



Testimony of Lawyers For Children  
to the New York State Senate  
Committees on Judiciary and Children & Families

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Thank you Chair Hoylman-Sigal, Chair Brisport, and all of the members of the Judiciary and Children & Families Committees for giving Lawyers For Children the opportunity to provide testimony regarding resources, operations and outcomes in New York family court.

Founded in 1984, Lawyers For Children (LFC) is a not-for-profit legal corporation that represents children in voluntary foster care, abuse, neglect, termination of parental rights, adoption, custody, guardianship, paternity, and juvenile justice<sup>1</sup> proceedings in family court. This year, we will represent children and youth in more than 3,000 court proceedings. In addition to representing children in individual cases, LFC works to effectuate child welfare reform through impact litigation and legislative advocacy.

The insufficient resources allocated to New York's Family Courts has long stymied operations and had a devastating impact on the families served by those courts – largely low-income, Black and Brown families. Many of the problems were clearly spelled out in The Franklin H. Williams Judicial Commission of the New York State Courts Report on New York City Family Courts (2021), and were laid bare when the Family Courts shut down due to the COVID-19 pandemic.<sup>2</sup> Because too many cases are assigned to too few jurists and attorneys, and too little money has been invested in technology, the family court was particularly ill-equipped to respond to the challenges of the pandemic. In June 2020, 90,000 pending cases were waiting to be restored to the New York City family court calendars.<sup>3</sup> By the following November, there were still at least 4,000 abuse and neglect cases that had not yet been assigned a new court date.<sup>4</sup> Justice and relief for families, which was often long-delayed in the best of times, came to a grinding halt.

Because New York's family courts do not have the resources that are so desperately needed to function efficiently, children have suffered. Some children are separated from their parents for unconscionable amounts of time. Other children are left in foster care limbo despite having loving families eager to adopt them. And, parents and guardians who are desperately in need of child support orders to help feed their families are unable to obtain timely relief. These children include so many whose experience mirrors that of our client, L.:

L. was removed from his parents' care when he was just six months old due to unexplained fractures on his arm and leg. The abuse trial did not begin until three years later, and was drawn out over 14 court dates that spanned a full twelve months. On many of those dates, the judge was able to devote only an hour to hearing testimony because of the competing demands on her calendar. Although the Court ultimately found that L.'s father was not responsible for his injury, by the time the finding was made, L. had been in foster care for four years. He was bonded to his foster parents, and New York law required that the agency file a proceeding to free him for adoption, permanently terminating the parental rights of his biological parents.

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<sup>1</sup> Also known as "delinquency".

<sup>2</sup> New York City Family Court COVID Workgroup, *The Impact of COVID-19 on the New York City Family Court: Recommendations on Improving Access to Justice for All Litigants*, [February 4, 2022](#).

<sup>3</sup> This information was provided to stakeholders by Judge Sarah Cooper on June 11, 2020.

<sup>4</sup> This information was shared at Judge Cooper's stakeholder meeting on November 17, 2020.

L.’s experience is not unique. Fortunately, however, there are steps that the Legislature can take in order to improve family court operations to ensure the best possible outcomes for children and their families.

### **Improving Family Court Operations and Outcomes by Addressing Inadequate Funding for Attorneys For Children Law Offices**

Attorneys For Children Law Offices (AFCs) represent children in the wide range of Family Court proceedings that can determine the future trajectory of their lives. This includes cases in which their parents are charged with abuse and neglect, cases in which custodial arrangements are made for destitute children, cases in which children are charged with having committed crimes, and cases seeking to have them freed for adoption. AFCs are also called upon to represent children in complex disputes regarding custody, visitation, guardianship, and adoption.

Continuing to provide high quality legal representation to all of those children and help move cases forward expeditiously has become more and more challenging because our offices are suffering an unprecedented crisis. Following years of flat funding, the NYS Office of Court Administration slashed funding for AFC offices by 10% during the pandemic. That funding has not been fully restored to many of the AFC offices, although caseloads continue to increase in number and complexity.

