

**STATUS:****S6877-A** GOLDENSame as [A 6334-A](#) Clark (MS)

Executive Law

TITLE....Creates the office of child advocate within the council on children and families

03/02/06 REFERRED TO SOCIAL SERVICES, CHILDREN AND FAMILIES

06/19/06 AMEND (T) AND RECOMMIT TO SOCIAL SERVICES, CHILDREN AND FAMILIES

06/19/06 PRINT NUMBER 6877A

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**VOTING:**

NO VOTING INFORMATION FOUND

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**SUMMARY:**

GOLDEN, DeFRANCISCO, LEIBELL, MALTESE, MORAHAN, PADAVAN, RATH, ROBACH, SPANO, TRUNZO, YOUNG

Add Art 19-I SS533 - 539, Exec L; rpld Art 6 Title 1-A, Soc Serv L

Creates the office of child advocate within the council on children and families whose purpose shall be to ensure the provision of effective, appropriate and timely services for children at risk of abuse and/or neglect who are resident in or served by the programs and facilities of state agencies or other service providers.

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**BILL TEXT:****STATE OF NEW YORK**

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6877--A**IN SENATE**

March 2, 2006

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Introduced by Sens. GOLDEN, DeFRANCISCO, LEIBELL, MALTESE, MORAHAN, PADAVAN, RATH, ROBACH, SPANO, TRUNZO, YOUNG -- read twice and ordered printed, and when printed to be committed to the Committee on Social Services, Children and Families -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

of AN ACT to amend the executive law, in relation to creating the office  
the child advocate; and to repeal 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. The executive law is amended by adding a new article  
19-I 2 to read as follows:

3 ARTICLE 19-I

4 OFFICE OF THE CHILD ADVOCATE

5 Section 533. Appointment, term and organizational structure.

6 534. Duties of the child advocate.

7 535. Rights and powers of the child advocate.

8 536. Access to the child advocate.

9 537. Confidentiality of information and prohibition

against  
10 retaliation.

11 538. Representation of children.

12 539. Indemnification from liability.

13 § 533. Appointment, term and organizational structure. 1. There  
is  
14 hereby created in the executive department an office of the child  
advo-  
15 cate. The governor shall appoint an attorney, qualified by training  
and  
16 experience, to perform the duties of the child advocate as defined  
by  
17 section five hundred thirty-four of this article, as the child  
advocate.  
18 The child advocate shall be appointed for a term of five years  
and  
19 shall continue to hold such position until his or her successor  
is  
20 appointed, provided that the child advocate may be removed from  
such  
21 position only if the governor determines that the child advocate  
has  
22 abused his or her rights, powers and duties established pursuant to  
this  
23 article or that the child advocate has willfully failed to carry out  
the

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

[-] is old law to be omitted.

LBD15132-

1 duties required by section five hundred thirty-four of this article.  
The  
2 governor shall fix the compensation of the child advocate within  
the  
3 amounts appropriated therefor.  
4 2. The child advocate may appoint assistants as may be deemed  
neces-  
5 sary whose duties shall be similar to those designated to the  
child  
6 advocate by law and any other staff as the child advocate may  
deem  
7 necessary. The duties of the assistants and other staff members shall  
be  
8 performed under and at the advice and direction of the child  
advocate.  
9 § 534. Duties of the child advocate. 1. The child advocate shall:  
10 (a) evaluate the delivery of services to children and families by  
the  
11 office of children and family services and those entities that are  
regu-  
12 lated or overseen by, or receive funding from, the office of  
children  
13 and family services;  
14 (b) periodically review the procedures established by the office  
of  
15 children and family services to carry out the provisions of  
article  
16 nineteen-G of this chapter and article six of the social services  
law,  
17 with a view toward the rights, safety and positive development of  
chil-  
18 dren;  
19 (c) review complaints of persons concerning the actions of the  
office  
20 of children and family services; make appropriate referrals and  
investi-  
21 gate those complaints where the child advocate determines that a  
child  
22 or family may be in need of assistance from the child advocate or  
that a  
23 systemic issue in the state's provision of services to children  
is  
24 raised by the complaint;  
25 (d) periodically review the facilities and procedures of any  
insti-  
26 tutions or residences, public and private, where a child has been  
placed  
27 by the local department of social services, the family court or  
the  
28 office of children and family services;  
29 (e) recommend changes in state policies and regulations  
concerning  
30 children including, but not limited to, changes in the systems  
that  
31 provide for juvenile justice, child protective services,  
preventive

