

(Note: Edited version extracting information directly relating to the Office of the Child Advocate for New York. Go to the NYS Senate website for full text.)

**STATUS:**

**S2107-C BUDGET** Same as Uni. [A 4307-C](#) Budget

Budget Bills

TITLE....Enacts into law major components of legislation necessary to implement the education, labor, and family assistance budget for the 2007-2008 fiscal year

**This bill is not active in the current session.**

01/31/07 REFERRED TO FINANCE  
02/26/07 AMEND AND RECOMMIT TO FINANCE  
02/26/07 PRINT NUMBER 2107A  
03/10/07 AMEND (T) AND RECOMMIT TO FINANCE  
03/10/07 PRINT NUMBER 2107B  
03/12/07 REPORTED AND COMMITTED TO RULES  
03/12/07 ORDERED TO THIRD READING CAL.303  
03/13/07 PASSED SENATE  
03/13/07 DELIVERED TO ASSEMBLY  
03/13/07 referred to ways and means  
03/20/07 RECALLED FROM ASSEMBLY  
03/20/07 returned to senate  
03/20/07 VOTE RECONSIDERED - RESTORED TO THIRD READING  
03/20/07 RECOMMITTED TO RULES  
04/01/07 AMEND AND RECOMMIT TO RULES  
04/01/07 PRINT NUMBER 2107C  
04/01/07 COMMITTEE DISCHARGED AND COMMITTED TO FINANCE  
04/01/07 RESTORED TO THIRD READING  
04/01/07 MESSAGE OF NECESSITY - 3 DAY MESSAGE  
04/01/07 REPASSED SENATE  
04/01/07 RETURNED TO ASSEMBLY  
04/01/07 referred to ways and means  
04/01/07 substituted for a4307c  
04/01/07 ordered to third reading rules cal.23  
04/01/07 message of necessity - 3 day message  
04/01/07 passed assembly  
04/01/07 returned to senate  
04/01/07 DELIVERED TO GOVERNOR  
04/09/07 SIGNED CHAP.57

9       Section 1. Sections 510-a, 510-b, 510-c, 512, 512-a, 513, 515,  
516,  
10       517, 518, 519, 520, 521 and 522 of the executive law are  
designated  
11       subtitle A of title 3 of article 19-G and a new subtitle B is added  
to  
12       read as follows:  
13                               **ADDITIONAL SERVICES FOR YOUTH**  
14       § 2. Title 3 of article 19-G of the executive law is amended by  
adding  
15       a new subtitle B to read as follows:  
16                               **SUBTITLE B**  
17                               **OFFICE OF CHILD ADVOCATE**  
18       **Section 523. Purpose.**  
19               **523-a. Definitions.**  
20               **523-b. Office of child advocate.**  
21               **523-c. Duties of the office of child advocate.**  
22               **523-d. Additional powers of the child advocate.**  
23               **523-e. Access to the child advocate.**  
24               **523-f. Notification to child advocates of critical incidents.**  
25               **523-g. Review of policies concerning children.**  
26               **523-h. Intervention as of right; notice.**  
27               **523-i. Duties of the director.**  
28               **523-j. Conduct and scope of investigations.**  
29               **523-k. Child advocate reports.**  
30               **523-l. Staff protection.**  
31               **523-m. Notification to child advocate of youth's need for**  
legal  
32                               **counsel.**  
33               **523-n. Independent review board.**  
34               **523-o. Chair of the independent review board.**  
35               **523-p. Confidentiality of reports.**  
36               **523-q. Indemnification from liability.**  
37       **§ 523. Purpose. The purpose of this subtitle is to ensure**  
the  
38       **protection and promotion of legal rights for youth in programs**  
and  
39       **facilities under the jurisdiction of the office of children and**  
family  
40       **services, and in programs and facilities under the jurisdiction of**  
other  
41       **agencies, by creating the office of child advocate.**  
42       **§ 523-a. Definitions. As used in this subtitle:**  
43       **1. "Commissioner" means the commissioner of the office of children**  
and  
44       **family services.**  
45       **2. "Director" means the director of the office of child advocate.**  
46       **3. "Office" means the office of children and family services.**  
47       **4. "Critical incident" shall mean: (a) an incident which**  
indicates  
48       **that a violation of rights has occurred that could lead to**  
disciplinary  
49       **action and/or criminal prosecution; (b) an incident in which a youth**  
has  
50       **died or sustained substantial physical injury; or (c) an incident**  
which  
51       **could give rise to a claim against a youth.**

52 § 523-b. Office of child advocate. There is hereby established  
the  
53 office of child advocate in the office of children and family  
services.

