

BILL TEXT:

## STATE OF NEW YORK

11498

### IN ASSEMBLY

June 11, 2004

Introduced by COMMITTEE ON RULES -- (at request of M. of A. Clark)  
--  
read once and referred to the Committee on Children and Families  
AN ACT to amend the executive law, in relation to creating the office  
of  
the child advocate; and repealing 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  
Assem-  
bly, do enact as follows:

1 Section 1. Article 50 and sections 1000 through 1003 of the  
executive  
2 law are renumbered article 60 and sections 2000 through 2003 and a  
new  
3 article 51 is added to read as follows:  
4 ARTICLE 51  
5 OFFICE OF THE CHILD ADVOCATE  
6 Section 1004. Office of the child advocate.  
7 1005. Appointment and term.  
8 1006. Organizational structure.  
9 1007. Duties of the child advocate.  
10 1008. Rights and powers of the child advocate.  
11 1009. Access to the child advocate.  
12 1010. Confidentiality of information.  
13 1011. Representation of child.  
14 1012. Indemnification from liability.  
15 1013. Commission on children established.  
16 § 1004. Office of the child advocate. There shall be within the  
state  
17 government an office of the child advocate. The head of the office  
shall  
18 be the child advocate, appointed pursuant to section one thousand  
five  
19 of this article.

20 § 1005. Appointment and term. The commission on children, as  
estab-  
21 lished by section one thousand thirteen of this article, shall  
appoint a  
22 person, qualified by training and experience to perform the duties  
of  
23 the office as set forth in this article, as the child advocate for  
the  
24 state of New York. The appointment shall be made jointly by the  
chair-  
25 person and vice-chairperson of the commission from a list of  
three  
26 candidates approved by the commission. The person appointed to the  
posi-

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

[-] is old law to be omitted.

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1 tion of the child advocate shall hold such office for a term of  
five  
2 years and shall continue to hold the office until his or her  
successor  
3 is appointed, provided that the child advocate may be removed from  
such  
4 position if the chairperson and vice-chairperson jointly determine  
that  
5 the child advocate has abused his or her powers and duties under  
this  
6 article or that the child advocate has willfully failed to carry out  
the  
7 duties required by this article.

8 § 1006. Organizational structure. 1. The child advocate may  
appoint  
9 assistants as may be deemed necessary whose powers and duties shall  
be  
10 similar to those designated to the child advocate by law and any  
other  
11 staff as the child advocate may deem necessary. The duties of  
the  
12 assistants and other staff members shall be performed under and at  
the  
13 advice and direction of the child advocate.

14 2. Notwithstanding any other provision of law, the child  
advocate  
15 shall act independently of the executive department and any other  
state  
16 agency or office in the performance of his or her duties.

17 § 1007. 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 the executive law and article six of the social  
services  
25 law, with a view toward the rights of children, and to investigate  
in  
26 accordance with the established rules and procedures adopted by  
the  
27 child advocate, the circumstances relating to the death or serious  
inju-  
28 ry of any child who has received services from the office of  
children  
29 and family services or any local office of child protective services  
or  
30 department of social services;  
31 (c) review complaints of persons concerning the actions of the  
office  
32 of children and family services and those entities that are regulated  
or  
33 overseen by, or receive funding from, the office of children and  
family  
34 services; make appropriate referrals and investigate those  
complaints  
35 where the child advocate determines that a child or family may be  
in  
36 need of assistance from the child advocate or that a systemic issue  
in  
37 the state's provision of services to children is raised by  
the  
38 complaint;  
39 (d) periodically review the facilities and procedures of any  
insti-  
40 tutions or residences, public and private, where a child has been  
placed  
41 by the local department of social services, the family court or  
the  
42 office of children and family services;  
43 (e) recommend changes in state policies and regulations  
concerning  
44 children including, but not limited to, changes in the systems  
that  
45 provide for juvenile justice, child protective services, foster  
care,  
46 and child care. If the child advocate identifies a systemic problem  
in  
47 how the state, through its agencies or contract services, or any  
locali-  
48 ty, through its agencies or contract services, protects children,  
the  
49 child advocate shall provide its findings and recommendations to  
the

50 agency affected by the findings and recommendations and make those  
find-  
51 ings and recommendations available to the public. The agency shall  
have  
52 sixty days from the receipt of the findings and recommendations  
to  
53 develop a corrective action plan and submit the plan to the child  
advoc-  
54 ate for approval. The child advocate shall monitor the agency's  
imple-  
55 mentation of the plan, and, if the agency fails to promptly  
implement

