

Testimony of The Legal Aid Society

On

THE 2010 - 2011 EXECUTIVE BUDGET

TOPIC: HUMAN SERVICES Presented before:

**The Senate Finance Committee
and
The Assembly Committee on Ways and Means**



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The Legal Aid Society welcomes this opportunity to submit testimony for the 2010-2011 Executive Budget hearing concerning the provisions affecting children involved in the juvenile justice and child welfare systems in New York State, and the hundreds of thousands of low-income New Yorkers who are affected by the budget and policy decisions regarding public assistance and related safety-net programs.

The Legal Aid Society is the nation's largest and oldest provider of legal services to poor families and individuals, providing legal representation in more than 300,000 legal matters for clients each year. Our perspective in submitting this testimony comes from our daily contacts with children and their families, and also from our frequent interactions with the courts, social service providers, and State and City agencies.

Legal Aid's Juvenile Rights Practice provides comprehensive legal representation to children who appear before the New York City Family Courts in all five boroughs, in abuse, neglect, juvenile delinquency, and other proceedings affecting children's rights and welfare. Last year, our Juvenile Rights staff represented some 34,000 children. Our Criminal Practice represents, among others, young people aged 13-15 who are charged as "juvenile offenders" and who may end up in Office of Children and Family Services (OCFS) facilities as well. In addition to representing many thousands of children each year in trial and appellate courts, Legal Aid also pursues impact litigation and other law reform advocacy on behalf of our clients.

The Society's Civil Practice has offices in every borough of New York City, handling more than 30,000 civil matters for its clients each year and wins over 92 percent of the cases that go to court or administrative hearing. An additional two million individuals benefit from our pending class action litigation. Our staff works tirelessly to improve the lives of needy New Yorkers by helping vulnerable families and individuals on a broad range of issues, including employment law and low-wage worker matters, health care, housing, employment and training, economic development, public assistance, immigration, domestic violence and disability-related issues. We represent a large number of clients who are forced to rely upon public assistance to get through difficult times that are often caused by a change of circumstances such as unemployment, disabling medical and mental health conditions, domestic violence, homelessness or even the need for child care. Our clients usually have two goals when they seek out public assistance. In the short-term, they seek to obtain and maintain subsistence income so they can keep a roof over their heads or end a period of homelessness and feed their children. In the long-term, they seek a path to a more stable income, whether through acquiring skills and education that will facilitate employment, finding paid employment directly or when necessary, securing disability benefits to which they are entitled from the Federal Social Security Administration.

I. JUVENILE JUSTICE AND CHILD WELFARE

Juvenile Justice Reform

We have long advocated on behalf of our young clients involved in the juvenile justice system for more community-based, service-intensive alternative to detention and incarceration options. Several recent investigations and reports, including that of the Governor's Task Force on reforming New York's approach to juvenile justice, have underscored the need, and the fact that the current system is simply not working. Placement in punitive Office of Children and Family Services facilities far from children's homes without badly-needed treatment services is costly and ineffective. The rate of re-arrest for young people after leaving OCFS placement is approximately 80%, as opposed to approximately 30% for youth who have participated in community-based alternative programs. At an annual cost of some \$210,000 per child, as opposed to the \$5000 - \$17,000 annual cost of community-based programs¹, OCFS placement has a failure rate that is unacceptable as well as fiscally unwise.

We therefore support the proposals in the SFY10-11 Executive Budget to eliminate 180 beds from under-used OCFS residential facilities, and to allocate \$18.2 million to improve staffing ratios in all of the facilities and address the shocking lack of appropriate mental health services for youth who so desperately need them. Our clients who are sent to "rehabilitative" placements in OCFS's residential facilities have long suffered from the physical abuses and lack of treatment described in the class action lawsuit filed by The Legal Aid Society late last year. *G.B., et al., v. Carrión, et al.*, 09 Civ. 10582 (S.D.N.Y.).

At the same time, however, the cuts in the Executive Budget to alternatives to detention, alternatives to incarceration, and youth programs, will impede the State's ability to work most effectively with this population of children and their families. Cutting the proposed \$10.75 million from alternative to detention and alternative to incarceration programs, and \$5 million from community reinvestment/alternative services, is unwise and will harm children and our communities. The proposed cut of \$46.4 million in TANF funds for the Summer Youth Employment and Advantage After-School programs will reduce dramatically the already limited opportunities for teens to take part in productive and educational activities in their free time.

