

STATUS:

S4990-A GOLDEN No Same as
Social Services Law
TITLE....Establishes the office of child advocate

04/24/07 REFERRED TO SOCIAL SERVICES, CHILDREN AND FAMILIES
06/06/07 AMEND (T) AND RECOMMIT TO SOCIAL SERVICES, CHILDREN AND
FAMILIES
06/06/07 PRINT NUMBER 4990A
01/09/08 REFERRED TO SOCIAL SERVICES, CHILDREN AND FAMILIES

SUMMARY:

GOLDEN
Rpld Art 19-G Title 3 Subtitle 1-B, Exec L; rpld Art 6 Title 1-A, amd SS483 & 483-b, add S483-f, Soc Serv L; add S10-a, Chap of 2007 (proposed in S. 3967/A. 7129)
Establishes the office of child advocate to ensure the protection and promotion of legal rights for youth in programs and facilities under OCFS.

BILL TEXT:

STATE OF NEW YORK

4990--A

2007-2008 Regular Sessions

IN SENATE

April 24, 2007

Introduced by Sen. GOLDEN -- 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

AN ACT to amend the social services law, in relation to the office
of
 the child advocate; to amend a chapter of the laws of 2007
amending
 the executive law and the social services law relating to the
transfer
 of the state council on children and families from the office of
chil-

in
adding
the
of
dren and family services to the executive department, as proposed
legislative bills numbers S. 3967 and A. 7129, in relation to
technical provisions thereto; and to repeal certain provisions of
social services law and the executive law relating to the office
the ombudsman in the office of children and family services

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

1 Section 1. Subtitle B of title 3 of article 19-G of the executive
law
2 is REPEALED.
3 § 2. Title 1-A of article 6 of the social services law is REPEALED.
4 § 3. Subdivision 1 of section 483 of the social services law, as
added
5 by section 2 of part F2 of chapter 62 of the laws of 2003, is amended
to
6 read as follows:
7 1. There shall be a council on children and families established
with-
8 in the office of children and family services consisting of the
follow-
9 ing members: the state commissioner of children and family services,
the
10 commissioner of temporary and disability assistance, the commissioner
of
11 mental health, the commissioner of mental retardation and
developmental
12 disabilities, the commissioner of the office of alcoholism and
substance
13 abuse services, the commissioner of education, the state director
of
14 probation and correctional alternatives, the commissioner of health,
the
15 commissioner of the division of criminal justice services, the
state
16 advocate for persons with disabilities, the director of the office
for

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

[-] is old law to be omitted.

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1 the aging, the commissioner of labor, [~~and~~] the chair of the
commission
2 on quality of care for the mentally disabled and the child
advocate.
3 The governor shall designate the chair of the council and the
chief

4 executive officer (CEO).
5 § 4. Section 483-b of the social services law is amended by adding
two
6 new subdivisions 6 and 7 to read as follows:
7 6. The council shall at its option, or at the request of the
child
8 advocate, meet to discuss reports, information, or
recommendations
9 presented by the child advocate concerning care and services
programs
10 for children and youth and to consider recommendations for remedy of
any
11 problems presented, or to consider initiatives or other
recommendations
12 made by the child advocate.
13 7. Member agencies shall promulgate regulations requiring that
no
14 care, services, programs, or services programs under their
jurisdiction
15 shall restrict or prohibit access to records or individuals by the
child
16 advocate upon request, provided, however, that in the case of
medical
17 records, disclosure may be exclusive of the personal notes of a
physi-
18 cian as defined in such regulations and access to such medical
records
19 may be limited to such times as may be specified in such
regulations.
20 The regulations shall specify that all records shall be made
available
21 by a designated member or members of the staff of the
services,
22 programs, or services programs, who shall be designated by
such
23 services, programs, or services programs to provide access to and,
where
24 necessary, interpretation of such records to the child advocate,
who
25 shall have the right to photocopy such records.
26 § 5. The social services law is amended by adding a new section
483-f
27 to read as follows:
28 § 483-f. Office of the child advocate. 1. Definitions. As used in
this
29 article:
30 (a) "Advocate" means the office of the child advocate, created by
this
31 section.
32 (b) "Director" means the director of the office of the child
advocate.
33 (c) "Member agency" means a member agency of the council, as such
term
34 is defined in section four hundred eighty-three-b of this article,
and
35 the terms "care", "services", "programs", and "services programs"
shall

