Office of the Child Advocate
Annual Report 2008

The Commonwealth of Massachusetts
One Ashburton Place, 5th Floor
Boston, MA 02108
Gail Garinger, The Child Advocate

THE COMMONWEALTH OF MASSACHUSETTS
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DEVAL L. PATRICK
GOVERNOR

TIMOTHY P. MURRAY
LIEUTENANT GOVERNOR

GAIL GARINGER
THE CHILD ADVOCATE

June 30, 2009

Dear Governor Patrick, Legislative Leaders, and Citizens of the Commonwealth:

I am pleased to submit the first annual report of the Office of the Child Advocate (OCA) for calendar year 2008. I have served as the first Child Advocate for the Commonwealth for a little over one year. Governor Patrick appointed me pursuant to an Executive Order, and less than three months later the General Court enacted the Child Welfare Law (Chapter 176 of the Acts of 2008). The Child Welfare Law made the OCA an independent office, reporting directly to the Governor and the Joint Committee on Children, Families and Persons with Disabilities.

This first annual report does not purport to be an overview of the incredibly complex child welfare system in Massachusetts. Nor does it highlight some of the recent successful interagency initiatives of executive child-serving agencies, such as the significant reduction in the number of youth with mental health issues "stuck" in hospitals for want of alternative treatment options; or the ongoing efforts of the Child and Youth Readiness Cabinet. Rather, this report provides a summary of the OCA's activities during its first eight months of operation together with some preliminary recommendations.

I conclude my first year with the conviction that the Commonwealth must focus on prevention and permanency. Especially in these challenging economic times, even as we are forced to cut back on important services, we must devote more resources to prevention, where they will have the greatest impact. Every child needs and deserves a permanent family, ideally her birth family. It is imperative that we commit ourselves to strengthening families, and when necessary, that we find relatives or new families who can provide permanency and security to enable each child to realize her full potential.

Systemic reform is impossible without better data collection and integration. The data that we do have is often separated into agency silos, and often stored in computer systems that do not communicate with each other. We must establish solid baseline data in order to measure the effectiveness of programs on which the Commonwealth spends a considerable amount of money each year. We also need data to identify and address disproportionate minority contact within the juvenile justice system, and disproportionality and disparity within the child welfare system. The looming shortfalls in state revenues make it imperative to be able to assess which programs best serve which children and families in the most cost-effective manner.

In closing, let me say how honored I am to be serving the Commonwealth as its first Child Advocate. When I left my position as a judge in the Juvenile Court in order to become The Child Advocate, I knew that this newly-created position would present many challenges, and that has indeed been the case. This position also has afforded me wonderful opportunities to meet and learn from many people who have dedicated their careers to the well-being of children and families. I am grateful for the challenges and opportunities of this position, and I look forward to working with all of you to provide better outcomes for children and families in the Commonwealth.

Sincerely,

Gail Garinger
The Child Advocate

Office of the Child Advocate

Our Mission is to improve the safety, health and well-being of Massachusetts children by promoting positive change in public policy and practice.

Our Vision is that every child is safe and nurtured and that every family is supported and strengthened within the community.

Our Focus is on at-risk children who are served by the Commonwealth's child welfare and juvenile justice systems.

OCA Staff

Gail Garinger
The Child Advocate

Elizabeth Armstrong
Deputy Director

Julianna Brody-Fialkin
Program Assistant

Susan Cummings
Clinical Specialist

2008 Interns:
Raviv Murciano-Goroff, BA, Harvard University '09
Annie Iglehart, BA, Smith College '09

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

"The child advocate shall report annually to the governor, the president of the senate, the speaker of the house, the senate and the house committees on ways and means, and the chairs of the joint committee on children, families and persons with disabilities on the activities of the office, including an analysis of activities undertaken to implement subsection d of section 5, recommendations for changes in agency procedures which would enable the commonwealth to better provide services to and for children and their families and priorities for implementation of those changes to services. The report shall be made public."
M.G.L. Chapter 18C, Section 10.

Part I: Activities of the Office

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, 2008 Session Laws Chapter 176, codified in part as Massachusetts General Law Chapter 18C,[1] and the Office of the Child Advocate (OCA) became an independent office charged with reporting directly to the governor and the legislature. For administrative purposes, the OCA 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. Plans for website expansion include a more extensive resources page and information targeted specifically towards youth.

The Child Advocate was assisted throughout the summer of 2008 by two interns, senior undergraduate students from Smith College and Harvard University. In September 2008 two full-time staff, a deputy director and a program assistant, were hired; and a final 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. In FY 2009, the OCA's appropriation approximated its start-up costs and salary support, and additional miscellaneous expenses have been covered by the Governor's 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.[2] 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

[1] For complete legislation, see Appendix A.
[2] Appendix B lists the members of the advisory board.

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. Board members will collaborate on the comprehensive plan and report to the OCA regarding which of their agencies' initiatives relate to the plan. With this information, the OCA will create subcommittees based on specific goals. The next full OCA Advisory Board meeting is scheduled for October 2009, and the subcommittees will meet as needed prior to that date.

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 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. The OCA staff has embarked on efforts to collect information regarding these topics, and finds two issues ripe for report at this time. These issues relate to mandated reporting and permanency planning for youth aging out of the care of the Department of Children and Families (DCF), identified in subsections 3 and 16 of Section 11(d), and discussed in later sections of this report.

Outreach

The Child Advocate devotes much of her time to educating the public regarding the services of the office and the mission of executive agencies in providing services to children and families.[3] In 2008, she represented the OCA at events across the state and presented information regarding the OCA to numerous stakeholders. She was a faculty member at a Massachusetts Continuing Legal Education (MCLE) Conference entitled "Juvenile Delinquency & Child Welfare Law" and participated in a symposium at Western New England College on the safety of children. She guest lectured on the child welfare and juvenile justice systems at Tufts University. In November 2008, The Child Advocate spoke at an event on the sexual exploitation of children, hosted by Support to End Exploitation Now (SEEN) and Suffolk University Law School where they premiered the film "Very Young Girls."

In addition, The Child Advocate presented to groups such as the Mental Health Legal Advisors Committee, the Massachusetts Juvenile Police Officers' Association and the Middlesex County Ju-

[3] M.G.L. Chapter 18C, Sec. 6(g).

venile Court judges and staff. 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. During the Central Massachusetts Interagency Child Abuse Investigation Summit, she spoke to an audience consisting of staff from UMass Medical Center, Worcester County District Attorney's Office, and Worcester Area Offices of DCF. She also continues her role as faculty in a Casey Family Programs breakthrough series collaborative on safety and risk assessment, for which she coaches teams from throughout New England and participates in regional conferences. In the upcoming year, The Child Advocate and her staff plan to visit all the regions in the state to meet with interested and involved stakeholders.

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." While the most obvious response to this directive would be to establish a 24-hour telephone hotline, the cost involved in staffing and training hotline personnel is prohibitive at this time. The OCA has established a toll-free telephone number which is listed on its website, along with an electronic mail complaint form. In addition, the OCA has created 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 DCF residential and congregate care programs.

Youth in Care Outreach Card:

About the Office of the Child Advocate

The Office of the Child Advocate (OCA) tries to help kids and teens in the custody of the Department of Children & Families (DCF) with problems related to their care. You can call or email the OCA or go online to use the complaint form on our website.

OCA phone number: 617-979-8360
OCA toll-free number: 1-866-790-3690
Website: www.mass.gov/childadvocate
Email: childadvocate@state.ma.us

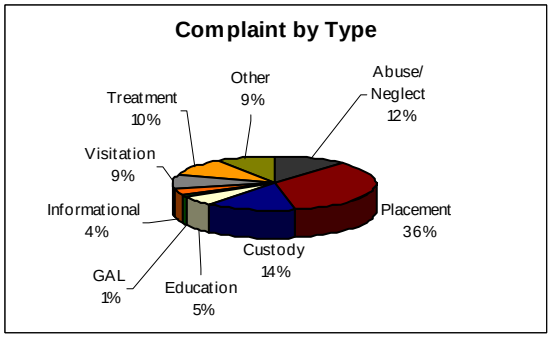
Resources

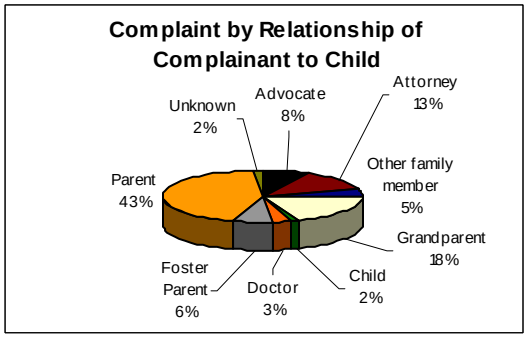
- **24/7 Youth Crisis Hotline:** 1-800-621-4000
- **Domestic Violence/Sexual Assault 24/7 Hotline:** New Hope 1-800-323-4673
- **Mental Health 24/7 Hotline:** Crisis Center 508-996-3154
- **To Report Abuse & Neglect:** DCF Hotline 1-800-792-5200
- **DCF Teen Peer Line:** 1-800-238-7868

You Have the Right...

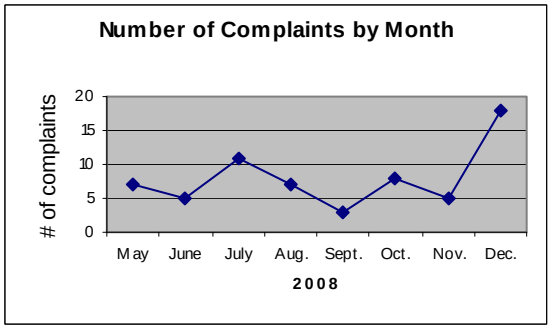
- to be safe and not neglected or abused physically, sexually, emotionally or in any way.
- to have your own lawyer who meets with you regularly & tells DCF, the judge & others what you want.
- to go to court, especially for permanency hearings.
- to have phone calls returned by your DCF worker and your lawyer in a reasonable amount of time.
- to have regular visits, in most cases, with siblings, parents, grandparents or other family members.
- to have a say in what services DCF offers you and to work with your lawyer on your service plan.
- to get money from DCF for things like clothing, birthdays & holidays while you are in placement.
- to get medical, dental, and mental health care.
- to get an education.
- to have access to important personal records and documents, such as your birth certificate and health records.
- to complain to DCF &/or to a judge (with help from your lawyer) if any of your rights are being violated.
- to apply to keep getting help from DCF after you turn 18 and to have a say in what services you get.

