



# The Advocate



## Legislature Passes Budget: Advocacy Efforts Reduce Impact on Children's Programs

By Linda O'Neal  
TCCY Executive Director

On June 18, 2009, after reaching an agreement on the budget and completing its work for the 2009 session, the 106<sup>th</sup> Tennessee General Assembly adjourned.

Budget concerns were prevalent throughout the 2009 session, as the State's financial situation grew increasingly worse. While legislators were challenged with passing a balanced budget based on significant shortfalls, children's advocates were extremely active in promoting their programs and the public-private and state-local partnerships necessary to implement essential "infrastructure" services for children and families. The successful efforts included contacting legislators via telephone, mail, email and in person. The tremendous response in a number of areas made a significant impact and resulted in important provisions in the final budget and legislation. Especially important was the work of people across the state on Coordinated School Health, mental health services, home visiting and DCS issues. All things considered, the outcome of the budget and legislation in 2009 was about as positive as it could be expected in current economic conditions. The following is a brief summary of some of the outcomes.

**Pre-K funding** remained intact at \$25 million and is now recurring state general fund dollars except for \$3 million that still comes from lottery proceeds.

**Department of Children's Services (DCS)** group homes, relative caregiver program, some staffing and youth development center funding was restored in recurring funding. This restoration eliminated the proposed need to change the definition of a child which would have resulted in no longer serving children adjudicated delinquent until their 19<sup>th</sup> birthday.

The General Assembly added an additional \$4.9 million to the budget to restore **Coordinated School Health Program** funding to approximately \$15 million in nonrecurring funds.

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### Calendar of Events

Events relating to helping children are available at: [www.tennessee.gov/tccy/webcalen.pdf](http://www.tennessee.gov/tccy/webcalen.pdf).

### TCCY

For more information on the Tennessee Commission on Children and Youth and its programs, check out the website at: [www.tn.gov/tccy](http://www.tn.gov/tccy).

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# Budget

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The General Assembly also added \$5 million to **mental health programs for children and families** with the nonrecurring funding to be provided on a pro rata basis to the non-state departmental grants and contracts scheduled to end June 30, 2009. This means there will be approximately 84 percent of previous funding available this fiscal year.



Instead of “**contingency funding**,” the appropriations bill includes

authorization for the Governor to “establish allotment reserves in an amount not less than \$55 million from the general fund and education fund appropriations” in order to address shortfalls. This is essentially an increase in the over-appropriations amount in the budget, and it is not targeted to any specific funding.

On the floor of the Senate Wednesday night, Senator Henry reported the sense of the Senate that funding for programs with the most impact on the welfare of children proposed for “contingency funding” and on a list he

had shared with the Democratic and Republican Caucuses should be last to be reduced. His list included Healthy Start, Family Resource Centers, Department of Health Shaken Baby Syndrome Prevention, Department of Health Poison Control Center at Vanderbilt, TennCare Program in Memphis City Schools and TennCare Perinatal Grants.

The Tennessee Commission on Children and Youth (TCCY) and other advocates expressed concerns over provisions in the Omnibus Bill requiring counties to pay when the rate of custody exceeds 200 percent. Through discussions with legislators and DCS, the language regarding “**over-commitment**” changed from 200 percent to 300 percent and established a benchmark of the highest commitment rate in either 2008 or 2009. It also requires DCS to work with counties when they reach 200 percent, requires regular reporting of data and requires the Select Committee on Children and Youth to study the issue. This change required the addition of \$4.5 million to the budget. The 300 percent provision has a two-year sunset provision.

The Omnibus Bill also revised language related to “**suitable accommodations**” in mental health facilities to authorize the Department of Mental Health and Developmental Disabilities to utilize temporary staffing to provide placements at peak times and requires the Department to assist local communities in identifying suitable placements when there are not suitable accommodations at the Regional Mental Health Institutes.

