

Report of the Office of the Child Advocate for Calendar Year 2008 Executive Summary

Office Establishment

In late April 2008, Gail Garinger assumed the role of The Child Advocate pursuant to Executive Order 494, reporting to the Secretary of Health and Human Services. In July 2008, the legislature passed the Child Welfare Law, and the Office of the Child Advocate (OCA) became an independent office reporting directly to the governor and the legislature. For administrative purposes, OCA operations moved to the Governor's Office, although the OCA remains at One Ashburton Place within space designated for the Executive Office of Health and Human Services (EOHHS). Transferring systems from EOHHS to the Governor's Office was completed by December 2008. The office designed and launched its website, found at <http://www.mass.gov/childadvocate>. In September 2008 two full-time staff, a deputy director and a program assistant, were hired, and a half-time position for a clinical specialist was filled at the end of March 2009. The general appropriation for the OCA for Fiscal Year 2009 was \$300,000, which was reduced by the Section 9C adjustments to \$276,000. As this report goes to press, the projected appropriation for FY 2010 from the Senate budget recommendation for the OCA is \$243,564, which does not cover salary support for the office.

OCA Advisory Board

M.G.L. Chapter 18C, Section 4, provides for the creation of a 25-member advisory board for the Office of the Child Advocate, and directs The Child Advocate to chair the group. Section 11 directs the advisory board to consult, along with the interagency child welfare task force, in the formulation of a comprehensive five-year plan to recommend a coordinated, system-wide response to child abuse and neglect. The Office of the Child Advocate held its first board meeting on March 5, 2009, and minutes from the meeting are on the website.

Interagency Councils

In addition to chairing the OCA Advisory Board, The Child Advocate is an *ex officio* member of many other boards and councils, including the Governor's Child and Youth Readiness Cabinet, the Child Abuse Prevention Board (usually referred to as the Children's Trust Fund), the Children's Behavioral Health Advisory Council, the Department of Elementary and Secondary Education (DESE) Task Force on Behavioral Health and the Public Schools, the State Child Fatality Review Team, and the Shaken Baby Prevention Initiative. As OCA staff members attend these meetings they are always looking for ways to share information and synchronize policy concerning child welfare and juvenile justice.

Comprehensive Five-Year Plan

M.G.L. Chapter 18C instructs the OCA to present the legislature with a coordinated, system-wide response to child abuse and neglect, including related mental health, substance abuse and domestic violence issues. The comprehensive plan shall look forward five years or more, shall be updated annually to plan for the ensuing five-year period, shall assess previous efforts and, if appropriate, shall include legislative and regulatory recommendations, such as

changes to the issues itemized in the comprehensive plan. Twenty-four issues are identified for examination and report in Section 11(d). The plan is to be filed no later than June 30, 2010.

Outreach

The Child Advocate devotes much of her time to educating the public regarding the services of the office and the missions of executive agencies in providing services to children and families. In 2008, she represented the OCA at events across the state and presented information regarding the OCA to numerous stakeholders. She has met with advocates for educational rights and the improvement of the juvenile justice system in Massachusetts, and those advocating for improved services for adolescents and for children with disabilities.

Youth in Care Outreach

M.G.L. Chapter 18C, Section 5(d), charges the OCA with developing “procedures to ensure appropriate responses to the concerns of youth in foster care 24 hours a day, 7 days a week.” The OCA has established a toll-free telephone number which is listed on its website, along with a wallet-sized outreach card with information on the OCA, rights of youth in care, and 24-hour resources for after-hours emergencies. Staff will conduct random checks of these hotlines to monitor their availability to youth in care. The OCA is planning an outreach project to distribute the cards to youth in care and through this project establish relationships with youth and staff at Department of Children and Families (DCF) residential and congregate care programs.