36 have the same meanings as in such section.
37 2. Office of the child advocate; creation. There is hereby
established
38 within the council the autonomous office of the child advocate,
whose
39 purpose shall be to ensure the protection and promotion of the
rights,
40 health, safety, and welfare of children receiving care,
services,
41 programs, and services programs by or under the jurisdiction of
the
42 office of children and family services, and of member agencies, to
the
43 extent provided and described in this section.
44 (a) The director shall be an individual with at least five years
expe-
45 rience in the general subject area of child welfare, child health
and
46 safety, and juvenile justice as a practitioner, advocate,
academician,
47 writer, or theoretician, who shall be appointed by the governor upon
the
48 advice and consent of the senate for a term of five years. The
director
49 shall continue to hold such position until his or her successor
is
50 appointed, but may be removed from his or her position if the
governor
51 shall determine that such director has abused his or her rights,
powers
52 and duties established pursuant to this subdivision or that he or
she
53 has willfully failed to carry out the duties required by this
subdivi-
54 sion. The director shall report to the governor, who shall fix
the
55 compensation of the director within amounts appropriated therefor.
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1 (b) Persons employed by the office of the child advocate shall
be
2 known and referred to as "child advocates," and shall be
individuals
3 with expertise in the areas of child welfare, child health and
safety,
4 and juvenile justice, as evidenced by experience in the field,
practice,
5 advocacy, or by academic background, the level and sufficiency of
such
6 factors to be determined by the director.
7 (c) The council on children and families, its chair, chief
executive
8 officer, or any member agency, shall have no power to appoint or
remove
9 any personnel of the advocate or any power or authority with regard
to

10 the operation and administration of the advocate or any power or
author-
11 ity over the advocate's budget. The advocate shall furnish to the
direc-
12 tor of the division of the budget the itemized estimates of its
finan-
13 cial needs, which shall not be revised or altered in any manner by
the
14 council, its chair, chief executive officer, or any member agency.
15 3. Duties of the office of the child advocate. The advocate shall:
16 (a) visit and evaluate the delivery of care, services, programs,
and
17 services programs for children and their families in accordance
with
18 priorities set by the director based upon the plan developed by
the
19 child advocate coordinating council; and hear grievances and
complaints,
20 and make appropriate referrals;
21 (b) investigate as provided herein alleged violations of the rights
of
22 children or threats to the health and safety of children in
care,
23 services, programs, and services programs under the jurisdiction of
the
24 office of children and family services, or of member agencies as and
to
25 the extent provided herein;
26 (c) monitor the implementation of policies and regulations of
the
27 office of children and family services, including statutes,
court
28 orders, court decisions and court stipulations, and of member
agencies
29 applicable to the rights, health, safety, and welfare of children
under
30 the jurisdiction of the office of children and family services;
31 (d) advise and assist youth under the jurisdiction of member
agencies
32 to obtain legal counsel, if the advocate shall deem it necessary
or
33 appropriate, or if requested to do so;
34 (e) establish and maintain a toll-free hotline to receive and
respond
35 to calls from adults and children seeking to refer problems and
concerns
36 to the advocate;
37 (f) recommend policies, regulations, and legislation to the
governor,
38 the legislature, and to the council on children and families which
are
39 designed to improve services or correct problems concerning
care,
40 services, programs, and services programs for children and their
fami-
41 lies, and recommend changes appropriate to protecting the
rights,

