

Volume 12 | Issue 2

---

Summer 2009

## Section Two: Article 6 of the CRC and New York State Law

Chantima Chokloikaew  
*Albany Law School*

Follow this and additional works at: <https://academicworks.cuny.edu/clr>

 Part of the [Law Commons](#)

---

### Recommended Citation

Chantima Chokloikaew, *Section Two: Article 6 of the CRC and New York State Law*, 12 N.Y. City L. Rev. 487 (2009).  
Available at: 10.31641/clr120214

The CUNY Law Review is published by the Office of Library Services at the City University of New York. For more information please contact [cunylr@law.cuny.edu](mailto:cunylr@law.cuny.edu).

children ages sixteen and seventeen in its custodial interference statutes, which leaves this group of children unprotected. It is important to note that, consistent with the Hague Convention, New York has adopted the definition of a child as a human being under the age of sixteen. If the United States ratifies the CRC, New York will have to address the disparity between the CRC's definition of a child and New York's definition under its Penal Laws. Even though New York has preventative and educational methods available to combat child abductions, the State should concentrate more resources into the specific crime of international parental abduction. More awareness of this issue would be appropriate and helpful for New York and its children under the age of eighteen.

## Section Two: Article 6 of the CRC and New York State Law

by *Chantima Chokloikaew*<sup>86</sup>

1. States Parties recognize that every child has the inherent right to life.
2. States Parties shall ensure to the maximum extent possible the survival and development of the child.<sup>87</sup>

The U.N. Convention on the Rights of the Child ("CRC") was adopted by a unanimous vote of the United Nations General Assembly.<sup>88</sup> States Parties to the CRC undertake to submit reports on the implementation of the CRC to the United Nations Committee on the Rights of the Child ("U.N. Committee").<sup>89</sup> These reports provide information on the measures adopted by States Parties to give effect to the rights set forth in the CRC and indicate progress and difficulties that may affect the degree of fulfillment of State Party obligations under the CRC.<sup>90</sup> The purpose of these reports is to provide the U.N. Committee with a comprehensive understanding of the implementation of the CRC by the State Party concerned. This Section attempts to simulate such a report under New York State law. Accordingly, this Section outlines different areas of

---

<sup>86</sup> J.D. Candidate, Albany Law School; B.A., New York University.

<sup>87</sup> CRC, *supra* note 2, art. 6(2).

<sup>88</sup> *See id.*

<sup>89</sup> RACHEL HODGKIN & PETER NEWELL, IMPLEMENTATION HANDBOOK FOR THE CONVENTION ON THE RIGHTS OF THE CHILD 604 (UNICEF 1998) [hereinafter UNICEF IMPLEMENTATION HANDBOOK].

<sup>90</sup> *Id.*

New York State law concerning the child, and compares these laws with the general principle set forth in Article 6 of the CRC—the right to life.

### I. ARTICLE 6

The fundamental right to life is seen as a universal right under United States and international law.<sup>91</sup> The CRC designation of the right to life in Article 6 is exceptional in its requirement for States Parties to ensure the “survival and development of the child.”<sup>92</sup> This provision raises the State’s obligation from one of withholding arbitrary deprivation of life<sup>93</sup> to one of actively providing and protecting the child “to the maximum extent possible” to ensure survival and development.<sup>94</sup> This essentially turns the State’s obligation toward the child from a negative to a positive right. For example, under the CRC, a child’s right to health services requires not only that States Parties ensure that a child is not deprived of the right to access health care services but, also, *inter alia*, that the State Party develop preventative health care systems<sup>95</sup> and take appropriate measures to diminish infant and child mortality.<sup>96</sup>

There is a link connecting a child’s right to life with health rights under the CRC.<sup>97</sup> The U.N. Committee further stresses the holistic connection<sup>98</sup> between health rights and the right to an adequate standard of living<sup>99</sup> and to education.<sup>100</sup> Article 24 of the CRC illustrates this interdependency by requiring that “in particular[,] parents and children are informed, have access to education and are supported in the use of basic knowledge of child health and nutrition, the advantages of breastfeeding, hygiene and environmental sanitation and the prevention of accidents.”<sup>101</sup> This shows the link between health and basic education as rights under the CRC. Education also ties in with positive child development.<sup>102</sup> Article 29 of the CRC sets forth the aims of education. The first aim

---

<sup>91</sup> See generally U.S. CONST. pmb.; United Nations Universal Declaration of Human Rights, G.A. Res. 217A(III), U.N. Doc. A/810 (Dec. 10, 1948).

<sup>92</sup> CRC, *supra* note 2, art. 6(2).

<sup>93</sup> *Id.* art. 6(1).

<sup>94</sup> *Id.* art. 6(2).

<sup>95</sup> *Id.* art. 24(2)(f).

<sup>96</sup> *Id.* art. 24(2)(a).

<sup>97</sup> *Id.* art. 24.

<sup>98</sup> UNICEF IMPLEMENTATION HANDBOOK, *supra* note 89, at 317.

<sup>99</sup> CRC, *supra* note 2, art. 27.

<sup>100</sup> *Id.* art. 28.

<sup>101</sup> *Id.* art. 24(2)(e).

<sup>102</sup> *Id.* art. 29.

of education is “the development of the child’s personality, talents and mental and physical abilities to their fullest potential.”<sup>103</sup> This aim illustrates the general principle that development under the CRC encompasses physical, mental, spiritual, moral, psychological, and social development,<sup>104</sup> all in preparation for adulthood.

Unlike the CRC, which views survival and development holistically, New York law seems to reflect a dichotomy between survival and development. There are numerous provisions in New York law that address survival, meaning that there are laws serving to preserve and protect a child’s life. In comparison, provisions in New York law addressing a child’s development are underdeveloped.

In this Section, I will compare the legal principles of New York law that correlate to the right to life and survival and development principles under the CRC. This includes capital punishment, military enlistment, healthcare, education, employment, social services, and care for especially vulnerable children.<sup>105</sup>

## II. CAPITAL PUNISHMENT

The CRC has a clear position on capital punishment.<sup>106</sup> Article 37(a) of the CRC prohibits capital punishment “for offences committed by persons below eighteen years of age.”<sup>107</sup> Article 6 of the CRC reinforces this by recognizing every child’s inherent right to life.<sup>108</sup> The U.N. Committee emphasizes the importance of this right by further stressing that it is not enough that the death penalty is not applied to children; the prohibition of the application of the death penalty in regards to children must be confirmed in legislation.<sup>109</sup>

New York law allows the death penalty for the crime of murder in the first degree;<sup>110</sup> however, a recent New York State Court of Appeals decision held the death penalty statute to be unconstitutional for reasons unrelated to children.<sup>111</sup> Since then, the New York Legislature has unsuccessfully sought to reintroduce the death penalty in a way that would remedy the issues found in *People*

---

<sup>103</sup> *Id.*

<sup>104</sup> UNICEF IMPLEMENTATION HANDBOOK, *supra* note 89, at 86.