Passionate, talented and experienced attorneys are unable to do this work because AFC salaries are too low to enable them to provide for their own families. AFC salaries have not kept pace with inflation and are far below those paid to their counterparts in government offices and private practice. As a result, offices that were inundated with highly qualified applicants for a small number of vacant positions a decade ago have vacancies that are now taking months to fill—if they can be filled at all.

The ripple effect of the failure to fully and fairly fund the AFC offices cannot be understated. High turnover<sup>5</sup> often means that matters in family court must be adjourned while new attorneys prepare to handle hundreds of cases. Crushing caseloads mean that attorneys cannot be as impactful as they can and should be in representing their clients. As a result, some children remain in foster care longer than necessary, other children are discharged from foster care without all necessary services being put into place, and cases that might be quickly settled by attorneys who have time for thoughtful negotiation, instead drag on in court for many months. The burden on attorneys in AFC offices is exacerbated by the number of cases they are expected to carry. While government and parent attorneys carry between 55 and 65 cases at any time, the rates paid to AFCs reflect OCA’s position that each AFC can represent up to 150 children at a time—an unacceptably and dangerously high workload<sup>6</sup>. And, it is important to note that representing a single child often means providing representation in several dockets/legal matters. Our attorneys might represent a child in a child protective (abuse or neglect) matter, a

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<sup>5</sup>Cayla Bamburger, New York Daily News, 2023. “Staffing crisis, caseloads threaten legal services for children in NYC Family Court”.

<https://www.nydailynews.com/2023/04/03/staffing-crisis-caseloads-threaten-legal-services-for-children-in-nyc-family-court/>

<sup>6</sup> 22 N.Y.C.R.R. § 127.5.

custody matter, and a juvenile justice matter – three distinct and time-consuming series of proceedings, all counted as a single “case” (one child) for purposes of state funding. In addition, our commitment to providing holistic legal assistance to our clients means that our attorneys and social workers also provide assistance in related matters and in advocacy outside of the family court. This may include, for example, advocating for appropriate educational services, helping clients to obtain Special Immigrant Juvenile Status to prevent deportation, ensuring that clients have safe, stable and appropriate housing upon discharge from foster care, and standing by their side if they are called as a witness in a criminal matter. The assistance provided in these matters is often crucial to helping resolve the family court case, as the issues are inextricably intertwined.

It is nearly impossible for attorneys in AFC offices to provide the high-quality representation children and youth deserve, with the funding currently provided to AFC offices. Moreover, it is critical to recognize that AFC institutional law offices in New York City represent over 90% of all children involved in child welfare matters. Last year, the legislature increased funding for attorneys who are assigned to represent a very small percentage of children (and primarily parents) pursuant to Art. 18-B of the County Law. That increase was long overdue but failed to impact institutional AFC offices that are paid a fixed amount annually by the Office of Court Administration. We urge the legislature to ensure that AFCs are adequately funded so that **all** attorneys representing children in New York State are paid a fair and competitive wage, and all children whose cases are heard in family court receive the highest quality representation.

### **Improving Family Court Operations and Outcomes by Embracing Technology**

Because of the extremely high volume of cases and the statutory time frames in which some proceedings must take place, matters in Family Court are often calendared in half an hour increments over several non-consecutive days, weeks or months. As a result, litigants, attorneys and witnesses often spend more time getting to and from court than they do appearing before the judge. This is particularly problematic for litigants who cannot readily take multiple days off from work, litigants who have to arrange for childcare in order to appear, and for child protective and foster care caseworkers who must take time away from investigating reports of abuse and neglect and from working with children and families in order to appear in court.