Complaint Process

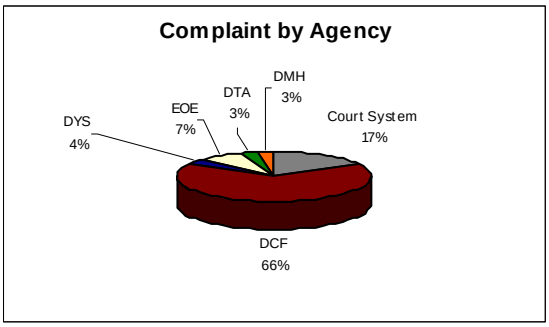


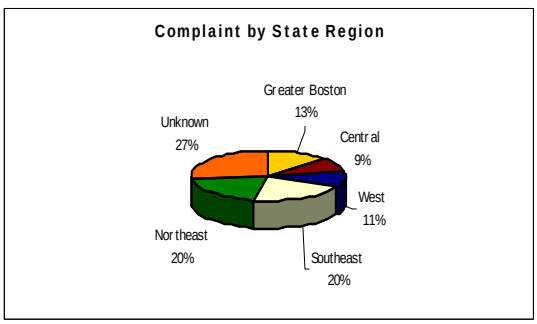


M.G.L. Chapter 18C requires the office to accept complaints relative to the provision of services to children by an executive agency. In its first year, the office established processes for receiving and responding to complaints. Working with the state information technology department, staff designed a database to log and track complaints. With this tool, they can identify systemic trends in categories such as geography, type of complaint, and relationship of complainant to child. With the creation of the website, The Child Advocate's outreach efforts and the attention received from the first OCA report to the Governor and the legislature regarding the deaths of two girls in the South Boston fire, the public's knowledge of the office has steadily grown.

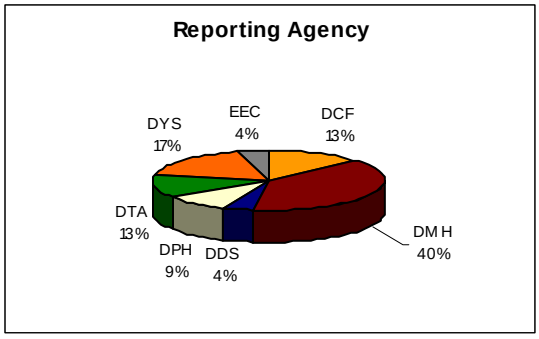


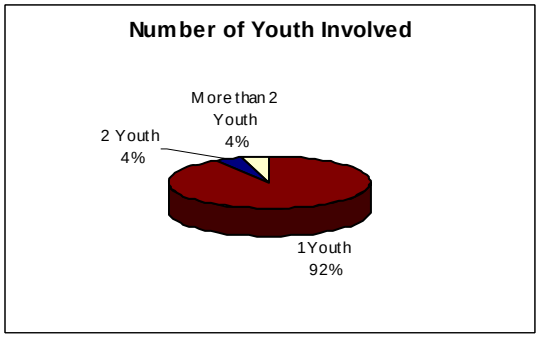
Between May and December 2008, the OCA received 64 complaints from parents and other biological family members, attorneys, advocates, foster and pre-adoptive parents, and youth. These complaints focused on concerns about abuse and neglect, placement and custody, visitation, treatment and medication, and education. Complaints came from across the state, with the largest number from the Northeast and Southeast regions. Complaints involved agencies under EOHHS – DCF, Department of Mental Health (DMH), Department of Transitional Assistance (DTA) and Department of Youth Services (DYS); the Executive Office of Education (EOE); and the Probate and Family Court and the Juvenile Court. The OCA referred many of the complainants to the appropriate people within the agencies involved or provided information on the child welfare and juvenile justice systems. Some of the complaints required more in-depth involvement, which included exploring current or available resources, reviewing possible actions and outcomes, and speaking with attorneys, agency staff, or other professionals involved in a child's care.





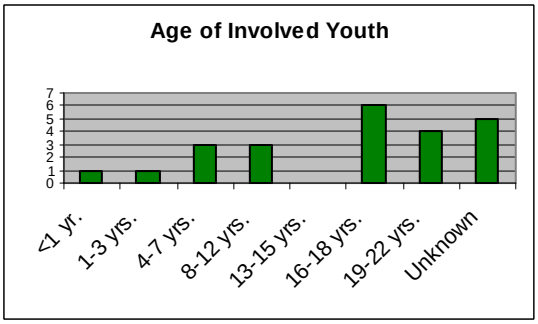
Critical Incident Reports

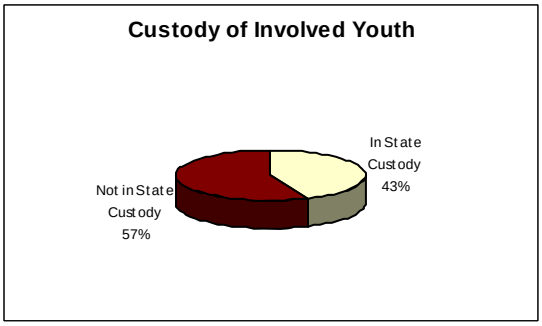




M.G.L. Chapter 18C defines a critical incident as a fatality, near fatality, or serious bodily injury of a child who is in the custody of or receiving services from the executive office of health and human services or one of its constituent agencies, or circumstances which result in a reasonable belief 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. The Office of the Child Advocate receives Critical Incident Reports that involve children served by executive agencies within EOHHS as well as those within EOE. EOHHS and the OCA worked collaboratively to create a Critical Incident Report form that provides the OCA with relevant information. Additionally, the OCA and EOE are developing a procedure for informing the OCA about critical incidents that occur in EOE agency-licensed facilities or programs.

In October of 2008, the OCA began receiving Critical Incident Reports from executive agencies. From October through December, the office received 23 Critical Incident Reports, including four fatalities, from the following EOHHS agencies: DCF, DMH, the Department of Developmental Services (DDS),[4] the Department of Public Health (DPH), DTA and DYS. The office also received reports from DEEC under EOE. DMH filed the most Critical Incident Reports and DEEC and DDS reported the fewest. The reports had the highest representation of sixteen- to eighteen-year-olds, no thirteen- to fifteen-year-olds, and usually involved only one child. The majority of youth were receiving services from but were not in the care of the Commonwealth. With its new database, the office is tracking the information contained in the reports and using it to begin to identify emerging trends and patterns within an agency or population.





[4] Effective June 30, 2009, the name of the Department of Mental Retardation will be changed to the Department of Developmental Services.

One of the challenges of creating the interagency critical incident reporting procedure has been recognizing each agency's definition of a critical incident, which differs from the M.G.L. Chapter 18C definition mandated for OCA use. For many agencies, the term "critical incident" encompasses any situation in which a manager or director becomes involved. For others, it means any time a child is injured, a 51A report of abuse or neglect is filed, or the police are contacted and respond to an agency's program. The OCA has received Critical Incident Reports ranging from residents fighting at DEEC-licensed residential programs and DMH adolescent clients attempting suicide to DYS-committed youth becoming victims of neighborhood violence and child abuse occurring at DTA family shelters. The OCA appreciates receiving all Critical Incident Reports as it helps the office assess the different issues arising at programs and agencies. We currently are working with executive agencies to review the critical incident reporting process and to clarify the definition of a critical incident.

Between October and December 2008, the OCA was advised of the following four deaths of children receiving services from executive agencies:

- A three-year-old child suffering from a chronic neuromuscular disability died from respiratory difficulties. As a patient at a specialized preschool licensed by DEEC, he was transported to a hospital where he died in the emergency department. After reviewing information provided by DEEC, the OCA determined that no further action was needed.
- A youth committed to DYS but living in the community died from a gunshot wound, and the Suffolk County District Attorney's Office is investigating that death. The OCA is deeply concerned about the number of fatalities and serious injuries caused by violence and suffered by youth of color, and will continue to track information related to this issue.
- A six-year-old child died in a fire in his home, and although the OCA received a Critical Incident Report from DCF, it was later determined that there was no Departmental involvement with the family. The child was under a guardianship created in the Probate and Family Court. The OCA is concerned about the vulnerability of children to fires in their homes, and is interested in programs that encourage fire safety education and use of smoke detectors.
- Finally, a one-year-old died after allegedly being suffocated by his adolescent mother. At the time of the child's death, DCF was providing services to the family. The OCA currently is reviewing DCF's investigation of this case.

For many of the Critical Incident Reports, the OCA staff follows up with the reporting agency to obtain more information related to the critical incident and to monitor the safety and well-being of the child. In most cases, the reporting agency is providing appropriate services and support to the child and family, and there is no need for further action from the OCA. There are certain times when the servicing agency is required to conduct an internal review regarding the critical incident. The OCA looks at these internal reviews with an eye toward the agency's initiative in creating changes and precautionary measures to decrease the risk of another incident occurring. Review of the critical incident ends when the OCA feels satisfied that the agency has taken the necessary steps to ensure the child's safety and well-being and to reduce future risk. If a report concerns a fatality or near fatality of a child, the OCA thoroughly examines the circumstances and the agency's internal review to determine whether the OCA should investigate the matter further.

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 Reisopoulos-Johnson, ages three and fourteen, who died in a fire in their mother's South Boston home on April 6, 2008. Investigators determined the fire was set deliberately, and Nicole Chuminski was indicted by the Suffolk County District Attorney for arson, murder and assault. On December 18, 2008, the OCA provided a comprehensive confidential report regarding DCF's involvement with Sophia and Acia's family to Governor Deval Patrick, Secretary JudyAnn Bigby, Commissioner Angelo McClain, and the then-Chairs of the Joint Committee on Children, Families, and Persons with Disabilities, Senator Karen Spilka and Representative Cheryl Coakley-Rivera. A public summary of the report was provided to the press and made available on the OCA's website. A slightly condensed version of this public summary is attached to this report as Appendix C.

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.