54 The governor shall appoint the director of the office of child  
advocate,

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1 upon the advice and consent of the senate. The director shall be  
an  
2 attorney licensed to practice law in New York. The director shall  
report  
3 to the governor and shall serve for a term of five years and  
shall  
4 continue to hold such position until his or her successor is  
appointed,  
5 provided that the director may be removed from such position if  
the  
6 governor shall determine that such director has abused his or  
her  
7 rights, powers and duties established pursuant to this subtitle or  
that  
8 he or she has willfully failed to carry out the duties required by  
this  
9 subtitle. The governor shall fix the compensation of the director  
within  
10 amounts appropriated therefor. Persons employed by the office of  
child  
11 advocate shall be known and herein referred to as "child advocates,"  
and  
12 shall be attorneys or shall have expertise in the areas of  
juvenile  
13 justice and youth rights, as evidenced by experience in the field, or  
by  
14 academic background, the level and sufficiency of which shall be  
deter-  
15 mined by the director.

16 § 523-c. Duties of the office of child advocate. The office of  
child

17 advocate shall:  
18 1. visit facilities and programs in accordance with priorities  
estab-  
19 lished by the director, hear grievances and complaints,  
investigate  
20 alleged violations of the legal rights of youth under the  
jurisdiction  
21 of the office, and monitor and participate in grievance  
procedures  
22 concerning residents in secure facilities, pursuant to section  
five  
23 hundred four-a of this article;  
24 2. monitor the implementation of the policies and regulations of  
the  
25 office and of the rules and regulations of other state agencies, as  
such  
26 may be applicable to the legal rights of youth under the jurisdiction  
of

27 the office, and monitor the implementation of statutes, court  
orders,  
28 court decisions and court stipulations which affect youth under  
the  
29 jurisdiction of the office;  
30 3. advice and assist youth under the jurisdiction of the office  
to  
31 obtain legal counsel;  
32 4. recommend policies, regulations, and legislation designed  
to  
33 protect youth under the jurisdiction of the office;  
34 5. serve as a resource to youth under the jurisdiction of the  
office  
35 by informing them of pertinent laws, regulations and policies, and  
their  
36 rights thereunder;  
37 6. present complaints of youth to the governor, the  
commissioner,  
38 appropriate office staff, and the independent review board; and  
39 7. evaluate the delivery of services to children and families by  
the  
40 office and those entities that are regulated or overseen by, or  
receive  
41 funding from, the office, and periodically review procedures  
established  
42 by the office to carry out the provisions of this article and  
article  
43 six of the social services law, with a view toward the rights,  
safety  
44 and development of children.  
45 § 523-d. Additional powers of the child advocate. Notwithstanding  
any  
46 other provision of law, 1. The child advocate shall have access  
to,  
47 including the right to inspect and copy, any records necessary to  
carry  
48 out its rights, powers and duties pursuant to this subtitle,  
excluding  
49 those protected by statutory privilege, including, but not limited  
to,  
50 access to records maintained by the statewide central registry of  
child  
51 abuse and maltreatment and records of local child protective  
services  
52 maintained pursuant to title six of article six of the social  
services  
53 law, records of local and regional fatality review teams, and  
records  
54 maintained pursuant to sections three hundred seventy-two and  
four  
55 hundred nine-f of the social services law. Consistent with  
applicable

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1 laws and regulations, the confidentiality of all records and  
documents  
2 obtained must be maintained by the child advocates.