The General Assembly passed two laws to resolve the issue of funding for mental health evaluations under **Juvenile Court Commitment Orders**

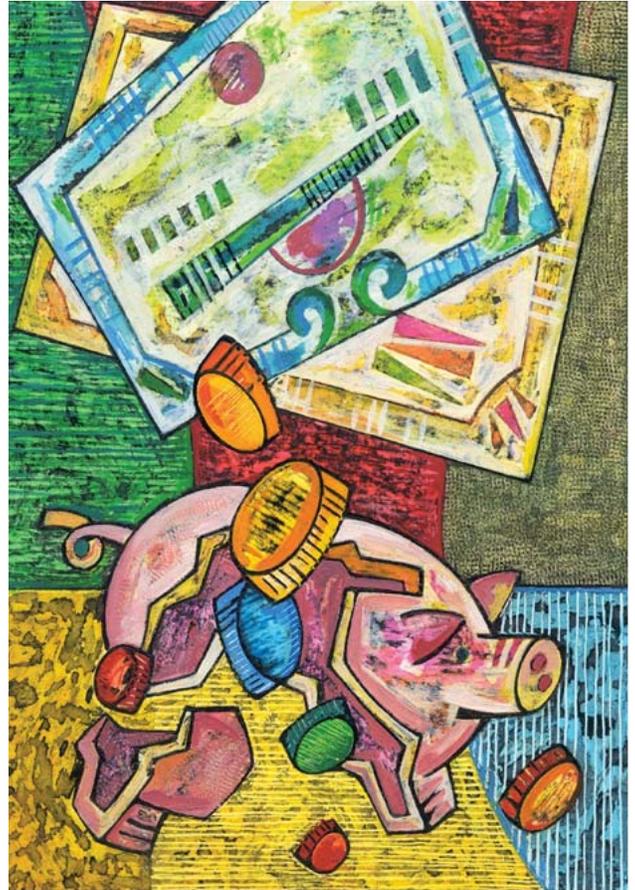
The Tennessee Commission on Children and Youth Cindy Durham, Chair Nashville	
Natasha Blackshear Nashville	Marti Hernon Martin
Sidney Bynum Nashville	Denise Hobbs-Coker Shelbyville
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Tim Goldsmith Memphis	Dwight Stokes Sevierville
Jere Hargrove Cookeville	Nancy Williams Memphis
	Joetta Yarbro Dyersburg
Linda O'Neal Executive Director	

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(JCCOs). Counties will still be responsible for inpatient evaluations. The state will pay for outpatient evaluations and develop and maintain a network of evaluators contracted to meet the needs of the court. Inpatient evaluations will only be performed in cases where a mental health professional certifies the evaluation cannot be completed on an outpatient basis. The Administrative Office of the Courts received \$600,000 non-recurring funds in the Appropriations Act to provide grants to Juvenile Courts to partially reimburse any certified inpatient evaluations or to pay for placement during the outpatient evaluation process. (See more detailed article on page 4.)

The appropriations bill also included the following language:  
“The Department of Finance and Administration is directed to notify in writing each entity (other than state agencies or individuals) receiving funding under this Appropriations Act which is non-recurring funding that such funding has been identified in the Governor’s proposed budget to expire at the end of fiscal year 2009-2010 or fiscal year 2010-2011, as applicable, and that such entity is advised to seek alternative non-state funding for future years.”

The budget was about as good as we could hope in the current economic situation. However, there is a great deal of work to do for next year as we help legislators, the administration and candidates for office understand the importance of maintaining the public-private and state-local partnerships that provide so many essential services for children and families. Many of these services will receive non-recurring funding for fiscal year 2009-2010. It will take a concerted advocacy effort to ensure they receive funding after next year. 🏠



## Instructions for Signing up for TCCY Legislative Information

- Type [listserv@listserv.state.tn.us](mailto:listserv@listserv.state.tn.us) in the “To:” area of your e-mail message.
- Leave the “Subject” line blank.
- In the “Message” area type: **Subscribe TCCY First Name Last Name**.  
Example: **Subscribe TCCY Steve Petty**
- This should sign you up to the electronic mailing list.
- You will receive a confirmation message verifying that you are enrolled.
- If you have questions or need assistance you can call Steve Petty at (615) 532-1685 or e-mail him at [Steve.Petty@tn.gov](mailto:Steve.Petty@tn.gov).
- You will begin receiving the Legislative Report, Updates and Summary through e-mail.