The OCA participates in the state team as an *ex officio* member, and has visited the Suffolk County local team to observe its protocol and learn about its processes. The Suffolk County team is an example of a well-established local team with regular monthly meetings which are well attended. Its members demonstrate commitment and concern for the work of the team, and engage in meaningful and robust discussions. Approximately three years ago, the Suffolk County Children's Advocacy Center of the Suffolk County District Attorney's Office obtained Department of Justice funding for a coordinator for the Suffolk County Child Fatality Review Team. The team coordinator collects records, sets meeting times and agendas, and records the findings and recommendations of the local team. Recently, the coordinator for the Suffolk County local team has been distributing a newsletter via electronic mail to state and county employees involved in the child welfare and juvenile justice communities. In addition, for the last few years, this coordinator has planned a statewide conference which brings together the state and local teams. The funding for this position will likely not be available for renewal, as no requests for proposals have been circulated by the granting agency.

A principal responsibility of the state team is to provide ongoing advice and support for the local teams through training, guidance and the dissemination of information. A second responsibility is to review local team recommendations and combine them with its own research in making final recommendations to the governor, the legislature and the public.[5] At the present time, it does not appear that the state team is in a position to fulfill its directives. For example, when the Child Wel-

[5] *Massachusetts Child Fatality Review Third Annual Report of Program Activity – 2003,* Executive Summary, p.2.

fare Law of 2008 was enacted, the state and local teams were directed to review both child fatalities and near fatalities.[6] At a joint conference for state and local teams held in October 2008, members of the local teams requested guidance from the state team in determining which near fatalities to begin reviewing, and asked for advice on protocols and processes for expanding their reviews to include near fatalities. Although this request was discussed at two subsequent state team meetings, no consensus was reached around information to provide to the local teams.

The current condition of enervation in the state team is through no fault of any office or individual, as no state funds have ever been allocated for the state or local teams, and the OCME is occupied with important work of its own. DPH has contributed many in-kind resources to the state and local teams, and appears to be willing to assist the OCME as a partner in developing agendas for the quarterly state team meetings, co-leading the meetings, and working with the local teams. DPH has supported state and local team efforts through contributions of staff time and funding for statewide conferences. This support has come from the Emergency Medical Services for Children Project, the Maternal and Child Health Block Grant and the Suicide Prevention Program. It is not known how long these funds will be available.

The OCA will continue to work with DPH, OCME, and other stakeholders to improve the consistency and engagement of the state child fatality review team**.** Child fatality review is, at its core, a public health function which is enabled by the multi-disciplinary membership of the teams. We are fortunate in Massachusetts to have interested and committed leadership from DPH for this important work. Without an active state team, the local teams cannot be expected to avoid feeling that they are working in isolation to an uncertain purpose.

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. While this is not the ideal time to request a new funding initiative, the allocation required would not be large, and 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

Through its complaint process and discussions with relevant stakeholders, the OCA has learned that children's voices are not heard adequately in the court system. 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. The MacArther Foundation recently awarded a grant to CPCS to further its efforts to create a statewide juvenile defender department which is intended to improve the quality of representation by counsel for youth in delinquency matters. 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 administrative order was issued in response to the Section 9C budget adjustments. The category of educational GAL was eliminated completely; this type of GAL is typically appointed in care and protection or child in need of services (CHINS) cases, and less often in delinquency cases, when a child's educational needs are not being met. An educational GAL investigates the child's needs and advocates with agencies and the school system to provide the child with appropriate

[6] The Acts of 2008, Chapter 176 Sec. 54(a).

educational accommodations. The "best interests" GAL category also was eliminated; this type of GAL has proved most helpful to judges in the context of termination of parental rights (TPR) cases. 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 of others in 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[7] presents the findings from a study that reviewed Probate and Family Court practice in three counties over ten years. Among its fifteen findings were the following:

- Guardian of minor petitions increased by 36% over ten years, whereas care and protection filings increased by 14%.
- Infants constitute the largest age group of guardianed minors.
- The majority of petitioners are grandparents.
- Representation by counsel is uncommon.
- Over half of the children were also involved with DCF.
- The reasons cited in support of guardianship petitions in the Probate and Family Court often parallel allegations made in care and protection proceedings in the Juvenile Court.

It is clear that protective concerns are being handled by an alternate pathway in the Probate and Family Court that does not provide the guardianed 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,[8] which will alter guardianship of minor cases in a number of ways, beginning on July 1, 2009. For example, Section 5-106 allows for appointment of counsel for a ward on a best interest basis, rather than requiring appointment of counsel for a child only when DCF is a party in a case, as in the present system. Also, Section 5-306(A) prohibits guardians from consenting to medical treatments for minors and incapacitated persons that require a substituted judgment, such as administration of anti-psychotic medication.

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 and the Probate and Family Courts 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.

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[7] Virginia G. Weisz and Barbara Kaban, *Protecting Children: A Study of the Nature and Management of Guardianship of Minor Cases in Massachusetts Probate and Family Court*. (August 2008).

[8] The Acts of 2008, Chapter 521, "An Act Relative to the Uniform Probate Code," was signed into law by Governor Patrick on January 15, 2009. A few of its provisions, including those related to guardianship of minors, will become effective July 1, 2009, with the remainder of its provisions to become effective July 1, 2011. Article V of the Uniform Probate Code describes guardianships for minors as well as other persons under a disability, and applies to the Probate and Family Court as well as to the Juvenile Court when there is a pending matter in the Juvenile Court.

Seclusion and Restraints

The OCA is extremely concerned about the use of seclusion and physical and mechanical restraints with children in the Commonwealth in both child and adolescent residential programs, often Chapter 766 programs, as well as in public school settings. This matter was brought to the OCA's attention early on through its participation in an interagency committee examining a particular program, as well as through separate complaints about this issue filed with the OCA by a juvenile court judge, a child's court-appointed attorney, and advocates for persons with disabilities.

DMH has focused on reducing the use of restraints in all child-serving inpatient and intensive treatment programs for almost ten years.[9] This initiative was undertaken when public data demonstrated that all children and adolescent inpatient programs had rates of restraint that were four to seventeen times higher than all adult inpatient programs.[10] Each episode of restraint is a nonconsensual, traumatic incident to the patient and is potentially physically and emotionally harmful to the patient, other clients, and staff. Since DMH began its initiative, there has been an 88% reduction in the use of these harmful interventions in DMH child-serving programs.[11]

In addition to significantly improving the services delivered to children and adolescents, the DMH initiative has resulted in considerable savings to the Commonwealth. Dr. Janice LeBel, Director of Program Management at DMH, developed a cost model and analysis of restraint use and savings that result from restraint prevention and reduction.[12] Using this cost model and applying it to the rate of restraint use that existed before this initiative in the DMH child and adolescent system, Dr. LeBel showed that there have been more than 34,000 restraint or seclusion episodes averted with a savings of more than $10.7 million.[13]

On May 1, 2008, DYS implemented a new policy to eliminate the use of room confinement as a sanction for behavior and to limit its use to crisis intervention and de-escalation for youth who are out of control and present a threat to the security of other youth and staff at the program. Initial data is encouraging and staff response has been positive.

The above efforts by DMH and DYS are laudable; however, the issue of physical and mechanical restraints and seclusion with children and adolescents in other residential settings in the Commonwealth is extremely concerning and warrants immediate attention. 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. This was a 19% increase in total reported restraints from 2007. Over 76% of these restraints involved floor restraints in both supine and prone positions. Experts consider the prone position, in which youth are restrained face down on the floor, to pose the greatest risk of harm, particularly with children who by virtue of size and age are more physically vulnerable to injury and positional asphyxia.[14] A few residential child-serving programs also use mechanical restraints, a broad category of restraints in which a child or youth is immobilized through external devices such as straps, belts, wrist and ankle cuffs, sometimes attached to a hard object such as a

[9] These programs include acute care, continuing care, public and private.
[10] National Executive Training Institute (NETI), 2008.
[11] NETI, 2008. The DMH initiative extends to adult facilities as well.
[12] LeBel and Goldstein, 2005.
[13] Substance Abuse Mental Health Services Administration (SAMHSA), 2009.
[14] NETI, 2008.

board. The literature indicates that mechanical restraints are equally dangerous, as deaths can occur even when the technology is correctly applied.[15]

Massachusetts lags behind several other states that have banned the use of prone restraints in publicly funded child-serving programs. In New York, for example, the Western New York Children's Psychiatric Center uses no mechanical restraint and no prone restraint; physical restraint is limited to fifteen minutes and seclusion is only used with children by exception with authorization from the leadership.

The use of restraints and seclusion in public schools is also extremely concerning. A recent article in the *Boston Globe*, "Restraining of Students Questioned," raised awareness about the issue and cited the problem of under-reporting of restraint use in Massachusetts.[16] Since 2001, when school districts were required to begin reporting the most extreme cases to the Department of Education (DOE), more than 900 cases of student restraints have lasted for an extended period of time or resulted in injury. Current regulations, however, only require local schools to report to DOE episodes of restraint or seclusion that last longer than twenty minutes or that result in serious injury.[17] Clearly, the actual number of students restrained or secluded in school settings is far in excess of the 900 reported cases.

Executive agency leaders in Massachusetts have begun to examine practices with respect to the use of restraints and seclusion with children and adolescents, but much more work is needed. What is lacking is an integrated state reduction and prevention effort 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 last interagency task force specifically convened to examine this issue met in 1998 as a result of a restraint death at a residential program. This led to the task force working for over a year on revising OCCS (now DEEC) restraint regulations with an eye toward utilizing restraints safely.

Practices and knowledge have evolved since that time. A committee has been meeting for some time to develop an appropriate and consistent restraint policy across EOHHS agencies. In addition, DCF secured Casey Family Programs funding to convene, along with DMH, DEEC and DESE, the first Massachusetts Interagency Leadership Forum on the Prevention of Restraint in Residential Programs. This forum is bringing together leaders from agencies and residential programs. The OCA wholeheartedly endorses these interagency initiatives.

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 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

[15] SAMHSA, 2009; *The Business Case for Preventing and Reducing Restraint and Seclusion Use* (in press), Washington, D.C, 2009.
[16] Vasnis, J., May 4, 2009.
[17] 603 C.M.R. 46.06.

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.

The OCA advocates strongly for the position that juveniles in the justice system are "our kids" who easily could have come into custody through the child welfare system, instead of the juvenile justice system, via a CHINS case or a care and protection case. We must use tested and effective programs and initiatives such as JDAI to work with "our kids" before they are beyond our reach.