Complaint Process

M.G.L. Chapter 18C requires the office to accept complaints relative to the provision of services to children by an executive agency. In its first year, the office established processes for receiving and responding to complaints, and staff designed a database to log and track complaints. Between May and December 2008, the OCA received 64 complaints from parents and other biological family members, attorneys, advocates, foster and pre-adoptive parents, and youth. These complaints focused on concerns about abuse and neglect, placement and custody, visitation, treatment and medication, and education

Critical Incident Reports

M.G.L. Chapter 18C defines a critical incident as a fatality, near fatality, or serious bodily injury of a child who is in the custody of or receiving services from the executive office of health and human services or one of its constituent agencies, or circumstances which result in a reasonable belief that the executive office of health and human services or one of its constituent agencies failed in its duty to protect a child and, as a result, the child was at imminent risk of, or suffered, serious bodily injury. From October through December 2008, the office received 23 Critical Incident Reports, including four fatalities, from EOHHS agencies. The office also received reports from the Department of Early Education and Care (DEEC) within the Executive Office of Education (EOE).

Review of Agency Investigations of Critical Incidents

M.G.L. Chapter 18C, Section 5, authorizes The Child Advocate to conduct an investigation of a critical incident or a review of an executive agency's investigation of a critical incident. During 2008, the OCA reviewed DCF's investigation of the deaths of Sophia and Acia, ages three and fourteen, who died in a fire in their mother's South Boston home on April 6, 2008. On December 18, 2008, the OCA issued a comprehensive confidential report to high-level government officials regarding DCF's involvement with Sophia and Acia's family. A public summary of the report was provided to the press and made available on the OCA website.

Child Fatality Review

The statewide child fatality review team was created by legislation in 2000 with the goal of decreasing the occurrence of preventable childhood deaths and injuries. The state team was directed to develop an understanding of the causes and incidence of childhood death and advise the governor, the general court, and the public by recommending changes in law, policy, and practice to decrease child death. The state team is chaired by the Office of the Chief Medical Examiner (OCME) and advises eleven local teams, constituted within each of the elected district attorneys' offices. The local teams gather records and information and conduct reviews of individual cases, and submit recommendations to the state team. As a long-term strategy, sustainable funding options for both the state and local teams need to be explored. Some funds are needed for coordination of the state team and to assist local teams with record collection and administrative work. The Commonwealth's child fatality review program cannot develop and mature without assistance or resources.

Child's Counsel, Guardians *ad Litem*, and the Child's Voice

The OCA, in conjunction with the Committee for Public Counsel Services (CPCS), is examining the issue of the quality of representation by counsel for children in child welfare cases in the juvenile court. In addition, the OCA has met with representatives from the juvenile court guardian *ad litem* (GAL) community, which was affected by the juvenile court administrative order severely curtailing the use of certain categories of GALs and the number of hours billable per case. The categories of educational GAL and "best interests" GAL were eliminated in response to 9C budget adjustments. The interplay between the quality of child's counsel and GAL issues is especially important for children in DCF custody. The OCA adds its voice to those expressing concern that juvenile judges have all relevant information available when fashioning remedies for children with complex needs.

Protecting Children: A Study of the Nature and Management of Guardianship of Minor Cases in Massachusetts Probate and Family Court presents the findings from a study that reviewed Probate and Family Court practice in three counties over ten years. Its findings made clear that protective concerns are being handled by an alternate pathway in the Probate and Family Court, and this pathway does not provide the guardian children with the same safeguards as those in the Juvenile Court under a care and protection case. In addition, the legislature enacted the Uniform Probate Code, which will alter guardianship of minor cases in a number of ways, beginning on July 1, 2009. In a related matter, the OCA has heard from citizens who are concerned that children's voices are not heard adequately in the Probate and Family Court during custody matters incident to divorce. The OCA is

committed to working with both the Juvenile Court and the Probate and Family Court as well as CPCS to ensure that counsel for children advocate effectively for their clients, to ensure that children's viewpoints are heard in both court systems, and to ensure that children's rights are protected.

