

STATUS:

S6298-A GOLDEN No Same as
Executive Law

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

06/16/07 REFERRED TO RULES

06/20/07 ORDERED TO THIRD READING CAL.1991

06/20/07 PASSED SENATE

06/20/07 DELIVERED TO ASSEMBLY

06/20/07 referred to children and families

01/09/08 died in assembly

01/09/08 returned to senate

01/09/08 REFERRED TO FINANCE

06/15/08 AMEND (T) AND RECOMMIT TO FINANCE

06/15/08 PRINT NUMBER 6298A

06/16/08 COMMITTEE DISCHARGED AND COMMITTED TO RULES

06/16/08 ORDERED TO THIRD READING CAL.1870

06/18/08 PASSED SENATE

06/18/08 DELIVERED TO ASSEMBLY

06/18/08 referred to children and families

VOTING:

[06/18/08](#) S6298-A Senate Vote Aye: 62 Nay: 0

[06/20/07](#) S6298 Senate Vote Aye: 62 Nay: 0

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06/18/08 S6298-A Senate Vote Aye: 62 Nay: 0

Aye Adams	Aye Alesi	Aye Aubertine	Aye Bonacic
Aye Breslin	Aye Bruno	Aye Connor	Aye DeFrancisco
Aye Diaz	Aye Dilan	Aye Duane	Aye Farley
Aye Flanagan	Aye Fuschillo	Aye Golden	Aye Gonzalez
Aye Griffo	Aye Hannon	Aye Hassell-Thompson	Aye Huntley
Aye Johnson C	Aye Johnson O	Aye Klein	Aye Krueger
Aye Kruger	Aye Lanza	Aye Larkin	Aye LaValle
Aye Leibell	Aye Libous	Aye Little	Aye Maltese
Aye Marcellino	Aye Mazarz	Aye Montgomery	Aye Morahan
Aye Nozzolio	Aye Onorato	Aye Oppenheimer	Aye Padavan
Aye Parker	Aye Perkins	Aye Rath	Aye Robach
Aye Sabini	Aye Saland	Aye Sampson	Aye Savino
Aye Schneiderman	Aye Serrano	Aye Seward	Aye Skelos
Aye Smith	Aye Stachowski	Aye Stavisky	Aye Stewart-Cousins
Aye Thompson	Aye Trunzo	Aye Valesky	Aye Volker
Aye Winner	Aye Young		

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06/20/07 S6298 Senate Vote Aye: 62 Nay: 0

Aye Adams	Aye Alesi	Aye Bonacic	Aye Breslin
Aye Bruno	Aye Connor	Aye DeFrancisco	Aye Diaz
Aye Dilan	Aye Duane	Aye Farley	Aye Flanagan
Aye Fuschillo	Aye Golden	Aye Gonzalez	Aye Griffo

Aye Hannon	Aye Hassell-Thompson	Aye Huntley	Aye Johnson C
Aye Johnson O	Aye Klein	Aye Krueger	Aye Kruger
Aye Lanza	Aye Larkin	Aye LaValle	Aye Leibell
Aye Libous	Aye Little	Aye Maltese	Aye Marcellino
Aye Maziarz	Aye Montgomery	Aye Morahan	Aye Nozzolio
Aye Onorato	Aye Oppenheimer	Aye Padavan	Aye Parker
Aye Perkins	Aye Rath	Aye Robach	Aye Sabini
Aye Saland	Aye Sampson	Aye Savino	Aye Schneiderman
Aye Serrano	Aye Seward	Aye Skelos	Aye Smith
Aye Stachowski	Aye Stavisky	Aye Stewart-Cousins	Aye Thompson
Aye Trunzo	Aye Valesky	Aye Volker	Aye Winner
Aye Wright	Aye Young		

SUMMARY:

GOLDEN

Rpld Part K-6, Chap 57 of 2007; add Art 19-I SS540 - 540-o, amd S501, Exec L; amd S483, Soc Serv L
Creates the independent office of child advocate to protect and promote legal rights for youth in
programs and facilities operated by the office of children and family services; repeals certain provisions
relating the the office of ombudsman.