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 (JJDPA),[18] 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. Rather than require each police department to create a separate after-hours juvenile lock-up facility, the Commonwealth established free-standing juvenile detention facilities that serve multiple police departments.[19] However, these facilities are not run by DYS, the state agency that operates or manages all post-arraignment residential detention and treatment facilities for children, and they are not funded by the Commonwealth. Instead, the Commonwealth has tapped federal funding, allocated to Massachusetts under the JJDPA and distributed by the Juvenile Justice Advisory Committee (JJAC) and the Executive office of Public Safety and Security (EOPSS), to contract with various providers for ALPs.

Serious questions have been raised about the safety and security of some of these facilities. The JJAC, an all-volunteer body appointed by the Governor to make recommendations on juvenile justice policy and ensure compliance with the JJDPA, has warned that it is neither designed nor equipped to oversee the operation of residential facilities.[20] Two of the ALPs are not licensed by DEEC, and a recent escape from one of the unlicensed ALPs resulted in a significant risk of harm to the youth.

Moreover, the stream of federal funding that has been diverted to ALPs, which was intended for investment in intervention and prevention programs rather than for ongoing support of detention facilities, has been steadily shrinking over the past several years and is now inadequate to support them.

[18] 42 U.S.C., Sec. 5633(a)(12).

[19] For an examination of problems associated with ALPs in Massachusetts, see Robin L. Dalhberg, et al., *A Looming Crisis: The Secure Detention of Youth After Arrest and Before Arraignment in Facilities Administered by the Massachusetts Executive Office of Public Safety and Security*, published in December 2008 by the American Civil Liberties Union and the Children's Law Center of Massachusetts.

[20] JJAC Fact Sheet on ALPs, found in Appendix D. While the authors of this Fact Sheet recommend $2.9 million in funding for secure ALPs overseen by DYS, the OCA recommends $4 million in funding in order for DYS to create and operate DEEC-licensed facilities.

The OCA has met with EOHHS and EOPSS personnel, as well as with the JJAC and other advocates, about the threat of ALPs closings and options for addressing this contingency. In addition, the OCA has been asked by DEEC to comment on an ACLU proposal that DEEC be responsible for the inspection of the two ALPs in Bristol County and Essex County run on a contract basis by the county sheriffs' offices. While the OCA would like to see DEEC conduct inspections, no consensus has been reached on this issue. 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. In the "Recommendations" section of this report, the OCA suggests a statutory amendment to make the definition of a critical incident consistent with language in Chapter 18C, Section 5, regarding reporting of critical incidents.

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, funding is a substantial barrier to that transfer of responsibility, and 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. Otherwise, DYS will have to struggle to provide services to its committed youth, and will have to reduce significantly the statewide detention population in order to operate within its projected budget.

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. The zero tolerance policy is one of the major reasons school systems have become feeders to the juvenile justice system ("school-to-prison pipeline"). Poor children and children of color are particularly impacted by these policies. For those who can afford to obtain an educational advocate, the outcomes are better: the children receive better educations, are excluded less often, and are less likely to be swept into the school-to-prison pipeline. The recent budget cuts to the GAL educational advocate program will make the disparities between those with access to advocates and those without even greater.

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. We must find a way to keep these children in school. Children should not be suspended or expelled solely because they have been charged with a criminal offense. Just as youth in DYS are "our kids," youth suspended or expelled from school for a technical violation that does not endanger or disrupt other students are our kids, too, and should remain in the classroom whenever possible. Those youth who cannot remain in school due to serious safety concerns must be provided with educational alternatives. If we commit our resources to keeping our kids in school, we may expend less on high-end programs and institutions

directed at incarceration, such as those discussed in the preceding two sections. To the extent that our society fails to focus on prevention, we are complicit in creating a demand for more expensive solutions after real harm has been inflicted on children, families, and society.

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. 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 was co-chaired by Cambridge Family and Children's Service and The Home for Little Wanderers and had the active involvement of representatives from EOHHS, the Department of Housing and Community Development (DHCD), DESE, DMH, the Department of Social Services (DSS, now DCF), DTA, and DYS, along with forty service providers.

The Task Force engaged the Boston University School of Social Work to conduct systemic and empirical research to understand the experiences of youth in care. The administrative data describes the 812 youth who turned 18 in 2005. The research was completed in 2007 and the report includes demographic information and survey and interview findings. The outcomes data from the study indicated that youth who had aged out of DSS were at considerable risk for homelessness, significant mental health issues, early pregnancy, physical violence and unwanted sexual contact. Ninety-six of these young adults participated in an in-person survey about their experiences before and after they turned 18. Over half of these 96 youth were unemployed; one-third had used illegal drugs in the past 30 days; one-quarter had been arrested within the last 12 months and eight per cent had been incarcerated within the last 12 months. The Commonwealth has stood *in loco parentis* for these youth— we must do better for our kids.

The report identifies five core resources which are nationally recognized as a basic set of personal and social assets for young people, and which have been adopted by Massachusetts' child-serving agencies. They are:

- Ongoing, nurturing relationships with adults and positive relationships with peers
- Safe and stable places for living, learning, working, and playing
- Values, skills, opportunities and supports that promote optimal physical and mental health
- Educational preparation and economic opportunity
- Opportunities to make a difference through community service and civic participation.

With these resources in mind, 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.

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. This represents approximately 70% of aging-out youth electing to remain in

DCF care. DCF partnered with the Juvenile Court in a few counties to invite youth 16 and older to attend permanency hearings prior to being required to do so by the Child Welfare Law of 2008. 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. Recently Massachusetts was chosen as one of seven states to participate in a National Governor's Association workshop in Washington, D.C. on youth transitioning out of foster care. 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.

The OCA also applauds the work done by the Task Force, and supports efforts to implement the recommendations made by the Task Force. 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.[21] 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.[22] The law does not specify which, if any, state entity is responsible for conducting the training program.

The Child Welfare Law also requires the OCA, as part of its comprehensive plan, to examine mandated reporter training. The legislation provides:

(d) The comprehensive plan shall examine the status of and address the following issues:
. . .
mandated reporting, including: (i) the quality and quantity of training provided to mandated reporters; (ii) standards for training based on best practices for recognizing and reporting suspected child abuse and neglect; and (iii) the use of the following as forums for training mandated reporters: online programs, training offered by state agencies, and existing programs of professional training

[21] M.G.L. Chapter 119, Sec. 51A. Mandated reporters are defined as physicians, hospital personnel, medical examiners, psychologists, emergency medical technicians, dentists, nurses, chiropractors, podiatrists, optometrists, osteopaths, psychiatrists, allied mental health care and human services professionals, drug and alcoholism counselors, social workers, teachers, school administrators, child care workers, guidance or family counselors, probation officers, clerk-magistrates of the district courts, parole officers, foster parents, firefighters, police officers, priests, rabbis, clergy, ministers, persons in charge of institutions, schools or facilities, and The Child Advocate. (M.G.L. Chapter 119, Sec. 21.)

such as those required for initial licensure or certification and relicensure or recertification, continuing education programs or in-service training[.][23]

The Child Advocate has been advised that mandated reporter training has been conducted by some District Attorneys' Offices; by DCF at area offices; by DCF on an as-needed basis for particular agencies or programs; by some local provider agencies; and by some private individuals through for-profit seminars. The OCA is aware of no standardized curriculum that has been agreed upon by all interested agencies and offices. As questions arise about difficult reporting issues, each trainer is left to answer those questions according to the interpretation of her own agency or office. This has led to some disagreement about reporting practices required by the law, which is problematic for everyone involved.

One of the areas specified by Chapter 18C for consideration is the use of online programs, and the OCA has gathered the following information regarding online mandated reporter training. Maine, California, New York and Illinois have established free online public website training programs for mandated reporters. These websites use video, audio, and case studies to explain the legal and procedural concepts relevant to reporting suspected abuse and neglect. Washington, D.C. recently launched its online training site, after working with the program designers who created the Illinois module. New York has implemented an OMRT website, and is required by its acceptance of Title IV funds to share its product with other states. Staff at the Child Welfare Institute, the education and training arm of DCF, had begun the task of exploring online training modules for Massachusetts mandated reporters, but that work was placed on hold due to budget cuts.

OMRT offers the following advantages over face-to-face training:

- Cost-effective: In Illinois, the cost to train an individual mandated reporter using an online public website is 60 cents.
- Convenient: Professionals will not have to take valuable time from work or family to travel to a training.
- Standardized: The content of basic mandated reporter training will be consistent for all mandated professionals.
- Wide-reaching: Illinois trained 15,000 mandated reporters online in the first six months after activating its website.
- Easily updated: It is much more efficient to update a website than to conduct retraining when needed due to changes in relevant laws or practices.

The following costs associated with OMRT should be considered:

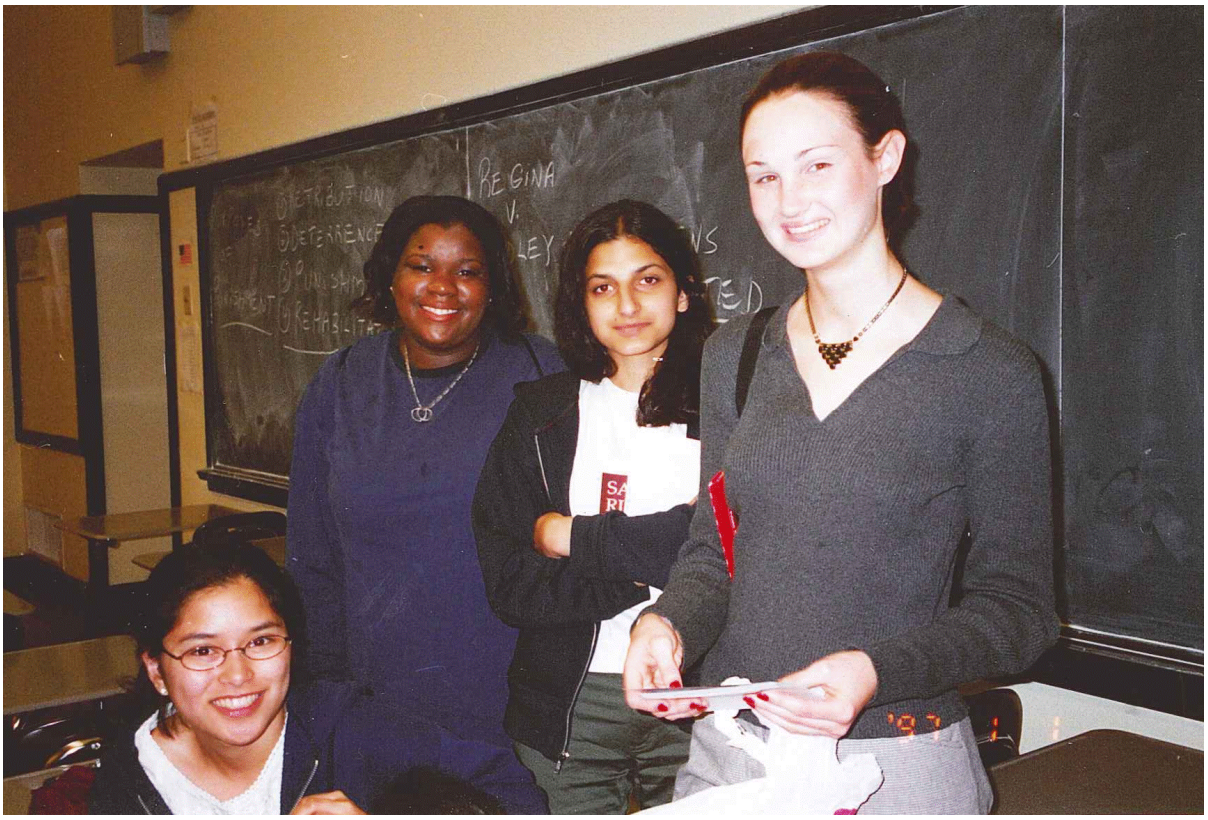
- Time and money: The Illinois-based group that created the websites for Illinois and Washington, D.C. estimates very broadly that adapting its program for an online training program for Massachusetts would take six to nine months and cost approximately $45,000.
- Server capability: Any agency or group that offers the OMRT will need to ensure that its computer server is ready to host the program. Hosting the website on a vendor's server would incur an annual fee.
- Technical support: Ongoing technical support would create additional costs.

The OCA envisions a system in which mandated reporters are provided with the opportunity to learn the basic principles involved with reporting suspected abuse and neglect through a free or

[23] M.G.L. Chapter 18C, Sec. 11(d)(3).

low-cost OMRT. The Child Welfare Institute is the entity best-suited to undertake this task. Additional specialized training within a discipline could then be offered by specific licensing bodies, continuing education foundations, agencies, or other groups.

The OCA recently learned that DCF concurs with this approach and 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.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Part II: Recommendations

As a preface to making recommendations, The Child Advocate must first acknowledge two factors that will curtail the ability of all branches of government to effect policy changes. These "givens" are the economic recession; and the Rosie D. lawsuit, Children's Behavioral Health Initiative (CBHI) and Yolanda's Law.

Economic recession: The reversal of fortune suffered by the American economy complicated the provision of services to children and families in the last quarter of 2008, as revenues fell and programs and personnel were cut. For example, DCF saw its general appropriation fall from $837 million to $816 million in FY 2009 following the Section 9C budget adjustments. DYS' appropriation fell from $163 million to $159 million, and DMH's appropriation for child and adolescent services fell from $76 million to $74 million, with significantly deeper cuts for all agencies anticipated for FY 2010.[24] These budget cuts translate into discontinued services to children and families. For instance, child care clients have experienced a loss of child care vouchers; a Young Parents' Program has had to limit enrollment; community-based counseling programs have been reduced dramatically and behavioral health and substance abuse clients have had their access to services restricted. DCF will reduce its social worker staff by more than 100 employees through attrition and layoffs. As funding for DCF decreases, its ability to accept Voluntary Applications for Services may be affected. This could result in the courts seeing a rise in CHINS applications, as families try to secure services from DCF by another route. Once implemented, MassHealth could provide services to some of these CHINS youth as a result of the CHBI initiative, however not all CHINS youth qualify for these services.

Rosie D. Remedy, Children's Behavioral Health Initiative, and Yolanda's Law: The future of behavioral health services for children receiving Medicaid will be impacted profoundly by the implementation of CBHI, the administration's proactive response to the court-ordered remedy stemming from the *Rosie D. versus Romney* federal lawsuit. These new Massachusetts Medicaid Behavioral Health services for youth under the age of 21 eventually will affect the standard of care in the Commonwealth for behavioral health services to other children as well, and will touch on many aspects of services for children for the foreseeable future. CBHI will provide for early periodic screening, diagnosis and treatment of severe emotional disturbances. Screening began during well-child visits prior to December 31, 2007; the Child and Adolescent Needs and Strengths (CANS) assessment tool was implemented as part of behavioral assessments on November 30, 2008; and CBHI is in the process of seeking federal approval to begin providing several new or improved community-based services, such as therapeutic mentoring and mobile family crisis response teams. The implementation of these CBHI services occurs concomitantly with the passage of Chapter 321 of the Acts of 2008, The Children's Mental Health Omnibus Law (often referred to as "Yolanda's Law"). This legislation builds upon the recommendations contained in *Children's Mental Health in the Commonwealth: The Time is Now*, written jointly by Children's Hospital Boston and MSPCC in 2006. Yolanda's Law codifies early routine screenings, increases collaboration between schools and mental health providers and enhances safeguards for children who might otherwise be caught in the system. The Rosie D. lawsuit, CBHI, and Yolanda's Law hold promise for children with mental health disorders and their families.

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[24] Emily Reinig and Barbara Talkov, *Public Secrets: Silent Suffering, The State of Our Most Vulnerable Children, A Statewide Report on How Budget Cuts are Hurting Children in Our Communities,* The Children's League of Massachusetts (April 2009).

In making the following recommendations, the OCA recognizes the need for fiscal restraint as well as the serious changes underway in the provision of mental health services to Medicaid-eligible youth.

Recommendations:

Seclusion and Restraints

The OCA strongly endorses ongoing efforts of EOHHS agencies and the interagency initiative for collaboration among state agencies and child-serving residential providers to reduce the use of seclusion and restraints and to create violence-free environments of care and learning. The OCA supports an integrated state reduction and prevention effort that would transcend agency boundaries, incorporate the principles of trauma-informed care, and adopt unified policy and practices with respect to the limited use of restraints and seclusion in child-serving programs in the Commonwealth.

Alternative Lock-up Programs

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, it is imperative that responsibility for ALPs not be transferred to DYS without a suitable, specific appropriation that would cover the cost of ALPs and help restore DYS' ability to provide services to its committed youth.

Permanency Planning for Youth Aging Out of Care

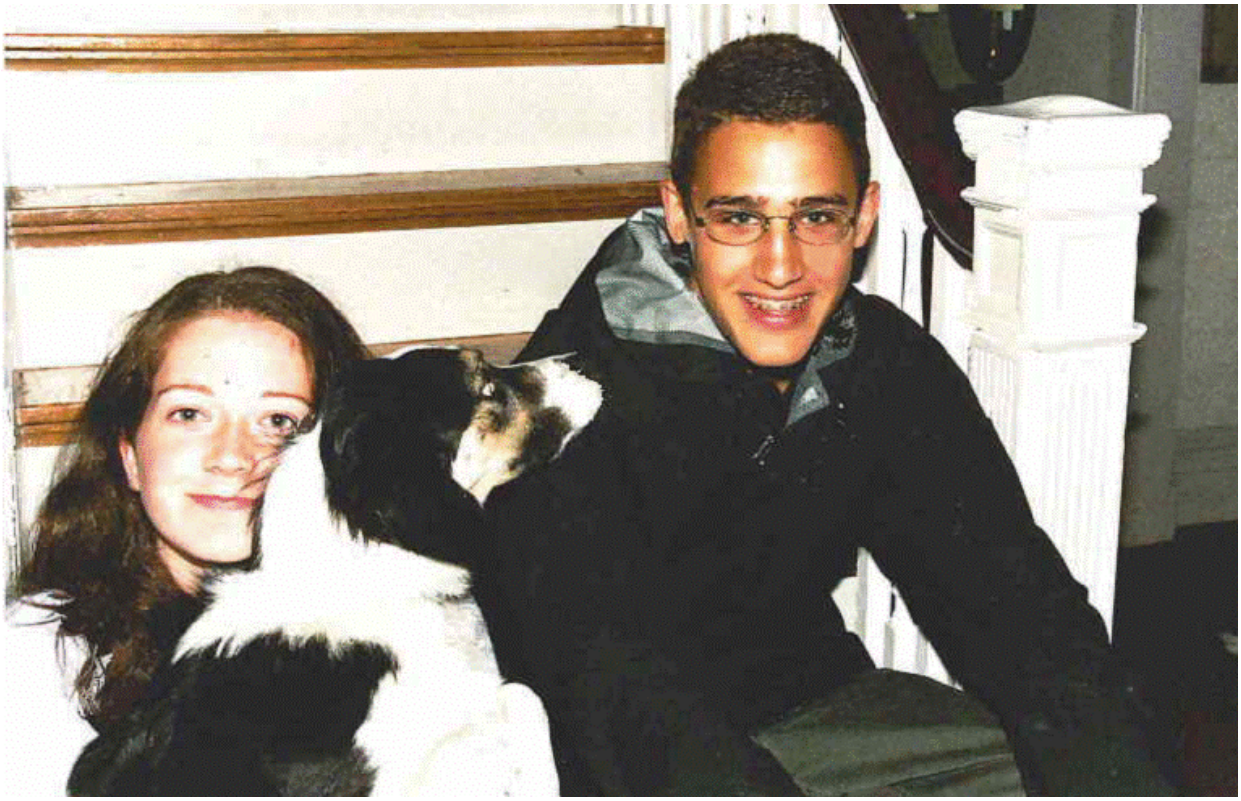
The policies and practices of the Commonwealth's agencies and staff involved with permanency planning for youth should be informed by the findings and recommendations in *Preparing Our Kids for Education, Work and Life: A Report of the Task Force on Youth Aging Out of DSS Care*. The findings of the Task Force are relevant not only for transition-aged youth, but also must inform practice regarding younger children. By prioritizing prevention and permanency for younger children, the dilemmas and difficulties of transitioning out of state care without a permanent family may be avoided.

