

STATUS:

A304-D Clark (MS) No Same as
Executive Law
TITLE....Establishes the office of the child advocate

01/03/07 referred to children and families
01/17/07 reported referred to codes
01/23/07 reported referred to ways and means
06/06/07 amend (t) and recommit to ways and means
06/06/07 print number 304a
06/18/07 amend (t) and recommit to ways and means
06/18/07 print number 304b
06/20/07 reported referred to rules
01/09/08 referred to children and families
05/08/08 amend (t) and recommit to children and families
05/08/08 print number 304c
05/13/08 reported referred to codes
05/28/08 reported referred to ways and means
06/10/08 amend (t) and recommit to ways and means
06/10/08 print number 304d
06/16/08 reported referred to rules
06/16/08 reported
06/16/08 rules report cal.288
06/16/08 ordered to third reading rules cal.288
06/17/08 passed assembly
06/17/08 delivered to senate
06/17/08 REFERRED TO RULES

BILL TEXT:

STATE OF NEW YORK

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2007-2008 Regular Sessions

IN ASSEMBLY

(Prefiled)

January 3, 2007

Introduced by M. of A. CLARK, SCARBOROUGH, TITUS, PAULIN, JACOBS,
HEAST-

JOHN, IE, BENJAMIN, BENEDETTO, GREENE, PEOPLES, N. RIVERA, COLTON,
WALKER, CANESTRARI, GALEF, PHEFFER, FIELDS, PERRY, MAYERSOHN, BOYLAND,
BARRA, ALFANO, BUTLER -- Multi-Sponsored by -- M. of A. ARROYO,
FARRELL, CAHILL, CAMARA, CHRISTENSEN, CROUCH, EDDINGTON, ERRIGO,
McENENY, GANTT, GOTTFRIED, HIKIND, HYER-SPENCER, LATIMER, LIFTON,
SWEE- McKEVITT, MILLER, MILLMAN, MOLINARO, NOLAN, ROBINSON, SAYWARD,
to NEY, TOWNS, TOWNSEND, WEISENBERG, WRIGHT -- read once and referred
the to the Committee on Children and Families -- reported and referred to
amended, the Committee on Ways and Means -- committee discharged, bill
-- ordered reprinted as amended and recommitted to said committee
reprinted again reported from said committee with amendments, ordered
the as amended and recommitted to said committee -- recommitted to
3, the Committee on Children and Families in accordance with Assembly Rule
as sec. 2 -- committee discharged, bill amended, ordered reprinted
amended and recommitted to said committee

in AN ACT to amend the executive law and the social services law,
relation to the establishment of the office of the child advocate

The People of the State of New York, represented in Senate and
Assem- bly, do enact as follows:

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

- 3 ARTICLE 19-I
4 OFFICE OF THE CHILD ADVOCATE
5 Section 533. Purpose.
6 534. Definitions.
7 535. Office of the child advocate; creation; director.
8 536. Duties of the office of the child advocate.
9 537. Duties of the director.
10 538. Powers of the office of the child advocate.

brackets EXPLANATION--Matter in italics (underscored) is new; matter in

[-] is old law to be omitted.

1 539. Duty to maintain confidentiality.
2 540. Additional provisions.
3 § 533. Purpose. The purpose of this article is to ensure the
4 safety
5 and well-being of children in the care, custody, or guardianship of
6 the
7 office of children and family services or a local social
8 services
9 district, and to eliminate systematic problems in publicly
10 funded
11 programs which services children and families which are
12 administered
13 through the office of children and family services or local
14 social
15 services districts, including juvenile justice, foster care, child
16 care,
17 child welfare programs, and preventive services, through the
18 establish-
19 ment of a state office of the child advocate under the executive.
20 § 534. Definitions. As used in this article:
21 1. "Child" or "children" shall mean a person, or persons under the
22 age
23 of twenty-one who has been placed into the care, custody, or
24 guardian-
25 ship of the office of children and family services or a local
26 social
27 services district, pursuant to article three, seven, or ten of the
28 fami-
29 ly court act, or sections three hundred fifty-eight-a, three
30 hundred
31 eighty-three-c, three hundred eighty-four-a, or three hundred
32 eighty-
33 four-b of the social services law, including, but not limited to,
34 chil-
35 dren in the care, custody, or guardianship of the office of children
36 and
37 family services or a local social services district who are placed
38 at a
39 center or facility licensed by the office of mental health, the
40 office
41 of mental retardation and developmental disabilities, or the
42 department
43 of education, or who are detained in a local detention facility
44 pursuant
45 to section five hundred three of this chapter.
46 2. "Child advocate" means the office of the child advocate,
47 created
48 under this article.
49 3. "Director" means the director of the office of the child
50 advocate.
51 § 535. Office of the child advocate; creation; director. 1. There
52 is
53 hereby created in the executive department, an office of the child
54 advo-
55 cate, the purpose of which shall be to:
56 (a) Promote the rights, safety, well-being, and best interests
57 of