<sup>105</sup> *See infra* Sections II–IX.

<sup>106</sup> UNICEF IMPLEMENTATION HANDBOOK, *supra* note 89, at 89.

<sup>107</sup> CRC, *supra* note 2, art. 37(a).

<sup>108</sup> *Id.* art. 6.

<sup>109</sup> UNICEF IMPLEMENTATION HANDBOOK, *supra* note 89, at 89.

<sup>110</sup> N.Y. CRIM. PROC. LAW § 400.27 (McKinney 2006); N.Y. PENAL LAW § 60.06, § 70.00 (McKinney 2006).

<sup>111</sup> *People v. LaValle*, 3 N.Y.3d 88, 99 (2004); *see People v. Taylor*, 9 N.Y.3d 129 (2007).

*v. LaValle*, which primarily concerned the deadlock jury instruction provisions in the death penalty statute.<sup>112</sup> However, these legislative attempts to reintroduce the death penalty have been without success. It should be noted that two of the bills—Assembly Bill 2210<sup>113</sup> and Assembly Bill 2209<sup>114</sup>—proposing to reintroduce the death penalty address the issue of child victims. Assembly Bill 2210 attempted to reinstate the death penalty for the killing of a disabled person, including a person deemed disabled because of age.<sup>115</sup> Assembly Bill 2209 attempted to reinstate the death penalty for domestic violence-based killings, including those involving minor victims.<sup>116</sup> Notwithstanding these attempts, no child, as defined by the CRC, would be affected in the event of a successful reintroduction of the death penalty in New York because of a 2004 U.S. Supreme Court decision that held that it is unconstitutional to impose a capital sentence on defendants who committed crimes when under the age of eighteen.<sup>117</sup>

The U.N. Committee would approve of the current status of the death penalty law in New York, but would probably urge that legislation be changed to reflect the Supreme Court's ruling in *Roper v. Simmons*, which is more in line with the principles of the CRC.

### III. JUVENILE JUSTICE

Generally, New York law provides that a person under the age of sixteen years old is not “criminally responsible for conduct.”<sup>118</sup> New York law defines a juvenile delinquent as a person over seven and under sixteen years old who has committed a misdemeanor or a felony crime.<sup>119</sup> The term “juvenile offender”<sup>120</sup> is to be distinguished from the term “juvenile delinquent,” which applies to a youth subject to proceedings in family court.<sup>121</sup> Juvenile delinquents are prosecuted in family court rather than criminal

<sup>112</sup> A. 2210, Gen. Assem., Reg. Sess. (N.Y. 2007); A. 2209, Gen. Assem., Reg. Sess. (N.Y. 2007).

<sup>113</sup> A. 2210.

<sup>114</sup> A. 2209.

<sup>115</sup> A. 2210.

<sup>116</sup> A. 2209.

<sup>117</sup> *Roper v. Simmons*, 543 U.S. 551 (2005).

<sup>118</sup> N.Y. PENAL LAW § 30.00(1).

<sup>119</sup> N.Y. FAM. CT. ACT § 301.2(1) (McKinney 2006).

<sup>120</sup> A juvenile offender is defined as a youth who is thirteen, fourteen, or fifteen and has committed a more serious or violent offense specified in the Penal Law, and thus may be prosecuted as an adult in Supreme Court. N.Y. PENAL LAW § 10.00(18).

<sup>121</sup> N.Y. FAM. CT. ACT § 301.2(1).

court.<sup>122</sup>

The exceptions to this general practice are numerous.<sup>123</sup> A child age thirteen or older may be designated a juvenile offender and prosecuted as an adult for certain serious crimes.<sup>124</sup> The specific crimes for which a child age thirteen is criminally responsible are the act of murder in the second degree,<sup>125</sup> or a “sexually motivated felony.”<sup>126</sup> A “sexually motivated felony” is defined as commitment of “a specified offense<sup>127</sup> for the purpose, in whole or substantial part, of his or her own direct sexual gratification.”<sup>128</sup> The sexually motivated felony “shall be deemed to be the same offense level as the specified offense the defendant committed.”<sup>129</sup> If convicted of “intentional” or “depraved” murder in the second degree, a child as young as thirteen may receive the maximum of an indeterminate prison term of life and a minimum period of imprisonment of seven and a half years.<sup>130</sup> The indeterminate sentence of imprisonment for juvenile offenders is mandatory.<sup>131</sup> A person as young as fourteen can be criminally responsible for violent crimes such as aggravated sexual abuse in the first degree, arson in the first and second degrees, assault in the first degree, attempted kidnapping in the first degree, kidnapping in the first degree, attempted murder in the second degree, burglary in the first and second degrees, criminal possession of weapons on school grounds, criminal sexual act in the first degree, manslaughter in the first degree, rape in the first degree, or robbery in the first and

---

<sup>122</sup> *Id.*

<sup>123</sup> *See* N.Y. PENAL LAW § 30.00(2).

<sup>124</sup> *Id.*

<sup>125</sup> *Id.* §§ 30.00(2), 125.25(1).

<sup>126</sup> *Id.* § 130.91.

<sup>127</sup> The specified offenses are as follows: Assault in the first and second degrees, *id.* §§ 120.10, 120.05; Gang assault in the first and second degrees, *id.* §§ 120.07, 120.06; Stalking in the first degree, *id.* § 120.60; Manslaughter in the first and second degrees, *id.* §§ 125.20, 125.15(1); Aggravated murder, *id.* § 125.26; Murder in the first and second degrees, *id.* §§ 125.27, 125.25; Kidnapping in the first and second degrees, *id.* §§ 135.25, 135.20; Burglary in the first, second, and third degrees, *id.* §§ 140.30, 140.25, 140.20; Arson in the first and second degrees, *id.* §§ 150.20, 150.15; Robbery in the first, second, and third degrees, *id.* §§ 160.15, 160.10, 160.05; Promoting prostitution in the first and second degrees, *id.* §§ 230.32, 230.30; Compelling prostitution, *id.* § 230.33; Disseminating indecent material to minors in the first degree, *id.* § 235.22; Use of a child in a sexual performance, *id.* § 263.05; Promoting an obscene sexual performance by a child, *id.* § 263.10; Promoting a sexual performance by a child, *id.* § 263.15. Finally, any conspiracy and felony attempts to commit any of the foregoing crimes is also included as a specified offense. *Id.* § 130.91.

<sup>128</sup> N.Y. PENAL LAW § 130.91(1).

<sup>129</sup> *Id.* § 130.92(2).

<sup>130</sup> *Id.* § 70.05.

