

STATUS:

S6877 PARKER Same as [A 3233-B](#) Clark (MS)

Executive Law

TITLE....Establishes the independent office of the child advocate; repealer

02/19/10 REFERRED TO CHILDREN AND FAMILIES

03/09/10 REPORTED AND COMMITTED TO FINANCE

06/08/10 1ST REPORT CAL.787

06/09/10 2ND REPORT CAL.

06/10/10 ADVANCED TO THIRD READING

06/14/10 SUBSTITUTED BY A3233B

A03233 Clark (MS)

01/23/09 referred to children and families

04/06/09 reported referred to codes

04/21/09 reported referred to ways and means

05/14/09 amend and recommit to ways and means

05/14/09 print number 3233a

06/08/09 reported referred to rules

06/22/09 reported

06/22/09 rules report cal.636

06/22/09 ordered to third reading rules cal.636

06/22/09 passed assembly

06/22/09 delivered to senate

06/22/09 REFERRED TO RULES

01/06/10 DIED IN SENATE

01/06/10 RETURNED TO ASSEMBLY

01/06/10 ordered to third reading cal.254

01/12/10 amended on third reading (t) 3233b

02/09/10 passed assembly

02/09/10 delivered to senate

02/09/10 REFERRED TO CHILDREN AND FAMILIES

06/14/10 SUBSTITUTED FOR S6877

06/14/10 3RD READING CAL.787

06/24/10 PASSED SENATE

06/24/10 RETURNED TO ASSEMBLY

09/20/10 delivered to governor

SUMMARY:**PARKER**

Rpld Art 19-G Title 3 Subtitle B, add Art 19-I SS533 - 539, amd S501, Exec L

Establishes the independent office of child advocate to ensure the protection and promotion of legal rights for youth in juvenile justice facilities; repeals certain provisions relating to the office of the ombudsman.

BILL TEXT:

STATE OF NEW YORK

6877

IN SENATE

February 19, 2010

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 Assem-
bly, do enact as follows:

1 Section 1. Subtitle B of title 3 of article 19-G of the
executive law
2 is REPEALED.
3 § 2. The executive law is amended by adding a new article 19-
I to read
4 as follows:

ARTICLE 19-I

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 § 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
23 2. advocate for, and report to the governor and the
legislature on
24 suggested statutory, regulatory or policy changes aimed at
improving
25 outcomes and services for children in the juvenile justice
system and
26 their families in New York state.
27 § 534. Definitions. As used in this article:

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

[-] is old law to be omitted.

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1 1. "Child" or "children" means:
2 (a) a person, or persons under the age of eighteen; or
3 (b) a person or persons under the age of twenty-one who
has been
4 placed into a juvenile justice facility in the care, custody,
or guardi-
5 anship of the office of children and family services or a
local social
6 services district pursuant to article three of the family court
act.
7 2. "Child advocate" means the person appointed pursuant to
subdivision
8 one of section five hundred thirty-five of this article to
direct and
9 oversee the activities of the independent office of the child
advocate.
10 § 535. The child advocate. 1. The child advocate shall be an
individ-
11 ual with at least five years experience in the general
subject area of
12 either child welfare, juvenile justice or childhood behavioral
health,
13 who shall be appointed by the governor upon the advice and
consent of
14 the senate for a term of five years. The child advocate shall
continue
15 to hold such position until his or her successor is
appointed, but may
16 be removed from his or her position if the governor shall
determine that
17 such child advocate has abused his or her rights, powers,
or duties