Remote proceedings have dramatically improved the court’s efficiency. When participants are able to appear by video, fewer cases require adjournment and more people have the opportunity to participate. Attorneys and litigants have appeared when stuck at home, or too sick to come to the office, but well enough to appear by video. Parties who are not able to arrange for child care have been able to participate. Low income parents do not need to choose between missing a day of work and appearing in court. Children in foster care need not choose between exercising their right to participate in their permanency hearings (which the legislature has found to be important for them) and missing a day of school, when too many children in foster care are struggling academically. Attorneys can appear virtually in multiple courthouses on a single afternoon. And litigants who do not appear, as scheduled, can immediately join the proceeding after being notified by phone or text – something that was not possible prior to the advent of virtual appearances. Unfortunately, not all courtrooms are equipped with the technology needed to facilitate remote or hybrid appearances.

The electronic document submission system implemented in New York Family Courts during the pandemic (EDDS) has also tremendously improved efficiency. Before the electronic system was put into place, litigants would sometimes spend an entire day waiting in line at the clerk's office to submit papers – only to be told that they must return another day. With the implementation of EDDS, litigants and attorneys may submit petitions, motions, and other documents without traveling to the courthouse. EDDS, is however, significantly inferior to NYSCEF, the electronic filing system used in Supreme Court. All attorneys who appear in a case filed in the NYSCEF system have access to all papers filed in that case – without relying other attorneys or parties to provide them with hard copies and without having to spend time in the courthouse reviewing the files. In addition, papers submitted through NYSCEF are deemed filed with the clerk when they are uploaded, while papers submitted through EDDS are merely deemed submitted to the courthouse, where they may sit for several days before being docketed or forwarded to the appropriate jurist. This delay may mean that filing deadlines are missed, and that emergency applications are not put before the court in a timely manner. Although NYSCEF has been used in Supreme Court since 1999, it has been adopted in family court in New York City only as a pilot program, only in one courthouse, and only in a limited number of cases.

The need for remote access to the courthouse is made even more acute by the shortage of security personnel. While we are pleased the Office of Court Administration recently swore in its largest class of court officers ever, it is critical that we ensure that staffing levels are consistently adequate. Uniformed court officers provide crucial security to jurists, attorneys and litigants in an environment where emotions run high. Physical altercations between litigants in the hallways are, sadly, not uncommon. Since the resumption of in-person proceedings, the number of officers in Manhattan family court has dropped precipitously. There are no officers to provide protection from an emotional and angry litigant in the rooms where referees preside over custody and visitation matters. Many floors in the building do not have any officers on the floor to provide assistance. It is simply unacceptable that victims of domestic violence who come to the courthouse seeking orders of protection cannot be assured that they will be safe in the building. Being able to participate in court proceedings from a secure location is essential.

Unfortunately, there are still a significant number of children and adults who are not able to adequately access remote proceedings and the electronic filing system because they do not have access to the necessary technology. Poor or non-existent WiFi, a lack of video technology and a lack of access to a computer have impacted the ability of some litigants and witnesses to fully participate in remote proceedings and/or take advantage of the electronic submission system.

Accordingly, we urge the Legislature to make two crucial investments in technology to improve operations in New York Family Court:

- Ensure that the family court is equipped with an electronic filing system that is on par with the system used in the Supreme Courts;
- Ensure that there are technology hubs throughout New York State where litigants can meaningfully participate in family court without having to travel to court. Libraries, neighborhood legal services offices, and other central locations should be fully equipped with up-to-date WiFi, computers in locations that afford privacy, and software that allow New York residents to fully access all of the family court's remote capabilities; and,

- Ensure that each courtroom has the technology needed to conduct remote and hybrid proceedings.

### **Improving Family Court Operations and Outcomes by Adding More Jurists**

Last year, Chair Hoylman-Sigal introduced S6492, which would add 16 new Family Court judges throughout New York State. As noted in the Sponsor's Memo, The Williams Commission Report recommended an increase in family court judges statewide (but especially in New York City) as essential to promoting equal access and full participation in the court system by persons and communities of color. Adding judges will address delays by providing caseload relief to existing judges. It will also reduce the system's reliance on judges elected to Civil Court who are temporarily assigned to Family Court, where they may have less interest and familiarity with the law, whose temporary assignment can exacerbate the delays that plague the family court.