**This information is also available at [www.tn.gov/tccy/listserv.shtml](http://www.tn.gov/tccy/listserv.shtml). 🏠**

# Juvenile Court Commitment Orders

By Steve Petty  
TCCY Staff

The General Assembly passed critical legislation this session to address the issue of funding for mental health evaluations under Juvenile Court Commitment Orders (JCCOs). In the past, a judge could order an inpatient mental health evaluation for up to 30 days at the state's expense for a child adjudicated delinquent on a charge that would be a felony if committed by an adult. However, on June 30, 2008, the Court of Appeals handed down a ruling ([www.tsc.state.tn.us/OPINIONS/TCA/PDF/083/JBOPN.pdf](http://www.tsc.state.tn.us/OPINIONS/TCA/PDF/083/JBOPN.pdf)) changing the interpretation of the law, which had been in place since the 1970s. The Court ruled the county, not the state, was responsible for the cost of the inpatient evaluation regardless of the charge. The ruling was put into effect September 1, 2008, and the number of JCCOs issued by courts plummeted. Between September 1 and December 31, 2008, only four JCCOs were issued. In fiscal year 2008, 757 orders were issued by Tennessee juvenile courts.



The state Department of Mental Health and Developmental Disabilities (MHDD) contracted with regional providers throughout the state to provide outpatient evaluations. Despite the state's agreement to pay for the service, very few outpatient evaluations were ordered. Due to a falling census the MHDD had to increase its daily rate for inpatient evaluations and close children's units serving much of the state, resulting in some counties contracting with private providers to do inpatient evaluations.

At the beginning of the 2009 session, four bills addressing JCCOs were filed in both the House and Senate. SB456/HB 459; SB 527/HB 350, SB 901/HB 829 (<http://wapp.capitol.tn.gov/apps/indexes/>). These bills would have codified the practice prior to the Court of Appeals ruling when the state paid for the evaluation of youth charged with adult felony offenses. The Bredesen Administration filed SB2282/HB 2295 that would have codified the ruling handed down in 2008 by the Court of Appeals, holding the counties responsible for the cost of the inpatient evaluation.

As the state budget situation deteriorated with each passing month, it became clear the state could not afford to continue doing business the way it had before the Court of Appeals ruling. Even in prosperous times, a county could not afford to continue ordering inpatient evaluations at the rate of previous years. Even if the state paid for the outpatient evaluations, counties without detention facilities were challenged with finding a secure placement for the child awaiting an evaluation.

Furthermore, many advocates felt inpatient JCCO's had been over-utilized, and in many cases, inappropriately ordered, primarily to provide a placement during the evaluation. There were concerns some judges were ordering the most restrictive level of care instead of the least restrictive as specified by law. One respected attorney even speculated that the practice was constitutionally suspect.

Given the high rate of mental health diagnoses for youth adjudicated delinquent, it is critical these youth receive the appropriate level of care while reducing unnecessary hospitalization and the stigma associated with it. The Tennessee Commission on Children and Youth staff worked with the sponsors of bill and others from the Select Committee on Children and Youth, the Administrative Office of the Courts and the Council of Juvenile and Family Court Judges, MHDD, the Department of Children's Services, the Department of Finance and Administration and the Governor's Office to craft legislation that would provide for appropriate evaluations

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## Juvenile

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and access to treatment for delinquent youth, allow judges to maintain community safety, while minimizing expenses to both the county and the state. Through a strong collaborative effort, the various partners were able to reach an agreement with the goal of doing what is best for the children of Tennessee.



After working through several different amendments, all parties reached the agreed upon language that ultimately passed the House 94-0 and the Senate 32-0 with all senators requesting to be added as sponsors. The two bills that ultimately passed were HB 2295/SB2282, amending TCA 37-1-128 and 37-1-150 and HB 459/SB456, amending TCA 37-1-617.

HB2295/SB2282 as amended continues to authorize the juvenile court judge to order an inpatient mental health evaluation but requires an outpatient evaluation be completed first. The new language specifies the state is responsible for payment of the outpatient evaluation and requires the outpatient evaluation be completed within 30 days of the receipt of the order.

Inpatient evaluations may only be ordered after the completion of the outpatient evaluation and upon the recommendation of the outpatient evaluator. It maintains that the city or county is responsible for payment of the inpatient evaluation.

The bill also provides guidance to the court and others working with youth by defining behavioral health emergency as an acute onset of a behavioral health condition that manifests itself by an immediate substantial likelihood of serious harm as defined in TCA 33-6-501. It requires a crisis service provider respond within two hours, notify the court if unable to respond within two hours and inform the court of an alternate method of assessment if the crisis service provider is unable to respond within the required timelines.