18 established pursuant to this article or that he or she has
19 willfully
20 failed to carry out the duties required by this article. The
21 child advo-
22 cate shall report to the governor, who shall fix the
23 compensation of the
24 child advocate within amounts appropriated therefor.
25 2. The child advocate may hire or appoint persons as may
26 be deemed
27 necessary to carry out the duties of the independent office of
28 the child
29 advocate. The duties of persons employed or appointed by the
30 child advo-
31 cate shall be performed under the advice and supervision of
32 the child
33 advocate. Persons employed or appointed by the independent
34 office of the
35 child advocate shall be individuals with expertise in the areas
36 of child
37 welfare, juvenile justice, childhood behavioral health,
38 foster care,
39 preventive services, or child care, as evidenced by
40 expertise in the
41 field, practice, advocacy or by academic background, the
42 level and
43 sufficiency of which shall be determined by the child
44 advocate. The
45 child advocate shall fix the compensation of persons
46 employed or
47 appointed by the independent office of the child advocate
48 within amounts
49 appropriated therefor.
50 § 536. Duties of the child advocate. 1. The child advocate
51 shall:
52 (a) examine, evaluate, investigate and report to the
53 governor and the
54 legislature on particular and systemic issues in publicly
55 funded juve-
56 nile justice programs overseen by the office of children
57 and family
58 services and local social services districts; and
59 (b) examine, evaluate, investigate and report to the governor
60 and the
61 legislature on multi-systemic issues that children in the
62 juvenile
63 justice system experience in accessing needed services across
64 systems;
65 and
66 (c) monitor the implementation of the policies, regulations
67 and stat-
68 utes of state agencies which may be applicable to the legal
69 rights of
70 children in juvenile justice facilities overseen by the office
71 of chil-
72 dren and family services or a local social services district,
73 or the
74 family of such children; and

49 (d) monitor the implementation of policies, regulations and
statutes
50 which may have an impact on publicly funded juvenile justice
programs
51 overseen by the office of children and family services; and
52 (e) recommend changes in state policies, statutes and
regulations
53 concerning children in the juvenile justice system and the
families of
54 such children; and
55 (f) recommend changes in state policies, statutes, and
regulations
56 concerning publicly funded juvenile justice programs that
service chil-

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1 dren and families, administered by the office of children
and family
2 services or local social services districts; and
3 (g) take appropriate actions aimed at promotion of the
rights, safety,
4 well-being, and best interests of children in New York state,
including,
5 but not limited to, undertaking legislative advocacy,
conducting public
6 hearings and making proposals for administrative or systemic
reform; and
7 (h) provide administrative supervision and oversight to the
independ-
8 ent office of the child advocate and devote full-time to the
duties of
9 his or her office; and
10 (i) conduct periodic inspections, evaluations or reviews of
any juve-
11 nile justice facility operated by the office of children
and family
12 services at any time, with or without prior notice. Juvenile
justice
13 facility directors and staff shall cooperate with such
inspection, eval-
14 uation or review. An advocate shall have the right to inspect
the juve-
15 nile justice facility, visit all areas and observe all parts
and aspects
16 of such facility program; and
17 (j) report to the governor and the legislature as needed, but
not less
18 than twice per year. Such report shall be made available to the
public,
19 unless such materials are confidential pursuant to statute,
and shall
20 include but not be limited to:
21 (A) information concerning the number and types of
reviews, evalu-
22 ations and investigations conducted by the independent
office of the
23 child advocate; and

24 (B) any recommendations by the child advocate for
25 legislative, regula-
26 tory, or public policy changes.
27 2. If after examination pursuant to subdivision one of this
28 section,
29 the child advocate identifies a systemic problem in how
30 services are
31 provided to children in the care, custody, or guardianship of
32 the office
33 of children and family services or a local social services
34 district, by
35 the office of children and family services, or a local social
36 services
37 district, or any public or private entity which contracts
38 with the
39 office of children and family services or a local social
40 services
41 district to provide services to such children, the child
42 advocate shall
43 provide such office, district, agency or entity a written
44 report outlin-
45 ing the findings and recommendations of the child advocate.
46 (a) An office, district, agency or entity named in a
47 report by the
48 child advocate as described in this subdivision shall have the
49 option to
50 respond in writing to the child advocate's findings, provided
51 however
52 that such written response must be issued within ninety
53 days of such
54 office, district, agency or entity's receipt of the applicable
55 report by
56 the child advocate.
57 (b) Within thirty days after the receipt of a response from
58 an office,
59 district, agency or entity as described in this subdivision,
60 the child
61 advocate shall issue such response, and the report issued by
62 the child
63 advocate pursuant to this subdivision, to the governor and the
64 legisla-
65 ture.
66 (c) If a response or a written request for an additional
67 thirty days
68 with an explanation is not received by the child advocate
69 within ninety
70 days from the date that the child advocate sent such
71 report to such
72 office, district, agency or entity, the child advocate shall
73 provide
74 such report to the governor and the legislature with a
75 notice stating
76 that such office, district, agency or entity failed to issue
77 a timely
78 written response to the report by the child advocate.
79 § 537. Powers of the independent office of the child
80 advocate.

