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2010 Children's Legislative Report Card

Children's Advocacy Institute, University of San Diego School of Law

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CHILDREN'S LEGISLATIVE REPORT CARD

LEGISLATIVE SESSION: 2009–10

REPORT CARD TERM: 2010

2010: THE YEAR IN REVIEW

The performance of our California legislators in addressing the needs of our children over the last two years has been disappointing. In 2009, we were unable, for the first time, to grade members of the Legislature on their achievements for the next generation. Rather, each member received an “incomplete” for that year because legislators effectively reduced or rejected public child investment across a wide spectrum of meritorious need. Child-investment measures involving small expense clearly repaid with child benefit and program savings over the next three or ten years, were not successful given the Legislature’s budget deficit-driven twelve-month immediate-return horizon. Regrettably, the overall lack of commitment of adult officials to our children in 2009 reflected a pattern of desiccation and decline across almost the entire spectrum of government-sponsored efforts to address child need, with no effort to come up with creative alternatives.

As with 2009, we tried to grade members for 2010. As in 2009, we ran sample grades based on the meager list of child-helpful bills we tracked. But, like in 2009, we were unable, in good conscience, to assign grades that reflected a fair comparative contribution to improving the lives of California’s children. Such a measurement assumes some observable significant forward movement from the cumulative effort. The scarcity of grade-worthy, bellwether bills meant that missing a single vote had disproportionate effects on a grade. While sometimes members will intentionally not vote on a measure (which has the parliamentary effect of a negative vote), sometimes they miss a vote because they are legitimately and temporarily indisposed, and may well know the margin does not require their vote. This is especially true late in the session, when the votes come fast and furiously. In most times, this is statistically smoothed over by a large cluster of votes on a large number of ambitious child supportive bills. But, once more, not this year.

And beyond the problem of measurement is the implicit message that any passing grade sends. Grades presume a comparative measure in achieving progress to the next level. Tenth graders are supposed to be ahead of where they were in ninth grade. But a student properly receives an “incomplete” and is asked to repeat the lessons appar-

ently not learned, prior to promotion, when no observable progress is made. And that is the unfortunate situation with the California Legislature as a group. They have not only failed to achieve progress, but have affirmatively regressed in the longstanding state commitment of our children — now for a second straight year. Accordingly, their Report Card will judge them as properly held back. Perhaps they would benefit from individual tutoring. Those lessons might include study of prior legislatures, which created national models in child protection, safety net assurance, K–12 education, and higher education.

Hence, we are again giving every California legislator a grade of “incomplete,” dubbing 2010 and 2009 as lost years when it comes to doing what every generation — almost as a matter of sacred trust — is supposed to do: leave the world a better place for those who come after them.

Here are just some examples:

- California’s once nation leading K–12 education system continues its decline, including class sizes now at about the worst in the nation. Higher education capacity and access — long synonymous in fact and Horatio Alger myth with breaking history’s grip on economic prosperity for poor, motivated children — continues to fade. Fears that government taxation will remove consuming money from the market bizarrely does not extend to the unprecedented increases in higher education fees and tuition imposed in recent years.
- A reduction of educational opportunities at the top has been joined with declines in safety net assurance for children at the bottom. The last is now at record levels below the federal poverty line for the modern era — and during a time of extraordinary need.
- The dependency court system, a last respite for children whose parents have been adjudged “unfit,” is demarked by increasing caseloads for those who become the legal parents and counsel and protectors of these children. The judges in Sacramento County serving as their legal parents have about 1,000 children each, somewhat over the travail of the OctoMom. Counsel for these children in many parts of the state have caseloads three to four times the levels federally adjudicated as a maximum for basic due process.
- Parks and recreation opportunities that provide needed play, group activities, exercise and a sense of worth for children who struggle for each are hurriedly spinning in rewind, a terrible icon of our short-sightedness.

The list goes on and on and on.

Admirable individuals and non-profits serving children's everyday needs continue to work for their hopeful future. And there are areas of notable contribution — for example, the work being done to address adolescent bullying. But the overall record is not one of progress, but of alarming downtrend. There are many talented Sacramento legislators who last year and this year devotedly champion the cause of children: Assemblymembers Beall, Hill, Mitchell, Fletcher, and Feuer, and Senators DeLeon, Yee and Liu are just a few. But we have been confronted by an unprecedented fiscal calamity in the form of astonishing deficits larger than the budgets of most states. Our Legislature has been weakened by short term limits and self-imposed institutional, artificial fiscal time-horizon budget practices that have together deprived it of needed expertise and policy-making independence. This institutional weakening has been supplemented with elections that cost ever-more millions and that proportionately empower those who have the money to underwrite them at the expense of children, who don't.

