

*Office of the Child Advocate*

*2005 Annual Report*



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# INTRODUCTION

In accordance with the statutory duties of the Office of the Child Advocate (hereinafter "OCA"), I respectfully submit this annual report covering the previous year of the OCA's operation. This has been a challenging year for the OCA. Although a Child Advocate was nominated in January of 2005, confirmation did not occur until six months later in June 2005.

The vicious murder of a three-year-old child allegedly by his unlicensed kinship foster care providers was the most dominant and important event on the OCA's agenda. A preliminary investigation revealed questionable judgments by the Department of Children, Youth and Families (hereinafter "DCYF") regarding the appropriateness of this placement and the assessment, monitoring, and services provided to kinship homes, in general. On the anniversary of the child's death, under the direction of the new Child Advocate, a report was released that established major issues existed within the Licensing Department and poor judgment on the part of the social case workers who were involved with the child and his family. Based upon the findings of the panel, the panel was able to identify larger system's issues within the Licensing Department which impacted the care of this child; accordingly another investigation is planned in order to fully identify the problem areas and to make recommendations for improvements and change.

The OCA monitors the care of children placed in residential facilities by DCYF. In addition to reviewing the continuum of care available to youth in DCYF care, site visits are made periodically to more than 120 facilities around the state. Most residential care slots are devoted to the care of adolescents. During the site visits, the Senior Monitoring Officer review the quality of the care provided to the youth as well as the physical premises where they are lodged. At each site, residents are interviewed to gain an appreciation of the quality of life from their perspective. After the site visit, the Senior Monitoring Officer prepares a report reviewing her findings and making suggestions for improvements, if appropriate. On occasion, a complaint is received by this Office alleging improprieties in the care of residents in a child care facility. Office staff collaborates with DCYF program monitors and/or CANTS inspectors to investigate the allegations and develop corrective plans, if necessary

Project Victim Services completed its thirteenth full year of operation. With a Federal Victims of Crime Act (VOCA) grant, renewed and funded in October of 2004 by the Rhode Island Justice Commission, the OCA files victims' compensation claims on behalf of children in State care and assists children who are involved simultaneously in child welfare, law enforcement and court systems. The OCA has successfully obtained awards totaling over three million dollars for 172 claimants.

During the 2005 legislative session, the OCA focused on legislation that will continue the OCA's mission to make our laws more attuned to the rights of the adopted

child. During the legislative session, the OCA tracked bills that sought to amend or establish laws related to children.

Office staff has participated in numerous policy meetings and task forces that solicit the input of the community on regulations and implementation strategies. Most notably, the OCA contributed to task forces targeting the revision of DCYF Adoption Policy regulations, and the Ideal System of Care. Of particular interest to this Office are variances from restraint and crisis intervention regulations and the standards utilized to assess these requests.

As I submit this Annual Report for 2005, I acknowledge the continued, valued support of the staff members of the OCA and the community. Without the advice and assistance of the physicians, social service professionals, attorneys, students, child care providers, law enforcement professionals, local college and university faculty and community volunteers who have donated their time and expertise, this Office simply could not meet its statutory obligations.

*Jametta O. Abston*  
Child Advocate

# MISSION STATEMENT

The Child Advocate's Office is established by statute to protect the civil, legal and special rights of all children involved with the Department of Children, Youth and Families. Yet, in addition to the legal responsibilities, moral and ethical obligations rest within the OCA. We are called upon to advocate for children and to help the State of Rhode Island recognize that the children in DCYF care belong to us all.

The chief purpose of this Office is to monitor DCYF and its operations. Children are placed with DCYF for a variety of reasons, but most often because their parents are unable or unwilling to care for them. Many are victims of abuse and neglect. It is the OCA's mission to ensure that DCYF offers the children adequate protection and quality services, while according the children respect for their individual rights and dignity.

The OCA discharges the state's institutional abuse investigation obligations under the federal Child Abuse Prevention and Treatment Act by reviewing allegations of abuse of children in substitute residential care and day care and taking appropriate action where necessary. Additionally, the OCA responds to the complaints of children and families seeking assistance from DCYF even when the children are not in DCYF's care. Each year the OCA responds to 500- 800 questions and complaints from children, professionals, parents and private citizens.