55 Notwithstanding any provision of law or regulation to the
56 contrary, the
57 independent office of the child advocate shall have access to,
58 including

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1 the right to inspect and copy, any records necessary to
2 carry out its
3 rights, powers and duties pursuant to this article, including
4 but not
5 limited to, personnel records that bear on any issue being
6 reviewed,
7 evaluated, or investigated and records of children under
8 care of the
9 juvenile justice system that bear on any issue being
10 reviewed, evalu-
11 ated, or investigated. The independent office of the child
12 advocate
13 shall also have the authority to subpoena records and
14 witnesses, and to
15 conduct interviews with any person necessary to carry out
16 its rights,
17 powers and duties pursuant to this article, including but not
18 limited to
19 staff and children under care of the juvenile justice system.
20 § 538. Duty to maintain confidentiality. All records of the
21 independ-
22 ent office of the child advocate pertaining to the
23 fulfillment of the
24 child advocate's rights, powers and duties pursuant to this
25 article, and
26 all records obtained by the child advocate shall be kept
27 confidential,
28 provided however, that limited information contained in such
29 records may
30 be released by the child advocate, if appropriate, and upon
31 approval of
32 the child advocate, so long as the information to be released
33 would not
34 identify the child or children the child advocate was
35 serving or the
36 names of the parents or siblings of such child or children.
37 § 539. Additional provisions. 1. The state shall protect
38 and hold
39 harmless any person employed or appointed by the child
40 advocate, from
41 financial loss and expense, including legal fees and costs,
42 if any,
43 arising out of any claim, demand or suit for damages resulting
44 from acts
45 or omissions committed in the discharge of his or her rights,
46 powers and
47 duties within the scope of his or her employment or
48 appointment which
49 may constitute negligence but which acts are not wanton,
50 malicious or

27 grossly negligent as determined by a court of competent
jurisdiction.

28 2. No state or local agency, department, office, or
entity shall

29 discharge, or in any manner discriminate or retaliate
against, any

30 person who in good faith makes a complaint to, or cooperates
with, the

31 child advocate in a review or evaluation conducted by the
child advo-

32 cate. No employee of any state or local department or office
or of any

33 private entity shall retaliate against any person who makes a
complaint

34 to, or who cooperates with the independent office of the child
advocate

35 in a review, investigation or evaluation conducted by the
independent

36 office of the child advocate.

37 3. All communications to the independent office of the child
advocate

38 shall remain confidential. Any complaint filed by a youth or
a staff

39 member of a juvenile justice facility with the independent
office of the

40 child advocate shall remain confidential. All youth residing
in a juve-

41 nile justice facility shall be permitted reasonable access to
a tele-

42 phone to make a toll free call or shall be supplied writing
materials in

43 order to write letters to the independent office of the child
advocate

44 upon the youth's request. Any communications between such youth
and the

45 independent office of the child advocate shall remain
confidential and

46 shall not be monitored by any member of the juvenile justice
facility's

47 staff.

48 4. The independent office of the child advocate may
apply for and

49 accept grants, gifts and bequests of funds from private
individuals and

50 foundations for the purpose of carrying out studies under this
article.

51 The funds shall be expended in accordance with the provisions
of such

52 grant, gift or bequest.