Amendments to M.G.L. Chapter 18C

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

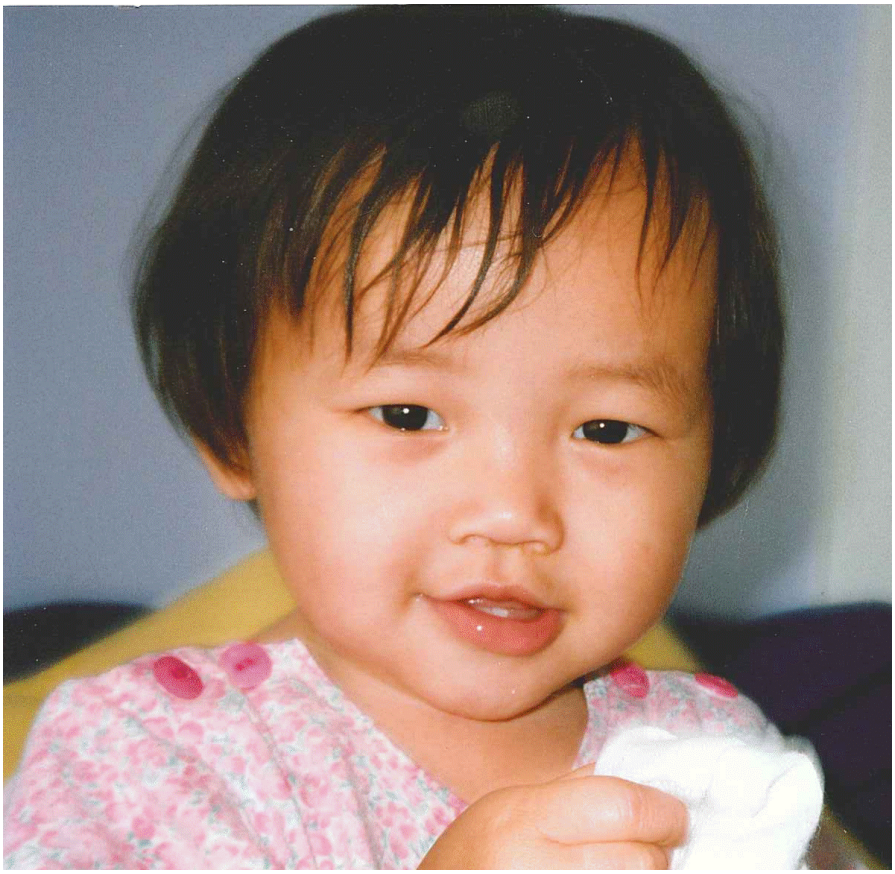
- The OCA suggests that Chapter 18C, Section 4, be amended to reflect the name change, effective June 30, 2009, of the Department of Mental Retardation to the Department of Developmental Services.
- In order to reflect the change in responsibility among the executive agencies concerning housing for low-income 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 con-

stituent 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.



Part III: Conclusion

In closing, staff of the Office of the Child Advocate would like to thank Governor Deval Patrick, Lt. Governor Timothy Murray, the Joint Committee on Children, Families and Persons with Disabilities, the members of the Legislature, and EOHHS leaders for their vision in creating the OCA. We also would like to recognize and thank the many dedicated and hard-working persons who have supported the OCA during its first year and who have devoted themselves to improving the health and welfare of children and families in the Commonwealth.



Appendix A: M.G.L. Chapter 18C

Office of the Child Advocate

Section 1. As used in this chapter, the following words shall have the following meanings, unless the context clearly requires otherwise:—

"Advisory board", the child advocate advisory board established by section 4.

"Child advocate", the child advocate appointed under section 3.

"Critical incident", (a) 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 1 of its constituent agencies; or (b) circumstances which result in a reasonable belief that the executive office of health and human services or 1 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.

"Department", the department of children and families.

"Executive agency", a state agency within the office of the governor that includes the executive office of education, the executive office of public safety and security, executive office of health and human services, the Massachusetts interagency council on homelessness and housing established by Executive Order No. 492 and the executive office of housing and economic development.

"Office", the office of the child advocate.

"Serious bodily injury", bodily injury which involves a substantial risk of death, extreme physical pain, protracted and obvious disfigurement or protracted loss or impairment of the function of a bodily member, organ or mental faculty.

Section 2. There shall be an office of the child advocate which shall be independent of any supervision or control by any executive agency. The office shall:

(a) ensure that children involved with an executive agency, in particular, children served by the child welfare or juvenile justice systems, receive timely, safe and effective services;

(b) ensure that children placed in the care of the commonwealth or treated under the supervision of an executive agency in any public or private facility shall receive humane and dignified treatment at all times, with full respect for the child's personal dignity, right to privacy, and right to a free and appropriate education in accordance with state and federal law;

(c) examine, on a system-wide basis, the care and services that executive agencies provide children; and

(d) advise the public and those at the highest levels of state government about how the commonwealth may improve its services to and for children and their families.

Section 3. The office shall be under the direction of the child advocate, who shall devote full time to the duties of this office. The child advocate shall serve at the pleasure of the governor and report directly to the governor. The child advocate may, subject to appropriation, appoint such other personnel as he deems necessary for the efficient management of the office. The governor shall appoint the child advocate to a term coterminous with that of the governor, except that the child advocate shall continue to serve following the end of a governor's term until a successor is appointed.

The governor shall appoint the child advocate from among 3 nominees submitted by a nominating committee to recommend a child advocate. The nominating committee shall consist of: the secretary of health and human services; the commissioner of children and families; the commissioner of youth services; commissioner of mental health; the executive director of the child abuse prevention board; a pediatrician experienced in treating child abuse designated by the Massachusetts chapter of the American Academy of Pediatrics; a child psychiatrist designated by the Massachusetts Psychiatric Society; a child psychologist designated by the Massachusetts Psychological Association; a repre-

sentative from the Massachusetts Association of Mental Health; a representative of an organization which advocates on behalf of children at risk of abuse designated by the Children's League of Massachusetts; a lawyer experienced in care and protection cases designated by the Massachusetts Bar Association; a social worker designated by the Massachusetts Chapter of the National Association of Social Workers; a person with experience in the juvenile justice system designated by the chief justice of the juvenile court department; and a representative of organized labor to be designated by the president of the collective bargaining unit that represents the social workers of the department. A vacancy occurring in the position of child advocate shall be filled in the same manner, except that if the child advocate ceases to serve for any reason, the governor shall appoint an acting child advocate who shall serve until the appointment of a successor.

Section 4. There shall be a 25-member child advocate advisory board. The advisory board shall consist of the child advocate, who shall serve as chair, the secretary of health and human services, the secretary of public safety and security, the secretary of education, the executive director of the criminal history systems board, the undersecretary of criminal justice from the executive office of public safety and security, the commissioner of early education and care, the commissioner of elementary and secondary education, the commissioner of mental health, the commissioner of mental retardation, the commissioner of public health, the commissioner of children and families, the commissioner of transitional assistance, the commissioner of youth services, the deputy commissioner of the child support enforcement division within the department of revenue, the president of the Massachusetts District Attorneys Association, the commissioner of probation, the chief counsel of the committee for public counsel services, the chief justice of the superior court department, the chief justice of the juvenile court department, the chief justice of the probate and family court department, the executive director of the child abuse prevention board, and 3 persons appointed by the governor.

Section 5. (a) An executive agency shall inform the child advocate when a critical incident has occurred. The child advocate may conduct an investigation of the critical incident or may review an executive agency's investigation of a critical incident. When the child advocate conducts his own investigation, he shall determine: (1) the factual circumstances surrounding the critical incident; (2) whether an agency's activities or services provided to a child and his family were adequate and appropriate and in accordance with agency polices and state and federal law; and (3) whether the agency's policies, regulations, training or delivery of services or state law can be improved.

(b) Before investigating any critical incident, the child advocate shall determine whether an executive or law enforcement agency is already conducting an investigation. If a law enforcement agency is conducting an investigation, the child advocate shall, when appropriate, defer to that agency or may conduct his own investigation. The child advocate shall coordinate efforts to minimize the impact on the child, family or employees of the agency involved, unless he determines such coordination would impede his investigation. If an executive agency is conducting an investigation, the child advocate may defer to that investigation or may conduct his own investigation. The child advocate may coordinate efforts to minimize the impact on the child, family or employees of the agency involved. In every instance, the child advocate shall notify the head of the relevant agency of his involvement before beginning any investigation.

(c) The child advocate shall receive complaints relative to the provision of services to children by an executive agency and shall review and monitor the complaints that reasonably cause him to believe that a child may be in need of assistance and to ensure that the complaint is resolved. If the complaint is not resolved by the relevant executive agency within a reasonable period of time in light of the circumstances, if the resolution is determined to be unsatisfactory to the child advocate, or if the complaint reasonably causes the child advocate to believe that a child may be in need of

immediate assistance, he may conduct an investigation of the complaint.
(d) The child advocate shall receive complaints from children in the care of the commonwealth and assist such children in resolving problems and concerns associated with their placement, plans for life-long adult connections and independent living, and decisions regarding custody of persons aged between 18 and 22, including ensuring that relevant executive agencies have been alerted to the complaint and facilitating intra-agency cooperation, if appropriate. For the purposes of this section, the office shall develop procedures to ensure appropriate responses to the concerns of youth in foster care 24 hours a day, 7 days a week.
(e) The child advocate shall periodically review, report and make recommendations, as appropriate, with respect to system-wide improvements that may increase the effectiveness of the care and services provided to children and their families and suggested legislative and regulatory changes including, but not limited to, a review of the programs and procedures established by the department to provide and administer a comprehensive child welfare program under section 2 of chapter 18B.
(f) At the request of the governor, the child advocate shall perform oversight functions to ensure that agencies serving children are fulfilling their obligations in the most effective and efficient manner.
(g) The child advocate shall undertake activities designed to educate the public regarding the services of the office and of the mission of the executive agencies in providing services to children and families.
(h) The child advocate shall be authorized to apply for, and accept on behalf of the commonwealth, federal, local or private grants, bequests, gifts or contributions for the purpose of carrying out the functions of the office.
Section 6. The child advocate or his designee shall have access at any and all reasonable times to any facility, residence, program, or portion thereof, that is operated, licensed or funded by an executive agency, and to all relevant records, reports, materials and employees in order to better understand the needs of children in the custody of the commonwealth or who are receiving services from an executive agency. The child advocate shall be bound by any limitations on the use or release of information imposed by law upon the party furnishing such information, except as provided in subsection (e) of section 12.
Section 7. The child advocate may request the attendance and testimony of witnesses and the production of documents, papers, books, records, reports, reviews, recommendations, correspondence, data and other evidence that the child advocate reasonably believes is relevant. If a request is denied, the child advocate shall have the power to issue a subpoena for witnesses and the production of documents and any other data and evidence that the child advocate reasonably believes is relevant.
If any person to whom a subpoena is issued fails to appear or, having appeared, refuses to give testimony or fails to produce the evidence required, the child advocate may apply to the Suffolk county superior court to issue an order to compel the testimony and production of documents of any such witnesses. A failure to obey the order may be punished as contempt.
The district attorney may seek injunctive relief in Suffolk county superior court to defer a subpoena issued by the child advocate.
Section 8. No discriminatory or retaliatory action shall be taken against any person who communicates with or provides information to the office. Any person who knowingly or willfully discriminates or retaliates against such a person shall be liable to such person for treble damages, costs and attorney's fees.
Section 9. The child advocate shall develop internal procedures appropriate for the effective performance of his duties.

