LawyersForChildren
Protecting Rights. Changing Lives.

May 23, 2022

RE: Nomination of Lawyers For Children for NACC Outstanding Law Office

Dear NACC Colleagues,

We are incredibly appreciative for the leadership, advocacy and ongoing support of NACC to advance our practice and protect the rights of the children we serve. We would be honored to be considered for the 2022 Promoting Excellence Award for Outstanding Law Office.

Founded in 1984, Lawyers For Children (LFC) embodies that best practices and holistic advocacy model espoused by NACC's Children's Law Office Handbook. LFC was the first and, we believe, is the longest operating legal services organization for children that assigns an attorney-social worker team for every client we represent—making a significant difference in the lives of over 30,000 children. Lawyers For Children is also innovative in its commitment to ensuring that the voice of our clients is fully integrated in our practice. We were one the first if not the first to employ two full-time Youth Advocates— adult professionals who have successfully transitioned out of the foster care system.

In addition to our individual advocacy on behalf of thousands of youth each year, LFC has continuously and courageously expanded the role of legal services to fill gaps that the child welfare and social service systems fail to address, so that young people in foster care can achieve their full potential. One of these unique initiatives, made possible with funding from the Robin Hood and Dorot Foundations, is the Adolescents Confronting Transition (ACT) Project for youth preparing to age out of foster care, which was recently featured at April's ABA Children & the Law Conference. The ACT Project responds to the dismal local and national outcomes for youth aging out of foster care. The ACT Project team includes two attorneys, one of whom is a housing rights specialist, two State-certified social workers, one of whom specializes in working with pregnant and parenting youth in foster care, and the two Youth Advocates mentioned above. The project has dramatically changed the level of engagement of these young adults the court proceedings that address their futures and has insured that no ACT Project client leaves foster care without safe and stable housing, and an economic, educational and/or vocational plan for independence.

Our Youth Advocates also run a Youth Advisory Board (created 10 years ago) and Young Leaders group that train and empower clients' abilities to self-advocate and connect with resources in their communities. Many of these young people then become trusted sources of support for other youth, and have also been instrumental in LFC's development of extensive know your rights handbooks, videos and palm cards—which are a critical resource for youth, caseworkers, and others across the state. LFC also launched a Youth Ambassador program eight years ago, that trains clients in public speaking, enabling them to speak out in public forums about their experiences. In addition, in collaboration with our Director of Communications, numerous clients have shared their stories in high profile media placements that bring visibility to youth in foster care nationally. LFC's empowerment of its clients and

commitment to ensuring their voice is represented extends to LFC's board welcoming a former client as a fellow board member.

In addition, LFC spearheaded the design, approval and implementation of a model court, the Transition Planning Court, for adolescents preparing to age out of foster care. Historically, these older youth were the young adults most in need of court oversight and protection and the most unlikely to receive it. These are the same young people represented by the ACT Project described above, who have been in foster care the longest, because they have no appropriate family with whom they can be reunited and no one to adopt them. Consequently, they must use their time in foster care to gain the skills necessary for life after foster care. The Transition Planning Court has transformed the court experience for hundreds of young adults and includes the enhanced involvement of adolescents in their court proceedings and consistent, rigorous enforcement of court orders to ensure these young people receive the support and services to which they are legally entitled in order to transition successfully to living independently.

LFC's ability to respond to urgent needs on behalf of particularly vulnerable children is exemplified by its other Special Projects, including our Immigration Rights Project, LGBTQ Rights Project (see Media Clips), Juvenile Justice Project (working with youth in delinquency matters and addresses the needs of crossover youth), Domestic Violence Project, and Education Project. We are also extraordinarily proud the accomplishments of our Special Litigation and Public Policy Project, which has achieved nationally recognized results for children in New York State and City, and serves as a model nationwide, including the *Nicholson v. Scoppetta* case which set a standard for removing children impacted by domestic violence, and the case *D.B. v. Richter,* a class-action lawsuit with our client serving as the lead plaintiff, which resulted in a landmark settlement prohibiting the City of New York from discharging youth to homelessness without stable housing. In addition, LFC has been active in advocating for narrowing the front door of the child welfare system and reducing hotline calls from mandated reporters, in favor of creating a new system of "mandated supporters."

LFC is also proud of its commitment to an anti-racist framework, including having worked with a Director of People & Culture and a robust Anti-Racism, Inclusion and Equity committee, and providing training for all staff on anti-racism and implicit bias.

It is with great respect for the values embodied by NACC that we submit our nomination. Lawyers For Children is an unwavering organizational advocate for children who are the subject of traumatic family court proceedings, and has contributed in a significant way to the human dignity and quality of life for young people in foster care and in high conflict custody cases. We hope you will agree that Lawyers For Children's unparalleled advocacy and track record exemplify the qualities and accomplishments recognized by the Outstanding Children's Law Office Award. Thank you for your consideration.

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File No. 800769-0000

May 26, 2022

National Association of Counsel for Children
899 N. Logan Street, Suite 208
Denver, CO 80203

RE: Letter in Support of Lawyers For Children's
NACC nomination for Outstanding Children's Law Office

Dear National Association of Counsel for Children:

I am honored to support the nomination of Lawyers For Children, Inc., for the NACC Outstanding Children's Law Office award. For over three decades, Lawyers For Children has been a national leader in expanding free legal services to children in foster care, using methods that are original, successful, and that have established a national model for interdisciplinary advocacy. In over 30 years serving the New York State Judiciary, most recently as Chief Judge, I can think of no organization as innovative and effective in representing children impacted by the child welfare, immigration, and youth justice systems. As will be detailed below, Lawyers For Children has not only enhanced the well-being and overall quality of life for vulnerable young people, but has made significant contributions to improvements in the court system, the law, legal and government institutions, and legal education. I cannot conceive of an organization more deserving of this honor.

LFC's mission is to provide the highest quality legal and social work services to children and enable them to achieve the basic "rights" of childhood - safety, security, and the opportunity to thrive. LFC was founded in 1984 using what is now the nationally recognized interdisciplinary, youth-directed advocacy model in which an attorney-social worker team is assigned to represent *every* client. Moreover, more than a decade ago LFC pioneered the concept of adding full-time Youth Advocates (young adults who have successfully aged out foster care) to LFC's advocacy teams to effectively engage older LFC clients in the court cases and planning decisions that will have a critical impact on their lives.

For nearly 40 years, just a few of LFC's milestone policy and class action accomplishments include:

- Pioneering what is now the much-replicated and well-recognized LFC best-practice interdisciplinary model in which a lawyer *and* social worker, both with extensive experience and training in child advocacy, work together on every case.
- Successfully working to change New York law to mandate that all children in foster care, including children voluntarily placed in care, receive legal representation. (1994)
- Settling a class action suit (*D.B. v Richter*, with the Legal Aid Society and Davis Polk and Wardwell) on behalf of youth who were discharged from foster care to homelessness. Via the settlement, the City of New York's child welfare agency has agreed to monitoring and implementation of new policies and procedures for youth leaving foster care to independent living. Regardless of age, no young person in foster care can be discharged to homelessness.
- Jointly representing the children in a class action lawsuit *(Nicholson v. Williams,* with the Legal Aid Society) brought on behalf of mothers and their children who were victims of domestic violence. The federal court decision prompted a landmark advisory opinion from the NYS Court of Appeals (*Nicholson v. Scopetta*, 2004), which clarified the circumstances under which children can be removed from their parents' custody, that is now applicable in all removal cases.
- Filing, settling and successfully monitoring the landmark class action lawsuit *Marisol v. Giuliani* (with Children's Rights Inc. and Schulte, Roth and Zabel, 1995-2005) in order to compel comprehensive reform of the child welfare system in New York City.
- Spearheading the design, approval and implementation of a new model court in NY City, the Transition Planning Court (TPC), for adolescents preparing to age out of foster care. The protocol, utilized by the TPC and created by Lawyers For Children (2011, revised 2016), is currently being recommended for use throughout the New York City Family Courts and serves as a model for other jurisdictions.

In addition to advocating on behalf of individual children in foster care in New York City, Lawyers For Children has spurred comprehensive reform of the foster care system and the provision of services to critically underserved populations of children in care. LFC's unique services and special projects address chronic, recurring issues for at-risk youth, including immigration, education, LGBTQ+, mental health, sex trafficking, youth aging out of care, youth justice, and domestic violence.

For nearly 40 years, Lawyers For Children has maintained an unwavering commitment to a single goal: providing children and youth with the outstanding legal and social work services necessary to protect their rights, secure their safety, and positively impact improvements in the child welfare system as a whole. LFC has my highest recommendation for this award.

Very truly yours,

LATHAM & WATKINS LLP

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May 24, 2022

National Association of Counsel for Children
899 N. Logan Street, Suite 208
Denver, CO 80203

Re: Recommendation of Lawyers For Children for Outstanding Law Office

Dear National Association of Counsel for Children:

With great enthusiasm I write to recommend Lawyers For Children for NACC's Outstanding Law Office Award. As detailed below, I am familiar with this exemplary organization as the partner at Proskauer Rose LLP leading the firm's global pro bono efforts, as Chair of the Fund for Modern Courts, through my work on a pair of recent New York City Bar Association initiatives focused on reform of the New York City Family Courts, and in connection with recent impact litigation. I work with dozens of organizations and can say without hesitation that LFC is unique among legal services organizations for both its interdisciplinary advocacy model and the manner in which its individual advocacy informs its systemic reform initiatives.

For nearly 40 years, Lawyers For Children (LFC) has ceaselessly fought for the protection and wellbeing of New York City's most vulnerable children. LFC's interdisciplinary model, in which a lawyer and social worker are assigned to every client, provides extensive and highly individualized expertise in child advocacy in child welfare proceedings as well as high-conflict custody proceedings in which the safety of the child is an issue. Consequently, each LFC team is comprised of a professional team with expertise in both the law and the full range of existing services available to LFC's young clients. This ensures that each young person's wishes and needs are expressed and advocated for in the Family Court proceedings that determine the most important decisions in that child's life.

But, LFC's advocacy does not stop there. By virtue of representing thousands of individual children each year, LFC's leadership is uniquely situated to identify and address the chronic, recurring issues faced by their clients. LFC's systemic reform strategy is based upon and designed to address those issue through targeted special projects, impact litigation and public policy advocacy. LFC's special projects focus on educational and immigration advocacy, mental health, intimate partner violence, the unique needs of LGBTQIA+ youth in care, youth justice and working with adolescents preparing to age-out of foster care.

I have worked directly with LFC's leadership and been profoundly impressed by the other two prongs of their systemic reform strategy: impact litigation and public policy initiatives. Currently, Proskauer is proud to represent Lawyers For Children in a lawsuit challenging a New York State regulation that would enact a "shadow" foster care system placing children out of their home without the legal protections and resources mandated for youth in foster care.

In addition, I've worked directly with LFC's leadership over the past several years to spearhead investigations into and extensive reports recommending reform of the current system for appointing and assigning Family Court Judges as well as the impact of the NYC Family Court's limited operations during the pandemic on the poor and low-income families of color who rely on the court to ensure their children's safety and welfare, obtain protection from domestic violence and secure the child support that is often critical to prevent food insecurity and the threat of becoming unhoused.

Finally, it is important to note the many instances over the past four decades in which LFC has partnered with numerous private firms and advocacy organizations to file lawsuits and change policies that that have improved outcomes for all children in the New York foster care system and inspired enhanced child advocacy efforts throughout the country. Examples include successfully working to change New York law to mandate that all children in foster care receive legal representation; filing the landmark class action lawsuit *Marisol v. Giuliani* to compel comprehensive reform of the New York City child welfare system; the landmark class action case, *D.B. v. Richter,* which effectively stopped the City of New York from discharging youth in foster care to homelessness; and jointly representing the plaintiff children in *Nicholson v. Williams,* which prompted a landmark advisory opinion from the NYS Court of Appeals (*Nicholson v. Scoppetta*, 2004) that mandated the highly individualized risk-benefit analysis that must occur in all cases before a child is removed from their homes.

I hope I have conveyed the extent to which Lawyers For Children has gone beyond the traditional role of a legal services organization. If it is not already clear, LFC is my top go-to organization when it comes to issues impacting the safety and security of families and children. I am proud to support LFC's nomination for Outstanding Children's Law Office and believe that its model and accomplishments serve as a model for the entire country. I urge you to give their candidacy close consideration.

Please feel free to reach out to me if you need any further information.

Sincerely,

William C. Silverman

VIDEOS

LFC clients sharing their experiences:
https://vimeo.com/155741470?embedded=true&source=vimeo_logo&owner=22288707#at=1

About Lawyers For Children & Our Model
https://vimeo.com/78280075?embedded=true&source=vimeo_logo&owner=22288707

NACC NEWSLETTER FEATURING LFC CLIENT & YOUTH AMBASSADOR TYASIA NICHOLSON

EXPRESS Yourself

Law school doesn't teach you this

by TyAsia Nicholson

When you see me, what do you see?
Do you see all the obstacles I have achieved
Or do you see the stigma placed on me
The labels .... Will you believe?

Will you believe what they say?
Will you believe there is more than one way?
Before Lawyers for Children all I did was wait

Before I use to wait for a call, wait for a knock,
because people didn't speak much they just watched

Watched me fall
Watched me trip
Watched me in a situation I didn't pick

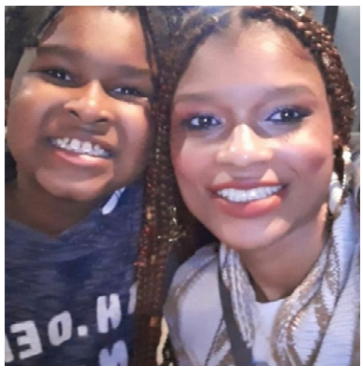
I had no control I was scared
But I'm not another statistic
Knowledge is what they feared
No one wanted me to know
They wanted to take control
But Lawyers for Children let my mind be blown...

Blown with consistency and honesty
It can change a lot
I hope you take from this meeting and don't stop
Lawyers can change lives
Advocating for what's right
Let me tell you there are many lonely nights

Nights we try to prevent
Try to give our children all the time we can
Remember trauma becomes a child's best friend

You can make a difference
You could change a life
You are here because you want to do what's right

Microaggressions are not okay
The statistics has to change
And I'm here to say,
My lawyer helped me find my way.



TyAsia Nicholson is a freelance writer, poet, social media influencer, young parent leader, and advocate. She is currently pursuing a degree in Criminal Justice at John Jay College with a double minor in Criminology and Human Services. Ms. Nicholson works in partnership with Lawyers for Children in NYC serving as their Youth Ambassador in addition to being a mentor for parenting youth in foster care. Additionally, she founded and launched a website that provides information, resources, and affordable activities for young families in NYC. Ms. Nicholson is passionate about breaking generational curses and supporting young parents in embracing their identities and making changes that they want to see.

TyAsia Nicholson co-presented NACC's June member webinar, *Breaking Stigma and Changing the Narrative: Strategies for Supporting Expectant and Parenting Youth in Foster Care*. Click here to watch!

THE IMPACT OF COVID-19 ON THE NEW YORK CITY FAMILY COURT: RECOMMENDATIONS ON IMPROVING ACCESS TO JUSTICE FOR ALL LITIGANTS

A REPORT INFORMED BY LFC STAFF

The Impact of COVID-19 on the New York City Family Court: Recommendations on Improving Access to Justice for All Litigants

The New York City Family Court COVID Work Group

A Joint Project of the New York City Bar Association and

The Fund for Modern Courts

January 2022

TABLE OF CONTENTS

Page

I. INTRODUCTION 1

II. EXECUTIVE SUMMARY 3

III. OVERVIEW 5

(a) Child Abuse and Neglect 6

(b) Custody, Visitation, Guardianship, and Domestic Violence 7

(c) Juvenile Justice 9

(d) Child Support 9

IV. TIMELINE: THE COURT'S RESPONSE TO THE PANDEMIC 10

V. CLASSIFICATION OF EMERGENCY MATTERS 15

VI. COMMUNICATIONS 17

(a) At the Courthouse 17

(b) The Website 18

(c) Administrative Orders 19

(d) Reliance on Lawyers to "Spread the Word" 20

VII. CHALLENGES WITH REMOTE OPERATION 21

(a) Staffing 21

(b) Family Court Staff Were Generally Unable to Work From Home 22

(c) Technology 22

(d) Filings 22

(e) UCMS Access 23

(f) Procedures in Remote Proceedings 25

VIII. PRO SE CHALLENGES 26

IX. HOW THE COURT IS DEALING WITH THE BACKLOG 27

X. CONSEQUENCES IN PARTICULAR CASES 30

XI. LACK OF ACCESS TO FAMILY COURT NEGATIVELY AFFECTS REAL LIVES 31

XII. RECOMMENDATIONS 34

XIII. ACKNOWLEDGMENTS 37

I. INTRODUCTION

In December 2020, the New York City Bar Association Family Court Judicial Appointment & Assignment Work Group ("Work Group") issued a report giving voice to significant concerns about the process by which Family Court judges are appointed and assigned.[1] Within a few months, however, it became apparent that the challenges addressed in that report paled in comparison to the alarming challenges posed by the COVID-19 pandemic. As detailed in a timeline below, for the better part of a year, the New York City Family Court (the "Family Court") largely heard only "essential" and "emergency" matters and was otherwise unavailable to many litigants.[2] In light of the serious consequences for families and children unable to access the Family Court, the Work Group—jointly with the Fund for Modern Courts—embraced a new mandate: to shed light on the crisis in the Family Court, document and analyze steps that were taken (or not taken) in order to ensure access to justice during and subsequent to the worst months of the pandemic, and make recommendations for meaningful reform based on lessons learned.[3]

In conducting its review, the Work Group interviewed institutional providers and legal service organizations working in the Family Court as well as members of the Assigned Counsel ("18-b") Panel in each borough. We prioritized hearing directly from the litigants themselves who have been impacted, some of whose experiences are detailed below. The Work Group also met with the Hon. George J. Silver, Deputy Chief Administrative Judge (NYC) and the

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[1]The Family Court Judicial Appointment and Assignment Process (December 15, 2020), available at https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/the-family-court-judicial-appointment-and-assignment-process.