Perhaps most disturbing of all has been the Republican opposition to raising revenues based on categorical obeisance to a strange ideology. It is hypocrisy to endorse the permanent endurance of tax credits and loopholes that now amount to many billions and take a two-thirds vote to end, whatever their effectiveness, whatever their costs, even if the money could be put to better, more cost-effective uses with greater returns on investment (including tax breaks for others elsewhere), while at the same time making the poor performance of government the centerpiece of their political rhetoric. Simply put: Republicans cannot have it both ways. They cannot on the one hand vigorously condemn government decision-making and operations as being inferior to the results-based decision-making of the private sector and then refuse even to talk about performance, returns on investment, opportunity costs, and basic math when it comes to the revenue-side of the government enterprise. *No business would do that* and the self-evident strangeness of this ideology is making the Grand Old Party increasingly unpopular with Californians every year.

We join Republican conservatives in many of their criticisms of child-related policy and government operations. For example, we endorse their condemnation of private irresponsibility in having children without preparation, and especially of paternal non-support for many children. We likewise in spirit join in their call for government accountability and priority-setting, whether it be classrooms or social services. We properly insist on outcome measures, on performance, and on elimination of that which does not warrant continued public subsidy. But the entering into no-tax pledges, and the group disapproval of any and all revenue increases — now extending to opposing the electorate's ability to vote on more taxes — contradicts their

emphasis on results-based decision-making and performance, not to mention their own stated values of individualism and freedom to pursue the dictates of one's own conscience.

All of this runs afoul of the accomplishments of our visionary forefathers. They worked in a bipartisan fashion based upon mature understandings of the limits of their own ideologies to erect a state that was a monument to what state governments could do; the envy of the nation. For example, Republicans and Democrats together built the best public university system in the world here in California — likely the best in human history. That accomplishment came from taxation and public investment, a commitment that warrants pride, not avoidance.

The ironic result of the current disinvestment trend is that a child who, as a result of aid extended for just a few years, could have lived a vibrant and productive life will instead be dependent upon public subsidies — whether in prison or on welfare — and will be more likely to birth children of his or her own who will odds on fare no better.

And it isn't because we do not have the money. Contrast the trend in child-disinvestment with what our seniors enjoy. True, poor seniors have seen in-home supportive services and adult day care cut, but since the enactment of Medicare, the elderly have enjoyed single-payer, universal health coverage, regardless of whether they are paupers or Warren Buffett. The Medicare unfunded liability nationally approaches a reasonably projected \$35 trillion. It is the largest future debt to be visited upon a generation by its parents in human history. Moreover, the benefits keep getting richer and richer. To seniors we are providing power chairs, Viagra, prescription coverage, and an ever extending list of complex operations at a cost of over seven times the medical insurance per capita cost of children. As to the latter, almost one million of California's kids are uninsured and many more are underinsured.

Worse, the group with so many members denied health care (children) will be the one we are going to be billing for the Boomer generation's Medicare and Social Security. Together, the unfunded legacy of elderly entitlement programs represents a transferred obligation that both conservatives and liberals lie about with equal disdain for simple arithmetic. It is what happens when we have a political system that decides to implement "defined benefit" systems without the means to pay for them, creating a blank check to be paid by our children.

The unfunded liabilities promised to current adults will total such an immense debt (over \$50 trillion) beyond any contribution by the beneficiaries, that just to *carry* that sum at 5% interest will in about 25 years require the expenditure of almost half of the future projected income of our children (over \$20,000 per family in current dollars per annum). Read that line again. It cannot be true you think? Think again.

We of course don't begrudge seniors getting universal health care. We should all have it. We of course do not begrudge low tax rates. We don't love paying taxes. What we

do begrudge are politics where those that have the best keep getting more while the children and grandchildren the Boomers profess to be proud of on bumper stickers keep getting less, all due to the specious and self-serving argument that we don't have the money to help them. The Greatest Generation gave a lot more of the less they had to their children and the Boomer Generation is using their matchless wealth and power to do the exact opposite.

Why does all this happen? The answer is depressingly simple. While every politician talks about helping children, and may in fact earnestly want to, the system within which they operate funnels them to the embrace of those with money and votes, and as elections have become more expensive, the pace of the funneling toward those with money and votes — tax cuts for those who don't need them, more benefits to seniors who already have single-payer health care — and away from children has hastened.