BILL TEXT:

STATE OF NEW YORK

6298--A

2007-2008 Regular Sessions

IN SENATE

June 16, 2007

Introduced by Sen. GOLDEN -- read twice and ordered printed, and when
printed to be committed to the Committee on Rules -- recommitted to
the Committee on Finance in accordance with Senate Rule 6, sec. 8 --
committee discharged, bill amended, ordered reprinted as amended and
recommitted to said committee

AN ACT to amend the executive law and the social services law, in
relation to the independent office of the child advocate; and to
repeal part K-6 of chapter 57 of the laws of 2007, amending the execu-
tive law relating to creating the office of ombudsman, relating there-
to

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

- 1 Section 1. Part K-6 of chapter 57 of the laws of 2007, amending the
- 2 executive law relating to creating the office of ombudsman, is REPEALED.

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

5 ARTICLE 19-I

6 INDEPENDENT OFFICE OF THE CHILD ADVOCATE

7 Section 540. Purpose.

8 540-a. Definitions.

9 540-b. Independent office of the child advocate.

10 540-c. Duties of the independent office of the child advocate.

11 540-d. Powers of the independent office of the child advocate.

12 540-e. Access to the independent office of the child advocate.

13 540-f. Notification to the independent office of the child advo-
14 cate of critical incidents.

15 540-g. Review of policies concerning children.

16 540-h. Duties of the director.

17 540-i. Conduct and scope of investigations.

18 540-j. Independent office of the child advocate reports.

EXPLANATION--Matter in italics (underscored) is new; matter in brackets
[-] is old law to be omitted.

LBD13879-03-8

1 540-k. Notification to the independent office of the child advo-
2 cate of a youth's need for legal counsel.

3 540-l. Independent review board.

4 540-m. Chair of the independent review board.

5 540-n. Confidentiality of reports.

6 540-o. Additional provisions.

7 § 540. Purpose. The purpose of this article is to protect and promote
8 legal rights for youth in programs and facilities operated by the office
9 of children and family services, by codifying and strengthening the
10 former office of the ombudsman as the independent office of the child
11 advocate.

12 § 540-a. Definitions. As used in this article:

13 1. "Commissioner" means the commissioner of the office of children and
14 family services.

15 2. "Director" means the director of the independent office of the
16 child advocate.

17 3. "Office" means the office of children and family services.

18 4. "Child advocate" means the independent office of child advocate,
19 created by this article.

20 5. "Board" is the independent review board, created by this article.

21 § 540-b. Independent office of the child advocate. There is hereby
22 established the independent office of the child advocate in the execu-
23 tive department. The director shall be an individual with at least five
24 years experience in the general subject area of child welfare, child
25 health and safety, and juvenile justice as a practitioner, child advo-
26 cate, academician, writer, or theoretician, who shall be appointed by
27 the governor upon the advice and consent of the senate for a term of
28 five years. The director shall continue to hold such position until his
29 or her successor is appointed, but may be removed from his or her posi-
30 tion if the governor shall determine that such director has abused his
31 or her rights, powers and duties established pursuant to this article or
32 that he or she has willfully failed to carry out the duties required by
33 this article. The director shall report to the governor, who shall fix
34 the compensation of the director within amounts appropriated therefor.
35 Persons employed by the child advocate shall be attorneys or shall have
36 expertise in the areas of juvenile justice and youth rights, as
37 evidenced by experience in the field, or by academic background, the
38 level and sufficiency of which shall be determined by the director.

39 § 540-c. Duties of the independent office of the child advocate. The
40 child advocate shall:

41 1. visit facilities and programs in accordance with priorities estab-
42 lished by the director, hear grievances and complaints, investigate
43 alleged violations of the legal rights of youth residing in facilities
44 operated by the office, and monitor and participate in grievance proce-
45 dures concerning residents in secure facilities, pursuant to section
46 five hundred four-a of this chapter;

47 2. monitor the implementation of the policies and regulations of the
48 office and of the rules and regulations of other state agencies, as such
49 may be applicable to the legal rights of youth residing in facilities
50 operated by the office, and monitor the implementation of statutes,
51 court orders, court decisions and court stipulations which affect youth
52 residing in facilities operated by the office;