42 health, safety, and welfare of children under the jurisdiction of
member
43 agencies;
44 (g) serve as a resource to children receiving care,
services,
45 programs, and services programs by member agencies or from
entities
46 under the jurisdiction of member agencies, by such means as creating
and
47 disseminating materials to inform them of their rights and
informing
48 them of the services that the advocate offers;
49 (h) present complaints of children and their families to the
governor
50 and the council on children and families, and where appropriate, to
the
51 independent review board and member agencies having jurisdiction
over
52 the child or the subject or source of the complaints; and
53 (i) with respect to children receiving care, services, programs,
and
54 services programs from mental hygiene facilities, as such term
is
55 defined in subdivision five of section 45.01 of the mental hygiene
law,
56 the child advocate shall execute a memorandum of understanding with
the

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1 state commission on quality of care and advocacy for persons with
disa-
2 bilities, created by article forty-five of the mental hygiene
law,
3 delineating the appropriate roles of the advocate and such
commission
4 with respect to the powers and duties of each. A copy of such
memorandum
5 of understanding shall be provided when executed to the fiscal
commit-
6 tees of the legislature. Any other provision of any other law to
the
7 contrary notwithstanding, including any provision of this section,
the
8 advocate shall have no power, authority, duty, right, or
responsibility
9 with respect to children receiving care, services, programs,
and
10 services programs from such mental hygiene facilities prior to
the
11 execution of such memorandum of understanding, and any power,
authority,
12 duty, right, or responsibilities after execution of such memorandum
of
13 understanding shall be entirely governed by such memorandum of
under-
14 standing.
15 4. Powers with respect to access to individuals and records.

16 (a) In performance of the rights, powers and duties granted by
and
17 pursuant to this article, the child advocate may communicate
privately
18 with any child who has received or is receiving care,
services,
19 programs, and services programs by or from an entity under the
jurisdic-
20 tion of the office of children and family services or a member
agency.
21 (b) Any other provision of any other law to the contrary
notwithstand-
22 ing: the child advocate shall have access to records and
documents
23 necessary to conduct an investigation, except as otherwise
provided
24 herein, or otherwise protected by federal requirements, and it shall
be
25 incumbent upon any member agency to produce materials or written
docu-
26 ments necessary to such investigation when so requested; and any
entity
27 providing care, services, programs, and services programs to children
of
28 the state and their families by or under the jurisdiction of a
member
29 agency shall similarly provide access to and produce records and
docu-
30 ments necessary to conduct an investigation when so requested,
unless
31 excluded as otherwise provided herein, or otherwise protected by
federal
32 requirements.
33 (i) Such access shall include access to records maintained by
the
34 statewide central registry of child abuse and maltreatment and
records
35 of local child protective services maintained pursuant to title six
of
36 article six of this chapter, under written agreement to be
established
37 with the commissioner of the office of children and family
services
38 which shall provide access to the extent that such access is
necessary
39 to an investigation undertaken by the advocate. The advocate shall
addi-
40 tionally have access to the extent necessary to an investigation
under-
41 taken by the advocate, to the records of local and regional
fatality
42 review teams pursuant to agreement with the office of children and
fami-
43 ly services, and shall have access equal to that granted to the
office
44 of children and family services pursuant to section three hundred
seven-

45 ty-two of this chapter to records maintained pursuant to such
46 section three hundred seventy-two, to the extent necessary to an
47 investigation undertaken by the advocate and shall have access to uniform case
48 records pursuant to section four hundred nine-f of this chapter.
49 (ii) Any failure to maintain the confidentiality of client-
50 identifia-ble information shall subject the advocate to denial of any
51 further access to records until such time as the advocate shall have
52 reviewed its procedures concerning controls and prohibitions imposed on
53 the dissemination of such information and shall have taken all
54 reasonable and appropriate steps to eliminate such lapses in maintaining
55 confiden-tiality to the satisfaction of the office of children and
56 family services. The office of children and family services shall establish
the