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1 the plan, the child advocate shall take such action as he or she  
deems  
2 necessary;  
3 (f) take all possible actions including, but not limited to,  
conduct-  
4 ing programs of public education, undertaking legislative advocacy  
and  
5 making proposals for administrative correction or systemic reform  
and  
6 formal legal action, in order to secure and ensure the legal, civil  
and  
7 special rights of children;  
8 (g) take the appropriate steps to make the existence and  
availability  
9 of the child advocate widely known, by appropriate and active means,  
to  
10 children and adults;  
11 (h) create informational materials for children regarding the  
rights  
12 of children when they are in foster care, detention centers,  
training  
13 schools, jails, or prisons and the methods and assistance available  
to  
14 enforce those rights; and  
15 (i) establish and maintain a twenty-four hour toll-free hotline  
to  
16 receive and respond to calls from adults and children referring  
problems  
17 to the child advocate.  
18 2. The child advocate may:  
19 (a) investigate, review, monitor or evaluate any state or local  
agency  
20 response to, or disposition of, an allegation of child abuse or  
neglect;  
21 (b) inspect and review the operations, policies and procedures  
of  
22 juvenile detention facilities, foster homes, group homes,  
residential  
23 treatment facilities, state training schools, shelters for the care  
of  
24 abused or neglected children, shelters for the care of persons in  
need

25 of supervision, shelters for the care of homeless youth, or  
independent  
26 living arrangements operated by or approved for payment by the office  
of  
27 children and family services, and any other public or private  
residen-  
28 tial setting in which a child has been placed by a state or  
local  
29 department or office;  
30 (c) review, monitor, and report on the performance of state-  
funded  
31 private entities charged with the care and supervision of children  
by  
32 conducting research audits or other studies of case records,  
policies,  
33 procedures and protocols, and conducting interviews with staff and  
child  
34 residents as deemed necessary by the child advocate to assess  
the  
35 performance of the entities;  
36 (d) hold public hearings on the subject of an investigation or  
study  
37 underway by the office, and receive testimony from agency and  
program  
38 representatives, the public and other interested parties, as the  
child  
39 advocate deems appropriate;  
40 (e) enter into contracts with any person, firm, corporation, or  
educa-  
41 tional institution in order to invite expert research to assist  
the  
42 child advocate in assessing, evaluating, reviewing and improving  
the  
43 delivery of services to children and families in New York; and  
44 (f) enter into contracts with any firm or corporation to assist  
the  
45 child advocate in the pursuit of formal legal action pursuant to  
para-  
46 graph (f) of subdivision one of this section.  
47 § 1008. Rights and powers of the child advocate. 1.  
Notwithstanding  
48 any other provision of law, the child advocate shall have access  
to,  
49 including the right to inspect and copy, any records necessary to  
carry  
50 out the duties of the child advocate as outlined in this article.  
Such  
51 access shall include, but not be limited to, access to records  
main-  
52 tained by the statewide central registry of child abuse and  
maltreatment  
53 and records of local child protective services maintained pursuant  
to  
54 title six of article six of the social services law, records of  
local  
55 and regional fatality review teams, and records maintained pursuant  
to

56 sections three hundred seventy-two and four hundred nine-f of the  
social

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1 services law. The child advocate shall have access to individually  
iden-

2 tifiable health information to the extent that the child advocate

3 deter-  
4 mines necessary to fulfill the requirements of this article. The

5 office  
6 of the child advocate shall be deemed a governmental authority

7 author-  
8 ized to receive reports of child abuse or neglect for the purpose

9 of  
10 complying with 45 CFR § 164.512 and other federal rules and

11 regulations  
12 governing access to individually identifiable health information. If

13 the  
14 child advocate is denied access to any records necessary to carry

15 out  
16 such responsibilities, he or she may issue a subpoena for the

17 production  
18 of such records as provided in subdivision three of this section.

19 2. In performance of his or her duties under this article, the  
20 child

21 advocate may communicate privately with any child or person who  
22 has

23 received, is receiving or should have received services from the  
24 office

25 of children and family services or any other entity that is regulated  
26 or

27 overseen by, or receives funding from, the office of children and  
28 family

29 services.  
30 3. The child advocate may issue subpoenas to compel the attendance

31 and  
32 testimony of witnesses or the production of books, papers and

33 other  
34 documents and to administer oaths to witnesses in any manner under

35 his  
36 or her investigation. If any person to whom such subpoena is

37 issued  
38 fails to appear or, having appeared, refuses to give testimony or

39 fails  
40 to produce the evidence required, the child advocate may apply to

41 the  
42 supreme court which shall have jurisdiction to order such person

43 to  
44 appear and give testimony or to produce such evidence, as the case

45 may  
46 be.

47 4. The child advocate may apply for and accept grants, gifts  
48 and

49 bequests of funds from other states, federal and interstate agencies  
50 and

51 independent authorities and private firms, individuals and  
52 foundations,

29 for the purpose of carrying out his or her responsibilities. The  
funds  
30 shall be expended in accordance with the provisions of such grant,  
gift  
31 or bequest.

32 § 1009. Access to the child advocate. 1. The child advocate  
shall  
33 create and disseminate materials for all youth in foster care and  
juve-  
34 nile justice facilities or programs detailing the services that  
the  
35 child advocate can offer such youth and how such youth can contact  
the  
36 office of the child advocate.