3     2. If any person, program or facility shall fail to produce  
materials  
4     or written documents when requested, then the child advocate may  
apply  
5     to the supreme court which shall have jurisdiction to order such  
person,  
6     program or facility to produce such evidence or to compel such  
materials  
7     or written documents to be produced, as the case may be.  
8     § 523-e. Access to the child advocate. 1. The child advocate  
shall  
9     create and disseminate materials for all youth in foster care and  
juve-  
10    nile justice facilities or programs detailing the services that  
the  
11    child advocate can offer such youth and how such youth can contact  
the  
12    office of the child advocate.  
13    2. All youth placed in foster care or a facility operated by  
the  
14    office shall be permitted access to a telephone to call the toll  
free  
15    hotline of the office of the child advocate upon the youth's  
request.  
16    Such youth shall be permitted to complete any phone call to the  
toll  
17    free hotline and any subsequent phone calls with the office of the  
child  
18    advocate in a private setting in which the youth's conversations are  
not  
19    monitored. Any calls placed by a youth to the office of the child  
advo-  
20    cate shall not count against any limit on phone calls placed on  
the  
21    youth pursuant to the rules of the facility in which he or she  
resides.  
22    § 523-f. Notification to child advocates of critical  
incidents. A  
23    facility or program director shall immediately notify the child  
advocate  
24    of any critical incident involving a youth under his or her care.  
25    § 523-g. Review of policies concerning children. 1. In addition  
to  
26    other powers and duties specified in this subtitle, the office of  
the  
27    child advocate may recommend changes in state policies and  
regulations  
28    concerning children to improve services or to correct systemic  
problems  
29    concerning services to children, in the systems that provide for  
juve-  
30    nile justice, child protective services, preventive services,  
foster  
31    care, and child care, or other services provided to children. The  
child  
32    advocate may also create and provide informational materials for  
chil-

33 dren regarding the rights of children in foster care, detention  
centers,  
34 facilities operated by the office and the methods and assistance  
avail-  
35 able to enforce those rights.  
36 2. With respect to any state or local agency or program which is  
oper-  
37 ated by or which receives payment for services or operations directly  
or  
38 indirectly from the office, the child advocate may:  
39 (a) reinvestigate, re-review, monitor or reevaluate such agency's  
or  
40 program's response to, or disposition of, an allegation of child  
abuse  
41 or neglect if it shall determine that any investigation or review  
of  
42 such response or disposition by the office has been insufficient or  
that  
43 the office has not engaged in any such investigation or review;  
44 (b) inspect and review operations, policies and procedures;  
45 (c) review, monitor and report on performance by conducting audits  
or  
46 studies of case records, policies, procedures and protocols, and  
inter-  
47 views with staff and child residents as the office may deem  
necessary;  
48 and  
49 (d) enter into contracts to obtain the services of experts to  
assist  
50 the child advocate in assessing, evaluating, reviewing and improving  
the  
51 delivery of services to children and families in New York.  
52 § 523-h. Intervention as of right; notice. The office of child  
advo-  
53 cate, pursuant to paragraph one of subdivision (a) of section  
ten  
54 hundred twelve of the civil practice law and rules, shall be  
permitted  
55 to intervene in any action involving an appeal from a decision of  
any  
56 court of this state which relates to programs, conditions or  
services

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1 provided by the office. Written notice shall be given to the  
attorney  
2 general and the commissioner by the party taking the appeal.  
3 § 523-i. Duties of the director. The director shall:  
4 1. provide administrative supervision and oversight to the child  
advo-  
5 cates;  
6 2. establish procedures to ensure that child advocate services  
are  
7 made available to every youth under the jurisdiction of the office;  
8 3. coordinate meetings of the independent review board and the  
activ-  
9 ities of its members;