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1 grounds for denial of access to records contained under this section
2 and shall recommend as necessary a plan of remediation to the advocate.
3 Any person given access to information pursuant to this subdivision
4 who releases data or information to persons or agencies not authorized
5 to receive such information shall be guilty of a class A misdemeanor.
6 5. Additional powers of the child advocate. With respect to any
7 care, services, programs, and services programs provided to children of
8 the state and their families by a member agency or by an entity under
9 the jurisdiction of a member agency, except as otherwise provided in
10 this section, the child advocate may:
11 (a) review, monitor or evaluate such agency's or entity's response
12 to or disposition of an allegation of child abuse or neglect if it
13 shall determine that the response or disposition by the agency or entity
14 has been insufficient, provided that the child advocate shall provide
15 time and opportunity, but not more than sixty days, for the agency or
16 entity to respond in writing to the results of such review, monitoring or
17 eval-uation prior to making its findings public or providing them to
the

18 governor and the legislature, and shall include such response in
any
19 such report;
20 (b) inspect and review operations, policies and procedures;
21 (c) review, monitor and report on performance by conducting audits
or
22 studies of case records, policies, procedures and protocols, and
inter-
23 views with staff and child residents as the advocate may deem
necessary;
24 (d) enter into contracts to obtain the services of experts to
assist
25 the advocate in assessing, evaluating, reviewing and improving
the
26 delivery of care, services, programs, and services programs to
children
27 and families in New York; and
28 (e) conduct public hearings on a study of systemic issues
undertaken
29 by the advocate, and receive testimony from representatives or
member
30 agencies, entities providing care, services, programs, and
services
31 programs under the jurisdiction of such member agencies, the public
and
32 other interested parties, as the child advocate deems appropriate.
33 6. Conduct and scope of investigations. Any other provision of
any
34 other law to the contrary notwithstanding, the child advocate may
inves-
35 tigate grievances and complaints brought to it from any source, and
may
36 in pursuing its investigation visit any facility or program at any
time,
37 without prior notice. Facility and program directors and
individuals
38 employed or volunteering at the facility or program shall cooperate
with
39 the investigation. At the child advocate's request, the staff
of a
40 facility or program shall inform the residents of the child
advocate's
41 availability on site or on premises. The child advocate shall
have
42 access to any resident or individuals receiving services on request,
and
43 the facility shall provide a suitable room upon request for
private
44 counseling. The child advocate shall have the right to inspect
the
45 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 such
facili-
50 ties or programs.
51 7. Reports. If the child advocate identifies a problem in the
way a
52 member agency or an entity under the jurisdiction of a member
agency
53 provides care, services, programs, and services programs to the
children
54 of the state and their families, the advocate shall provide a draft
of
55 its findings and recommendations to the agency or entity. The agency
or
56 entity shall have sixty days from the receipt of such draft findings
and

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1 recommendations to develop a response, which may include a
corrective
2 action plan which it shall submit to the child advocate for inclusion
in
3 the final findings and recommendations which the child advocate
shall
4 make available to the public, except for any information or
data
5 required to be kept confidential by state or federal law or
other
6 requirement. The reports shall be forwarded unaltered by the child
advo-
7 cate to the appropriate member agency, to the governor, the child
advo-
8 cate coordinating council, the inspector general, the temporary
presi-
9 dent of the senate, the speaker of the assembly, the chairman of
the
10 senate committee on social services, children and families, and
the
11 chairman of the assembly committee on children and families. If a
member
12 agency or an entity under jurisdiction of such member agency
has
13 conducted an investigation into the matters reported by the child
advo-
14 cate, the findings of such investigation shall be included in the
child
15 advocate's report.

16 8. Notification to child advocates of critical incidents. A
member
17 agency or entity shall immediately notify the child advocate of
any
18 critical incident occurring with respect to a child receiving
care,
19 services, programs, and services programs by such entity or member
agen-

20 cy, which for the purposes of this subdivision means and includes
21 an incident which indicates that a violation of rights has occurred
22 that could lead to disciplinary action and/or criminal prosecution, or
23 in which a youth has died or sustained substantial physical injury,
24 or which is an incident which could give rise to a claim against a
25 youth.

