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Testimony of Susan Jacobs, Esq.
Before the General Welfare Committee of
The New York City Council
January 10th, 2008

My name is Susan Jacobs; I am the President and Executive Director of the Center for Family Representation (CFR). I would like to thank Chairman de Blasio and the Committee for the opportunity to testify this afternoon.

CFR is: a non-profit law and policy organization, whose mission is to keep families safely together wherever possible and if a child is removed to foster care, to work towards a quick and safe reunification. The model of parent representation provided by CFR was developed to make a difference in the lives of families from the point that they are under investigation by child welfare through any court proceedings.

For the forty years of the existence of family court until recently, parents in New York City who were facing a court case involving potential removal of a child to foster care and breakup of their family had little or no support to address problems including domestic violence, substance abuse and mental illness, which led to the risk of foster care. However, we know that

the earlier a family becomes engaged in the right services, the better the outcome for the children and families.

Before CFR was established, if a neglect case was filed and children were placed in foster care, frequently the only support available to parents were solo attorneys whose interaction with families was limited to court appearances: these attorneys rarely worked with social workers or helped parents to improve their visits, secure better housing or Medicaid, or maintain rehabilitation services. Where safe reunification was possible, it was often needlessly delayed by this lack of attention outside of the legal process, and a complicated and overburdened family court.

Family court is simply not a panacea for resolving difficult family situations. Even before the spike in cases resulting from the tragedies in 2005 and 2006, family court was experiencing a huge increase in work load because of the demands of new legislation – the permanency law of 2005. The goal of the law was to help children get out of foster care and into permanent homes more quickly. Currently, New York ranks 48th out of 50 states in length of time that children spend in foster care.¹ Significantly, the legislation requires twice as many hearings twice as frequently as before. Notably, no additional funding was provided to support the increase in hearings and cases created by the Permanency Legislation, or the added burden on ACS and the foster care agencies of preparing the permanency reports. Similarly, no additional funding was provided to address the dramatic increase in reports, filings, and foster care placements.

¹ See, *A Dangerous Cycle*, A report by the Public Advocate, September 2007, p. 13, citing statistics provided by ACS, the child Welfare League of America and the United States Department of Health and Human Services; New York City's average length of stay is 49.9 months and is the second highest in the nation.

It is important to note that when the law was enacted, family court was already a place of endemic delay²: Routinely in 2005 and continuing to today, a child protective case might come into court in January and a trial would not start until July. Unlike criminal cases, for which there is a speedy trial requirement in the law, in family court a trial may start on day one and be adjourned several times for a period stretching out over several months. So the child, removed to foster care in January, stays essentially in limbo for months with no judicial action and no other oversight.

The increase in cases and placements puts pressure on an already busy court to make accurate and early differential decisions about families and make appropriate and timely supports available. However, no additional resources were provided by the state to any of the parties charged with implementing the mandates of the legislation: the judges and court system, child welfare agencies, lawyers for children and for parents. The system is in danger of stalling and the goals of moving children more quickly out of foster care have been stymied. One of the recommendations to get the system moving again is to add family court judges whose dockets far exceed those of their colleagues in other courts: In 2005, 79,500 contested civil cases and 24,500 criminal cases were filed in Supreme Court in New York City. In contrast, 211,000 cases were filed in Family Court in New York City that same year.³

Along with Chairman de Blasio, we have joined a group of advocates from around the city calling for an increase in the number of Family Court judges assigned to New York City to handle abuse and neglect cases, Family Court judges who handle child protective cases currently

² See, *Justice Denied: Delays in Resolving Child Protection Cases in New York*, by Martin Guggenheim and Christine Gottlieb, the Virginia Journal of Social Policy & the Law Vol. 12, #3, 2005.

³ Data provided by the New York City Family Court, January 2007.

carry an average of 547 cases per judge in New York County, 950 cases per judge in the Bronx, 725 cases per judge in Kings County, 688 cases per judge in Queens and 835 cases per judge in Staten island (where only two judges sit in Family Court). These numbers do not include the increased work load from the new permanency hearings. Clearly, judges with such workloads cannot possibly have sufficient time to consider the details and complexity of all of the child safety cases before them. Add to this that the caseworkers from ACS and foster care agencies are charged with producing much more detailed reports about the status of children: This is a good thing, but only if there is enough time and resources to make those reports available in a timely way and to ensure they are accurate.

So there are several reasons that family court as currently constituted in NY is disserving the families it was intended to help: There are too few judges with not enough time to hear complicated family situations. The law requires that judges hear and decide the most complicated of situations in what is the equivalent of a nanosecond. The bottom line is that the court is not a social service agency and is an expensive and inefficient way to get services to families which need help.

I have no doubt that the judges are as frustrated as we are in their inability to get the information, supports and services necessary to both understand and assist a family in crisis. The solutions are multiple: We applaud Chairman de Blasio for raising the important issues brought on by a lack of sufficient judges. We think it is important that those judges have the time to hear cases which must come before them and which need legal adjudication. However, this is probably far fewer cases/families than are currently brought into the court: Cases should and

could be diverted from the courthouse entirely which would result in far more time, far fewer days lost for families, caseworkers, etc. and much faster resolutions for children.

While the Council has recognized the importance of this work and the City has finally created institutional providers for parents in three boroughs, the resources allocated continue to be woefully short of what is needed to strengthen and preserve families wherever possible and achieve alternative permanent homes quickly for children when reunification is not possible. And the resources which do exist from government concentrate on the crisis, not as much on the circumstances leading up to it. CFR actually provides both.

Numerous studies of family court called for a new model of legal and social work assistance for families where children were at risk of abuse or neglect. Experts called for a model that could combine advocacy and social work assistance in the community early on, before a crisis became a danger, *and* continue to help the family safely reunify should foster care be inevitable. These experts cited the need for the perspectives of families who experienced the foster care system to be integrated into law making and policy development, and for a greater effort to be made to train all professionals working with poor families on practices that promoted family stability and parent engagement as a component of child safety.

The Administration for Children's Services (ACS) recently estimated that nearly a quarter of the children in foster care could have stayed at home, rather than entering care, with the right services. And many children who enter care stay longer than needed. The effect is far-reaching. An entanglement with the child protective system often leaves parents estranged from relationships with their children's schools, neighbors, employers and even other family members.

When children are actually taken, parents frequently are at risk of homelessness because their public housing is dependent on the number of children residing with them.

For children, the consequences are more devastating. Even when taken from difficult situations, the removal from the security of home and community is stressful, confusing, alienating and traumatic. Often, foster care means separation from family, friends, teachers, churches and extracurricular activities. Accordingly, children who spend extended time in foster care more frequently experience emotional, psychiatric and educational difficulties and as adults often fall victim to homelessness, unemployment and incarceration. In fact, foster care children are twice as likely to suffer from mental illness and post-traumatic stress disorder as the general public. Alarming, 33% of foster care children report abuse by a foster care parent or other adult. Foster youth are also more than twice as likely as the general population to be pregnant by age 19. More unsettling, 37% of youth leaving foster care are neither employed nor in school, resulting in major implications for adulthood. As adults, people who were in foster care make up 13% of the homeless population and are 15 times less likely to finish college than the general public. They are also three times more likely to live in poverty.⁴ The result of these compounded factors is the heightened chance that as adults, children who spend time in foster care will experience their own children having to go through the foster care system, continuing the detrimental cycle.

In addition, the financial costs of inappropriate removals or lengthy stays in foster care are staggering: New York State ranks second in the nation in numbers of children in foster care.⁴

⁴ See, "Preparing Youth for Adulthood," ACS, June 2006, p. 3 and see National Coalition for Child Protective Reform at <http://www.nccpr.org/newissues/1.html>.

The average costs to the state and city of New York of foster care for children removed from home is over \$45,000 per year. This has further implications for New York, where the mean length of stay in foster care for city children is 48 months, far exceeding national averages. But the human costs to children are incalculable.

Typical outreach and prevention efforts can fail due to a parent's mistrust of the intentions of an ACS caseworker, or because of a parent's lack of resources or knowledge of the family court system. This can cause parents to not follow up on referrals for rehabilitative services. Many parents confronted by ACS feel their voice is not heard or worse, feel too intimidated to engage in needed conversations about how to best safely care for their children.

We provide the services of an interdisciplinary team of social worker, lawyer, and parent advocate for every parent. The combination of these disciplines and the way they are able to be available to the client makes a difference in the parent's ability to engage with: workers from child welfare, service providers, and courts. We think this is because we are able to engage parents to work with services and we stay with them as their confidential advocates during that process.

Our staff is very hands-on and accessible, they all have cell phones. Staff members meet clients in places and at times that work for already stressed out families. They also work on underlying issues: education, housing, substance abuse and mental illness are among the most common. Interestingly, it is often inadequate services to children related to education and mental health services which causes ACS to investigate in the first place.

Our parent advocates are critical in many cases to “getting through” to parents who many service providers have deemed uncooperative.

When we work with families who have court cases, our team helps establish safety plans for families early and intensively and in some cases enables the court and ACS to agree to keep children at home, so to not request a remand. But even where remands are ordered, we are able to quickly stabilize the families, help them engage in services, plan for the safe return of children and thus markedly shorten the average length of stay of the children who are in foster care. The following case illustration demonstrates what this model can achieve even in the current court environment:

CFR was assigned to represent a parent in a neglect proceeding in family court one year after the initial petition was filed. The prior attorney was no longer on the 18-b assigned counsel panel. The court had not held a fact-finding or “trial” yet. By then, one of the children had been in foster care for one year and his new sibling for three months. The parents had one hour weekly supervised visits at the foster care agency, i.e. the equivalent of one day per year: At CFR’s first court appearance, our request for twice weekly visits was immediately granted – that’s double the amount of time the parents could spend with both children each week. When CFR requested an emergency hearing for the children to return to their parent’s care, we prevailed. This reunification was due to extensive legal research, consulting with experts, and out of court conferencing with the children’s lawyer and the lawyer for the City.

In a mixed caseload meaning families we met before court filings and families we met at or about the time of court filings, we've diverted cases altogether, kept kids at home during court supervision and have shortened the length of stay of kids who do go into care.

There are some conclusions that we are able to draw from preliminary data of our work: The first is that when our interdisciplinary teams meet families early in their contact with ACS, we are succeeding in diverting most families from court altogether (95% of the time these cases are diverted from court). In our cases where children were in remand at some point during the case, 49% of those children come home; of those, the average length of stay in foster care is 4.9 months. The average length of stay for the state of New York is 48 months.

As you've heard from witnesses all afternoon, the family court is failing families. If we as a City truly care about our children, we will provide this institution with the resources it needs to provide justice to everyone it touches.

**BROOKLYN FAMILY DEFENSE PROJECT
CITY COUNCIL HEARING ON FAMILY COURT DELAYS
JANUARY 10, 2008**

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New York City Council General Welfare Committee
NYC Administration for Children's Services Written Testimony

John B. Mattingly, Commissioner

January 10, 2008

Good afternoon Chair de Blasio and members of the General Welfare committee. I am John Mattingly, Commissioner for the New York City Administration for Children's Services (Children's Services). With me today is our Deputy Commissioner for Family Court Legal Services, Ronald Richter. Thank you for the opportunity to discuss the critical role played by the Family Court in ensuring the safety, permanency and well-being of New York City's children and the work of Children's Services in supporting these efforts.

Children's Services seeks the assistance of the Family Court when a child protective investigation results in the need to remove a child because he or she is at imminent risk, or to place a family under supervision because the parents are unable or unwilling to cooperate with a reasonable safety plan. In these situations, the Family Court and Children's Services are critical partners in protecting the safety and well-being of the City's children. In addition, the Family Court provides oversight for Children's Services and our provider agencies to ensure that the rights of every child and her family are respected and preserved and that all partners in the child

welfare system fulfill their responsibilities in meeting every child's need for safety, permanency and well-being.

In 2007, Children's Services was granted approximately 5,000 orders to remove an abused or neglected child from a home and place that child in foster care, and more than 6,000 orders mandating a child's parents to participate in services and cooperate with ACS supervision of their home.

Children's Services' statutory obligation and our goal as an agency is to keep children with their parents whenever it is safe to do so. There are times when there is credible evidence that a child has been neglected, yet the child is not at imminent risk in her parents' care. These parents are sometimes charged with neglect in Family Court, in so-called Court Ordered Supervision cases, because the child's family is unwilling or unable to get the help they need to change the behavior that is putting their child at risk. The authority of the Family Court judge and the formality of being charged with neglect often provide the impetus to engage parents in the kind of work necessary to ensure their child's safety - as well as to avoid removal.

The Family Court makes many of the most crucial decisions in the lives of abused and neglected children and affects the lives of thousands of children each year. In the last year alone, a Family Court judge made the decision to:

- Return 6,498 children from foster care to their families;
- Terminate parental rights for 1,393 children so that each of these children could be freed for adoption; and
- Approve the adoption of 1,562 children previously living in foster care.
- In addition, a Family Court judge or referee oversaw two permanency hearings for each of the 16,988 children in foster care in 2007.

Children's Services and the children we serve rely heavily on the Family Court to make these important decisions. In every case in which court intervention for services or foster care are sought, it is only the Family Court judge who can order actions that will meet the needs of an abused or neglected child.

As the Committee is aware, in 2006 Children's Services experienced an unprecedented increase in alleged child abuse and neglect reports. Our investigations jumped more than 24 percent from 2005 to 2006, and in 2007 this increase steadied to a rate that remains approximately 20 percent higher than in previous years. In 2007, Children's Services' child protective staff investigated 64,190 reports of abuse and neglect. Naturally, this increase in investigations has led to an increase in cases for which we seek assistance from the Family Court. In 2007, we filed 6,743 new abuse or neglect petitions with the Family Court, a six percent increase over 2006.

The increase in cases experienced by the courts as a result of the additional families in need of court intervention and the new permanency law have placed a tremendous strain on the court system's already busy dockets. Unfortunately, delays in a court case translate into delays in the amount of time before the decision is made to return a child to his or her parents or to free a child so that he or she can achieve permanency in an adoptive home or with a fit and willing relative through a custodial arrangement. While Children's Services and our provider agencies work hard to minimize any disruption experienced by children and families, every moment that a child spends without certainty as to his or her family situation places a strain on that child's development and on his or her family connections.

Children's Services is mandated by the Adoption and Safe Families Act (ASFA) and by state law to work to reunify families or to move a child toward permanency as quickly as is safely possible. As the City's child welfare agency, we are committed to this practice. While our colleagues at the Family Court are working hard to hold hearings and make decisions in the best interest of every child who comes before them, we know that the workload makes this challenging, and that ultimately it is the children and families who suffer.

Overview of Family Court Legal Services

While the City does not control the resources available in the Family Court, we have put significant resources into our division of Family Court Legal Services to strengthen our agency's collaborative work with the court system. I created this division during an agency-wide restructuring in 2005 because I understood that the work of the Family Court is critical to our efforts to protect children and that collaboration with the courts is an essential part of our mission. Attorneys in Family Court Legal Services represent the agency in abuse and neglect and related proceedings before the Family Court, including the management of case filings and court appearances from the initiation of a proceeding through the achievement of permanency.

Soon after the division was created, Children's Services re-engineered the Family Court Legal Services work so that a single agency attorney would be assigned to a case throughout its life. Previously, attorneys handled specific types of appearances, for example, original abuse and neglect proceedings but then handed the case off to other attorneys. This key structural change enables an attorney to carry a child's history with them throughout the case, resulting in more effective representation and investment in a successful outcome for that child.

In 2006, Children's Services collaborated with the Family Court and other stakeholders to make additional shifts in the structures of our Queens and

Brooklyn offices so that attorneys are assigned to specific judges, or groups of judges and referees. In the coming year, we will evaluate the effectiveness of this approach in strengthening our collaborative work with the Courts and the child protective field offices.