Our children are therefore simply not at the table when our national and state legislative “mediators” work out the final arrangement with the de rigueur “stakeholders.” There are 1,200 lobbyists in Sacramento, ten for every legislator, including many former legislators and staff. Those representing just the interests of children? A handful, and they aren't spending their dinnertimes at fundraisers or their weekends at golf tournaments. Child advocates and therefore children have none of the tools of political power. We lack voters, organization, and campaign money. We are pretty lonely up there.

As with last year, essential to our decision to offer no grade for 2010 was sympathy for legislators who did not introduce more ambitious bills in a year when devastating and historically record-setting cuts to the social safety net were the order of the day. It is hard to fault an individual member for failing to introduce bills he or she knows cannot get enacted. But, our elected representatives can do far more.

Sacramento Republicans depart from the examples of Reagan, Wilson, and Deukmejian who each addressed budget problems with a responsible and rational mix of cuts and revenues. They seem to forget that the historically swelling state General Fund (and special funds) may appear to be growing in raw numbers, but — earth to amateur economists — they have to be adjusted by inflation and population every year. If they increase 5–7% per annum most years, they are actually staying even. As stated above, they religiously oppose taking money from Californians when the take is labeled a “tax” but not when it is an increase in tuition, as if a dollar in someone's wallet knows whether it is destined for the Franchise Tax Board or the Regents of the University of California.

California is simply not overtaxed based on history. Indeed, the elderly are enjoying the payment of a small, small fraction in the property taxes paid by the young and the future purchasers of real property. Their assessments, taxed at 1%, are now one-fifth, even one-tenth the assessments of new purchasers (*e.g.*, the young) — even with the current real estate downturn. The next generation will be paying ten or more times

the property taxes of we “Boomers” for the properties owned of the same market value to provide the same services. Strong emotion was well warranted when federal income taxes exceeded 90% for the wealthy, as they were for the fathers and mothers of the Boomers. That is hardly the case now, where the top rate is now nearly two-thirds lower.

Sacramento Democrats, for their part, cannot muster the courage or attention span to stop introducing resume-padding minor bills instead of focusing with equal ambition on ensuring the programs we already have operate rationally, efficiently, and in service to the needs of children. The scandal at the Commission for Teacher Credentialing should not have needed an audit to uncover. Its failings would have been obvious if any Democratically-controlled legislative committee had bothered to look under the hood.

When our lawsuit against the California Department of Social Services uncovered that it had done literally nothing *for thirty years* to ensure that reimbursements paid to foster parents were legal, this failing can in part be laid at the feet of the Legislature’s Democrats who are in control and supposed to oversee how money is spent, for even a cursory asking of just a few questions about this program would have raised alarm bells, making the litigation unnecessary. More broadly, why did we have to file suit to make the state comply with federal law requiring compensation for these families taking care of children where we (state judges) are the legal parents? The Legislature knew that placements in family foster homes declined to one-third previous levels because the reimbursements for their out-of-pocket expenses fell far below what those expenses actually cost. The Legislature knew these homes are the source of most non-kin adoptions, resulting in a child being raised in a loving home, removing them from expensive foster care caseloads to boot. Instead, as the number of foster parents declined, the state for years spent ten times as much for each child to go to group homes.

This is where Democrats have their own hypocrisy to shoulder along with Republicans. The Democrats control the Legislature. The Democrats control the policy and budget committees. The policy and budget committees are supposed to do oversight of executive branch performance. The Democrats need to make sure that the programs they fight to fund — and vociferously criticize Republicans for seeking to cut — are doing what they are supposed to be doing with the funding they have. A program that is performing inefficiently and poorly when measured against the problem it is supposed to address is, functionally, the same as a cut to that program. Both cuts and poor performance impair the program from curing the social ills it was enacted to heal. Democrats will have greater standing with the public to waive chastising fingers at Republicans once they pursue government performance with the same zeal as they pursue revenues.

What endures from this year and last is each legislator’s personal duty to prioritize the expenditures that we can and do make. Even in a world of cuts, each member should

— whether through their bill package or through aggressive oversight of current programs — engage in visible, sustained and self-conscious priority setting favoring the group that has the least “juice” and therefore most requires their personal devotion: children, who do not vote, do not attend fundraisers, do not write op-eds, do not host radio talk shows, and do not pay for grass tops campaigns, but who will entirely, without caveat or exception, populate our nation’s and state’s future and whose success or failure is the sole fair secular referendum on what kind of people we are now.