32 services, foster care, and child care. If the child advocate  
33 identifies  
34 a systemic problem in how the state, through its agencies or  
35 contract  
36 services, or any locality, through its agencies or contract  
37 services,  
38 protects children, the child advocate shall provide its findings  
39 and  
40 recommendations to the agency affected by the findings and  
41 recommenda-  
42 tions and make those findings and recommendations available to  
43 the  
44 public. The agency shall have sixty days from the receipt of the  
45 find-  
46 ings and recommendations to develop a corrective action plan and  
47 submit  
48 the plan to the child advocate for approval. The child advocate  
49 shall  
50 monitor the agency's implementation of the plan, and, if the  
51 agency  
52 fails to promptly implement the plan, the child advocate shall take  
53 such  
54 action as he or she deems necessary;  
55 (f) take all possible actions including, but not limited to,  
56 conduct-  
57 ing programs of public education, undertaking legislative advocacy  
58 and  
59 making proposals for administrative correction or systemic reform  
60 and  
61 formal legal action, in order to secure and ensure the legal, civil  
62 and  
63 special rights of children;  
64 (g) take the appropriate steps to make the existence and  
65 availability  
66 of the child advocate widely known, by appropriate and active means,  
67 to  
68 children and adults;  
69 (h) create informational materials for children regarding the  
70 rights  
71 of children when they are in foster care, detention centers,  
72 facilities  
73 operated by the office of children and family services, jails, or  
74 pris-  
75 ons and the methods and assistance available to enforce those  
76 rights;  
77 and

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1 (i) establish and maintain a toll-free hotline to receive and  
2 respond  
3 to calls from adults and children referring problems to the child  
4 advo-  
5 cate.  
6 2. The child advocate may:  
7 (a) investigate, review, monitor or evaluate any state or local  
8 agency

6 response to, or disposition of, an allegation of child abuse or  
neglect  
7 upon a determination by the child advocate that any investigation  
or  
8 review of such response or disposition by the office of children  
and  
9 family services has been insufficient or that the office of children  
and  
10 family services has not engaged in any such investigation or review;  
11 (b) inspect and review the operations, policies and procedures  
of  
12 juvenile detention facilities, foster homes, group homes,  
residential  
13 treatment facilities, facilities operated by the office of children  
and  
14 family services, shelters for the care of abused or neglected  
children,  
15 shelters for the care of persons in need of supervision, shelters  
for  
16 the care of homeless youth, or independent living arrangements  
operated  
17 by or approved for payment by the office of children and  
family  
18 services, and any other public or private residential setting in  
which a  
19 child has been placed by a state or local department or office;  
20 (c) review, monitor, and report on the performance of state-  
funded  
21 private entities charged with the care and supervision of children  
by  
22 conducting research audits or other studies of case records,  
policies,  
23 procedures and protocols, and conducting interviews with staff and  
child  
24 residents as deemed necessary by the child advocate to assess  
the  
25 performance of the entities. Provided, however, that such reviews  
may  
26 only be conducted in response to specific complaints made to the  
child  
27 advocate and after a determination by the child advocate that the  
office  
28 of children and family services has failed to adequately address  
such  
29 complaint or in response to an investigation by the child advocate  
into  
30 systemic issues;  
31 (d) hold public hearings on the subject of an investigation or  
study  
32 underway by the office, and receive testimony from agency and  
program  
33 representatives, the public and other interested parties, as the  
child  
34 advocate deems appropriate;  
35 (e) enter into contracts with any person, firm, corporation, or  
educa-

36 tional institution in order to invite expert research to assist  
the  
37 child advocate in assessing, evaluating, reviewing and improving  
the  
38 delivery of services to children and families in New York; and  
39 (f) enter into contracts with any firm or corporation to assist  
the  
40 child advocate in the pursuit of formal legal action pursuant to  
section  
41 five hundred thirty-eight of this article.  
42 § 535. Rights and powers of the child advocate. 1.