Seclusion and Restraints

The OCA is extremely concerned about the use of seclusion and physical and mechanical restraints with children in the Commonwealth in child and adolescent residential programs, often Chapter 766 programs, as well as in public school settings. DEEC data indicates that 65,150 restraint episodes occurred in Massachusetts in 2008, resulting in 2,322 injuries to residents and 1,890 injuries to staff. Each episode of restraint is a nonconsensual, traumatic incident to the child and is potentially physically and emotionally harmful to the patient, other clients, and staff. The Department of Mental Health (DMH) has focused on reducing the use of restraints in all child-serving inpatient and intensive treatment programs for almost ten years, resulting in an 88% reduction in the use of these harmful interventions in DMH child-serving programs, along with savings to the Commonwealth of more than \$10.7 million. An integrated state reduction and prevention effort is needed that transcends agency boundaries, incorporates the principles of trauma-informed care, includes outcome measures, and adopts unified policy and practices with respect to a limited use of restraints and seclusion in child-serving programs in the Commonwealth. The OCA commends the new interagency task force on restraints that the Commissioners of DCF, DMH, DEEC, and DESE are convening.

Juvenile Detention Alternative Initiative

The OCA participates in the strategic planning and steering committees of the Juvenile Detention Alternatives Initiative (JDAI), a project of the Annie E. Casey Foundation, which is being advanced by the Department of Youth Services (DYS) under the leadership of the Commissioner. JDAI focuses on the juvenile detention component of the juvenile justice system because youth are often unnecessarily or inappropriately detained at great expense, with long-lasting negative consequences for both public safety and youth development. A central component of JDAI is to reduce the racial disparities that plague juvenile justice systems across the country. A fundamental principle of the initiative is data-driven decision making, and one of the first steps in detention reform is to develop a "snapshot" of the detention-eligible population. The OCA wholeheartedly supports JDAI and urges all invited stakeholders to cooperate with JDAI data collection efforts and to participate in the steering committee meetings.

Alternative Lock-up Programs

A second concern in the juvenile justice arena is the dangerous and unsustainable system of secure lock-up facilities (Alternative Lock-up Programs, or ALPs) that is used to detain youth who are arrested when juvenile court is not in session, as in evenings and on holidays and weekends. ALPs are free-standing juvenile detention facilities that were created to comply with the federal Juvenile Justice and Delinquency Prevention Act (JJDP), which prohibits the detention of recently-arrested youth in a police station for more than six hours, and requires that youth held longer be housed separately from adult arrestees. Serious

questions have been raised about the safety and security of some of these facilities. Although a recent escape from one of the ALPs resulted in a significant risk of harm to the youth, it was not reported to the OCA, perhaps due to the wording of Chapter 18C, Section 1. (See Recommendations for the suggested statutory amendment to address this issue). All interested parties with whom the OCA has discussed the issue agree that DYS should operate ALPs because of the agency's expertise and staff training capability. However, a new appropriation to DYS would be required before that agency could assume responsibility for ALPs. The Commissioner of DYS estimates that \$4 million would be required for DYS to operate ALPs. Given that the projected DYS FY 2010 funding of \$150 million represents a 7.5% reduction from the FY 2009 general appropriation, it is imperative that ALPs not be handed to DYS without a suitable, specific appropriation.

Zero Tolerance

A third and significant concern of the OCA with respect to juvenile justice pertains to the ease and frequency with which youth charged with delinquency offenses are removed from school settings on either a temporary or permanent basis. The so-called "zero tolerance" policy by which school administrators are able to suspend or expel students charged with delinquent behavior, even when unrelated to the safety of the school, results in significant numbers of youth being removed from school with few or no educational alternatives. Poor children and children of color are particularly impacted by these policies. The OCA will seek to obtain additional data about the extent of the problem and will work with concerned stakeholders, including the DESE Graduation and Dropout Prevention and Recovery Commission, to develop a strategy to address the issue.