53 3. advise and assist youth residing in facilities operated by the
54 office to obtain legal counsel;

55 4. recommend policies, regulations, and legislation designed to
56 protect youth residing in facilities operated by the office;

1 5. serve as a resource to youth residing in facilities operated by the
2 office by informing them of pertinent laws, regulations and policies,
3 and their rights thereunder;

4 6. present significant complaints and concerns of youth residing in
5 facilities operated by the office to the commissioner, appropriate
6 office staff, and the independent review board; and

7 7. periodically review procedures established by the office to carry
8 out the provisions of article 19-G of this chapter, with a view toward
9 the rights, safety and development of youth residing in facilities oper-
10 ated by the office.

11 § 540-d. Powers of the independent office of the child advocate.
12 Notwithstanding any other provision of law, the child advocate shall
13 have access to, including the right to inspect and copy, any records
14 necessary to carry out its rights, powers and duties pursuant to this
15 article, excluding those protected by statutory privilege or as other-
16 wise provided in this section, or protected by federal requirements.
17 Such access shall include access to records maintained by the statewide
18 central registry of child abuse and maltreatment and records of local
19 child protective services maintained pursuant to title six of article
20 six of the social services law, under written agreement to be estab-
21 lished with the commissioner which shall provide access to the extent
22 that such access is necessary to an investigation undertaken by the
23 child advocate. The child advocate shall additionally have access to the
24 extent necessary to an investigation, to the records of local and
25 regional fatality review teams pursuant to agreement with the office,
26 and shall have access equal to that granted to the office pursuant to
27 section three hundred seventy-two of the social services law to records
28 maintained pursuant to such section three hundred seventy-two, to the
29 extent necessary to an investigation undertaken by the child advocate,
30 and shall have access to uniform case records pursuant to section four
31 hundred nine-f of the social services law. Any failure to maintain the
32 confidentiality of client-identifiable information shall subject the
33 child advocate to denial of any further access to records until such
34 time as the child advocate shall have reviewed its procedures concerning
35 controls and prohibitions imposed on the dissemination of such informa-
36 tion and shall have taken all reasonable and appropriate steps to elimi-
37 nate such lapses in maintaining confidentiality to the satisfaction of
38 the office. The office shall establish the grounds for denial of access
39 to records contained under this section and shall recommend as necessary
40 a plan of remediation to the child advocate. Any person given access to
41 information pursuant to this subdivision who releases data or informa-
42 tion to persons or agencies not authorized to receive such information
43 shall be guilty of a class A misdemeanor.

44 § 540-e. Access to the independent office of the child advocate. 1.
45 The child advocate shall create and disseminate materials for all youth
46 in facilities operated by the office detailing the services that the
47 child advocate can offer such youth and how such youth can contact the
48 child advocate, and shall establish and maintain a toll-free hotline to
49 receive calls from adults and children seeking to refer problems and
50 concerns to the advocate.

51 2. All youth residing in a facility operated by the office shall be
52 permitted reasonable access to a telephone to make a toll-free call to
53 the child advocate upon the youth's request. Such youth shall be permit-
54 ted to complete any phone calls with the child advocate in a manner
55 which reasonably assures that the youth's conversations with a child
56 advocate are private. Any calls placed by a youth to the child advocate

1 shall not count against any limit on phone calls placed on the youth
2 pursuant to the rules of the facility in which he or she resides.

3 § 540-f. Notification to the independent office of the child advocate
4 of critical incidents. The child advocate shall receive copies of crit-
5 ical incident reports involving a youth residing in a facility operated
6 by the office.

7 § 540-g. Review of policies concerning children. In addition to other
8 powers and duties specified in this article, the child advocate may
9 recommend changes in office policies and regulations concerning children
10 to improve services or to correct systemic problems concerning services
11 to children in the juvenile justice system. In addition, the child
12 advocate may: (a) inspect and review operations, policies and procedures
13 for the purpose of reporting on systemic performance of the office and
14 agencies under its jurisdiction by conducting audits or studies of case
15 records, policies, procedures and protocols, and interviews with staff
16 and child residents as the child advocate may deem necessary; (b) enter
17 into contracts to obtain the services of experts to assist the child
18 advocate in assessing, evaluating, reviewing and improving the delivery
19 of services and programs to children and families; and (c) conduct
20 public hearings on a study of systemic issues undertaken by the child
21 advocate.

