



COUNCIL ON CHILDREN

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March 19, 2023

Hon. Kathy Hochul
Governor of the State of New York
New York State Capitol Building
Albany, NY

Hon. Carl Heastie
Speaker, New York State Assembly
Legislative Office Building 932
Albany, NY 12248

Hon. Andrea Stewart-Cousins
Majority Leader, New York State Senate
Legislative Office Building 907
Albany, NY 12247

Re: FY24 New York State Executive Budget Provisions with a Significant Impact on Children and Families in New York State - Public Protection and General Government Article VII Bill (A.3005/S.4005), Education, Labor and Family Assistance Article VII Bill (A.3006/S.4006), and Aid to Localities Bill (A.3003/S.4003)

Dear Governor Hochul, Speaker Heastie and Majority Leader Stewart-Cousins:

On behalf of the New York City Bar Association Council on Children, we write regarding proposals included in the Governor's proposed FY24 Executive Budget Public Protection and General Government bill and the Education, Labor, and Family Assistance bill, which we believe will have a significant impact on children and families in New York State.

About the Association

The mission of the New York City Bar Association, which was founded in 1870 and has over 23,000 members, is to equip and mobilize a diverse legal profession to practice with excellence, promote reform of the law, and uphold the rule of law and access to justice in support of a fair society and the public interest in our community, our nation, and throughout the world.

PUBLIC PROTECTION AND GENERAL GOVERNMENT (PPGG) BILL

Part P:

We support Part P of the PPGG bill, which would raise the rates paid to attorneys assigned to represent parents and children in Family Court pursuant to § 722-b of County Law Article 18-b.¹ The State has not increased compensation paid to these attorneys in two decades, despite the fact that they provide critical legal representation to many litigants and children who desperately need assistance in resolving pressing issues related to their most fundamental rights and familial relationships. As a result, not only are 18-b attorneys underpaid for their important work, but the ranks of attorneys willing to join the 18-b panel have thinned significantly, making it difficult to ensure that every party entitled to an attorney in Family Court litigation is assigned one in a timely manner. Moreover, this failure most significantly impacts and burdens New York's low-income families and families of color, because members of those communities comprise a substantial portion of the New Yorkers whom the Family Courts serve.² Thus, enacting Part P would be an active step towards improving access to justice and Family Court functioning.

We do, however, have the following concerns regarding Part P as it is currently drafted in the Governor's proposal:

First, the proposal does not include the investment of state funding that is needed to effectuate this necessary raise. Relatedly, the proposal also does not provide for an annual cost of living increase, so that members of the panel can continue to receive appropriate compensation in future years. We urge you to direct appropriate funding towards this proposal, and include legislative language that will ensure continued, fair compensation for attorneys who do this important work.

Further, we must stress that 18-b attorneys are not the only group of Family Court practitioners in need of increased funding. Not-for-profit attorney for the child (AFC) offices, which are funded through the State Judiciary budget,³ are not adequately resourced, and have suffered severe budget cuts in recent years. The funding for AFC attorney offices, which provide necessary services to New York's children, most of whom are from low-income communities, is woefully insufficient. After the onset of the pandemic, AFC offices suffered State budget cuts of 10% or higher, driving up staff shortages, which in turn caused caseloads to skyrocket and threatened the offices' sustainability. Moreover, prior to the pandemic, attorneys in AFC offices already were disadvantaged by years of budget increases of 1.5% or less, which is far below cost

¹ See *i.e.* "2023 NYS Legislative Agenda: Increase the rates paid to 18-b attorneys," New York City Bar Association, Feb. 13, 2023, <https://www.nycbar.org/media-listing/media/detail/increase-pay-for-18-b-attorneys-access-to-justice>. (All websites last accessed on March 17, 2023.)