SB0456/HB0459 as amended authorizes the Council of Juvenile and Family Court Judges to establish and administer a program to reimburse counties for the costs associated with inpatient mental health evaluations. It specifies the fund may pay for evaluations for juveniles charged with an offense that would constitute a felony if committed by an adult. It allows the fund to pay for full or partial reimbursement of the costs of inpatient mental health examinations or evaluations ordered by a juvenile court judge, the costs of transportation for a mental health examination or evaluation and the costs of detention incurred pursuant to TCA 37-1-116(f) for the purposes of obtaining an outpatient evaluation or examination at a detention facility located in another county. The law specifies that the program is subject to available funds. The council shall adopt rules and regulations for the administration of the fund subject to its own rulemaking authority.

The appropriations bill allocated \$600,000 for the fund this year.

Many stakeholders worked diligently beginning in fall 2008 and continuing throughout the 2009 session to resolve an issue that has frustrated courts for a year and troubled advocates for many years. The legislation gives courts access to mental health evaluations and treatment at the most appropriate level of care to meet the needs of children charged with delinquent offenses. It maintains community safety while also assuring scarce treatment resources and tax dollars are used wisely for the most critical needs. The process under which the bill was crafted was a model of how a variety of stakeholders can set aside their own agendas and do what is right for the children and youth of our state. ❏

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**Chairman John DeBerry and Vice Chair Kevin Brooks of House Children and Family Affairs Committee listen to discussion. JCCO legislation was just one of many bills heard in Children and Family Affairs Committee.**

## Juvenile Sex Offender Registration Deferred

**By Steve Petty  
TCCY Staff**

Legislation requiring juvenile sex offender registration was introduced in an attempt to meet the guidelines of the Federal Law, the Sex Offender Registration and Notification Act (SORNA), better known as the Adam Walsh Child Protection and Safety Act. However, sponsors of the legislation were unable to pass it out of committee in the 2009 session of the 106<sup>th</sup> Tennessee General Assembly. Speaker of the House Kent Williams expressed his concerns with the legislation early in session at the Northeast Council on Children and Youth Legislative Breakfast in February and predicted its defeat. Despite the efforts by sponsors of the bill to amend the legislation late in session, they were unable to garner the bi-partisan support necessary to succeed in this difficult session.

TCCY opposes placing juveniles who have not been transferred to criminal court and adjudicated as adults on the public sex offender registries. Juvenile courts currently consider the seriousness of the offense and have the authority to transfer youth charged with serious offenses to criminal court in the most egregious cases. If convicted in criminal court these serious offenders will be placed on the sex offender registry. TCCY opposes registration of juvenile sex offenders because children are more responsive to treatment than adults and are less likely to re-offend if provided appropriate treatment. Children whose conduct involves sexually inappropriate behavior do not pose the same threat to public safety as do adults. Children who offend have fewer numbers of victims than adult offenders and engage in less violent behaviors than adults. Most children who offend can be

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**Chairman Craig Fitzhugh, Vice Chairman Charles Sargent and Secretary Johnny Shaw at a meeting of the House Finance Ways and Means Committee working together during a difficult budget process.**

safely maintained in the community under supervision by probation officers and be treated in outpatient treatment programs.

Though none of the bills carried significant cost to the state, local expenditures were estimated to exceed \$100,000 due to excessive notification requirements in the bill, with the state having to cover ten percent of the cost

to local government during the first year. Even this modest amount may have been insurmountable during this bleak budget year.

States would risk a 10 percent reduction in Byrne Grant funding for failure to pass the bill meeting the federal requirements before the June 27, 2009, deadline. Byrne Grants are an important source of federal funding for local law enforcement. Tennessee's penalty was estimated to be \$270,000. The threat diminished when passage of the American Recovery and Reinvestment Act included \$50 million of additional Byrne Grant funding for Tennessee not subject to the penalty. Tennessee was in the process of filing for an extension, as the law allows states to request two one-year extensions in both 2009 and 2010. In the meantime, Attorney General Eric Holder granted all states a one-year extension. The chairman and ranking members of the Judiciary committees of both the U.S. House and U.S. Senate made the request, pointing out, to date no state had been certified in compliance. These actions by both the U.S. Justice Department and Congress are indicative of the strong work and positive impact of juvenile justice and children's welfare advocates.