In order to protect the rights of children involved with DCYF, the OCA also works with service providers outside DCYF such as local and state education agencies. The OCA is statutorily empowered to take legal action to attack deficiencies and discrimination experienced by children in DCYF care accessing services from any source, public or private.

The statutory powers of the OCA are contained in Rhode Island General Laws §§42-73-7 and 40-11-1 et seq. The most prominent powers are:

- (1) Insure that each child in protective care, custody or in treatment; and in proper cases, others interested in the child's welfare are apprised of the child's rights;
- (2) Review periodically the procedures established by DCYF;
- (3) Review complaints of persons and investigate those where it

appears that a child may be in need of assistance from the Child Advocate;

(4) Periodically review the facilities and procedures of any and all institutions and/or residences, public and private, where a juvenile has been placed by the Family Court or DCYF;

(5) Recommend changes in the procedures for dealing with juvenile problems and in the systems for providing childcare and treatment;

(6) Take all possible action including, but not limited to, programs of public education, legislative advocacy and formal legal action, to secure and ensure the legal, civil and special rights of children involved with DCYF;

(7) Review orders of the Family Court relating to juveniles with power to request reviews as required by the best interests of the child;

(8) Investigate institutional abuse complaints;

(9) Investigate, in accordance with the established Rules and Regulations adopted by the Child Advocate, the circumstances relating to the death of any child who has received services from DCYF; and

(10) Commence in the Superior Court a civil action on behalf of child victims of crime in the care of DCYF, in accordance with Chapter 12-25 entitled "Criminal Injuries Compensation" of the General Laws, against the state for compensation.

# OFFICE ACTIVITIES DURING 2005

## **A. Fatality Reviews and Investigations**

In accordance with the state statute, the OCA conducts reviews and investigates the circumstances surrounding the death of any child who dies while in the custody of DCYF, or who has had, personally, or through his or her family, recent involvement with the Department. In its preliminary stage, this review consists of the gathering of all available information regarding the deceased child and his or her family. This information includes autopsy reports, police and fire reports, court documents, DCYF files, medical records, and other social service agency records. If, after review of this material, the OCA determines that the fatality cannot be linked to some action or omission on the Department's part and that further investigation would not lead to constructive recommendations for improving the department's delivery of services, the OCA concludes its investigation at that point.

The most recent child fatality review was initiated July 1, 2005 and completed on the anniversary of the child's death, October 31, 2005. Based upon exhaustive review of the documents and eight (8) interviews with both direct line staff and administrators, it was apparent that several opportunities and factors existed in which a decision should have been made to remove the child from the kinship foster home. The report recommended fifteen policy changes for DCYF. The recommendations involved: seven (7) areas that required policy changes; five (5) areas of accountability that needed to be addressed; two (2) areas of staff development that needed to be implemented and a commitment to staff evaluations. Each of the recommendations had timetables for the implementation of the recommendations. To insure a strong working relationship with DCYF and to assist with the compliance of the recommendations, both the Director of DCFY and I meet once a month.

The OCA also participates in the Statewide Child Death Review Team, co-chaired by the Medical Examiner and the Director of the Child Protection Team at Hasbro Hospital. This team meets quarterly to review all child deaths occurring in R. I. to identify special trends, hazards and patterns in child mortality that might be addressed through community services, outreach, education, information or legislation.

## **B. Institutional Abuse Reviews and Investigations**

Pursuant to statute, the OCA receives and reviews all allegations of abuse or neglect of children in out-of-home residential or day care homes. In 2005, DCYF forwarded to the OCA 370 complaints, involving children allegedly subjected to institutional abuse. Office staff reviewed all reports and assessed DCYF's response to the allegations, conducting follow-up investigations as appropriate and necessary to the case allegation. The OCA took some follow-up action in 85 investigations forwarded to this Office for review. The results of institutional abuse investigations were as follows: 72 were "indicated" as abuse or neglect likely occurring; 228 were unfounded; 47 were registered as early warnings; 7 are pending; 10 are cloaked and 8 are unable to complete. The statistics reveal that DCYF conducted fewer institutional abuse/neglect investigations in 2005, although the same percentage was indicated.