[2]We note up front that creating a timeline was a difficult and inexact exercise because of the nature of the pandemic itself, the fact that announcements by the Court were made both officially and informally, and the differences between what practitioners heard and what they observed. Moreover, by relying in part on an interview/survey format, the Work Group understands that some readers may feel that their experiences in certain respects—or at certain points along the timeline—were different from what is presented here. That being said, this is an important exercise, so that what occurred is not lost and forgotten but, instead, can serve as a basis for discussion, deliberation and reform. Lastly, we note that this report does not seek to provide information on events that have transpired since December 31, 2021, unless otherwise indicated. In other words, although we recognize that facts on the ground—both in terms of COVID-19 and court operations—are fluid, the timeline does have an end date.

[3]Members of the expanded Work Group include three former Family Court jurists, a pro bono counsel and pro bono partner from the law firms of Orrick, Herrington & Sutcliffe LLP and Proskauer Rose LLP, respectively, an executive from a major technology company, and members of the leadership teams from several of the New York City institutional providers of legal services for parents and children involved in Family Court litigation, including Brooklyn Defender Services, Lawyers For Children, the Legal Aid Society Juvenile Rights Practice, and the Children's Law Center, as well as the New York City Administration for Children's Services. A full list of members appears at the end of this report.

Hon. Jeanette Ruiz, Administrative Judge of the New York City Family Court. Based, in part, on these interviews and discussions, the Work Group used best efforts to create a timeline of events.

The purpose of this report is not to be critical for its own sake. The intent and hope are to be constructive, transparent, and honest. We must start with the proposition that most Family Court stakeholders are keenly aware of the deep inequities in that historically under-resourced court. Secretary Johnson's *Equal Justice* report, discussed in greater detail below, came as no surprise to many who practice in Family Court. But to see these deep inequities so quickly laid bare by the pandemic—with significant negative consequences for those who rely on Family Court—was deeply disturbing to many, particularly as they heard far different reports from colleagues who practice in other more-resourced parts of our state courts. We know that when COVID-19 hit, an under-resourced court like Family Court was ill-equipped to respond quickly, consistently, fairly, and comprehensively to the needs of all litigants. Under stressful and uncertain conditions, we know that difficult choices had to be made. And, in some cases, we know that the immediate efforts of bench and bar yielded responsive results, for example, when it came to ensuring that fewer juveniles would be in detention. We can both acknowledge these facts and remain firm in our belief that the pandemic illuminated significant inequities, shortfalls and a lack of readiness in Family Court, to the detriment of many. We need to take account and challenge ourselves to do better. That is the spirit in which this report was conceived and written.

With this in mind, the report aims to accomplish three things: first, to collect and give voice to the significant concerns raised by lawyers and litigants in Family Court, some long-standing and some triggered or exacerbated by the pandemic; second, to contribute to the critically important question of how to improve the reliability and effectiveness of a court that serves mostly poor, disenfranchised New Yorkers; and third, to recommend and support changes that we believe are achievable and necessary and already subject to broad consensus among Family Court stakeholders, discussed in greater detail below, but in summary:

- adopt NYSCEF, the electronic filing system used throughout much of the New York State Court system, in Family Court to the fullest extent permitted by law, with appropriate support for unrepresented litigants;

- provide the public with regular statistical reporting, by court Term, on all Family Court proceedings;

- build an effective, user-friendly website (including mobile website) that comprehensively informs the public of current court operations and provides guidance to unrepresented litigants;

- enable litigants without access to adequate technology to participate in remote proceedings by providing access to the appropriate technology;

- adopt a communications strategy to ensure litigants and attorneys are kept up to date on the status of their cases as well as the status of Court operations generally;

- provide enhanced training for jurists in case management strategies and techniques;

- assess the Court's needs with respect to remote proceedings to ensure that it purchases and utilizes up-to-date technology best suited for courtroom protocols, and provide sufficient user training and support;

- move judges, staff, and other resources from other trial courts as necessary and appropriate to tackle backlogs and delays;

- enact uniform procedural rules; and

- engage with stakeholders on a plan for the complete reopening of the Family Court.[4]

We emphasize, again, that nothing in this report should diminish the importance of those proceedings which did go forward during the pandemic and the efforts required to do so. According to the Family Court, it heard to completion over 102,000 cases from March 2020 to October 2021.[5] This report highlights hard choices the Family Court made about what cases it could hear, focuses on those proceedings that did not go forward, and addresses the need—that long predates COVID-19—for increased Family Court resources and meaningful reform.

II. EXECUTIVE SUMMARY

In his recent report examining institutional racism in the New York State Court system, which had been requested by Chief Judge Janet M. DiFiore, former U.S. Secretary of Homeland Security Jeh Johnson singled out a handful of under-resourced trial courts throughout the state, including the Family Court, and concluded that "[t]he picture painted for us was that of a second-class system of justice for people of color in New York State." Nowhere is this concept better

[4]Our recommendations are well supported by recent committee reports issued by the New York City Bar Association on issues such as the need for access to the UCMS system and uniform procedural rules governing in-person and virtual proceedings in the Family Court. *See* Letter to Judge Ruiz Regarding Equitable Access to Justice in the NYC Family Courts (June 15, 2021), available at https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/letter-to-judge-ruiz; Letter to the Franklin H. Williams Judicial Commission Regarding their May 19, 2021, Meeting with New York City Family Court Stakeholders (June 15, 2021), available at https://s3.amazonaws.com/documents.nycbar.org/files/2020915-RacialEquityInCourtsWilliamsCommissionMtg.pdf.

[5]According to the Court, from March 16, 2020, to October 31, 2021, the Family Court issued 63,603 orders of protection, 93,941 extensions and modifications of orders of protection, finalized 576 adoptions, and fully adjudicated 22,559 support petitions, 2,957 guardianship petitions, 14,578 child abuse and neglect petitions, and 2,978 paternity petitions. To provide context, we compared those numbers—which span a 19-month period—with the 12-month period preceding the pandemic, as reflected in the New York State Unified Court System's 2019 Annual Report: in 2019, the Family Court finalized 906 adoptions, and fully adjudicated 57,519 support petitions, 3,758 guardianship petitions, 16,307 child abuse and neglect petitions, and 9,701 paternity petitions. We were unable to locate comparable data on orders of protection.

demonstrated than in how the Family Court has fared during the COVID-19 pandemic. To be clear, the pandemic has been as unprecedented as it has been cruel, and nothing in this report should suggest that the Family Court reasonably could have met the challenges faced by litigants without, at least initially, some disruption of service. What followed from COVID-19, however, was a significant shutdown of service in the New York City Family Court for a large number of litigants for an extended period of time. In other words, our findings and recommendations are a product of the deep inequities in Family Court that this crisis has laid bare.

When COVID-19 struck New York City in March 2020, the Family Court operated much as it had for decades. While other trial courts in New York, such as the Supreme Court, had embraced electronic filing, the Family Court had not. Prosecution of an action required the filing of a physical petition and in-person court appearances. Similarly, for those who wanted a copy of a court document, and for those unrepresented litigants who sought help filing papers, the Court was only accessible in person. Moreover, Court personnel were not equipped with the technology to enable them to work from home. Thus, at the start of the pandemic, when safety protocols led to the closure of public buildings, the Family Court faced enormous hurdles to simply function.

Given its limited technological and logistical capacity, once the pandemic hit, the Family Court allocated its resources to a limited number of "essential" cases, such as orders of protection and certain child protective and delinquency proceedings, which it heard remotely. Virtually all other cases—including most visitation, custody, adoption, guardianship, and support matters, as well as many child protective and termination of parental rights proceedings—were deemed "nonessential" and "nonemergency" and did not proceed. The bulk of pending "nonessential" cases therefore stagnated for months, many for almost a year, before being scheduled to be heard, and most new cases like these were not even accepted for filing. Although the Family Court accepted some applications deemed "emergencies" in these "nonessential" matters, it never defined what constituted an "emergency." Accordingly, while some creative lawyers were able to fashion their cases as "emergencies," the vast majority of litigants—especially unrepresented litigants who make up 80% or more of the court population—had virtually no access to the Family Court.[6]

In the end, the distinction between emergencies and nonemergencies became a false dichotomy, rationalizing delays that caused harm to thousands of families. For example, a child support matter is indeed an emergency for a family without financial support suffering from housing or food insecurity regardless of whether the Family Court deemed the matter to be an "emergency." Similarly, an emergency exists for a victim of domestic violence who is not receiving child support and thus has no means to leave their abusive home regardless of how the Family Court characterizes the filing. And while it might have seemed necessary to exclude most custody and visitation proceedings from the category of "emergencies," that is of no comfort to the parents and children who have not seen each other for months, or to children in physically or emotionally harmful custodial arrangements. At a time of crisis, when the vulnerable populations

[6]It is worth noting here that the overwhelming number of delinquency referrals were not included among the "essential" matters.

who routinely appear in Family Court needed help the most, the courthouse doors were largely closed.

Making matters worse, the Family Court struggled to develop an effective system to disseminate updates and guidance to the public. People were turned away from courthouses with limited information. Even now, the Family Court's website provides limited and often unclear information on the status of the Court's operations and offers only limited guidance for unrepresented litigants.

The website is just one example of the Family Court's technological challenges. The Family Court struggled with its transition to remote proceedings given staffing shortages, the challenges staff faced working remotely, and the use of cloud-based conferencing platforms ill-suited to their purpose. Of grave impact was the inability of many lawyers to access orders or documents electronically on their cases. The Court's decision to not authorize widespread access to its Universal Case Management System ("UCMS"), which is not an electronic filing system but does enable users to immediately view and print all signed orders and documents, imposed an impossible burden on providing effective representation. While some institutional and agency lawyers have access to UCMS, many do not. Even during "normal" times, lawyers and unrepresented litigants should have access to court files electronically as they do in the Supreme Court. But during the pandemic—when physical access to court documents has been limited—it became a problem of utmost urgency that the Family Court still seemed to be struggling to address. Nor has the Court yet implemented a system to facilitate electronic filing and to eliminate UCMS as a relic of a bygone era.

What distinguishes the Family Court, of course, is that the litigants are primarily unrepresented. Pre-COVID, the Help Center, or pro se petition room, served a critical role assisting the public, including helping file various court documents. Since the beginning of the pandemic, that essential assistance has been greatly curtailed. Moreover, remote proceedings have presented special challenges to some unrepresented litigants who lack adequate access to technology. While nonprofit organizations have helped to some degree, unrepresented litigants continue to have difficulty navigating the system and getting information about their cases. This is especially problematic given the long delays resulting from the substantial backlog of cases now facing the Family Court.

III. OVERVIEW

This overview illuminates the real damage caused by the extended cessation of Family Court operations for so many litigants during COVID-19. These consequences can only be fully appreciated with an understanding of the intensive workload and frenetic pace of the Court and its impact on the lives of families and children pre-COVID.

New York State Family Court has jurisdiction over a range of subject matters that are vital to the lives of children and families, including child abuse and neglect, termination of parental rights, adoption, domestic violence, custody, visitation and guardianship, paternity, child support, and juvenile justice.

The caseload in New York City Family Court is enormous. In 2019, there were a total of 192,000 filings in the City's five counties.[7] Because that caseload is far too large to be handled by the 56 statutorily authorized Family Court Judges alone, a variety of other judicial officers also preside over certain matters. These judicial officers include judges on temporary assignment from other courts as well as "Court Attorney-Referees," "Judicial Hearing Officers," and "Support Magistrates."[8] Before the pandemic, there were approximately 135 Court "Parts" presided over by these judicial officers in Family Court. During the first month of the pandemic, there were just three, expanding to five in mid-April, seven in early June, and eleven later that month.

Since Family Court cases have drastic impacts on families—including the temporary or permanent removal of a child from the care of their parent—and since time frames in the life of a child are pronounced, Family Court practice and procedure, informed in part by statutory mandates, aspire to avoid delays and seek swift results. Highlighted below are some of the most important relevant Family Court proceedings.

(a) Child Abuse and Neglect

When a parent (or caregiver) is charged with child abuse or neglect, a case may be filed pursuant to Article 10 of the Family Court Act ("FCA") by the City's Administration for Children's Services ("ACS"). In egregious cases of "imminent risk" to the child, the agency has the power to perform an "emergency removal" of the child from the parent and to place them into foster care without a Court order. In such cases, the parent must be notified immediately and

[7]These include 3,119 delinquency cases, 60,000 child support and paternity cases, 53,260 custody and visitation cases, 24,414 Article 8 family offense cases, and 14,084 Article 10 child abuse and neglect matters. New York State Unified Court System 42nd Report 2019 Year, Annual Report of the Chief Administrator of the Courts, available at https://www.nycourts.gov/legacypdfs/19_UCS-Annual_Report.pdf.

[8]The number of Family Court Judges in New York City is fixed by the New York State Legislature. FCA §§121 and 131. In 2014, the allotment was increased from 47 to 56, which remains inadequate to meet the demand. To address this need, the Office of Court Administration ("OCA") has resorted to creative measures. On the judicial level, OCA has developed a system of designating New York City Civil Court Judges as Acting Family Court judges and temporarily assigning them to Family Court. Approximately ten serve at any given time. OCA has also created "Court Attorney-Referee" and Judicial Hearing Officer ("JHO") positions. Referees are appointed to their positions by OCA and serve subject to the court's supervision. JHOs are retired judges who serve part-time and per diem to assist the court. Referees and JHOs primarily conduct preliminary proceedings in custody, visitation, guardianship, and domestic violence cases. Additionally, upon consent of the parties, Referees and JHOs can conduct trials. There are approximately 45 Referees and JHO's citywide. Support Magistrates are specifically authorized by statute to hear child support cases. (FCA §439). They are appointed by the Chief Administrative Judge to a five-year term (22 NYCRR 205.32). There are currently approximately 25 Support Magistrates serving citywide.

ACS must commence a legal proceeding within 24 hours. At any time, the parent is entitled to request a formal hearing to contest the removal pursuant to FCA §1028, which must be held within 72 hours of the request.

Where an ex parte removal is not effectuated prior to the filing, ACS may recommend at the initial appearance to have the child remain in the parent's care upon certain Court-ordered conditions or it may seek an order to remove the child. In the latter instance, a formal expedited hearing is conducted (FCA §1027).

Ultimately, whether a child is removed or not, unless the matter is settled, a trial ("fact-finding hearing") must be conducted. If the parent is found to have committed the act of neglect or abuse, then a "dispositional hearing" follows to determine the disposition that is in the best interests of the child.

Because of the overwhelming number of cases on judges' dockets, it is common to have more than a year or two pass between the time of the case's filing and the time of trial and disposition. However, during that time, the judge will preside over numerous conferences and interim proceedings and make rulings that significantly impact the lives of the children and their parents. During this time, continued ACS oversight is nearly a universal mandate by the Court.

For example, there may be preliminary hearings to consider whether certain conditions are necessary to keep a family intact and ensure safety for the child, such as supervised visitation, temporary orders of protection, or social service intervention programs to assist the family. If the child is placed in foster care, the Family Court must hold a "Permanency Planning Hearing" every six months, where it is determined whether the agency has made sufficient efforts to reunify a family and whether the situation triggering ACS's intervention has been remedied or the parent has been sufficiently rehabilitated to allow the child to safely return home.