26 9. Access to the child advocate. All children receiving
27 care, services, programs, and services programs under the jurisdiction of
28 a member agency shall be permitted access to a telephone to call the
29 toll free hotline of the office of the child advocate upon such
30 child's request. Such child shall be permitted to complete any phone call to
31 the toll free hotline and any subsequent phone calls with the child
32 advocate in a private setting in which the child's conversations are not
33 moni-tored. Any calls placed by a child to the child advocate shall not
34 count against any limit on phone calls placed on the child pursuant to
35 the rules of the facility in which such child resides.

36 10. Intervention as of right; notice. The office of the child
37 advo-cate, pursuant to paragraph one of subdivision (a) of section one
38 thou-sand twelve of the civil practice law and rules, shall be permitted
39 to intervene in any action involving an appeal from a decision of any
40 court of this state which relates to programs, conditions or services
41 provided by the office of children and family services. Written notice shall
42 be given to the attorney general and the commissioner of the office
43 of children and family services by the party taking the appeal.

44 11. Grants and gifts. The child advocate may apply for and
45 accept grants, gifts and bequests of funds from private individuals and
46 founda-tions for the purpose of carrying out systemic studies hereunder.
47 The funds shall be expended in accordance with the provisions of such
48 grant, gift or bequest.

49 12. Quarterly and annual reports by the child advocate. The
50 child advocate shall report to the governor, the legislature, and the
51 council

50 on children and families, concerning the grievances and complaints
of
51 youth and the status of such grievances and complaints on a
periodic
52 basis, but not less than once per quarter. The report shall
indicate
53 whether a reported issue, complaint or grievance has been resolved
and
54 the manner in which it was resolved, and the status of implementation
of
55 recommendations or directives made by the child advocate with regard
to
56 previously reported issues, grievances or complaints. At least once
per

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1 year such report shall additionally contain statistical data and
infor-
2 mation indicating:
3 (a) the number of youths served by the child advocates;
4 (b) the number and types of complaints, grievances or issues
brought
5 to the attention of the child advocates;
6 (c) the number of facilities visited by the child advocates;
7 (d) the number of investigations conducted by the child advocates;
8 (e) the number of hearings in which the child advocates were
involved;
9 (f) the number and nature of contacts made by child advocates
to
10 persons or agencies external to the office on behalf of youth under
the
11 jurisdiction of the office; and
12 (g) information regarding major grievances, complaints received
and
13 other matters needing attention, including a recitation of the issue
or
14 complaint, a brief statement of facts, and the conclusions and
recommen-
15 dations of the child advocate, and such other items of information
as
16 the child advocate shall deem appropriate.
17 13. Child advocate coordinating council. (a) There is hereby
created a
18 child advocate coordinating council, whose purpose shall be to
facili-
19 tate, with the assistance of the child advocate, interagency
planning
20 and policy with respect to the work of the child advocate, to
review
21 specific initiatives undertaken by the child advocate for their
impact
22 on services related to the children as specified or required by
this
23 section, to provide a continuing forum for concerns and
discussion
24 related to the work of the child advocate with respect to children,
and

25 to provide ongoing consultation and advice for the work of the
child
26 advocate. The council shall be comprised of nine members with
expertise
27 in the general subject area of juvenile justice and child welfare
as
28 practitioners, advocates, academicians, writers, or theoreticians, to
be
29 appointed as follows: three shall be appointed by the governor,
two
30 shall be appointed by the temporary president of the senate and two
by
31 the speaker of the assembly, and one shall be appointed by the
minority
32 leader of the senate and one by the minority leader of the assembly.
The
33 governor shall designate a chairman of the council.

Administrative

34 duties shall be the responsibility of the child advocate. The members
of
35 the council shall receive no compensation for their services but
shall
36 be reimbursed for necessary travel and other expenses.
37 (b) Within one year after the effective date of this section,
the
38 council shall conduct community forums to gain input from
consumers,
39 providers, key researchers in the field and other interested
parties
40 concerning focus and direction of the work of the child advocate,
with
41 such forums to be conducted in at least each of the following regions
of
42 the state: Long Island, New York City, Northern Metropolitan New
York,
43 Northeastern New York, Utica area, Central New York, Rochester area
and
44 Western New York. The council shall develop a report identifying
best
45 practices, interventions, training, costs of effective interventions
and
46 an assessment of the best initial and ongoing focus for the child
advoc-
47 ate within appropriate budget parameters, and such other
recommenda-
48 tions as it shall deem appropriate in keeping with the spirit and
intent
49 of the creation of the office of the child advocate.