Kinship Guardianship Assistance Program

On October 7, 2008 the Fostering Connections to Success and Increasing Adoptions Act of 2008, P.L. 110-351, ("Fostering Connections") was signed into law. One of the provisions of this landmark piece of child welfare legislation provides federal Title IV-E dollars to States which choose to implement a kinship guardianship assistance program for children who are currently being raised by relatives in the foster care system. Such a program would provide a subsidy to those kinship foster parents who wish to provide permanent

¹ Governor Paterson's Task Force and the Vera Institute of Justice, *Charting a New Course: A Blueprint for Transforming Juvenile Justice in New York State*, December 2009.

homes for children who are unable to return to their biological families and for whom adoption is not an option. So far, thirty-nine states and the District of Columbia have implemented kinship guardianship assistance programs and achieved permanency for children formerly in foster care.

We applaud the creation of a subsidized kinship guardian program in the Executive Budget which will provide real permanency to so many children in foster care whose loving kinship foster parents simply cannot afford to care for them outside the foster care system without additional financial support.. Reunification with a parent or adoption are and will always remain the primary permanency goals for the majority of children who enter foster care. However, for a child who is unable to return to her parent and whose family caregivers wish to provide her with a permanent home but for a variety of reasons are unable to adopt her, kinship subsidized guardianship will enable that niece or nephew or grandchild to leave foster care and reside permanently with caring, committed family members.

While we fully support a kinship guardianship assistance program for New York State's children and families, we would like to suggest some modifications to the program currently proposed by the Governor:

1. Fostering Connections requires that return home or adoption must be ruled out as a permanency goal for a child in foster care and that placement with a legal guardian is the best permanency option for the child before a court can grant a petition for subsidized kinship guardianship. Moreover, the federal law requires that a child reside in a kinship caregiver's home for *a minimum of six consecutive months* before allowing that caregiver to apply for kinship subsidized guardianship but States are free to lengthen that period of time.

The Governor's bill mirrors the federal requirement of the six-month minimum, but in our experience, six months in foster care is usually not enough time to definitively conclude that neither return to parent nor adoption is the most appropriate permanency goal for a child. The Office of Court Administration ("OCA") has also proposed legislation that, in addition to requiring that a child reside in her caregiver's home for six months, would also require that a fact-finding hearing on the abuse or neglect case has taken place or a first permanency hearing has occurred, whichever is later, prior to entertaining an application for kinship subsidized guardianship. We suggest that these bills be amended to avoid a premature conclusion that return to parent and adoption are not viable permanency options.

2. The Governor's bill, like Fostering Connections, requires the consent of a child who is 18 or older and merely requires "consultation" with a child who is fourteen or older before granting a petition for kinship subsidized guardianship. There is nothing in the federal legislation that would prohibit a state from a) requiring consent from younger children nor b) requiring consultation with all children able to voice their wishes. We strongly support a modification to the Governor's bill that would require a child's consent at age 14 and age-appropriate consultation with all children. New York State currently requires the consent of a 14 year old child in order for an adoption to take place; if kinship subsidized guardianship is truly the permanent option we wish it to be for our children and families, then a 14 year-old's consent must be mandatory. Additionally, Family Court Act § 1089 (d) requires age-

appropriate consultation with a child who is the subject of a permanency hearing, and as this legislation deems kinship subsidized guardianship an appropriate permanency goal for some children, it is imperative that age appropriate consultation be mandatory.

3. Both Fostering Connections and the Governor's bill make youth exiting from foster care to legal guardianship, after age 16, eligible for federally-supported independent living services. Unfortunately, the Governor's bill only makes these services available to young people until age 18 if they are discharged to subsidized guardianship prior to turning 16 whereas the services will be available until age 21 if a young person is discharged to kinship subsidized guardianship after the age of 16. These benefits are crucial to young people as they begin to make the transition to adulthood and cutting them off at 18 for some children could result in a kinship caregiver waiting until her foster child reaches the age of 16 before petitioning the court for subsidized guardianship. Children might remain in foster care longer in order to receive these needed benefits and services. We suggest that all young people whose foster parents are awarded subsidized guardianships be eligible to receive independent living services until the age of 21.