<sup>131</sup> *Id.* § 70.05(1).

second degrees.<sup>132</sup> The fact that a child can still be held criminally responsible and possibly receive a sentence of life imprisonment cannot be construed as an active attempt to ensure “the survival and development of the child . . . [to the] maximum extent possible,” as required by Article 6 of the CRC.<sup>133</sup>

Under New York law, a child can avoid a criminal conviction if adjudicated a “youthful offender,”<sup>134</sup> which allows a judge leniency to avoid imposing a sentence of imprisonment<sup>135</sup> since the adjudication is not deemed a conviction of a crime or any other offense.<sup>136</sup> The court may find that an eligible youth is a youthful offender if, in the opinion of the court, the interest of justice would be served by relieving the eligible youth from the onus of a criminal record and by not imposing an indeterminate term of imprisonment of more than four years.<sup>137</sup> Youthful offender eligibility is based on the nature of the crime and a youth’s prior record.<sup>138</sup> However, there are many hurdles to eligibility for youthful offender status. First, the person may be a thirteen, fourteen, or fifteen-year old prosecuted in criminal court as a juvenile offender, or a sixteen, seventeen, or eighteen-year old youth at the time of commission of the crime.<sup>139</sup> Moreover, youthful offender status is available for any crime except for a class A felony or armed felony, rape in the first degree, a criminal sexual act in the first degree, or aggravated sexual abuse.<sup>140</sup> A youth is not eligible for youthful offender status if she or he has any previous felony convictions or sentences, a youthful offender adjudication following a conviction of a felony, or a previous juvenile delinquency adjudication for the

---

<sup>132</sup> *Id.* § 30.00(2).

<sup>133</sup> CRC, *supra* note 2, art. 6(2).

<sup>134</sup> Youthful offenders include juvenile offenders or youths who are at least sixteen and less than nineteen when the crime was committed whose conviction was set aside by a judge and replaced with non-criminal adjudication. Thus, a sixteen-year old is not a juvenile offender, but may be eligible for youthful offender status. Both offender labels are different from “juvenile delinquent,” who is a youth between the ages of seven and fifteen who commits an act which would be a crime if she or he were an adult, but the crime is considered a “delinquent act” due to the child’s youth. A youth adjudicated a juvenile delinquent by the family court is provided with treatment or confinement, with the goal of rehabilitation. ERIC WARNER, THE JUVENILE OFFENDER HANDBOOK, NEW YORK STATE DEPARTMENT OF JUVENILE JUSTICE, *available at* [www.nyc.gov/html/djj/html/cases.html](http://www.nyc.gov/html/djj/html/cases.html).

<sup>135</sup> N.Y. PENAL LAW § 60.10(1).

<sup>136</sup> *See* N.Y. CRIM. PROC. LAW § 720.20.

<sup>137</sup> *Id.* § 720.20(1)(a).

<sup>138</sup> WARNER, *supra* note 134.

<sup>139</sup> N.Y. CRIM. PROC. LAW § 720.10.

<sup>140</sup> *Id.* § 720.10(2)(a).

commission of a “designated felony act.”<sup>141</sup>

These numerous exceptions to youthful offender eligibility make it more likely that a child will not be eligible for the discretionary leniency provided for in New York law. If a child fifteen-years old or younger is convicted as a juvenile offender, the only available safeguard to the incarcerated minor is that she or he cannot be incarcerated in the same facility as adults.<sup>142</sup> However, notwithstanding this safeguard against the potential assault and sexual abuse by adult inmates, New York laws concerning juvenile justice do not seem to be in line with the general principle of right to life, survival, and development under Article 6 of the CRC. Indeed, studies have shown that once a child enters the juvenile justice system, he or she rarely leaves its revolving doors.<sup>143</sup>

One of the major pipelines into the juvenile justice system is the status offense<sup>144</sup> of truancy. In New York State, there is no definition of truancy except for the vague definition of a child being “unlawfully absent from attendance upon instruction.”<sup>145</sup> This lack of a clear definition for truancy leaves children vulnerable to detention as a truant for missing just one day of school. Should the child be habitually truant or “incorrigible,” she or he can be deemed a school delinquent and may be required to have a Person In Need of Supervision (“PINS”)<sup>146</sup> Proceeding in family court. In 2007, as a result of the New York City Police Department’s Truancy Sweep Program, there were several documented incidents of questionable detention, arrest, and court involvement for children who were deemed truants when, in fact, they were late and on their way to school.<sup>147</sup>

---

<sup>141</sup> *Id.* § 720.10(2)(b)–(c).

<sup>142</sup> N.Y. FAM. CT. ACT § 304.1(2).

<sup>143</sup> U.S. DEPARTMENT OF EDUCATION, MANUAL TO COMBAT TRUANCY, available at <http://www2.ed.gov/pubs/Truancy>; VERA INSTITUTE OF JUSTICE, APPROACHES TO TRUANCY PREVENTION, [http://www.vera.org/publication\\_pdf/197\\_377.pdf](http://www.vera.org/publication_pdf/197_377.pdf); OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION, TRUANCY: FIRST STEP TO A LIFETIME OF PROBLEMS, available at <http://www.ncjrs.gov/txtfiles/truancy.txt>.

<sup>144</sup> A status offense is an act that is a crime due to the young age of the actor, but would not be illegal for someone older. See N.Y. FAM. CT. ACT §§ 711–718.

<sup>145</sup> N.Y. EDUC. LAW § 3213(2)(a).

<sup>146</sup> N.Y. FAM. CT. ACT § 712(a) (defining a “person in need of supervision” as a person who is less than eighteen years of age who does not attend school or who is incorrigible, ungovernable or habitually disobedient and beyond the lawful control of a parent or other person legally responsible for such child’s care, or other lawful authority, or who violates the provisions of section 221.05 of the penal law (unlawful possession of marihuana)).

<sup>147</sup> Letter from Donna Liberman, Executive Director of New York Civil Liberties Union, to William C. Thompson Jr., President of New York City Board of Education

While there are many education-related studies that emphasize the importance of addressing truancy and that claim that truancy is linked to future delinquency,<sup>148</sup> there is a noticeable lack of studies that address the possibility that truancy is the gateway to the juvenile justice system and creates future delinquents.

Apart from truancy, the other most common status offenses among children in New York State are running away from home, alcohol use, curfew violations, and ungovernability.<sup>149</sup> Individual towns have the authority to enact curfew laws so long as that law bears a substantial relationship to an important governmental objective.<sup>150</sup> The CRC views status offenses as discriminatory and harmful to children. The fact that status offenses often lead the child into the revolving doors of family court<sup>151</sup> would raise major concerns for the U.N. Committee. Article 37(b) of the CRC states that any arrest, detention or imprisonment of a child must not only be in conformity with the law, but must also be used only as a measure of last resort and for the shortest appropriate period of time.<sup>152</sup> This is related to the child's right to mental and social development in Article 6 of the CRC.<sup>153</sup> The sentencing laws of New York State are of some concern, but more research and information would be needed to ascertain whether these sentencing laws are measures of last resort and the shortest appropriate periods of time.