22 § 540-h. Duties of the director. The director shall:

23 1. provide administrative supervision and oversight to the child advo-
24 cate;

25 2. establish procedures to ensure that the child advocate services are
26 made available to every youth residing in facilities operated by the
27 office;

28 3. coordinate meetings of the board and the activities of its members;

29 4. coordinate activities of the child advocate with the board and
30 other units within the office;

31 5. report to the governor, the legislature, the board, the commission-
32 er, other appropriate directors of the office, the general counsel to
33 the office and other appropriate office staff, concerning the grievances
34 and complaints of youth residing in facilities operated by the office
35 and the status of such grievances and complaints on a periodic basis,
36 but not less than once per quarter. The report shall indicate whether a
37 reported issue, complaint or grievance has been resolved and the manner
38 in which it was resolved, and the status of implementation of recommen-
39 dations or directives made by the commissioner with regard to previously
40 reported issues, grievances or complaints; and

41 6. prepare a monthly report for the commissioner on the activities of
42 the child advocate. Such monthly report shall contain statistical data
43 and information indicating: the number of youth served by the child
44 advocate; the number and types of complaints, grievances or issues
45 brought to the attention of the child advocate; the number of office
46 facilities visited by the child advocate; the number of investigations
47 conducted by the child advocate; and the number and nature of contacts
48 made by the child advocate to persons or agencies external to the office
49 on behalf of youth residing in facilities operated by the office.

50 § 540-i. Conduct and scope of investigations. The child advocate may
51 investigate grievances and complaints pertaining to youth residing in
52 facilities operated by the office brought to the attention of the child
53 advocate from any source, and may in pursuing its investigation visit
54 any facility operated by the office at any time, without prior notice.
55 Facility directors and facility staff shall cooperate with the investi-
56 gation. At the child advocate's request, the staff of a facility shall

1 inform the residents of the child advocate's availability on site or on
2 premises. The child advocate shall have access to any resident on
3 request, and the facility shall provide a suitable room, if so
4 requested, for private counseling. The child advocate shall have the
5 right to inspect the facility, visit all areas and observe all parts and
6 aspects of the facility program. The child advocate shall interview
7 facility staff during regular hours of employment whenever feasible.
8 The child advocate shall have access to all books, records, logs,
9 reports, memoranda and any and all other materials or written documents
10 pertaining to office facilities in the possession of the office, or its
11 facilities. The child advocate may copy or make reference to any such
12 report, document, memorandum, log entry or other material or written
13 document and, unless such item is confidential pursuant to statute, may
14 include a copy in his or her report. Consistent with applicable laws
15 and regulations, the confidentiality of records and documents obtained
16 must be maintained by the child advocate.

17 § 540-j. Independent office of the child advocate reports. The child
18 advocate shall submit regular reports, at least monthly, which shall
19 contain information regarding major grievances, complaints received and
20 other matters needing attention. The reports shall include a recitation
21 of the issue or complaint, a brief statement of facts, and the conclu-
22 sions and recommendations of the child advocate, and such other items of
23 information as the child advocate shall deem appropriate. The reports
24 shall be forwarded unaltered by the child advocate to the governor, the
25 commissioner, the legislature, and other appropriate office officials,
26 and to the board. When the facility director has conducted an investi-
27 gation into the matters reported by the child advocate, the findings or
28 response of such facility director shall be included in the child advo-
29 cate's report.

30 § 540-k. Notification to the independent office of the child advocate
31 of a youth's need for legal counsel. 1. If informed that a youth resid-
32 ing in a facility operated by the office has been or is about to be
33 arrested by a law enforcement official, the child advocate shall take
34 steps to see that the youth is provided with adequate legal represen-
35 tation.