Frontline Coordination and Decision Making

Over the past year, Family Court Legal Services and the Division of Child Protection have continued efforts to increase coordination among Child Protective Specialists, who conduct investigations of child abuse and neglect, and Family Court attorneys. Recognizing that part of the challenge in coordinating the work of these professionals is the natural disconnect that exists between the social work and family law professions, we have hired a consultant with extensive background working on the intersection of these two disciplines to work with us to create a shared language around child safety and risk; decision making across both divisions; and to help bridge the gaps that exist between these two sets of professionals.

Our Family Team Conferencing model, which we have developed as part of the *Improved Outcomes for Children* initiative, will also support information sharing between child protective staff and Family Court Legal Services attorneys. The model requires that a conference be held with the family before a child is placed, or immediately after in emergency situations. The information exchanged during the conference about the safety plan for the child and the needs of the family will be documented.

That information will be made available by the child protective worker to the attorney when the filing process begins. We believe that this system, which has already been implemented in Manhattan, will enhance information sharing between the caseworker and attorney on every case where we seek court intervention and thus will provide the attorney with more specific information upon which to base causes of action.

Permanency Law Implementation

We also continue to work on implementation of the New York State Permanency Law. Children's Services along with the State Office of Children and Family Services (OCFS), the New York City Family Court and advocates championed the permanency bill as a much needed reform, albeit not the complete reform necessary. In summary, the new law grants the Court continuing jurisdiction over children in foster care placement, brings these children's cases before the court twice a year instead of the prior practice of once a year; and formalizes these permanency hearings for the purpose of improving and facilitating permanency outcomes for children living away from their biological families.

Children's Services has taken a number of steps to support compliance with the Permanency Law, including new trainings, reports and monitoring for our foster care provider agencies. This past year, we brought on board 23 Legal Case Assistants and four Case Assistant Managers to serve as liaisons to our provider agencies for the FCLS

attorneys on any number of issues that may arise over the course of a child's path to permanency. As we move forward with implementing *Improved Outcomes for Children* system wide in the coming year these case assistants will work to ensure compliance with the Permanency Law.

Children's Services also made changes over the past two years to our Legal Tracking System to support the implementation of the Permanency Law, including creation of an email tickler system, and access to Court calendars, contact information and court case information for attorneys and case planner staff at provider agencies. This has greatly assisted our frontline staff with case supervision and planning and is also an effort to reduce the need to adjourn permanency hearings. Finally, written notification from this commissioner is now sent to the Executive Director of an assigned provider agency whenever a caseworker fails to appear at a scheduled court hearing.

Collaboration with the Courts

Children's Services is working with the New York City Family Court to strengthen communication and collaboration between our two systems. In 2005, I along with Deputy Commissioner Richter began holding monthly meetings with Family Court Judges in each borough to discuss Children's Services' vision and to hear concerns from the judges on child protective and provider agency practice. These information sharing meetings have been invaluable to Children's Services' efforts to strengthen the work

underway on the frontlines. They have also opened the lines of communication between the agency and the court so that when issues arise in the courtroom that are unable to be resolved with frontline staff, they can quickly be brought to my attention both to help resolve the issue and to discuss ways of preventing practice-related obstacles in the future.

In the coming year, Children's Services will participate in a pilot Best Practices approach developed by Judge Richroath of the Queens Family Court aimed at expediting Court Ordered Supervision cases where families agree to cooperate with a service plan while a child remains at home. Judge Richroath proposed this model to address the backlog of court conferences and trials which resulted from the increase in workload at the Family Courts. We are hopeful that it will reserve the court's limited time for the most serious abuse and neglect cases, and for permanency hearings for young people living in foster care.

Children's Services has also been working with the New York City Family Court and the Statewide Office of Court Administration to develop an electronic information sharing system. The first phase of the project is expected to roll out in the fall of 2008, at which time Children's Services will begin filing petitions and permanency hearing reports electronically. We expect that the next phase of this initiative will include the court providing Children's Services with hearing outcome information, including reasonable efforts findings and next court dates through our

Legal Tracking System. In the future, we expect that the court will send Children's Services all court orders electronically and that judges will have the ability to sign and return orders electronically, saving time and resources for both Children's Services and the courts as well as improving the quality of our data.

Conclusion

Before I close, I would like to thank the Counsel and the Committee again for the opportunity to discuss these most important matters. Over the past two years, I know that the entire child welfare system has been hard at work to protect children and to provide for their well-being. It is not often enough that I have the opportunity to thank our attorney staff for their hard work and dedication on behalf of New York City's most vulnerable children, as well as the tremendous response of the family courts throughout the city to the unprecedented increase in child abuse reports.

I want to thank Mayor Bloomberg and John Feinblatt of the Office of the Criminal Justice Coordinator for the initiation and now the growth of an Institutional Parents' Bar. The better parents are represented in Family Court, the stronger the rest of the system will become. I join Chair de Blasio in his desire to see the Family Courts equipped with the resources needed to meet the needs of our City's children and families on a timely basis.

FOR THE RECORD

Testimony to the Committee on General Welfare Services

Submitted by Brian Zimmerman, Esq., President and Rhonda Weir, Esq. Kings County, Assigned Counsel Panel, January 10, 2008

Members of the Council, my name is Brian Zimmerman and I represent the assigned council panel in Kings County, but my remarks here have applicability to all the boroughs in New York City.

For those less familiar, the assigned counsel panels serve multiple constituencies within Family Court in New York City. In the five counties there are somewhat in excess of 400 attorneys who handle cases for the indigent in Family Court. In child protective proceedings, we represent respondent parents, as well as intervening non respondent parents, relatives, and foster parents. We also serve as law guardians when the Juvenile Rights Division has a conflict of interest. Since we sit on all sides of the table in Family Court, we have a unique picture of the systemic issues that face families that come before the Court. We also represent parents and children in custody proceedings, juvenile delinquents, and domestic violence victims, as well as respondents in cases involving domestic violence.

Last January, I testified regarding the need to increase the resources to Family Court to handle the increased numbers of cases occasioned by the death of Nixmary Brown, as well as the changes in the law which required the review of cases every six months in Court. Sadly, in the year since I testified, the needs have not abated but rather increased. We continue to agree with the Council, and this committee that the provision of services to the population that comes to Family Court is worthy of review. The influx of cases to an already overburdened system is certainly cause for concern, and we applaud any efforts this Committee can make to assist our adult and child clients towards receiving the assistance they rightly need and deserve.

The numbers of case filed have actually increased in the second year after Nixmary rather than abate. Many of these cases are what we call "services" cases. The Administration of Children's Services brings the case to assure the parent is mandated to cooperate with services, and the Court thus becomes a monitor for the provision of these services. Many of these cases must be litigated, and each

case takes time on the calendars of the Court and the attorneys. The lack of judicial resources to handle all these cases often harms the families brought before the Family Court in the name of helping them. The families are placed under mandates, whether justifiable or not, and the merits of their cases may take a year or more to resolve. The Council should advocate for the creation of more Family Court judgeships, so the families of New York City can receive more timely resolutions to the charges made against them. It is no longer unheard of for a Judge to schedule matters for 5:00 p.m. in order to attempt to provide justice to the families of New York. In addition, the Council should advocate that the Judge's should receive pay raises, as they have not been awarded a raise since 1999, and the demands of the Court require them to be properly compensated.

It must be noted that the Administration for Children's Services, the Juvenile Rights Division, Assigned counsel, legal service projects, Court personnel, from the Judges to the clerks, as well as the Court Officers, continue to work extremely hard and tirelessly to meet the increased demands occasioned by the events of the past two years.

In advocating for an increase in Judicial resources to handle the increase in filings in Court, it must be understood that all the people needed to staff the parts is necessary. For instance, the addition, over the years, of referees and Judicial Hearing Officer's has helped to a large degree, but those parts often do not have Court Officer's that are critical to the running of a part. The Council must advocate for more Court officers, interpreters and clerks as well. More parts also means that the already burdened staffs of the legal department of the Administration for Children's Services and the Juvenile Rights Practice need to be expanded to further to staff those parts. The Council should also support State legislative efforts to meaningfully set caseload caps for those that represent the children of New York City.

It remains in Court a mathematics question. You can only split the 7 hours of work time into so many slots a day to hear cases, and since the number of attorneys at JRP are far fewer than those assigned to ACS or on the assigned counsel panels, even if there were no attrition, it is virtually impossible to schedule each matter for the time necessary to handle them to the standards we

all believe they warrant. The day is too often defined by which case can be adjourned because someone necessary to the case is on trial in another court room or out ill, a caseworker is no longer at the agency, a report is not completed, or a child needs to be seen. In some cases those adjournments may benefit a parent or child, but in others it can cause great harm, as the next adjournment may be upwards of 4 to 8 months away. Thus, if this Committee was to have influence to increase Judicial personnel, it must also increase the number of support staff available to the Courts and attorneys available to ACS and to JRP.

The increase in filings has affected the assigned counsel panels as well, though the size of the assigned counsel panels permits us to more easily handle expansions, as well as reductions in case filings in an efficient manner.

The lack of Judicial resources also effects the child protective cases in other ways. Custody, visitation and order of protection case filings have also increased over the years. Many of these cases will turn into child protective cases. Some of these cases, if heard and resolved earlier may not fester and become cases if the tensions surrounding them were addressed earlier. Similarly, many juvenile delinquency cases may be averted if the issues in the family could be resolved earlier with the proper attention in Court, and not burden the already overtaxed Family Court system.

More than anything, it is the provision of services to our clients that, we submit, this Committee should address. While the new Improved Outcomes for Children initiative of the Administration for Children's Services, may improve the quality of care for the children in care and may help the parents as well, it remains critical that the community bases services be properly funded. Once the case is in Court though, or even before it is in Court, much more needs to be done in the areas of preventive services and service delivery. The length of stay of a child in foster care is affected by external causes, generally poverty related issues, such as the lack of housing, or the adequacy of services available, whether it is psychological counseling or drug treatment; or by repeated changes in caseworkers at foster care agencies or at outside service providers which interrupts the ability of the parties to finish mandated services and these interruptions undermines the Court's role as decision-maker.

This Committee should also consider how it can help schools be better staffed with social workers, family workers, and guidance counselors that can help prevent cases from making it into the system in the first place.

This Committee should continue to evaluate how to better fund foster care agencies. It remains rare that a parent who has a child in foster care will have the same foster care worker from one Court date to another. Every time a worker leaves, and a case goes uncovered, valuable time is lost on a case. Similarly, ACS supervision units must have reasonable caseloads, so that cases where the children can remain home safely do not become tomorrow's tragedies.

Many of the suggestions submitted by the Assigned Counsel Panel last year remain true this year.

The ability of a parent to begin services once brought to Court should not be contingent on waiting lists. Parenting programs, drug programs, anger management, domestic violence counseling and other frequently offered programs should be available on a continual basis, and should be selected to meet the specific needs of the parent and the situation that caused the family to be in Court. Those programs should be culturally sensitive, and available in the languages of the parents. More programs to help parents with special needs children are also necessary. Programs should also provide for daycare and offer hours that are consistent with those of the working poor.

The provision of mental health services to both parents and children needs to be vastly improved. Too often mental health services are delayed because of wait lists, or lack of medical coverage. Many of the agencies or hospitals that provide mental health services are staffed by psychology or social work interns in field placements, and though well meaning, are unlikely to provide consistent, and especially critical to our clients, long term care. Moreover, there are few provisions for our clients to find a therapist that they are comfortable with, and most are required to work with whoever is available. Finally, it is difficult to get mental health professionals to opine regarding the issues of reunification so critical to Family Court cases. This is an area which this Committee can work towards improving.

The provision of medical coverage must be timely facilitated for both children and parents when it is not available. Children especially need to be afforded good mental health services when they are separated from their parents, have been abused, or have their own mental health issues.

This Committee can also assist in finding funds to permit agencies to have extended visiting hours during evening hours and on weekends, so as not to interfere with the work schedules of parents and foster parents attempting to hold onto jobs, as well as the children who have homework and must choose between seeing parents and siblings and their schoolwork. It is extremely important, in most cases, for children to see their parents as frequently as possible while in care. This is especially important for young children, especially infants and toddlers, who need frequent contact for bonding purposes.

There also needs to be more services available that can meaningfully assist parents with mental illness or who are developmentally delayed to remain with their children in the community or through supportive living situations.

The Courts still spend too much time discussing what services have been offered, or can be offered, and why they have not been completed, and who is responsible for the failure to provide those services, rather than dealing with legal issues. It is submitted that many of the cases in Court would not be there but for the inability to access meaningful, timely, consistent, and appropriate services that could avoid the filing of petitions. For those cases that must be filed in response to serious neglect or abuse charges, access to meaningful, timely and appropriate services would undoubtedly decrease the length of time cases must remain in Court.

In conclusion, while providing more resources to the Court is important, it is perhaps more important to provide more and better resources to the communities that may assist the system. The trickle down effect is two-fold. In those cases where the respondent may never truly rehabilitate, the provision of quality, consistent, and meaningful services will help the Court's determine, through litigation, whether alternative forms of permanency are more appropriate. In most cases though, it will permit families to be reunited more expeditiously, which in turn, will allow the Courts to return to its central mission

of making judicial determinations about the issues that come before it, and over time decrease the burdens now placed upon the system.



LIFT

LEGAL INFORMATION FOR FAMILIES TODAY – *promoting access to justice for children & families*

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Testimony of LIFT (Legal Information for Families Today)
Child Welfare and Increased Demands on New York City Family Courts
Presented to the General Welfare Committee of the New York City Council
By Melissa M. Beck, Executive Director
January 10, 2008

Thank you for the opportunity to be heard. My name is Melissa Beck and I am the Executive Director of LIFT.

What does it mean to go to Family Court in New York City today?

For everyone from a father trying to reunite with his children, to a lawyer waiting for a case to be called, to a petition room clerk filling out a petition for an order of protection, to a judge determining what is in the best interests of a child, it means the same thing: frustration, delay, time lost, and a fading ray of hope for justice.

For families in some courthouses it means long lines in the lobbies waiting to go through metal detectors, only to then get on a second line to wait for an elevator that may or may not be working. It means arriving at the petition room only to find out that they are no longer accepting petitions. It means arriving at your part after the case has already been called only to find out the case has been adjourned.

For the too few attorneys available to represent all of the parties involved in family court, it means spending hours waiting for cases to be called contributing significantly to the inefficient workings of the Family Court system, and, in the process, magnifying the system's limitations.

For families throughout the city it means waiting, waiting, and more waiting. It means missing a full day of work or school. It means waiting an entire day for your case to be heard by a judge who only has five minutes because of an overwhelming calendar. It means waiting another four, five, six months to appear before a judge for an opportunity to establish paternity... to correct your child support order... to reunite with your child. It means waiting years for a final order of custody or for your child to come home from foster care. No matter the courthouse, no matter the family, the waiting is confusing, excruciating and devastating.

For judges it means waiting, too. Waiting in an empty courtroom for petitioners and respondents to make it upstairs; waiting for an overscheduled interpreter to finish a case in a different courtroom before a case can be heard; waiting for a court appointed attorney to meet a new client; waiting for a case file to be located by an overburdened

court employee. It means waiting before final orders can be issued, while caseloads continue to multiply at an alarming rate.

What does this mean for the system? It means that every part of the system is past capacity; that every overworked component of the system causes increased delays and more back-ups throughout the whole system. While the dire need for more family court judges is being highlighted today, it is sadly all parts of the Family Court system which are in need of critical resources. The net effect of limited resources means that no part of the system can ever catch up and adequately respond to the needs of our City's families.

What does this all mean for LIFT? It means that LIFT's services are even more critical than ever before. Indeed, for 11 years, LIFT has operated Education & Information Sites in the lobbies and waiting areas of the City's Family Courts and we have witnessed firsthand the positive impact of our work on the system's strains and on our City's families. We have helped families either navigate the legal system effectively and efficiently or avoid it in favor of other solutions to their problems. By creating a more informed and prepared litigant, LIFT extends its impact beyond the individuals we serve and alleviates part of the burden on the court system so that it, in turn, can fulfill its mandate with greater efficacy. The net effect is New Yorkers' enhanced ability to pursue the best interests of their children, their families, and ultimately, their community.

But there is much more to be done. Increasing the number of Family Court judges is an essential first step. Until that happens, it means families will continue to wait for justice. And justice delayed is justice denied.