53 5. The child advocate shall take all possible actions
including, but

54 not limited to, conducting programs of public education,
undertaking

55 legislative advocacy and making proposals for administrative
correction

1 or reform and formal legal action, in order to secure and
2 ensure the
3 legal, civil and special rights of children.
4 6. The child advocate shall take the appropriate steps to
5 make the
6 existence and availability of the child advocate widely known,
7 by appro-
8 priate and active means, to children and adults.
9 7. The child advocate shall create informational materials
10 for chil-
11 dren regarding the rights of children when they are in
12 detention
13 centers, facilities operated by the office of children
14 and family
15 services, jails, or prisons and the methods and assistance
16 available to
17 enforce those rights.
18 § 3. Subdivision 16 of section 501 of the executive law, as
19 renumbered
20 by chapter 170 of the laws of 1994, is renumbered subdivision
21 and a
22 new subdivision 16 is added to read as follows:
23 16. The commissioner of the office of children and family
24 services
25 shall promulgate regulations requiring that no services,
26 facilities,
27 entities or programs under the jurisdiction of the office of
28 children
29 and family services shall restrict or prohibit access to
30 facilities,
31 records or individuals to the independent office of the child
32 advocate
33 upon request, unless the disclosure of such records are
34 otherwise
35 prohibited by federal law or regulation.
36 § 4. This act shall take effect April 1, 2011; provided,
37 however, that
38 effective immediately, the addition, amendment and/or repeal of
39 any rule
40 or regulation necessary for the implementation of this act on
41 its effec-
42 tive date are authorized and directed to be made and
43 completed on or
44 before the effective date.

SPONSORS MEMO:

**NEW YORK STATE SENATE
INTRODUCER'S MEMORANDUM IN SUPPORT
submitted in accordance with Senate Rule VI. Sec 1**

BILL NUMBER: S6877

SPONSOR: PARKER

TITLE OF BILL:

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

PURPOSE OR GENERAL IDEA OF BILL:

This bill would establish an Independent Office of the Child Advocate, vested with the authority to examine issues in state-funded programs in order to advocate for the rights, safety, and well-being of children in the State's care.

SUMMARY OF SPECIFIC PROVISIONS:

Section 1 establishes the Independent Office of the Child Advocate with-
in state government, headed by the Child Advocate appointed by the Governor for a five-year term.

The Child Advocate shall examine, evaluate, and report to the Governor and the legislature on issues in publicly funded programs and multi-sys-
temic issues that children in the State's care and their families experience; advocate for statutory, regulatory or policy changes aimed at improving outcomes and services for children and families in New York; monitor the implementation of policies and regulations that may be applicable to the legal rights of children in the State's care; recommend changes in State policies that may have an impact on certain publicly funded programs; recommend changes in State policies that service children and families; and take appropriate actions aimed at promoting the rights, safety, well-being and best interests of children in New York.

The Child Advocate shall also take actions, such as public education programs and proposals for reform, in order to secure and ensure children's legal and civil, rights; make the availability of the Child Advo-
cate known; and create informational materials for children regarding their rights while in the state's cure.

EFFECTS OF PRESENT LAW THIS BILL WOULD ALTER:

Current law does not provide for any office that performs the functions that would be performed by the Independent Office of the Child Advocate.

JUSTIFICATION:

This bill would establish an Independent Office of the Child Advocate, similar to offices that currently exist in numerous other states includ-
ing New Jersey, Massachusetts, Connecticut, Delaware, and Rhode Island, among others.

This bill is a response to recent reports from the Governor's Task Force
on Transforming Juvenile Justice and the United States Department of Justice, Civil Rights Division that found egregious, system-wide civil

rights violations and serious problems in our state's juvenile justice system. This bill incorporates some of the suggestions outlined in the reports.

One of the most important duties of the state is to protect children in its care. The mission of the Independent Office of the Child Advocate is to ensure the safety and well-being of children. The Office is authorized to accomplish this by addressing concerns within state and local programs that serve children, making recommendations to improve systems that serve children, and working with, agencies and entities to ensure the best possible outcomes for children.

PRIOR LEGISLATIVE HISTORY:

6/17/04 Reported from Assembly Children and Families Committee to Codes Committee

6/20/05 - A.6334/S.6877, Passed Assembly, Delivered to Senate

1/4/06 Died in Senate, Returned to Assembly

3/2/06 - Referred to Senate Social Services, Children and Families Committee

6/21/06 - Passed Assembly, Delivered to Senate, Referred to Senate Rules Committee

1/17/07 A.304, Reported from Assembly Children and Families Committee to Codes Committee

1/23/07 - A.304, RDported to Assembly Ways and Means Committee

6/22/09 - A.304, Passed Assembly, Delivered to Senate, Referred to Senate Rules Committee

6/22/09 - A.3233-A, Passed Assembly, Delivered to Senate, Referred to Senate Rules Committee

FISCAL IMPLICATIONS:

To be determined.

EFFECTIVE DATE:

April 1, 2011