#### IV. MILITARY ENLISTMENT

As the CRC is indivisible and its articles interdependent,<sup>154</sup> when considering the issue of military enlistment—which goes to

---

and Harold O. Levy, Interim Chancellor of New York City Board of Education (May 23, 2007), *available at* <http://www.nyclu.org/node/567>.

<sup>148</sup> See MYRIAM L. BAKER, JANE NADY SIGMON & M. ELAINE NUGENT, TRUANCY REDUCTION: KEEPING STUDENTS IN SCHOOL, UNITED STATES DEPARTMENT OF JUSTICE, OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION (2001), <http://www.ncjrs.gov/pdf/files1/ojdp/188947.pdf>.

<sup>149</sup> ACT 4 JUVENILE JUSTICE, JUVENILE STATUS OFFENSES FACT SHEET, [www.act4jj.org/media/factsheets/factsheet\\_17.pdf](http://www.act4jj.org/media/factsheets/factsheet_17.pdf).

<sup>150</sup> “A town may enact a juvenile curfew law pursuant to its home rule police powers if it proves that the provision bears a substantial relationship to an important governmental objective, but it may not charge parents with a violation, punishable by fine and/or imprisonment, if their minor children violate the curfew.” See 2005 Informal Op. N.Y. Att’y Gen. 13 (2005), [http://www.ag.ny.gov/bureaus/appeals\\_opinions/opinions/2005/informal/2005\\_13.pdf](http://www.ag.ny.gov/bureaus/appeals_opinions/opinions/2005/informal/2005_13.pdf).

<sup>151</sup> MANUAL TO COMBAT TRUANCY, *supra* note 143.

<sup>152</sup> CRC, *supra* note 2, art. 37.

<sup>153</sup> *Id.* art. 6.

<sup>154</sup> UNICEF IMPLEMENTATION HANDBOOK, *supra* note 89, at 17.

the heart of the inherent right to life principle under Article 6—it is necessary to also look at Article 38 of the CRC, which discusses the protection of children who are affected by armed conflict.<sup>155</sup> Article 38 requires States Parties to take all feasible measures to ensure that children under fifteen years of age do not directly participate in armed conflict,<sup>156</sup> such as refraining from recruiting youths under fifteen into armed forces,<sup>157</sup> and giving priority to the oldest youth when recruiting anyone who is between fifteen and eighteen years old.<sup>158</sup> This particular article’s age provisions are an anomaly in the CRC because Article 1 of the CRC defines the age of majority as eighteen.<sup>159</sup> In response to this incongruity, the Optional Protocol to the CRC raised the minimum age for involvement in hostilities and recruitment into armed forces to eighteen years old<sup>160</sup> in “light of the definition of the child and the principle of the best interests of the child.”<sup>161</sup>

New York’s military enlistment qualifications are tied to federal law.<sup>162</sup> These qualifications comport with the CRC’s requirement that military enlistment must be of persons at least fifteen years old by only accepting original enlistment of “qualified, effective, and able-bodied persons who are not less than seventeen years nor more than forty-two years of age.”<sup>163</sup> The relevant federal statute also seems to provide a safeguard for minors by specifically requiring the written consent of a parent or guardian of a person under age eighteen if “he has a parent or guardian entitled to his custody and control.”<sup>164</sup> This statute suggests that federal and New York State law recognize and acknowledge that a person under age eighteen is a minor and generally requires protection from military involvement. It can be argued, however, that the provision in the law requiring a parent or guardian’s consent to a minor’s enlistment makes this safeguard inapplicable to those persons under eighteen who have no legal guardian or are emancipated.

---

<sup>155</sup> CRC, *supra* note 2, art. 38.

<sup>156</sup> *Id.* art. 38(2).

<sup>157</sup> *Id.* art. 38(3).

<sup>158</sup> *Id.*

<sup>159</sup> *Id.* art. 1.

<sup>160</sup> Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict, G.A. Res. 54/263, art. 1–4, U.N. Doc. A/RES/54/263 (May 25, 2000) [hereinafter *Optional Protocol for Children in Armed Conflict*].

<sup>161</sup> UNICEF IMPLEMENTATION HANDBOOK, *supra* note 89, at 511.

<sup>162</sup> N.Y. MIL. LAW. § 90(1) (McKinney 2006).

<sup>163</sup> 10 U.S.C. § 505(a) (2008).

<sup>164</sup> *Id.*

Article 6 requires States Parties to take positive measures to protect life and not merely to construe the “inherent right to life” in a restrictive manner.<sup>165</sup> This understanding, combined with the general definition of the child as “below the age of eighteen,”<sup>166</sup> raises concerns regarding the federal and New York State provisions allowing for seventeen-year olds to be enlisted. Allowing youth under eighteen-years old to be enlisted is a contravention of Article 6 of the CRC.

## V. ESPECIALLY VULNERABLE CHILDREN

### A. *Refugees*

There are only two provisions in New York law that are related to refugee status and Article 6 of the CRC’s inherent right to life. The two provisions concern educational grants<sup>167</sup> and loans for refugees and federal public assistance.<sup>168</sup> New York law regarding refugees’ access to educational loans and grants puts refugees on equal footing with U.S. citizens for the purpose of loan and grant eligibility, thereby removing the distinction between children based on their citizenship status.

The federal public assistance statutes authorize the operation of “a Cuban and Haitian entrant program and a refugee resettlement program pursuant to [T]itle IV of the federal [I]mmigration and [N]ationality [A]ct, including provision for refugee cash assistance, refugee medical assistance, refugee child welfare services, and refugee social services.”<sup>169</sup> This provision allows for a broad array of services that are necessary to ensure a child’s survival, such as medical assistance and welfare services.

### B. *Commercial Sexual Exploitation*

Definitions in New York Penal Law of sex trafficking and prostitution do not stipulate age, and nor do they explicitly mention children.<sup>170</sup> As such, it is possible for a child to be charged with prostitution while under the age of sexual consent.<sup>171</sup> However, during the 2005 session, the New York State Legislature attempted to address the increase in the number of children forced into “sex

<sup>165</sup> UNICEF IMPLEMENTATION HANDBOOK, *supra* note 89, at 87.

<sup>166</sup> CRC, *supra* note 2, art. 1.

<sup>167</sup> N.Y. EDUC. LAW. § 661.

<sup>168</sup> N.Y. SOC. SERV. LAW § 358 (McKinney 2006).

<sup>169</sup> *Id.* § 358(3).

<sup>170</sup> See N.Y. PENAL LAW. §§ 130.00, 230.00.