If children had real political power, we could back up all these observations with the implied threats that make politics work who can make the threats. We would threaten to withhold money, endorsements, and votes.

But, we represent children, so the most we can do is ask legislators of every party and ideology and personal circumstance to look in the mirror, acknowledge that their privileged time in power will be brief and that it is the product of private responsibility and public investment in them, *and* — as we properly ask of our children — say *please*.

NOTABLE LEGISLATION

Although insufficient progress was made by legislators during 2010 to improve the health and well-being of children and youth, the Legislature did send a few notable measures to Governor Schwarzenegger for his consideration. Those measures include the following:

AB 12 (Beall) implements the federal Fostering Connections to Success and Increasing Adoptions Act of 2008, which allows states to opt in to kinship guardianship assistance payments provisions and extend transitional foster care services for eligible youth between 18 and 21 years of age. The passage of AB 12 was a potentially very significant step forward which may give some foster children an enhanced chance to achieve self-sufficiency after age 18. However, the leading studies of Illinois foster children by Chapin Hall and our own experience suggest that merely allowing youth to stay in care another year or two, without more, is likely to simply postpone by several years the common negative outcomes faced by many youth who age out of the foster care system. Those consequences include radically disproportionate unemployment, arrests, and homelessness. As well, the experience from Illinois documents that at least 30% of all transition age foster youth will elect to reject living in “the system” entirely, even if it means homelessness. CAI at the end supported AB 12 as its language evolved to become less and less of a “top down” traditional government program delivery model and more flexible, potentially allowing youth to live in the system but in a variety of settings. As the massive stakeholder

group that is implementing the bill moves forward, the full promise of the measure will only be achieved if youth – who are now in their twenties – are permitted progressively more and more independence while still in the system, both because it is their right but also because that is the way to ensure they do not choose homelessness over what might feel like a confining bureaucracy, unresponsive to their individual capabilities. The median age of self-sufficiency in the U.S. is 26, and youth need what parents commonly give them: median financial help after age 18 of just under \$50,000 to achieve that self-sufficiency, and a flexible plan developed with the youth and customized to his or her best prospects. Kids do well when the adult involvement is personal (as with a mentor), not so much when they are part of a caseload. AB 12 may be interpreted and implemented to create such a result, but it is not the central thrust of the new statute, and we fear that its success will be limited. The plain language measure as enacted, while a net positive, fails sufficiently to involve assuredly the child, counsel, courts; fails to provide resources beyond a year or two; and fails to customize and personalize the youth's individual traversal to self-sufficiency that parents successfully provide. *This bill was signed by the Governor on September 30, 2010 (Chapter 559, Statutes of 2010).*

SB 945 (Liu) ensures that upon the release of a dual status ward from a nonfoster care facility, a probation officer or parole officer will provide that person with (1) a written notice stating that the youth is a former foster child and may be eligible for the services and benefits that are available to a former foster child through public and private programs; and (2) information that informs the youth of the availability of federal and state programs that provide independent living services and benefits to former foster children. By ensuring that all former foster youth receive access to transitional living skills programs, the likelihood that they will find jobs and housing increases, SB 945 will help reduce the growing population of homeless and incarcerated youth. *This bill was signed by the Governor on September 30, 2010 (Chapter 631, Statutes of 2010).*

AB 2264 (De Leon) would have prohibited the issuance of an order for the garnishment of a bank account or the earnings of a homeless youth for fees, fines, forfeitures, or penalties imposed by a court due to the violation of state or local law related to truancy, loitering, curfew violations, or illegal lodging. This bill would have provided that an order for garnishment may be issued if it is proven, by a preponderance of the evidence, that the youth against whom the garnishment is sought does not qualify as a homeless youth. *This bill was vetoed by the Governor on September 24, 2010.*

SB 900 (Alquist, Steinberg) and AB 1602 (J. Perez) establish the nation's first health benefit exchange under the new federal health care law. If properly implemented, these measures could help many uninsured children access regular preventive care. These measures are not child-specific and are intended to implement the federal health insurance reforms which focus on access to alternative health coverage by families not receiving it from employers. *These bills were signed by the Governor on September 30, 2010 (Chapters 659 and 655, respectively, Statutes of 2010).*