4. The Governor's bill provides that State funding for the kinship guardianship assistance program is under the Foster Care Block Grant. We are concerned about this because kinship subsidized guardianships, like adoptions, are permanent solutions for children and their relative caregivers and so from a policy perspective alone, the monies should not be taken out of the foster care block grant, which is massively under funded and barely meeting the needs of children in the foster care system in New York State. Moreover, while there might be a short-term savings based on an anticipated reduction of administrative costs for children leaving foster care for kinship subsidized guardianships, we are concerned that in the long term, costs will increase if greater numbers of young people leave foster care but remain dependent on the block grant for longer periods of time.

Electronic Testimony

The SFY10-11 Executive Budget includes a proposal that would permit testimony or attendance by telephone, audio-visual means, or other electronic means, and would permit the submission of documentary evidence by electronic means, in a variety of Family Court proceedings relating to juvenile delinquency, child protection, termination of parental rights, and Persons in Need of Supervision (PINS). We think that the Governor's bill has the potential to enable individuals who might not otherwise be able to, to participate in Family Court proceedings, and to enable the Family Courts to make more informed decisions based upon more fully developed records in the proceedings before them. However, we are concerned that, as currently drafted, the bill has the potential to interfere with due process and with an individual's ability to determine, with the advice of counsel, how and to what extent s/he will participate in Family Court proceedings.

While we are not opposed to electronic appearances in all cases, we suggest the following modifications to the Governor's program bill:

1. The Governor's bill provides that a "court may permit a party or an interested person to attend, or a witness to testify" by electronic means at certain Family Court proceedings without specifying who may make an application to the court to permit a particular party, interested person or witness to appear or attend by electronic means. As such, the Governor's bill leaves open that possibility that one party may seek and obtain an order from the court directing that another party appear electronically, or that a party may be compelled to appear or testify by electronic means against his or her wishes.

The Statement in Support of this bill specifically states that the bill would reduce costs currently incurred by the State in transporting youth in OCFS facilities to and from court appearances. We cannot stress enough how important it is for youth in OCFS custody to be able to appear in court in person. In addition, we note that for a youth in OCFS custody, the court date is often the only time s/he meets with counsel in person as well as their family, and we question whether the projected cost savings of this measure would outweigh the loss in less tangible benefits associated with personal contact with counsel and the court.

We strongly suggest that the Governor's bill be modified to provide that any application to the court that a party, interested person or witness appear, attend or testify in any Family Court proceeding must be made exclusively by the attorney representing that party or calling that witness.

2. The Governor's bill allows, among other electronic means, testimony and attendance by telephone. We are concerned that testimony or attendance by telephone or other electronic means that lack a video component would impede the court's ability to observe and assess demeanor, or even to ascertain the identity of the person participating. As such, we support a modification to the Governor's bill that would limit participation via electronic means to those that include a visual or video component.

Conclusion

We are extremely grateful to the members of the Assembly and Senate for your leadership and ongoing commitment to children and families involved in the juvenile justice and child welfare systems in New York State. We look forward to working with you in this difficult economic climate, to find creative solutions to the challenges facing the needs of this vulnerable population.

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II. SOCIAL SERVICES and the OFFICE OF TEMPORARY AND DISABILITY ASSISTANCE

There are many proposals in the executive budget for the social services area and in the related Article VII bills that are of great concern to our clients. We are focusing today on three that are of particular importance. We ask that the Legislature:

- (1) reject the Governor's proposal to renege on last year's commitment to increase the basic welfare grant, which is still too low;
- (2) increase investment in real jobs programs;
- (3) promote transparency and accountability in how the federal stimulus and recovery funds that are earmarked for low-income families with children are being budgeted and spent.

Promises To Keep: Protect The Basic Welfare Grant

The Governor's proposed reduction of the scheduled grant increase by half, to only 5%, cannot be accepted. The promise made jointly by this Legislature and the Governor, to begin to redress the years of neglect with relatively small, incremental steps, is a promise to be honored, not broken – especially in the midst of the severe economic downturn when low income New Yorkers are suffering greatly.

Last year, we applauded the Legislature and the Governor for taking the first steps to reverse two decades of neglect, and begin raising the basic welfare grant. The budget agreement adopted last year established a schedule of three annual increases of 10% per year for a total of 30%. At the time, the real value of the grant had eroded to less than 50% of its purchasing power in 1990, the last year the grant was increased. Thus, even when implemented by 2012, the approved increases will still leave the most vulnerable New Yorkers living in deeper poverty and with at least 20% less resources than their counterparts two decades earlier.