**Testimony Presented by
James F. Purcell, CEO
Council of Family and Child Caring Agencies
Before the
New York City Council General Welfare Committee
January 10, 2008**

Good morning, I am Jim Purcell, CEO of the Council of Family and Child Caring Agencies (COFCCA). COFCCA is the primary statewide membership organization for child welfare services providers, representing 110 not-for-profit agencies that contract with the New York City Administration for Children's Services and the county departments of social services to provide foster care, preventive services, adoption, and aftercare services as well as education for children on our facility campuses. These agencies serve 80% of all children and families in the state's child welfare system, and nearly all of New York City's children at risk.

On behalf of the very vulnerable children and their families served by the COFCCA member agencies, I thank Chair deBlasio for your leadership on all child welfare issues, especially your strong advocacy for Preventive Services for which you spearheaded the Child Safety Initiative that lowered caseworker caseloads—the most significant factor in protecting children. We also thank you for your persistence in examining the workings of the Family Court in relation to the City's child welfare system.

One year ago almost to the day, I came before this committee to discuss the Family Court and the impact of the new Permanency legislation that doubled the number of court reviews of a child's status in foster care--requiring an initial hearing for every child placed in foster care eight months after removal from his or her home and every six

months thereafter. Previously, permanency hearings were only required every 12 months. The State's new permanency requirements were imposed on a system already plagued by long delays in hearing times and constant adjournments of cases. But the State added no new resources to help the foster care agencies and few to help the courts meet their new mandates.

Prior to implementation of the new Permanency law, a study by the Council of Family & Child Caring Agencies of "Time at Family Court" found that caseworkers spent an average of 80% of their time in court just waiting for their cases to be called, dismissed, or adjourned. Some workers spent as much as 8 hours, from 9:30 am to 5:30 pm only to learn that their case had been adjourned. The study showed that less than 20% of caseworkers' time in court was spent in the actual hearing of cases. During their waiting time, caseworkers cannot maintain contact with their cases nor work on the considerable documentation required to report on the progress of their cases.

The situation in family court was gravely worrisome even before the implementation of the new law. The ensuing changes have resulted in a skyrocketing increase in the amount of time caseworkers spend in court. In response to the concerns about the burden on caseworkers, the New York State Legislature asked the State Office of Child and Family Services to conduct a study of caseworker time. The New York State Child Welfare Workload Study, conducted in September 2006, after the implementation of the new Permanency laws, documents the time demands on foster care caseworkers and concludes that given all their obligations-- caseworkers spend less than one hour per month with the children in their care.

It is certain that the intent of the new Permanency Law was not to delay permanency for children, but that is its impact. As Chair deBlasio knows full well--because he is the champion of lowering caseloads for caseworkers in Preventive Services--the key to improving permanency for children is in lowering caseloads--for caseworkers in foster care and for the courts.

Achieving permanency for children in foster care is the paramount responsibility of their caseworkers. Caseworkers determine the goal for children as soon as they enter care and immediately develop a plan for achieving that goal—whether for reunification (as in most cases) or adoption—based on the ability of families to regain responsibility for their children. Caseworkers must assess the needs of the children and the capabilities of their families. Following these assessments, caseworkers must ensure that the services provided to the child are appropriately responsive to his/her physical, mental health, and educational needs. Concurrently, caseworkers must engage the child/children's families to facilitate visitation and move toward reunification. Throughout this process, the caseworker must document all contacts and progress in meeting the established goals toward permanency.

Article 10 of the Family Court Act requires that the following assessment and service plans be developed:

- An initial family assessment and service plan must be completed and approved by the case manager (currently an ACS worker) within 30 days from the case initiation date;
- A comprehensive assessment and service plan must be completed and approved by the case manager within 90 days of the case initiation date;
- The first family reassessment and service plan must be completed no later than 210 days from the case initiation date; and
- All subsequent family assessments and service plans must be completed 6 months from the due date of the previous reassessment and every 6 months thereafter.

Each family assessment plan and service plan must include, but is not limited to:

- A program choice for each child receiving services;
- A goal and plan for child permanency;
- A description of legal activities and their impact on the case;
- A thorough and comprehensive assessment and analysis of the family members' strengths, needs and problems;
- A plan of services and assistance made in consultation with the family and each child older than 10 years of age;
- The status of the service plan, including service availability and the manner of service provision;
- The family's progress toward plan achievement;
- Summary of the involvement of the parents, guardian, children, and any other in the development of the service plan;
- Safety assessments;
- Risk assessments in child protective cases; and
- Assessments of family functioning

This list does not include the hearings held in conjunction with the Permanency law, beginning at initial placement and every 6 months thereafter; nor the requirement that caseworkers meet with child's parents, foster parents and the child if 10 years or older before each hearing. Nor does it mention that the State's study of caseworker workload found that it took caseworkers 3 1/2 hours to complete the 23-page hearing report for each case. Add to these the following mandates for caseworkers:

- Must meet with foster children twice within the first month of placement, and at least once every month thereafter—with two out of every three meetings occurring in the child's placement.

- Must meet with birth parents or relatives twice within the first month of placement, and monthly thereafter—with one of every three meetings held in their home.
- Must meet with foster parents as often as necessary during the first month, at least once at the foster home, and monthly thereafter—with one of every three meetings at the foster home.
- Must facilitate bi-weekly visits between children and parents if the goal is reunification.
- Must be involved in all aspects of adoption efforts, from beginning actions to legally free the child within 30-days following the goal change to adoption to working toward completion within 12 months. Must work to locate adoptive home and finalize adoption within 12 months.

This listing doesn't include travel time and downtime associated with the above activities. Given these demands, is it any wonder that the New York State Child Welfare Workload Study found that caseworkers spend only 54 minutes a month with the children in their care? The more time caseworkers spend waiting in family court, the less time they have to expedite discharge to permanency.

In the past two years, we have only seen a bad situation get worse. Many of the problems that we reported to the committee last year are just as omnipresent this year.

- Judges are still making casework decisions—ordering daily parental visits without any knowledge of the family dynamics or respect for caseworkers other obligations.

- Caseworkers still have no access to space in court to do their work. They are not even allowed to use empty conference rooms outside the court. If a caseworker leaves the floor, there is no system to notify them when their case is called.
- Agencies are still reporting constant adjournments. Workers often remain in court all day, only to learn that their case will not be heard. One agency reported in December that a case was adjourned to March.
- The dearth of judges in Brooklyn Family Court has led to combining Permanency Hearings with Disposition, Fact Finding, or Termination of Parental Rights actions, which causes the cases to be adjourned for months at a time. The intention of the bi-annual Permanency Hearing Report timeframe has been defaulted by adding other legal milestones into the hearing.
- Caseworkers can be called to different courts for different cases at the same time, forcing them to cancel appearing at one hearing or another. Some judges refuse to accept the fact that the worker has a time conflict and cannot appear. Efforts to persuade ACS attorneys and supervisors to re-calendar court dates have failed due to the increase in court intakes and high-turnover of legal staff.
- Some judges verbally abuse caseworkers, ignoring legitimate conflicts that prevent workers from appearing in court. One judge threatened to arrest a caseworker if she didn't come to the next hearing, even though the agency had just received the case.
- One adoption finalization was jeopardized because the child's birth certificate was in Spanish, even though the judge knew that the child had been born in Honduras.

- Agencies are still getting court orders to move children to another state without completed Interstate Compacts, forcing agencies to send staff long distances to ensure that their new homes are safe for the children and thus can be approved by the State Office of Child and Family Services. While a caseworker travels for this purpose, his/her other cases must be re-assigned, thereby further reducing the time that caseworkers can pursue permanency for each child.

Add to all of this the demands from the new “Improved Outcomes for Children” (IOC), which seeks to expedite discharge of children from foster care by transferring case management (decision-making) to the foster care agencies that contract with ACS. Under IOC, agencies will be rated on how quickly they can return children home or finalize adoptions. But an agencies’ best efforts can and will be foiled by the delays caused by the Family Court.

We do not want to leave the City Council with the impression that we blame the Family Court for all the delays that occur. We understand that to a large extent, they too have been asked to do much more without commensurate resources. We want to acknowledge the efforts of Chief Administrative Judge Joseph Luria in trying to respond to the problems plaguing Family Court. We appreciate his seeking information from us about our experiences and understand his frustration in trying to mediate among the various stakeholders. We will continue to meet with him and encourage him to form a small representative group to discuss improvements.

We also want to acknowledge that one agency reported that the “time certainties”, which are supposed to reduce caseworker waits, have been helpful. Unfortunately, we found little support for that experience among other agencies.

We also note that five judges have been added, along with numerous referees, and the court broken up into many parts, but this clearly is not enough. We offer the following recommendations with the certainty that everyone involved in the family court process

holds the same hopes of improving the outcomes for the very vulnerable children whose lives depend on the foster care system for their protection and permanency.

Recommendations

1. Add more Family Court judges, giving them flexible hours to make caseloads more manageable, with the intention that this change would make Time Certains more reliable to reduce the amount of time that caseworkers must spend in court.
2. Build on existing collaborations to enhance communication among the stakeholders and practitioners –facilitating ways to identify day-to-day barriers and joint problem-solving. Bring together Family Court Legal Services staff (FCLS) and foster care agency workers to establish communication in a way similar to the meetings between FCLS and Child Protective Service (CPS) workers. Instituting periodic meetings to review obstacles.
3. Develop an oversight panel to support the Administrative Judge in taking action to address offensive or obstructive behavior by judges and/or referees.
4. Allow caseworkers space and access to secure Connections computers in Family Court so they can record required progress on their cases and maximize their waiting time.

General Welfare Committee Hearing
New York City Council
"Child Welfare and Increased Demands on
New York City Family Courts"
January 10, 2008

Testimony of Jane M. Spinak
Edward Ross Aranow Clinical Professor of Law
Columbia Law School

Good afternoon. Thank you Councilmember de Blasio for your continued interest in Family Court and for holding a second hearing on this important subject. Your focus, in this hearing, on the need for more resources for the Family Court, and particularly the need for more Family Court judges, highlights one of the critical obstacles to Family Court reform. In the last year, I have had the opportunity to chair two conferences on Family Court co-sponsored by the New York County Lawyer's Association (NYCLA) and Columbia Law School. The first conference, held in October 2006, brought together over a hundred concerned participants in the Family Court systems – including litigants, lawyers, social workers, academics, young people living in foster care, government officials, and judges – who for two days worked on a series of reports and recommendations to improve the court. These recommendations and reports were published in a

special symposium issue of the Columbia Journal of Law and Social Problems along with articles and replies written by conference participants. I have brought several copies for you today and will highlight those recommendations in a moment. Following the publication of the journal, a second public forum was held this past July to discuss the recommendations from both a local and national perspective. Again, a wide range of participants provided great insight into the need to take action to improve the court. Let me turn to that now.

Everyone at the NYCLA conferences agreed that additional judges are critical and, moreover, that merging the Family Court with the Supreme Court – as Judge Kaye has repeated proposed – would both expand the pool of judges available to address the needs of family court litigants and expand the availability of other court resources. The recommendations of the October conference did not stop but rather started at that point. We can all agree on the need for more resources but from an historical perspective we also know that trial courts addressing basic family, civil and criminal issues have

always been under resourced. Therefore, we must look beyond just resources to understand what the other obstacles to reform may be.

The conference recommendations responded to three interconnected concerns. The first concern is accountability: what is the court's mission and how do we hold it responsible for its mission? No matter how the court is structured and resourced, the court must be held accountable for its process and outcomes. The second concern is transparency: how can information be generated and made available so that the public can determine what the court does? The third concern is connection: what is the relationship between the court and the communities it serves and what steps can be taken to ensure that the court more accurately reflects and engages in those communities?

The recommendations include a wide range of responses to those concerns from requiring the court system to develop an effective data collection and reporting system to improving the selection and evaluation system for choosing judges to protecting the due process rights of litigants by holding full evidentiary hearings to ensuring that everyone who works in the Family Court system is more

culturally competent. I have attached a synopsis of the recommendations and small group reports to my testimony so that you can see the creative – if sometimes contradictory – ideas that were generated.

Let me conclude by making a request. NYCLA is forming a Task Force to begin the process of implementing the conference recommendations. For the Task Force to be effective, it must include a broad coalition of committed individuals willing to demand real change, to stop pointing fingers and to start recognizing that we are all responsible for the failures of this court and to come together on behalf of the families we are supposed to serve. I ask the City Council to join us in this hard work, to send a representative from the Council to the join the Task Force, and to continue to press for a better court. We can do this together. Thank you.

The Family Court in New York City in the 21st Century: What are Its Roles and Responsibilities

Outline of Final Plenary Recommendations

I. Accountability and Information Systems

- **Themes:**
 - Court made accountable to community
 - Improved communication among agencies, institutions and actors
 - Increased transparency of the system

A. Accountability: Data, Analysis and Distribution

- Need for better record-keeping and data collection
- Facilitation of complaint and feedback collection

1. Data collection and use

- OCA should collect data on Family Court processes, and publish and distribute information regarding assignment of counsel, court adjournments, motions, fact-finding, well-being measures, etc.
- Information system set up for better outcomes; e.g. List of vacancies in programs to which decision-makers can make referrals

2. Participant feedback

- Ombudsperson's office to receive and direct complaints, and collaborate with Research and Development branch of the court system to produce recommendations and an annual report.
- Display system in courthouses of suggestions, feedback and complaint numbers

3. Transparency

- Informational improvements: purpose of the Family Court explained to litigants, in-court resource office (possibly ACS-staffed), space for youth centers with computers and other amenities, parent-advocate in clearly-marked space, and current roster of judges made available in the courthouse
- Ability to communicate: caseworkers, attorneys and non-attorneys, and parents encouraged to communicate, communication also encouraged among agencies, ACS, parents and youth.

B. Accountability: Professional Responsibility and Role of Judge

- **Purposes**
 - To revise and improve selection, conduct, and evaluation of judges, and increase accountability
 - To examine the appointment, re-appointment and transfer processes
- Judges should report gross negligence of advocates to their employers

- Judges should be subject to increased scrutiny; evaluations, shorter terms, more authority for Administrator/Supervising Judges
- Reform of assignment to Family Court process with accountability considerations in mind
 - Only judges appointed by Mayor to Family Court
 - No transfer between boroughs without consent of judge and new supervising judge
 - Judge not re-appointed cannot be put in quasi-judicial positions
 - Mayor's re-appointment committee hearing publicized
 - Quarterly stakeholder review
 - Stakeholder opportunity to give input on temporary judge/Family Court candidate to the administrator judge, who should have the power to reject the appointment

II. Family Court System Policy Clarifications and Reforms

- Aim to increase efficiency and correct deficiencies

A. Problem: Case overload

- Social service or alternatives dispute resolution options more fully explored prior to court filings
- Randomized case review to consider whether legal proceedings are appropriate, and whether proper standards of legal actionability are applied.

B. Due Process: Strain on resources are eroding due process and professional standards

- Address trial delays
- Evidentiary hearings upon request
- Foster care permanency hearings more formal, with pre-hearing conferences so that parents have all information, communication and records
- Cap judge and counsel caseloads
- Clarify and communicate standards of professionalism

C. Cultural Competency

- Interpreters or workers with fluency in parents' languages
- Cultural competency training for judges, attorneys, and law enforcement
- Reduced caseload for those working across cultures
- Materials explaining legal requirements for discipline of children; copies of records, motions, brochures explaining the system, information on how to interact with authorities, and rights and responsibilities in parents' own languages.
- Parents leave courtroom with documents stating the outcome and what they need to do to regain custody, in their own language
- Diversity in Family Court judges and staff
- Data-collection system organized by case type and by zip code

III. Systemic Reforms and Restructuring

- The community needs to be brought back into the system—if the system is not responsive to the community it will fail.