Two of the bills filed this session were similar and adhered closely to the requirements of the federal law. They required juvenile registration for the offenses of rape of a child, aggravated rape or criminal attempt. In an effort to address concerns for youth in a consensual sexual relationship, an amendment was introduced requiring a four year difference in the age between the victim and the offender before the child could be placed on the sex offender registry for rape of a child. One of the bills was taken off notice while the other was deferred to January 2010. A third bill would have required registration for all juvenile sex offenses. This bill was never placed on a calendar in the House. None of the bills were moved in the Senate Judiciary Committee.

The Tennessee Commission on Children and Youth (TCCY) staff met with the House sponsors of the three juvenile sex offender bills. One sponsor was primarily concerned about local law enforcement's access to

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## Registration

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juvenile information and expressed willingness to explore alternative solutions to address these concerns. One such alternative could be legislation TCCY hopes to see in next session that would reform the way fingerprint information is collected, maintained and released by the Tennessee Bureau of Investigation (TBI). The legislation would create standards for TBI in regards to release of information for employment background checks for certain occupations working with children, the elderly and other special populations. All counties would be required to send juvenile fingerprint information to TBI. Right now only two counties routinely provide fingerprint information on any juvenile offenders. This legislation would be based on recommendations of the Juvenile Records Task Force. The Task Force report is available at [www.tennessee.gov/tccy/pres-JRTF-08.pdf](http://www.tennessee.gov/tccy/pres-JRTF-08.pdf).

Another sponsor, a strong supporter of juvenile sex offender registration, was hoping to move the bill to summer study in an effort to find language upon which all sponsors, members, proponents and advocates could agree. The sponsor was also willing to wait for the anticipated changes in the interpretation and implementation of the federal law by the new Administration coming to power in Washington, DC.

Despite this year's deferral, legislators have promised another concerted effort to seek passage of legislation requiring juvenile sex offender registration next year. TCCY will continue to work with advocates at both the federal and the state levels to ensure youth are not placed on public sex offender registries and instead receive the appropriate treatment and services. 

Coming soon: KIDS COUNT National Data Book and State of the Child in Tennessee.

## Keeping Up with You and with Technology

When TCCY began its Listserv in 2001, the e-mail mailing list was the most up-to-date method of communicating with advocates. However, several generations of technology have evolved since then. A number of options, social networking sites like Facebook and My Space, blogs and Twitter, now exist. TCCY wants to use the best methods possible to keep you informed.

We have created a survey to help us decide how best to communicate timely information. Please let us know if you use the various new media social networking sites such as Facebook, MySpace and LinkedIn and how you use them. Also, please let us know if you read or create Blogs or use Twitter to follow others' tweets or tweet yourself.

We also want to know if you are aware of these networking tools but haven't had a chance to use them, or if you don't have a clue and/or am happy with the current communication methods.

**The survey has only six questions (one of which is an optional request for comments) and is available at [http://www.surveymonkey.com/s.aspx?sm=\\_2bH1fdMHZQ32rq5bUYI3skA\\_3d\\_3d](http://www.surveymonkey.com/s.aspx?sm=_2bH1fdMHZQ32rq5bUYI3skA_3d_3d). If you have difficulty accessing the survey, please email [fay.delk@tn.gov](mailto:fay.delk@tn.gov) and we will email you a link.** 

*The Advocate* is published by the Tennessee Commission on Children and Youth as an information forum on children's issues. The Tennessee Commission on Children and Youth, an independent state agency, serves as an advocacy agency and information resource for planning and coordination of policies, programs, and services on behalf of the state's children and youth. The 21-member Commission, appointed by the governor, works with other agencies and with regional councils on children and youth in each development district to collect information and solve problems in children's services. To receive *The Advocate*, sign up on the website at [www.state.tn.us/tccy/listserv.html](http://www.state.tn.us/tccy/listserv.html) or contact Fay L. Delk, Publications Editor, Tennessee Commission on Children and Youth, 710 James Robertson Parkway, 9th Floor, Nashville, TN 37243-0800. Phone: (615) 741-2633. Fax: (615) 741-5956. E-mail: [fay.delk@state.tn.us](mailto:fay.delk@state.tn.us).