If a child has remained in foster care for a significant period of time and the parent is deemed not to have made sufficient progress toward reunification of the family, proceedings may be brought to terminate the parental rights ("TPR proceeding") and allow a child to be adopted. Again, because of a lack of judicial resources, it might take several years to complete the case—a delay of particular consequence, since a family may be in limbo and a child may be without stability as a decision is being reached on whether their family will be kept together or the child will be adopted into a new family.

(b) Custody, Visitation, Guardianship, and Domestic Violence

Family Court is the main arbiter of custody and visitation disputes in our system.[9] Such matters can run the gamut from serious allegations of domestic violence to irreconcilable differences in child rearing. Regardless of a case's particular nature, however, the life of a child,

[9]While Family Court does not have jurisdiction over matrimonial cases, it has concurrent jurisdiction with the Supreme Court over custody and visitation of children of unmarried parents. Additionally, even for married couples, custody disputes ancillary or supplemental to a divorce are often heard in Family Court.

already disrupted by the split in the family, remains in limbo until a stable outcome is achieved. For this reason, the Family Court has official rules regarding the trial of a custody and visitation case, which must be concluded within 90 days of commencement (22 NYCRR 205.14).

The original custody case, however, rarely concludes the matter. There can be any number of reasons for continued proceedings that extend the time frame in which custody cases can be concluded. For example, a noncustodial parent may assert the other is withholding legally mandated visitation with the child. Or a custodial parent may have a new job or social opportunity in another city, with their potential relocation necessarily affecting contact between the child and the other parent. Once again, the uncertain result in such cases can severely affect the child, making expeditious resolution of these proceedings essential.[10]

Similar temporal concerns arise in related contexts such as guardianships. A parent serving in the Armed Forces might at a moment's notice be deployed to another country. Or a parent might be deported, leaving their child behind. In each of these cases, all interested parties must be notified, and even if there is no objection to the guardian's appointment, the potential guardian's background must be explored before the Court may approve of their appointment. Sometimes the matter is contested, as when two relatives are fighting over guardianship, and a formal hearing is necessary.

While awaiting the outcome, the child's life remains uncertain. They may not be allowed to see the other parent or enroll in school, government benefits may be denied or delayed, or they may not be allowed to travel or obtain a passport or visa. Even more importantly, the emotional stability of the child may suffer while facing such uncertainties. For these reasons, Family Court strives to process such cases expeditiously.[11]

Also requiring speedy resolution are cases involving domestic violence, which affect the rights of adults, and where children are often also the targets of or witnesses to violence in the home. Brought pursuant to FCA Article 8, they allow a party to seek an order of protection where there is a current or former "intimate relationship" with the alleged abuser. These cases can have dire consequences if delayed.

Such family offense proceedings are generally commenced ex parte with the petitioner seeking an order of protection. If an exclusionary order is issued, there will be an expedited

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[10]If a person withholds custody of the child, a proceeding may be brought on by a writ of habeas corpus for immediate attention. If a party lives in another state, pursuant to the Uniform Child Custody Jurisdiction and Enforcement Act, there must be rapid consultation by the Family Court Judge with the judge in the other state to address the jurisdictional issues even before reaching the merits of the case.

[11]Federal law provides "Special Immigrant Juvenile Status" to undocumented immigrant children who are present in the United States and who have been abused, abandoned or neglected by one or both parents. *See* 8 U.S.C. §1101(A)(27)(J); 8 C.F.R.§204.11. The Family Court must make a preliminary determination in a child's favor before the application is submitted to the United States Citizenship & Immigration Services, the federal agency that is authorized to grant SIJS relief. New York City Family Court receives hundreds of such applications.

return date scheduled to give the respondent an opportunity to be heard. These cases often result in time-sensitive hearings. Any delay in securing a final order leaves the victim(s) in a state of insecurity and peril; delays in addressing ex parte orders in situations where a respondent is wrongfully accused may result in that person improperly being excluded from their home or indefinitely separated from family members, including their children.

(c) Juvenile Justice

Family Court has jurisdiction over Juvenile Delinquency cases, i.e., the commission of an act by a person under the age of 18, which would be considered a crime if committed by an adult. While Family Court has long had jurisdiction over cases involving youth under the age of 16,[12] the historic Raise the Age legislation resulted in the expansion of Family Court's jurisdiction to include all misdemeanor charges brought against 17 and 18-year-old youth as well as those Adolescent Offenders in that age group who are charged with a felony and whose cases originated in the Youth Part of the Supreme Court.[13] It also expanded juvenile justice operations to 365 days and nights a year, from what had been essentially a business-hours only court.[14] These operations continued throughout the pandemic and returned to live in-person proceedings at Criminal Court on July 6, 2021. Because of the exposure to quasi-criminal liability, and the fact that youth can be remanded—separated from their parents and family without bail—while their cases are tried, the Family Court's speedy trial rules contain extremely short time frames that are strictly enforced.[15]

(d) Child Support

A critical component of Family Court's jurisdiction is its authority to issue and enforce orders of child support. For any parent, but particularly for the working class and those of limited means who make up most of the Court's litigants, adequate financial support is essential for their

[12]Legislation effective December29, 2021, amended Article 3 of the Family Court Act to increase the minimum age for a juvenile delinquency prosecution to 12 for all crimes except enumerated homicide crimes, which would retain their minimum age of seven.

[13]Eighty-four percent of all NYC youth Adolescent Offenders that originate in the Supreme Court Youth Parts have been removed to the Family Court.

[14]Night, weekend and holiday proceedings in Juvenile Justice cases are currently handled by the accessible magistrate in the Criminal Court. These proceedings were initially handled by the Family Court at the beginning of the pandemic.

[15]If a youth is remanded at the initial appearance, the respondent is entitled to a "probable cause hearing" within three days to justify any longer, continued remand. (FCA § 325.1). If the remand continues, trials must commence within three days for lower-level crimes or 14 days for higher-level felony charges. (FCA §340.1). Pretrial motions, such as hearings to suppress evidence illegally obtained or statements taken in contravention of the Fifth Amendment, must be promptly heard within these speedy trial parameters.

children's health and welfare and missed payments can have immediate and drastic consequences.

Support matters are initially heard before Support Magistrates. (FCA §439). Once a child-support obligation is imposed, proceedings can be brought for modification if there is a significant change in circumstances. Supplemental proceedings can also be brought if the obligor fails to pay the required child support. In such matters, a hearing is conducted by the Support Magistrate to determine if the failure to pay was "willful," which would subject the obligor to sanctions, including, in some cases, incarceration.[16] Due to the hardship imposed on a child for failure to receive child support, Family Court Rules impose strict deadlines for the conduct of a Violation petition, including that hearings commence within 30 days and conclude within 60 days thereafter. (22 NYCRR 205.43).

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As discussed in detail below, many of the above-described proceedings were deemed to be "nonessential" and "nonemergency" matters that could neither proceed nor even be filed during much of the first year of COVID-19, leaving thousands of litigants in limbo without access to legally entitled remedies.

IV. TIMELINE: THE COURT'S RESPONSE TO THE PANDEMIC

Prior to the COVID-19 pandemic, litigants initiated cases in New York City Family Court by mail or at the courthouse itself by filling out a physical petition, often with the help of a clerk for those who were unrepresented.

March – April 2020: Beginning on March 16, 2020, for most cases and then on March 26, 2020, for all cases—as the COVID-19 pandemic spread across New York City—the Family Court closed its physical doors to the public, rendering in-person physical filings and court appearances impossible. Signs on the doors, first posted only in English, and then only in English and Spanish, notified litigants of the closure. Practitioners reported that thousands of people came to Family Court during the pandemic only to be turned away. By the end of March 2020, the Family Court opened three citywide virtual intake parts focused on Child Protection, Juvenile Delinquency, and Orders of Protection. Those three parts stood in lieu of the approximately 135 parts that operated pre-pandemic.

From the start of the pandemic, the Family Court distinguished between pending cases that were "essential" and those that were "nonessential." Nonessential cases could only proceed if deemed by the court to be "emergency" matters. "Nonemergency" matters were placed on indefinite hold. Thus, the Family Court administratively adjourned without return dates all "nonessential" matters filed before March 17, 2020, unless they were subsequently deemed to be an "emergency."

[16] A family Court Judge must confirm the determination of the Support Magistrate before sanctions can be imposed. (FCA §§439(a) and 454, et seq.).

During March and April 2020, the Court issued a series of administrative orders and press releases with a list of "essential matters," stating that the Court would accept "no new nonessential matters…[or] additional papers…in pending nonessential matters." The Court's definition of "essential matters" included: (1) new child protection cases involving removal applications, (2) new juvenile delinquency cases involving remand applications or modifications thereof, (3) emergency family offense petitions/temporary orders of protection, (4) Orders to Show Cause, and (5) stipulations on submission. The Court stated in a separate order that emergency Family Court cases would be heard by remote video appearance and/or by telephone, and it provided a telephone number and email address for litigants to use for any questions.[17]

As a result, a vast number of pending Family Court cases deemed "nonessential"—including custody, visitation, guardianship, adoption, and support—were frozen for at least nine months, as were all new similar cases until they began to be calendared a year later, in spring 2021. Many of those cases were given return dates well into 2022 and then only for preliminary administrative issues such as return of service.

From the beginning of the pandemic, the Family Court also heard emergency applications on "nonessential" cases. However, as described in greater detail below, it was unclear what constituted an "emergency" in the so-called "nonessential" matters. It was left to the discretion of the individual jurist sitting in the Court's "Intake Part" that day to decide whether what was pleaded in an Order to Show Cause constituted an emergency and would be heard. Initially, the Court only heard "emergency" applications in pending cases. Clearly intended to restrict the number of filings in light of the Family Court's limited capacity, there was no substantive basis to distinguish between an emergency in a pending case and one where no case previously had been filed.

While the Family Court's handling of Juvenile Delinquency (Article 3) and Abuse and Neglect (Article 10) cases fared better, the physical closure and then the slow transition to virtual

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[17] *See* AO/78/20 (March 22, 2020), available at https://nycourts.gov/whatsnew/pdf/AO-78-2020.pdf ("Pursuant to the authority vested in me, in light of the emergency circumstances caused by the continuing COVID-19 outbreak in New York State and the nation, and consistent with the Governor of New York's recent executive order suspending statutes of limitation in legal matters, I direct that, effective immediately and until further order, no papers shall be accepted for filing by a county clerk or a court in any matter of a type not included on the list of essential matters attached as Exh. A. This directive applies to both paper and electronic filings."); AO/85/20 (April 8, 2020), available at https://www.nycourts.gov/whatsnew/pdf/AO-85-20.pdf (directing that certain pending matters can proceed virtually; providing that no new nonessential matters may be filed until further notice; nor may additional papers be filed by parties in pending nonessential matters). *See also* Governor's Executive Order 202.8 (March 20, 2020) ("In accordance with the directive of the chief Judge of the State to limit court operations to essential matters during the pendency of the COVID-19 health crisis, any specific time limit for the commencement, filing, or service of any legal action, notice, motion, or other process or proceeding, as prescribed by the procedural laws of the state, including . . . the family court act . . . is hereby tolled…."), available at https://www.governor.ny.gov › EO_202.8.pdf.
These orders were continually extended until June 25, 2021.

courtrooms negatively affected those areas too. In the Juvenile Delinquency practice area, the cases in which remand (detention) of juveniles was sought were processed smoothly. Some advocates, however, advised the Work Group that they were aware of certain children who had been detained and whose length of time in detention increased as a result of the pandemic. Of note, at the beginning of the pandemic, the Family Court entertained motions brought by practitioners, who reviewed previously issued remand orders in light of the danger of congregate living during the pandemic. Our understanding is that this decreased the number of youths in custody by more than 50%.

Juvenile justice practitioners worked every day, night, weekend, and holiday with the Family and Criminal Courts. Every youth arrested and charged with a crime was afforded the opportunity to be considered for adjustment services by the Department of Probation, to be considered for release by the Law Department, and, ultimately, where those options were not available, to have their case decided by a Family Court judge in a virtual proceeding where they were represented by counsel; to accomplish this effort, Family Court judges took over night, holiday, and weekend court. [18] When grand juries were suspended, the Family Court conducted prepetition hearings, arraignments and probable cause hearings, each of which was deemed an essential matter. These virtual hearings were conducted in largely the same manner as when they were in-person. Remand cases remained on the Court's calendar and motions to advance matters outside the Court's administrative orders were granted for settlement and disposition.[19]

ACS, which prosecutes child protective cases in Family Court, understood early on that the agency was effectively prohibited from filing cases in which it was not seeking a remand of the child into foster care.[20] In situations where a child was arrested but a decision was made not to seek remand or other interim relief, no case would be filed and the matter and pending charges against the child were left in judicial limbo. Because of resource constraints and the resulting attempt by the Court to prioritize certain cases over others, a high percentage of Article 10 filings involved serious allegations of domestic violence or other physical harm, including sexual abuse. It was reportedly much more difficult to file Article 10 cases involving allegations considered to be less serious, such as educational neglect. The Work Group was informed that there were many instances where attorneys attempted to get such cases on the calendar to dispose of them because the relevant issues had been satisfactorily addressed but could not do so because there were no jurists available. In addition, in the first few weeks of the shutdown of the Family Court,

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[18]The pandemic did create opportunities for some technological advancement, including the use of virtual proceedings. Technological capabilities acquired during the pandemic should be harnessed, finalized and tested to ensure access and safety for all who have crucial business with the Family Court.

[19]It is important to note that all youth in custody are represented by counsel. There is no question that those who were unrepresented during the pandemic fared worse than those who were able to retain counsel or were afforded representation due to the nature of their case.

[20]These are called "court-ordered supervision cases"–those in which the child is alleged to be at risk of abuse or neglect, but an attempt is made to provide the services necessary to maintain the child safely at home, thereby avoiding removal.

statutorily mandated permanency hearings (required to be held every six months for youths in foster care) were missed—though that issue appears to have been addressed.

The Family Court's severely limited operations between March and April 2020 exacerbated the serious constitutional issues implicated whenever families are separated for extended periods of time. Attorneys for parents in Article 10 cases requested unsuccessfully that pending emergency hearings be completed rather than continuously adjourned. Moreover, the Family Court had no centralized calendar for identifying and effectively processing emergency cases. As a result, only the attorneys working on the cases had that information. Consequently, during the first few weeks of the Family Court shutdown, those attorneys provided the Family Court with daily lists of cases that should proceed to emergency hearings.

Statutorily expedited emergency hearings, such as 1027 and 1028 hearings that address vital liberty issues for families when their children are removed by ACS, were conducted by affidavit in truncated proceedings in virtual courtrooms. This was woefully inadequate to the Family Court's full consideration of parents exercising their statutory right to challenge the removal of their children. In addition, while there have in recent years more frequently been delays in scheduling required hearings in child protective cases, including 1027 and 1028 hearings, these delays have grown exponentially worse with the advent of the pandemic restrictions. Because the Family Court took the position that statutory time constraints were suspended, mandated hearings with speedy trial obligations of 24 to 72 hours were not being calendared for four weeks or longer.

With respect to orders of protection, the Court took steps from the beginning of the pandemic to ensure that these proceedings went forward. This effort included a central processing system for new matters and the use of telephone and, later, video proceedings.

April – June 2020: It is our understanding that by May 24, 2020, all jurists had returned to the courthouses except those with specific health concerns, and clerical staff had returned on a staggered basis.

The Family Court rolled out virtual courtrooms utilizing the "Skype for Business" platform in April 2020. However, it was not until May 2020 in Richmond County, and several months later for the larger boroughs, when each jurist had access to their own virtual link. In addition, Skype for Business was inadequate to the task because, among other things, it did not allow for the recording of proceedings. Severely limited resources were used to train staff and attorneys on Skype for Business only to have the Family Court transition to the "Microsoft Teams" platform in mid-December 2020 (as a result of the court system's statewide contract with Microsoft, which changed platforms). This only further aggravated the backlog of cases in the Family Court. One physical courtroom, fitted with plexiglass barriers, was available in each county to accommodate in-person proceedings.

In early May 2020, the Family Court began accepting "nonemergency" applications—but did not schedule them for court appearances—when the Court provided that applications related to pending child support matters could be submitted by email. In a notice on the Court's website dated May 13, 2020, the Court provided information on how to modify an order of support because of a change of circumstances. This update reiterated that the Family Court was not yet

scheduling cases involving child support but that the Court would update litigants when it began hearing those cases.