A. Legislative changes to the Family Court system

- Family Court judges should be given more authority and resources to enforce resolutions
- Most important: merging Family Court with New York State Supreme Court
- To give Family Court full legitimacy and authority until merger can take place:
 - Family Court judges given appointments as acting Supreme Court judges
 - Strengthen and broaden the jurisdictional authority of the judges by amending New York Family Court Act §255

B. Changes required from systems outside the Family Court

- State resources to community-based programs rather than detention
- Involve the New York City Police Department in the development and evaluation of juvenile justice initiatives
- Limit distances between homes and detentions
- 18 months aftercare for each discharge
- Discharges placed in public school within forty-eight hours
- Make alternative dispute resolution available
- Support the Safe Harbor Act
- Judges should visit juvenile placements and attend more mandatory judicial training on juvenile justice issues
- The community should be the primary mover in shaping court reform.
- Expand definition of family to include same-sex couples
- Maintain a databank of pro- or low-bono experts
- Increase funding for Youth-Line Help Line and its publicity and advertising

The Family Court in New York City in the 21st Century: What are Its Roles and Responsibilities?
Outline of Working Group Recommendations

I. Working Group One: Children Who Break the Rules: Juvenile Delinquency and Status Offenses

- **Themes:**

- Professionals need to recognize problems earlier through preventive services.
- Need-based distribution of resources, made possible by data collection systems.

A. Education and Cultural Competency Training

- Education for and interaction between community and law enforcement, in order to promote understanding and prevent unnecessary filings that may result from juveniles simply "acting out"
- Familiarize law enforcement with cultural norms of the community

B. Data Collection

- Better assessment of system by tracking youths through the system; data collected by OCA
- Assessment of police in the community; law enforcement and community can jointly explore methods to help rather than incarcerate.

C. Alternative Dispute Resolution

- mediation, youth courts, and community courts by zip code
- community-based approach might help place focus back on rehabilitation

D. Discharge from Detention and placement

- Every discharged youth should be placed in public school within 48 hours of release, with court follow-up to be sure youth reported to school
- Court provide 18 months of after-care
- State increase funding and publicity for NYC Youthline.

E. Court Parts Arranged by Zip Code (instead of by case type)

- in order to give judges better appreciation of communities' inner workings and available resources
- Resources can be distributed according to geographical need

F. Judicial Understanding and Interaction with Local Communities

- better education for judges about community resources
- requirements for judges to visit placement facilities and know alternatives to detention

G. Role of the Judiciary.

- Judges should be more carefully screened and educated: this includes mandatory training on juvenile justice issues and stakeholder oversight of judicial appointments.
- Judges should take more responsibility for attorney, should be required to report gross neglect in client representation to attorney's employer.

H. Experts and In-House Advocates

- access for youth and families to experts on a pro- and low-bono basis
- on-site parent-advocate for parents and youth and in-court mental health evaluators.

II. Working Group Two: Intra-Family Disputes

A. Urgent Reform: chief priority

- Case delay problems: additional judges and support staff needed.

B. Restructuring the Family Court

- Should be a single forum for all facets of intra-family disputes (more efficient, easier to navigate for families involved in complicated disputes and better communication)

C. Accountability

- Research and Development branch of the Court to research how well the system is working for stakeholders
- Ombudsperson's office; should be accessible and user-friendly office to receive complaints and reach out to authorities to address those complaints. Should be in the courthouse, but independent from the Court, and should work with R&D branch to collect and publish data.

D. Assorted Immediate Improvements

- Designated court employee to gather and disseminate information about vacancies in social service programs
- Referral orders must be clearly connected to the court's decision-making process
- All relevant stakeholders should be identified for a focus group to provide commentary and assessments of these recommendations
- Develop a procedure by which two W-2 wage earners may enter into a support stipulation, with informed consent, without personally appearing before a support magistrate (to reduce magistrate's caseload)

III. Working Group Three: State Intervention in the Family: Child Protective Proceedings and Termination of Parental Rights

A. Case Volume

- clear standards for when CPS must go to court before removal
- community services available prior to court, or CPS discretion in investigating anonymous reports
- perhaps child abuse cases assigned to criminal courts
- definitions of neglect and abuse need to be clarified, and these charges must require allegation and a showing of need for court intervention, which the court must show at an early stage
- enhance judge's authority to assist families and reduce caseloads, by merging the Family Court with the New York State Supreme Court.
- Until merger: Family Court judges should be given authority to cap caseload and order the services of public-funded entities. Also, there should be continuous trials to improve the rate of resolution.

B. Accountability System Needed

- ongoing process evaluations and short- and long-term outcome evaluations
- Judge and attorney obligations need to be clarified so that they can more easily be measured and assessed.
- perhaps judges should be elected, not appointed, and have term limits.
- A list should be made available of judges' outcome measures

C. Removals

- Increased accountability with respect to removal. Obligations and procedures of ACS workers and the court need to be clarified. Should be evaluated by random, confidential case review
- More information-sharing among Court, attorneys, caseworkers, etc, for more accurate and fair decisions

D. Minorities and Cultural Issues

- ACS caseworkers need training to combat disproportionality in removals. They should also either speak the language of the families or have translators.
- community-based services, meetings in town-hall meeting format
- Counsel for parents and children should be culturally competent
- caseload cap for attorneys, better incentives, including increase in pay scale
- All workers involved should be exposed to ongoing competency training and education
- qualitative and quantitative consumer report

E. Child and Parent Participation

- needs to be on the whole more meaningful:
- more appearances of children in Family Court

- parents should leave with a written document in a language they understand stating what they need to do to get their children back.
- Legal standards of abuse and neglect, parents' right, and explanations of the court system should all be distributed to parents in a language they understand.
- easy access for families to records, motions and court documents

IV. Working Group Four: Foster Care and Permanency Proceedings

- Most necessary improvement: caseload reduction

A. Due Process and Efficiency

- Pilot project of an emergency court part:
 - Family Court and Supreme Court judges are rotated
 - Family Court is assessed and evaluated with comparisons and feedback
 - An assessment is done by an independent body (efficiency, due process, and outcomes should be examined)

B. Increased Attention to Permanency Hearings

- full evidentiary permanency hearings, involving a caseworker with personal knowledge when requested by the party
- standard pre-hearing conference fourteen days before the hearing to determine which issues will be discussed and to resolve any outstanding discovery issues before the hearing

C. Needs of Youths and Family Members

- ACS- and expert-staffed in-court resource center in every borough; this office should give feedback to ACS policy-level employees
- in-court youth center in every borough with staff trained to work with adolescents and offering services recommended by youth advocacy groups; this office should keep track of time spent waiting for cases to be called and youths' satisfaction with the system.

D. Improved Communication

- needed among all caseworkers (ACS, agencies, attorneys and non-attorneys); pre-hearing conference will facilitate this
- Foster care agencies should be permitted to articulate competing perspectives from those of ACS

E. Court Structure (in regards to terms and qualifications of judges)

- Increased accountability of Family Court judges to supervisory judges and to families
- meaningful evaluation of judges in categories: time management, respect shown to stakeholders, knowledge of relevant law, knowledge of child welfare best practices, how stakeholders perceive the judge and

the system, random reviews of transcripts and orders, and observation of court proceedings

- evaluations made accessible to the public
- Authority of supervisory and administrator judges should be clarified, and these judges also should be evaluated on how they respond to complaints
- Judges should serve shorter terms

Good Afternoon. My name is Lauren Shapiro and I am the director of the Brooklyn Family Defense Project, one of three institutional providers funded by the City of New York to represent respondents in child neglect cases. We are an office of Legal Services NYC, which has 18 community-based offices and numerous outreach sites located throughout New York City. During 2007, approximately 2,000 new Article 10 cases were filed in Brooklyn with as many as 200 filed in some months, more than in any other borough. From July 2007 to the present, BFDP has represented over 400 respondents.

There is general agreement that there are not enough family court judges to adequately handle the large volume of child protective cases that are being filed in Brooklyn Family Court. As a result of this high volume, in Brooklyn, fact finding trials are being scheduled for July, August and September in some of the judges' parts for cases that were filed last summer. Families are routinely waiting over a year for a judge to determine whether the allegations against them are even true. In addition, there are not enough resources to handle emergency hearings involving the removal of children from their parents. These hearings, by statute, must occur within three days of a parent's request. Because there are too few judges, parents sometimes do not have their cases heard in the three day statutory time frame. These hearings are crucial because they are the chance for the court to determine whether there is good reason to remove children from their parents. Unnecessary separations are devastating to families and it is simply unacceptable that their statutory rights to hearings within three days are violated due to inadequate resources. When they are held timely, emergency hearings cause delays in numerous other important hearings on the needs of children in foster care, because judges' calendars are so crowded that they have no choice but to prioritize emergency hearings over other important matters.

Judicial resources are further stretched as a result of the recent permanency legislation, which requires judges to hold permanency hearings every six months. The permanency legislation was intended to ensure that children do not linger in foster care longer than they should, but because of the lack of judicial resources, hearings are often delayed or not held at all. When permanency hearings are held, they often do not resemble hearings at all because of intense time pressures. The shortage of judges has made this important legislation less effective than it should be.

We think it is imperative that the number of judges be increased immediately. However, the City Council also should be looking very carefully at whether many of the child protective cases that are filed require family court intervention at all. In our experience, many of the cases we see do not belong in family court. For example, it is futile and unfair to file an educational neglect case against a parent who cannot force her 14 year old child go to school. In our experience, the broadest category of cases that should not be brought to family court are those cases that involve families who desperately need help, often families who have sought help or have been known to the system, but are not given the help they need until the Administration for Children's Services files a neglect case against the parents in court. Many of our clients have children with physical disabilities or emotional issues with which the parents do not have sufficient resources to


cope. One of the reasons that these cases often end up coming to court is that parents are not given the services that they really need to help their family.

Most families who receive any services at all receive preventive services in the form of a case worker monitoring the home and providing case management services. While helpful in some cases, they do not take into account the physical and mental health needs of the family and are often are not the professional services that most families need to achieve stability. In many cases, a neglect petition, and the removal of children, could be avoided if ACS did an individualized needs-based assessment of these vulnerable families. In a great many cases, the most needed services, such as home-based services to assist parents in coping with children with special needs, are never offered.

We strongly believe that ACS should be required to conduct case conferences with families before a neglect petition is filed in Family Court and before a child is removed from their parents, in order to determine what specific help the family needs and how to most meaningfully provide that help. According to the ACS Commissioner John Mattingly himself, in other jurisdictions, this practice has reduced the number of cases filed by 30%. While ACS has discussed doing this for some time, they have waited too long to institute this plan. ACS should be immediately required to hold these conferences before filing neglect petitions against parents. In addition, in cases where such conferences are currently being held ("elevated risk conferences" where the parent is receiving preventive services), parents are simply told what they need, often by people who do not know the family at all. Permitting parents to have advocates at these conferences, and funding social workers who have worked directly with the family to attend these conferences, would make a tremendous difference in ensuring that the family's *actual* needs are addressed, and appropriate services provided. In many cases, this would avoid the need to file a case in family court at all. We therefore urge the City Council to enact legislation that would permit parents to have social work advocates at these conferences and to fund a program to ensure that parents have social work professionals available to them when ACS becomes involved in their lives. Treating these cases appropriately will allow the Family Court to focus its limited resources on the cases that truly require court intervention.

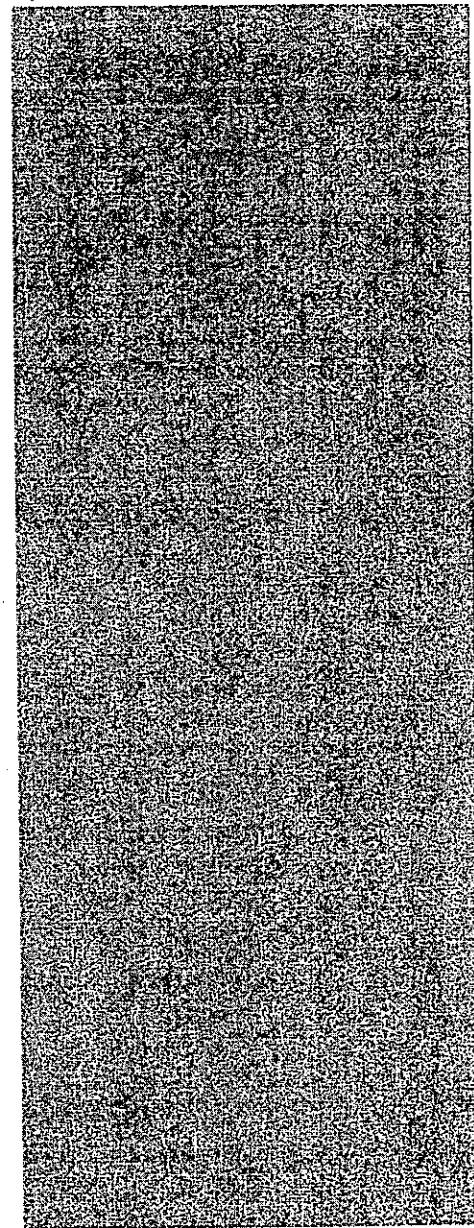
The problems facing the Family Court system in New York City cannot and should not be addressed solely by adding more judges. The City can also reduce judicial caseloads by making sure that families get the help they need *before* they are brought to court. Our experience has shown us that this will be money well spent.

Child Welfare Watch
AGAINST THE CLOCK:
The struggle to move kids into
permanent homes



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VOL. 15 WINTER 2008



Disorder and Delay

Abuse and neglect charges are up;
Family Court is overwhelmed

A reprint from Child Welfare Watch
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RECOMMENDATIONS AND SOLUTIONS

THIS EDITION OF THE WATCH CONSIDERS the legacy of the federal Adoption and Safe Families Act of 1997. As with most legislated solutions to problems of great complexity, the law purported to be a comprehensive reform, but wasn't. It failed to put substantial resources into family support services, or into the nation's troubled family courts—two essential tools for ensuring that children have permanent homes and families. Of its own accord, New York successfully expanded investment in preventive family support in recent years—although today, impending city budget woes could undermine this advance. Meanwhile, the city's Family Court is too overwhelmed to handle its responsibilities in a timely way. Following are recommendations proposed by the *Child Welfare Watch* advisory board.

ACS AND FAMILY COURT MUST WORK TOGETHER TO REDUCE THE NUMBER OF NEGLECT CASES NOW UNDER COURT SUPERVISION.

Family Court has been overwhelmed by a 150 percent increase in new abuse and neglect petitions filed by city attorneys against parents. While some of this increase is the result of more removals of children from their parents, most of the growth is in requests for court-ordered supervision of families not being broken up. Rather, these families are expected to participate in services while remaining under city oversight.

ACS officials say this is necessary because many families do not take part in preventive services following an investigation, and are eventually re-reported for neglect. With a court order, ACS can keep tabs on a family for six months to a year, ensuring that children remain cared for and safe. Officials say the increase in court activity is a direct consequence of the higher rates of abuse and neglect reporting that began soon after the murder of Nixzmary Brown in January 2006.

According to judges and other court observers, however, many of these cases could be effectively handled by responsible caseworkers with resources to help families and monitor their progress without the court's involvement. This matters because Family Court's capacity is finite. The surge in filings has caused a massive case backlog in the court. Intact families in need of help—like mental health counseling or drug treatment—often bounce in and out of court for months and fail to receive appropriate services. Meanwhile, families who

have had their children taken away and placed in foster care do not receive timely attention or even full judicial consideration of key decisions, such as returning a child home. Children are now staying in foster care longer: for children experiencing foster care for the first time, the median length of stay increased to 11.5 months in fiscal year 2007, up from 8.2 months in fiscal year 2005.

Almost any case can be brought to court if there is some evidence of neglect, but not all should be. It is up to ACS officials to determine when they truly need court authority to supervise a family. This should be pursued only when parents and their relatives refuse to do what's right by their children—and never simply to allow a case manager to avoid responsibility for making important decisions. When a court filing is made prematurely, it can have a damaging impact, alienating families and turning them away from potentially useful services.

In order to preserve the integrity of Family Court, ACS needs to establish strong rules for child protective staff and attorneys that avert court involvement whenever possible through the use of family team conferencing, the provision of appropriate support services and other interventions. Just before the *Watch* went to press, ACS issued preliminary guidelines, including a requirement that a family team conference precede any court filing. These guidelines, however, are too open to interpretation. Judges need to work with ACS to make court supervision truly useful for families and helpful to vulnerable children—and not a crushing burden on an already troubled court.