10 4. coordinate activities of the child advocates with the  
11 independent  
12 review board and other units within the office;  
13 5. fully participate in the policy development process of the  
14 office;  
15 6. report to the governor, the legislature, the independent  
16 review  
17 board, the commissioner, the executive deputy of the office,  
18 other  
19 appropriate directors of the office, the general counsel to the  
20 office  
21 and other appropriate office staff, concerning the grievances  
22 and  
23 complaints of youth and the status of such grievances and complaints  
24 on  
25 a periodic basis, but not less than once per quarter. The report  
26 shall  
27 indicate whether a reported issue, complaint or grievance has  
28 been  
29 resolved and the manner in which it was resolved, and the status  
30 of  
31 implementation of recommendations or directives made by the  
32 commissioner  
33 with regard to previously reported issues, grievances or complaints;  
34 and  
35 7. prepare a monthly report for the governor and the commissioner  
36 on  
37 the activities of the office of child advocate. Such monthly  
38 report  
39 shall contain statistical data and information indicating: the number  
40 of  
41 youth served by the child advocates; the number and types of  
42 complaints,  
43 grievances or issues brought to the attention of the child  
44 advocates;  
45 the number of facilities visited by the child advocates; the number  
46 of  
47 investigations conducted by the child advocates; the number of  
48 hearings  
49 in which the child advocates were involved; and the number and nature  
50 of  
51 contacts made by child advocates to persons or agencies external to  
52 the  
53 office on behalf of youth under the jurisdiction of the office.  
54 § 523-j. Conduct and scope of investigations. Any other provision  
55 of  
56 any other law to the contrary notwithstanding, the child advocate  
57 may  
58 investigate grievances and complaints brought to it from any source,  
59 and  
60 may in pursuing its investigation visit any office facility and  
61 program  
62 at any time, without prior notice. Facility and program directors  
63 and  
64 individuals employed or volunteering at the facility or program  
65 shall

39 cooperate with the investigation. At the child advocate's request,  
the  
40 staff of a facility or program shall inform the residents of the  
child  
41 advocate's availability on site or on premises. The child advocate  
shall  
42 have access to any resident or individual receiving services on  
request,  
43 and the facility shall provide a suitable room, if so requested,  
for  
44 private counseling. The child advocate shall have the right to  
inspect  
45 the facility, visit all areas and observe all parts and aspects of  
the  
46 program. The child advocate shall interview employees during  
regular  
47 hours of employment whenever feasible. The child advocate shall  
have  
48 access to all books, records, logs, reports, memoranda and any and  
all  
49 other materials or written documents in the possession of the  
office,  
50 its facilities or programs. The child advocate may copy or make  
refer-  
51 ence to any such report, document, memorandum, log entry or other  
mate-  
52 rial or written document and, unless such item is confidential  
pursuant  
53 to statute, may include a copy in his or her report. Consistent  
with  
54 applicable laws and regulations, the confidentiality of records  
and  
55 documents obtained must be maintained by the child advocates.

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1 § 523-k. Child advocate reports. The child advocate shall submit  
regu-  
2 lar reports, at least monthly, which shall contain information  
regarding  
3 major grievances, complaints received and other matters needing  
atten-  
4 tion. The reports shall include a recitation of the issue or  
complaint,  
5 a brief statement of facts, and the conclusions and recommendations  
of  
6 the child advocate, and such other items of information as the  
child  
7 advocate shall deem appropriate. The reports shall be forwarded  
unal-  
8 tered by the child advocate to the commissioner and other  
appropriate  
9 office officials, and to the independent review board, the  
temporary  
10 president of the senate, the speaker of the assembly, the chairman  
of  
11 the senate committee on social services, children and families, and  
the



12 chairman of the assembly committee on children and families. When  
the  
13 facility or program director has conducted an investigation into  
the  
14 matters reported by the child advocate, the findings of such  
director  
15 shall be included in the child advocate's report.  
16 § 523-l. Staff protection. For the protection of employees,  
the  
17 following rules shall apply:  
18 1. When an employee is or may be the subject of an investigation  
which  
19 may lead to employee disciplinary action or criminal prosecution,  
such  
20 employee may request that a lawyer be present when speaking to the  
child  
21 advocate. When such request is made, a counsel shall be provided.  
22 2. An employee who is the subject of a grievance or complaint  
may  
23 request the child advocate to investigate the grievance or  
complaint.  
24 The child advocate shall advise the facility or program director of  
such  
25 request.  
26 § 523-m. Notification to child advocate of youth's need for  
legal  
27 counsel. 1. If informed that a youth has been or is about to  
be  
28 arrested by a law enforcement official, the child advocate shall  
take  
29 steps to insure the youth is provided with adequate legal  
represent-  
30 tation.  
31 2. When a youth is to be interrogated or interviewed by a law  
enforce-  
32 ment official concerning a criminal act, or by any person  
concerning a  
33 civil or criminal matter, the child advocate may request to be  
present  
34 during such interrogation or interview. Under no circumstances shall  
the  
35 child advocate serve as the youth's attorney or legal  
representative,  
36 and the child advocate shall so inform the youth and the  
representatives  
37 of the youth, but if requested to do so, shall take steps to assure  
that  
38 the youth is provided with legal representation.  
39 3. Whenever it appears to a child advocate that a youth is in need  
of  
40 legal services, the child advocate may contact the youth's attorney  
or  
41 legal representative or assist the youth in making such contact.  
42 § 523-n. Independent review board. The independent review board  
shall  
43 consist of fifteen members who are not employed by the office and  
who