The OCA reviewed 118 foster home and 80-day care investigations. The number of CANTS investigations of residential facilities in 2005 has dropped dramatically to 124 investigations from 2000, when DCYF undertook 203 such investigations. The OCA also reviewed 8 DCYF CANTS investigations at psychiatric hospitals. There was an alarming increase in investigations at the training school - 44, more than double the number conducted in 2001.

Ready access to DCYF's RICHIST computer system allows Office staff the capacity to review CANTS investigations from their inception to completion. This access not only allows a quicker response and follow-up by staff but also reduces the number of investigations carried as "pending" due to lack of information. CANTS institutional abuse investigations are e-mailed to the Chief Field Investigator who can do an immediate review and track patterns. This easy recording capacity has permitted the OCA to identify more issues arising in foster homes and isolate those foster homes where patterns and/or multiple complaints suggested problems not apparent in a single investigation.

Investigations often produced formal licensing actions in foster care settings and day care settings, and remedial actions for group residential settings. Some informal remedial action resulted from virtually every indicated case and often from cases, though "unfounded," where program weaknesses were revealed during the course of the investigation. The OCA initiated special actions with regard to 2 daycare centers, 21 foster homes and 62 investigations of residential facilities. The OCA also reviews complaints related to childcare, both in terms of institutional abuse and operation without or in violation of a license.

After reviewing the completed CANTS investigative reports of institutional abuse, which include conclusions and recommendations, the OCA concurred with the

department's stance in a high percentage of cases. When there were disagreements, negotiations normally resulted in the adoption of specific action recommended by the OCA of the Child Advocate. When the need arose, CASA was notified immediately of concerns about placements. Periodically, this Office forwards reports to the Court Appointed Special Advocate's Office (CASA) regarding indicated institutional abuse cases involving children represented by CASA.

### **C. Complaints and Inquiries**

In 2005, OCA may have received approximately 865 formal inquiries and requests for assistance. The OCA received calls from parents, professionals representing medical, social service, educational and other profession, relatives and foster parents of children, children in DCYF care and calls from the general public.

The nature of inquiry calls demonstrates the important role played by the Child Advocate's Office as a clearinghouse for information on legal issues related to children. Calls to the OCA can be as simple as a request for the phone number of the child support enforcement agency or as complicated as a report from another professional that a child's mother has died and Legal Guardianship remains unsettled. Every staff member is trained to handle and/or refer the matters that arrive into the OCA.

### **D. Voluntary Placements**

The voluntary placement statute enables parents, under certain circumstances, to place children in the care of DCYF without surrendering custody. During 2005, as a result of state and federal permanency planning laws, the OCA has been involved in ongoing case planning for 58 children in voluntary placement, an increase of over 50% since 2001.

The OCA undertakes legal representation of only those children whose voluntary placement exceeds six months. After 120 days, DCYF is required to file a Miscellaneous Petition for review of the child's placement and permanency plan by the Family Court within 60 days after the petition is filed. A Staff Attorney appears on behalf of the children in court hearings involving these voluntaries and monitors the department's compliance with other laws requiring court reviews, case planning and permanency hearings for these children.

In 2005, the OCA attended over 120 court reviews on children in voluntary placement with the department. This is more than a 40% increase in court appearances for the OCA. Prior to the court hearing, professional staff at the OCA interviews the child, reviews the case plan and discusses permanency plans with DCYF social workers, therapists and the parents. The OCA monitors the child's progress in placement, attends treatment team and discharge planning meetings and makes recommendations to the court as to the child's best interests.



In some cases, the OCA makes a recommendation to DCYF and/or the Family Court that a formal dependency petition be filed. In 2005, DCYF filed dependency petitions in eight cases where the OCA represented the child in Family Court. Most of these cases involved severely disabled youth that will be transitioned into the adult care system when they reach their 21<sup>st</sup> birthday.

#### **E. Facilities Review**

Since 1989, the OCA has conducted a review of residential child-placement facilities contracting with DCYF in accordance with its statutory duties. From time to time, over the years, the OCA has revised its protocol and site-review checklists as the number, diversity and range of child placement facilities grew from fifty in 1989 to one hundred twenty in 2005.