Significantly, the Family Court did not officially begin accepting all other nonemergency petitions, including custody, visitation, and guardianship and new support matters, until spring 2021, one year from the start of the pandemic.[21] However, that did not stop litigants, primarily those with attorneys, from submitting them by mail and, beginning in May 2020, via the Electronic Document Delivery System ("EDDS"), when EDDS opened for the stated purpose of receiving support modification petitions. As the Court did not have any rejection protocol, those petitions sat dormant until the Court started docketing nonemergency cases in 2021. At that time, the litigants who submitted these cases during COVID—when they were officially not being accepted—were at the front of the line for scheduling. This is just one of many examples where pro se litigants were profoundly disadvantaged by the Court's process.

August 2020: On August 24, 2020, the Court transitioned from accepting support submissions by email to accepting them through EDDS. As explained in more detail below, EDDS is not an electronic filing system but simply a vehicle to submit papers that, in turn, are not "filed" until processed by Court personnel. EDDS is not user friendly, especially for unrepresented litigants.

Accordingly, between March and December 2020, the Family Court heard "essential" cases and "emergencies" within "nonessential" cases, but other cases were largely stuck in a holding pattern, even those that had been filed before the start of the pandemic. The Court has informed us that "most jurists continued to remotely advance existing cases in which appearances were not required." The lack of court appearances, however, combined with the limitation on filing applications and motions prevented all but a small number of these cases from moving forward. As a result, there is now a significant backlog of cases.[22]

December 2020: In December 2020, the Family Court began to assign court dates to custody and visitation cases filed prior to March 17, 2020.

As mentioned above, the Family Court transitioned to Microsoft Teams by mid-December. Yet, that transition failed to provide critical functionality to litigants and their attorneys, including breakout rooms where attorneys could confer confidentially with their clients and where cases could be conferenced. Perhaps worse, judges reported not getting appropriate instruction and training on how to use the new software and technology. Some could not manage the technology, especially from home with no in-person support. Utilization was also

[21]Lawyers consistently told us that the Court officially began accepting all nonessential submissions in the spring of 2021—based in part on direct conversations they had with the Court—but we have not been able to locate any formal announcement or administrative order on point.

[22]The Work Group has not been able to identify the specific number of backlogged cases, itself an issue, but suffice to say, it appears there are thousands of cases submitted prior to or after the onset of COVID that have been significantly delayed.

hindered because there was only one LAN technician in each county creating links, setting up equipment, rolling out laptops, establishing virtual courts and virtual private networks (VPN) to ensure confidentiality, and creating phone numbers for each virtual part.

January – February 2021: In January and February 2021, the Family Court began to assign court dates to child support cases filed prior to March 17, 2020.

March 2021: At the end of March 2021, the Family Court announced that it would begin scheduling custody, visitation and support cases that were submitted during the pandemic. Practitioners consistently informed us of significant delays in getting their cases on the calendar, and then, in many cases, only for preliminary administrative matters such as return of service. In one typical example, a litigant had submitted a child support application in July 2020 that was not scheduled for a first appearance until June 2021. Even if the application is ultimately successful, it is unclear whether and to what extent the litigant will be successful in obtaining retroactive relief.

July – October 2021: There was wide variation in how quickly new cases were being scheduled during this time period. For instance, one attorney noted that within a week after filing a motion to change the method of payment on a support order, the Court scheduled a first appearance four weeks out. In contrast, another lawyer reported that for a new support petition she filed on July 2nd, she was given a first appearance date of October 4th. Accordingly, her client was without even a temporary order of support for three months. Practitioners also reported extended delays between court appearances. One lawyer explained that pre-COVID she would routinely have adjournments of about two months and now that is closer to four months. Indeed, many cases were getting court dates in 2022. In one example, a litigant who filed a family offense petition on August 25th received a temporary order of protection with a return date of June 13, 2022. It is our understanding that there remained a number of cases submitted through EDDS, email or mail that had not been calendared. Every practitioner we spoke with has told us that, overall, delays in Family Court are significantly longer now than they were pre-COVID.

November – December 2021: It is our understanding that all cases submitted through EDDS, email, or mail throughout the pandemic have been calendared. Practitioners, however, continued to report wide variation in how quickly cases were being scheduled, longer than usual adjournments between court appearances, and little or no improvement in overall delays in Family Court. That being said, there were improvements in the number of cases being adjudicated. For example, according to Chief Judge Janet M. DiFiore in her December 13th video address, "while the number of adoptions has not quite returned to pre- COVID levels, we are on pace to finalize 33% more adoptions in 2021 than in 2020."

V. CLASSIFICATION OF EMERGENCY MATTERS

Although the Court accepted emergency applications in nonessential matters by Order to Show Cause, it never defined what constituted an "emergency." In the initial stages of the pandemic, Orders to Show Cause to obtain permission to file went to Supervising Judges who approved very few applications, perhaps because of the limited resources available to them. Subsequently, proposed Orders to Show Cause were distributed to individual judges who we

understand felt constrained to strictly or narrowly consider them. Judges informed us that they were frustrated with their inability to appropriately address the emergency situations affecting children and families.

From numerous interviews, it is clear that practitioners had difficulty distinguishing between emergencies and nonemergencies and that the standard often varied from judge to judge. In general, practitioners understood that abuse, neglect or other cases where the child was in danger constituted emergencies. Likewise, attorneys understood that, as a general rule, support cases were not considered to be emergencies. However, confusion arose in the multitude of different circumstances where a family was in crisis, but the child might not be in immediate physical danger.

This confusion was initially compounded by the Family Court's decision to only hear emergencies in pending cases. One practitioner told us they tried to get before a judge on behalf of a client whose spouse had taken their child out of state, but the Court rejected the application several times because there was no pending case. Then, when the Court did begin accepting orders to show cause for both new and existing emergency applications on nonessential cases, it did so without clearly communicating this change to litigants.

Practitioners used what they called "creative lawyering" to have their cases heard as "emergencies," while equally or arguably even more compelling litigants were shut out. However, even where the Court calendared a case as an emergency proceeding, some attorneys noted that there was no mechanism for filing related nonemergency claims in the same case. While the Court was more likely to calendar orders to show cause where a litigant was represented by counsel, many such cases were not heard because they were not deemed to be a sufficient emergency.

In one example, a practitioner represented an adult brother of a child whose mother had died of COVID-19. The attorney sought to assist the adult brother in applying for custody of the child so that he could make medical and educational decisions. While the Court was generally treating custody cases as nonemergencies, the attorney emphasized the importance of the case in the context of COVID-19. The Court initially rejected the case as a nonemergency, but the attorney pursued the case until, after multiple attempts, it was finally heard. For most litigants who are not represented by counsel, this outcome in all likelihood would have been different.

Although the Family Court attempted to create a delineation between emergency and nonemergency cases, practitioners repeatedly noted that many so-called "nonemergency" matters were in fact emergencies, both in terms of the health and safety of the litigants, and the urgent time frames the cases presented. As the months went on, this extended delay in the ability to seek and obtain judicial relief wreaked havoc on thousands of families and irreparably damaged their legal cases. The consequences of this delay are discussed in detail below.

While the pandemic brought nonemergency cases to a virtual standstill in Family Court, the New York State Supreme Court continued to hear both new and ongoing cases, whether or not they were deemed to be an "emergency." Thus, while nonemergency visitation, custody, and support cases were all stayed in Family Court for months on end, those same kinds of legal

issues continued to be adjudicated in the Supreme Court in connection with divorce cases, highlighting, again, the two systems of justice described by Secretary Johnson in his report.

This difference is largely a function of the fact that, unlike in Family Court, the Supreme Court's transition to remote proceedings was relatively smooth. It is well recognized that litigants who have access to the Supreme Court, where there is a filing fee, are more often represented by counsel and typically more affluent than their Family Court counterparts. Family Court serves many more unrepresented litigants, people of color and those living in poverty. There may not be a better example of systemic injustice, and yet despite this glaring disparity, in June 2021, the New York State Legislature approved additional judges to sit throughout the state in the Supreme Court. There was no such legislative solution or bailout of any kind directed to the New York City Family Court despite the crisis described in this report affecting some of the most vulnerable children and families in the State.

VI. COMMUNICATIONS

The Family Court's decision not to hear "nonemergency" matters affected a vast number of cases. This, in turn, prompted countless questions from unrepresented litigants, as well as from lawyers and advocates, about when and to what extent the Court would reopen, what would happen to previously filed cases and when new dates for those cases would be provided, what to do in an emergency, whether custody orders had to be complied with even if children were being relocated for health and safety reasons related to the pandemic and what to do if they are not, whether petitions (previously only filed in person) could still be filed while Family Court was physically closed, how to notify the Court of a change of address or phone number, and more. These questions were made even more urgent by the continuously changing nature of court operations over the course of the pandemic.

In the face of this significant disruption of services, the Court struggled to find a coherent communications strategy and never developed a system to effectively disseminate updates and guidance to the public on court operations and procedures. Litigants could not rely on the website or any other accessible source to receive clear, detailed, accurate, and up-to-date information, which was especially challenging for those who were unrepresented.

(a) At the Courthouse

At the time the pandemic began in March 2020, with limited exceptions, litigants could only file Family Court petitions by mail or in person at the courthouse, often relying on the help of court clerks.[23] Therefore, from approximately March 16, 2020, to May 8, 2020, when the courthouse was physically closed and was not yet accepting any filings on nonessential/nonemergency matters, litigants could neither file nor even submit petitions. Even when the Court began accepting petitions via email and then EDDS, these changes in court procedures were not effectively communicated in real time to litigants or the general public. Nor

[23]Prior to COVID, family offense petitions could be filed electronically from outside the courthouse.

was it communicated how to determine in advance when particular cases would be calendared and heard.

As a result, thousands of litigants showed up at the courthouse, as they would pre-pandemic, only to be turned away. Signs on the courthouse doors stated that the Court was closed with little additional information. Compounding the problem, in the beginning of the pandemic, these signs were only in English, and even when the signs were modified to provide for greater accessibility, they were only posted in English and Spanish.

Further, as a Court that had previously relied exclusively on paper filings and in-person hearings, the Family Court often did not collect or update litigants' contact information. Consequently, many litigants whose cases were administratively adjourned could not be reached by the Court and were left with no information about their cases.

(b) The Website

In addition to the lack of meaningful guidance at the courthouses, the Family Court sections of the Unified Court System website (including the version shown on mobile devices) provide limited and often unclear, outdated or inaccurate information on the status of the Court's operations even as of the release of this report. Of concern, the website is only available in English and, to a more limited degree, Spanish. By not offering a variety of languages, the website automatically excludes many individuals from acquiring any information.[24]

Also of concern, the website's home page does not contain any landing page for updates related specifically to the impact of the pandemic on the Court's operations. The only section dedicated to pandemic-related updates is the "Coronavirus and New York City Family Court" portion, which is a single hyperlink in a long list of links. The section provides only basic information, and at no point throughout the pandemic did it provide meaningful updates with detailed guidance for litigants or the general public on the latest changes in court operations and procedures.

Not only does the website contain very limited information, but it also includes information that is conflicting or inaccurate. For instance, as of the date of this report, the website still states that the Court is "not yet open for the initiation of new cases involving . . . nonemergency matters." In fact, the Court has been accepting new submissions relating to nonemergency matters via EDDS and by email for months. To make matters even more confusing, in the section titled, "Information for Filing Emergency/Essential Applications," there is no guidance on what constitutes an emergency.

The website does direct litigants to submit permitted filings via EDDS, but the system is hard to navigate even with the Court's user guide,[25] especially for unrepresented litigants. For

[24]In its own Strategic Plan for Language Access, OCA identified the most frequently requested languages for translating, which includes Spanish, Mandarin, Russian, Haitian Creole and Arabic. http://ww2.nycourts.gov/sites/default/files/document/files/2018-06/language-access-report2017.pdf

[25]https://iappscontent.courts.state.ny.us/NYSCEF/live/edds.htm.

example, EDDS will only accept a certain file type (PDF/A), even though the Court forms are only made available in PDF (non-form fillable) and Microsoft Word. For many unrepresented litigants who are unfamiliar with computers, this requirement poses a real and potentially insurmountable challenge.

Certain forms are provided on the website, but most are only in English and are not accompanied by any instructional guides to help litigants determine how to appropriately complete them or even which forms to complete. With respect to an affidavit of service, which is a critical document, one must know where to look on the website. Indeed, the web page titled "Filing an Affidavit of Service" indicates that the document can be found by clicking on the hyperlink labeled "Forms," which redirects the user to a category of forms. However, "Affidavit of Service" is not mentioned anywhere on that page.

The website contains some "do-it-yourself forms," which provide more specific guidance for litigants about the drafting process, but they are quite limited in scope.[26] For example, the custody and modification forms are only designed for parents. A grandparent or sibling could not use the forms to modify their visitation schedules or custody arrangements. Likewise, when users find out that the forms they are trying to use are not right for them, the only direction they receive is to call their local Family Court. Moreover, there are only five such forms available: Paternity, Custody Modification, Custody Enforcement, Child Support Modification, and Child Support Enforcement. There are, however, a multitude of other forms needed by litigants, especially during COVID-19 when no cases in those areas were being heard without an Order to Show Cause and Affidavit in Support. The closest information we could find anywhere on the Court website with guidance on Orders to Show Cause is on a link[27] that provides information for pro se litigants titled, "How to Ask the Court for Something (motions and orders to show cause)." There is no form for an affidavit in support, however, which must accompany an Order to Show Cause, the information provided is general and not specific to the Family Court, and the web page is hard to find.

(c) Administrative Orders

Some information, including guidance on what broad categories of cases constitute an emergency, and what phase of operations the Family Court is in at any given time, was shared through the Court's various administrative orders. These orders, however, are difficult to locate; indeed, there is no link on the Family Court website that easily allows a litigant or the general public to access them. Furthermore, the orders themselves do not contain all updates to Family Court operations and provide only limited guidance. The incomplete and inaccessible nature of

[26]The lack of a uniform format is problematic: some forms on the website are available in Word, some in fillable pdf, and still others in non-fillable pdf, which have to be printed out and filled in by hand. Because these are universal forms, they often contain language that does not apply in every case, so the absence of clear instructions in many of the forms leaves unrepresented litigants confused and potentially disadvantaged.

[27]https://iappscontent.courts.state.ny.us/NYSCEF/live/edds.htm.

the orders has thus contributed to confusion concerning the status at any given time of the Family Court operations in New York City.

(d) Reliance on Lawyers to "Spread the Word"

Lawyers working in the Family Court, especially those from institutional providers of legal services to families and children, and members of the assigned counsel panel have fared better with respect to learning about the current status of Family Court operations. These advocates, by and large, have received information throughout the pandemic directly from the Family Court. For instance, the Supervising Judges in each of the boroughs held periodic meetings with agency leaders to provide updates on Family Court operations. These meetings, among other things, enabled stakeholders to comment on the definition of essential matters and advocate for the ability to file Orders to Show Cause to address additional matters. Other important issues were discussed during these meetings as well. In the area of juvenile justice, for example, practitioners were able to explain the importance of an order appointing attorneys for the child prior to the initial appearance based on the large number of non-custody cases that could not be filed. Issues regarding conflicting information or positions among jurists were also raised during these meetings.[28]

However, only a select group of institutional and nonprofit providers were invited to participate in these meetings. Additionally, participants reported that these meetings were most helpful for understanding what the Court could not do but were less effective in communicating updates from the Court or clarifying how to overcome challenges presented by the pandemic. Announcements from the Court at these meetings were not always consistent with what participants were seeing on the ground. In addition, the Court communicated some information via one-off emails to listservs, but it did not send these updates with any regularity and often provided little clarity beyond what the Court's brief and irregular administrative orders stated.

The Family Court did not disseminate information to the general public and to advocates at the same time or with the same level of detail. Advocates reported that the Court delegated its responsibility to communicate with the public to the advocates, asking them to communicate updates to their clients instead of widely disseminating information to the public at large. Represented litigants whose lawyers were able to find out more information were thus more likely to obtain favorable outcomes—e.g., access to the courts during the pandemic—than unrepresented litigants with no direct access to information. Unequal outcomes may exist even among represented litigants, with some organizations receiving fuller or more complete information than others depending on what meetings with the Court they attended.

[28]By way of a more recent example, during the past few months' return to in-person juvenile delinquency intake across the boroughs, attorneys for the child, probation officers, and ACS were initially denied a request for technology in the detention rooms that would enable all members of their staff and the youth to maintain safety precautions. Although the request was initially denied, the decision was later reversed following a stakeholder meeting with newly appointed Administrative Judge Anne-Marie Jolly.

The communication mentioned here developed on a rather ad hoc basis and as time progressed. There was not, and is not now, a formalized emergency plan of communication that anticipates future crises which are unfortunately certain to occur.[29]

As a result, many of the sources of information advocates relied on originated outside of the Court. For instance, advocates from various nonprofit organizations and institutional provider organizations set up email chains to share updates with each other. Advocates would communicate with colleagues in other organizations to determine what successes and roadblocks they had experienced with their cases, hopeful that the information would help other advocates achieve successful outcomes for their clients.