<sup>171</sup> See *id.* §§ 230.00, 130.05(3)(a).

slavery” by creating the new offense of “compelling prostitution.”<sup>172</sup> This offense punishes a person for a class B felony when, “being twenty-one years of age or older, he or she knowingly advances prostitution by compelling a person less than sixteen years old, by force or intimidation, to engage in prostitution.”<sup>173</sup> Other attempts to protect children from commercial sexual exploitation are the various provisions prohibiting the promotion of sexual performances by children and possession of child pornography.<sup>174</sup>

New York’s Social Services Law provides that the Office of Temporary and Disability Assistance (“OTDA”) give specific services to victims of human trafficking.<sup>175</sup> These services include:

case management, emergency temporary housing, healthcare, mental health counseling, drug addiction screening and treatment, language interpretation and translation services, English language instruction, job training and placement assistance, post-employment services for job retention, and services to assist the individual and any of his or her family members to establish a permanent residences in New York state or the United States.<sup>176</sup>

Although there is no mention of children *per se* in these services, there is a special provision concerning victims under the age of eighteen.<sup>177</sup> Where the victim is under the age of eighteen, OTDA is required to notify the local Department of Social Services in the area where the child was found.<sup>178</sup>

### C. Street Children

The New York State Legislature has recognized that runaway youths are without protection and are exposed to unnecessary danger. Accordingly, the Legislature enacted the Runaway and Homeless Youth Act to establish procedures and services to protect runaway youth and to alleviate the personal or family situation that may present a threat to the health and safety of the youth.<sup>179</sup>

The statute defines a “runaway youth” as a “person under the age of eighteen years who is absent from his legal residence without the consent of his parent, legal guardian or custodian.”<sup>180</sup> A

---

<sup>172</sup> *Id.* § 230.33.

<sup>173</sup> *Id.*

<sup>174</sup> *Id.* §§ 263.00 *et seq.*

<sup>175</sup> *See* N.Y. SOC. SERV. LAW § 483-bb(a).

<sup>176</sup> *Id.* § 483-bb(b).

<sup>177</sup> *See id.* § 483-cc(b).

<sup>178</sup> *Id.*

<sup>179</sup> N.Y. EXEC. LAW § 532.

<sup>180</sup> *Id.* § 532-a(1).

“homeless youth” is defined as “a person under the age of twenty-one who is in need of services and is without a place of shelter where supervision and care are available.”<sup>181</sup>

Runaway programs have been established and are authorized to provide a variety of services to runaway and homeless youth. These services include:

- (a) provide assistance . . . ; (b) attempt to determine the cause for the youth’s runaway or homeless status; (c) explain to the runaway and homeless youth his legal rights and options of service or other assistance available to the youth; (d) work towards reuniting such youth with his parent or guardian as soon as practicable . . . ; (e) assist in arranging for necessary services for runaway or homeless youth, and where appropriate, their families, including but not limited to food, shelter, clothing, medical care, education and individual and family counseling.<sup>182</sup>

Moreover, there is a statewide central register and clearinghouse for missing children.<sup>183</sup> These provisions indicate the New York State Legislature’s attempt to protect a child’s right to life and, more importantly, an attempt to ensure the survival and development of street children,<sup>184</sup> an especially vulnerable group.

In further ensuring child development, the New York Education Law also provides that homeless children between ages of five and twenty-one who have not obtained a high school diploma are entitled to attend a public school.<sup>185</sup> Homeless children are also entitled to free transportation to school.<sup>186</sup> For the purposes of the Education Law, a homeless youth is defined as a child who “lacks a fixed, regular, and adequate night-time residence”<sup>187</sup> or whose primary nighttime residence is a shelter or “a public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings.”<sup>188</sup>

One possible problem with the compulsory education law, which was intended to be a child protective statute ensuring every child receives adequate educational opportunities,<sup>189</sup> is the issue of truancy arrests.<sup>190</sup> “A supervisor of attendance, attendance teacher

---

<sup>181</sup> *Id.* § 532-a(2).

<sup>182</sup> *Id.* § 532-b(1).

<sup>183</sup> *Id.* § 837-e.

<sup>184</sup> *Id.* § 532.

<sup>185</sup> N.Y. EDUC. LAW § 3202(1).

<sup>186</sup> N.Y. SOC. SERV. LAW § 62(6)(c).

<sup>187</sup> N.Y. EDUC. LAW § 3209(1)(a)(1).

<sup>188</sup> *Id.* § 3209(1)(a)(2)(ii).

<sup>189</sup> *See Matter of Julio R.*, 129 Misc.2d 171 (1985).

<sup>190</sup> *See* N.Y. EDUC. LAW § 3213(2)(a).

or attendance officer” is given authority to “arrest without warrant any minor who is unlawfully absent from attendance upon instruction.”<sup>191</sup> The unstable and unpredictable nature of being homeless makes such children more susceptible to being labeled a truant and arrested. Also, a person less than eighteen years old who does not attend school in accordance to the attendance requirements of compulsory education may be deemed a PINS.<sup>192</sup>

Another possible problem that might arise for homeless children is that, under the New York Penal Law, loitering is a misdemeanor and is defined as “remain[ing] or wander[ing] about in a public place for the purpose of begging” or “remain[ing] in any transportation facility, or is found sleeping therein, and is unable to give a satisfactory explanation of his presence.”<sup>193</sup> These are acts that most homeless youth and adults alike tend to default to, due to the nature of their status. It seems then that under the Penal Law homeless children are punished for being homeless. However, this effect has been mitigated as the subdivision of this statute concerning begging has been recognized by New York courts as unconstitutional on First Amendment grounds in 1993.<sup>194</sup>

Overall, New York’s laws regarding vulnerable children are in accord with the CRC’s requirements of state promotion of survival and development for children. However, in several key areas New York State laws fail to fully reflect the requirements of Article 6.

## VI. HEALTHCARE

New York Public Health Law provides for health services that will “promote public health and prevent illness.”<sup>195</sup> Among these services are “activities designed to reduce perinatal, infant and maternal mortality and morbidity and to promote the health of infants, children, adolescents, and people of childbearing age.”<sup>196</sup> The Public Health Law specifies that such activities will include “family centered perinatal care and other services appropriate to promote the birth of a healthy baby to a healthy mother, and services to prevent and detect health problems in infants, young children, and school age children.”<sup>197</sup> There is an active effort to

---

<sup>191</sup> *Id.*

<sup>192</sup> N.Y. FAM. CT. ACT § 712(a) .

<sup>193</sup> N.Y. PENAL LAW §§ 240.35(1), 240.35(7).

<sup>194</sup> *See* Loper v. New York City Police Department, 999 F.2d 699 (2d Cir. 1993).

<sup>195</sup> N.Y. PUB. HEALTH LAW § 602(2)(a) (McKinney 2006).

<sup>196</sup> *Id.* § 602(3)(b)(1).

