



Children's Studies Center for Research, Policy, and Public Service

Legislation for an Independent Office of the Child Advocate for New York (OCA)

Our research and work involving child policy in New York revealed a need to address the many problems that confront predominantly minority children: One-third of the two million children in New York City live in poverty, many of them face homelessness and failure in school, and many will also eventually be unemployed or involved in the juvenile and criminal justice systems.

On March 11, 2004, the Children's Studies Center held a policy symposium, "Children and the Law in New York," funded by the Carnegie Corporation of New York. The remarks of twenty-eight speakers — including members of the judiciary, the state legislature, child advocacy agencies, and existing Child Advocates from the states of Connecticut New Jersey, and Rhode Island, along with key stakeholders who are professionally concerned with children and childhood — addressed the realities that these children face within the compartmentalized systems of child supervision and administration. The symposium provided a child-centered and human rights perspective on the major issues of child welfare, education, health and mental health, and of children in the juvenile/criminal justice systems in New York. It directly resulted in the introduction of legislation in the New York State (NYS) Assembly for an independent Office of the Child Advocate for New York on June 11, 2004, three months after the day of the symposium. This ongoing legislation (currently A03233b and S6877) has passed every year for the last five years in the NYS Assembly and separately in the NYS Senate, but this year was different because both same as bills finally passed in both houses and went before Governor David Paterson.

Juvenile Justice and Office of the Child Advocate Legislative Update

U.S. Department of Justice Investigation*

In August 2009, the U.S. Department of Justice (USDOJ) released a report detailing the findings of a two-year investigation of four secure juvenile detention facilities in New York—Lansing, Gossett, Tryon Boys and Tryon Girls. The findings included many instances of violation of constitutional standards in the area of protection from harm and mental health care. The report detailed excessive use of force and inappropriate restraints by staff against youth resulting in numerous instances of severe physical injuries, inappropriate medication practices regarding psychotropic medications, inadequate investigations or actions to address abuses by staff against

youth, and inadequate care and treatment of youth, especially those requiring mental health care or substance abuse treatment. The USDOJ required the NYS Office of Children and Family Services (OCFS) to reach a resolution addressing their concerns within 49 days of the report or they would authorize the Attorney General to initiate a lawsuit against them.

Response to the USDOJ Investigation

Senator Velmanette Montgomery, Chairperson, NYS Senate Committee on Children and Families organized a meeting titled: *Meeting of Juvenile Justice Minds: A Roundtable Discussion* on November 18, 2009. The purpose of the meeting was to discuss facility oversight and administration, and to address the issues that were raised in the report with legislative and budget proposals as a short- and long-term plan of remedial action.

Children's Studies was among the numerous stakeholders invited to the meeting and has been aware for many years of the growing problem of oversight and accountability in the fragmented systems of child supervision and administration. We have fully supported and participated in the research for the OCA legislation since its introduction in 2004. At the time of the roundtable discussion, Senator Velmanette Montgomery was the Senate sponsor of the OCA legislation S4790A, which was also included as an agenda item along with other legislative reform proposals.

Amendment to the OCA Legislation: A Strategic Necessity

Whereas the previous legislation for an OCA encompassed both the child welfare and juvenile justice systems, in January 2010 Assemblywoman Barbara Clark, the main sponsor of the bill since 2005, amended it to focus only on juvenile justice. This change came about in response to the Department of Justice Report and to the "Report of Governor David Paterson's Task Force on Transforming Juvenile Justice." In particular, its Recommendation 19 stipulated: "Establish and fund an *independent, external oversight body to monitor and report* on OCFS's juvenile justice policies and practices" (italics added). Moreover, years of powerful opposition to the original OCA legislation by both the public and not-for-profit child welfare agencies in the state suggested that an OCA focused only on juvenile justice might have a better chance to succeed.

According to A03233B, the bill "establishes the independent office of child advocate to ensure the protection and promotion of legal rights for youth in juvenile justice facilities; repeals certain provisions relating to the office of the ombudsman." It passed the NYS Assembly in February 2010. Since Senator Montgomery no longer served as the co-sponsor of the amended bill, Senator Kevin S. Parker co-sponsored the bill as S6877 in the NYS Senate, where it passed in June 2010.

