

NEW YORK  
CITY BAR

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*By Facsimile and Regular Mail*

April 6, 2010

Hon. David A. Paterson  
New York State Governor  
Executive Chamber  
State Capitol  
Albany, NY 12224

**Re: Statement on Relevant Article VII Legislation- FY 2010-2011**

Dear Governor Paterson:

The Council on Children of the New York City Bar Association is a diverse group of legal professionals representing eight Association committees and various child and family legal services and advocacy organizations. We are writing to you regarding several of the provisions in the Article VII budget legislation (“the Bill”), which impact children and families.

**1) Education, Labor and Family Assistance Part Z: Subsidized Kinship Guardianship – SUPPORT SUBJECT TO MODIFICATIONS**

The Council on Children fully supports Subsidized Kinship Guardianship in New York, as this is an important permanency option that would allow many children and youth living with their relatives the opportunity to achieve the sense of stability that only be achieved by permanency outside of the foster care system. It is critical, however, that any kinship subsidized guardianship program in New York be limited only to children who are not going to be reunified or adopted and that the program be financially supported fairly by both the state and the localities with funds not intended for children in foster care.

We respectfully submit the following suggested amendments to the currently pending Article VII bill:

- Strengthen the requirement that reunification and adoption be ruled out by requiring the local social service district and the court to document a compelling reason why the child will not be able to be reunified or adopted before approving the guardianship petition.
- Only permit this permanent arrangement after the fact-finding hearing is concluded or the first permanency hearing is concluded, whichever is later.
- Ensure that subsidized guardianship is an available permanency option for children voluntarily placed in foster care.

- Require all children be consulted prior to the approval of the guardianship petition and require that youth 14 and over consent to the guardianship, which would mirror adoption law.
- Enable the subsidy to continue until the age of 21 regardless of whether the guardianship is finalized before or after the child's 16<sup>th</sup> birthday.
- Fund subsidized kinship guardianship outside the Foster Care Block Grant. This limited funding is intended to provide support and services for children who are in the custody of the state and localities and as such should not be used for children who have achieved permanency.
- Reimburse counties for 65% of the non-federal share of the subsidy, which would fairly reimburse counties while leaving an incentive to counties to continue to pursue adoptions, which are reimbursed by the state at 75% of the non-federal share.

## **2) Education, Labor and Family Assistance Part AA: Court Ordered Investigations (COI) – SUPPORT SUBJECT TO MODIFICATIONS**

This part appears to be intended to provide some mandate relief to counties during this difficult economic time. The Council on Children appreciates and understands the need for the court to document their reasonable cause to suspect child abuse or neglect before ordering the local social service district to perform a court ordered investigation of a family

The Council on Children respectfully submits the following recommendations to amend this part of the Article VII bill to ensure that child safety is not jeopardized:

- As written, the Bill eliminates the ability for a Family Court Judge to order a Court Ordered Investigation in a JD or a Family Offense case even though that is currently permissible. We urge you to amend the bill to continue COIs in these types of cases.
- The Bill currently extends the timeframe for the COI to be due to the court to 60 days (with a preliminary safety assessment at 7 days). Currently, COIs must be produced much more quickly in order to guarantee the safety of the child(ren). We believe this lengthier timeframe will contribute to court delay and put children at unnecessary risk of harm.

## **3) Education, Labor and Family Assistance Part BB: Electronic Court Appearances in Family Court Proceedings - OPPOSE**

The Council on Children opposes Part BB of Article VII. Although we understand that there may be circumstances where electronic court appearances (by means such as phones and webcam) could be beneficial and/or achieve cost savings, this bill makes no effort to protect the due process rights of juveniles or parents whose rights may be terminated. It should be subject to further review and discussion in order to ensure that the rights of juveniles and their parents are not diminished.

As currently stated, the Bill will relieve the State Office of Children and Family Services from its obligation to transport youth in upstate juvenile facilities to their court hearings. The Bill allows any party – including Administration for Children Services or OCFS - to make an application to the court for permission to have a child appear by electronic means even if the child or the child's

attorney does not consent. The court is given broad discretion to grant such an application, including when the child simply lives in another county, when appearing would cause undue hardship, and for "good cause shown." Moreover, the proposal fails to include the protections afforded under the Criminal Procedure Law §182 regarding video arraignments for juveniles, such as the requirement that counsel be present with the defendant unless waived and if waived by the defendant, that counsel and the defendant are able to see and hear each other and engage in private conversation and that the adult consent to each electronic appearance. CPL §182 recognizes the special circumstances involved when a juvenile appears by electronic means, and this bill must do the same. We urge that this issue be given further study and an appropriate bill developed outside of budget negotiations.

**4) Education, Labor and Family Assistance Part CC: Safe Harbor Act –  
SUPPORT WITH RECOMMENDATION**

The Council on Children is grateful that the Executive Budget proposes \$3 million for long-term safe houses to implement the Safe Harbor Act, which becomes effective on April 1, 2010. While long-term safe houses are critical, the young girls and boys who are victims of sexual exploitation also need short-term crisis/intake centers. When these young people first come into contact with the new social services aimed at helping them, they will need immediate emergency services such as safe shelter, food, clothing, health care and counseling—all with the goal of helping them through the crisis so that they can receive long-term treatment. We urge you to expand the use of the \$3 million allocation to include short-term crisis centers for these young people.

Sincerely,

  
Karen Freedman

Cc: Robert L. Megna  
Budget Director  
New York State Division of the Budget