Permanency Planning for Youth Aging Out of Care

Hundreds of Massachusetts youth turn 18 every year while still in the custody of the Commonwealth, entering adulthood without a permanent, legal family to nurture and guide them as they continue their education, look for productive work, and begin families of their own. DCF has been working in the area of transition-aged youth for a number of years, and has succeeded in encouraging youth to remain with DCF voluntarily. Over the past five years, DCF has seen a 100% increase in the number of youth 18 and older who remain in their care, from 800 in 2004 to 1600 today. DCF currently funds post-secondary education for over 700 transition-aged youth; this year over 600 transition-aged youth received a G.E.D., high school diploma, or post-secondary degree. Youth who leave DCF custody at age 18 have the option of requesting to return to care, and in any event are provided MassHealth coverage up to age 21. Social workers from DCF's Adolescent Outreach Unit are highly regarded by youth and by other professionals. DCF leadership should be acknowledged for their efforts toward transition-aged youth, supported in part by federal grants through the Chafee Foster Care Independence Program.

In 2005, the Massachusetts Society for the Prevention of Cruelty to Children (MSPCC) addressed these concerns in its report *18 and Out: Life after Foster Care in Massachusetts*. Subsequently, the Boston Foundation published *Preparing Our Kids for Education, Work and Life: A Report of the Task Force on Youth Aging Out of DSS Care* in 2008. The Task Force developed a framework that identifies outcomes for healthy development and preparation of youth transitioning from care and recommendations for changes to existing administrative,

statutory, and appropriation structures. The OCA applauds the work done by the Task Force, and supports efforts to implement the recommendations made by the Task Force. However, economic realities must be acknowledged in the implementation of these recommendations. For example, expansion of DCF Adolescent Outreach Units to all DCF offices is desirable, but may not be achieved at a time when DCF is struggling to fulfill its mandate to respond to reports of abuse and neglect of children. This issue underscores the importance of prevention and permanency planning. To the extent that families are strengthened and children can remain in their parents' homes, the need for more specialized adolescent services will decrease; another path to this outcome is early and effective permanency planning, so that fewer youth reach the age of 18 without a safe, legal, permanent family.

Online Mandated Reporter Training (OMRT)

Massachusetts law requires persons who come in contact with children while fulfilling their professional responsibilities to report cases of suspected child abuse or neglect to DCF. The Child Welfare Law of 2008 added a requirement, effective January 1, 2010, that all mandated reporters who are professionally licensed through the Commonwealth complete training to recognize and report suspected child abuse or neglect. The law does not specify which, if any, state entity is responsible for conducting the training program. The OCA researched online mandated reporter training programs and informed EOHHS and DCF of the advantages of OMRT over face-to-face training, as well as associated costs. The OCA recently learned that DCF has established a working group to develop a timeline, curriculum, and implementation plan for this initiative. The OCA applauds the leadership DCF is demonstrating by taking on this responsibility given the reduction in its general appropriation, and looks forward to working with DCF to realize the goal of OMRT for the Commonwealth.

Amendments to M.G.L. Chapter 18C

After working with our enabling statute for the last nine months, the OCA has the following recommendations:

- The OCA suggests that Chapter 18C, Section 4, be amended to reflect the name change, effective June 30, 2009, of the Department of Mental Retardation to the Department of Developmental Services.
- In order to reflect the change in responsibility among the executive agencies concerning housing for low-income families, the OCA suggests that Chapter 18C, Section 4, be amended to add to the child advocate advisory board a 26th member, the undersecretary for housing and community development from the executive office of housing and economic development.
- The OCA suggests that the definition of "critical incident" in Chapter 18C, Section 1, be amended to delete the words "the executive office of health and human services or 1 of its constituent agencies" and substitute the language "an executive agency" in subparts (a) and (b). This change will make the critical incident definition consistent with Sections 5(a), (b), (c) and (g), and Section 6, in which the term "executive agency" is used, without restriction to executive office of health and human services.