The child advocate may, subject to chapter 30A, adopt, amend or repeal such rules and regulations as are deemed necessary to carry out the functions of the office.

Section 10. The child advocate shall report annually to the governor, the president of the senate, the speaker of the house, the senate and the house committees on ways and means, and the chairs of the joint committee on children, families and persons with disabilities on the activities of the office, including an analysis of activities undertaken to implement subsection (d) of section 5, recommendations for changes in agency procedures which would enable the commonwealth to better provide services to and for children and their families and priorities for implementation of those changes to services. The report shall be made public.

Section 11. (a) The child advocate, in consultation with the advisory board and the interagency child welfare task force established by section 215 of chapter 6, shall formulate a comprehensive plan, with periodic benchmarks and cost estimates, to recommend 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 5 years or more, shall be updated annually to plan for the ensuing 5-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.

(b) The child advocate may seek advice broadly from individuals with expertise in child welfare in formulating the plan and consult with, social workers of the department, pediatricians, child psychiatrists, early childhood education and adolescent behavior specialists, parents of children who have received services from the commonwealth, and persons who, as children, were clients of the department.

(c) The comprehensive plan shall be filed annually with the governor, the clerks of the senate and the house, the senate and house committees on ways and means, and the joint committee on children, families and persons with disabilities.

(d) The comprehensive plan shall examine the status of and address the following issues:—

(1) racial disproportionality and disparity of the department's client population, including the effectiveness of reforms designed to address overrepresentation of children of color within that population;

(2) the needs of families whose children are truant, runaways, or whose conduct interferes with their parent's ability to adequately care for and protect them. The plan shall propose a system of community-based programs to assist these children and families by providing services on a continuum of increasing intensity with the goal of keeping children out of the juvenile justice and child protection systems. The plan shall examine: (i) the existing complex system of services available from multiple public and private agencies; (ii) the differences in service delivery throughout the state; (iii) the need for immediate response to stabilize a family in crisis and to connect the family to services in their own community; and (iv) the collection and analysis of information needed to evaluate and identify gaps in service to such children and families throughout the commonwealth;

(3) mandated reporting, including: (i) the quality and quantity of training provided to mandated reporters; (ii) standards for training based on best practices for recognizing and reporting suspected child abuse and neglect; and (iii) the use of the following as forums for training mandated reporters: online programs, training offered by state agencies, and existing programs of professional training such as those required for initial licensure or certification and relicensure or recertification, continuing education programs or in-service training;

(4) screening of child abuse and neglect reports, including: (i) centralizing the reporting and screening processes; (ii) a single, 24-hour, toll-free telephone number for all oral reports, a single fax number or mailing address for all written reports and internet-based filing of reports; (iii) multiple

reports filed about a particular child or family; (iv) a determination of when and under what conditions reports may have been inappropriately screened out and the impact of those decisions; and (v) direct, electronic access to the National Crime Information Center for criminal history records and warrants;

(5) child protection teams, which are multidisciplinary teams that provide specialized medical examinations of children who present signs of abuse or neglect and that include pediatricians or pediatric nurses and psychologists or social workers who have been trained to recognize child abuse and neglect, including statewide expansion to regional hospitals, all hospitals with emergency rooms and all pediatric care hospitals;

(6) the shortage of experts in the commonwealth who specialize in the prevention, diagnosis and treatment of abused or neglected children, with recommendations to train pediatricians and pediatric nurse practitioners to become clinical experts who are knowledgeable and competent in all areas of child abuse and neglect, including: the identification, assessment, and treatment of physical abuse, sexual abuse, neglect, emotional abuse and neglect and factitious illness by proxy; multidisciplinary training with law enforcement, state and local agencies and child advocacy centers; collection of forensic evidence; court testimony; research; and child advocacy;

(7) family engagement model or other nationally recognized models to strengthen child welfare practice, including: (i) the evaluation of the model and its use of differential response and risk assessment tools to determine how effectively findings of abuse or neglect are made; (ii) the cost to implement the model state-wide; (iii) the combination of departmental functions such that an individual social worker investigates, assesses and provides ongoing case management, particularly as that combination impacts incidents requiring specialized investigatory skills; (iv) delays in the fair hearing process; and (v) time limits allowed for screenings, investigations and assessments;

(8) social worker caseloads and teaming, including: (i) the effects of teaming on caseloads and of caseloads on teaming; (ii) the cost of state-wide adoption of various standard caseload ratios; (iii) a potential multi-year plan to reduce caseloads; and (iv) duties handled by social workers that may be more affordably and efficiently handled by other staff;

(9) law enforcement involvement, including: (i) how effectively the department and law enforcement collaborate and whether there is room for improvement or coordination of resources; (ii) protocols for mandatory reporting of certain abuse or neglect to local law enforcement and district attorneys and (iii) potential alignment with efforts to prevent or prosecute domestic violence and with the procedures used in the investigation of sexual abuse, such as the sexual abuse intervention network and the sexual assault nurse examiners program;

(10) schools of social work, including: (i) how effectively social work and related degree programs teach child welfare practice; (ii) greater cooperation between the department and higher education to study child welfare issues; (iii) the capacity of public and private schools to meet increased demand for social work and related degrees, including concentrations in child welfare; and (iv) a timeline for inclusion of child welfare concentrations in bachelor's and master's degree programs at public institutions of higher education;

(11) social worker qualifications, including the infrastructure needed to support a more qualified workforce, such as full implementation of proposed programs at the child welfare institute and the transferability of certificate coursework to degree-granting programs;

(12) confidentiality, including research of legal and ethical considerations to be addressed if information relative to cases of child abuse and neglect is shared between the office and other executive agencies;

(13) health service needs of the department's client population and health consultation needs of the department, including: (i) the need for physical and behavioral health services and consultation,

including those related to mental health and substance abuse treatment; (ii) coordination and consultation among executive agencies; (iii) proposed best-practice models for more effective client behavioral health services; and (iv) oversight and peer review of the safety and effectiveness of the use of psychotropic drugs by children involved with executive agencies;
(14) critiques of the department, including: (i) potential alignment of a internal or external audit unit with the department's continuous quality improvement and quality service review initiatives; and (ii) dissemination of the findings of these critiques to policy makers within and outside of the department;
(15) criminal offender record information reviews, including: (i) the use of these reviews in out-of-home, kinship and foster placements and (ii) areas for improved efficiency and equality;
(16) permanency planning for those who, due to their age, are transitioning out of the child welfare system to assist with health care, housing, higher education, long-term interpersonal connections and other needs for independent living;
(17) examine the frequency of transitions in the treatment plans and living placements of foster children;
(18) provide an analysis of the administrative and cost requirements and recommendations to create a personal needs and individual development account for each child in foster care over the age of 14;
(19) review the process of adopting children in foster care and recommend streamlined procedures to reduce the time required to complete the adoption process;
(20) the impact on child welfare efforts of the early and periodic screening, diagnostic and treatment services provision and reasonable promptness provision of the federal Medicaid law, 42 U.S.C. 1396a(a)(10)(A),-(a)(43), 1396d(r)(5),-(a)(4)(B), and 1396a(a)(8)(2005), respectively;
(21) oversight provided by MassHealth and its contractors of medical and behavioral health expenditures made on behalf of the department's client population;
(22) federal funding available for child welfare purposes and factors affecting that funding, including: (i) the Title IV-E saturation rate for foster children, (ii) the determination of AFDC status for the non-TANF population, and (iii) expedited judicial determinations made within the required time frames;
(23) an estimate of the expenditure necessary to implement an annual adjustment to the daily rate for maintenance payments to foster care, adoptive and guardianship families, to provide care so as to meet the rate recommended periodically by the United States Department of Agriculture; and
(24) the effectiveness of the state's child abuse laws as they relate to defining, prohibiting, preventing and reporting cases of emotional abuse of children, including recommendations to increase public and professional education and awareness of the symptoms and impact of emotional abuse.
Section 12. The following provisions apply to information and records obtained, reviewed or maintained by the child advocate:
(a) Notwithstanding chapter 66A, section 70 of chapter 111, section 11 of chapter 111B, section 18 of chapter 111E, sections 51E and 51F of chapter 119, chapter 112, chapter 123, or sections 20B, 20J, or 20K of chapter 233 to the contrary, the disclosure of information to the office of the child advocate pursuant to this chapter shall not be prohibited. Any information considered to be confidential under the aforementioned sections shall be submitted for the child advocate's review upon the determination of the child advocate that the review of said information is necessary. The child advocate shall ensure that no information submitted for his review is disseminated to parties outside the office. Under no circumstances shall the child advocate or any employee of the office violate the confidentiality provisions set forth in the aforementioned statutes, except as authorized under subsection (e).