IN THE BUDGET BATTLES AHEAD, NEW YORK'S MAYOR AND GOVERNOR MUST PROTECT FUNDING FOR FAMILY SUPPORT SERVICES.

Social services for low-income families are always a tempting target for politicians and budget managers facing lean times. But cuts to the city's preventive services programs would jeopardize the dramatic success the Administration for Children's Services (ACS) has had in reducing the number of children in foster care—and leave troubled families with fewer places to turn for help in a crisis. Mayor Michael Bloomberg and Governor Eliot Spitzer, along with the City Council and the city's representatives in the state legislature, must aggressively fight to protect and expand funding for crucial items including drug treatment, mental health services, housing subsidies, after-school programs and community-based family counselors and case managers. A substantial investment in these areas can keep fragile families intact and will continue to save the city millions of dollars on foster care spending. ✕

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Disorder and Delay

BY KATHLEEN CARROLL
AND ANDREW WHITE

There's been a dramatic increase in abuse and neglect charges filed against city parents, and Family Court is overwhelmed again.

IT'S A HECTIC AUTUMN DAY in Ilana Gruebel's Brooklyn courtroom, which is scheduled to handle seven foster care hearings involving more than a dozen children. And that's just the day's overflow from the courtroom next door.

Despite her packed schedule, Gruebel isn't a judge. She's a court-approved referee who oversees hearings that can't find a home on Judge Arnold Lim's crowded docket in Brooklyn Family Court. State law requires Family Court to hold frequent hearings for every foster child in the city, to ensure they are in foster care for the shortest time possible. The overwhelmed courts are turning more duties over to referees, court middlemen of sorts. They relay information from the hearings to judges, who ultimately decide whether and when children return to their parents.

Attorneys for the Administration for Children's Services (ACS) have vastly increased the number of parents they charge with abuse or neglect in Family Court. The number of new petitions filed by ACS in such cases is up 150 percent since January 2006, and the total number of hearings on these new petitions has more than doubled in just two years, according to court records. As a result, New York City's Family Courts are near the breaking point despite years of attempts at reform, according to several judges and other court observers.

One consequence is that children are spending more time in foster care waiting for their families' cases to be resolved. For children experiencing foster care for the first time, the median length of stay before returning home increased to 11.5 months in fiscal year 2007, up from 8.2 months in fiscal year 2005.

Attempts to relieve some of the pressure by shifting cases to referees and court assistants have helped, some judges say, but the sheer volume of cases has been crippling. Because every judge is so overloaded, they say, the court has lost the ability to make well-informed decisions on the cases before it.

"You've lost any responsible [judicial] consideration of the merits of the case," says Judge Lee Elkins of Brooklyn Family Court. "It's a system that's out of control."

"Children are experiencing greater delays in permanency," adds Judge Bryanne Hamill, also of Brooklyn. "The dramatic increase in filings [is one factor]. And the court has to use its precious time to hold emergency hearings." The result, she says, is that it has become much more difficult to move kids through the system and out of foster care.

The rapid increase in cases coincided with new court reforms that were supposed to improve the quality of judicial case oversight. Two years ago, the state legislature set out to transform Family Court and improve the speed and effectiveness with which it handled cases. The Permanency Law of 2005 required judges to track cases far more closely than in the past and mandated that ACS and the city's nonprofit foster care agency caseworkers provide everyone involved in cases with extensive, semi-annual reports on each child's progress. The law was put in place after a scathing 2003 federal audit condemned the performance of New York's Family Court and threatened the city with the possible loss of hundreds of millions of dollars in foster care reimbursements.

The new law was intended to move foster children back home or into adoptive placements more quickly. But it hasn't worked out that way. While legislators assigned more work to the already struggling courts and the judges, lawyers and caseworkers who toil there, they did not allocate additional funding. And then, just as the sweeping new mandates took effect, a flurry of publicized cases of child murders, culminating in the 2006 Nixzmary Brown case, led to a surge in the number of reports of abuse and neglect—a surge that continues two years later. City lawyers accelerated the pace of Family Court filings, and ever since, the courts have been flooded with cases.

...

In 2006, ACS filed 12,472 new abuse and neglect petitions in Family Court, up from 5,059 in 2005. This rapid pace continued in 2007: there were an average of more than 1,050 such petitions each month during the first nine months of the year, the most recent data available.

The increase reflects two major changes in policy and practice at ACS since the Nixzmary Brown murder, both of which have contributed to the huge increase in petitions involving parents suspected of abusing or neglecting their children.

First, the city is today removing far more children from their parents and placing them in foster care than they were in 2005. Currently, the city places about 7,200 children in foster care every 12 months, compared to fewer than 5,000 before January 2006. (The pace of removals, however, remains substantially below what it was in the late 1990s, when as many as 12,000 children entered foster care in one year.)

Second, ACS has dramatically altered the way it uses the Family Court to guarantee parents' cooperation with agency caseworkers and to compel participation in services such as drug or alcohol testing and treatment, mental health counseling or parenting classes. In thousands of cases each year, the city now requests that judges grant caseworkers the authority to keep tabs on parents and their children for 6 months or more—well beyond the standard 60-day child protective investigation.

Before January 2006, ACS usually sought court authority for family supervision in fewer than 200 cases each month. Today, ACS routinely files such petitions against 400 or 500 families each month. In August 2007, they filed nearly 800.

"It's important for us to have the jurisdiction to continue to track how children are faring," says Ron Richter, former deputy commissioner for Family Court legal services at ACS and now the mayor's family services coordinator. "One way to do this is to seek the authority of the Family Court to continue to monitor a family with the children at home, without seeking a removal.

"I'm pleased we have not had a rush to removal," Richter adds. "But I'm not surprised to see the agency's caseworkers and attorneys being as cautious as we can be."

Several city officials say privately that caseworkers have become far more cautious than in the past. After Nixzmary Brown's murder, ACS officials determined that child protective investigators were closing a high percentage of cases even after finding evidence of abuse or neglect. Today, such "indicated" cases are rarely closed without services.

Sometimes, says Richter, a court order is the most effective way to make sure parents do what's asked of them while allowing ACS to be confident the children remain well cared for.

The administration recognizes the burden the policy has imposed on the judges, says ACS Commissioner John Mattingly, but he says the cases his agency brings to the courtroom belong there. "That has put a huge strain on the court, the filing increases," he acknowledges. "We are working with the judges now to come up with a plan in which requests for supervision can be handled in a more expedited manner. We are all very worried that cases in court have gone up so much because the reports have gone up.

"We need more referees, more judges," Mattingly adds. "It looks like [the numbers of filings] isn't going to go down. We're all concerned about that and really want help from Albany to deal with the crisis."

But critics say the answer is not to simply hire more court personnel. Rather, they say ACS needs to use better discretion in choosing which cases go to court. During this two-year surge in filings, the city has had no formal guidelines to define when attorneys and caseworkers should request a court order for supervision. Instead, as with removals, these decisions are made case-by-case among child protective investigators, their supervisors and managers and agency attorneys.

Richter says ACS is currently developing new guidelines. One may require that emergency conferences be held on each case before any court filing, bringing together child protective

staff, family members and community providers in hopes of finding a safe alternative to either removal or long-term supervision of the family. This practice began in much of Manhattan during the last weeks of 2007, but the impact on the court is not yet evident.

...

The city's heavy reliance on court supervision orders has stirred a growing controversy among judges, attorneys and parent advocates, some of whom charge that ACS has effectively usurped the court's authority by overwhelming its judges.

The city's heavy reliance on court supervision orders has stirred a growing controversy among judges, attorneys and parent advocates.

"If the court is not able to make timely, independent judgments about whether there needs to be a removal, or whether there's been neglect, or whether a child should return home, or a family needs supervision, then the agency can do pretty much whatever it wants," says Judge Elkins.

He blames Commissioner Mattingly for failing to demand that city caseworkers make a distinction between children in need of immediate intervention and those who don't necessarily need the court involved. "If you're not exercising executive discretion, that's irresponsible," Elkins says. "You've got sexual abuse cases, abandonment cases, a whole variety of very serious neglect cases that need to be addressed on a timely basis. We simply don't have the luxury of being a hammer against a parent who doesn't want ACS in their lives."

Parents' attorneys agree. "I see it very simply as people started passing the buck to Family Court," says Kara Finck of The Bronx Defenders, which provides free representation to parents. "They don't want to be on the line for this if something goes wrong in a case."

The constant fear of being caught in error on a case and shouldering the blame was less common in 2005. Instead, attention at that time was focused on improving the accountability of the court itself. Under the Permanency Law enacted that year, children were supposed to be guaranteed a more thorough and attentive court than in the past. After a child is placed in protective foster care by ACS, a hearing to track progress toward a permanent placement is supposed to be held twice each

year. The hearings must be attended by all key stakeholders: a law guardian representing the child's interests, a lawyer representing the family, a lawyer representing pre-adoptive parents, an ACS attorney and a foster care agency caseworker.

The intended tenor and focus of court hearings also changed under the new law. The hearings were to be guided by detailed caseworker reports on progress toward the child's eventual exit from foster care, including updates on education, health status and visits with parents.

But today, the hearings routinely fail to follow the law's requirements.

On an October morning in Gruebel's courtroom, the referee held one hearing for a child in foster care even though the caseworker was missing and the most recent progress report was three months out of date. The case was already overdue: the last hearing had been seven months earlier. Another hearing had been set for the summer, but it was rescheduled after the child's caseworker failed to appear—she said her offices had been flooded. At this rescheduled session, the caseworker again failed to appear, because she was mistaken about the time.

But the child's law guardian and the mother's attorney were both present, as was another caseworker from the same

agency who happened to be in the courthouse. That caseworker was assigned to one of the child's siblings, so Gruebel asked her to participate and held the hearing based on an outdated, unofficial progress report from the summer.

"All I have to go on is an unsworn permanency report," said a frustrated Gruebel. "The goal of this family is reunification, and that is the most crucial goal. I really need the worker here."

Nonetheless, she approved a request by the child's law guardian for play therapy, and the mother's request to change her weekly visitation details to accommodate a new work schedule. Then, noting that the caseworker had failed to appear, Gruebel scheduled another hearing for the following month.

...

Repeated court delays can prove devastating for a family seeking to reunite. Parents who want to hold onto the right to care for their children must satisfy goals established during these hearings, such as getting counseling or securing an adequate job and apartment.

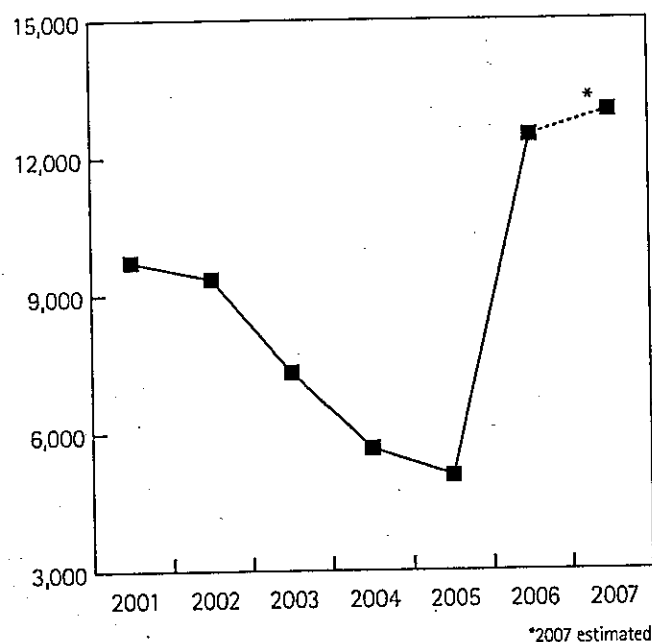
In Hamill's Brooklyn courtroom, reaching the "fact-finding" hearing, akin to a civil trial, in an abuse or neglect case may now take a year, she says, when it used to take five months—

continued on page 26

ABUSE AND NEGLECT CASES ON THE RISE

The Administration for Children's Services has dramatically increased the number of families it charges with abuse or neglect in Family Court.

ORIGINAL FILINGS, ABUSE AND NEGLECT PETITIONS, NEW YORK CITY FAMILY COURT

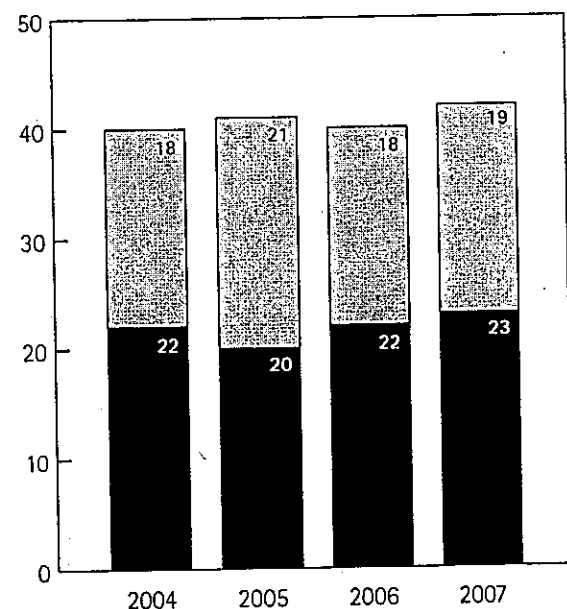


Source: New York State Unified Court System

JUDICIAL POWER DRAIN

The number of judges, referees and judicial hearing officers handling abuse and neglect cases in New York City Family Court hasn't changed, even as the number of ACS court filings has more than doubled since 2004.

JUDGES REFEREES AND JUDICIAL HEARING OFFICERS (FULL-TIME EQUIVALENT)



Disorder and Delay, continued from page 7

thanks largely to the increased workload. These hearings are regularly bumped off of her schedule by emergency hearings for petitions brought by ACS against other parents.

Hamill says her caseload has grown from about 300 in 2005 to almost 900 today. In Brooklyn, the total number of abuse and neglect filings tripled in 2006 and has remained high, according to court data.

"My schedule is full out until February or March of next year," Hamill said in early October 2007. "Anything new that comes in now will be bumping cases that were scheduled three months ago."

Parent and child advocates, lawyers and judges almost uniformly supported the new Permanency Law when it was being developed in 2005. There was broad agreement that Family Court was dysfunctional, decisions were made on inadequate information and permanency plans were poorly documented.

But today, they mostly agree the situation is intolerable—and maybe worse.

"Intelligently, the law was designed for increased judicial oversight," says Sue Jacobs, executive director of the Center for Family Representation in Manhattan, which provides legal representation and counseling for poor families in crisis. "It's not being implemented well because no additional resources were provided for any of its parts."

"It is frustrating that the law was passed with no financial resources," agrees Richter of ACS. "It only became law because an overwhelming number of advocates, government and court personnel were overwhelmingly supportive."

"Be careful what you wish for, I guess."

The 2005 law expanded the court's oversight to include children aged 18 to 21 in foster care, requiring permanency hearings for them for the first time and making them more likely to receive social services and supports as they transition to adulthood. But that provision also put additional stress on the court system, adding an estimated 600 cases to the Family Courts in 2006, according to the New York City Bar Association.

Meanwhile, the number of Family Court judges has remained at 47 since 1991. Of those, 27 hear abuse and neglect cases, according to the state Office of Court Administration.

A 2006 survey by New York City Family Court found that, during the studied week, 45 percent of foster care hearings required multiple court appearances before they could be completed. Some 30 percent of hearings were adjourned because the required progress report was missing or incomplete. Of those cases with complete reports, a mere 12 percent were submitted two weeks in advance, as the law requires.

At least one part of the system has seen some relief: the Bloomberg administration added \$3.4 million in city tax dollars to the ACS budget to pay for more attorneys. Since 2005, the agency has expanded its legal staff from about 150 to 220, with each attorney carrying about 80 cases. The agency's ultimate goal is to employ 235 attorneys, each with a caseload of about 60, says Richter. The American Bar Association recommends caseloads not exceed 50.

