

By Representative Lerner

1 A bill to be entitled
2 An act relating to child advocacy; amending s.
3 43.16, F.S.; creating the Office of Child
4 Advocate; providing an additional duty of the
5 Justice Administrative Commission to manage and
6 direct the Office of Child Advocate; creating
7 s. 43.165, F.S.; providing for the Office of
8 Child Advocate; providing legislative intent;
9 providing for the appointment and term of the
10 child advocate; providing for staff and
11 funding; providing for an annual report;
12 providing for duties; providing for access to
13 information; providing for the rights and
14 powers of the advocate; providing for
15 confidentiality; providing for indemnification;
16 providing for the transfer of the guardian ad
17 litem program from the Office of State Court
18 Administration to the Office of Child Advocate;
19 creating s. 63.406, F.S.; providing for the
20 award of reasonable fees and costs to the
21 guardian ad litem under certain circumstances;
22 providing an effective date.

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24 WHEREAS, the Legislature finds that periodic reports
25 which include recommendations for changes in polices and
26 procedures to improve the health, safety, and welfare of
27 children would be helpful in order to timely influence the
28 public policy of this state and the Office of Child Advocate
29 should be created to serve as a centralized resource for
30 providing such information to the Legislature, and
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1 WHEREAS, the Office of Child Advocate should be created
2 to identify, receive, investigate, and seek resolution or
3 referral of complaints made by or on behalf of children
4 concerning any act, omission to act, practice, policy, or
5 procedure of any agency or any contractor or agent of such
6 agency that may adversely affect the health, safety, or
7 welfare of children, and

8 WHEREAS, while numerous agencies and citizen
9 organizations are engaged in monitoring a wide range of
10 children services, there is a greater need for coordination of
11 monitoring efforts, for using resources to obtain information
12 most useful for achieving relevant local, state, and federal
13 requirements regarding children services, and for making the
14 information more accessible to those agencies and
15 organizations implementing children programs and projects, and

16 WHEREAS, it is the intent of the Legislature to
17 encourage the focusing of existing state agencies monitoring
18 and reporting activities necessary to focus on child welfare
19 in the State of Florida, NOW, THEREFORE,

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21 Be It Enacted by the Legislature of the State of Florida:

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23 Section 1. Subsection (5) of section 43.16, Florida
24 Statutes, is amended to read:

25 43.16 Justice Administrative Commission; membership,
26 powers and duties.--

27 (5) The duties of the commission shall include, but
28 not be limited to, the following:

29 (a) The maintenance of a central state office for
30 administrative services and assistance when possible to and on
31 behalf of the state attorneys and public defenders of Florida,

1 the office of capital collateral representative of Florida,
2 and the Judicial Qualifications Commission.

3 (b) Each state attorney and public defender and the
4 Judicial Qualifications Commission shall continue to prepare
5 necessary budgets, vouchers which represent valid claims for
6 reimbursement by the state for authorized expenses, and other
7 things incidental to the proper administrative operation of
8 the office, such as revenue transmittals to the treasurer,
9 automated systems plans, etc., but will forward same to the
10 commission for recording and submission to the proper state
11 officer. However, when requested by a state attorney or a
12 public defender or the Judicial Qualifications Commission, the
13 commission will either assist in the preparation of budget
14 requests, voucher schedules, and other forms and reports or
15 accomplish the entire project involved.

16 (c) The management and direction of the Office of
17 Child Advocate which is created within the commission.

18 Section 2. Section 43.165, Florida Statutes, is
19 created to read:

20 43.165 Office of Child Advocate; legislative intent;
21 appointment to office; staff; funding; duties; powers;
22 confidentiality; indemnification from liability.--

23 (1) Legislative intent.--It is the intent of the
24 Legislature through the creation of the Office of Child
25 Advocate and the enactment of this section to:

26 (a) Provide that all children in the state shall be
27 ensured representation individually and as a class of their
28 best interests in child abuse and neglect proceedings.

29 (b) Provide that the policies and programs created to
30 ensure their health, education, and welfare remain effective,
31 integrated, and serve the purpose for which created.

1 (c) Recognize the need for a single point of
2 accountability for children services. The Office of Child
3 Advocate shall be operated to create an efficient and cohesive
4 means to ensure the rest of the government works together in a
5 cohesive manner and brings together the values of education
6 and health to our state's children. This office shall
7 strengthen the state's ability in protecting children and
8 assure that the legislators are overseers of government
9 programs involving children and ensure there is no other
10 agenda for the best interest of the state.

11 (2) Appointment and term.--The Governor with the
12 advice and consent of the Senate shall appoint a member of The
13 Florida Bar who has been admitted to practice law for a least
14 3 years to fill the Office of Child Advocate, who shall be a
15 person qualified by training and experience to perform the
16 duties of the office. The appointment shall be made from a
17 list of at least three persons prepared and submitted by a
18 committee consisting of two attorneys appointed by The Florida
19 Bar; two judges appointed by the chief judge; one medical
20 doctor appointed by the Board of Medicine; one psychologist
21 appointed by the Board of Psychology; a House member appointed
22 by the Speaker of the House of Representatives; a Senate
23 member appointed by the President of the Senate; one social
24 worker appointed by the Board of Clinical Social Work,
25 Management and Family Therapy, and Mental Health Counseling;
26 one person appointed as a representative of private children's
27 agencies by the Governor; one person representing the general
28 public appointed by the Governor; and one person appointed by
29 the Secretary of Children and Family Services. The person
30 appointed child advocate shall hold office for a term of 2
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1 years and shall continue to hold office until his or her
2 successor is appointed and qualified.