Site visits continued in 2005 to most of the 120 facilities operated by twenty-three agencies. Site visits are made both to the community-based programs contracted by DCYF and the Purchase of Service programs in Rhode Island where DCYF places children. Children's rights brochures prepared by the OCA, both in English and Spanish, are distributed to youth at the site visits to encourage and facilitate their contact with the OCA. In addition, OCA displays and distributes brochures from the many community program providers for our visitors in order to inform them of the services available for children.

We have received complaints regarding daycare facilities, group homes and institutions that have required visits to determine whether regulations were being violated. In response to a complaint received about a daycare, OCA reviewed the facility and found minor violations. We were able to determine that the conflict revolved around the interpretation of DCYF's regulations. Thus, OCA was able to mediate among the parties and resolve the issues.

The OCA is represented on the DCYF committee that is revising the Child Care Regulations. Of major interest to the OCA are provisions that support and insure the rights of children placed in these facilities. Among the issues emphasized by the OCA are: limitations on searches of residents; recognition of private property rights of residents; the right of residents to send and receive mail; training, re-training and certification of child care staff; quality of care and comfort in the physical plant; attaching responsibility for insuring that the education, health and religion of the residents is addressed and development of appropriate programming/activities for residents while they are at the facility. Final approval has yet to be achieved.

In addition to the formal reviews discussed above, Office staff made on-site facility reviews, as warranted, in response to a specific allegation of institutional abuse, a request for assistance from the Family Court. The OCA addressed the complaint by visiting the institution in Connecticut and has completed two additional site visits to oversee the implementation of the recommendations

With the hiring of the Chief Investigation Officer, we plan to increase the OCA's presence at the Training School. We have arranged to have an office at the Training School and plan to keep constant surveillance on the programmatic and physical plant issues that often arise there. Post-Secondary education, overcrowding and gender specific programming are among our most persistent concerns. With the newly appointed the Federal Master, we will continue to review *Unusual Incident Reports* in order to make recommendations for training of juvenile program workers in departmental restraint policies. We will further monitor the situation involving overcrowding and to insure that the children at the Training School have appropriate sleeping quarters.

## **F. Public Education**

The OCA prepared and disseminated in book form its Laws Affecting Children, covering the legislation enacted during 2005. Released as a public document, it summarizes all legislation that impacts directly upon children in Rhode Island whether or not in the care of DCYF.

The OCA publishes and distributes copies of an informational brochure and poster outlining the statutory "Children's Bill of Rights" to interested individuals and to all licensed residential child care providers. A brochure, written in both Spanish and English, is distributed to residents on site visits by OCA staff. It describes their rights in plain and simple language and offers referral sources particularly appropriate to children in the care of the state. The OCA has provided technical assistance to R.I. KIDS COUNT in the development of its 2005 Rhode Island KIDS COUNT *Factbook*.

On numerous occasions, the Child Advocate and staff have participated in or planned training workshops and seminars on child abuse reporting laws, child fatality reviews, institutional abuse prevention, new legislative initiatives in adoption and permanency planning and on children's rights.

In 2005, the Child Advocate served as guest speaker in numerous forums, including:

- American Academy of Pediatrics
- Woonsocket Rotary Club
- Institute of Child Poverty
- St. Mary's

The OCA has responded to several hundred individual inquiries from callers and the media seeking information relating to the rights of children. Finally, the OCA promotes public awareness of children's issues by releasing reports as public documents generally available to the citizens of the state, and by writing articles for professional journals and opinion editorials for the *Providence Journal*.

## **G. Children's Policy Development**

In addition to its continuing advocacy for more comprehensive and creative solutions to the night-to-night placement problem and the physical and programmatic issues at the Training School, the OCA supports efforts to develop a system of care that accommodates the needs of children placed in DCYF custody both in residential facilities and in the community.