Administrative

50 staff for the coordinating council shall be provided by the child
advoc-
51 ate.
52 (c) The council shall meet quarterly or more frequently if its
busi-
53 ness shall require. The community forums in the first year of
implemen-

54 tation shall count as a formal meeting of the council. The
council
55 shall provide reports to the governor, the child advocate, and
the
56 legislature on or before December first, two thousand eight and
by

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1 February first of every other year thereafter. Such reports
shall
2 include recommendations for improving the effectiveness of the
child
3 advocate and a review of activities, with an assessment of their
rela-
4 tive success or failure, and reasons therefor.

5 14. Protection from retaliation. No state or local agency,
department,
6 office, or entity shall discharge, or in any manner discriminate
or
7 retaliate against, any employee who in good faith makes a complaint
to
8 the child advocate or cooperates with the child advocate in an
investi-
9 gation. No employee of any state or local department or office or
of
10 any private entity shall retaliate against any child who
makes a
11 complaint to the child advocate or who cooperates with the office of
the
12 child advocate in an investigation.

13 15. Indemnification from liability. The state of New York
shall
14 protect and hold harmless any attorney, director, investigator,
social
15 worker or other person employed by the office of the child advocate
and
16 any volunteer appointed by the child advocate from financial loss
and
17 expense, including legal fees and costs, if any, arising out of
any
18 claim, demand or suit for damages resulting from acts or
omissions
19 committed in the discharge of his or her rights, powers and duties
with-
20 in the scope of his or her employment or appointment which may
consti-
21 tute negligence but which acts are not wanton, malicious or
grossly
22 negligent as determined by a court of competent jurisdiction.

23 16. Utilization of other agency assistance. To effectuate the
purposes
24 of this section, any department, division, board, bureau, commission
or
25 agency of the state or of any political subdivision thereof shall,
at
26 the request of the child advocate, provide such facilities,
assistance

27 and data as will enable the advocate properly to carry out its
powers
28 and duties.
29 17. Initial focus. The foregoing provisions of this section to
the
30 contrary notwithstanding, the advocate shall focus initial
investigato-
31 ry, informational, analysis, reporting, and other efforts and
responsi-
32 bilities as required or established in this section on facilities
oper-
33 ated by the office of children and family services. Such initial
focus
34 shall be maintained until at least the fiscal year beginning in
two
35 thousand nine.

36 § 6. A chapter of the laws of 2007 amending the executive law and
the
37 social services law relating to the transfer of the state council
on
38 children and families from the office of children and family services
to
39 the executive department, as proposed in legislative bills numbers
S.
40 3967 and A. 7129, is amended by adding a new section 10-a to read
as

41 follows:
42 § 10-a. An act of the legislature of the year in which this act
shall
43 have become a law which adds or purports to add a new article,
title,
44 section, subdivision or other provision of law to the consolidated
laws
45 from which the sections of this act were derived, as such laws were
in
46 force and effect immediately prior to the date that this act shall
take
47 effect, shall be legally effective notwithstanding any repealers,
amend-
48 ments and transfers of provisions of such laws by this act and shall
be
49 construed as having been added to this act and shall be given
full
50 effect according to its context as if the same had been added
expressly
51 and in terms to this act and shall be deemed and construed to have
been
52 inserted in this act in juxtaposition to and as modifying the effect
of
53 the corresponding provision or provisions of this act.