Notwithstanding

43 any other provision of law, the child advocate shall have access  
to,  
44 including the right to inspect and copy, any records necessary to  
carry  
45 out the rights, powers and duties of the child advocate pursuant to  
this  
46 article. Such access shall include, but not be limited to, access  
to  
47 records maintained by the statewide central registry of child abuse  
and  
48 maltreatment and records of local child protective services  
maintained  
49 pursuant to title six of article six of the social services law,  
records  
50 of local and regional fatality review teams, and records  
maintained  
51 pursuant to sections three hundred seventy-two and four hundred  
nine-f  
52 of the social services law. The child advocate shall have access  
to  
53 individually identifiable health information to the extent that  
the  
54 child advocate determines necessary to fulfill the requirements of  
this  
55 section. The office of the child advocate shall be deemed a  
governmental  
56 authority authorized to receive reports of child abuse or neglect  
for

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1 the purpose of complying with 45 CFR § 164.512 and other federal  
rules  
2 and regulations governing access to individually identifiable  
health  
3 information. If the child advocate is denied access to any  
records  
4 necessary to carry out such responsibilities, he or she may  
issue a  
5 subpoena for the production of such records as provided in  
subdivision  
6 three of this section.  
7 2. In performance of his or her rights, powers and duties pursuant  
to  
8 this article, the child advocate may communicate privately with  
any

9 child or person who has received, is receiving or should have  
10 received  
11 services from the office of children and family services or any  
12 other  
13 entity that is regulated or overseen by, or receives funding from,  
14 the  
15 office of children and family services.  
16 3. The child advocate may issue subpoenas to compel the attendance  
17 and  
18 testimony of witnesses or the production of books, papers and  
19 other  
20 documents and to administer oaths to witnesses in any manner under  
21 his  
22 or her investigation. If any person to whom such subpoena is  
23 issued  
24 fails to appear or, having appeared, refuses to give testimony or  
25 fails  
26 to produce the evidence required, the child advocate may apply to  
27 the  
28 supreme court which shall have jurisdiction to order such person  
29 to  
30 appear and give testimony or to produce such evidence, as the case  
31 may  
32 be.  
33 4. The child advocate may apply for and accept grants, gifts  
34 and  
35 bequests of funds from other states, federal and interstate agencies  
36 and  
37 independent authorities and private firms, individuals and  
38 foundations,  
39 for the purpose of carrying out his or her responsibilities. The  
40 funds  
41 shall be expended in accordance with the provisions of such grant,  
42 gift  
43 or bequest.  
44 § 536. Access to the child advocate. 1. The child advocate  
45 shall  
46 create and disseminate materials for all youth in foster care and  
47 juve-  
48 nile justice facilities or programs detailing the services that  
49 the  
50 child advocate can offer such youth and how such youth can contact  
51 the  
52 office of the child advocate.  
53 2. All youth placed in foster care or a facility operated by the  
54 divi-  
55 sion of rehabilitative services shall be permitted access to a  
56 telephone  
57 to call the toll free hotline of the office of the child advocate  
58 upon  
59 the youth's request. Such youth shall be permitted to complete any  
60 phone  
61 call to the toll free hotline and any subsequent phone calls with  
62 the  
63 office of the child advocate in a private setting in which the  
64 youth's