The OCA plays an integral role in numerous policy initiatives involving children's issues. The OCA has members on the following Boards:

- Board of the Rhode Island Children's Policy Coalition
- Kent County Hospital
- Permanent Legislative Commission on Child Care
- DHS Advisory Committee on Child Care
- The Children's Justice Task Force
- Special Needs Adoption Committee
- DCYF Adoption Policy Task Force
- Rhode Island Justice Commission: Juvenile Justice Advisory Committee
- DCYF Child Care Regulations Committee
- DCYF Restraint Regulations Committee
- Rhode Island Statewide Child Death Review Committee
- Children's Mental Health Advisory Committee and Evaluation Task Force

## **H. Legislative Advocacy**

During the 2005 legislative session, the OCA did not testified in support of bills, yet did provide letters of support for different bills that would offer further protection to children and families. As always, the DCYF budget and the allocation of resources by DCYF was the most pressing legislative concern of the OCA. In testimony on the 2005 supplemental budget and the FY 2004 budget, the OCA made a specific plea to the legislature to fund family treatment, wraparound services, aftercare, outreach and tracking, crisis intervention and other community based initiatives to pave the way for adolescents to return from out of state placement, to ultimately return home, and to avoid their placement in state care in the first place. Targeted funds for step down beds to reduce the number of adolescents in psychiatric hospitals were requested as well as a specific appropriation for a diagnostic assessment center/capacity for adolescents upon their first entry into state care. In addition to the testimony on DCYF's budget, the OCA lobbied extensively and served as a consultant to legislators, policy makers and citizens concerned about children's issues.

## **I. Other Investigations**

Investigations are prompted by complaints to the OCA from parents, providers, school personnel and other professionals. These complaints include questions about the treatment of residents at the Training School and residential facilities, alleged violations of the Children's Bill of Rights, concerns about the advisability of returning children home after incidents of documented abuse/neglect by their parents and decisions made by CANTS in response to citizen complaints.

## **K. Litigation**

Over the years, the OCA of the Child Advocate has initiated and/or joined another party in litigation in the Family Court, the Federal Court and the Rhode Island Supreme Court to promote the interests of children.

### **i. Night-to-Night Placement**

In January and February 2005, we did not have any incidences of night-to night placement. March and April 2005 only one incident occurred a month. From May to December the numbers started to creep up until we reached 15 night-to-night placements in November 2005 and 21 placements in December 2005. Unfortunately, the placements lasted two nights. It is not clear why placement is a problem. It cannot be pinpointed as to whether the Licensing Department is unable to complete the regulatory process of licensing in a timely manner or whether there are not enough foster homes. With the ongoing investigation into the Licensing Department, we hope to have a better idea of where the precise issues lie and how to resolve them to eliminate the problems of Night-to-Night Placement.

### **ii. The Training School**

In 2001 an Amended Consent Decree updated the earlier Consent Decree and requires that DCYF take all steps necessary to bring the facility up to certification standards of the American Correctional Institute. Although it was agreed that compliance would require construction of a new facility designed to suit the size, security and programming needs of Rhode Island's juvenile population, progress was slow. Although a groundbreaking has occurred for the new facilities, community sites must be completed if the same issues of overcrowding do not continue to plague the Training School.

Throughout 2005, representatives from the OCA attended meetings with the federal masters to interview a new federal master that would continue to oversee the federal case. In addition to review of the plans for the new training school these meetings focused on

continuing issues that beset the Training School such as discipline procedures, facilities and services to female residents.

The Office has reviewed 52 CANTS investigations at the Training School arising from institutional abuse complaints and physical abuse of residents. Residents, staff, attorneys, parents and other state employees trigger most reviews and investigations. The issues most identified by the OCA staff and others are: medical and mental health issues, suicide prevention, overcrowding, lack of proper bedding, deterioration of the physical plant and gender specific programming.

#### **L. Miscellaneous Office Activities**

Staff of the OCA of the Child Advocate also promotes the interests of children and discharges the OCA's statutory responsibilities by service on various public panels and commissions apart from those mentioned in earlier sections of the report. The Child Advocate serves as co-chairman of Project Undercover, sponsored by The Girl Scouts of Rhode Island, which encourages scouts and others to collect undergarments and diapers for needy children.

Staff members receive on-going training through attendance at community conferences, in-service trainings and regular staff meetings. The Child Advocate was invited to be a judge of the State Finals of Mock Trial. In addition to speaking engagements, the Child Advocate has assiduously attempted to meet each of the community providers that assist children in DCYF Care.

