



**Statement to Department of Health and Human Services Transition Team Regarding  
Services for At-Risk Children and Families**

**The Association of the Bar of the City of New York  
Council on Children**

**December 2008**

The Council on Children of the Association of the Bar of the City of New York (the “Association”) respectfully submits these recommendations for consideration as the Obama Administration begins to develop priorities for the delivery of health and human services to at-risk children and families.<sup>1</sup> The Association urges the Obama Administration to treat the needs of America’s children and families as a critical component of the Presidency. In times of economic downturn, it is more important than ever to remember those in our society who have no direct access to those in power--particularly children. The Association strongly supports many of the proposals that President-elect Obama has already put forward, such as increasing funding for early care and education (child care, Head Start and Universal Pre-Kindergarten), home visiting and Promise Neighborhoods; deepening the Earned Income Tax Credit; and expanding health coverage to all children. In addition, the Association submits the following recommendations which we believe will enhance the quality of children’s lives in the United States. Focusing on these four key areas – *foster care, juvenile justice, housing, and child abuse prevention* – will help to provide a continuum of care to children and families and, in the long term, better enable at-risk children to become independent and productive adults.

**I. THE NEED TO ENHANCE FOSTER CARE SERVICES**

The Benefits of Increasing Federal Financing for Foster Care

Foster care is intended to be a *time-limited* intervention to keep children safe while their parents receive services to address the factors that placed the child at risk. Children need to grow up in permanent, stable, loving and supportive homes, yet too many spend years growing up in foster care. One of the major reasons for extended foster care stays is that the foster care system is not adequately funded to provide timely services to children and their parents. This is unsettling for children and ultimately can be more costly to the state because the child remains in the foster care system longer than may be necessary. Currently, states only receive federal funding for children eligible under Title IV-E of the Social Security Act, which includes an outdated income

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<sup>1</sup> The Association, founded in 1870, has over 23,000 members. While most practice in the New York area, the Association’s membership includes lawyers from around the nation and in 50 foreign countries. The Association regularly reports on legislative and regulatory issues on a local, state and national level. The Council on Children is comprised of representatives of eight Association committees that regularly address issues pertaining to children and families, family court and juvenile justice.

eligibility standard. Specifically, for a child to be eligible for federal funding, the family's income must be such that the family would have been eligible for AFDC in 1996 *without any adjustments for inflation*. This has led to a steady decline of income eligible children and the loss of vital foster care resources, which results in fewer caseworkers, slower delivery of services to families, fewer eligible foster families, and longer delays before an adequate permanent solution can be found. As is starting to occur with federal adoption subsidies, the federal government should de-link federal IV-E funding for foster care from the AFDC standard and provide support for all foster children-- children who by definition are deemed not to be safe with their parents and thus are in the custody and care of the government.

#### Amending The Adam Walsh Child Protection and Safety Act to Expand Foster Parent Eligibility

The bipartisan Adoption and Safe Families Act of 1997 included an important requirement mandating criminal background checks of foster and adoptive parents to ensure the safety of children placed their care. In enacting this requirement, Congress allowed states to individualize their foster/adoptive parent licensing requirements, so that the information obtained in a criminal background check would be used to ensure the appropriateness and safety of homes certified to care for children. As of October 2008, however, the Adam Walsh Child Protection and Safety Act eliminated the states' autonomy in this regard, and categorically prohibited certification of foster/adoptive parents who have been convicted of certain crimes – regardless of the circumstances of the conviction or the likelihood that the conviction would have any bearing on the person's fitness to parent a child.

Using procedures crafted by the individual states, hundreds of homes have been licensed to provide foster care and adoption so that children could safely remain with family, even when a member of the household had been convicted of a crime that would preclude the family from caring from the child under the Federal standards. Categorical rejection of certain applicants required by the current law, without regard to the best interests of the child, will unreasonably preclude many children from being placed in (or remaining in) kinship homes. We urge the Obama Administration to reconsider this issue and restore the states' ability to make individual determinations based on the needs of the child.

#### Proper Discharge Planning for Youth Aging Out of Foster Care is Vital

Recent statistics show that 25% of youth become homeless within a year of leaving the foster care system. Action must be taken to reduce these numbers. The Fostering Connections to Success Act of 2008 takes an important step in this direction by providing for states to allow youth to remain in foster care until age 21. However, more needs to be done to ensure that youth aging out of foster care secure permanent housing, complete an education, and obtain meaningful employment. Requirements must be strengthened to ensure that states take early, specific actions to achieve effective discharge planning, identify proper aftercare supports, and create connections to caring adults in the community. In addition, youth leaving the foster care system should be granted priority access to Federal housing and job programs.

#### Proper Health Care for Foster Children Must be Maintained

In 2007 the Bush Administration, through the Centers for Medicaid and Medicare Services, issued a proposed regulation and then an interim final regulation that would impact the provision of rehabilitative services and targeted case management, two optional services under Medicaid

that states have relied on to serve foster children. Fortunately, the 110<sup>th</sup> Congress issued a moratorium on this provision, which is now delayed until April 1, 2009. We urge the Obama Administration to rescind these regulations before they go into effect.

## **II. IMPROVING THE JUVENILE JUSTICE SYSTEM WILL REDUCE RECIDIVISM**

### The Juvenile Justice and Delinquency Prevention Act (JJDP) Must be Reauthorized

The JJDP, first enacted in 1974 and most recently reauthorized in 2002, promotes effective juvenile justice and delinquency prevention by providing states with federal funding and supports for improving delinquency and juvenile justice practices. S.3155, the Juvenile Justice and Delinquency Prevention Reauthorization Act of 2008, is bi-partisan legislation that has already passed the Senate Judiciary Committee and, if passed by Congress, will further support states in their efforts to prevent juvenile crime and keep communities safe. Key measures include directing states to reduce disproportionate minority representation, to adopt evidenced based practices that have proven to reduce recidivism, and to deinstitutionalize young people who are runaways, truants or status offenders. We urge the Obama Administration to support passage of the Juvenile Justice and Delinquency Prevention Reauthorization Act of 2008 so that we can best serve our nation's children by addressing their needs and keeping them connected to their homes, families, schools and communities, while keeping those communities safe.