<sup>197</sup> *Id.*

diminish infant and child mortality in New York law.<sup>198</sup> In furtherance of such goals, there are provisions for the surveillance and execution of an immunization program for children to protect against communicable diseases,<sup>199</sup> as well as testing for certain other diseases and conditions at twenty-eight days or younger,<sup>200</sup> and a requirement that physicians test pregnant women for syphilis<sup>201</sup> and hepatitis B<sup>202</sup> upon first examination. There are also provisions for the collection, storage, and distribution of human breast milk, and education of the public and health care providers regarding the availability of human breast milk.<sup>203</sup> The State recognizes the importance of breast milk to an infant's health and survival and, accordingly, allows a mother to freely breast-feed her baby irrespective of location and exposure of nipple.<sup>204</sup>

Other significant healthcare provisions for children in New York State are laws regarding lead poisoning.<sup>205</sup> Some of these provisions include identifying zip codes in counties with significant concentrations of children identified with elevated blood lead levels and targeting children under age six living in housing areas with the highest lead exposure risk in order to develop a primary prevention plan, including policies, education, and community outreach to reduce lead exposure.<sup>206</sup> There seems to be an attempt to cover every possible contingency concerning lead screening of children and pregnant women,<sup>207</sup> reporting lead exposure levels,<sup>208</sup> and restricting manufacture and sale of lead-painted toys and furniture.<sup>209</sup>

The State also provides for health services coverage to eligible children<sup>210</sup> and expectant mothers,<sup>211</sup> which is also in keeping with the CRC's right to health and health services in order to ensure

---

<sup>198</sup> *Id.* § 2500 (requiring the commissioner to act in an advisory and supervisory capacity in matters relating to the health of mothers and their children).

<sup>199</sup> *See id.* § 613.

<sup>200</sup> *Id.* § 2500-a (relating to testing for phenylketonuria, homozygous sickle cell disease, hypothyroidism, branched-chain ketonuria, galactosemia and homocystinuria); *id.* § 2500-f (relating to HIV).

<sup>201</sup> *Id.* § 2308.

<sup>202</sup> *Id.* § 2500-e.

<sup>203</sup> *Id.* § 2505.

<sup>204</sup> N.Y. CIV. RIGHTS LAW § 79-e (McKinney 2006).

<sup>205</sup> *See* N.Y. PUB. HEALTH LAW § 1370.

<sup>206</sup> *Id.* § 1370-a(3).

<sup>207</sup> *Id.* §§ 1370-c, 1370-d.

<sup>208</sup> *Id.* § 1370-e.

<sup>209</sup> *Id.* § 1371.

<sup>210</sup> *Id.* § 2511.

<sup>211</sup> *Id.* § 2520.

that “no child is deprived of his or her right of access to such health care services.”<sup>212</sup> It is the eligibility criteria of the insurance and assistance programs that raise concerns as to whether no child is in fact deprived. A child or expectant mother who does not meet the oftentimes rigid and confusing definitions of eligibility and other requirements<sup>213</sup> for federal or state assistance and cannot afford private care is denied access to proper health care.

The numerous provisions relating to the promotion and protection of the child’s health are in keeping with Article 6’s recognition of every child’s inherent right to life and the active obligation of a State Party to ensure “to the maximum extent possible” the survival of the child. Specifically, these healthcare provisions are in line with Article 24 of the CRC’s requirement for States Parties to take appropriate measures to diminish infant and child mortality<sup>214</sup> and ensure appropriate prenatal and postnatal health care for mothers.<sup>215</sup>

## VII. EDUCATION

The CRC views education as playing an integral role in a child’s development.<sup>216</sup> Even before the CRC was formally adopted, it has been recognized that education is an important aspect of a child’s development. For example, the Eighteenth General Conference of the UNESCO Recommendation Concerning Education for International Understanding, Cooperation and Peace and Education Relating to Human Rights and Fundamental Freedoms of 1974 states: “[t]he word ‘education’ implies the entire process of social life by means of which individuals and social groups learn to develop consciously within, and for the benefit of, the national and international communities, the whole of their personal capacities, attitudes, aptitudes and knowledge.”<sup>217</sup> The CRC does not attempt to define the details of a basic curriculum, and nor does it indicate how much of the child’s life should be devoted to education. It requires, however that there be a fundamental core minimum of free compulsory primary education for all.<sup>218</sup>

Children in New York have access to this free and compulsory

---

<sup>212</sup> CRC, *supra* note 2, art. 24(1).

<sup>213</sup> N.Y. PUB. HEALTH LAW §§ 2510, 2521.

<sup>214</sup> CRC, *supra* note 2, art. 24(2)(a).

<sup>215</sup> *Id.* art. 24(2)(d).

<sup>216</sup> *See id.* art. 29.

<sup>217</sup> UNICEF IMPLEMENTATION HANDBOOK, *supra* note 89, at 373.

<sup>218</sup> CRC, *supra* note 2, art. 28(1)(a).

primary education.<sup>219</sup> Interestingly, incarcerated minors receive compulsory education up until the age of twenty years old.<sup>220</sup> While New York laws do not have a provision that expressly ensures the survival and development of the child, the “maintenance and support of a system of free common schools”<sup>221</sup> provision in the New York State Constitution, along with statutory compulsory education requirements<sup>222</sup> can, nonetheless, be construed as the state’s active assurance of a child’s development. Provisions of New York’s Vehicle and Traffic Law regulating vehicular speed in school zones<sup>223</sup> and requiring cars to stop and not overtake school buses<sup>224</sup> are further evidence of a legislative recognition of safe access to schools and the desire to ensure the child’s survival by laying safeguards to protect against vehicular accidents.

Dealing with health and, by extension, life, New York law also contains provisions that connect survival and development in the form of comprehensive school health education programs.<sup>225</sup> The purpose of these provisions is in line with the CRC as it seeks to assist public schools in “developing curricula, training staff, and addressing local health education needs of students, parents, and staff.”<sup>226</sup>

However, because the programs referenced above are limited to health education at the elementary school level,<sup>227</sup> children above the elementary school age are excluded from receiving further health education. There may be a correlation between a lack of health education specifically concerning safe sex practices in high schools and the number of under-aged and unwanted pregnancies. Those pregnancies in turn contribute to the infant and child mortality rates.<sup>228</sup> To fully comply with the CRC, such programs should be extended beyond the elementary school level to protect life and ensure child survival and development as required by Article 6 of the CRC.

One of the duties imposed upon trustees of school districts and boards of education is the duty to purchase sites for recreation

---

<sup>219</sup> N.Y. CONST. art XI, § 1.

<sup>220</sup> N.Y. EDUC. LAW § 3202(7).

<sup>221</sup> *Id.*

<sup>222</sup> N.Y. EDUC. LAW § 3205.

<sup>223</sup> N.Y. VEH. & TRAF. LAW. § 1180(c) (McKinney 2006).

<sup>224</sup> *Id.* § 1174.

<sup>225</sup> N.Y. EDUC. LAW § 804-a.