33 children placed into the care, custody, or guardianship of the office
of
34 children and family services or local social services districts
through
35 advocacy and independent oversight; and
36 (b) Investigate and make recommendations regarding systematic
problems
37 in publicly funded programs that service children and families
including
38 juvenile justice, foster care, child care, child welfare, and
preventive
39 services, which are administered by the office of children and
family
40 services or local social services districts.

41 2. The director shall be an individual with at least five years
expe-
42 rience in the general subject area of child welfare and juvenile
justice
43 who shall be appointed by the governor upon the advice and consent
of
44 the senate for a term of five years. The director shall continue to
hold
45 such position until his or her successor is appointed, but may
be
46 removed from his or her position if the governor shall determine
that
47 such director has abused his or her rights, powers, or duties
estab-
48 lished pursuant to this article or that he or she has willfully
failed
49 to carry out the duties required by this article. The director
shall
50 report to the governor, who shall fix the compensation of the
director
51 within amounts appropriated therefor.

52 3. The director may hire or appoint persons as may be deemed
necessary
53 to carry out the duties of the office of the child advocate. The
duties
54 of persons employed or appointed by the office of the child
advocate
55 shall be performed under the advice and supervision of the
director.
56 Persons employed or appointed by the office of the child advocate
shall

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1 be individuals with expertise in the areas of juvenile justice,
foster
2 care, child care, child welfare or preventive services, as evidenced
by
3 expertise in the field, practice, advocacy or by academic
background,
4 the level and sufficiency of which shall be determined by the
director.
5 The director shall fix the compensation of persons employed or
appointed

6 by the office of the child advocate within amounts appropriated
there-
7 for.
8 § 536. Duties of the office of the child advocate. 1. The child
advo-
9 cate shall:
10 (a) Evaluate the delivery of services by the office of children
and
11 family services, local social services districts and voluntary
agencies,
12 to children in the care, custody, or guardianship of the office of
chil-
13 dren and family services or a local social services district, and
their
14 families;
15 (b) Take appropriate actions aimed at promotion of the rights,
safety,
16 well-being, and best interests of children placed into the care,
custo-
17 dy, or guardianship of the office of children and family services
or
18 local social services districts, including, but not limited to,
conduct-
19 ing programs of public education, undertaking legislative
advocacy,
20 conducting public hearings and making proposals for administrative
or
21 systematic reform;
22 (c) Monitor the implementation of the policies, regulations and
stat-
23 utes of state agencies which may be applicable to the legal rights
of
24 children in the care, custody, or guardianship of the office of
children
25 and family services or local social services districts, and
policies,
26 statutes or regulations which may have an impact on juvenile
justice,
27 foster care, child care or child welfare programs, and
preventive
28 services, administered by the office of children and family services
or
29 local social services districts;
30 (d) Visit facilities, centers and programs licensed by, or run
by,
31 entities which have contracted with the office of children and
family
32 services or local social services districts, which service children
in
33 the care, custody, or guardianship of the office of children and
family
34 services or a local social services district and their families;
35 (e) Hear grievances and complaints and investigate alleged
violations
36 of the legal rights of children in the care, custody, or guardianship
of

37 the office of children and family services or local social
services
38 districts;
39 (f) Review and investigate complaints of systematic problems
in
40 publicly funded programs that service children and families,
adminis-
41 tered by the office of children and family services or local
social
42 services districts, including, juvenile justice, foster care,
child
43 care, or child welfare programs, and preventive services;
44 (g) Recommend changes in state policies, statutes and
regulations
45 concerning children in the care, custody, or guardianship of the
office
46 of children and family services or local social services districts;
and
47 recommend changes in state policies, statutes, and regulations
concern-
48 ing publicly funded programs that service children and families
includ-
49 ing juvenile justice, foster care, child care, child welfare
programs,
50 and preventive services, administered by the office of children
and
51 family services or local social services districts;
52 (h) Serve as a resource to children in the care, custody, or
guardian-
53 ship of the office of children and family services or local
social
54 services districts by informing such children of pertinent laws,
regu-
55 lations and policies, and their rights thereunder;