36 2. When a youth residing in a facility operated by the office is to be
37 interrogated or interviewed by a law enforcement official concerning a
38 criminal act, or by any person concerning a civil or criminal matter,
39 the child advocate may request to be present during such interrogation
40 or interview. Under no circumstances shall the child advocate serve as
41 the youth's attorney or legal representative, and the child advocate
42 shall so inform the youth and the representatives of the youth, but if
43 requested to do so, shall take steps to see that the youth is provided
44 with legal representation.

45 3. Whenever it appears to the child advocate that a youth residing in
46 a facility operated by the office is in need of legal services, the
47 child advocate may contact the youth's attorney or legal representative
48 or assist the youth in making such contact.

49 § 540-l. Independent review board. The independent review board shall
50 consist of fifteen members who are not employed by the office and who
51 are knowledgeable in the areas of juvenile justice and youth rights.
52 Five members of such board shall be appointed by the governor, five by
53 the temporary president of the senate, and five by the speaker of the
54 assembly. Each board member shall be appointed for a term of three
55 years, which term may be renewed once. At least one member shall be a
56 former resident or parent of a resident; at least one member shall be a

1 psychologist or other clinician; at least one member shall be an indi-
2 vidual knowledgeable of juvenile legal rights matters; at least one
3 member shall be a judge of the family court; and at least one member
4 shall be knowledgeable of the criminal justice system. Members shall be
5 reimbursed for travel expenses incurred in the conduct of their duties.
6 The board shall review the child advocate reports and meet at least
7 bimonthly with the child advocate, the commissioner and other appropri-
8 ate personnel to discuss the reports. The board is an advisory body and
9 has no administrative duties. It shall advise the commissioner on
10 matters pertaining to the child advocate and on matters related to
11 complaint and grievance resolution. The board shall have the authority
12 to:

13 1. request the child advocate and/or the commissioner to conduct
14 investigations;

15 2. make inquiries at the request of the child advocate or the commis-
16 sioner, or, on its own motion, into matters affecting the legal rights
17 of youth residing in facilities operated by the office;

18 3. convene meetings and communicate freely with the child advocate;

19 4. evaluate the effectiveness of the child advocate and make necessary
20 inquiries to that end; and

21 5. visit office facilities and grounds and inspect records of the
22 office pertaining to such facilities. Laws and regulations governing the
23 confidentiality of records must be adhered to, and the general counsel
24 for the office should be notified concerning the records to be
25 inspected. During any such visit to facilities or inspection of records,
26 the board members may speak with youth and facility staff.

27 § 540-m. Chair of the independent review board. The governor shall
28 appoint one of the members of the board to serve as its chair. The
29 member so appointed shall serve as chair for a term of three years. The
30 chair of the board shall:

31 1. be responsible for coordinating the activities of the board, with
32 the assistance of the director;

33 2. preside at meetings of the board;

34 3. establish agenda items for board meetings; and

35 4. make recommendations to the commissioner for the removal of inac-
36 tive board members.

37 § 540-n. Confidentiality of reports. The child advocate reports and
38 reports of the board are confidential and shall be safeguarded from
39 coming to the knowledge of, and from inspection or examination by any
40 person other than the commissioner, other designated agency officials
41 for the performance of their official duties and the board. Authorized
42 persons receiving such reports shall not divulge information contained
43 therein without the written consent of the commissioner. The authorized
44 disclosure of any such information shall not contain any individually
45 identifiable information.

46 § 540-o. Additional provisions. 1. The state shall protect and hold
47 harmless any attorney, director, investigator, social worker or other
48 person employed by the child advocate, and any volunteer appointed by
49 the child advocate, from financial loss and expense, including legal
50 fees and costs, if any, arising out of any claim, demand or suit for
51 damages resulting from acts or omissions committed in the discharge of
52 his or her rights, powers and duties within the scope of his or her
53 employment or appointment which may constitute negligence but which acts
54 are not wanton, malicious or grossly negligent as determined by a court
55 of competent jurisdiction.

1 2. No state or local agency, department, office, or entity shall
2 discharge, or in any manner discriminate or retaliate against, any
3 employee who in good faith makes a complaint to or cooperates with the
4 child advocate in an investigation. No employee of any state or local
5 department or office or of any private entity shall retaliate against
6 any child who makes a complaint to or who cooperates with the child
7 advocate in an investigation.