<sup>226</sup> *Id.* § 804-a(1).

<sup>227</sup> *Id.* § 804-a(2).

<sup>228</sup> See generally UNICEF IMPLEMENTATION HANDBOOK, *supra* note 89, at 87.

and playgrounds.<sup>229</sup> This comports with the child's right to leisure and recreation set forth in Article 31 of the CRC.<sup>230</sup> Article 31 of the CRC recognizes the right of a child to leisure, recreation, and culture, and relates to the child development principles embodied in Article 6 because such free time and unsupervised play is essential to the child's physical, social, and psychological development.<sup>231</sup> By providing for playgrounds, New York is ensuring that children have playtime and, by extension, is promoting their development. It should be noted that the New York County, General City, and Municipal Laws also make reference to the establishment and maintenance of playgrounds.<sup>232</sup> However, these are optional provisions and do not impose a legal requirement on municipalities to provide playgrounds and recreation areas.<sup>233</sup>

Unfortunately, the New York Education Law does not actively ensure a child's right to rest and leisure that, under Article 19 of the CRC, implies having the time and freedom to do as one pleases.<sup>234</sup> New York law frames the length of school sessions negatively as "not less than one hundred ninety days each year, inclusive of legal holidays that occur during the term of said school and exclusive of Saturdays."<sup>235</sup> This cannot be construed as setting a reasonable limitation on schooltime, as the phrase "not less" means that school administrators have discretion to add more hours to the school session. Furthermore, New York does not have a statutory right to recess time.

Overall, the New York Education Law mirrors the safeguards in Article 6 of the CRC, especially with regards to a child's right to development, in that it provides for free and compulsory primary education and has established provisions for leisure and recreation. The concern, however, is how these provisions in the New York law are implemented.

#### VIII. EMPLOYMENT

Article 32 of the CRC concerns child labor and relates to Article 6 of the CRC in that it specifically refers to protecting the child's development.<sup>236</sup> Article 32 of the CRC requires that chil-

---

<sup>229</sup> N.Y. EDUC. LAW §§ 1709, 1604.

<sup>230</sup> CRC, *supra* note 2, art. 31.

<sup>231</sup> *Id.* UNICEF IMPLEMENTATION HANDBOOK, *supra* note 89, at 420.

<sup>232</sup> *See* N.Y. GEN. CITY LAW § 20(7) (McKinney 2006).

<sup>233</sup> *Id.*

<sup>234</sup> UNICEF IMPLEMENTATION HANDBOOK, *supra* note 89, at 417.

<sup>235</sup> N.Y. EDUC. LAW § 3204(4)(a).

<sup>236</sup> CRC, *supra* note 2, art. 32.

dren be protected from performing any work that is likely to be hazardous, to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral, or social development.<sup>237</sup> It also provides for the "appropriate regulation of the hours and conditions of employment"<sup>238</sup> as well as "a minimum age or minimum ages for admission to employment."<sup>239</sup>

In contrast to the lack of limitations on school hours, New York law takes a proactive role and actively sets limitations on working hours of minors,<sup>240</sup> including various restrictions on employment for minors under fourteen.<sup>241</sup> Education takes precedence when the minor is fourteen or fifteen, since no minor at those ages may be employed when attendance is required by the Education Law.<sup>242</sup> The exception is if the student presents an employment certificate or permit issued in accordance with the Education Law.<sup>243</sup> There are more exceptions that allow for employment without an employment certificate.<sup>244</sup> Such employment includes:

- (1) Caddy service on a golf course;
- (2) Service as a baby sitter staying with and at the home of a younger child or children with or without the presence at such home of such child's or children's parents or guardians;
- (3) Casual employment consisting of yard work and household chores in and about a residence or the premises of a non-profit, non-commercial organization, not involving the use of power-driven machinery;
- (4) Assisting a parent, aunt, uncle, grandparent or guardian in the sale of produce of a farm that is owned or leased by the minor's parent, aunt, uncle, grandparent or guardian, at a farm stand or farmer's market stand that is owned or leased by the minor's parent, aunt, uncle, grandparent or guardian, at times when school is not in session and the minor is accompanied by the parent or guardian or has presented the written consent of the parent or guardian.
- (5) Caddie service at a bridge tournament;
- (6) Work for his parents or guardians either on the home farm or at other outdoor work not connected with or for any trade, business, or service.<sup>245</sup>

However, under no circumstance may a minor age fourteen or fif-

---

<sup>237</sup> *Id.* art. 32(1).

<sup>238</sup> *Id.* art. 32(2)(b).

<sup>239</sup> *Id.* art. 32(2)(a).

<sup>240</sup> N.Y. LAB. LAW § 133 (McKinney 2006).

<sup>241</sup> *Id.* §§ 130, 133, 134.

<sup>242</sup> *Id.* § 131(1).

<sup>243</sup> *Id.* § 131(2).

<sup>244</sup> *Id.* § 131(3).

<sup>245</sup> *Id.*

teen work in connection with a factory.<sup>246</sup> This prohibition of factory work extends to all children under the age of eighteen.<sup>247</sup>

Education also takes precedence over employment, as an employed minor between ages sixteen and seventeen must still attend school.<sup>248</sup> To ensure that the student is not deprived of rest time, an employed minor at that age may attend school part-time.<sup>249</sup> This is mandatory, as the minor may not be employed while school is in session unless he or she is enrolled part-time.<sup>250</sup> The hours of school instruction are delineated as “not less than four, nor more than eight hours per week.”<sup>251</sup> The allowable hours of work for these part-time enrolled minors<sup>252</sup> are up to forty-eight hours per week,<sup>253</sup> up to six days a week,<sup>254</sup> and not after midnight or prior to 6:00 a.m.<sup>255</sup>

The Education and Labor Laws, taken together, promote the development of the child, as the limitations on work and school hours serve to ensure rest and leisure, and education provides a vital benefit to the child. The Labor Law’s allowance of employment for up to twenty-eight hours a week for minors enrolled in school full-time, and up to forty-eight hours a week for minors enrolled as part-time students, juxtaposed with the Education Law’s restriction on a maximum of eight hours of instruction a week for part-time employed students, illustrates the scale tipping in favor of labor and against education. The CRC emphasizes and stresses the importance of education. To be more in keeping with the goals and principles of the CRC, the provisions concerning hours of employment for school-age children should make labor hours more restrictive and should expand education hours.

#### IX. SOCIAL SERVICES

New York Social Services Law covers a variety of rights specified under the CRC that relate to the survival and development of the child under Article 6. Specifically, the Social Services Law address the child’s right to health,<sup>256</sup> right to protection from all

---

<sup>246</sup> *Id.* § 131(2).

<sup>247</sup> *See id.* § 133(2).

<sup>248</sup> *Id.* §§ 132(1), 132(2).

<sup>249</sup> *See id.* § 143.