44 are knowledgeable in the areas of juvenile justice and youth rights.  
The  
45 members of such board shall be appointed by the governor with the  
advice  
46 and consent of the senate; provided that two members shall be  
appointed  
47 upon the recommendation of the temporary president of the senate,  
two  
48 members shall be appointed upon the recommendation of the speaker of  
the  
49 assembly, one member shall be appointed upon the recommendation of  
the  
50 minority leader of the senate, and one member shall be appointed  
upon  
51 the recommendation of the minority leader of the assembly. Each  
board  
52 member shall be appointed for a term of three years, which term may  
be  
53 renewed once. At least one member shall be a former resident or  
parent  
54 of a resident; at least one member shall be a psychologist or  
other  
55 clinician; at least one member shall be an individual knowledgeable  
of  
56 juvenile legal rights matters; at least one member shall be a judge  
of

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1 the family court; and at least one member shall be knowledgeable of  
the  
2 criminal justice system. Members shall be reimbursed for travel  
expenses  
3 incurred in the conduct of their duties. The board shall review  
the  
4 child advocate reports and meet at least bimonthly with the child  
advo-  
5 cates, the director, the commissioner and other appropriate personnel  
to  
6 discuss the reports. The board is an advisory body and has no  
adminis-  
7 trative duties. It shall advise the commissioner on matters  
pertaining  
8 to the office of child advocate and on matters related to complaint  
and  
9 grievance resolution. The board shall have the authority to:  
10 1. request the office of child advocate and/or the commissioner  
to  
11 conduct investigations;  
12 2. make inquiries at the request of the director or the  
commissioner,  
13 or, on its own motion, into matters affecting the legal rights of  
youth;  
14 3. convene meetings and communicate freely with the child  
advocates  
15 and the office of child advocate;  
16 4. evaluate the effectiveness of the office of child advocate and  
make

17 necessary inquiries to that end; and  
18 5. visit office facilities and grounds and inspect records of  
the  
19 office. Laws and regulations governing the confidentiality of  
records  
20 must be adhered to, and the counsel for the office should be  
notified  
21 concerning the records to be inspected. During any such visit to  
facili-  
22 ties or inspection of records, the board members may speak with  
youth  
23 and employees.  
24 § 523-o. Chair of independent review board. The governor shall  
appoint  
25 one of the members of the independent review board to serve as  
its  
26 chair. The member so appointed shall serve as chair for a term of  
three  
27 years. The chair of the board shall:  
28 1. be responsible for coordinating the activities of the board,  
with  
29 the assistance of the director;  
30 2. preside at meetings of the board;  
31 3. establish agenda items for board meetings; and  
32 4. make recommendations to the governor for the removal of  
inactive  
33 board members.  
34 § 523-p. Confidentiality of reports. Child advocate reports  
and  
35 reports of the independent review board are confidential and shall  
be  
36 safeguarded from coming to the knowledge of, and from inspection  
or  
37 examination by any person other than the commissioner, other  
designated  
38 agency officials for the performance of their official duties and  
the  
39 independent review board. Authorized persons receiving such  
reports  
40 shall not divulge information contained therein without the  
written  
41 consent of the commissioner. The authorized disclosure of any  
such  
42 information shall not contain any individually identifiable  
information.  
43 § 523-q. Indemnification from liability. Any attorney,  
director,  
44 investigator, social worker or other person employed by the office  
of  
45 the child advocate and any volunteer appointed by the child  
advocate  
46 shall have immunity from civil and criminal liability for all  
reasonable  
47 and good faith actions taken pursuant to this subtitle.  
48 § 3. This act shall take effect January 1, 2008.