8 3. The child advocate may apply for and accept grants, gifts and
9 bequests of funds from private individuals and foundations for the
10 purpose of carrying out systemic studies hereunder. The funds shall be
11 expended in accordance with the provisions of such grant, gift or
12 bequest.

13 § 2. Subdivision 16 of section 501 of the executive law, is renumbered
14 subdivision 17 and a new subdivision 16 is added to read as follows:

15 16. The commissioner of the office of children and family services
16 shall promulgate regulations requiring that no services or programs
17 under the jurisdiction of the office of children and family services
18 shall restrict or prohibit access to records or individuals by the inde-
19 pendent office of the child advocate upon request, unless excluded as
20 otherwise provided by law, or otherwise protected by federal require-
21 ments, and provided further, however, that in the case of medical
22 records, disclosure may be exclusive of the personal notes of a physi-
23 cian as defined in such regulations and access to such medical records
24 may be limited to such times as may be specified in such regulations.

25 § 3. Subdivision 1 of section 483 of the social services law, as added
26 by section 2 of part F-2 of chapter 62 of the laws of 2003, is amended
27 to read as follows:

28 1. There shall be a council on children and families established with-
29 in the office of children and family services consisting of the follow-
30 ing members: the state commissioner of children and family services, the
31 commissioner of temporary and disability assistance, the commissioner of
32 mental health, the commissioner of mental retardation and developmental
33 disabilities, the commissioner of the office of alcoholism and substance
34 abuse services, the commissioner of education, the state director of
35 probation and correctional alternatives, the commissioner of health, the
36 commissioner of the division of criminal justice services, the state
37 advocate for persons with disabilities, the director of the office for
38 the aging, the commissioner of labor, [~~and~~] the chair of the commission
39 on quality of care for the mentally disabled and the independent office
40 of the child advocate. The governor shall designate the chair of the
41 council and the chief executive officer (CEO).

42 § 4. This act shall take effect immediately; provided however that
43 sections two and three of this act shall take effect April 1, 2009.

SPONSORS MEMO:

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

BILL NUMBER: S6298A

SPONSOR: GOLDEN

TITLE OF BILL:

An act to amend the executive law and the social services law, in relation to the independent office of the child advocate; and to repeal part K-6 of chapter 57 of the laws of 2007, amending the executive law relating to creating the office of ombudsman, relating thereto

PURPOSE OR GENERAL IDEA OF THE BILL:

This bill establishes an autonomous Independent Office of the Child Advocate within the Executive Branch, appointed by and reporting to the Governor, whose purpose is to protect and promote legal rights for youth in programs and facilities operated by the office of children and family services, by codifying and strengthening the former office of the ombudsman as the independent office of the child advocate.

SUMMARY OF PROVISIONS:

§ 540-b - Creates the Independent office of the child advocate, and establishes criteria for the director, who must be an individual with at least five years experience in the general subject area of child welfare, child health and safety, and juvenile justice, appointed by the governor upon the advice and consent of the senate for a term of five years. Employees in the department shall be attorneys or have expertise in juvenile justice and youth rights.

§ 541-C - Duties. 1. visit facilities and programs, hear grievances and complaints, investigate alleged violations of the legal rights of youth in facilities operated by OCFS, and monitor and participate in grievance procedures concerning residents in secure facilities;

2. monitor the implementation of the policies and regulations of OCFS and the rules and regulations of other state agencies, if applicable to the legal rights of youth in OCFS facilities, and monitor the implementation of statutes, court orders, etc. which affect youth residing in facilities operated by the office;

3. advise and assist youth in OCFS facilities office to obtain legal counsel;

4. recommend policies, regulations, and legislation to protect youth in OCFS facilities;

5. serve as a resource to youth in OCFS facilities by informing them of pertinent laws, regulations and policies, and their rights;

6. present significant complaints and concerns of youth residing in OCFS facilities to the commissioner and others; and

7. periodically review procedures established by the office to carry out the provisions of article 19-6, with a view toward the rights, safety and development of youth in facilities and programs under the jurisdiction of the office.

