



Wednesday, July 13, 2005

Bill Summary - A06334

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A06334 Summary:

SAME AS No same as

SPONSOR Clark

COSPNSR Scarborough, Titus, Paulin, Jacobs, Heastie, Benjamin, Lavelle, Gordon, Benedetto, Karben, Greene, Peoples, Rivera N, Colton, John

MLTSPNSR Cahill, Christensen, DiNapoli, Eddington, Gantt, Gottfried, Grannis, Hikind, Latimer, Mayersohn, McEneny, Millman, Norman, Perry, Pheffer Sanders, Seddio, Sweeney, Towns

Ren Art 50 & SS1000 - 1003 to be Art 60 & 2000 - 2003, add Art 50 SS1000 - 1009, Exec L; rpld Art 6 Title 1-A, Soc Serv L

Creates the office of the child advocate to oversee the administration of state services provided to children; repeals certain provisions of social services law relating to the state commission on the quality of foster care.

A06334 Actions:

03/10/2005 referred to children and families
 04/05/2005 reported referred to codes
 05/03/2005 reported referred to ways and means
 05/17/2005 reported
 05/19/2005 advanced to third reading cal.652
 06/20/2005 passed assembly
 06/20/2005 delivered to senate
 06/20/2005 REFERRED TO RULES

A06334 Votes:

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| Abbate | Y | Carrozz | Y | Fields | Y | John | Y | Meng | Y | Pretlow | Y | Sweeney | Y |
| Alfano | Y | Casale | Y | Finch | Y | Karben | Y | Miller | Y | Quinn | Y | Tedisco | Y |
| Arroyo | Y | Christe | Y | Fitzpat | Y | Kirwan | Y | Millman | Y | Rabbitt | Y | Thiele | Y |
| Auberti | Y | Clark | Y | Galef | Y | Kolb | Y | Mirones | Y | Raia | Y | Titus | Y |
| Aubry | Y | Cohen | Y | Gantt | ER | Koon | Y | Morelle | Y | Ramos | Y | Tokasz | Y |
| Bacalle | Y | Colton | Y | Gianari | Y | Lafayet | Y | Mosiell | Y | Reilich | Y | Tonko | Y |
| Barclay | Y | Conte | Y | Glick | Y | Latimer | Y | Nesbitt | Y | Reilly | Y | Towns | ER |

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|---------|----|---------|---|---------|----|---------|----|---------|---|---------|----|---------|----|
| Barra | Y | Cook | Y | Gordon | Y | Lavelle | Y | Nolan | Y | Rive J | Y | Townsen | Y |
| Barraga | Y | Crouch | Y | Gottfri | Y | Lavine | Y | Norman | Y | Rive N | Y | Walker | ER |
| Benedet | Y | Cusick | Y | Grannis | Y | Lentol | Y | Oaks | Y | Rive PM | Y | Weinste | Y |
| Benjami | Y | Cymbrow | Y | Green | Y | Lifton | Y | O`Conne | Y | Robinso | Y | Weisenb | Y |
| Bing | Y | DelMont | Y | Greene | Y | Lopez | Y | O`Donne | Y | Saladin | Y | Weprin | Y |
| Boyland | Y | Destito | Y | Gunther | Y | Lupardo | Y | O`Mara | Y | Sanders | Y | Wirth | Y |
| Bradley | Y | Diaz LM | Y | Hayes | Y | Magee | Y | Ortiz | Y | Sayward | Y | Wright | Y |
| Brennan | Y | Diaz R | Y | Heastie | Y | Magnare | Y | Ortloff | Y | Scarbor | ER | Zebrows | Y |
| Brodsky | ER | DiNapol | Y | Hevesi | Y | Manning | Y | Parment | Y | Schimmi | Y | Mr Spkr | Y |
| Brown | Y | Dinowit | Y | Hikind | Y | Markey | Y | Paulin | Y | Schroed | Y | | |
| Burling | ER | Eddingt | Y | Hooker | ER | Mayerso | ER | Peoples | Y | Scozzaf | Y | | |
| Butler | Y | Englebr | Y | Hooper | Y | McDonal | Y | Peralta | Y | Seddio | Y | | |
| Cahill | Y | Errigo | Y | Hoyt | Y | McDonou | Y | Perry | Y | Seminer | Y | | |
| Calhoun | Y | Espail | Y | Ignizio | Y | McEneny | Y | Pheffer | Y | Stephen | Y | | |
| Canestr | Y | Farrell | Y | Jacobs | Y | McLaugh | Y | Powell | Y | Stringe | Y | | |

A06334 Memo:

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

PURPOSE OR GENERAL IDEA OF 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. A newly established Commission on Children would be authorized to appoint a Child Advocate. The appointment would be made jointly by the chair and vice-chair from a list of three candidates.

The Child Advocate would hold office for a five-year term, and could be removed if the chair and vice-chair jointly determine that the Child Advocate has abused his or her powers and duties or failed to carry out such duties. The Child Advocate would be authorized to appoint assistants and staff as deemed necessary.

The Child Advocate would act independently of the Executive Department and any other state agency. Its duties would include: 1) evaluating the delivery of services to children and families by the Office of Children and Family Services (OCFS), 2) periodically reviewing procedures established by OCFS and investigating circumstances related to the death or serious injury of any child who has received services from OCFS or any local child protective service (CPS) or department of social services (DSS), 3) reviewing complaints related to actions of OCFS, making referrals and investigating complaints, 4) periodically reviewing the facilities and procedures of any institution or residence where a child has been placed, 5) recommending 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) taking all possible actions to secure and ensure the legal, civil and special rights of children, 7) taking steps to make the Child Advocate's presence in New York State widely known for children regarding their rights

in foster care, detention centers, training schools, jails or prisons, and methods of enforcement, and 8) establishing a 24-hour 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 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.

The Commission on Children would be established to meet three times a year with the Child Advocate to review and assess: 1) patterns of treatment and services for children, 2) policy implications of the findings of investigations, and 3) necessary systemic improvements. The Commission would consist of six members, experienced in child welfare, juvenile justice or child care. Any matter put to vote by the Commission would require an affirmative vote of the majority of the members, and no vote could be taken until all members are appointed.

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

Section three provides for an effective date on April 1, 2005.

EFFECTS OF PRESENT LAW WHICH THIS BILL WOULD ALTER: 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 most recently on June 10, 2004, the New York Post reported the case of a baby boy, Colevinton 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 caseload 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, 2005.

Contact Webmaster