The shortage of judicial personnel has a very real impact upon our clients. These include the siblings, J. and R.

J. and R. were the subject of custody, visitation and family offense petitions involving their mother, father, and grandparents on both sides of the family. There were petitions, cross-petitions, and allegations that continued to evolve as the matter was pending before the court. During the time that the matter was active, the family appeared before no fewer than seven different jurists, due, in part, to repeated re-assignments of the judge overseeing the case. With each reassignment, the matters remained unresolved, as the person presiding over the cases reviewed the files and acquainted themselves with the matter. With each new assignment, the jurist began, from scratch, to understand the family dynamics and the nuances of the issues before the court. With each new assignment, the parties returned to court, only to be told that the matter could not proceed until the judge had obtained a full grasp of the dockets pending. As a result, the matters dragged on for a full four years before they could be resolved.

While the Legislature added three judges in New York City last year (S7534/A7669 – a bill that is awaiting the Governor's signature), that number is far from sufficient to meet the demands across the five boroughs. Accordingly, we urge the Legislature to put its full support behind S6492, so that the Family Court in New York City and across the state can be appropriately staffed to serve the families who come before it.

### **Improving Family Court Operations and Outcomes by Increasing Access to Supervised Visitation Programs**

Too many cases move too slowly through the family court because families are not able to access the services and supports needed to resolve their case. The backlog of custody and visitation cases is due in no small part to the shortage of resources for conducting supervised visits. In some cases, professionally supervised visits are needed because there is a safety concern (such as domestic violence or threats of harm to the child) that requires oversight of the parent-child contact. In other cases, supervision is necessary to facilitate the interaction between a parent and child who have not had contact for an extended period of time. And, in cases involving very

young children, supervision is sometimes necessary so that the court can receive a report regarding the parent-child interaction from a neutral, unbiased source.

The few organizations that provide free or low-cost supervision are stretched far too thin, and are unable to serve all of the families that require their services. As a result, professionally supervised visits generally do not begin until 4-6 months after a family is placed on the waitlist – which is often 6-8 months after the case was first filed.

These delays have devastating consequences for children and significantly impede family court operations by dragging out cases far longer than necessary or appropriate. Some of our clients who have been harmed by the shortage of supervised visitation programs include the following:

- M. was four-years-old and desperately wanted to see his mother, whose mental health needs prevented them from being safely alone together.
- R. was ten-years-old and apprehensive about visiting with his father, who had been absent from his life for a significant period of time. Supervised visits were ordered to help facilitate the interaction and ensure his safety. During the many months that the family waited for visits to begin, the child grew increasingly anxious, and his parents repeatedly returned to court, only to be told to come back after the visits had begun.
- D., whose father broke down and sobbed in frustration during a court date six months after filing his visitation petition, when he was told that he remained on the waitlist for supervised visits, and would have to return to court in several weeks.

The shortage of supervised visitation resources also poses a serious risk of physical harm to some children. Faced with no alternatives, Judges may feel compelled to allow unsupervised visits, even when there is a concern for the child's safety. In these cases, the child's physical safety may be placed in jeopardy, as well as their emotional well-being.

We urge the Senate to support the creation of additional supervised visitation programs throughout New York State in order to end the trauma caused by the protracted separation of children from their parents and the danger posed by allowing unsupervised visits simply because there are no resources available to help protect the child.

### **Conclusion**

While the pandemic exacerbated many of the family court's long-standing operational challenges, it also paved the way for new and different ways of operating that are efficient and inclusive. We urge you to commit the resources needed to improve family court operations, and ensure equitable outcomes for families and children across New York State – whether they appear in family court or supreme court.

Thank you for your attention and commitment to improving the administration of New York's family courts, which serve New York's most vulnerable residents -- its children. We are happy to answer any questions about our testimony and to assist the Senate in developing these recommendations further, as the Legislature moves toward crafting its FY2025 budget.