² Notably, in his 2020 report regarding Equal Justice in the New York State Courts, Secretary Jeh Johnson asserted that, despite the New York State court system's efforts, it remained "under-resourced" and "over-burdened," resulting in a "second-class system of justice for people of color" who comprise the "overwhelming majority" of litigants in Housing, Family, Civil, and Criminal Courts. See Report from the Special Adviser on Equal Justice in the New York State Courts, p. 2, <https://nycourts.gov/whatsnew/pdf/SpecialAdviserEqualJusticeReport.pdf>.

³ This is different from the 18-b attorney rates, which are determined by statute. Note that 18-b attorneys are assigned to represent children primarily in counties that lack non-profit AFC law offices, and also may be assigned when an AFC law office cannot represent a child because of a conflict of interest.

of living increases. The State should restore the severe budget cuts to AFC offices, invest additional resources in those offices, and provide for cost-of-living adjustments, as well as lower the acceptable case cap for AFCs, which continues to be 150 child clients per attorney. Without such investments and actions, AFCs are severely hampered in their ability to provide crucial legal representation to some of the most vulnerable New Yorkers. Accordingly, the State should appropriately fund AFC organizations as well as individual 18-b practitioners.⁴ We applaud the Assembly for including funding for panel attorneys performing AFC work, but note the critical lack of additional funding for AFC organizations in the one-house budget bills.

Finally, we question the decision to propose offering different rates to attorneys based on their geographic location in the state. The rate has uniformly been \$75/hour, throughout the state. However, Part P proposes an increase to \$158/hour in all counties in New York City, on Long Island, and in Westchester, Rockland, Putnam, Orange, Dutchess, Ulster, and Sullivan Counties, and to \$119/hour in all other counties in the state. Further, Part P proposes a \$10,000 cap on total compensation for time expended providing representation in New York City and downstate counties, and \$7,000 for upstate counties. We appreciate the implicit acknowledgment that the cost of living varies throughout the State but would like a better understanding of how the specific differing amounts were calculated.

Part I:

We are not opposed to the creation of a state-wide model domestic and gender-based violence policy, as we agree that a uniform, trauma-informed approach to addressing this problem could improve the well-being of children and families. However, we have a few concerns regarding the Governor's proposal as drafted.

First, with respect to the members of the task force that would be convened to develop the model policy, we believe that the proposal omits key stakeholders and experts who should be included in the task force. Most notably, absent from the list of potential task force members are attorneys for children and other child advocates, social scientists, prosecutors, and attorneys and service providers for people accused of doing harm. Even assuming some of them could participate in the public hearing, such participation likely would not provide sufficient opportunity for these stakeholders, each representing a different viewpoint, to share all of their expertise, insight, and feedback. If this task force is to develop a policy based on best practices, it should employ a full diversity of perspectives, and ensure its approach is evidence based.

Additionally, in subsections b(i)-(iv), the proposal includes an inexhaustive list of topics that the policy should address. Moreover, the language used to describe those topics is vague and unclear. Given this lack of clarity, we are concerned that the task force will be hindered in its efforts to fulfill its responsibilities.

Part C:

⁴ For more information on the need for funding AFC attorney offices, please see the Council on Children's March 17, 2023 letter "Fund Equal Access to Justice for Children in NYS Family Courts." Available at <https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports>.

Part C of the PPGG bill would allow the use of body imaging scanning equipment that applies ionizing radiation to humans for purposes of screening individuals held in secure or specialized secure detention facilities, or placed in facilities operated by the NYS Office of Children and Family Services, as well as any visitors to those facilities. These provisions raise serious concerns about, among other things, exposure to radiation, who would be responsible for operating the body scanning equipment, and how it would be determined which individuals would be subjected to body scanning. According to the proposal, body scanning would be permitted not only upon suspicion of contraband, but routinely upon intake and before and after visits. To the extent that the purported purpose of body scanning would be to prevent contraband from entering these facilities, it is difficult to understand how such a proposal could exclude the individuals who work in the facilities from the application of body scanning when it is well known that staff in facilities are often responsible for bringing in contraband. At a minimum, we recommend that if a body scanning proposal is to be adopted by the State, it must apply equally to staff in the facilities as to young people and their visitors. However, given the aforementioned concerns, we question whether it is proper to include this proposal in the Executive Budget. Rather, if the Legislature chooses to consider this proposal at all, it should do so as a standalone bill, so that a fuller and more adequate evaluation process can occur. We note that the Assembly left this provision out of its one-house budget, while the Senate rejected that part of the Executive proposal that would allow body scanning in facilities overseen by the NYS Office of Children and Family Services.