In Brooklyn, the total number of abuse and neglect filings tripled in 2006 and has remained high.

Caseloads for law guardians, who represent children's interests during foster care hearings, have grown even more unwieldy than they were before the new law took effect. In a position paper released this summer, the New York City Bar Association's Council on Children reported that caseloads for staff attorneys at The Legal Aid Society's Juvenile Rights Division have grown to between 250 and 300 per attorney, on average, compared to between 150 and 200 before 2006. To keep up, they routinely work overtime without additional pay. The city's bar association has called for a 50 percent increase in spending on law guardians in New York City, or \$13 million, to reduce caseloads.

...

On that same October day when Gruebel, the referee, was scheduled to hear seven foster care hearings, Judge Hamill was unable to hear a single one. Her day was filled by emergency hearings all morning and intake of new cases all afternoon.

Gruebel's courtroom offers a picture of those difficulties, too. Mid-morning, Gruebel was spending a crucial half-hour sitting in silence at the dais, waiting for a missing lawyer. The lawyer was in another hearing, caught in the undertow of the mercilessly busy courthouse.

Gruebel and the child's law guardian grimaced at one another and waited. Twenty-five minutes later, their window of time had closed. They opened their calendars and picked new hearing dates, five and six weeks away.

The guardian ran to a hearing in an adjoining courtroom, and Gruebel sighed at the missed opportunity.

"The time is so precious," said Gruebel. "To me, this is like a travesty." ❧

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Centernyc@newschool.edu
or fax to: 212 229-5335.



PREPARED STATEMENT OF JUDGE ELKINS

I want to thank the Chair, Councilperson DeBlasio and the General Welfare Committee for inviting me to speak to you today.

My name is Lee Elkins. I am a judge of the Family Court in Kings County. For eight years, until July of last year I presided over what may be the busiest child protection part in the country. I have presided over 20,000 cases since my appointment by Mayor Giuliani in 1995, including 8000 neglect and 1500 abuse cases. I am not here representing the court administration. I accepted your invitation to speak today, because it is important that you hear about the conditions in the Family Court from a sitting judge.

You know that since the Nixzmary Brown tragedy, filings in the Family Court have more than doubled. In Kings County in particular, filings in child protection cases increased four fold in early 2006. Filings remain at three times the 2005 levels. In the past two years, ACS has filed about 25,000 new petitions in the Family Court. This number does not include permanency hearings for which petitions are not required, but which a judge must hold every six months, in every case where a child is in foster care. Those hearings must be completed in 30 days, by law. Permanency hearings result in 12 page orders to be prepared in every case. Also not included in those numbers are the most important proceedings - emergency hearings to decide whether children removed from their homes can be safely returned, and proceedings to decide whether children should be freed for adoption. Those are the most sensitive and time consuming cases. Removal hearings often last late into the evening - to 8 or 9 p.m.. Cases seeking a termination of parental rights take days of trial time. One of my colleagues in Brooklyn routinely schedules those cases to be heard between 5 and 6:30 p.m..

Statewide, 154 Family Court judges handle 700,000 case filings annually. I am told that according to the family court administration, the average annual caseload for a Family Court judge in New York City went from 1400 in 2005, to 1900 in 2006, to 2200 in 2007. Juvenile delinquency judges carry at most two hundred cases. So if you take away the 25% of Family Court judges presiding over juvenile delinquency cases, the remaining judges are hearing more than 2500 cases a year on average. Some child protection judges in Brooklyn, Queens and the Bronx have 1000 or more cases pending prior to disposition. That does not include permanency and other post disposition cases. Judges hearing custody cases have 1500 to 2000 pending cases. Most telling is that on average the number of cases that remain pending without resolution after 6 months has doubled for virtually every judge citywide in child protection, custody, and domestic violent parts in the past 12 months. As Judge Hamill wrote in the New York Law Journal, it is no longer possible for child protection judges to apply the best practices model recommended in such cases by the National Council of Juvenile and Family Court Judges. It has become virtually impossible for my colleagues to comply with the time frames established by the permanency law of 2005.

In human terms, this exacts a tremendous personal cost on the judges, on the clerks and other people who support the judges, and most of all on the families whose circumstances bring them to the Family Court. Family Court Judges work hard. We expect to work hard. We carry the highest case loads, involving the most sensitive issues of any court. Because we are dealing with children, science tells us that we must complete these cases quickly, and common sense tells us that we must be right. Because we are conscientious, we are distressed by these circumstances. As a child protection judge, I worked every weekend and late nights. Often I found myself in my

office at midnight, preparing permanency orders. Despite tremendous sustained effort by our best judges over two years, the length of time it takes to complete child protection and custody cases is ever increasing. Cases go for six months between adjournments. There are not thirty minutes available on a child protection calendar in Kings County in the next four months. The obvious result is that children in foster care remain separated from their families without either going home or finding permanent alternatives. In two years, the promise of the permanency legislation of 2005 has been put beyond our reach. The trend of decreasing the foster care population has stopped.

There are principally three reasons for this situation. First, the permanency law passed the State legislature without any additional resources being provided to the court to implement it. The City Bar called it an unfunded mandate. The Family Court's workload doubled, with shorter time frames, using the same resources. Second, as soon as the permanency law went into effect, the Nixzmary Brown tragedy resulted in a rapid and sustained increase in child protection filings, increasing child protection caseloads three fold. Third, in response to the crisis, the ACS embarked on a plan to bring more than twice as many families under the supervision of the Family Court, while leaving their children in the home. In the 18 month period following Nixzmary's death, ACS brought an additional 2000 families under the court's supervision. This more than doubled the number of court ordered supervision cases to over 3500 families.. This decision was made apparently because the agency considered the 60 day period of voluntary compliance with preventive services to be too short. By bringing families to court, the agency is able to extend its supervision over the family for the life of the court case. Prolonging court cases means prolonging the period of supervision.

What I conclude from all of this is that the legislative and executive branches have negligently disregarded the effects of their actions on the judiciary, which negatively affects the families we are appointed to serve. The state legislature demands more of the Family Court while failing to provide any additional judges. Since the permanency statute, requiring foster care reviews twice as frequently, the legislature has enacted other laws requiring the Family Court to be available 24 hours 7 days a week to consider emergency removal applications. The legislature has enacted laws creating a new proceeding in which the Family Court is to decide whether victims of domestic violence should be let out of their leases. These are all worthy measures, which place additional burdens on a court already in crisis. The executive branch continues to bring families to court, even in cases where ACS does not contend that children are at imminent risk of harm, in order to compel the family to engage in services. They do this, even though they know that the existing preventive services programs are fully subscribed. They do this, even though they know that the court is unable to provide meaningful supervision of the family, due to the sheer volume of cases filed.

I believe that there are some legislative and executive solutions to the court's crisis. For example, in addition to creating new judgeships (Judge Kaye has called for 39 new Family Court judges statewide - 14 for the city), the state legislature should provide child protection judges with the same authority to adjourn cases in contemplation of dismissal as is given to judges in juvenile delinquency cases - prior to fact finding, in the judge's discretion, according to terms set by the court, not requiring the consent of ACS. The legislature should specify that child protection judges have the authority to determine the extent and duration of any pre-finding supervision of families brought to court. The executive should require all city agencies to

provide services to families involved with ACS on a priority basis, and should empower ACS workers to access those services with a minimum of red tape. There should be executive orders, requiring NYCHA, OMRDD, OMH, DHS, DOE, and the rest of the alphabet agencies to cooperate with ACS in implementing service plans designed to preserve or reunite families. Finally, ACS should be required to exercise restraint in bringing families to court - limiting court filings to those cases where it appears that without judicial intervention, a child's health or life will be at risk. And there should be a mandate for prevention prior to judicial intervention. Only measures of this kind will stem the flow of cases into the Family Court; enable the court to provide meaningful access to families and their advocates; and enable the judges of the court to provide the quality of judicial attention that children and families in our city deserve.

Thank you.

**Testimony by Karen J. Freedman
Executive Director
Lawyers for Children, Inc.
New York, New York**

Presented to

Councilmember Bill DeBlasio,
Chairman,
The New York City Council-General Welfare Committee

**Child Welfare and the Increased Demand on the New York City Family Court
*January 10, 2008***

Good morning, my name is Karen Freedman. I am the Executive Director of Lawyers For Children, Inc. ("LFC"). I thank you, Chairman DeBlasio and your dedicated colleagues for inviting us to present testimony at this important hearing.

As you may know, LFC is a not-for-profit organization dedicated to protecting the rights of individual children in foster care and to compelling system-wide child welfare reform in the City of New York. Every child we represent receives free legal and social work services in cases involving foster care, abuse, neglect, termination of parental rights, adoption, guardianship, custody and visitation. In 2006-07, LFC attorneys appeared in over 6000 Family Court proceedings.

Our experience in day to day advocacy on behalf of children and young adults, combined with our focus on child welfare reform gives Lawyers For Children a unique perspective on the issue before the

Council today—the overwhelming demands that are presently being placed on New York City’s family court system.

One year ago, I stood before you and described how a lack of appropriate resources severely hindered the Family Court’s ability to provide timely, meaningful hearings for children being removed from their homes, children in the foster care system, and children aging out of the foster care system to adulthood. During the last year, the crisis in the family court has not abated. However, there has been a great call, state-wide, for additional resources to improve the functioning of the family courts. Today, I stand before you to urge the City Council to take all possible steps to see that those resources are made available.

Historically, Family Court has been woefully under-funded and overburdened, with unfilled vacancies in critical positions, and most distressing, too few judges. But the family court does not function in a vacuum. A fully funded and supported court staff is meaningless without also providing resources for institutional legal service providers for both children and parents, for the city’s office of Family Court Legal Services as well as adequate support for the community based service providers that serve children and families. If we hope to maintain a judicial system that can meet its critical mandate of child protection, family support, and permanency, that system must be viewed in the

context of all of the players who labor on behalf of children and families in crisis.

During the last ten years, several factors have directly caused a tremendous increase in family court caseloads. The Adoption and Safe Families Act of 1997 required more frequent monitoring of the cases of children in foster care and required the filing of petitions to terminate the parental rights as to children who were in foster care for 15 of 22 months. In 2000, the legislature increased from 16 to 18 the age over which the Family Court had jurisdiction over "persons in need of supervision." And, following several highly publicized child fatalities the number of abuse and neglect filings increased dramatically.

During the last few years, the State Legislature has recognized that many of the players in the Family Court system have become so overwhelmed that they cannot effectively perform the duties to which they have been assigned. In an effort to improve the functioning of the family court, a range of legislation has been introduced -- including the "permanency bill of 2005," legislation to reduce law guardian caseloads, and legislation to increase the number of judges on the court. Unfortunately, some of these measures have yet to be passed into law. Even the legislation that has passed, most notably the 2005 "permanency bill", has failed to achieve its promise --

and has, ironically, contributed to the increased burdens placed upon the court.

Implementation of the 2005 permanency bill highlights the challenges facing an overwhelmed and under-resourced system. By 2004, it was clear that New York State was poised to lose important federal financial support because of its inability to achieve timely, safe, and permanent outcomes for children in foster care. As a result, the legislature enacted sweeping legislation that significantly altered the substantive and procedural laws affecting children in foster care who are the subject of family court proceedings. These reforms were designed to place children in safe, permanent homes as quickly as possible. Instead, they have overwhelmed the court, actually slowing permanency for some children.

Several aspects of the legislation have caused a tremendous increase in the number of cases heard by the family court. First, because the legislation calls for permanency hearings to be held every six months (rather than once each year), the number of permanency hearings held each year has doubled. In addition, because the legislation expanded the Court's jurisdiction to require permanency hearings for all voluntarily placed children between the ages of 18 and 21, permanency hearings are now held every six months for young people who never before fell under the Family Court's jurisdiction.

The legislation requires that each six month permanency hearing include a detailed inquiry into the services being provided to the child in placement, the services being provided to the family, the plan for the future, and the steps that need to be taken to achieve the permanency goals for the young person and their family. If implemented as designed, the Permanency Bill should ensure that steps are expeditiously taken to either safely return children to their homes, or to free them for adoption.

Unfortunately, the great promise of the Permanency Bill has simply not been realized because the State has failed to provide any additional financial or technical resources to help implement its requirements. As a result, the family courts are overwhelmed, foster care and ACS workers are wasting far too many hours sitting in courthouses instead of working with families, attorneys who represent parents and children simply cannot provide the level of service that their clients need and deserve, and litigants lose far too many days of school and work waiting for their cases to be heard.

A permanency "hearing" as currently conducted in most New York City courtrooms bears no resemblance to the in-depth inquiry envisioned in the statute. Most hearings last less than ten minutes and some judges refuse to hold full evidentiary hearings even when requested to do so by a party.

In one courtroom in which child protective proceedings were heard this past Monday – January 7, 2008, the calendar listed cases pertaining to 42 different children. This included permanency hearings, conferences, motions, hearings for the immediate return of children who had been removed from their homes, disposition hearings following findings of neglect, as well as fact-finding hearings on several abuse and neglect cases. How can the court possibly devote the appropriate amount of time and attention to each of these children in a single day? On that same day, in the court part dedicated to hearing voluntary foster care cases, the Judge heard cases pertaining to 34 different children. This means that the court was able to devote less than 10 minutes, at most, to each child's case. In those 10 minutes, the judge was charged with determining whether the child had been voluntarily placed in foster care, whether there were any other family resources available for the child, whether the child was appropriately placed in a foster home, group home or residential treatment center, whether the child's educational and medical needs were being met, whether appropriate visitation was being arranged for the child between parents and siblings, what the long term plan was for the child, and what steps needed to be taken to achieve that plan. The fleeting attention paid to these permanency "hearings" remains deeply troubling.

During the last legislative session in Albany, the Senate and Assembly both recognized that steps needed to be taken to lessen the workloads of the players in the family court system. As a result, they passed Chapter 626 of the Laws of 2007, directing the Chief Administrator of the Courts to promulgate rules prescribing workload standards for law guardians. On any given day, individual attorneys from Lawyers for Children can be asked to handle cases for as many as 24 children and can be expected to appear in any of 16 different court parts. Due, in large part, to changes brought by the Permanency Bill of 2005, the same number of staff attorneys at LFC handled nearly 1200 more permanency hearings in 2006, than in 2005. With caseload demands like this, we need to make heroic efforts to ensure that we continue to give our clients the highest quality representation and services. This task presents an increasing challenge with each passing day.

Several weeks ago, The Chief Administrator released a preliminary report regarding law guardian workloads. That report echoes the statements I made to you last year. It confirms the dramatic increase in the number of cases heard by the Family Court during the last 10 years and calls for reforms of the "systemic problems of an overburdened Family Court system in which Judges are struggling to keep pace with crushing caseloads." According to

statistic recently released by the new York Family Court, the average caseload of each judge rose from 1529 to 2200 between 2004 and 2007. With numbers like these, it is not just the law guardians whose case loads must be reduced.

In order to reduce the "crushing" caseloads, it is essential that the number of Family Court judges be increased. Last year, many advocates called upon the state legislature to increase the number of family court judges for the first time since 1991. This is an essential step that must be taken if we are to find safe permanent homes for children in foster care in a timely manner. Consider the case of our client, Kathleen. She is five years old and has been in foster care since she was only a few months old. Her mother has not visited for the last several years and her father has been in and out of prison. In 2004, a petition was filed to free Kathleen for adoption. The case has been ready for trial since December of that year. Yet, no fewer than six times all of the parties spent an entire day in court, only to be told late in the afternoon that the judge had no time to hold a trial that day. The case is next scheduled for a hearing in February of 2008.

The City Council has provided important leadership on issues of child welfare and we applaud you for continuing to do so. We urge you to continue to raise your voices and muster resources to prevent the most **vulnerable members of our society --- needy**

children --- from losing the footing that they have gained over the last several years. A properly staffed Family Court is a vital link in an effective system of child protection and family services. New York State has enacted legislation that could launch us into a leadership position in the nation's approach to child welfare reform. Instead, this new legislation sits as an empty promise because it was passed without the resource allocations necessary to realize its potential. We applaud you for your efforts on the behalf of children and families. Today's hearing can shine a light on the needs of children and families struggling in our child welfare and family court systems and bring us closer to the promise of safety and security for all children and families in our City.

