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January 19, 2011

The Honorable Andrew M. Cuomo

New York State Governor

State Capitol

Executive Chamber

Albany, NY 12224

Dear Governor Cuomo:

We congratulate you on your election as Governor and want to take this opportunity to introduce the New York City Bar Association's Council on Children. The Council is comprised of representatives of all the City Bar committees dealing with children, education, family, family court, juvenile justice, and the needs of lesbian, gay, bisexual and transgender youth. Also sitting on the Council are representatives of the child welfare and foster care communities, and attorneys representing parents and children. The Council looks forward to working with you and your administration in the upcoming year, particularly regarding policies that impact the lives of children, youth and families.

We appreciate the difficult economic time in which you are beginning your responsibilities as New York's next Governor and we recognize that fiscal prudence will be necessary. However, it is particularly in these times that we must maintain and strengthen the basic protections the State provides for the most vulnerable New Yorkers, our children, and particularly children who are not being raised by their birth families. We must work to assure that children at risk of entering foster care, living in foster care and leaving foster care to reunification, adoption, guardianship or independent living, as well as those children involved with the juvenile justice system, have their needs for safety, permanency and well-being addressed so that they can grow up and become successful New Yorkers. If we shrink or eliminate their safety net, we risk not only their future dependency on the State but the ramifications this has for the social and economic stability of their families and communities. It is in that vein that we address the following issues:

- A) Increasing permanency for children in foster care
- B) Continuing to reform the State's Juvenile Justice System
- C) Providing sufficient resources to keep New York's children safe

## **A. INCREASING PERMANENCY FOR CHILDREN IN FOSTER CARE**

New York State has a responsibility to work with its localities to ensure the safety, permanency and well-being of children. While the number of children in foster care has declined dramatically over the past decade, the number of children reported abused or neglected has increased and children's length of stay in foster care has only marginally decreased.

To address the safety, permanency and well-being of children coming into contact with the child welfare system, we urge your administration to consider the following as priorities for 2011:

### **1. Better meet the permanency needs of children in foster care**

While foster care is intended to be temporary, children in New York State have some of the longest lengths of stay in the nation. In fact, New York recently failed the federal Child and Family Service Review, ranking almost last among states with regard to length of stay in foster care. This means that children in New York are essentially being raised in foster care, and thus without the stability that only a permanent family can provide.

In 2005, the legislature passed a crucial bill for children, known as "the Permanency Bill," [Laws of 2005, ch.3]. Protracted stays in foster care can have lasting, detrimental effects on children. The law's objective was to ensure that children did not linger in foster care longer than necessary and that they receive all of the services they need while they are dependent on the family court. To this end, the law requires that the family court hold a substantive hearing on each child's situation every six months (twice as often as under prior law).

If implemented as designed, the law would speed reunification for children who can return home safely and adoption for those who cannot. In practice, however, the State's failure to provide the necessary resources to implement the law has jeopardized the system's ability to process cases efficiently and results in children spending longer periods in care. In particular, the failure to increase the number of Family Court judges to address the increase in the number of hearings required by statute has contributed to the present crisis in New York's family courts (*see* section 5 below).

Timely and effective permanency planning is vital to a child's well-being. As such, we urge you to support legislation that would extend permanency planning to include children who enter the family court system as Persons in Need of Supervision, Juvenile Delinquents, and Destitute Minors (defined as a child who, through no neglect on the part of its parent or guardian, is destitute, homeless, or without a place of shelter where supervision and care are available). In addition, when child welfare financing (Social Service Law Section 153-k) expires in June 2012, New York should consider a new funding model that better supports foster care than the current Foster Care Block Grant (which is also used to pay for private juvenile justice placements).

### **2. Support the newly Subsidized Kinship Guardianship permanency option outside of the Foster Care Block Grant**

As part of the State's Fiscal Year 2010-2011 Adopted Budget, Article VII legislation was passed enacting Subsidized Kinship Guardianship in New York, effective April 1, 2011, but without agreement with regard to funding the State's share. The New York City Bar Association has

supported the addition of this permanency option, which will offer children in kinship foster care - and their relatives - an important new option where the children cannot be reunified with their parents and their relative foster parents do not want to adopt and/or the child does not want to be adopted. Subsidized kinship guardianship will enable these children to achieve permanency, allowing these families the security of no longer having an open child welfare case.

The children who leave foster care to subsidized kinship guardianship should be supported much like the State supports children who leave foster care through subsidized adoptions. Such adoption funding has always remained outside of the Foster Care Block Grant and the Council on Children urges your administration to resolve funding for kinship guardianship in the same way. This would avoid diverting the limited resources intended to benefit foster children in state and local custody to those children outside of the foster care system.

### **3. Ensure that youth aging out of foster care do not age out to homelessness**

The Council recommends that New York define youth aging out of foster care as homeless adults. This would provide these extraordinarily needy young adults with the option of qualifying for federally subsidized housing that is now reserved only for homeless adults and families. At present, many young adults choose or are advised to live in homeless shelters upon aging out of care because it is the only way to gain entry into critical supportive housing programs such as those provided for young women and their children. The Council recommends that your administration take the lead in ending the practice of requiring youth to age out of foster care to homelessness in order to receive the services to which they are entitled.

### **4. Ensure that children initially placed in foster care, and those children who experience multiple moves while in care, can stay in their school of origin**

The Council recommends that your administration ensure that New York comes into full compliance with the federal Fostering Connections to Success Act of 2008, which added new requirements for state child welfare agencies to provide educational stability for children in foster care. Further State action is necessary in order to eliminate multiple school transfers for many children in foster care whose emotional, social, and academic development are severely compromised when their educational progress is so frequently disrupted.