### The Juvenile Sex Offender Provision of the Adam Walsh Act is Unnecessary, Unsafe, and Must be Eliminated

Title I of the 2006 Adam Walsh Child Protection and Safety Act, the Sex Offender Registration and Notification Act (SORNA), creates a national sex offender registry and establishes new state registry requirements for juvenile sex offenders who are at least 14 years old. Under the Act, young offenders must register for life and must update and verify their information every three months. If an individual does not comply with these requirements, he or she can be charged with a new offense, which can include a prison penalty.

Research shows that youthful sex offenders have low re-offense rates (3-8%) -- over 90% of arrests of children for sex offenses represent a one-time event that will never recur. Because children are to some degree or another sexually undeveloped, early intervention and targeted therapeutic programs can effectively reduce recidivism. Indeed, mental health, education and other services are the cornerstone of the juvenile system's rehabilitative mission. By contrast, a sex offender registry for children would *impair* their rehabilitation by permanently stigmatizing them rather than encouraging them to become productive members of society.

Adding juveniles to the national registry list also has the unwanted and unintended effect of causing confusion as to which offenders pose real threats to public safety. Victims' rights organizations have objected to the inclusion of juveniles because the registry was designed to alert people to the existence of adult predators, not children. Public registries can actually set youth up to be targets of pedophiles. We urge the Obama Administration to take the lead and convince Congress to eliminate the juvenile sex offender provision of the Adam Walsh Act.

### **III. ENSURING CHILDREN AND FAMILIES HAVE AFFORDABLE HOUSING WILL PROVIDE STABILITY AND GREATER OPPORTUNITY FOR CHILDREN TO SUCCEED**

The Federal Commitment to Public Housing and the Section 8 Program (administered by the New York City Housing Authority (NYCHA) in New York City)

Affordable housing is a crisis in New York City and other cities throughout the country. As of June 30, 2008, 132,651 New York City families were on the waiting list for public housing and 136,602 families were on the waiting list for Section 8 housing (47,965 were on both lists). The stressors associated with housing stability, and of becoming homeless, have a dramatic impact on the well-being of children. In New York City, due to the increased cost of housing and decreases in federal support (\$160 million decrease in federal funds for FY08), NYCHA faced an almost \$200 million structural deficit this year that has forced it to use Section 8 vouchers to fill a part of the gap and to close NYCHA community centers. These actions obviously have a negative impact on both the quality of public housing developments and the total number of affordable units in New York City. Further cuts will be necessary in the absence of increased funding.

With regard to public housing, we urge the Obama Administration to work with Congress to pass a bill akin to Senator Schumer and Congresswoman Velazquez's 2007 Public Housing Equal Treatment Act, which would ensure that all of New York City's public housing units receive federal funding. Currently, only 322 of the 343 public housing developments operated by NYCHA receive federal funding. With regard to Section 8 vouchers, we ask that more federal funds be made available for this voucher program so that more families can get off of the waiting list and into permanent, affordable housing. We also support President-elect Obama's proposal to create an affordable housing trust fund.

#### Expanding Supportive Housing for Families Will Create Stability for Children

Supportive housing is critical for maintaining housing stability for many families, while providing services to help keep children safe and assist youth who have aged out of foster care. We suggest two ways that the Obama Administration and the Congress can improve access to supportive housing for families. First, we urge the reauthorization of the McKinney-Vento Act to continue incentives to build supportive housing units particularly for youth aging out of foster care. Second, we suggest exploring a tax credit option to develop more supportive housing. Promoting Qualified Allocation Plans (QAPs) that prioritize supportive housing - and specifically include families reunifying after foster care, families at risk of foster care and youth aging out of foster care - would enhance the likelihood that states would choose to use this valuable resource to develop supportive housing for these vulnerable populations.

### **IV. INCREASING SUPPORT FOR CHILD ABUSE PREVENTION SERVICES WILL KEEP CHILDREN SAFE AND FAMILIES TOGETHER**

Preventing child abuse and maltreatment is a critical issue facing child welfare agencies throughout the country. While the federal government requires states and localities to make reasonable efforts to prevent a child's removal and placement into foster care, there is limited federal funding available to support these services that keep children safe while strengthening and supporting their families.

Unfortunately, there is no one federal statute that funds preventive services; instead, funding is through several capped federal grants in Title IV-B part 1 (of the Social Security Act), Title IV-B part 2, the Promoting Safe and Stable Families, and the Child Abuse Prevention and Treatment Act (CAPTA). These block grants are dependent on federal appropriations, which are not even funded at their full authorization levels. We urge the Obama Administration to work with Congress to fully fund these measures at their authorized levels. In addition, we hope the Administration will explore more comprehensive ways to finance preventive services and to consider linking the funding to the number of children being served.

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We welcome the opportunity to work with the Presidential Transition Team and the Obama Administration on these vitally important issues. Please contact us if you have questions, would like more information, or would like to see further support for the matters we have raised above. You may reach the Council on Children by contacting Maria Cilenti, the Association's Director of Legislative Affairs, at 212-382-6655 or [mcilenti@nycbar.org](mailto:mcilenti@nycbar.org).

Thank you very much for your attention and concern.