Senator Montgomery, on her part, introduced S6474, which proposed that the Correctional Association of New York provide independent oversight over the New York

juvenile justice system. In the course of an interview on the Brian Lehrer Show on February 3, 2010 with Senator Montgomery and A.M. Clark to discuss the OCA legislation and other proposals as they related to issues brought up by the Department of Justice report. Senator Montgomery affirmed that New York needed both the OCA legislation A03233B/S6877 and S6474. to make sure that children are protected in the juvenile justice system. (Brian Lehrer Show, WNYC, 93.9 fm, am 820, "Advocating for Children," February 3, 2010. <http://beta.wnyc.org/shows/bl/2010/feb/03/advocating-for-children/>)

Governor Paterson Introduces Program Bill 273

At the very end of the legislative session and when it became clear that the OCA legislation was going to be passed in the NYS Senate as well as the Assembly, and shortly before the settlement with the USDOJ was to be signed, it was in June 2010 that, on his part, Governor Paterson introduced Program Bill 273 to establish an office of the independent juvenile justice advocate. Senator Montgomery introduced this bill in the NYS Senate as S8091. But it could not find a NYS Assembly co-sponsor.

S6877 Parker Same as A 3233-B Clark "establishes the independent office of child advocate to ensure the protection and promotion of legal rights for youth in juvenile justice facilities; repeals certain provisions relating to the office of the ombudsman" passes the NYS Senate on June 24th, 2010 and receives strong support

Upon passage of S6877/A3233-B in the NYS Senate and Assembly, numerous letters of support were immediately sent to Governor Paterson to urge him to sign the legislation into law; The following is a partial list of those who sent letters of support for S6877/A3233-B: American Civil Liberties Foundation Women's Rights Project; Chair of the Committee on Children and Families in the New York State Assembly; Child Advocates of the States of Connecticut, Massachusetts and Rhode Island, and Ombudsman, Office of the Family and Children's Ombudsman, State of Washington; Executive Director, Children's Rights; New York State Bar Association Committee on Children and the Law; Director of the Brooklyn College Children's Studies Program and Center; Executive Director, Empire State Coalition of Youth and Family Services; Executive Director and Legislative Director, New York Civil Liberties Union; Executive Director, Parents in Action; President, HEAL-NYC; and The Community Vision Council. At the same time, however, the OCA legislation continued to meet fierce opposition from the public and private agencies that it would provide oversight and accountability over.

Governor David Paterson Announces Settlement with USDOJ

On July 14, 2010, the lawsuit between OCFS and the USDOJ was settled. The following is an excerpt of that announcement that appeared on Governor Paterson's website:

Governor David A. Paterson today announced that New York State has executed a Settlement Agreement with the United States Department of Justice, which will significantly improve oversight and operations at four juvenile justice facilities of the Office of Children and Family

Services (OCFS). Along with implementation of recommendations of the Governor's Task Force on Transforming Juvenile Justice and the Governor's Juvenile Justice program bill, which awaits Legislative action, this Settlement Agreement will further efforts to transform the juvenile justice system. The Settlement Agreement will result in a number of remedial measures to resolve issues identified as a result of a Department of Justice investigation of the four OCFS facilities in 2008.

Governor David Paterson Vetoes S6877/A3233-B

In spite of solid support and passage of the OCA legislation by wide margins in the NYS Senate and Assembly, coupled with strong support from key stakeholders as listed above, Governor Paterson vetoed the bill on October 1, 2010, citing budgetary, technical, and legal ramifications of the OCA legislation. In his veto message number 6819 to the New York State Assembly, the Division of Budget estimated costs of the new OCA office to be 6.2 million dollars in the first year and 3.2 million dollars of annual costs thereafter.

The Governor was opposed to removing the statutory authority of the Office of the Ombudsman within OCFS and to place oversight in the hands of "an outside watchdog." He further insisted that the existing Office of the Ombudsman was a "highly successful tool in ensuring the proper functioning of OCFS facilities." Lastly, he cited a number of "technical problems" with the bill, which would "produce unnecessary disputes and litigation."

In summation, his primary "point of disagreement with the sponsors relates to the cost of this bill" and he invited the "legislature to negotiate a bill that would meet all of our goals."