39 conversations are not monitored. Any calls placed by a youth to  
the  
40 office of the child advocate shall not count against any limit on  
phone  
41 calls placed on the youth pursuant to the rules of the facility in  
which  
42 he or she resides.  
43 § 537. Confidentiality of information and prohibition against  
retali-  
44 ation. 1. All records of the child advocate pertaining to the  
fulfill-  
45 ment of the child advocate's rights, powers and duties pursuant to  
this  
46 article and all confidential records obtained by the child  
advocate  
47 shall be confidential. Provided, however, that information contained  
in  
48 those records may be disclosed publicly in such a manner that would  
not  
49 identify the individuals from whom such information was obtained.  
Such  
50 confidential records shall be available to persons approved, upon  
appli-  
51 cation for good cause, by the family court.  
52 2. No state or local department or office or private entity  
shall  
53 discharge, or in any manner discriminate or retaliate against,  
any  
54 employee who in good faith makes a complaint to the child advocate  
or  
55 cooperates with the office of the child advocate in an investigation.  
No  
56 employee of any state or local department or office or of any  
private

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1 entity shall retaliate against any child who makes a complaint to  
the  
2 child advocate or who cooperates with the office of the child  
advocate  
3 in an investigation.  
4 § 538. Representation of children. 1. In addition to the  
rights,  
5 powers and duties set forth in this article, the child advocate, or  
his  
6 or her designee, shall have the power to commence a civil action  
against  
7 the state, any subdivision of the state and any private entity  
providing  
8 out-of-home residential services to children on behalf of any  
child  
9 whose care and custody or custody and guardianship has been assigned  
to  
10 any agency or department under the oversight of the office of  
children  
11 and family services.



12        2. Any judgment for compensation or order for settlement of the  
claim  
13        for compensation entered by the court pursuant to subdivision one  
of  
14        this section shall be considered as the estate of the child for  
whose  
15        benefit the judgment or order is entered, to be held by the office  
of  
16        the child advocate as guardian of such compensation, and shall be  
depos-  
17        ited into a trust account established by the office for the purpose  
of  
18        distributing such funds to such child in accordance with the  
plan  
19        adopted by the court issuing the judgment.  
20        § 539. Indemnification from liability. The state of New York  
shall  
21        protect and hold harmless any attorney, director, investigator,  
social  
22        worker or other person employed by the office of the child advocate  
and  
23        any volunteer appointed by the child advocate from financial loss  
and  
24        expense, including legal fees and costs, if any, arising out of  
any  
25        claim, demand or suit for damages resulting from acts or  
omissions  
26        committed in the discharge of his or her rights, powers and duties  
with-  
27        in the scope of his or her employment or appointment which may  
consti-  
28        tute negligence but which acts are not wanton, malicious or  
grossly  
29        negligent as determined by a court of competent jurisdiction.  
30        § 2. Title 1-A of article 6 of the social services law is REPEALED.  
31        § 3. This act shall take effect April 1, 2007.

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**SPONSORS MEMO:**

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

**BILL NUMBER:** S6877A

**SPONSOR:** GOLDEN

**TITLE OF BILL:**

An act to amend the executive law, in relation to creating the office of the child advocate; and to repeal certain provisions of the social services law relating to the state commission on the quality of foster care

**PURPOSE OR GENERAL IDEA OF THE BILL:**

This bill would establish an independent Office of the Child Advocate,

vested with broad powers to investigate practices within the State's child welfare and juvenile justice systems, to better protect children in the State's care.

#### SUMMARY OF SPECIFIC PROVISIONS:

Section one would establish the Office of the Child Advocate within state government, headed by the Child Advocate appointed by the Governor for a five year term. The Child Advocate would be authorized to appoint assistants and staff as deemed necessary. The Child Advocate would:

- 1) evaluate the delivery of services to children and families by the Office of Children and Family Services (OCFS) and those entities funded or regulated by OCFS,
- 2) periodically review procedures established by OCFS,
- 3) review complaints related to actions of OCFS, make referrals and investigate such complaints,
- 4) periodically review the facilities and procedures of any institution or residence where a child has been placed,
- 5) recommend changes in state policies and regulations concerning children with the ability to monitor any corrective action plan initiated in response to the Child Advocate's findings,
- 6) take all possible actions to secure and ensure the legal, civil and special rights of children,
- 7) take steps to make the Child Advocate's presence in New York State widely known and create materials for children regarding their rights in foster care, detention centers, OCFS facilities, jails or prisons, and
- 8) establish a toll-free hotline to receive and respond to calls referring problems to the Child Advocate.