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1 (i) Take steps to make the existence and availability of the
child
2 advocate widely known, by appropriate and active means; and
3 (j) Establish and maintain a toll-free hotline to receive calls
from
4 children or adults regarding any matter in which the rights,
safety,
5 well-being or best interests of children in the care, custody, or
guar-
6 dianship of the office of children and family services or local
social
7 services districts, may be detrimentally affected.
8 2. If after review or investigation pursuant to paragraph (f)
of
9 subdivision one of this section, the child advocate identifies a
system-
10 atic problem in how services are provided to children in the
care,
11 custody, or guardianship of the office of children and family
services

12 or a local social services district, by the office of children and
fami-
13 ly services, or a local social services district, or any public
or
14 private entity which contracts with the office of children and
family
15 services or a local social services district to provide services
to
16 children in the care, custody, or guardianship of the office of
children
17 and family services or a local social services district, the child
advo-
18 cate shall provide such office, district, agency or entity a
written
19 report outlining the findings and recommendations of the child
advocate.
20 (a) An office, district, agency or entity named in a report by
the
21 child advocate as described in this subdivision shall have sixty
days
22 from the receipt of the written report to respond in writing to
the
23 child advocate's findings.
24 (b) Within ten days after the receipt of a response from an
office,
25 district, agency or entity as described in this subdivision, the
child
26 advocate shall issue such response, and the report issued by the
child
27 advocate pursuant to this subdivision, to the governor and the
legisla-
28 ture.
29 (c) If a response is not received by the child advocate within
sixty
30 days from the date that the child advocate sent such report to
such
31 office, district, agency or entity, the child advocate shall
provide
32 such report to the governor and the legislature with a notice
stating
33 that such office, district, agency or entity failed to issue a
timely
34 written response to the report by the child advocate.
35 § 537. Duties of the director. The director shall:
36 1. Provide administrative supervision and oversight to the office
of
37 the child advocate;
38 2. Report to the governor, the legislature, and the commissioner
of
39 the office of children and family services information concerning
the
40 grievances and complaints regarding children in the care, custody,
or
41 guardianship of the office of children and family services or
local
42 social services districts received by the child advocate, and the
status

43 of such grievances and complaints on a periodic basis, but not less
than
44 once per quarter.
45 (a) Such report shall contain statistical data and information
indi-
46 cating:
47 (i) the number of children served by the child advocate;
48 (ii) the number and types of complaints, grievances or issues
brought
49 to the attention of the child advocate;
50 (iii) whether a reported issue, complaint or grievance has
been
51 resolved and the manner in which it was resolved, and the status
of
52 implementation of recommendations or directives made by the child
advo-
53 cate with regard to previously reported issues, grievances
or
54 complaints;

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1 (iv) the number of agencies, residential centers, facilities,
secure,
2 non-secure, limited secure, and local detention facilities, group
homes
3 and foster homes visited by the child advocate;
4 (v) the number of investigations conducted by the child advocate;
and
5 (vi) the number and nature of contacts made by the child advocate
to
6 persons employed by the office of children and family services or
local
7 social services districts, or other state or local agencies, on
behalf
8 of children in the care, custody, or guardianship of the office of
chil-
9 dren and family services or a local social services district.
10 (b) The report shall indicate whether the office of children and
fami-
11 ly services or a local social services district has denied the
child
12 advocate access to records necessary to conduct an investigation.

13 § 538. Powers of the office of the child advocate. 1.

Notwithstanding

14 any provision of law or regulation to the contrary, the child
advocate
15 shall have access to, including the right to inspect and copy,
any
16 records necessary to carry out its rights, powers and duties pursuant
to
17 this article. Such access shall include access to records maintained
by
18 the statewide central registry of child abuse and maltreatment
and
19 records of local child protective services maintained pursuant to
title