Children's Studies Position and Policy Recommendation

Since the settlement with the USDOJ and NYS and the veto of the OCA legislation, Children's Studies is saddened to report that – within two months -- there have already been two confirmed deaths that have happened in two facilities under the oversight of OCFS. They are currently under investigation, one of a boy named Alexis Cirino-Rodriguez, who died on October 13, 2010 after a physical incident involving intervention by a staff member of the William George Agency in Dryden, and another boy who was just reported to have committed suicide on November 16, 2010 in OCFS's Highland facility.

As far as budgetary concerns which led to the Governor's veto of the OCA, it should be noted that Governor Paterson has budgeted \$18.2 million in the 2010-2011 executive budget to hire additional counselors and staff, and to provide training for employees in the juvenile justice facilities as a part of the settlement agreement. At the same time, New York's budgetary crisis worsens and funding that supports children and families are projected to be cut, further worsening the existing systemic problems and curtailing new legislative measures to address problems in the system before they can even take effect.

Children's Studies will continue to work towards educating the public about the human rights of children as articulated in *The Universal Declaration of Human Rights* (1948) and the *U.N. Convention on the Rights of the Child* (1989) (UNCRC) and in the case of the Independent Office of the Child Advocate Legislation, recommend Article 3 of the UNCRC, which states, "In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration."

We take the position that children must come first, not special interests, not political agendas, not profit, and not budget constraints. Precisely at such time of fiscal crises, systems of oversight, accountability and transparency are more needed than ever and could save the state money. An OCA office would indeed help unify and streamline an overly large, unmanageable and fragmented system, and in so doing it will effectively serve children and youth in New York and protect their human and civil rights.

The Children's Studies Center policy research has shown that an independent Office of the Child Advocate has worked in many states that have experienced very similar problems to that of New York and it can also work here if it is implemented in a responsible manner and with adequate financial support.

***The following are links to documents relating to the Juvenile Justice lawsuit, settlement, and related matters:**

U.S. Department of Justice, Civil Rights Division, August 14, 2009 "Investigation of the Lansing Residential Center, Louis Gossett, Jr. Residential Center, Tyron Residential Center, and Tyron Girls System"

http://www.justice.gov/crt/split/documents/NY_juvenile_facilities_findlet_08-14-2009.pdf

Charting a New Course

A Blueprint for Transforming Juvenile Justice in New York State

From the Vera Institute of Justice – December 2009:

A Report of Governor David Paterson's Task Force on Transforming Juvenile Justice

<http://www.vera.org/download?file=2948/Charting-a-new-course-Executive-summary-recommendations.pdf>

<http://www.vera.org/download?file=2944/Charting-a-new-course-A-blueprint-for-transforming-juvenile-justice-in-New-York-State.pdf>

Information about the Department of Justice lawsuit against the New York State Office of Children and Families:

<http://www.ocfs.state.ny.us/main/default2.asp>

Children's Studies Policy Symposium: "Children and the Law in New York,"
March 11, 2004

<http://www.brooklyn.cuny.edu/pub/departments/childrensstudies/1587.htm>

S6877/Parker/Same as A3233-B/Clark: "establishes the independent office of child advocate to ensure the protection and promotion of legal rights for youth in juvenile justice facilities; repeals certain provisions relating to the office of the ombudsman"

<http://www.brooklyn.cuny.edu/pub/departments/childrensstudies/1595.htm>

Governor Paterson's Program Bill #273, introduced by Senator Velmanette Montgomery in the New York State Senate and no sponsors in the New York State Assembly:

http://www.state.ny.us/governor/bills/pdf/gpb_273.pdf

Governor Paterson Announces Settlement with USDOJ to Continue Efforts to Transform the Juvenile Justice System:

<http://www.state.ny.us/governor/press/071410settlement.html>

OCFS Press Release, July 14, 2009: Governor Paterson Announces Settlement with USDOJ to Continue Efforts to Transform the Juvenile Justice System

http://www.ocfs.state.ny.us/main/rehab/Jul%2014%202010_%20Paterson%20Press%20Release%20DOJ%20Juvenile%20Justice.asp

Governor Paterson Veto Message No. 6819

<http://www.votesmart.org/vetotext/32699.pdf>

Text of the U.N. Convention on the Rights of the Child (CRC)

<http://www2.ohchr.org/english/law/crc.htm>