54 § 7. Transition money. Monies appropriated to the office of
the
55 ombudsman in the office of children and family services pursuant
to
56 chapter 53 of the laws of 2007, and monies in the amount of
\$500,000

1 appropriated by section 1 of chapter 53 of the laws of 2002, and
reap-
2 appropriated by chapter 53 of the laws of 2007 to the state commission
on
3 quality of foster care, are hereby transferred and made available to
the
4 office of the child advocate, and notwithstanding section 51 of
the
5 state finance law or any other provision of law to the contrary,
the
6 director of the budget may authorize transfer or interchange of
moneys
7 not otherwise allocated or monies appropriated within the office of
the
8 children and family services to the office of the child advocate in
an
9 amount not exceeding an additional one million dollars, except
where
10 transfer or interchange of appropriations is prohibited or
otherwise
11 restricted by law.
12 § 8. This act shall take effect on the same date as part K-6 of
chap-
13 ter 57 of the laws of 2007, takes effect; provided, however,
that
14 section six of this act shall take effect on the same date and in
the
15 same manner as a chapter of the laws of 2007 amending the executive
law
16 and the social services law relating to the transfer of state council
on
17 children and families from the office of children and family services
to
18 the executive department, as proposed in legislative bills numbers
S.
19 3967 and A. 7129, takes effect.

SPONSORS MEMO:

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

BILL NUMBER: S4990A

REVISED 06/11/07

SPONSOR: GOLDEN

TITLE OF BILL:

An act to amend the social services law, in relation to the office of the child advocate; to amend a chapter of the laws of 2007 amending the executive law and the social services law relating to the transfer of the state council on children and families from the office of children and family services to the executive department, as proposed in legislative bills numbers S. 3967 and A. 7129, in relation to adding technical

provisions thereto; and to repeal certain provisions of the social services law and the executive law relating to the office of the ombudsman in the office of children and family services

PURPOSE OR GENERAL IDEA OF THE BILL:

This bill would establish an autonomous Office of the Child Advocate within the Council on Children And Families, appointed by and reporting to the Governor, and vested with broad powers to investigate practices within the State's child welfare and juvenile justice systems, for the purpose of better protecting children in or under the jurisdiction of the State's care.

SUMMARY OF SPECIFIC PROVISIONS:

Sections 1 and 2 repeal the Office of Children & Family Services Ombudsman, the Independent Review Board and the State Commission on Quality of Foster Care.

Section 3 amends 483 of the social services law to make the child advocate a member of the Council on Children and Families, and section 4 adds new subdivision 6 to section 483-B, to allow the council at its option, or at the request of the child advocate, to discuss reports, information, or recommendations presented by the advocate concerning care and services programs and to consider recommendations for remedy of any problems presented, or to consider initiatives or other recommendations made by the child advocate. It also adds a new subdivision 7 to require member agencies of the council (OCFS, OTDA, OMH, OMRDD, OASES, SED, Probation, DOH, DCJS, the Advocate For Persons With Disabilities, SOFA, and DOL) to promulgate regulations requiring that the child advocate have full access to records or individuals upon request.

Section 5 creates the Child Advocate as a new section 483-f to the social services law, and states that the purpose is to ensure the protection and promotion of the rights, health, safety, and welfare of children receiving care, services, programs, and services programs by or under the jurisdiction of OCFS and Council member agencies. The section also sets forth the following:

* STAFF: The director must have at least five years experience in child welfare, child health and safety, and juvenile justice, and will be appointed by the governor on the advice and consent of the senate for a term of five years. The director may be removed for cause and reports to the Governor.

* AUTONOMY: Prohibits the council on children and families, and any member agency from having power to appoint or remove any personnel of the advocate or any power or authority with regard to the operation and administration of the advocate or any power or authority over the advocate's budget.

* DUTIES: The advocate shall:

- visit and evaluate the delivery of care, services, programs, and

services programs for children and their families, hear grievances and make referrals;

- investigate violations of the rights of children or threats to health and safety;
- monitor implementation of policies and regulations of OCFS, and member agencies applicable to the rights, health, safety, and welfare of children under the jurisdiction of the office of children and families;
- advise and assist youth under jurisdiction of member agencies to obtain legal counsel;
- establish and maintain a toll-free hotline;
- recommend policies, regulations, and legislation;
- serve as a resource to children by such means as creating and disseminating materials to inform them of their rights and of the services the advocate offers;
- present complaints of children and their families to appropriate agencies; and
- execute an MOD with the State commission on quality of care and advocacy for persons with disabilities, delineating the appropriate roles of the advocate with respect to the powers and duties of each.