VII. CHALLENGES WITH REMOTE OPERATION

Not only did the Family Court struggle to communicate with the public about the current state of Family Court operations, it also struggled to manage the transition to remote operations altogether. Inadequate staffing, challenges with Court staff working remotely, the Family Court's outdated pre-pandemic filing system, the Court's unwillingness to authorize widespread access to its Universal Case Management System ("UCMS") and challenges with remote proceedings all contributed to a slow and confusing transition to remote operations.

(a) Staffing

With the Courthouse physically shut down at the beginning of the pandemic, the Family Court sought to shift to virtual proceedings with its judges and staff working remotely. The transition was difficult as judges, court clerks, and other staff were not initially equipped with the necessary technology or training to work at home effectively. The problem was magnified because the Court, which had already been acutely understaffed before the pandemic, was subject to a crippling hiring freeze imposed across the entire court system.

The lack of adequate court staff and the rocky transition to remote work made it difficult for the Court to hear cases and provide various services to the public, including assistance and guidance for unrepresented litigants. The Family Court website informed litigants that they could call the Court to obtain information, yet because of the shortage of clerks and the lack of proper technology, the public was often unsuccessful in getting through to the Court for help. Additionally, because of understaffing and the attendant need for personnel to assume roles for which they were not adequately trained, the advice provided by the office was at times inconsistent. As a result, litigants and practitioners alike were sometimes required to file the same or similar motions and petitions repeatedly before they were accepted. Litigants also had difficulty obtaining documents previously filed in their cases.

[29]Additionally, there appeared to be virtually no routine, formal communication among the Supreme, Family and Criminal Courts regarding Raise the Age operations and youth. To that end, juvenile justice parties and stakeholders were present at Criminal Court in downtown Manhattan on the night that Hurricane Henri devastated New York City. Despite attempts to communicate with the Criminal Court and to utilize virtual appearances, all were expected to travel to the court.

Early on in the establishment and implementation of remote Family Court, usage of the new technology—first Skype for Business and then Microsoft Teams—was inadequate because, initially, virtual court time had to be rationed and shared by various judges. Even when there were enough courtrooms, only some had the capability to connect with the standard digital recording system ("FTR"). Another issue arose in those cases that required court reporters. Few reporters were available, and their services were therefore rationed. It was also difficult to secure interpreters. These factors made scheduling court time difficult.

(b) Family Court Staff Were Generally Unable to Work From Home

Compounding the lack of adequate staffing was the notable fact that many Family Court clerks and staff were unable to work remotely because they lacked the hardware and/or technology to do so. As a result, going remote while already facing a significant caseload[30] put even more burden on the jurists who were left without sufficient or, in some cases, any support staff. Moreover, we understand that court staff were not required to use their personal phones for work, making the situation more difficult for jurists to access assistance remotely to handle the Family Court's significant caseload crisis.

(c) Technology

Today, more than 85 percent of Americans have access to the internet.[31] And, while significantly fewer low-income individuals have sufficient internet access than those better off economically, that digital divide has been narrowing. The widespread availability and use of the internet has presented the Family Court with an opportunity to examine past, present, and future practices.[32] Unfortunately, at the time COVID-19 struck, the Family Court had, by and large, allowed this opportunity to pass.[33] The cessation of in-person proceedings and closing of the Family Courthouses for a large number of litigants during COVID only magnifies the need to confront the technology issues head on and develop workable solutions and innovations.

(d) Filings

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[30] *See* New York State Unified Court System 2020 Annual Report, https://www.nycourts.gov/legacypdfs/20-UCS-Annual-Report.pdf.

[31] *See generally* Internet/Broadband Factsheet, Pew Center for Research (Apr. 7, 2021), available at https://www.pewresearch.org/internet/fact-sheet/internet-broadband/.

[32] *See generally* Digital Divide Most Glaring in Low-Income Communities, Government Technology (Sept. 7, 2017), available at https://www.govtech.com/computing/where-the-digital-divide-is-the-worst.html.

[33] Some of this lost opportunity was due to concerns about the need to preserve confidentiality in Family Court proceedings and that a voluntary e-filing system (the only form permitted under current law) would be unworkable. We believe that privacy concerns can be addressed through safeguards in the technology, as they have been in the Supreme Court, and that an e-filing system for those willing to take advantage of it would be a great improvement over current practices.

In contrast to many other courts in New York State, the Family Court had no electronic filing system before the pandemic, and it still has yet to adopt one. The New York State Courts Electronic Filing System (NYSCEF) is the electronic court filing system used in the New York State Unified Court System. Since the introduction in 1999 of electronic filing in the Commercial Division of the Supreme Court in two counties, electronic filing has gradually expanded to most counties in the state and to additional courts. Specifically, electronic filing through NYSCEF is currently authorized in 60 Supreme Courts, 54 Surrogate's Courts, the Court of Claims, and the Appellate Division, and it has also expanded to the high-volume New York City Housing Court.[34] NYSCEF is also administered in matrimonial cases, in which the public is presumptively precluded from accessing legal documents.

Although legislation would be required to make electronic filing mandatory in Family Court, current law authorizes the Chief Administrative judge to introduce electronic filing for those litigants willing to take advantage of it (FCA §214). Among the many benefits of electronic filing is the digital storage of electronic documents that provides litigants, their attorneys, and courts with the significant benefit of instant access to court papers anytime. After the closing of the physical Family Court to the public in March 2020, the method of in-person filing of pleadings was rendered obsolete, but no adequate substitute was ready to be instituted. As of the date of this report, in-person filings are permitted but there is limited capacity in the waiting areas.

The Family Court first adopted a rudimentary system through which filings could be submitted to the Court, but not filed, through a simple email address—NYSCAPPLICATIONS@NYCCOURTS.GOV. Beginning May 4, 2020, OCA initiated a new program to transmit digitized documents to the Family Court via EDDS. EDDS allows users to (1) enter basic information about a matter on a Uniform Court System website portal page, (2) upload one or more PDF documents, and (3) send those documents electronically to a court or clerk selected by the user. Upon receipt of the document(s) by the court, the sender receives an email notification with a unique code that identifies the delivery. However, no further action is taken through EDDS, including issuance of a docket number or a summons. And neither litigants nor attorneys can access any documents through EDDS. This platform is, therefore, a submission portal and not a filing system like NYSCEF.

The Work Group was advised by stakeholders that Family Court was slow to roll out information about how to use EDDS, particularly for pro se litigants. The Family Court website now contains a link on the main page on how to use EDDS along with a user manual, but, as explained above, current guidance is insufficient for unrepresented litigants.

(e) UCMS Access

Further compounding the impact of not having an electronic filing system is that the Family Court has not yet provided litigants and lawyers with UCMS access to the Court files in their own cases. Presently and prior to the pandemic, all records in a case file were received

[34] *See* New York State Unified Court System 2020 Annual Report, https://www.nycourts.gov/legacypdfs/20-UCS-Annual-Report.pdf (last visited on June 8, 2021).

digitally and saved in the Family Court's UCMS by court staff. Judges, Support Magistrates, Court Attorney-Referees and Judicial Hearing Officers review all court records online and enter their case progress notes into UCMS. Petitions and orders are signed electronically by jurists, enabling the presentment agencies and those attorneys with access to UCMS to immediately view and print all signed orders and documents.

All attorneys interviewed for this report, regardless of whom they represented or which types of proceedings they handled, were consistent in their criticism of the fact that many lawyers, including those working for institutional providers, are unable to access court documents through UCMS. Access is therefore completely uneven: some institutional providers have full access, while others have no access or access only to certain types of cases (e.g., custody, visitation, and neglect but not family offense petitions). Further, even within individual institutional providers and the assigned counsel panel, some have access and some do not. Private attorneys have no access to UCMS.

It is a problem of utmost urgency that lawyers are not able to access court files electronically, particularly during a pandemic when most lawyers have been working remotely. One attorney described the lack of access as "practicing law with a blindfold on." It is our belief that no attorney can advise clients adequately without having timely access to copies of all pleadings and orders.

Further, UCMS does not have a docket sheet such as that provided in the NYSCEF system. Therefore, to the extent attorneys have UCMS access, they have to access documents piecemeal and pull documents individually without reference to the full electronic file. This is a material impediment to adequate representation. At some point during the pandemic, the Family Court created an email system where attorneys could request documents. For some, there has been delay in accessing documents in that way, but in any event, this antiquated system unacceptably impedes access to the court system in a way that disproportionately impacts the poor and low-income parties in Family Court who are less likely to have counsel who can request documents for them.

These impediments made the work of lawyers during the pandemic much more burdensome. For example, in an ad hoc effort to deal with the limited applications that would be accepted during the pandemic, a project was initiated in late March 2020 to provide representation to domestic violence victims seeking orders of protection, in which Safe Horizon coordinated with the court-appointed attorney panel (referred to as the "18-b" panel) in New York City. However, many 18-b lawyers were unable to access court files through UCMS. The lack of UCMS access required the already overburdened 18-b lawyers with UCMS access to spend even more time coordinating the staffing of these cases for those 18-b lawyers without UCMS access. The bulk of the orders of protection in Family Court during COVID-19 were filed by various legal services organizations. These organizations also reported difficulty in making these filings without access to Court clerks or UCMS. They often found it challenging to track cases and provide clients with their documents after hearings.[35]

[35]There is no question, however, that litigants benefited greatly from having counsel early in the process, which gave them access to safety planning and legal advice that strengthened their

Family Court should act expediently to provide all lawyers who work in the Family Court with UCMS access, particularly given that the Court does not have an electronic filing system. To the extent that the Family Court has concerns about abuse of the system and safeguarding the privacy of records, those concerns are relevant to every electronic filing system, including matrimonial cases through NYSCEF, and there are straightforward technological solutions to manage those concerns.

(f) Procedures in Remote Proceedings

The Family Court has not yet issued uniform rules governing remote proceedings.[36] In December 2020, several advocate organizations and ACS, with input from the Safety, Family Engagement & Court Practice Committee and the Family Court's all borough Child Protective Advisory Committee, presented a detailed virtual hearing protocol to Administrative Judge Jeanette Ruiz for the Court's consideration. We understand that, as of the date of this report, the Court has not substantively responded to the draft protocol nor developed its own protocol.

Feedback from the Court has been that while it might at some future date consider best practice guidelines for remote proceedings, a virtual hearing protocol would infringe on judicial independence. We respectfully disagree. Indeed, uniform procedural rules would instill confidence in the system, increase the likelihood that all litigants are treated fairly and respectfully, and ensure that litigants and their attorneys know what to expect and are better prepared for Court.

Senior Court administrators have advised us that they will embrace remote proceedings going forward. This decision, which we support, highlights the importance of establishing uniform rules for remote proceedings.

In addition, we believe remote proceedings should allow the Family Court to move quickly and efficiently away from the dehumanizing "cattle calls" that traditionally have plagued the Family Court.[37] And, in this regard, it bears emphasis that other courts have been able to conduct remote proceedings effectively, including those in matrimonial cases, which raise many

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petitions. This is particularly true given that in family offense petitions pro se litigants are expected to plead specific elements of a crime.

[36]The Family Court issued a general one-page document that provided little practical guidance for pro se litigants and attorneys. *See* https://www.nycourts.gov/LegacyPDFS/COURTS/nyc/family/Guide-to-Virtual-Appearances.pdf.

[37]Report from the Special Adviser on Equal Justice in the New York State Courts (Oct. 1, 2020) at p. 3 ("Over and over, we heard about the 'dehumanizing' and 'demeaning cattle-call culture' in" the Family Court. "At the same time, the overwhelming majority of the civil or criminal litigants in the Housing, Family, Civil and Criminal courts in New York City are people of color. The sad picture that emerges is, in effect, a second-class system of justice for people of color in New York State. This is not new."), available at http://www.nycourts.gov/whatsnew/pdf/SpecialAdviserEqualJusticeReport.pdf.

of the same issues relating to privacy and confidentiality as do Family Court cases. The same result should be achievable in the Family Court.

Finally, we believe that a flexible approach in administering remote proceedings is critically important. For example, one litigant informed us that he spent months seeking to get his child support termination case heard by phone because he had no way to access a video proceeding. This seems like a sensible way to process cases for litigants who may not have video access and particularly where, as in this case, the issues in the court proceeding were uncontroverted and straightforward. Accordingly, the Family Court uniformly should conduct proceedings by phone where appropriate.[38] Indeed, the Court informed us that most unrepresented litigants now appear by telephone and are able to introduce evidence by email. The Microsoft Teams link that is currently sent to litigants includes a phone number to dial into proceedings.

VIII. PRO SE CHALLENGES

Under the best of circumstances, pro se parties in Family Court need significant help navigating the complex and intimidating maze of rules, regulations, statutes and case law governing access to the Family Court and disposition of each proceeding. When the pandemic hit New York City, these litigants suffered disproportionately when it came to their Family Court cases.

Pre-COVID, the Help Center, or pro se petition room, was the Family Court's lifeblood for unrepresented litigants. The Help Center seeks to provide individuals with the highest quality service in order to fulfill the public's right to fair and efficient justice. Although Court staff do not provide legal advice, they historically have provided various types of assistance to court users, including help filing petitions, motions, and other court documents. After the physical closure of the Family Court beginning in March 2020, unrepresented litigants were prevented from accessing the Help Center. That was a devastating blow to a large number of unrepresented litigants who have little or no legal sophistication and have difficulty filing papers without assistance. Throughout the pandemic the Family Court assigned staff to answer phones and emails from litigants about their cases, but we were universally told of the difficulty many unrepresented litigants had in getting through to the Court. As of the date of this report, the Family Court has resumed Help Center operations but only at reduced capacity.

As mentioned above in the context of orders of protection, the Family Court has relied heavily on already overburdened nonprofit organizations and 18-b panel members in each borough to provide assistance to unrepresented litigants. As heroic as these organizations have been during the pandemic, the absence of the Help Center as it existed pre-COVID continues to negatively impact unrepresented litigants.

On the positive side, OCA has facilitated the creation of Public Access Terminal Court Hubs housed in Family Justice Centers, which offer remote access to Family Court and were

[38]Telephonic appearances in child support cases were not unusual pre-COVID. The difference is that typically only one party appeared by phone (because, for example, they lived in another state) while the others, including their attorneys, appeared in person.

often staffed by Safe Horizon employees. Unrepresented litigants can seek to file petitions for orders of protection and obtain general information about Family Court cases during the limited windows when these hubs are open—most often for not more than two days per week and a few hours each day.[39] According to the Court, work is in progress to establish additional hubs in other locations. In addition, in each county, isolated space containing a court computer and staffed by a court clerk has been set aside to permit litigants who do not possess the requisite technology to attend their court appearances.

As discussed above, one of the greatest challenges pro se litigants experienced during the pandemic was the inability to get information about their cases. When finally calendaring cases after the long delays described above, the Family Court reached out by mail and often did not have current email or phone information, thus making it difficult or impossible for pro se litigants to receive notice of their scheduled virtual court proceedings. For the same reasons, the Court was often unable to reach litigants who failed to appear for scheduled hearings. For those pro se litigants who were able to submit nonemergency cases through EDDS, there have been delays of up to one year between the time a petition was submitted on EDDS and when the Family Court deemed that petition to be filed and a summons issued.[40] During that time, litigants received no information about the status of their submissions and had no access to the court system.

Even when a litigant was finally able to get a hearing, there was no meaningful way for that individual to obtain technical support to log into the remote courtroom or to receive assistance in uploading documents for the hearing. As a result of these technical difficulties and trouble getting through to the Court for assistance, practitioners report an increasing number of motions to recalendar cases. These issues have resulted in the denial of access to justice for innumerable pro se litigants in Family Court.

IX. HOW THE COURT IS DEALING WITH THE BACKLOG

We requested from OCA, but did not receive, detailed information on the backlog of filings in the New York City Family Court—including those cases that have been filed but not disposed of and those cases that have been submitted through EDDS but not yet filed. Therefore, we have not been able to quantify the actual number of backlogged cases. In June 2021, the Court explained in an email response to our inquiry that it was "difficult to quantify 'backlogged' cases." They continued, "the term 'backlogged' does not have a generally accepted definition. As you know, in Family Court normal proceedings in some cases can continue for

[39]In July 2021, Legal Information for Families Today (LIFT) piloted a remote technology site in its downtown Brooklyn office where pro se litigants can come to participate in their virtual hearings and trials in Family Court, download Court documents and upload them to the Court electronic delivery system, and receive remote assistance from LIFT's staff.

[40]For child support cases in particular, the date of filing is substantively important, as any support ordered or modified is retroactive to the date of filing.

several months. What we can offer in response to this question is the number of unfiled cases—11,120—plus the approximately 10,000 anticipated new child support filings."