##### **i. Project Victim Services**

The VOCA grant for 2005 from the Rhode Island Justice Commission enabled the OCA to continue with the statutory mandate of providing services to children who are eligible for Project Victim Services. This project assists criminally abused child victims in state care by accessing the State's Violent Crime Indemnity Fund. Further, the OCA further ensures that the children are connected with all appropriate support services.

In 2005, the OCA reviewed 550 claims for potential filing through the administrative system at the General Treasurer's Office. Of the children referred, 262 were physical abuse victims, 288 were sexual abuse victims. Specifically in 2005, the OCA received settlement offers for 22 victims in the aggregate amount of four hundred seventy-eight thousand five hundred dollars (\$478,500.00) and dispersed three hundred five thousand five hundred dollars (\$305,500.00) in awards for pain and suffering to fourteen (14) victims. For children under eighteen (18), upon receipt of the award, the funds are placed in trust until the child's twenty-first (21<sup>st</sup>) birthday. This year the OCA distributed awards in the amount of two hundred seventy-two thousand ninety-seven dollars (\$272,097.00) to 16 victims whose claims were filed by the OCA in prior years.

ii. **Trainings**

The OCA has provided Trainings to different community providers on the issue of Preventing Institutional Abuse. The Trainings were held at the following agencies: St Mary's, Child & Family Services of Newport, Key Program, Family Court Training for Teachers. In the future, we will begin to reach out to community groups to discuss the duties of the OCA and how the OCA may be of service to them.

## RECOMMENDATIONS

In conclusion, demands on the OCA and its staffing needs have increased dramatically in the past twenty-two years. The OCA needs to receive sufficient staff, funding and support to meet the needs of the children we protect. The number of sites has more than doubled and the number/ complexity of case management for children voluntarily placed have increased substantially. To monitor and protect the children of this State in the manner they deserve and meet the statutory duties of the OCA, it is crucial to acknowledge that the current FTE count (5.8) is insufficient. Further, it is imperative that the OCA of the Child Advocate take on a more active role in monitoring and investigating foster care. The same attention and response that we give to institutions must be given to the foster care system. In order to address the issues that are present, we must have additional personnel.

The OCA recommends that services to children and families, especially to those involved with the state child welfare system, be among the highest priorities of the Rhode Island community. Elected officials in Rhode Island have been responsive and sensitive to the plight of children in state care and we hope that they continue to provide for our state's most vulnerable children among its highest priorities.

Unfortunately, as noted earlier, night-to-night placements have increased. Night-to-night placement continues to be a problem despite the Department's re-affirmation of its intention to eliminate it completely. We intend to aggressively monitor DCYF's compliance with all provisions of the Second Amended Consent Decree, including administrative approval for night-to-night placement of children and mandatory school attendance and transportation for all children enrolled and attending school within the prior 30 school days.

On a more positive note, we are pleased with relationship both the Director and the Child Advocate have created. Since the completion of the Child Fatality Report, both parties have met monthly to discuss the implementation of the recommendations from the Child Fatality Panel and other issues that have developed during the month. This communication has created an atmosphere of professionalism that broadens the ability to service the children in State care. Thus, the OCA believes that this open communication will help us to address what is causing the increase in the Night-to-Night Placement.

The Training School continues to be a sorrowful ongoing problem that the State of Rhode Island faces now and into the future. The physical plant is unacceptable and although groundbreaking has occurred for a new building, it is clear that without the

community-based projects, the same issues of over-crowding will exist in the future. Accordingly, it is important that we continue to work together to guarantee that our children are protected and maintained in a dignified manner while at the Training School.

In order to work on the problems that currently exist at the Training School, the OCA will establish a satellite space at the Training School. Staff will be present daily at the Training School to address concerns that may rise during the week and/or weekend. In addition, the OCA will continue to address the concerns that exist regarding education and gender specific issues.

## **CONCLUSION**

To conclude, the State of Rhode Island, through its elected officials, have always met the needs of the children of Rhode Island. Unfortunately, we face financial cuts both locally and federally. It is important that we continue to meet the needs of our most vulnerable population, despite the financial concerns we must face. The provisions that we have instituted to protect our children cannot be demolished in these financially perilous times; instead, we must remain steadfast in our commitment and dedication.