<sup>250</sup> *See id.*

<sup>251</sup> N.Y. EDUC. LAW § 3206(3).

<sup>252</sup> N.Y. LAB. LAW § 143(3).

<sup>253</sup> *Id.* § 143(2).

<sup>254</sup> *Id.*

<sup>255</sup> *Id.*

<sup>256</sup> CRC, *supra* note 2, art. 24.

forms of violence,<sup>257</sup> and the right to an adequate standard of living.<sup>258</sup>

Some of issues covered by New York State law include child welfare,<sup>259</sup> child abuse and protective services,<sup>260</sup> teen pregnancy,<sup>261</sup> abandonment,<sup>262</sup> foster care,<sup>263</sup> homeless housing,<sup>264</sup> paternity proceedings,<sup>265</sup> and assistance to victims of human trafficking.<sup>266</sup>

Child protective services aim to:

encourage more complete reporting of suspected child abuse and maltreatment and to establish in each county of the [S]tate a child protective service capable of investigating such reports swiftly and competently and capable of providing protection for the child or children from further abuse or maltreatment and rehabilitative services for the child or children and parents involved.<sup>267</sup>

The interagency reporting creates an overlap between the Public Health Law, Education Law, and the Family Law to establish the requirements for mandatory reporting of child abuse.<sup>268</sup> This serves to further the goal of protecting a child from violence.

There are also provisions for “preventative services,” which reflect the finding of the New York State Legislature that “it is desirable for children to grow up with a normal family life in a permanent home and that such circumstance offers the best opportunity for children to develop and thrive.”<sup>269</sup> Preventative services entail:

supportive and rehabilitative services provided . . . to children and their families for the purpose of: averting an impairment or disruption of a family which will or could result in the placement of a child in foster care; enabling a child who has been placed in foster care to return to his family at an earlier time than would otherwise be possible; or reducing the likelihood that a child who has been discharged from foster care would

---

<sup>257</sup> *Id.* art. 19.

<sup>258</sup> *Id.* art. 27.

<sup>259</sup> N.Y. SOC. SERV. LAW §§ 372-a, 395-398, 409.

<sup>260</sup> *Id.* §§ 411-425.

<sup>261</sup> *Id.* §§ 409i-n, 465.

<sup>262</sup> *Id.* § 372-g.

<sup>263</sup> *Id.* §§ 383-c, 398-a.

<sup>264</sup> *Id.* § 43.

<sup>265</sup> N.Y. SOC. SERV. LAW § 372-c.

<sup>266</sup> *Id.* §§ 483-aa - 483-ee.

<sup>267</sup> *Id.* § 411.

<sup>268</sup> *Id.* § 413, N.Y. EXEC. LAW § 214-a.

<sup>269</sup> N.Y. SOC. SERV. LAW § 384-b(1)(a)(i).

return to such care.<sup>270</sup>

Thus, New York law in many ways already enshrines the same goals and requirements found in Article 6 of the CRC when it provides for social services to New York's children.

Article 6 of the CRC concerns the child's rights to life and maximum survival and development.<sup>271</sup> It goes beyond the human rights norm of the right to not arbitrarily lose one's life. Article 6 is a positive right, meaning it requires States Parties to take further steps to ensure to the maximum extent possible a child's survival and development, including physical mental, spiritual, moral, psychological, and social development to prepare the child for adulthood.<sup>272</sup>

Paragraph 1 of Article 6 raises no concerns when read in conjunction with New York law since, with regards to capital punishment, the U.S. Supreme Court ruling in *Roper v. Simmons* in 2005—prohibiting capital punishment for crimes committed by persons under age eighteen—is in keeping with Article 6's recognition of every child's right to life. The Court's ruling is also in keeping with Article 37(a) of the CRC, which prohibits capital punishment or life imprisonment without parole for children.<sup>273</sup>

The focus is New York law is thus primarily on child survival and development. Though both words are always phrased together to emphasize development as a holistic concept, the laws of New York seem to reflect a separation of the terms and, consequently, an imbalanced emphasis on survival over development.

Survival under New York law seems to be viewed as preventing death. Survival measures focus on protecting a child's life, and to keep a child from losing her or his life as a result of poor health or abuse. New York law has many provisions in place to protect a child's life, with particular focus on infant mortality. Laws that allow a mother to breastfeed freely anywhere, enact numerous provisions for prenatal care and immunizations, require screenings and regulations for lead exposure, and that mandate child health insurance for low-income families are all steps to ensure a child's survival. The mandatory reporting requirements under the Social Services Law that triggers child protective services to step in and ascertain a child's situation at home is another step in the direction of ensuring a child's survival by protecting her or him from abuse

---

<sup>270</sup> *Id.* § 409.

<sup>271</sup> CRC, *supra* note 2, art. 6.

<sup>272</sup> UNICEF IMPLEMENTATION HANDBOOK, *supra* note 89, at 86.

<sup>273</sup> CRC, *supra* note 2, art. 37(a).

or neglect in the home. However, budgetary concerns may prevent effective implementation of the Social Services Law.

In contrast, fewer laws enacted by the New York Legislature are geared solely toward positive youth development. The concept of development under New York law is primarily addressed through compulsory education of children up to the age of sixteen.<sup>274</sup> This recognition of the importance of education is in keeping with the CRC's goals. A dedication to education does, however, interweave with the reality of children needing to work for a variety of reasons. Thus, the current Labor Law provisions allow for employment of up to twenty-eight hours a week for students enrolled in school full-time.

Ironically, the compulsory education provision itself is, at times, the root of the problem since mandatory attendance and truancy laws often conflict. As a result, a child may be arrested or detained for missing school, and a child missing just one day of school can be labeled a truant. If the child habitually misses school or is labeled "incorrigible," she or he may have a PINS proceeding filed against him or her. Thus, in this respect, the noble aim of fostering development by requiring education actually results in the opposite effect of feeding youth into the juvenile justice system, thus reducing a child's chances of survival.

Truancy and curfew violations are status offenses that open the door to the juvenile justice system. As such, efforts must be made to prevent children from entering the system. As the laws currently stand, the child enters a system that has a view towards punishment rather than providing aid, treatment, and rehabilitation, all of which a child could receive from child protective services. Once divorced from the family setting, children are funneled through the juvenile justice system and not through social services. Again, this is likely a result of the lack of effective interagency collaboration under the Penal and Social Services Laws, as is seen with provisions concerning especially vulnerable children. The Legislature could correct this discrepancy by creating a coordinating body that would bring together the agencies involved in the protection and prosecution of children in New York State. This would ensure that those agencies' policies work with each other—rather than asymmetrically, as they presently do—and that the concerns and interests of each agency's constituencies are discussed among all the agencies responsible for the services and well-being of children.

---

<sup>274</sup> N.Y. CONST. art XI § 1; N.Y. EDUC. LAW § 3202(1).