We are available to assist in any way possible to improve the services and quality of care for children who are in need.

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TESTIMONY

The Council of the City of New York
Committee on General Welfare
Bill de Blasio, Chair

“Child Welfare and the Increased Demands on New York City Family
Courts”

January 10, 2008
New York, New York

Prepared by
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Presented by:
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[E]ach child must be valued as a unique human being, regardless of race, ethnicity, religion, age, social class, physical or mental disability, gender or sexual orientation. Each child is vested with certain fundamental rights, including a right to physical and emotional health and safety. In order to achieve the physical and emotional well-being of children, we must promote legal rights and remedies for children. This includes empowering children by ensuring that courts hear and consider their views in proceedings that affect their lives.

National Association of Counsel for Children, Recommendations for Representation of Children in Abuse and Neglect Cases, page 100.

Good afternoon. I am Amanda White, Attorney in Charge of the Legal Aid Society's Juvenile Rights office in Bronx County. I submit this testimony on behalf of the Legal Aid Society, and thank Chairman de Blasio and the Committee on General Welfare for inviting our thoughts on how to help solve the crisis in New York City's Family Courts. We applaud the Council for tackling this important subject, and look forward to the valuable contributions that we are sure the Committee will make in this area of vital concern to our City's children and their families.

The Legal Aid Society is the nation's largest and oldest provider of legal services to poor families and individuals. Legal Aid's Juvenile Rights Practice provides comprehensive representation as law guardians to children who appear before the New York City Family Court in abuse, neglect, juvenile delinquency, and other proceedings affecting children's rights and welfare. Last year, our staff represented some 29,000 children, of whom almost 90% were clients in child protective proceedings. Our perspective comes from our daily contacts with children and their families, and also from

our frequent interactions with the courts, social service providers, and State and City agencies. In addition to representing many thousands of children each year in trial and appellate courts, we also pursue impact litigation and other law reform initiatives on behalf of our clients.

It is beyond argument that children are the heart and soul of who we are as humans. Our treatment of them reflects everything both good and bad about us. The work we do in Family Court is complicated and nuanced, and tremendously important. All day long in Family Court, parents, judges, attorneys and child welfare workers confront the difficult and emotional task of trying to keep families together whenever possible and separating them when necessary. This is often a very fine line. And recent events have conspired to make this work even more difficult.

Our perspective is that of our young clients. Children caught up in the Family Court require high quality services, rendered by a well-trained group of professionals and paraprofessionals who are able to maintain a strong and continuous relationship with them. Additionally, the services for these children must cover a wide spectrum of needs and must not be routinized but must be developed taking into consideration the diverse needs of each individual child. Moreover, there needs to be recognition that to best serve the child the professionals involved must serve the family as well. Our clients must feel that the professionals they are dealing with respect them, care about them and empathize with them at every juncture of the case. It is the children to whom we are answerable at the end of the day.

Today the Committee is focusing on increased demands in our City's Family Courts. I will present some background and then focus on two areas which, if addressed,

would go a long way toward reducing workload in Family Court: delays in resolving cases, and the scarcity of community-based services to support families.

Background

Already facing a workload crisis, in 2006 Juvenile Rights staff, as well as all Family Court practitioners and judges, were confronted with the unanticipated increase in petitions being filed as well as the difficulties created by the new permanency legislation. The tragic deaths of several children at the end of 2005 and beginning of 2006 created a groundswell of calls into the New York State Central Registry. In addition, the deaths of these children, some under Administration for Children's Services supervision, resulted in a reevaluation of all ACS families in which a child remained with a respondent on an abuse or neglect petition. This increase in filings resulted in a critical mass of new matters before the Family Court that neither the court, ACS nor the Juvenile Rights practice had sufficient staffing to handle.

In early 2006, ACS devoted over 16 million dollars toward improving service provision, including increasing their legal staff by 32 attorneys. Likewise, the court saw the need to add an additional "temporary" judge to each large borough to assist with the burgeoning workload. The damage done to the families, courts and practitioners was all too clear. Emergency hearings were at an all time high, causing courts to adjourn previously set hearing dates. Existing cases and families were put aside until the new matters could be addressed.

Responding to the enormous increase in workload, Juvenile Rights staff worked furiously to prepare for the emergency hearings, while juggling to fit adjourned dates into their already flooded calendars. Triaging both new and old cases became necessary,

causing significant strain on an already stressed system. In an environment where the children's lawyer often holds the key to the resolution of a case, the desperate need to be prepared in each and every matter before the court reached crisis levels in the Legal Aid Juvenile Rights practice. Despite the serious problems listed above, the Juvenile Rights staff continued to remain extraordinarily committed to providing their clients with the best overall services possible, staying late into the night to ensure their clients' issues were addressed and that much needed services were put in place.

Last year, after much effort by a broad coalition, the State Legislature passed a long-needed law recognizing that lawyers representing children need reasonable workloads in order to do their crucial jobs effectively, and mandating that OCA set workload standards, including a cap, by April 1, 2008, on the number of clients who can be represented at a given time by law guardians for children. We are participating in the process that will lead to that cap being set, and look forward to the resources necessary to provide excellent services to our city's most vulnerable children.

The Courts' Workload Causes Unconscionable Delays in Achieving Permanency

The permanency law requires significant resources to all players in the Family Courts that have not been provided. The increase in petitions filed by ACS has added tremendously to the workload as well, and new cases cause pending cases to be bumped to later dates for resolution. When children have been removed from their parents, the need for speedy adjudication is all the more urgent, yet delays and the harm that comes with those delays persist.

Waiting months or even years to know the outcome of a neglect petition is traumatic for every family. Especially in cases in which children have been removed

from their parents or caregivers and placed in foster care, anything but a speedy and thorough determination of the charges and what a court will order is simply unacceptable. For children especially, given their developmental stage, a period of months of uncertainty and upheaval can seem like a year, and a year or more can seem an eternity. A year in the life of a child includes so many changes and so much growth that its significance cannot be understated.

Across the City, lengthy delays in the adjudication of child protective cases are the norm. It is quite common for cases at every stage – including fact finding, disposition, and post-dispositional/ permanency hearings – to be adjourned for 3 – 6 months between court dates. All the while, including in cases in which children have been removed from their families, children and families suffer the trauma and uncertainty of not knowing when they will have permanency or what that will look like.

The Committee members have surely read the *New York Times*' December 12, 2007 article about the abysmal state of the Bronx Family Court elevators and how the elevators' failure prevents people from getting to their hearings on time. A four-year project to repair the four elevators, ongoing since October 2006, is not yet complete. The elevator situation remains untenable in Bronx Family Court and is a clear illustration of how these most important cases, involving the most basic rights of children and families, are not considered important enough to ensure that litigants are able physically to get to the courtrooms. The *Times* describes a situation in which a mother, whose daughter had been in foster care for 10 months, could not get to the courtroom in time for her hearing because of the broken elevators. The article reports: "So the judge, who had something

like 70 other cases to try that day, rescheduled the no-shows for the next available date.

For this mother, the next chance to plead her case and get her child back was in January.”

For many families who have child protective cases pending in New York City’s Family Courts, the workload crisis has resulted in adjournments that are far longer. For example, Legal Aid lawyers represent children in each of these cases:

- ACS filed a neglect petition in Manhattan Family Court in October 2006. The fact finding began June 2007 and has now been adjourned to February 2008 -- 16 months after the filing of the petition.
- ACS filed a sexual abuse petition in Queens Family Court in July 2003. The case was transferred to new judge in December 2006 and is now adjourned to continue the fact finding until January 25, 2008 – three and one-half years after the petition was filed.
- In Brooklyn Family Court, ACS filed a neglect petition on December 21, 2007. Our clients are children aged 6, 7, and 9. The fact finding is scheduled for August 14, 2008 – eight months after the petition was filed.
- ACS filed a sexual abuse petition in Queens Family Court in March 2005. Following “administrative adjournments” for an entire year, the fact finding hearing resumed in 2007.
- ACS filed a neglect petition in Brooklyn Family Court on May 26, 2006. The fact finding began January 18, 2007 and the court adjourned the case to January 30, 2007. Because there was no time on the court’s calendar, the judge subsequently adjourned the case to June 19, June 22, July 5 and July 17, 2007. The case was next adjourned to September 17 and November 29, 2007, but these dates were again adjourned because the Court did not have time to hear the case. The case was settled on December 11, 2007 – a year and one-half after it was filed -- with an adjournment in contemplation of dismissal for 6 months because all services were completed.
- A termination of parental rights petition was filed in Manhattan Family Court in April 2002 and the court completed fact finding in October 2004. By December 2005, disposition was completed, freeing the children for adoption. The case was appealed and the appellate court affirmed the termination in April 2007 (Court of Appeals denied leave to appeal in July 2007). *There is still no date set to finalize the adoptions of the 13 and 17-year-old children who have been in foster care for twelve years, since May 1996.*

The workload crisis in the New York City Family Courts has led to practices like these which our lawyers have experienced. The result is unconscionable delays for children and their families:

- A Brooklyn Family Court judge has to routinely adjourn cases from one permanency hearing date to the next permanency hearing date, even cases that are pre-fact finding or pre-disposition. If an attorney pleads with the judge, the judge will sometimes find a half hour, or he will put two cases on for the same time slot.
- A Queens Family Court judge has to routinely set conference dates and the fact finding date when issue is joined. In this judge's part the earliest fact finding dates available now are in September 2008 – *eight months away*.
- In Brooklyn Family Court, a termination of parental rights/custody case was filed in 2003 and has not yet concluded. In order to find more trial time before July 2008, the judge has scheduled three hearing dates on which testimony will be heard from 5:00 pm - 6:30 pm.
- On November 1, 2007, in Brooklyn Family Court, Legal Aid Society attorneys were assigned cases on intake that were immediately adjourned for pre-fact finding conferences in April 2008 and fact findings in July 2008 – *eight months away*.

Overall, while judges and referees are better able to schedule permanency hearings within the statutory time frames, other parts of proceedings in child protective cases have enormous delays. Based on our current experience around the City: in Brooklyn, with eight judges hearing child protective cases, some cases are adjourned for six months at every stage of the case; in Queens, fact finding hearings have the longest delays, with adjourned dates five to six months out; in the Bronx six-month delays are common; in Staten Island, both judges routinely state on the record that there are only two judges for half a million people, and that this is the reason for long delays, including adjournments of three to four months for every stage of a case that lacks a statutorily-mandated shorter time frame; and in Manhattan, some of the judges are able to minimize delays while others often have to adjourn cases for two or three months.

Preventive and Community-Based Services Will Reduce Case Numbers in Family Court

Although ACS has begun to increase its community-based preventive services to families, the City needs to commit more resources and to focus ever more on how to support children and families so that they do not end up in crisis. That focus, and funding, must be in schools, outpatient mental health services, permanent and emergency housing, and other supports in the communities where families live. Early identification of problems, and the availability of resources to address them, could prevent some of the neglect cases that flood our Family Court system from ever escalating to this point.

- Legal Aid represents a girl, now age 15, who has cancer and is HIV positive. ACS filed a neglect petition against her mother when our client became ill after not taking her medication regularly. Our client was separated from her mother and remanded to foster care for almost 18 months because no one was able to locate a visiting nurse service that would go to her neighborhood. Had such nursing been available to ACS as a preventive service, this neglect case would have likely never have been filed. We were able eventually to get our client home with nurses. Tragically, her mother died less than a year after the family's reunification, while the neglect case was still pending in Family Court.

Similarly, an increased availability of community-based services and supports will result in children who have been removed from their families via the Family Court process who should return home, being able to do so much more quickly. To keep a family separated when a parent or child is on a waiting list for outpatient mental health services or subsidized housing is an entirely avoidable tragedy if our City has the will to support and expand community-based services.

Recommendations

To address the workload crisis and to ensure that children and families are truly served by family court, the Legal Aid Society asks the City Council to consider the following recommendations:

1. The new permanency legislation significantly increased workload pressure in Family Court and for all practitioners; permanency hearings every six months doubled court time for attorneys and judges as well as necessitated increased case preparation and motion practice for attorneys. We ask the City Council to urge the State Legislature to provide additional funding to fully implement the permanency law so it will function as originally intended and truly serve families.
2. The City Council can also urge the State Legislature to provide funding to increase the number of Family Court judges so that families seen in Family Court are given the time and attention they so desperately need. Temporary judicial assignments only serve to add to the confusion of the courthouse, increase attorney court time and result in the bifurcation of matters, ignoring the one judge/one family model.
3. The National Association of Counsel for Children, along with the ABA and New York State Bar Association, all recommend caseload standards in child protective cases. These three agree on a standard of 100 clients per attorney. Currently many Juvenile Rights attorneys represent between 200 and 300 clients at any given time. The new State caseload cap statute mandates OCA to set standards. We ask that the City Council support necessary State funding to implement caseload limitations.

4. The City must commit more resources to preventive services to families in their communities, so that families in need of support do not go without it and end up in Family Court.

The introduction to Child Welfare Watch's recent report on Family Court states: "Ultimately, the court is responsible for having the best, most well-informed possible judgment in every case that appears within its walls. Anything less is an injustice." We want to work with the City Council to fight to ensure that New York City's Family Courts have the necessary resources to do justice and do it in a timely manner. Then, our children and families will truly be served.

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Testimony of

Stephanie Gendell
Senior Policy Associate for Child Welfare and Child Care Services
Citizens' Committee for Children

Before the
New York City Council
General Welfare Committee

January 10, 2008

Good afternoon. I am Stephanie Gendell, the Senior Policy Associate for Child Welfare and Child Care Services at Citizens' Committee for Children of New York, Inc. (CCC). CCC is a 64-year old independent child advocacy organization dedicated to ensuring that every New York child is healthy, housed, educated and safe.

I would like to thank Council Member de Blasio and the members of the General Welfare Committee for holding today's oversight hearing on child welfare and the increased demands on the Family Court.

New York's most vulnerable children depend on the Family Court to make some of the most important decisions about their lives such as where they will live, who will raise them, and how and when they will visit their parents and siblings. Unfortunately judicial caseloads, as well as the caseloads for the attorneys and caseworkers appearing in court, are so high that it is impossible for these hearings to be completed timely.

In 1962, the New York State Family Court was established to create a court system that brought children's issues together, provided counsel for children and provided for procedural due process.¹ It is this Family Court that today's judges, referees, parents' attorneys, children's attorneys, agency attorneys, and caseworkers seek to shape into a system that meets the procedural and substantive due process rights of children and their families. Unfortunately, the shortage of resources limits the ability of this system and the dedicated and well-intentioned professionals who comprise it, to be able to ensure the safety, permanency and well-being of the City's children.

The Family Courts in New York have jurisdiction over abuse, neglect, child support, paternity, termination of parental rights, Persons in Need of Supervision (PINS), juvenile delinquency, guardianship, adoption, custody/visitation and family offense cases.² The New York State Family Court Act limits the number of judges handling these cases to merely 153 judges statewide³—who this past year struggled to manage close to 700,000 court filings with close to two million court appearances.⁴

For the past 17 years, since 1991, New York City has been statutorily limited to 47 Family Court Judges.⁵ Approximately half of these judges are currently assigned to the Child Protective/Permanency Planning Division⁶—and in 2007 they were responsible for the almost 13,000 new abuse and neglect petitions

¹ Merrill Sobie, *The Family Court- A Short History*, Mar. 7, 2003. Retrieved Jan 3, 2008 from http://courts.state.ny.us/history/family_ct_History_Fam_Ct.htm.

² New York State Family Court Act §116 (2007).

³ New York State Family Court Act §121 and §131 (2007).

⁴ Syracuse Post Standard, *Help for Judges- New York's Family Courts Need More Resources This Year*. Dec. 26, 2007 at p. 8.

⁵ New York State Family Court Act §121 (2007).