§ 540-D - Powers of the independent office of the child advocate with respect to access to individuals and records. Gives access to records necessary to carry out its rights, powers and duties pursuant to this

article, excluding those protected by statutory privilege, or protected by federal requirements; requires that access to sensitive records, such as with the child registry, be provided under written agreement with OCFS and that access be granted only to the extent needed for an investigation. Any failure to maintain the confidentiality of client identifiable information shall subject the child advocate to denial of further access until the advocate takes steps to eliminate future lapses to the satisfaction of OCFS. A person who releases data or information to persons or agencies not authorized to receive it is guilty of a class A misdemeanor.

§ 540-E - Access to the independent office of the child advocate. Requires Informational materials for youth in OCFS facilities and a toll-free hotline. Guarantees that a youth in an OCFS facility can make a toll free call to the advocate.

§ 540-F - Notification to the independent office of the child advocate of critical incidents. Requires that the child advocate receive copies of critical incident reports involving a youth residing in an OCFS facility.

§ 540-G - Review of policies concerning children. The child advocate may recommend changes in OCFS policies and regulations to improve services or to correct systemic problems concerning services to children in the juvenile justice system. In addition, the child advocate may: (a) inspect and review operations, policies and procedures for the purpose of reporting on systemic performance of OCFS and agencies under its jurisdiction; (b) contract with experts to assist in assessing, evaluating, reviewing and improving the delivery of services and programs to children and families; and (c) conduct public hearings on a study of systemic issues.

§ 540-h and j. Duties of the director. In addition to administrative duties, requires a report to the Governor and the Legislature, and others, on grievances and complaints of youth residing in OCFS facilities and the status of such grievances and complaints at least quarterly; and also a monthly report for the OCFS commissioner on the activities of the advocate, with statistical data and information indicating: the number of youth served by the child advocate; the number and types of complaints, grievances or issues brought to the attention of the child advocate; the number of office facilities visited by the child advocate; the number of investigations conducted by the child advocate; and the number and nature of contacts made by the child advocate to persons or agencies external to the office on behalf of youth residing in facilities operated by the office. Also monthly reports on incidents which are not sanitized, to be provided to the Governor and the legislature.

§ 540-I - Conduct and scope of investigations. Provides general parameters for the investigations of the advocate, including access to records, personnel, requirements that facility staff cooperate, etc.

§ 540-K - Notification to the independent office of the child advocate of a youth's need for legal counsel. Requires the advocate to take steps to see that a youth is provided with adequate legal representation. § 540-L, M, N. Independent review board. Continues the 15member independent review board, and changes the appointments to five each by the Governor, the Temporary President of the Senate, and the speaker of the Assembly. Each board member shall be appointed for a term of three years. Establishes qualifications for some of the members. The board is

required to review child advocate reports and meet with the child advocate, the commissioner and other appropriate personnel to discuss the reports. The board shall have the authority to: 1. request investigations; 2. make inquiries into matters affecting the legal rights of youth residing in OCFS facilities; 3. convene meetings and communicate freely with the child advocate; 4. evaluate the effectiveness of the child advocate and make necessary inquiries to that end; and 5. visit office facilities and grounds and inspect records of the office pertaining to such facilities. The Governor appoints the chair. IRB reports are confidential and authorized persons receiving such reports shall not divulge information contained therein without the written consent of the commissioner. The authorized disclosure of any such information shall not contain any individually identifiable information. 540-0 - Additional Provisions. 1. Provides Indemnification of employees and volunteers. 2. Provides protection from retaliation for public employees and children. 3. Allows the child advocate to accept Grants and Gifts.

Section 2. Requires OCFS to promulgate regulations requiring access to records and documents by the child advocate.

Section 3. Makes the child advocate a member of the Council on Children and Families.

Section 4. Repeals the state commission on the quality of foster care

JUSTIFICATION:

This bill establishes an independent Office of the Child Advocate, similar to those existing 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.

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.

PRIOR LEGISLATIVE HISTORY:

S.6877, Children & Families

FISCAL IMPLICATIONS:

None in the current year.

EFFECTIVE DATE:

April 1, 2008.