37 2. All youth placed in foster care or a facility operated by the  
divi-  
38 sion of rehabilitative services shall be permitted access to a  
telephone  
39 to call the toll free hotline of the office of the child advocate  
upon  
40 the youth's request. Such youth shall be permitted to complete any  
phone  
41 call to the toll free hotline and any subsequent phone calls with  
the  
42 office of the child advocate in a private setting in which the  
youth's  
43 conversations are not monitored. Any calls placed by a youth to  
the  
44 office of the child advocate shall not count against any limit on  
phone  
45 calls placed on the youth pursuant to the rules of the facility in  
which  
46 he or she resides.

47 § 1010. Confidentiality of information. 1. All records of the  
child  
48 advocate pertaining to the fulfillment of the child advocate's  
duties  
49 under this article and all confidential records obtained by the  
child  
50 advocate shall be confidential. Provided, however, that  
information  
51 contained in those records may be disclosed publicly in such a  
manner  
52 that would not identify the individuals from whom such information  
was  
53 obtained. Such confidential records shall be available to  
persons  
54 approved, upon application for good cause, by the family court.

55 2. No state or local department or office or private entity  
shall  
56 discharge, or in any manner discriminate or retaliate against,  
any

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1 employee who in good faith makes a complaint to the child advocate  
or

2 cooperates with the office of the child advocate in an investigation.  
No  
3 employee of any state or local department or office or of any  
private  
4 entity shall retaliate against any child who makes a complaint to  
the  
5 child advocate or who cooperates with the office of the child  
advocate  
6 in an investigation.  
7 § 1011. Representation of child. 1. In addition to the duties  
set  
8 forth in section one thousand seven of this article, the child  
advocate,  
9 or his or designee, shall have the power to commence a civil  
action  
10 against the state, any subdivision of the state and any private  
entity  
11 providing out-of-home residential services to children on behalf of  
any  
12 child whose care and custody or custody and guardianship has  
been  
13 assigned to any agency or department under the oversight of the  
office  
14 of children and family services.  
15 2. Any judgment for compensation or order for settlement of the  
claim  
16 for compensation entered by the court pursuant to subdivision one  
of  
17 this section shall be considered as the estate of the child for  
whose  
18 benefit the judgment or order is entered, to be held by the office  
of  
19 the child advocate as guardian of such compensation, and shall be  
depos-  
20 ited into a trust account established by the office for the purpose  
of  
21 distributing such funds to such child in accordance with the  
plan  
22 adopted by the court issuing the judgment.  
23 § 1012. Indemnification from liability. The state of New York  
shall  
24 protect and hold harmless any attorney, director, investigator,  
social  
25 worker or other person employed by the office of the child advocate  
and  
26 any volunteer appointed by the child advocate from financial loss  
and  
27 expense, including legal fees and costs, if any, arising out of  
any  
28 claim, demand or suit for damages resulting from acts or  
omissions  
29 committed in the discharge of his or her duties within the scope of  
his  
30 or her employment or appointment which may constitute negligence  
but  
31 which acts are not wanton, malicious or grossly negligent as  
determined



32 by a court of competent jurisdiction.  
33 § 1013. Commission on children established. 1. There is  
established a  
34 commission on children which shall meet three times a year with  
the  
35 child advocate and his or her staff to review and assess the  
following:  
36 (a) patterns of treatment and services for children;  
37 (b) policy implications of the findings of paragraph (a) of  
this  
38 subdivision; and  
39 (c) necessary systemic improvements.  
40 2. Such advisory committee shall consist of six members, all of  
whom  
41 have experience in the field of child welfare, juvenile justice,  
or  
42 child care. One member shall be appointed by the temporary president  
of  
43 the senate, one member shall be appointed by the minority leader of  
the  
44 senate, one member shall be appointed by the speaker of the  
assembly,  
45 one member shall be appointed by the minority leader of the  
assembly,  
46 and the remaining two members shall be appointed by the governor. Of  
the  
47 two members appointed by the governor, one shall be a member of the  
same  
48 political party as the temporary president of the senate and the  
other  
49 shall be a member of the same political party as the minority leader  
of  
50 the senate. The term of office for each member shall be six years  
and  
51 vacancies in the membership of the commission occurring for any  
cause  
52 shall be filled for the balance of the unexpired term in the same  
manner  
53 as the original appointment of the member whose office became vacant.  
54 3. The chairperson and vice-chairperson of the commission shall  
be  
55 elected by a majority of the members of the commission to serve a  
two  
56 year term. The chairperson shall be a member of a different  
political

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1 party than the chairperson of the commission during the preceding  
term.  
2 The chairperson and vice-chairperson shall each be a member of a  
differ-  
3 ent political party as such term is defined in the election law.  
4 4. Any matter upon which the commission must act by a vote of  
the  
5 membership must be by an affirmative vote of the majority of the  
members

6 of the commission. No such vote may be taken until all members of  
the  
7 original commission are appointed; thereafter, each member shall  
contin-  
8 ue to serve until a successor is appointed in the manner provided  
in  
9 this section. Each member of the commission shall be entitled only  
to  
10 the actual and necessary expenses incurred by him or her in the  
perform-  
11 ance of his or her duties under this article.

12 § 2. Title 1-A of article six of the social services law is  
REPEALED.

13 § 3. This act shall take effect on April 1, 2005.

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