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The Honorable Eliot Spitzer
State Capitol
Executive Chamber
Albany, New York 12224

Commissioner Gladys Carrión
Office of Children and Family Services
52 Washington Street
Rensselaer, New York 12144

Dear Governor Spitzer and Commissioner Carrión:

Congratulations on your election and appointment. The Council on Children of the Association of the Bar of the City of New York looks forward to working with you as you set your administration's incoming agenda and budget on several areas of State policy and legislation that are critical to the lives of New York's children and families. The Council on Children is comprised of representatives of all the City Bar committees dealing with children, family, family court and juvenile justice. Also sitting on the Council are Family and Supreme Court judges, representatives of the child welfare and foster care communities, and attorneys representing parents and children.

Your administration comes to office in a time of challenges and opportunities for New York's families, especially those who live in poverty. We look forward to partnering with you to work on the following issues:

- A. The current crisis caused by rising caseloads in Family Court
- B. The future of child welfare funding
- C. The plight of older youth in county and State custody

Below, we discuss each of these issues and recommend steps the State can take to address them.

A. IMPACT OF THE RISING CHILD WELFARE CASELOAD

Thousands of children in New York State are in danger of coming into foster care more frequently and staying longer for two reasons: 1. A steep and continuing increase in the number of families investigated statewide by child welfare agencies and 2. Implementation of reform legislation in 2005 which was passed without providing necessary resources for its ambitious goals.

Impact of Increased Caseloads in Family Court

Crushing caseloads in Family courts in NYC and around the State are threatening the well-being of our most vulnerable children and families. After the series of child fatalities last year, the Administration for Children's Services (ACS) in the City has redoubled its efforts to investigate allegations of child maltreatment. As a result, ACS has filed 163% more cases against parents in 2006 than it did during 2005.ⁱ These are just 47 judges in New York City Family Court, the same number that have been in place since 1991, and only about half of those hear cases regarding child maltreatment. Not surprisingly, these judges handle as many as 2,500 cases a year, leaving them with as little as ten minutes of court time for each one.ⁱⁱ New York City has about 80% of the caseload of children in foster care statewide, but it is important to note that most upstate jurisdictions also report an increase in their filings along with a lack of resources to handle the increase.

The child welfare and family court communities are concerned that one effect of this rise in caseloads is that the family courts are increasingly unable to manage to hear and decide cases in a timely manner. This is fast approaching a situation in New York City and state wide in which the caseload increase along with the increased demands of the Permanency Law (see below) threaten to undermine the ability of the family court system to serve children and families effectively.ⁱⁱⁱ

Recommendations: The State should increase the number of Family Court judgeships available statewide. **This would require amending §§ 121, 131 of the Family Court Act.** In addition, resources must be provided for the parties in these proceedings – the child welfare agency attorneys, lawyers for children, and counsel for parents so that they can work with the courts to achieve better outcomes for children.

Meeting the Permanency Needs of Children in Care

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 new law's objective is to insure that children do not linger in foster care longer than necessary and receive all of the services they need while 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 jeopardizes the system's ability to process cases efficiently and may result in children spending longer periods in care.

Recommendations: The Council on Children of the New York City Bar Association is developing a Position Paper by early Spring that will address the impact the Permanency Bill is having on families and make recommendations about what is needed to realize the original intent of the bill. The recommendations will likely speak to the need for additional resources for New York City as well as modifications to the existing law and we will work with the State towards their implementation.

In addition, the State should consider supporting 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).

B. CHILD WELFARE FINANCING

The county-run child welfare systems need the State to contribute sufficient resources to ensure that children are safe, that children and families receive high quality preventive and after care services, and that timely permanency is achieved through reunification or adoption for children in foster care.

New York State's child welfare financing provisions, codified at Social Service Law Section 153-k, **expire June 30, 2007**, requiring the State to take action to ensure a funding mechanism is in place for the State and counties to meet their critical mandates to provide for New York's most vulnerable children.

Recommendations: To ensure quality services to allow children to remain safely in their homes, the State should continue to provide UNCAPPED preventive services reimbursement, at a minimum of 65% state reimbursement (net of federal funding). For those children who cannot remain safely in their homes, the State needs to provide sufficient funding and resources to the counties to ensure timely, quality services and permanency planning. The Council hopes the State will consider alternatives to the current foster care block grant such as an uncapped funding stream for foster children or a new funding formula for the block grant that provides counties with the necessary additional resources needed.