In evaluating the Governor's proposal, it is important to note that the increases approved last year apply only to a portion, generally less than 50%, of the monthly assistance that each family receives to live on, commonly referred to as the "basic" welfare grant. This does not include the "shelter allowance," which was not increased at all, and which comprises over half the monthly grant for most families. In reality, the scheduled "10%" increase is only a 5% increase for most households in terms of the assistance they will receive.

To illustrate, a family of three in New York City is allowed a maximum of \$400 per month in shelter costs, so, not surprisingly, most recipients of public assistance have to use all or a portion their "basic" welfare grant to pay for their housing. The "basic" welfare grant for the family would be \$321, for a combined grant of \$731. The scheduled 10% increase would net the household approximately \$30 per month so they can look forward to a monthly subsistence allowance of \$751 for a family of three – an increase of less than 5% -- if last year's promise is kept. Under the Governor's proposal, the grant would be reduced by \$15,

yielding an “increase” of \$15 per month, little more than 2%, and barely enough to keep up with real inflation.

The shelter allowance levels are established by the Commissioner of the Office of Temporary and Disability Assistance, and were last increased – very modestly – in 2003. The combined inadequacy of the shelter grant and the basic assistance grant has contributed to a crisis of substandard, overcrowded and dangerous housing conditions, and homelessness, particularly in New York City, and leaves too many New Yorkers, including young children and seniors, living in abject poverty.

Despite the limitations of the increases approved last year, we welcomed the 2009-10 budget agreement because it offered not just vague promises to do better in future years when the picture was brighter, but instead committed to a specified, multi-year schedule of gradual increases. The 30% increase over three years would not close the inflation gap, but would at least put a modest dent in it. Equally important, it signaled what we hoped was a shift from nearly two decades in which the needs of the most vulnerable New Yorkers were rarely promoted in good budget years or protected in bad ones.

Even in the face of the current adversity, we need to continue the movement we began last year. More, not less needs to be done to close the inflation gap. The poorest New Yorkers cannot afford a decrease in the welfare grant. And despite the negative budget realities in many areas, the poorest New Yorkers can and should be more insulated from the ravages of the recession for practical, as well as moral reasons.

New York has received, or will receive, over \$1.2 billion in federal recovery and stimulus funds through the TANF Contingency and Emergency Contingency Fund in FFY 2009 and 2010.² There is also real possibility that the federal funding will be extended and increased this year.

Against this backdrop of an influx of over a billion dollars specifically earmarked for poor families with young children, the proposed rollback of the grant increase stands out as a singularly unnecessary budget cut. The Governor puts the price tag at reneging on last year’s promise at \$18 million in “savings” for SFY 2010-11. That is not a paltry sum, either in the aggregate or in what it means broken down to each of the nearly 160,000 families it is being taken from, for whom the small difference in the grant may perhaps mean enough to buy a metro card or pay for gas to take a sick child to see a doctor. But thanks to a billion dollar plus infusion of extra federal TANF funds for low-income families with children – rolling back the grant is simply not a matter of necessity. The executive budget proposal to take back the scheduled increase should be rejected by the Legislature as unacceptable with a simple message to the Governor: We will keep our promises, especially to the most vulnerable New Yorkers.

² Giving the Governor credit where it is due, he lobbied personally and effectively for an inclusion of funds in the stimulus package to be earmarked for low-income Americans, and as a result of his efforts, and others, the American Recovery and Reinvestment Act included, among other initiative, \$5 billion in TANF Emergency Contingency Funds.

Help Wanted: A Budget To Help People Earn And Learn Their Way Out Of Poverty.

In addition to the proposed reduction in the basic welfare grant, the executive budget's most glaring deficiency in the public benefits area is the substantial reduction in funding for subsidized jobs and similar programs. The Governor's proposal would reduce support in this critical area from approximately \$70 million to less than \$20 million. These proposed cuts would be in the jobs programs in which people get a chance to actually earn money while learning skills and gaining experience. Before last year, New York State was extremely reluctant to invest in subsidized jobs programs to help public assistance recipients earn and learn their way out of poverty. Historically less than 1% of New York State's \$2.4 billion annual TANF block grant has been programmed for wage subsidy and similar jobs programs.

This past year, largely at the insistence of the Legislature, relatively small but important steps were taken to increase spending on real jobs programs. This year, unfortunately, and seemingly without any sound reasoning, the executive budget proposes to slash spending in this area, even as the unemployment rate climbs and low income New Yorkers find the job market particularly difficult to enter. Last year, we saw the small steps taken to begin investments in jobs programs as something to build upon. This year's executive budget, if enacted, would move in the opposite direction.