At the time of this report, practitioners consistently report that delays in Family Court are considerably longer now than they were pre-COVID, which may be the best indication that the backlog of cases continues to present a real problem for litigants. Our interviews have indicated that the backlog includes cases that were filed pre-March 2020 that have been delayed, cases filed during the pandemic that are moving at different speeds, and a large number of "dangler" cases—those cases that have been submitted through EDDS or by mail but have not yet been deemed filed. Indeed, it has been a source of confusion among litigants that a submission could be something separate from a filing. Some practitioners informed us of documents getting lost or not being properly filed. As of the date of this report, it appears that the remaining dangler cases have been calendared.[41]

To address this backlog, in or about January 2021, OCA recruited approximately 100 volunteer Supreme Court Justices, many of whom are from matrimonial or criminal parts, to hear custody and visitation cases in all five boroughs in matters where there is no prior history between the parties. The Supreme Court justice is provided a Family Court link and is reliant entirely on Family Court resources and personnel. These justices went through a training program that included the administrative process, signing vouchers and other matters.

So far, the Supreme Court Justices have primarily been conferencing cases. Judge Ruiz reported to us that approximately 600 cases had been referred to Supreme Court justices in April and May 2021 and that the disposition rate was greater than 50%, with many cases resolved by referrals to court-based alternative dispute resolution programs. Judge Ruiz was optimistic that the Supreme Court project would expand and that more cases would be referred under the project. As of the date of this report, to our knowledge, this project has not expanded.

We appreciate that these case referrals have been made; however, to date, these judges have disposed of a relatively small number of cases, mostly through the settlement of cases already ripe for settlement and dismissal for failure to appear. Moreover, it is our understanding that the Supreme Court justices are only handling Family Court matters one day per week and are using Family Court clerks and other resources (as opposed to using Supreme Court resources), thereby taxing the already under-resourced Family Court. In short, although a good step, this small initiative has not adequately addressed the current backlog of cases.

Compounding the shortage of resources appears to be the resistance among some Supreme Court justices to be associated with the Family Court because of a perceived lack of

[41] According to practitioners, a factor contributing to the current delay in Family Court proceedings is the lack of a sufficient number of 18-b lawyers as a result of resignations during the pandemic. In the absence of available appointed counsel, a growing number of cases have had to be adjourned. The resignations should not come as a surprise given the added burdens of the pandemic combined with the fact that 18-b lawyers have not received a pay increase in 17 years.

prestige.[42] This reflects deeper issues regarding the perception, even among jurists, of the Family Court as a less important component of the state's system of justice. The same is reflected in the legislature's recent measure to add Supreme Court seats in 11 judicial districts, but not a single New York City Family Court judgeship. This resulted in a statement from the court system's spokesperson acknowledging that "additional Family Court Judges would have been more helpful as Family Court is facing greater challenges than any other court and could use the resources."[43]

Finally, we must note that on January 7, 2022, just days before this report was issued, OCA took steps which could significantly exacerbate the central concerns we address here. It announced the transfer of six Civil Court Judges, who had been assigned to Family Court, out of Family Court, to be replaced by one, or perhaps, two judges. It has not, however, yet determined how the transferred judges' caseloads will be absorbed. Four of those Civil Court Judges had been sitting in Bronx Family Court, where it is our understanding they were the only jurists assigned to hear custody, visitation and family offense matters; the other two had been sitting in Brooklyn, where they too had been hearing such cases.[44] It is our understanding that as a result, nearly 4,500 cases will have to be transferred to other sitting jurists who, as we have detailed, preside over dockets that are already overwhelming.

No rationale for these transfers has been shared with the public.[45] We are particularly troubled that this action is being undertaken notwithstanding OCA's previous acknowledgment of the need to ameliorate the impact of such transfers, which were thoroughly highlighted in our prior report.[46]

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[42] Tarinelli, Ryan, "Power Struggle Continues Over Return of Older NY Judges as System Announces Assignment Plan." *New York Law Journal*, May 21, 2021, https://www.law.com/newyorklawjournal/2021/05/21/power-struggle-continues-over-return-of-older-ny-judges-as-system-announces-assignment-plan/.

[43]Tarinelli, Ryan, "State Lawmakers Vote to Add More Judicial Seats as Session Ends." *New York Law Journal*, June 21, 2021, https://www.law.com/newyorklawjournal/2021/06/11/state-lawmakers-add-more-judicial-seats-as-sessionends/?kw=State%20Lawmakers%20Add%20More%20Judicial%20Seats%20as%20Session%20Ends.

[44]Memorandum from Family Court Administrative Judge Anne-Marie Jolly, dated January 7, 2022. We understand that one newly elected Civil Court Judge will be assigned to New York County Family Court and that a newly appointed Family Court Judge may be assigned to Family Courts.

[45]We have requested additional information from the Court concerning these transfers but did not receive anything in time to include here.

[46]The Family Court Judicial Appointment and Assignment Process (December 15, 2020), available at https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/the-family-court-judicial-appointment-and-assignment-process.

The work group is profoundly concerned with the significant disruption and delay these transfers will likely cause for the poor and low-income families of color who are before the Family Court, who are already the most profoundly and detrimentally impacted by the pandemic, and whose cases have already been subject to long delays.

X. CONSEQUENCES IN PARTICULAR CASES

As described earlier in this report, the tremendous backlog of cases in the Family Court is made up primarily of custody, visitation, guardianship, adoption, and child support cases. The Family Court also continues to suffer from a severe shortage of court personnel. Scores of would-be litigants have been cut off from the Family Court without access to a court-appointed lawyer. Moreover, the Family Court Help Center is now operating at only limited capacity, further hobbling pro se litigants' ability to proceed on their own.

Child Support: During a meeting with several Family Court judges early in the pandemic, one agency was told child support would never be considered an emergency. Later, practitioners reported that in response to zealous and creative advocacy, the Court heard a small handful of child support cases that were deemed to be "emergency" cases. However, the vast majority of child support cases filed before and during the pandemic were stayed for an extended period of time.

Some lawyers invoked the provision in Article 8 that provides for an award of child support in connection with an order of protection only to find that many jurists were reluctant to make such awards.

Without child or spousal support for months on end, many families have experienced greater food and housing insecurity and dependence on public assistance. Practitioners also reported that some victims of domestic violence felt compelled to remain in abusive or unsafe homes due to the lack of child support for their families. Financial support is a critical factor in enabling victims to leave their abusers: A victim is more likely to stay with or return to an abuser if they are unable to meet their and their children's basic needs. Indeed, financial dependence is one of the most powerful methods of keeping a victim of intimate partner violence trapped in an abusive relationship, and it deeply diminishes the victim's ability to stay safe after leaving an abusive partner. Moreover, limiting access to the Family Court increases the chance that a child will reside in an abusive home, which can have devastating long-term effects. In short, for many litigants, support denied over an extended period of time is anything but nonessential.[47]

Child Custody: For families litigating child custody matters, the months of inaction have prevented parents from seeing children for extended periods of time. This separation is excruciating for parents and children alike. Determining custody and visitation is not a

[47]According to a recent report published by Her Justice, which examines New York City Child support proceedings in detail and provides a host of original data, "the child support system plays a critical role in determining economic justice for single mothers and children living in poverty." https://herjustice.org/childsupportpolicyreport/.

dispassionate legal matter for families seeking help from the Family Court—it is often their last recourse when they are being denied access to their children or believe their children are being mistreated by the other caregiver. In addition to the personal burden, lost time with children may affect the Court's ultimate decision in a given case, which is likely to be influenced to some degree by the status quo. Moreover, lack of access to the Court during the pandemic put some litigants in the impossible position of having to choose between following a prior court order or making a sound public health decision.

Thus, characterizing virtually all custody and visitation proceedings as nonemergency matters, causing them to be sidelined for so long, continues to take a grave human toll.

Termination of Parental Rights and Adoptions: Another so-called nonemergency category involves adoption proceedings, which were stayed during the pandemic and have only begun to be calendared with any frequency since the spring of 2021. This standstill and resulting backlog have undermined the health and safety of children who are being deprived of a final, timely decision on their adoption. It is also important to note that pre-adoptive parents have no parental rights, so the lack of access to the Family Court gravely affected them as well.

One practitioner described a case that was scheduled for a dispositional hearing in a termination of parental rights proceeding in March of 2020 for a seven-year-old who had spent most of their life in foster care as a result of their mother's mental illness. The matter was delayed an entire year. Because of the failure of the Court to proceed, the child was subjected to numerous virtual visits in which their mother cursed at them, instructed them on what to say to their attorney and repeatedly hung up on them during phone conversations. In May 2021, two days after a virtual visit where the mother threatened the child, the child was psychiatrically hospitalized with suicidal ideation. In addition, despite struggling in school, the child's mother repeatedly refused to sign requests for a special education evaluation, subjecting the child to an entire year of "virtual school" in an inappropriate educational setting.

The overall effect of this extended lack of access goes beyond the thousands of individuals denied their day in court; it now threatens institutional damage to the Family Court itself. Without the ability to proceed in court, some have engaged in self-help or were on the other side of such an effort and now may be even more reluctant to follow the law or have their disputes decided by a judge as the doors finally reopen. Practitioners have told us that many people are losing respect for an institution that became unavailable to them during a time when its help was most needed.

XI. LACK OF ACCESS TO FAMILY COURT NEGATIVELY AFFECTS REAL LIVES

The effect of the Family Court's closure to a significant number of litigants involving many categories of proceedings has had a profoundly negative impact on New York City's families, as demonstrated by the client stories below:

1. Kings County, New York

A. O. is facing the potential termination of her parental rights to her seven-year-old daughter, Amora. The termination of parental rights proceeding in her case began prior to the

pandemic, with the agency's submission of case records making up its direct case. The continued trial was initially adjourned as the result of the pandemic and then proceeded virtually over Ms. O.'s objection. Ms. O.'s main witness is her grandmother, Maria G., who does not have reliable internet or a computer or tablet in her home. Ms. O's counsel arranged for Ms. G. to come to her office to participate in the proceeding. However, once Ms. G. arrived, they discovered that the Wi-Fi at counsel's office was not working, forcing Ms. O's attorney to participate in the trial via her phone. On a subsequent court date, Ms. G. arranged to return to counsel's office but had to cancel when another grandchild's school closed because of COVID. As a result, Ms. G. had to continue her testimony from her home on her personal phone, using her cellular connection. The judge frequently interrupted her testimony to admonish Ms. G. for her inability to hold the phone steady, her bad lighting, and the fact that the judge was having difficulty hearing her—none of which was within Ms. G.'s control. Counsel for Ms. O. attempted to make a record regarding the multiple technological issues that had occurred throughout the course of the proceeding; however, the judge became upset and attempted to prevent her from doing so.

2. Bronx County, New York

A.C. is the father of a two-and-a-half-year-old son. For the two years following the birth of his son, the child resided with A.C. and the mother had little involvement in his life. Things changed dramatically when A.C.'s mother refused to return the child to A.C. after a visit. Shortly thereafter, A.C. was arrested and a criminal order of protection was entered against him that prevented him from contacting his son, subject to modification by a subsequent order of visitation from the Family Court. A.C. was unable to access the Family Court to obtain a temporary visitation order because the Family Court did not recognize this as an emergency matter. He was not able to file a petition until eight months later, when he obtained pro bono counsel. With counsel, A.C. was able to obtain a shared custody order. A.C. established that the denial of visitation was detrimental to his son and restarted his relationship with him. Eight months in the life of a two-year-old constitutes many developmental milestones that the child experienced without his father.

3. Bronx County, New York

J.A. has three children, one of whom has significant special needs. She has spent at least seven years in Family Court seeking to enforce significant child support arrears. She submitted her most recent petition on October 27, 2020. The Family Court did not calendar the case until late July 2021, and the willfulness hearing was not concluded until September 23, 2021, just a little less than one year after submission. As a result, J.A. has fallen into debt, endured a housing eviction case, and has been unable to provide adequately for the basic needs of her children.

4. Kings County, New York

During her marriage, a client was strangled, head-butted, kicked, slapped, and pushed by her husband. Many incidents occurred while the client was pregnant. She is an immigrant and her husband threatened to call immigration to have her deported if she left him and to leave her on the street with their two young children and with no support. The client knew the Court was not accepting child support cases and feared that she would not be able to quickly get child

support during the pandemic. Thus, she stayed in an abusive, unsafe situation. She tried twice to separate from her husband during the pandemic, but he convinced her to reconcile, repeatedly telling her that she could not support the children without him. After finding counsel months later, she filed for an order of protection in Family Court. In addition to asking that the Court order the husband to stay away from her, the attorney also requested, and received, a temporary child support order based on the children's needs under Article 8. Because of her order of protection and the support award, the client felt both physically and financially safe to separate from her abuser.

5. Kings County, New York

On May 22, 2020, ACS filed a petition alleging that Mr. J. neglected his one-year-old son and his son's two half siblings. The petition alleged that Mr. J. knew or should have known of the mother's mental illness and did not arrange emergency treatment for her. The Kings County Family Court removed the children, placing one of them with her nonrespondent father and the other two, including Mr. J.'s son, in non-kinship foster care. On June 9, 2020, Mr. J. requested the return of his son to his care, or in the alternative, an immediate hearing pursuant to Family Court Act ("FCA") section 1028. All the parties except the children's mother submitted papers stipulating to certain facts. The attorney for the child supported his release to Mr. J. Over Mr. J.'s objection, the Court granted the children's mother an extension until June 26, 2020, to submit papers. Despite numerous requests by Mr. J.'s counsel that the Court schedule an immediate hearing, the Court took no action until July 8, 2020, at which time it issued a decision denying Mr. J.'s 1028 application for the return of the children without a hearing "in light of the Covid-19 response." Mr. J. appealed the order and filed an emergency motion seeking remittal to the Family Court for an immediate hearing. On July 17, 2020, the Appellate Division Second Department granted the motion and remanded the case for an immediate 1028 hearing. The Family Court began the hearing on July 23, then adjourned to August 3 because the judge was on vacation. On August 3, the Court heard one hour of testimony and then adjourned the hearing over Mr. J.'s objection to August 13. On August 6, 2020, Mr. J. filed a second emergency motion in the Second Department seeking to expedite the hearing. The Second Department issued an interim order directing the Family Court to continue the 1028 hearing expeditiously and without adjournment as required by the Family Court Act. The court continued the hearing on August 11, 12, and 13, and issued a decision on August 17 granting his application and releasing his son to his care—more than five weeks after Mr. J. requested his son's return pursuant to FCA section 1028.

6. New York County, New York

In January 2020, C.C. commenced a violation of support petition on behalf of her 14-year-old son who had been placed on administrative leave from his therapeutic boarding school due to his father's failure to pay his tuition pursuant to a court order. The Support Magistrate issued an undertaking for the next tuition payment that was due March 1, 2020. Respondent failed to pay but was granted an extension until April 1, 2020. The pandemic hit in March, and the courts were closed. The son's school closed March 17, 2020. As the date to reopen was rapidly approaching, the school increased their efforts to collect the tuition and the mother ramped up her efforts to get help from the Court. She was repeatedly told by her lawyers and the attorney for her daughter in a concurrent custody matter that the Court would only hear

emergency cases. The May 15th reopening of school date came and went, and her son was not allowed back to school. Having been removed from his educational and support network, his mental health deteriorated rapidly and his behavior grew more erratic and he became aggressive and socially withdrawn. C.C.'s attempts to file violation petitions and motions were met with silence. She did not hear from the Court regarding the support violation until October 2020, by which point it was too late to reenroll her son in his therapeutic boarding school.

7. New York County, New York

A.B., a father, submitted a petition through EDDS in August 2020 to terminate his support obligation because his son was living with him. He received no response. In January 2021, he brought an Order to Show Cause because his license was being threatened for failure to pay child support. A.B. received his first appearance by telephone on March 10th. EDDS was very difficult for him to navigate, and he did not find useful information on the Court's website. He had no idea what an Order to Show Cause was before speaking with a volunteer attorney, and up until that point, he had found the experience to be "horrible." He felt the Support Magistrate refused to let him speak and treated him "like a child." Even for such a simple request, it took almost a year to get relief and only after coming close to having his license suspended.

XII. RECOMMENDATIONS

The main takeaway from this report should be the urgent need to modernize the Family Court and bring it up to at least the level of the state's trial court of general jurisdiction, the Supreme Court. The lack of electronic filing was crippling during the pandemic but even in normal times, it is still unacceptable for litigants not to have immediate access to documents and court orders. During the pandemic, the lack of effective remote access to court proceedings, including access to a Help Center and an effective website, meant that many litigants were shut out of Court, facing lengthy delays without knowing the status of court operations. But this lack of technology, adequate staffing and uniform rules were all problems that existed for decades prior to the COVID-19 pandemic.