⁶ Communication with New York City Family Court Administration. January 7, 2008.

filed and the almost 31,000 permanency hearings that were held.⁷ These judges' caseloads have risen from approximately 1,500 in 2004 to approximately 2,200 in 2007.⁸

In addition to the sheer total number of cases increasing, the average number of family court appearances in child protection cases also increased from 2004 to 2006. Clearly, the Family Court is trying to meet the needs of the children and families by adjourning cases more regularly. In 2006 the average number of family court appearances was 12.76 in the Bronx, 12.95 in Brooklyn, 11.17 in Manhattan, 13.3 in Queens and 7.74 in Staten Island.⁹

But putting all of these numbers into more perspective is jarring. There are 221 court days per year in New York¹⁰ and if we assume that each of these days is 7 hours long, a child protective judge with a caseload of 2,200 can only spend a total of **42 minutes a year** on each case.¹¹ (And if a case has 12 appearances in the year that translates into an average of only 3.5 minutes per court appearance.)

Forty-two minutes per year will never be sufficient to resolve any matter involving the safety, permanency and well-being of a child. In fact, the National Council of Juvenile and Family Court Judges recommends that a "routine permanency hearing" be docketed to take 60 minutes.¹²

While long adjournments, long waits in the courthouse and protracted hearings cannot be resolved merely by adding Family Court Judges, court delays certainly cannot be resolved without increasing the number of judges. In addition to judges, for the Family Court system to work efficiently and effectively, children's attorneys need to have significantly lower caseloads, parents must have adequate representation, and caseworkers must have low enough caseloads that they can come to court prepared. In addition, there must be enough resources for preventive services to strengthen and support families, keep children safe and eliminate the need for court intervention. CCC will continue to support legislative and budgetary initiatives that will address all of these workload issues.

⁷ Id.

⁸ Id.

⁹ Preliminary Report of the Chief Administrative Judge Pursuant to Chapter 626 of the Laws of 2007. Dec. 2007.

¹⁰ ABA Center on Children and the Law, National Council of Juvenile and Family Court Judges and the National Center for State Courts, *Building a Better Court: Measuring and Improving Court Performance in Child Abuse and Neglect Cases*, at 39. Retrieved Jan. 3, 2008 from <http://www.ncjfcj.org/images/stories/dept/ppcd/pdf/buildingabettercourt.pdf>.

¹¹ 221 days per year multiplied by 7 hours per day= 1547 hours. 1547 hours for 2200 cases= 42 minutes per case per year.

¹² National Council of Juvenile and Family Court Judges. *Adoption and Permanency Guidelines: Improving Court Practice in Child Abuse and Neglect Cases*. (Reno, Nevada: Fall 2000).

Clearly, much has changed since 1991 when the State Legislature authorized 47 Family Court Judges for New York City. The Administration for Children's Services (ACS) was created in 1996. The Adoption and Safe Families Act was passed in New York in 1999. The Permanency Law was passed in 2005. And since the death of Nixzmary Brown nearly 2 years ago, there has been a substantial increase in the number of child abuse and neglect reports. During this time, the Family Courts, led by Chief Judge Judith Kaye and New York City's Chief Administrative Judge Joseph Lauria, have worked tirelessly with family court stakeholders to try to make this system meet the needs of children and their families. Judges now work with referees who are not limited in number by statute and can dispose of uncontested hearings. In addition, there have been numerous special projects and pilots designed to expedite permanency, such as the Model Courts, the Best Practice Parts, the Family Treatment Courts and the Permanency Mediation Project.

Yet three things have remained the same since 1991: 1) New York City has been statutorily limited to 47 Family Court Judges; 2) the overtaxed Family Court has repeatedly been described as in crisis due to workload issues; and 3) New York's foster children have some of the longest foster care stays in the country.

If the resource needs created a crisis in the late 90s, then there is almost no word to capture the state of crisis that currently exists. Below is a brief history showing how long our Family Court system has been overwhelmed and to quote Chief Judge Judith Kaye, "desperately short of judicial resources."¹³

- **1991:** The Family Court Act is amended to provide New York City with 47 Family Court Judges.¹⁴
- **November 1997:** The federal government passes the Adoption and Safe Families Act (ASFA), a law aimed at reducing the length of time children spend in foster care.¹⁵
- **February 1999:** New York passes its ASFA implementing legislation, which expands the court's role in reviewing permanency plans through the implementation of permanency hearings.¹⁶
- **April 1999:** The Village Voice publishes an article entitled, *Crisis in Family Court*. This article details how judges can have as many as 60 cases on their calendar and that they each can only spend 10-15 minutes of court attention on each adjourn date. The article states "as the number of family court cases climb, the number of judges... remains almost

¹³ Chief Judge S. Judith Kaye, *The State of the Judiciary*, 2007.

¹⁴ New York State Family Court Act §121 (2007).

¹⁵ Adoption and Safe Families Act, Pub. L. No. 105-89, 111 Stat.2115 (1997) (codified as amended in scattered sections of 42 U.S.C.).

¹⁶ Chapter 7 of the New York Laws of 1999.

constant. . . The courts are clogged. Cases crawl through the system. . . That's part of the reason kids average four years in foster care, waiting to find out if they will get returned to their parents or put up for adoption." The article then goes on to say that the implementation of ASFA is only going to make the Family Court even more overwhelmed.¹⁷

- **March 9, 2000:** The Special Child Welfare Advisory Panel, appointed to oversee reforms at ACS as a result of the Marisol litigation, issues their Final Report and includes a special report about the Family Court. They wrote, "Though the pace seems fast and the atmosphere hurried, actual resolution of cases in the family courts proceeds very slowly. The courts are characterized by crowded dockets, long adjournments, and not enough attorneys to represent parents and children. With rare exceptions, hearings lack sufficient docket time for a true examination of the issues. A family that becomes the subject of an abuse or neglect proceeding in these courts can expect to return to court repeatedly and to remain involved in litigation for many months, and sometimes for years. A single fact-finding or dispositional hearing may require four to six separate dates and extend over six months or more. It is not uncommon for children to be in care for a full year. . . without having had a disposition of the original protective proceeding. (By contrast, in many other states it is routine for fact finding and disposition to be completed within sixty to ninety days after placement)."¹⁸
- **May 2000:** Public Advocate Mark Green issues *Justice Denied*, a report detailing the "crisis in legal representation in child welfare proceedings."¹⁹ Significant beneficial steps have been taken since that time to enhance the representation of parents, including the increase in 18-B panel rates from \$40 per hour for in-court time and \$25 per hour for out-of-court time to a flat rate of \$75 per hour for both time spent in and out of court. In addition, in the past year there has been the implementation of institutional providers using a multi-disciplinary approach, in Manhattan, Brooklyn and the Bronx. We need to make sure that the City continues to provide the resources for these institutional providers and that this is expanded to Queens and Staten Island.
- **June 1, 2000:** The Gotham Gazette publishes an article, *Family Court Fiasco*, explaining how court delays slow down family reunification and prohibit ASFA compliance.²⁰

¹⁷ Karen Houppert, *Crisis in Family Court*. The Village Voice, April 14-20, 1999.

¹⁸ Special Child Welfare Advisory Panel. *Advisory Report on Front Line and Supervisory Practice*. March 2000, at 44.

¹⁹ Mark Green, *Justice Denied: The Crisis In Legal Representation of Birth Parents in Child Welfare Proceedings*. May 2000.

²⁰ Peggy Farber, *Family Court Fiasco*, *Gotham Gazette*. June 1, 2000.

- **2001:** The New York State Permanent Judicial Commission on Justice for Children reports that only 33% of New York's abuse and neglect cases were reaching disposition within 6 months from when they were filed.²¹
- **January 2002:** The Federal Government completes its first Child and Family Services Review (CFSR) of New York in 2001 and releases a report in January 2002 finding New York State NOT to be in substantial conformity. The CFSR was a new federal review established to measure child welfare outcomes pertaining to safety, permanency and well-being by assessing data, comparing the state to national standards and performing on-site case reviews. The Executive Summary of the 2002 Final Report states, "New York faces serious challenges in meeting the national standard that children have permanency and stability in their living conditions."²² New York State was required to institute a Performance Improvement Plan and will be reviewed again in 2008.
- **April 2002:** Citizens' Committee for Children issues the report, *The Adoption and Safe Families Act (ASFA) and the Family Court*, and finds that the shortage of resources for the Family Court, ACS, Law Guardians and parents' attorneys is preventing compliance with the ASFA time frames and is leading to permanency delays for children.²³
- **April 2005:** The Council of Family and Child Caring Agencies (COFCCA) releases *Time at Family Court*, a report following their study of time caseworkers from 7 foster care agencies were spending in court from September through December 2004. They found that the average wait time for a hearing was 2.3 hours. For the 610 court appearances analyzed in the three-month study, workers spent 1,743 hours in court, with 1,400 of those hours used to wait for their cases to be called.²⁴
- **December 2005:** After several years of advocacy by child welfare stakeholders and advocates the "Permanency Legislation" was passed and effective.²⁵ The key components of this new law recognized the valuable oversight role the family court plays in child protective proceedings and the need to reduce the length of time New York's children were spending in foster care. The major statutory changes are a) permanency hearings are now required to be held every 6 months instead of every 12 months, meaning there are twice as many permanency hearings each year; b) young people ages 18-21 who had been placed in

²¹ New York State Judicial Commission on Justice for Children. *Second Interim Report to the Court of Appeals on the State Court Improvement Project*. (Albany, NY: 2001).

²² U.S. Department of Health and Human Services Administration for Children and Families, *Final Report of the Child and Family Services Review of New York State*, at 1. (June 2002).

²³ Citizens' Committee for Children, *The Adoption and Safe Families Act (ASFA) and the Family Court*. (April 2002).

²⁴ Council of Family and Child Caring Agencies, *Time at Family Court*. April 2005.

²⁵ Chapter 3 of the New York Laws of 2005.

foster care voluntarily are now entitled to permanency hearings; c) foster care agency caseworkers are now required to submit a 16 page report prior to every permanency hearing; d) parents are entitled to continuous representation; and e) the Family Court now maintains jurisdiction over the family until permanency is achieved. Unfortunately, all of these critical measures intended to make New York's statutory scheme better able to expedite permanency for children, further taxed the Family Court system.

- **January 11, 2006:** After a series of highly publicized fatalities of children known to ACS, Nixzmary Brown is brutally murdered by her mother's boyfriend and the resulting publicity leads to heightened and consistent attention to child abuse and neglect in New York City and the need to make reports to keep children safe. In 2006, there was a 147% increase in the number of new cases filed in Family Court by ACS.²⁶
- **November 2006:** Consultants produce a Child Welfare Workload Study for the NY State Office of Children and Families (OCFS) and find that child protective, foster care and preventive service caseworker caseloads are all too high. Furthermore, the workload analysis found that ACS caseworkers spent an average of 9.2% of case-related time on court activity and ACS's foster care agency workers spent 8.1% of their case-related time on court activities.²⁷
- **January 11, 2007:** The City Council General Welfare Committee holds a hearing where the Criminal Justice Coordinator's Office, ACS, Legal Aid, Lawyers for Children and other child advocates testify that the Family Court system is overwhelmed by the tremendous number of cases filed and pending before only 47 Family Court Judges. The next day, the New York Times publishes an article, *Rise in Child Abuse Reports has Family Court Reeling*, further documenting the crisis that has only grown during this past year.²⁸
- **January 16, 2007:** The New York Times publishes an editorial, *Fix the Dysfunctional Family Court*, saying that the state's "neglect has left [the Family Court] in something between chaos and despair" and that "it is cruel to leave children's fates to an institution as overwhelmed as the Family Court."
- **February 26, 2007:** In Judge Kaye's State of the Judiciary she says the Family Court "is desperately short of judicial resources" and then calls upon the Legislature to take the necessary steps to add 39 Family Court

²⁶ Data provided by the Administration for Children's Services (ACS).

²⁷ *New York State Child Welfare Workload Study Final Report*, at 4-19. (November 2006).

²⁸ Sewell Chan, *Rise in Child Abuse Reports Has Family Court Reeling*, The New York Times, Jan. 12, 2007.

Judges statewide.²⁹ Unfortunately no budget or legislative steps were taken last legislative session to increase the number of Family Court Judges in NYC.

- **August 2007:** The New York City Bar Association's Council on Children issues the report, *The Permanency Legislation of 2005: An Unfunded Mandate- Critical Resource Needs for New York City's Children and Families*, documenting that the goals of the 2005 Legislation cannot be met due to resource shortfalls, including insufficient numbers of judges, lawyers and caseworkers. Recommendation Number One is to increase the number of Family Court Judges.³⁰
- **September 2007:** New York receives its Child and Family Services Review Data Profile in preparation for the 2008 Child and Family Services Review. New York's composite scores are well below the national standards for timeliness to reunification and adoption. In Federal Fiscal Year 2006, New York State ranked **42nd out of the 47 ranked states** on timeliness to reunification and **44th out of the 47 ranked states** on timeliness to adoption.³¹ Children are remaining in foster care far longer in New York than most other states.
- **December 2007:** Pursuant to Chapter 626 of the Laws of 2007, the Chief Administrator of the Courts prepares a preliminary report to the State legislature regarding law guardian workload standards. This report was required due to a 2007 law passed in response to the extremely high children's attorney caseloads. The study found that the average number of pre-disposition appearances in child welfare cases had increased nearly 60% between 2004 and 2006 and the number of post-dispositional appearances had nearly doubled. Furthermore, the study found an increase in the percent of cases that took longer than 120 days to reach disposition.³² These frightening statistics, a result of the increased filings and the implementation of the permanency law, show that the clogged court calendars are indeed impacting children's stays in foster care.
- **December 12, 2007:** The New York Times publishes an article describing the long lines curving around the Bronx Family Courthouse because

²⁹ Chief Judge S. Judith Kaye, *The State of the Judiciary*, 2007.

³⁰ New York City Bar Association's Council on Children, *The Permanency Legislation of 2005: An Unfunded Mandate- Critical Resource Needs for New York City's Children and Families*. August 2007.

³¹ United States Department of Health and Human Services. *New York Child and Family Services Review Data Profile: September 24, 2007*, at 9-10.

³² *Preliminary Report of the Chief Administrative Judge Pursuant to Chapter 626 of the Laws of 2007*. Dec. 2007.

broken elevators lead families to wait on line for hours, sometimes missing their court appearances.³³

- **December 26, 2007:** The Syracuse Post-Standard publishes the editorial, *Help For Judges: New York's Family Courts Need More Resources This Year*, calling on the Governor and the Legislature to "make 2008 the year in which they bring some sanity to the Family Court system."

And now it is January 10, 2008 and the child welfare stakeholders and advocates are again before the City Council General Welfare Committee trying to explain how the crisis in Family Court has actually become worse this past year. The impact of the tremendous judicial caseloads and subsequent judicial delay is real and has real impact on real children and families.

In New York for the children in foster care on March 31, 2007, their median length of stay was 22.4 months—almost 2 years.³⁴ Children who are adopted from New York's foster care system have a median length of stay that is longer than 4 years.³⁵ This means that children are growing up in foster care. The numbers, data and history are perhaps too much for us to be able to wrap our minds around—but we must confront the impact they are having on the children and families in New York City.

For children and their parents this means that they spend years not knowing when or if the children will be returning home or will be adopted by another family. For children this translates into first words, first steps, first grade, first crushes, and numerous birthdays and holidays in foster care. Just a few weeks ago it meant that there were children who could have safely spent this past Christmas with their families but who did not get to—because their cases were adjourned well past Christmas.

CCC looks forward to working with the City Council and other child advocates to do everything we can to make this the year that the Legislature and Governor increase the number of Family Court Judges for New York City and statewide. We must all work together and take every step possible so that this is accomplished this legislative session—otherwise the same children who missed this Christmas might still be in foster care next Christmas.

³³ Leslie Kaufman, *At Bronx Court, Elevator Woes Slow Justice*, The New York Times. Dec. 12, 1999.

³⁴ United States Department of Health and Human Services. *New York Child and Family Services Review Data Profile: September 24, 2007*, at 8.

³⁵ *Id.*