In this area we truly need more, not less. The Legal Aid Society supports the premise of the "Good Jobs New York" campaign, and a modest increase in spending on effective jobs and training programs – from approximately \$70 million to \$100 million — is entirely feasible, particularly because New York has received or will receive in the next several months an extra billion dollars or more in federal support through the Contingency Fund and the Emergency Contingency Fund. Even at the \$100 million level, jobs funding would still represent a very small fraction – less than 5% – of the combined TANF block grant and contingency funds available this year.

Support for these types of jobs programs, be they in areas of construction trades, "green jobs," health care, or other activities, should be an integral part of the programming administered through the agencies charged with helping New Yorkers survive on, and then transition off of, public assistance. With more than 800,000 unemployed New Yorkers, the jobs program should not be a mere afterthought as it appears to be based on the Governor's proposed budget.

We recognize that it will take time to get there from here to there, in terms of developing an infrastructure in which paid employment is an integral part of the State's safety net, rather than a collection of small pilot projects. Progress can be made incrementally, but the executive budget's proposed reduction is a serious step backwards. We can do better, and the Legislature can restore the cuts proposed in the Governor's budget and incrementally increase spending on jobs related programs that offer public assistance recipients a way to earn and learn their way out of poverty.

Promote Real Transparency In How The Stimulus And Recovery Funds Are Being Spent In The Human Services Area.

Budget making processes always reflect choices and priorities, with the interests of people, programs, and policies hanging on the decisions made. Everyone, including the Governor, speaks in favor of increased transparency these days. The call for transparency and accountability is particularly resonant in the area of the stimulus funding. Federal funds are being provided to the States with explicit expectations that they will engage in a transparent process of allocating the funds. Citizens should be able to evaluate how and where stimulus money is being spent; whose priorities are being addressed; whose interests protected or sacrificed; and which promises are being made, kept, or broken.

Deciphering the choices made and sometimes deeply embedded in the executive budget is challenging particularly for those of us not intimately familiar with some of the nuances and conventions of the State budget making process. To be fair to the Governor and his staff, this year advocates from Legal Aid and elsewhere have enjoyed meaningful assistance in interpreting the proposed budget from members of the executive, agency and Department of Budget staff, for which we are very appreciative.

We know much more than we did when the budget was first released. For instance, we have learned that more than \$260 million of federal stimulus and recovery funds earmarked for low income families with children are, in the Governor's proposed budget, being used for general revenue relief. This is not illegal – the funds were or will be “earned” on projections of tax credits associated with the Earned Income, Empire State Child Care, and Tuition Tax credit programs. We have also learned that despite the cuts in the welfare grant, the jobs programs and summer youth programs, the Governor's budget has preserved tens of millions of dollars already set aside for future costs to offset the local share of the grant increase, some of which will not be incurred until 2014 under his proposal. These promises, also made last year, are being kept.

What we have learned in the past several weeks since the budget was released is that making important policy decisions on this magnitude are not easy, and public participation is hindered when the facts are difficult to discern. We do not question the Governor's intention to make improvements in this area. Transparency is something that has to be worked on, and, with so many moving parts, budget making in this area, like others, will never be simple. But New York can and must do better.

To provide greater transparency and accountability in stimulus spending in New York, we believe that it is essential to hold legislative hearings on this process. Our clients, and the people affected by spending in this area, have historically been isolated from the decision-making processes for allocating federal and State funds that are supposed to benefit them. Our expectation is that by holding a legislative hearing on the issue of transparency in the social services spending area, accountability can be advanced and processes improved. Ultimately New York should end up with a more informed and involved citizenry, and ultimately better policy choices for low-income New Yorkers, and the State as a whole.

Conclusion

Without making light of the very serious budgetary constraints facing New York, the influx of more than a billion dollars of federal support earmarked specifically to protect low income families with children from the impact of the recession and help them earn and learn their way out of poverty presents an opportunity to build upon, not reverse, the progress made last year. The scheduled grant increase should take place as promised. Jobs programs that offer public assistance recipients a wage, dignity, and responsibility should be preserved and expanded – this is the newer, truer, welfare reform we have been waiting for. Finally, the time has come to let the citizens, particularly those most marginalized by society’s inequities, have access to the information and decision-making processes upon which their very subsistence depends.

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