EDUCATION, LABOR AND FAMILY ASSISTANCE (ELFA) BILL (PART W) AND AID TO LOCALITIES BILL

We applaud the provisions of Part W of the ELFA bill, which would make the juvenile justice services close to home initiative (Close to Home), first enacted in 2012 and extended for a period of five years in 2018, a permanent feature of the New York Social Services Law, the New York Family Court Act, and the New York Executive Law. Close to Home, which ensures that children who are deemed to require placement in a juvenile justice facility by a Family Court Judge will be placed in a location in proximity to their community, has proven over the years to be a successful initiative that benefits New York City's children and communities. It ensures, among other things, that children are able to have more regular and frequent visits with family members, and that the services provided to the children in Close to Home placements can include family members and allow more robust planning for successful discharge to the community.

However, we are concerned that once again the Executive Budget, in the Aid to Localities provisions, fails to allocate any funding to support the Close to Home program in New York City. While New York State provides 50% of the placement costs for all youth adjudicated as juvenile delinquents outside New York City, the City's youth in Close to Home placement receive *no* state support. The State should allocate funds to support the Close to Home initiative, including not only placement facilities, but also quality supportive services, aftercare and alternatives to placement.

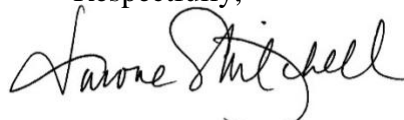
CHILD AND FAMILY WELLBEING FUND

Finally, we are disappointed that the FY24 Executive Budget does not currently include the Child and Family Wellbeing Fund, currently included in the Child and Family Reinvestment

Act advanced by Assemblymember Hevesi and Senator Brisport, and we urge you to include it.⁵ The Fund advances the health and development of all New York's children by investing resources in communities that have been historically disenfranchised and targeted for government intervention through the child protective system. The Fund will resource community-driven initiatives and projects that strengthen families to reduce contact with child protective agencies. Given the challenges wrought by the pandemic, this is the time for bold new investments in New York's children and families.

In sum, the City Bar applauds inclusion of proposals in the Governor's FY24 Executive Budget that prioritize the needs of children and families and endeavor to ensure that all litigants and court-involved children receive due process and access to justice in the State's Family Courts. However, we are concerned that the above proposals, and the notable exclusions therefrom, do not go far enough to achieve those goals or effectuate meaningful change. Of particular concern is the lack of investment of state funding necessary to properly implement the proposal to increase the 18-b rates and to support the Close to Home program in New York City. We not only urge you to make those critical investments, but also to enhance the Judiciary budget for New York State's AFC offices, so that those offices receive reasonable and equitable compensation. The absence of those resources from the final FY24 Executive Budget will undoubtedly prevent the achievement of race equity in the New York City and State Family Courts, and the fair administration of justice.

Respectfully,



Dawne A. Mitchell, Chair
Council on Children

Cc: Hon. Jamaal Bailey
Hon. Jabari Brisport, Chair, NYS Senate Children & Families Committee
Hon. Andrew Hevesi, Chair, NYS Assembly Children & Families Committee
Hon. Brad Hoylman, Chair, NYS Senate Judiciary Committee
Hon. Liz Krueger, Chair, NYS Senate Finance Committee
Hon. Charles Lavine, Chair, NYS Assembly Judiciary Committee
Hon. William Magnarelli
Hon. Helene Weinstein, Chair, NYS Assembly Ways & Means Committee

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⁵ See *i.e.* Feb. 17, 2022 letter to Governor Hochul, <https://affcnny.org/wp-content/uploads/The-Children-and-Families-Reinvestment-Act-CFRA.pdf>.