The emergence, however uneven, of remote technology and a growing recognition that the Family Court is under-resourced and that its in-person service model does not fit today's world should be a source of hope. The Court is now in a position, as it continues to recover from the pandemic, to address long-standing and deep-seated institutional challenges. The recommendations that follow are meant to address these challenges and should be embraced with urgency for two main reasons. First, the current backlog of cases requires immediate attention or else the aftereffects of the shutdown could be felt for years to come. Second, recent events have underscored the acute need to advance racial and social equity in our court system, a need underscored by the findings in Secretary Johnson's report. The Family Court, in particular, is truly a "People's Court," primarily serving unrepresented litigants, lower-income families and communities of color. Accordingly, these recommendations will not simply make the system more efficient but are essential for equal access to justice.

It should be further noted what these recommendations do not address. We recognize that many challenges in Family Court are the byproduct of New York's antiquated system of 11 separate trial courts and an overall lack of resources, including, among other things, an

insufficient number of judges. Accordingly, the Work Group urges legislative and executive action to address the underlying inequities in the court system. The Fund for Modern Courts is spearheading a coalition of organizations in support of the Chief Judge's proposal to simplify the courts through an amendment to the New York State Constitution.[48] The recommendations that follow, however, are intended to identify specific actions the Court can take immediately on its own to advance the rule of law for all families and children.

We recommend:

1) The Family Court should create a **uniform system of filing, processing and tracking cases**. In the absence of such a system, litigants are often left in the dark about their cases and often have to submit papers in person. Even represented litigants have been disadvantaged to the extent their counsel are among the many who do not have access to UCMS. The Family Court should adopt NYSCEF, which is used effectively in the Supreme Court and other trial courts across the state. Although e-filing would be on a voluntary basis in Family Court (which is the fullest extent that current law allows), it would be a dramatic improvement over the antiquated and inadequate system in place now. Moreover, until such a modern system is in place, the Court should grant UCMS access to ALL attorneys in Family Court, even to the extent the legal service they are providing is limited in scope. To the extent practicable and safe, sufficient Court staff should be made available in person and remotely to help unrepresented litigants file documents.

2) The Family Court should provide the public with **regular statistical reporting**, by court Term (13 of them in one calendar year), on all Family Court proceedings, including, among other things, case totals, filings, dispositions, and some approximation of current delays. Greater transparency and accountability will better serve the public by informing it of the Family Court's current operations and what to expect as a litigant and providing a critical foundation for informed, targeted, and meaningful reform.

3) The Family Court needs an **effective, user-friendly website** (including mobile website) that comprehensively informs the public of current court operations and provides guidance to unrepresented litigants. The website should be in multiple languages, be kept up to date, and should include forms with easy-to-comprehend instructional guides.

4) Given that remote proceedings are likely here to stay, the Family Court should **enable litigants without access to adequate technology to participate in remote proceedings** by providing access to the appropriate technology. In addition, the Court should provide accommodations for litigants without reliable space or privacy to remotely access their attorneys and the Court. We appreciate that OCA facilitated the creation of Public Access Terminal Court Hubs in Family Justice Centers and have made computer terminals available to unrepresented litigants inside courthouses. We strongly encourage the expansion of these efforts. This will require greater coordination with nonprofit organizations, including the Court's acceptance of donations of technology to be implemented in a fashion consistent with ethics rules and cybersecurity. Specially trained Court staff should be available to help litigants resolve technical

[48] https://simplifynycourts.org/; https://www.law.com/newyorklawjournal/2019/03/01/ny-lawmakers-see-court-reform-assigned-counsel-rate-hike-with-favor/.

issues, and litigants should be given the option to appear by telephone in all videoconference proceedings.

5) The Family Court should adopt a **communications strategy** to ensure litigants and attorneys are kept up to date on the status of their cases as well as the status of Court operations generally. This would be accomplished through the Court website, a staffed telephone line, as well as text messaging or other forms of direct communication. The New York City Family Court Administration currently conducts meetings with certain institutional providers, attorneys, and other "stakeholders" in order to involve them in policy discussions and pass along information of Court improvements and procedures. In order to communicate more effectively with the broader public, these meetings should include a wider range of stakeholders and the substance of the meetings should be made available to the public. In the same vein, the Court should develop additional avenues of communication to reach unrepresented litigants. All public communications should be available in multiple languages, not merely English and Spanish.

6) The Family Court should provide **greatly enhanced training** for jurists in case management strategies and techniques in order to better serve the public, smoothly process cases, and address the backlog.

7) The Family Court should **assess its needs with respect to remote proceedings** to ensure that it purchases and utilizes up-to-date technology best suited for courtroom protocols. The Court must then implement and provide competent and coherent training in the use of this technology to its jurists and non-judicial staff and provide comprehensive IT backup and support staff.

8) To address the current backlog of cases and alleviate substantial delay, judges, staff and other resources should be moved from other trial courts as necessary and appropriate. Such **transfer of resources** must be implemented within a coherent and efficient framework. (See this Work Group's prior report, which provides background and includes recommendations concerning the temporary assignment of judges to the Family Court from other courts).[49]

9) Especially with the advent of virtual proceedings and other innovations, the Family Court should **enact uniform procedural rules**. For example, the rules should specify the methods by which litigants introduce various forms of evidence in virtual and in-person proceedings. In addition, the rules should clarify when virtual proceedings are available, including broad acceptance of proceedings entirely by phone, so that there is greater consistency. As the Family Court continues to recover from the pandemic, the Court administration should engage with

[49]The Work Group's earlier report details how the Family Court—which does not have a sufficient number of judges—relies by necessity on the assignment of "acting" judges on temporary leave from other courts. Our recommendations (published before the pandemic in December 2020) were intended to mitigate the delay and disruption resulting from judicial vacancies and transfers. *See* The Family Court Judicial Appointment and Assignment Process (December 15, 2020), available at https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/the-family-court-judicial-appointment-and-assignment-process.

stakeholders and experts on a plan for the complete reopening of the Family Court along with any necessary safety protocols.

Work Group members, and those we interviewed, are acutely aware that the COVID-19 pandemic has presented remarkable challenges for all organizations serving New Yorkers and that the transition to remote work and the resulting embrace of technology have been unprecedented in scope. The new way forward offers the opportunity to improve our court system for the most vulnerable in society by applying what we have learned during this crisis. We are eager to work closely with the Family Court to ensure that we leverage this moment to reimagine how the Court can better ensure equal access to justice for all New Yorkers.

XIII. ACKNOWLEDGMENTS

The Work Group wishes to thank the Chief Administrative Judge of the Courts of New York State, the Hon. Lawrence K. Marks, for his commitment to OCA's cooperation with this effort, and former Deputy Chief Administrative Judge of the New York City Courts, the Hon. George J. Silver, and former Administrative Judge of the New York City Family Court, the Hon. Jeanette Ruiz, for meeting and sharing information with us. The Work Group offers its profound appreciation to all the advocates, practitioners, and litigants who generously shared their frontline and institutional experience and insights. In particular, we wish to acknowledge significant contributions to the Report from Her Justice, The Children's Law Center, JCCA, Legal Information for Families Today (LIFT), New York Legal Assistance Group (NYLAG), Sanctuary for Families, and Safe Horizon. The Work Group also wishes to acknowledge the Hon. Daniel Turbow and Glenn Metsch-Ampel, co-chairs of the first phase of this group's efforts who, along with the Hon. Sidney Gribetz, worked closely with the current co-chairs in the preparation of this report. The Work Group benefited enormously from the invaluable substantive input and keen editing of Krusheeta Patel, John Prusakowski, and Lucy Wolf, Associates at Proskauer, Zachary Hennessee, Associate at Orrick, and Hanan Nouira, Fordham University School of Law LL.M. '21.

January 2022

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Previously Issued City Bar Reports of Note/Relevance

July 20, 2021, Letter from Council on Children (Dawne A. Mitchell, Chair) and Family Court and Family Law Committee (Michelle Burrell, Chair) to Judge Ruiz Regarding Equitable Access

to Justice in the NYC Family Courts, https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/letter-to-judge-ruiz.

June 15, 2021, Letter from Working Group on Racial Equity in New York State Courts (Vidya Pappachan, Chair) to the Franklin H. Williams Judicial Commission Regarding their May 19, 2021, Meeting with New York City Family Court Stakeholders, https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/racial-equity-in-courts-williams-commission-meeting.

June 12, 2021, Letter from Council on Children, Children and the Law Committee (Melissa J. Friedman, Chair) and Family Court and Family Law Committee to Court Officials Requesting COVID-19 Point Person for New York City Family Court, https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/covid-19-point-person-for-new-york-city-family-court.

April 9, 2021, Report from Domestic Violence Committee (Amanda M. Beltz, Chair): Recommendations for New York City Virtual Family Court Proceedings, With Particular Focus on Matters Involving Litigants Who Are Survivors of Abuse, https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/comments-on-virtual-trial-rules-domestic-violence-cases.

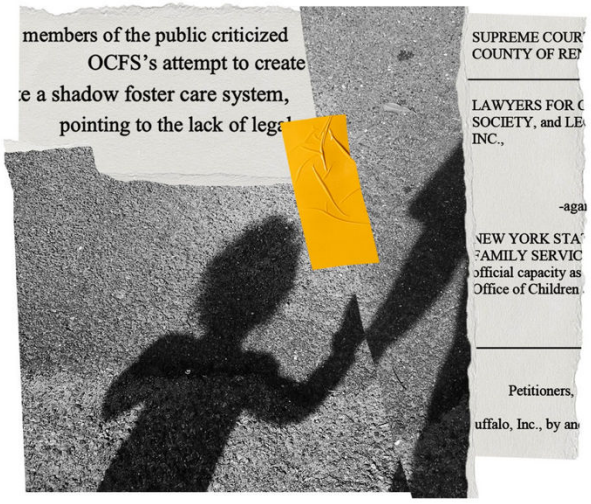
December 15, 2020, Report from Multi-Committee Working Group on The Family Court Judicial Appointment and Assignment Process (Glenn Metsch-Ampel and Hon. Daniel Turbow (ret.), Co-Chairs), https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/the-family-court-judicial-appointment-and-assignment-process.

MEDIA CLIPS FEATURING LAWYERS FOR CHILDREN

PROPUBLICA
Investigative Journalism in the Public Interest

Child Advocates Sue New York Over Proposed Shadow Foster Care System

by Lizzie Presser April 11, 2022 12 p.m. EDT



Link: https://www.propublica.org/article/child-advocates-sue-new-york-over-proposed-shadow-foster-care-system

Spurred by a ProPublica investigation, three organizations that represent children in foster care filed a lawsuit last week in New York State Supreme Court against the state's Office of Children and Family Services over new regulations that establish a "Host Family Homes" program, charging that they create a shadow system that will deprive children and parents of their rights.

The ProPublica story, published in collaboration with The New York Times Magazine in December, documented how, across the country, caseworkers are diverting children from formal foster care into what some scholars call "shadow foster care," in which the legal protections of the formal system disappear. Parents who are investigated for allegedly mistreating their children agree, sometimes under coercion, to place their child with a relative, friend or volunteer family as an alternative to government foster care. Child welfare departments then often skirt their legal duty to keep children at home or thoroughly monitor the informal arrangements; the shadow system also strips families of access to free lawyers, judicial oversight and court-mandated services to attempt to reunite families.

The New York state regulations, which were adopted at the end of last year, allow placements in the homes of strangers without any court involvement, in so-called voluntary arrangements. The state describes the program as "temporarily supporting a family when a parent has made a determination that he/she is unable to care for their child" and has made an informed agreement "to allow a host family to care for his or her child as a way to avert the need for more child welfare intervention." Similar to foster care, the rules call for monthly check-ins by the agencies that the state authorizes to perform this work; but unlike foster care, placements continue without oversight from a court.

New York statute already provides for formal voluntary placements that include safeguards that hold the state to account for the decision to take a child into a placement, for the care of the child while in the placement and for the services offered to help the family reunite. This lawsuit alleges that the host homes program subverts existing law by failing to provide these same protections.

Under the new rules, there is no requirement that the agency first provide preventive services, no requirement to attempt to place a child with kin, no requirement to receive court approval of the placement, no appointment of counsel and no mandate to provide services for reunification. Advocates who oppose the regulations say that they create a pathway for the state to avoid paying for the support that it does in the formal system to help stabilize families, like assistance for housing and subsidized child care.

The host homes program in New York came about after a faith-based organization, Safe Families for Children, approached the state. The volunteer-based group, which was not featured in the ProPublica story, has chapters in the majority of U.S. states and offers Christian "host homes" to struggling parents as an alternative to the child welfare system. Safe Families for Children says it has helped more than 25,000 children across the country with a 95% reunification rate.

But a 2021 report on Safe Families for Children in Illinois, co-authored by Mark F. Testa, a professor emeritus of social work at the University of North Carolina, found that some caseworkers there were using it as a "way-station for separating children from their parents." He found that if left uncorrected, the program could have the opposite effect to its intended aim to preserve family integrity.

Safe Families for Children did not respond to requests for comment. In 2020, David Anderson, its founder and executive director, told Michael Fitzgerald at The Imprint: "The idea is, how do you build this as a social movement versus just a program? It's built on the idea of trying to make the safety and protection of our children all of our responsibility, not just the child welfare system." The organization did not have a way to track how the children in the program fared on outcomes, like educational progress or emotional well-being, according to The Imprint.

The New York rules do not allow a host home to take in a family member if that family is subject to an open child protective services investigation. But Josh Gupta-Kagan, a University of South Carolina Law School professor and the author of "America's Hidden Foster Care System," has documented how hidden foster care can occur after an investigation is closed. The rules permit host families to keep children for up to six months, with the possibility of additional six-

month extensions that could go on indefinitely. It also puts no limitation on out-of-state placements.

“The rights of parents are clearly preserved in the regulations in multiple provisions,” Laura Galt, the director of the New York City chapter of Safe Families for Children, told ProPublica. The New York regulations made no mention of funding for host home agencies and the Office of Children and Family Services declined to comment for this article, citing the pending legislation.

Lawyers for Children, The Legal Aid Society of New York and the Legal Aid Bureau of Buffalo Inc., the organizations that filed the lawsuit, charge that the program is unlawful. In public comments, attorneys, child-welfare experts and judges voiced concerns over the proposed regulations. Many questioned the “voluntary” nature of these placements. Diane Redleaf, an Illinois-based lawyer who coined the term “shadow foster care,” wrote that the word “‘voluntary’ carries little weight whenever the child protection system is either directly or indirectly involved in a family.”

ProPublica’s story exposed how children who had been diverted into shadow foster care in Cherokee County, North Carolina, had suffered from extreme consequences, like homelessness and alleged sexual abuse. Without any court oversight, parents struggled to appeal the informal placements and reunify with their children.

“The ProPublica article made it abundantly clear for us how problematic these regulations are and the actual impact that it will have on individual children,” said Betsy Kramer, special litigation director at Lawyers for Children. “For us, it was all sort of theoretical before, and this article made it very real.”

Kramer believes that if the lawsuit is successful, it could have broader implications for Safe Families for Children chapters across the country and other shadow foster care practices that bypass the statutory framework for voluntary placements.

“This program will separate families without any assistance to prevent the separation or reduce the length of the separation and without any of the protections in place to make sure the separation isn’t traumatic to the child.”

New York City will stop collecting Social Security money from children in foster care

March 9, 2022 6:00 AM ET
Heard on All Things Considered

Joseph Shapiro

Link to listen: https://www.npr.org/2022/03/09/1084620883/new-york-city-will-stop-collecting-social-security-money-from-children-in-foster

Child welfare officials in New York City say they will stop collecting all of the Social Security checks from children in foster care and using that money to cover the costs of their care, altering a practice criticized by advocates for children. And those advocates say they hope New York's action becomes a model for agencies across the country.

Jess Dannhauser, commissioner of the Administration for Children's Services, New York City's child protection agency, says soon the Social Security money will be placed in savings accounts that children can access when they leave foster care–either when they return to family, are adopted or age-out of foster care between ages 18 and 24.

"This is their money," Dannhauser says, "and they deserve to use it as they see fit."

NPR and The Marshall Project reported last year on the common practice of taking the Social Security checks of foster youth. Child welfare agencies, in 49 states and the District of Columbia, take the benefit checks.

Some agencies, like in New York City, have staff, or even hire private companies, to figure out which kids to sign up for that revenue, then cash the checks, often without telling the child in foster care or their family.

Child welfare agencies justify the practice as a way to reimburse themselves for the food, shelter and other things that foster care provides. But other children in foster care are not expected to pay for this service–which is required by state and federal laws–with their own resources.