* ACCESS TO INDIVIDUALS AND RECORDS: The advocate may communicate privately with any child receiving care, services, programs, and services programs and shall have access to records and documents necessary to conduct an investigation, including, with appropriate agreements and constraints, the child abuse registry, records of local child protective services, and others;

* ADDITIONAL POWERS: The advocate may:

- review, monitor or evaluate such agency's or entity's response to or disposition of an allegation of child abuse or neglect if it determines that the response or disposition by the agency or entity has been insufficient;
- inspect and review operations, policies and procedures;
- review, monitor and report on performance by conducting audits or studies of case records, policies, procedures and protocols, and interviews with staff and child residents as the advocate may deem necessary;
- enter into contracts for experts; and
- conduct public hearings.

* REPORTS: The child advocate may provide a draft of findings and recommendations to the agency or entity if it finds a problem, and give it 60 days to develop a response, which may include corrective action plan which it shall submit to the advocate for inclusion in the final report.

* OTHER:

- The advocate is required to be notified of critical incidents,
- access to the advocate is required upon a child's request,
- the advocate may intervene in any action involving an appeal from a decision of any court which relates to programs, conditions or services provided by the office of children and family services.
- the advocate may apply for and accept grants, gifts and bequests of funds from individuals and foundations.
- the advocate is required to report to the governor, the legislature, and the council on children and families, concerning the grievances and complaints of youth and the status of such grievances and complaints on a periodic basis, but not less than once per quarter.

* CHILD ADVOCATE COORDINATING COUNCIL: A none member council appointed by the governor and the Legislature, which will conduct community forums to gain input from stakeholders and develop a report identifying best practices, interventions, training, costs of effective interventions and an assessment of the best initial and ongoing focus for the child advocate within appropriate budget parameters, and other recommendations in keeping with the spirit and intent of the creation of the office. The council shall provide reports to the governor and the legislature on or before December first, 2008 and by February 1 of every year thereafter, with recommendations for improving the effectiveness of the child advocate and a review of activities, with an assessment of their relative success or failure, and reasons therefore.

* PROTECTION FROM RETALIATION: No state or local agency, department, office, or entity shall discharge, or in any manner discriminate or retaliate against, any employee who in good faith makes a complaint to the child advocate or cooperates with the child advocate in an investigation. No employee of any state or local department or office or of any private entity shall retaliate against any child who makes a complaint to the child advocate or who cooperates -with the office of the child advocate in an investigation.

* INDEMNIFICATION FROM LIABILITY: The state is to protect and hold harmless anyone employed by the advocate and any volunteer.

* INITIAL FOCUS: The initial focus of the advocate is to facilities operated by OCFS until at least the fiscal year beginning in 2009.

Section 6. A chapter amendment to a chapter of the laws of 2007, to insure that if the Council becomes an independent agency, the child advocate will move with it.

Section 7. Provides \$1 million in funding for the advocate from funds appropriated to the ombudsman and the state commission on quality of

foster care, both repealed by this act, and authorization to transfer up to \$1 million additional.

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. 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 "Benevolent Complicity: The Myth of Protecting Children's Best Interests," at a symposium at the Bar Association of New York City hosted by the Children's Studies Center of Brooklyn College and funded by the Carnegie Corporation. The title of the symposium was "Policy Symposium: Children

and the Law in New York," developed for the purpose of exploring the establishment of an independent Office of the Child Advocate. 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..."

Beyond the need to address these 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 a 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:

S.6877, Children & Families

FISCAL IMPLICATIONS:

\$2 million in authority is provided in the bill from existing sources.

EFFECTIVE DATE:

The same day as part k-6 of chapter 57 of the laws of 2007 takes effect.