Specifically, the law now provides for the provision of reasonable transportation costs to keep a child in their school of origin after placement in care, unless after careful consideration by all of the stakeholders it is determined that remaining in his or her school of origin is not in the best interests of the child. Unfortunately, many local districts interpret this mandate to apply only to a child's initial placement in foster care and do not provide for school stability when a child changes foster care placements after his or her entry into care. Maintaining a stable school placement while the rest of their lives are in flux is critical to the well-being of children in care in New York, and should be a priority for the new administration.

### **5. Increase the number of Family Court Judges**

There is a crisis in New York's Family Courts. Overburdened judicial caseloads are leading to long adjournments, protracted trials, and unconscionably long foster care lengths of stay for both children who return home to their families and those who are eventually adopted.

There have been significant legislative changes regarding enhanced judicial oversight of children in foster care (the 1999 NY Adoption and Safe Families Act and the 2005 New York Permanency Law), legislation increasing the responsibilities of Family Court Judges and Court personnel, a sustained increase in Family Court filings, and legislative changes expanding the jurisdiction of the Family Court (increasing the Persons in Need of Supervision (PINS) age from 16 to 18 and expanding access for orders of protection); yet, there has not been an increase in the number of Family Court judges. In particular, New York City has been statutorily limited to 47 Family Court Judges since 1991.

In Chief Judge Kaye's final State of the Judiciary she said, "I arrived at the State's High Court directly from a commercial litigation practice, but I stand before you 25-plus years later convinced beyond all else that we must summon our resources and efforts to help the children in our Family Courts."

The State must increase the number of Family Court judgeships available statewide. This would require amending §§ 121 and 131 of the Family Court Act. In previous legislative sessions, the New York City Bar Association has supported numerous bills that have been introduced to accomplish this, all of which passed the Senate but have not been voted on in the Assembly (most recently A.8957-A/S.5968-A).

## **B. CONTINUING TO REFORM THE JUVENILE JUSTICE SYSTEM**

The Council applauds your recognition of this vital issue in your State of the State Address.

As was documented in the Department of Justice Report in 2009, Citizens' Committee for Children's Report in 2009, the Governor's Task Force in 2010, your Urban Agenda, and numerous other reports and media coverage, New York State's Juvenile Justice system is in urgent need of reform. The State Office of Children and Family Services (OCFS) facility placement system, which typically places children far from their families and communities, is expensive (costing approximately \$220,000 per child annually) and exposes young people to physical and psychological harm, abuse, and a woeful lack of education and mental health treatment, which results in a stunningly high recidivism rate (there is an 81% recidivism rate for boys).

Youth returning home from placement face barriers to enrolling in school and keeping the credits they earned in placement, face enormous challenges to reintegration with their families, and struggle to access supportive services and preparing for adulthood. Community-based alternatives, in contrast, which provide intensive services to children and their families while they remain at home and in school, have much lower recidivism rates and cost far less in dollars than incarceration. Alternative to placement programs are not only cost-effective but more humane. They avoid the additional trauma of breaking children apart from their families, serve children better than incarceration, and serve our State as well.

The Council on Children recommends that your administration continue the reforms begun in the prior administration and implement the recommendations in the Governor's Task Force on Juvenile Justice. Specifically, we urge you to implement the following reforms:

- Close additional underutilized facilities;
- Eliminate the 12-month waiting period to close facilities;
- Reinvest savings into community-based alternative-to-detention and alternative-to-placement programs that produce better outcomes at considerably less cost;
- Increase oversight of educational support and credit transfer for youth in facilities and re-entering the community;
- Ensure youth in placement receive mental health services and substance abuse treatment when warranted;
- Establish a taskforce to review New York's age of criminal responsibility;
- Work with the counties to ensure a fair and equitable cost-sharing structure for both OCFS facilities and private placements; and
- Ensure that there is an independent oversight mechanism in place for both OCFS facilities and private placement facilities.

### C. KEEPING NEW YORK'S CHILDREN SAFE

The county-run child welfare systems need the State to contribute sufficient resources to ensure that children and families receive high quality preventive and after care services to keep children safe from abuse and neglect and, where a child cannot safely remain with his or her birth family, that timely permanency is achieved through foster care.

The statutory 65/35 uncapped state match for protective, preventive, independent living and aftercare services remained in place from 2002 until 2008 and must be restored. In the State Fiscal Year 2008-2009, budget shortfalls led to across the board 2% cuts to social services. Consequently, the State provided only 63.7% state/ 37.3% local shares for preventive services. This 2% reduction was carried forward in the state's Fiscal Year 2009-2010 Budget. The State Fiscal Year 2010-2011 Executive Budget, through an Emergency Budget Resolution this past summer, cut the reimbursement rate by another 2% (i.e. 96% of the 65% share), which translates to 62% state reimbursement to the counties. In addition, since that time, reimbursement has once again been reduced as part of the 1.1% across the board Federal Medical Assistance Percentages cut on state reimbursement for local assistance claims. These two more recent cuts translate into a \$7 million dollar State cut to New York City in NYC Fiscal Year 2011.

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Thank you for your consideration. We look forward to working with you and your administration on these and related issues critical to New York's children and families.

Sincerely,



Karen Freedman  
Chair, Council on Children



Stephanie Gendell  
Vice-Chair, Council on Children