(b) Any and all information and records acquired by the child advocate in the exercise of the office's purpose and duties under this chapter shall be confidential and exempt from disclosure under chapter 66 and clause Twenty-sixth of section 7 of chapter 4.
(c) Information, documents and records of the child advocate and his office shall not be subject to subpoena, discovery or introduction into evidence in any civil or criminal proceeding; provided, however, that information, documents and records otherwise available from any other source shall not be immune from subpoena, discovery or introduction into evidence through these sources solely because they were presented during the child advocate's investigation or maintained by the office of the child advocate.
(d) Statistical compilations of data which do not contain any information that would permit the identification of any person may be disclosed to the public.
(e) The restrictions of this section shall not preclude the child advocate from sharing with the governor, the attorney general, a district attorney, a secretary, an agency commissioner or other agency personnel, or the chairs of the joint committee on children, families and persons with disabilities, the report of, or the results of, a critical incident investigation involving that agency. Any executive or legislative branch employees who receive or read such a document shall be bound by the confidentiality requirements of this section.
Section 13. No person employed by or contracted by or volunteering for the office shall be subject to suit directly, derivatively or by way of contribution or indemnification for any civil damages under the laws of the commonwealth resulting from any act or omission performed during or in connection with the discharge of his duties within the scope of his employment or appointment, unless such act or failure to act was committed with gross negligence, maliciously, or in bad faith.

Appendix B: Complete List of Child Advocate Advisory Board Members

***Ex-officio* members:**

Gail Garinger, Chair
The Child Advocate
Office of the Child Advocate

Dr. JudyAnn Bigby
Secretary
Executive Office of Health and Human Services

Kevin M. Burke
Secretary
Executive Office of Public Safety and Security

Paul Reville
Secretary
Executive Office of Education

Curtis M. Wood
Executive Director
Criminal History Systems Board

Mary Elizabeth Heffernan
Undersecretary of Criminal Justice
Executive Office of Public Safety and Security

Sherri Killins
Commissioner
Department of Early Education and Care

Mitchell D. Chester
Commissioner
Department of Elementary and Secondary Education

Barbara Leadholm
Commissioner
Department of Mental Health

Elin M. Howe
Commissioner
Department of Developmental Services

John Auerbach
Commissioner
Department of Public Health

Angelo McClain
Commissioner
Department of Children and Families

Julia Kehoe
Commissioner
Department of Transitional Assistance

Jane Tewksbury
Commissioner
Department of Youth Services

Laurie McGrath
Deputy Commissioner
Child Support Enforcement Division
Department of Revenue

David F. Capeless
President
Massachusetts District Attorneys Association

John J. O'Brien
Commissioner
Department of Probation

William J. Leahy
Chief Counsel
Committee for Public Counsel Services

Hon. Barbara J. Rouse
Chief Justice
Superior Court

Hon. Michael F. Edgerton
Chief Justice
Juvenile Court

Hon. Paula M. Carey
Chief Justice
Probate and Family Court

Suzin Bartley
Executive Director
Children's Trust Fund

Gubernatorial appointees, selected to represent non-governmental interests:

Barbara Kaban
Deputy Director/Director of Research & Policy
Children's Law Center of Massachusetts

Anthony Barrows
Project Manager
Judge Baker Children's Center

Valdace Levarity
Teacher
Quincy Public Schools

Appendix C: Excerpts from the Public Summary of the OCA Report to the Governor on the Deaths of Acia and Sophia Reisopoulos-Johnson

In the report, Child Advocate Garinger identified two main areas of concern about DCF's work with the family, and a third concern involving fire safety.

Concern: A failure to "connect the dots" on the part of DCF personnel – a lack of recognition of the depth of the family dysfunction over time, and the corresponding risk to the children.

Recommendations:

- Improve documentation, using problem list documentation combined with improved closing summaries.
- Strengthen information sharing between law enforcement and DCF and enhance DCF supervisors' understanding of Criminal Offender Record Information (CORI) so that CORIs and police reports better inform DCF decisions.
- Strengthen training of social workers regarding risks to children from parents' substance abuse, domestic violence, criminal activity and mental health issues.
- Adhere to policy: reinforce review of records and contact of collaterals during assessment.
- Reinstate arrangement for proactive use of drug testing of persons with substance abuse histories.
- Improve methods for assessing and measuring safety and risk.
- Examine data sharing with other agencies such as DTA.

Concern: Lack of clarity regarding guardianship responsibilities in protective cases.

Recommendations:

- Train prospective kinship guardians to navigate new relationships and set boundaries with parents of children under guardianship.
- Provide guardians with additional resources and support.
- Require that DCF stipulate to the terms of the guardianship and request that the stipulation be entered as an order of the court, and that a copy of the stipulation be placed in the portion of the DCF case file accessible to social workers for future reference.
- Recommend that juvenile court judges conduct colloquies with prospective guardians, require notarized signatures on guardianship petitions, and enter stipulations regarding terms of guardianships as orders of the court.

Concern: Fire safety in residential homes.

Recommendations:

- Train social workers to look for operational smoke detectors in homes, particularly where there are existing concerns about child safety.
- Heighten public awareness of the risk of residential fire deaths, particularly for children in homes with domestic violence.

The report concluded that the arsonist bears primary responsibility for the deaths of Acia and Sophia. By leading lives involved with crime, drugs, and violence, the parents exposed their children to the violence of other people with similar behaviors. These events demonstrate the terrible

toll that parental substance abuse, criminal behavior, and domestic violence take on the lives of children.

However, the report pointed out that DCF also missed opportunities to recognize the dangers to Acia and Sophia and to intervene. The documentation and assessment practices within DCF made it difficult for agency personnel to create an accurate longitudinal picture of this family and to use this information to identify the level of risk for the children. The recommendations in this report reflect needed changes related to information sharing, documentation, and training within DCF.

Additional recommendations in the report pertained to the creation of guardianships in the juvenile court and fire safety in the home, both areas in which the OCA will provide direction and leadership. The OCA has been working with DCF to implement the recommendations in the report.

Appendix D: Juvenile Justice Advisory Committee Fact Sheet on Alternative Lock-up Programs

The Commonwealth of Massachusetts Juvenile Justice Advisory Committee

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Boston, Massachusetts 02116
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Deval Patrick
Governor

Tim Murray
Lieutenant Governor

Robert Gittens
Chair

Cecely Reardon
Vice Chair

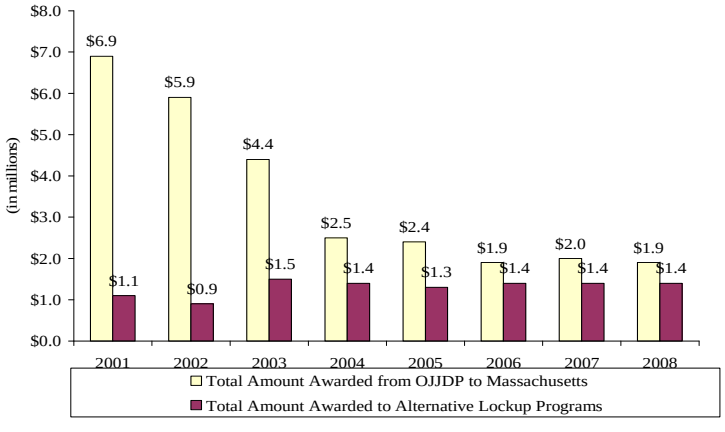
Overview of Secure ALPs:

Secure Alternative Lock-up Programs (ALPs) were created by the Governor's Juvenile Justice Advisory Committee (JJAC) and the Executive Office of Public Safety and Security (EOPSS) to hold juveniles after arrest when court is not in session. These facilities are required to comply with one of the core requirements of the federal Juvenile Justice and Delinquency Prevention Act (JJDPA), which mandates that juveniles not be confined in a police lock-up for more than 6 hours. For approximately 15 years, JJAC has funded these regional facilities through federal allocation to EOPSS, while the City of Boston maintained its own facility. As of July 1, 2008, Boston closed its facility. Now, all regions of the Commonwealth rely on federally funded ALPs.

THE PROBLEM:

The current method of funding ALPs is **unsustainable, inappropriate**, and **risks the loss of important federal dollars** for juvenile justice prevention and intervention activities.

- If current federal funding trends continue, *the JJAC will soon be unable to fund ALPs*. Federal funding for juvenile justice has decreased dramatically in recent years, with Massachusetts' share falling from $6.9 million in 2001 to $2 million in 2007. During this time period, the cost of contracting for ALP services has risen. While ALPs took up approximately 16% of Massachusetts' OJJDP funding at the beginning of the decade, they now account for over 70% of this funding.[i]



[ii]

- Current funding does not support a facility in Suffolk County, the largest population area in the Commonwealth. As a temporary solution, Boston has been sending youth to other ALP facilities (mostly in

Worcester and Bristol Counties), but this is not sustainable in the long-term. *Boston youth are being transported far from their families and communities, bail procedures have become more difficult for some youth, and the resources of the other ALP programs are being stretched thin*. Massachusetts must assume responsibility for funding all ALPs, including a facility to serve the Boston area.

- In order to remain in compliance with the JJDPA's Jail Removal requirement, there must be alternative placements for youth who cannot be brought to court within 6 hours of their arrest. *Failure to comply with this core requirement will result in a loss of significant funds for juvenile justice in Massachusetts.*

- *Funding of ALPs has significantly diverted money and attention from prevention and other programs that the JJAC could be supporting.* It has been more than a year since the JJAC was able to fund any innovative and evidence-based programs aimed at juvenile crime prevention or intervention with federal funds. Furthermore, the time and energy spent on ALPs has diminished the JJAC's ability to work on the other core requirements of the federal Act.

- *The JJAC does not have the resources, expertise or oversight capacity to appropriately and safely design and monitor residential programs for children and youth*. Unlike other secure residential facilities overseen by the Department of Youth Services (DYS), two of the biggest ALPs have not been licensed by the Department of Early Education and Care as temporary shelter facilities for children as all DYS programs are.

THE SOLUTION:

The Commonwealth must immediately provide funding of $2.9 million for secure ALPs and designate the DYS to oversee the ALPs.

- By funding ALPs, the Commonwealth will
    - provide long-term, sustainable funding that is responsive to local needs; and
    - keep Massachusetts in compliance with the federal requirements and avoid the loss of federal funding.

- State funding of ALPs will enable the JJAC to allocate its resources to other projects and fund a variety of important juvenile delinquency prevention and intervention services and programs throughout Massachusetts, which is especially important during these difficult economic times.

- State funding of the secure ALPs will put them on the same footing as the non-secure Alternative Lock-Up Programs, which have been funded by the Commonwealth (and overseen by the Department of Children and Families) for many years.

- DYS, the agency with the expertise to design and oversee secure residential programs for youth accused of delinquency offenses, will provide greater consistency among the programs, ensure the safety of the youth and guarantee that the programs all meet the DEEC licensing requirements as temporary shelters for children.