20 six of article six of the social services law, or records kept or
main-
21 tained by the office of children and family services for children or
a
22 local social services district for children placed pursuant to
article
23 three or seven of the family court act.
24 2. Notwithstanding any inconsistent provision of law to the
contrary,
25 the commissioner of the office of children and family services and
the
26 commissioners of each local social services district shall enter into
a
27 written agreement with the director which shall provide the child
advo-
28 cate access to information and records regarding the services
provided
29 and received by children in the care, custody, or guardianship of
the
30 office of children and family services or a local social
services
31 district, to the extent that such access is necessary to an
investi-
32 gation undertaken by the child advocate. The child advocate shall
addi-
33 tionally have access to the extent necessary to an investigation, to
the
34 records of local and regional fatality review teams.
35 § 539. Duty to maintain confidentiality. All records of the
child
36 advocate pertaining to the fulfillment of the child advocate's
rights,
37 powers and duties pursuant to this article, and all records obtained
by
38 the child advocate shall be kept confidential. Provided however,
that
39 limited information contained in such records may be released by
the
40 child advocate, if appropriate, and upon approval of the director,
so
41 long as the information to be released would not identify the child
or
42 children the child advocate was serving, the names of the parents
or
43 siblings of such child or children, or the name of any individual
who
44 placed a call to the toll-free hotline operated by the child
advocate
45 and described in paragraph (j) of subdivision one of section
five
46 hundred thirty-six of this article.
47 § 540. Additional provisions. 1. The state shall protect and
hold
48 harmless any person employed or appointed by the child advocate,
from
49 financial loss and expense, including legal fees and costs, if
any,

50 arising out of any claim, demand or suit for damages resulting from
acts
51 or omissions committed in the discharge of his or her rights, powers
and
52 duties within the scope of his or her employment or appointment
which
53 may constitute negligence but which acts are not wanton, malicious
or
54 grossly negligent as determined by a court of competent jurisdiction.
55 2. No state or local agency, department, office, or entity
shall
56 discharge, or in any manner discriminate or retaliate against,
any

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1 person who in good faith makes a complaint to, or cooperates with,
the
2 child advocate in an investigation. No employee of any state or
local
3 department or office or of any private entity shall retaliate
against
4 any child who makes a complaint to, or who cooperates with, the
child
5 advocate in an investigation.
6 3. The child advocate may apply for and accept grants, gifts
and
7 bequests of funds from private individuals and foundations for
the
8 purpose of carrying out systematic studies under this article. The
funds
9 shall be expended in accordance with the provisions of such grant,
gift
10 or bequest.

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

14 16. The commissioner of the office of children and family
services
15 shall promulgate regulations requiring that no services or
programs
16 under the jurisdiction of the office of children and family
services
17 shall restrict or prohibit access to records or individuals to
the
18 office of the child advocate upon request, unless the disclosure of
such
19 records are otherwise prohibited by federal law or regulation.

20 § 3. Subdivision 1 of section 483 of the social services law, as
added
21 by section 2 of part F2 of chapter 62 of the laws of 2003, is amended
to
22 read as follows:

23 1. There shall be a council on children and families established
with-

24 in the office of children and family services consisting of the
follow-
25 ing members: the state commissioner of children and family services,
the
26 commissioner of temporary and disability assistance, the commissioner
of
27 mental health, the commissioner of mental retardation and
developmental
28 disabilities, the commissioner of the office of alcoholism and
substance
29 abuse services, the commissioner of education, the state director
of
30 probation and correctional alternatives, the commissioner of health,
the
31 commissioner of the division of criminal justice services, the
state
32 advocate for persons with disabilities, the director of the office
for
33 the aging, the commissioner of labor, [**and**] the chair of the
commission
34 on quality of care for the mentally disabled and the director of
the
35 office of the child advocate. The governor shall designate the chair
of

36 the council and the chief executive officer (CEO).
37 § 4. Paragraph (d) of subdivision 1 of section 422-a of the
social
38 services law, as amended by chapter 136 of the laws of 1999, is
amended

39 and a new paragraph (e) is added to read as follows:
40 (d) the child named in the report has died or the report involves
the
41 near fatality of a child. For the purposes of this section, "near
fatal-
42 ity" means an act that results in the child being placed, as
certified
43 by a physician, in serious or critical condition[~~.~~]; or
44 (e) a request for access to such records has been made by the
office
45 of the child advocate for the purpose of carrying out the duties of
the
46 office of the child advocate as described in section five hundred
thir-
47 ty-six of the executive law.