The Child Advocate would be authorized to access confidential records relating to the fulfillment of his or her duties, issue subpoenas, and apply for and accept grants.

The Child Advocate would create and disseminate materials for all youth in foster care and juvenile justice facilities or programs explaining services the Office can offer and how youth can contact the Office. All youth placed in foster care would have access to a toll-free hotline of the Office and be permitted to make calls in a setting where the youth's conversations are not monitored. Any such calls made would not count against any limit on phone calls placed by the youth according to the rules of the facility.

The Child Advocate would be authorized to commence a civil action on behalf of a child against the State, or any subdivision and private entity providing out-of-home residential services to children. Any judgment for compensation as a result of such civil action would be considered the estate of the child, to be held by the Office of the Child Advocate, and deposited in a trust account for the child.

Section two would repeal the Commission on the Quality of Foster Care.

Section three provides for an effective date on April 1, 2007

**EFFECTS OF PRESENT LAW WOULD ALTER THE BILL:**

Current law does not provide for any office that performs the functions that would be performed by the Office of the Child Advocate. The Commission on the Quality of Foster Care, established in Title 1-A of Article 6 of the Social Services Law, is currently authorized to: investigate complaints brought to the Commission's attention; obtain copies of preliminary and final reports and fatality reports from OCFS; and, notify OCFS of its investigations and make a report of its findings. The Office of the Child Advocate would replace this Commission as the primary means of investigating practices within state and local child welfare and juvenile justice systems.

**JUSTIFICATION:**

This bill would establish an independent Office of the Child Advocate, similar to offices that currently exist 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. In these instances, DSS employees failed or were unable to properly follow procedures and communicate with law enforcement to ensure that children were safe in their homes. If the Office of the Child Advocate were in existence, it would have broad powers to deal with these types of cases and to monitor the implementation of a corrective plan of action to improve the way each agency it investigates handles its child welfare and juvenile justice cases.

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. Marcia Robinson Lowry of Children's Rights, Inc., presented a speech entitled "Benevolent Complicity: The Myth of Protecting Children's Best Interests," at a symposium hosted by the Bar Association of New York City on March 11, 2004 defending the need for an Office of Child Advocate in New York State. According to an excerpt from her remarks, "there was a recent study of children in foster care from the Government Accounting Office which covered 50% of all kids in care nationwide, including New York, and it found that 12% of children in foster care had received no routine health care, 34% have received no immunizations, 32 % continue to have at least one unmet health need, 78 % were high risk for HIV, but only 9% were tested.

"There should be, in our view, national standards, and there sure should be standards in New York State for how agencies operate. We have no minimum standards for workers in the contract agencies, which provide the vast majority of care. For workers in the city agency that monitor the care provided by the contract agencies, the case load is 54 average and usually averages are much higher when you look at all the people who are actually carrying cases."

Beyond the need to address these grave issues, an Office of Child Advocate is necessary because children who are removed from their homes - whether due to abuse and neglect by their parents, or due to behavioral misconduct in the community - experience an extremely disruptive and emotionally painful period in their lives. Therefore, it is essential that the State provide these children with a supportive, nurturing environment once they are placed in care, whether it be in a foster home, group home, residential facility or other type of placement setting. In acting as an independent advocate for children and in offering a means through which both children and adults could report abuses in the system, the Office of the Child Advocate would serve as a beacon, casting light upon the treatment and protection of New York's children taken into custody by the State.

#### **PRIOR LEGISLATIVE HISTORY:**

New bill.

#### **FISCAL IMPLICATIONS FOR STATE AND LOCAL GOVERNMENTS:**

To be determined.

#### **EFFECTIVE DATE:**

April 1, 2007.

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