Finally, the Council would be interested in working with the State to advocate for increased federal support for protective, preventive and foster care services.

C. THE PLIGHT OF OLDER YOUTH IN COUNTY AND OCFS CARE

Outcomes for former foster youth are bleak. Studies show that youth leaving government care face disproportionately high rates of unemployment, incarceration, homelessness, and dependence on government benefits. Similarly, the State is doing too little to ensure that delinquent youth in State custody receive the services they need to return to their communities. Reforms are needed in order to ensure that the State and counties help the youth in their care become healthy, productive adults.

Services for Youth in Transition

To transition successfully to adulthood, foster youth need continuing access to services including social workers, medical care, and job training and placement. Parenting foster youth have additional needs, including day care services and parenting support. Foster youth need—and are entitled to—these services whether they remain in foster care past their 18th birthdays, go on “trial discharge” to independent living, or “age out” of care at 21. Unfortunately, too many counties and voluntary agencies fail to provide these services. To make matters worse, counties sometimes discharge youth to homeless shelters prior to their 21st birthdays, a practice which is explicitly forbidden by state regulation.

Recommendations: We ask that the State increase oversight of the treatment of older foster youth by counties and contract agencies. In particular, the administration should issue a policy statement regarding the counties' responsibilities to youth who are leaving or have left care. The State should allocate additional funds for transitional living centers, subsidized apartments, and supportive living arrangements for youth ageing out of foster care. Given the significant number of parenting youth in care, such housing must include spaces for young families. Finally, the State should provide continuous

health insurance coverage to 18 to 21 year olds leaving foster care by allowing them to maintain their eligibility for Medicaid, as permitted by federal law.

Undocumented Youth In Foster Care

Undocumented children end up in foster care in many ways—some are brought to the United States by undocumented parents, who later abuse or neglect them. Others come alone, fleeing abuse, domestic violence, or war. Regardless of how they came to New York, without proactive steps by the child welfare system, these children will age out of care without lawful permanent status. They will be unable to work legally or qualify for federal financial aid, and will be at constant risk of forcible removal to their countries of origin. Currently, the counties do not know how many undocumented youth are in their care, and often fail to identify these youth until it is too late.

Recommendations: The State should enforce existing regulations requiring that the counties obtain a birth certificate – domestic or foreign – for every child in their care. Where a child is found to be foreign-born, regulations should require that workers refer that child to qualified immigration counsel. In addition, we ask that the State assist the counties in developing methods to track the number of undocumented youth in their custody.

Youth in OCFS Custody

The care OCFS provides to children in their facilities is widely considered to be inadequate. In particular, recent reports have raised concerns regarding the abuse of adolescent girls in the State detention system and the improper use of restraints in facilities serving both boys and girls. These concerns are exacerbated by the fact that there is only one ombudsman available state-wide to visit facilities and hear and respond to complaints and that person is an OCFS employee. Finally, youth returning home from placement face barriers to enrolling in school, reintegrating with family, accessing supportive services and preparing for adulthood.

Recommendations: The State should consider creating an Ombudsman office independent of OCFS to hear and respond to youth and family complaints in a timely and more adequate manner. As with foster youth, the State must provide pregnant and parenting girls in its care with pre-natal and post-partum care, family planning services, and counseling.

To prepare for community reintegration, the State should increase support for the OCFS Family Advocacy program to facilitate parental communication with youth in placement. Finally, the State should ensure that each young person returning home from OCFS placement is enrolled in an intensive aftercare program and is enrolled in a health insurance program.

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

Susan Jacobs
Chair

Eve Stotland
Secretary

ⁱ Filing statistics provided to CFR by the ACS Family Court Legal Services Division;

ⁱⁱ “Fix the Dysfunctional Family Court,” New York Times Editorial, 1/16/07.

ⁱⁱⁱ Kaufman, Leslie, “Response to Child Deaths Suggest a System Poised to Work”, New York Times, November 17th, 2006. Reporting that the family court is overwhelmed by increased case filings, Supervising Judge Joseph M. Lauria stated, “...a good number of cases already in foster care are going to remain in care longer because we just can’t get to it.”