3 (3) Staff; experts.--

4 (a) The child advocate may appoint such assistants as
5 may be deemed necessary whose powers and duties shall be
6 similar to those imposed upon the child advocate by law and
7 such other staff as deemed necessary. The duties of the
8 assistants and other staff members shall be performed under
9 and by the advice and direction of the child advocate.

10 (b) The Legislature shall annually appropriate such
11 sums as it may deem necessary for the payment of the salaries
12 of the staff and for the payment of office expenses and other
13 actual expenses incurred by the child advocate in the
14 performance of his or her duties; and the comptroller is
15 hereby authorized and directed to draw a warrant upon the
16 treasurer for the payment of such sum or sums or so much
17 thereof as may from time to time be required upon receipt by
18 him or her of proper vouchers approved by the child advocate.

19 (4) Annual report.--The child advocate shall annually
20 submit to the Governor and the Legislature a detailed report
21 analyzing the work of his or her office and any
22 recommendations resulting therefrom.

23 (5) Duties.--The child advocate shall perform the
24 following duties:

25 (a) Ensure that each child in protective care,
26 custody, or treatment and, in proper cases any other person
27 interested in the child's welfare, is apprised of his or her
28 rights under this chapter and other applicable provisions of
29 the statutes;

30 (b) Review periodically the procedures established by
31 the Department of Children and Family Services with a view

1 toward the rights of the children and to investigate in
2 accordance with the established rules adopted by the child
3 advocate, the circumstances relating to the death of any child
4 who has received services from the department;

5 (c) Review complaints of persons and investigate those
6 where it appears that a child may be in need of assistance
7 from the child advocate;

8 (d) To periodically review the facilities and
9 procedures of any and all institutions and/or residences,
10 public and private, where a juvenile has been placed by the
11 family court or the Department of Children and Family
12 Services;

13 (e) To recommend changes in the procedures for dealing
14 with juvenile problems and in the systems for providing child
15 care and treatment;

16 (f) To take all possible action, including, but not
17 limited to, programs of public education, legislative
18 advocacy, and formal legal action, to secure and ensure the
19 legal, civil, and special rights of children;

20 (g) To provide training and technical assistance to
21 guardians ad litem and special advocates appointed by the
22 family court to represent children in proceedings before that
23 court; and

24 (h) To review orders of the court relating to
25 juveniles with power to request reviews as required by the
26 best interest of the child.

27 (6) Access to information.--The child advocate shall
28 have access to the following information:

29 (a) The names of all children in protective services,
30 treatment, or other programs under the jurisdiction of the
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1 Department of Children and Family Services for children and
2 their families, and their location if in custody.
3 (b) All written reports of child abuse and neglect.
4 (7) Rights and powers of advocate.--The child advocate
5 shall have the following rights and powers:
6 (a) To communicate privately by mail or orally with
7 any child in treatment or under protective services;
8 (b) To have access, including the right to inspect,
9 copy, and/or subpoena records held by the clerk of the court,
10 law enforcement agencies, and institutions, public or private,
11 and other agencies wherein, or persons with whom a particular
12 child has been either voluntarily or otherwise placed for
13 care, or has received treatment within or without the state;
14 (c) To take whatever steps are appropriate to see that
15 persons are made aware of the services of the child advocate's
16 office, its purpose, and how it can be contacted;
17 (d) To apply for and accept grants, gifts, and
18 bequests of funds from other states, federal and interstate
19 agencies, and independent authorities, and private firms,
20 individuals, and foundations, for the purpose of carrying out
21 his or her lawful responsibilities; and
22 (e) To exercise the powers conferred upon a trustee.
23 (8) Criminal injuries to children, additional
24 powers.--
25 (a) The child advocate, or his or her designee, shall
26 have the power to commence in court a civil action against the
27 state on behalf of any child the custody of whom has been
28 assigned to any institution or agency under the control of the
29 Department of Children and Family Services or any other
30 private agency.
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1 (b) Any judgment for compensation or order for
2 settlement of the claim for compensation entered by the court
3 shall be considered as the estate of the child for whose
4 benefit the judgment or order is entered, to be held by the
5 office as guardian of such compensation, and shall be
6 deposited into an account established by the office for the
7 purposes of distributing such funds to such child in
8 accordance with the plan adopted by the court.

9 (9) Confidentiality.--All records of the child
10 advocate pertaining to the care and treatment of a child shall
11 be confidential. Information contained in those records may
12 not be disclosed publicly in such manner as to identify
13 individuals, but records shall be available to persons
14 approved, upon application for good cause, by the family
15 court.

16 (10) Indemnification.--The State of Florida shall
17 protect and hold harmless any attorney, director,
18 investigator, social worker, or other person employed by the
19 Office of the Child Advocate and/or any volunteer appointed by
20 the child advocate from financial loss and expense, including
21 legal fees and costs, if any, arising out of any claim,
22 demand, or suit for damages resulting from acts or omissions
23 committed in the discharge of his or her duties with the
24 program within the scope of his or her employment or
25 appointment which may constitute negligence but which acts are
26 not wanton, malicious, or grossly negligent as determined by a
27 court of competent jurisdiction.

28 Section 3. Section 63.406, Florida Statutes, is
29 created to read:

30 63.406 Guardian ad litem; award of reasonable fees and
31 costs authorized.--In any action for dissolution of marriage,