48 § 5. Subdivision 1 of section 413 of the social services law, as
sepa-
49 rately amended by chapters 193 and 513 of the laws of 2007, is
amended

50 to read as follows:
51 1. (a) The following persons and officials are required to report
or
52 cause a report to be made in accordance with this title when they
have
53 reasonable cause to suspect that a child coming before them in
their
54 professional or official capacity is an abused or maltreated child,
or

55 when they have reasonable cause to suspect that a child is an abused
or
56 maltreated child where the parent, guardian, custodian or other
person

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1 legally responsible for such child comes before them in their
profes-
2 sional or official capacity and states from personal knowledge
facts,
3 conditions or circumstances which, if correct, would render the child
an
4 abused or maltreated child: any physician; registered physician
assist-
5 ant; surgeon; medical examiner; coroner; dentist; dental
hygienist;
6 osteopath; optometrist; chiropractor; podiatrist; resident;
intern;
7 psychologist; registered nurse; social worker; a person employed by
the
8 office of the child advocate as described in section five hundred
thir-
9 ty-five of the executive law; emergency medical technician;
licensed
10 creative arts therapist; licensed marriage and family
therapist;
11 licensed mental health counselor; licensed psychoanalyst;
hospital
12 personnel engaged in the admission, examination, care or treatment
of
13 persons; a Christian Science practitioner; school official,
which
14 includes but is not limited to school teacher, school guidance
counse-
15 lor, school psychologist, school social worker, school nurse,
school
16 administrator or other school personnel required to hold a teaching
or
17 administrative license or certificate; social services worker; day
care
18 center worker; provider of family or group family day care; employee
or
19 volunteer in a residential care facility defined in subdivision seven
of
20 section four hundred twelve of this title or any other child care
or
21 foster care worker; mental health professional; substance abuse
counse-
22 lor; alcoholism counselor; peace officer; police officer;
district
23 attorney or assistant district attorney; investigator employed in
the
24 office of a district attorney; or other law enforcement official.
25 [~~(a)~~] (b) Whenever such person is required to report under this
title
26 in his or her capacity as a member of the staff of a medical or
other

27 public or private institution, school, facility or agency, he or
she
28 shall make the report as required by this title and immediately
notify
29 the person in charge of such institution, school, facility or agency,
or
30 his or her designated agent. Such person in charge, or the
designated
31 agent of such person, shall be responsible for all subsequent
adminis-
32 tration necessitated by the report. Any report shall include the
name,
33 title and contact information for every staff person of the
institution
34 who is believed to have direct knowledge of the allegations in
the
35 report. Nothing in this section or title is intended to require
more
36 than one report from any such institution, school or agency.
37 [~~(b)~~] (c) A medical or other public or private institution,
school,
38 facility or agency shall not take any retaliatory personnel action,
as
39 such term is defined in paragraph (e) of subdivision one of
section
40 seven hundred forty of the labor law, against an employee because
such
41 employee believes that he or she has reasonable cause to suspect that
a
42 child is an abused or maltreated child and that employee therefore
makes
43 a report in accordance with this title. No school, school
official,
44 child care provider, foster care provider, residential care
facility
45 provider, hospital, medical institution provider or mental health
facil-
46 ity provider shall impose any conditions, including prior approval
or
47 prior notification, upon a member of their staff specifically
required
48 to report under this title. At the time of the making of a report, or
at
49 any time thereafter, such person or official may exercise the right
to
50 request, pursuant to paragraph (A) of subdivision four of section
four
51 hundred twenty-two of this title, the findings of an investigation
made
52 pursuant to this title or section 45.07 of the mental hygiene law.
53 [~~(b)~~] (d) Social services workers are required to report or cause
a
54 report to be made in accordance with this title when they have
reason-
55 able cause to suspect that a child is an abused or maltreated
child

56 where a person comes before them in their professional or
official

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1 capacity and states from personal knowledge facts, conditions or
circum-

2 stances which, if correct, would render the child an abused or
maltreat-

3 ed child.

4 § 6. Transition of money. Monies in the amount of \$500,000
appropri-

5 ated by section 1 of chapter 53 of the laws of 2002, and
reappropriated

6 by chapter 53 of the laws of 2007 to the state commission on the
quality

7 of foster care, are hereby transferred and made available to the
office

8 of the child advocate, and notwithstanding section 51 of the
state

9 finance law or any other provision of law to the contrary, the
director

10 of the budget may authorize transfer or interchange of monies
appropri-

11 ated within the office of children and family services to the office
of

12 the child advocate, except where transfer or interchange of
appropri-

13 ations is prohibited or otherwise restricted by law.

14 § 7. This act shall take effect on the one hundred eightieth day
after

15 it shall have become a law; provided, however, that effective
immediate-

16 ly, the addition, amendment and/or repeal of any rule or
regulation

17 necessary for the implementation of this act on its effective date
are

18 authorized and directed to be made and completed on or before
such

19 effective date.