2010 Children's Legislative Report Card

THE GRADES

Senators	2010 GRADE
Aanestad	INCOMPLETE
Alquist	INCOMPLETE
Ashburn	INCOMPLETE
Blakeslee	INCOMPLETE
Calderon	INCOMPLETE
Cedillo	INCOMPLETE
Cogdill	INCOMPLETE
Corbett	INCOMPLETE
Correa	INCOMPLETE
Denham	INCOMPLETE
DeSaulnier	INCOMPLETE
Ducheny	INCOMPLETE
Dutton	INCOMPLETE
Emmerson	INCOMPLETE
Florez	INCOMPLETE
Hancock	INCOMPLETE
Harman	INCOMPLETE
Hollingsworth	INCOMPLETE
Huff	INCOMPLETE
Kehoe	INCOMPLETE
Leno	INCOMPLETE
Liu	INCOMPLETE
Lowenthal	INCOMPLETE
Negrete Mcleod	INCOMPLETE
Oropeza	INCOMPLETE
Padilla	INCOMPLETE
Pavley	INCOMPLETE
Price	INCOMPLETE
Romero	INCOMPLETE
Runner	INCOMPLETE
Simitian	INCOMPLETE
Steinberg	INCOMPLETE
Strickland	INCOMPLETE
Walters	INCOMPLETE
Wiggins	INCOMPLETE
Wolk	INCOMPLETE
Wright	INCOMPLETE
Wyland	INCOMPLETE
Yee	INCOMPLETE
<i>Vacancy</i>	

Assemblymembers²	2010 GRADE
Adams	INCOMPLETE
Ammiano	INCOMPLETE
Anderson	INCOMPLETE
Arambula	INCOMPLETE
Bass	INCOMPLETE
Beall	INCOMPLETE
Berryhill, B.	INCOMPLETE
Berryhill, T.	INCOMPLETE
Block	INCOMPLETE
Blumenfield	INCOMPLETE
Bradford	INCOMPLETE
Brownley	INCOMPLETE
Buchanan	INCOMPLETE
Caballero	INCOMPLETE
Calderon	INCOMPLETE
Carter	INCOMPLETE
Chesbro	INCOMPLETE
Conway	INCOMPLETE
Cook	INCOMPLETE
Coto	INCOMPLETE
Davis	INCOMPLETE
De La Torre	INCOMPLETE
De Leon	INCOMPLETE
DeVore	INCOMPLETE
Eng	INCOMPLETE
Evans	INCOMPLETE
Feuer	INCOMPLETE
Fletcher	INCOMPLETE
Fong	INCOMPLETE
Fuentes	INCOMPLETE
Fuller	INCOMPLETE
Furutani	INCOMPLETE
Gaines	INCOMPLETE
Galgiani	INCOMPLETE
Garrick	INCOMPLETE
Gatto	INCOMPLETE
Gilmore	INCOMPLETE
Hagman	INCOMPLETE
Hall	INCOMPLETE
Harkey	INCOMPLETE

²Assembly membership as of August 31, 2010.

Assemblymembers³	2010 GRADE
Hayashi	INCOMPLETE
Hernandez	INCOMPLETE
Hill	INCOMPLETE
Huber	INCOMPLETE
Huffman	INCOMPLETE
Jeffries	INCOMPLETE
Jones	INCOMPLETE
Knight	INCOMPLETE
Lieu	INCOMPLETE
Logue	INCOMPLETE
Lowenthal	INCOMPLETE
Ma	INCOMPLETE
Mendoza	INCOMPLETE
Miller	INCOMPLETE
Monning	INCOMPLETE
Nava	INCOMPLETE
Nestande	INCOMPLETE
Niello	INCOMPLETE
Nielsen	INCOMPLETE
Perez, J.	INCOMPLETE
Perez, V.	INCOMPLETE
Portantino	INCOMPLETE
Ruskin	INCOMPLETE
Salas	INCOMPLETE
Saldana	INCOMPLETE
Silva	INCOMPLETE
Skinner	INCOMPLETE
Smyth	INCOMPLETE
Solorio	INCOMPLETE
Strickland	INCOMPLETE
Swanson	INCOMPLETE
Torlakson	INCOMPLETE
Torres	INCOMPLETE
Torricono	INCOMPLETE
Tran	INCOMPLETE
Villines	INCOMPLETE
Yamada	INCOMPLETE
<i>Vacancy</i>	
<i>Vacancy</i>	

³Assembly membership as of August 31, 2010.



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