Children get Social Security checks because they are entitled to them, by law, because they or a parent are disabled or because a parent has died. It's estimated that 10 to 20 percent of children in foster care are eligible for these benefits.

Melanie Perez was 12 years old when she went into foster care. She left foster care once, when she was 18, to try to make it on her own. But returned when she was 19.

"For me, I don't have my parent. My Mom (is) deceased," she said. "When I left here at 18, I didn't have a penny in my bag."

Not having money, especially in a place as expensive as New York City, is one reason she returned to foster care, Perez said.

Now 21 and the mother of a one-year-old daughter, she knows that eventually she'll need to leave foster care for good. In New York City, she can stay with her daughter until she finds a stable place to live.

A few years ago, when Perez was first leaving foster care, she was told that, because of her various disabilities, Social Security had been sending her a monthly benefit check. It totaled several hundred dollars a month.

But the city foster care agency was cashing it.

"It's not OK for them to take something that is not theirs," said Perez.

"I want to use the money to take care of my child," she says of her benefits check. "So it will help me be independent. It will help me pay some of my college tuitions, hopefully."

"This is their money," says Jess Dannhauser, commissioner of the New York City Administration for Children's Services, of foster children's social security benefits. "And they deserve to use it as they see fit."

Dannhauser says that's exactly why his agency is changing its policy. This summer, it will start putting those Social Security checks into savings accounts for the youth.

Dannhauser says the agency will teach youth in foster care how to save. The money then can be used, he says, to pay for an apartment, for college or technical school or for other things someone leaving foster care needs to succeed. "Those resources can mean the difference between a really rocky start to that transition or one that they really have a foundation to launch from," he said.

Because they deal with poverty, interrupted education and trauma, children in foster care face long odds when they leave care. They have elevated rates of unemployment, homelessness and time in jail or prison. By one estimate, only 3 to 4 percent will graduate from a four-year college.

After the NPR and Marshall Project stories last year, advocates for children–including Lawyers for Children, which represents Perez–tried to find out if New York City was among the places that took Social Security benefits from children in foster care. They discovered that ACS had employees who signed up youth for those checks – but that the agency was considering a change to that practice.

Dannhauser took over ACS in January, appointed by New York's new mayor, Eric Adams. The policy change on Social Security was announced by his predecessor, David Hansell, as he left

office in late December. Hansell called setting aside those Social Security benefits "the right thing to do."

For a child who gets benefits because they've been orphaned, the Social Security "survivors benefits" that get set aside will add up to several thousand dollars a year.

For a child who is disabled or has a disabled parent, the plan is to put aside two thousand dollars. That's the federal "asset limit" for someone who receives those Social Security benefits, called Supplemental Security Income (SSI)

Unlike SSI benefits, there is no limit on how much a child can keep if they receive benefits because a parent has died.

Amy Harfeld, national policy director for the Children's Advocacy Institute, says there are ways New York could set up special accounts and save more than the two thousand dollars of SSI benefits. It takes time and staff and legal work, though.

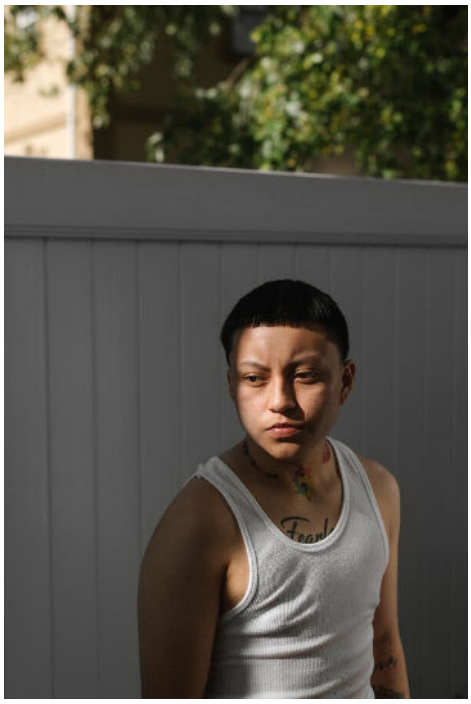
Maryland is the one state that currently puts some of that Social Security money into savings accounts–starting when a foster youth is 14. It also sets up accounts so that more than $2,000 can be saved.

Still, Harfeld says New York City's move is ground-breaking and one that she hopes other state, county and city welfare agencies will follow. "What New York City is doing is courageous," she argues, "because they've basically said: We have been doing this thing that is unethical and that doesn't serve the kids that we are the legal parents of. And so even though we've become accustomed to taking this money, it's not the right thing to do. And we're going to stop doing it."

In Philadelphia, City Councilmember Helen Gym is expected to introduce legislation this month to stop the practice, after the Philadelphia Inquirer reported in December that the city took $5 million in benefits from children in foster care between 2016 to 2020.

Currently, there is legislation pending in Nebraska, Texas, Minnesota and Illinois to stop taking Social Security benefit checks from children in foster care.

The New York Times



Jonathan DeJesus, 21, who is transgender, stayed in a residential treatment center for four years

What Happens to Some L.G.B.T.Q. Teens When Their Parents Reject Them

Over a third of young people in foster care in New York City identify as L.G.B.T.Q. and are struggling to find the support they need, according to a new survey.

By Amanda Rosa

Published Nov. 11, 2020 Updated Feb. 25, 2021

A teenage girl from Brooklyn bounced to four foster homes before she trusted a family enough to come out as bisexual. In Queens, a 21-year-old transgender man said he no longer spoke to his parents.

Another teenager, who is transgender, remembered the day he climbed to the roof of his apartment building in Queens and contemplated jumping to his death. Soon after, he was placed into a foster home.

Some advocacy groups have long believed that gay, bisexual and transgender teenagers are overrepresented in the city's foster care system, and that many struggle to find support in it and at home. A new survey has confirmed that impression: It found that more than a third of New York City's young people in foster care identify as L.G.B.T.Q.

The survey, published on Tuesday by the Administration for Children's Services, the city's child welfare agency, revealed disparities between the L.G.B.T.Q. youths and their peers in foster care. The young people who identify as L.G.B.T.Q. are placed more often in group homes or residential care, instead of family-based homes. They also are more likely to report experiencing homelessness, negative interactions with the police, and feelings of depression and hopelessness.

The agency said it had used the survey's findings to develop a plan to decrease the number of L.G.B.T.Q. youths in the system, increase placements with relatives and foster families, and improve the young people's overall well-being. In New York City, children can stay in foster care into adulthood, transitioning once they find stable housing.

"Without that data, in a sense, we're doing program and policy planning in the dark," said David Hansell, the agency's commissioner. "We can only do good planning to meet the needs of youth in foster care if we really understand what those needs are."

For years, foster care agencies in New York City have lacked the data to assess L.G.B.T.Q. youths' needs or analyze their own shortcomings. Nationwide data on L.G.B.T.Q. teenagers in foster care is scarce.

While there is no federal data for comparison, the Annie E. Casey Foundation, a philanthropy for underprivileged children, has found that about 24 percent of young people being served by a foster care initiative it has in 17 states identify as L.G.B.T.Q.

The New York City survey is "a very targeted focus on a population that we usually don't see in child welfare," said Sandra Gasca-Gonzalez, vice president of the Annie E. Casey Foundation's Center for Systems Innovation.

Theo Sandfort, a professor at the Columbia University Vagelos College of Physicians and Surgeons, analyzed the findings of the telephone survey, which was completed in late 2019. People ages 13 to 20 who were in foster care answered questions about their gender, sexual orientation, demographics, experiences in the system and well-being.

Nearly 2,400 people were contacted, and 659 responded. About 34 percent of the respondents said they were L.G.B.T.Q.

While some children are placed into foster care because of abuse, neglect or poverty, many L.G.B.T.Q. teenagers enter the system after their families reject them.

Jonathan DeJesus, the 21-year-old man who said he no longer speaks to his parents, dreams of becoming a public speaker and an advocate for young people like him. Mr. DeJesus said he was first placed in foster care when he was 12, after experiencing domestic violence at home. Despite family therapy, friction continued once he identified as a lesbian.

“I started to dress masculine and everything, so it was just definitely out of the question for them,” he said, referring to his parents.

His first placement, at a residential treatment center in Westchester County, N.Y., was supposed to last a couple of months. Mr. DeJesus stayed for four years.

His experience was similar to that of other L.G.B.T.Q. youths who lingered in residential care and group homes. Mr. DeJesus said he was thriving in his current group home because it was L.G.B.T.Q. specific and aided in his transition.

Under the child welfare agency’s new plan, all staff members must attend two days of training. The agency will also recruit foster parents interested in caring for L.G.B.T.Q. youths, and L.G.B.T.Q. youths will join a current youth leadership council that advises the staff.

While the plan outlines solutions, the survey does not get to the root of the disparities. It does not, for example, explain why L.G.B.T.Q. youths are more likely to have more placements or more likely to be placed in group homes.

Family settings tend to be more effective, Ms. Gasca-Gonzalez said, because “families take care of each other’s needs” and group homes typically have generalized rules.

Mr. Hansell said the agency was planning to do further studies. Advocacy groups welcomed the new data as a positive step, though some were skeptical that the effort to improve services would be effective.

Lawyers for Children, a nonprofit legal group that represents children in foster care, has an L.G.B.T.Q. Rights Project. Linda Diaz and Kristin Kimmel, co-directors of the project, said they wished they had been included in devising the plan.

“It is very disappointing that at a really crucial juncture in the provision of services to L.G.B.T.Q. youth that A.C.S. is not consulting with us,” Ms. Diaz said.

Youth advocates could have offered valuable perspectives, Ms. Kimmel said. She added, for example, that the plan should make sure all foster parents — even those not specifically recruited to care for L.G.B.T.Q. youths — were trained to support children regardless of sexuality or gender expression.

“While A.C.S. has had a policy for quite some time that they’re going to train all of their foster parents, all of their agency caseworkers and everybody that provides services to these kids to be accepting of them, that really hasn’t come to pass,” Ms. Kimmel said. “There are plenty of foster homes that are rejecting of these young people.”

Destiny Simmons, 24, who was not part of the survey, said that moving from home to home often kept her from forming relationships.

“You don’t know when you’re going to be moved again,” Ms. Simmons, who is bisexual, said. “So, it’s like, why form a bond with this person when it could just be broken?”

In recent years, city data on homelessness showed that 40 percent of homeless young people in New York City were L.G.B.T.Q., and about 42 percent of homeless youths had been in foster care.

Jamie Powlovich, executive director of the nonprofit Coalition for Homeless Youth, attributed the homelessness rate to rejection from family and community members, and a lack of secure housing. Surveys and plans were not enough, she said, and L.G.B.T.Q. youths must be involved in decision-making.

“I’ve never worked with a young person who didn’t know some really great answers,” she said. “It’s just that most people don’t listen to them.”

Andrés, a 19-year-old living in a foster home in the Bronx, knows the feeling of not being heard, wishing the city’s child welfare agency had acted sooner to remove him from his parents’ apartment.

About four years ago, Andrés, who did not want his surname used, came out as transgender. That kick-started family therapy, an intervention by the agency in hopes of keeping Andrés out of foster care. But he said his relationship with his parents could not be repaired.

“I’m not making any compromises,” he said, “because I’m not going to compromise myself for someone else.”

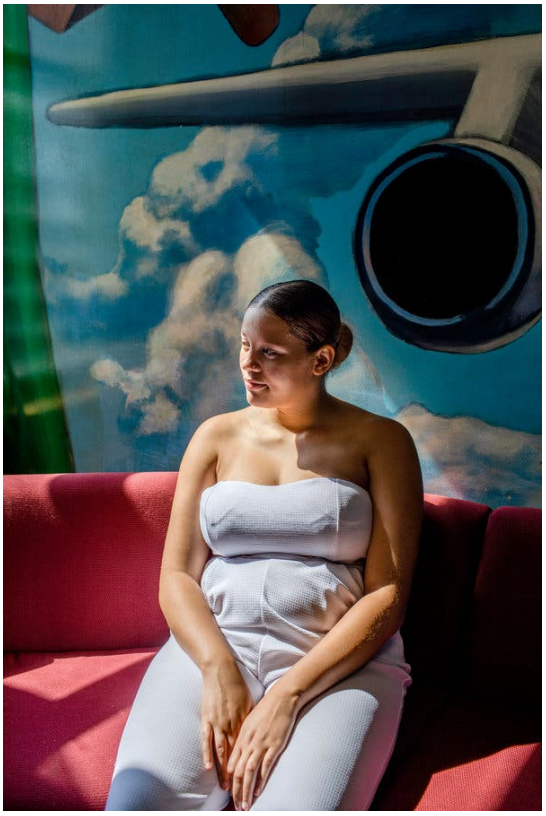
During a visit to Colombia, he said, his mother forced him to participate in what he described as an exorcism to change his identity.

“I’m locked in a concrete room with two men I’ve never met before in my life trying to pray the gay away,” he said.

When he returned to New York, his two brothers continued to support him. Still, he found himself on the roof of his apartment building considering suicide.

The child welfare agency then moved him from his home in 2016. Now, he said, he is in a better place.

The New York Times



Tatianna, seated in the offices of Lawyers for Children, has not seen her mother in 14 years. She blames the pain of separation for problems she has had since then.

By Nikita Stewart

Aug. 7, 2019

Latoya Joyner, a state assemblywoman from the Bronx, said she was raised by a loving adoptive family after her biological parents lost custody of her. The same was true for Tracy L. VanVleck, the commissioner of human services in Seneca County.

But that is where their similarities end. The women are on opposing sides in an emotionally charged battle over a potential change in New York state adoption law that is awaiting Gov. Andrew M. Cuomo's signature.

The legislation, called Preserving Family Bonds, would fundamentally shift the relationship that birth parents can have with their children after a court has taken the children away permanently and another family steps in to adopt them.

The proposed change has touched off a wide debate, some of it informed by the wrenching personal experiences of people who have not only gone through the foster care system but, like Ms. Joyner and Ms. VanVleck, now have the power to shape it.

Under the law, judges would be able to order that an adopted child stay in contact with a biological parent, including supervised visitation, if it helps the child. The order would apply even if an adoptive parent does not agree. Judges are currently banned from allowing any contact after ending a parent's rights.

Only eight other states allow judges similar leeway. The New York legislature passed the measure, but the governor's office is still reviewing it, said Caitlin Girouard, a spokeswoman for Mr. Cuomo.

Ms. Joyner, a Democrat who was the lead sponsor of the bill, said completely severing ties meant she missed out on valuable time with her birth mother. They were reunited when Ms. Joyner reached adulthood, but her mother died just six years later.

"When she went into the hospital, I was the first person she called," said Ms. Joyner, 32. "We had a better relationship, but it was relatively short."

On the other side are many child welfare workers, including those with their own stories, such as Ms. VanVleck. She recalled being tugged between her biological family and her foster family for six confusing years before she was adopted. Her childhood, she believed, would have been better without that contact.

"There's the 'I love you's.' The 'I want you back.' There's the trauma of people not showing up," said Ms. VanVleck, 43.

A major report on adoption in 2012 showed that about 95 percent of infant adoptions are now open, meaning that children stay in some contact with their biological parents. Studies show the approach is largely beneficial. Children are less inclined to blame themselves, or to idolize their birthparents and demonize their adoptive parents. There is also the advantage of knowing family and medical histories.

But that trend has not reached cases in which the rights of parents are ended by a court, usually because the court has found evidence of abuse or neglect.

These cases, called terminations, usually occur after months or even years of legal wrangling and regular visits between birth parents and children while they are in foster care.

"The child grows up fully aware, knowing their parent. You go through this process," Ms. Joyner said. "You don't want to cut that contact off. That's very traumatic."

If parents voluntarily surrender their rights, they can often see their children after an adoption. Advocates for parents said the current law essentially punishes parents who fight to keep their children.

About 1,100 terminations were completed in the state in 2016, the last year for which numbers were available, according to the New York State Office of Court Administration. It is not known how many of those terminations were done over the objections of the parents.

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Bill Baccaglini, president and chief executive of the New York Foundling, a nonprofit foster care agency, said there was some merit to the arguments being made by the supporters of the bill, but he argued for a more measured approach.

“We’re going to go from zero to 360 in two minutes,” Mr. Baccaglini said.

The proposed law is not clear on what rights adoptive parents have during what could be a emotionally tumultuous or even a potentially unsafe situation, opponents argue. Adoptive parents are not simply caretakers for other people’s children, they said.

“Once they are adoptive parents, they are parents,” said David A. Hansell, commissioner of the New York City Administration for Children’s Services, which administers the city’s child welfare system.

Mr. Hansell said several changes might improve the bill: providing court-appointed lawyers to adoptive parents; allowing contact only if the adoptive parents and children, if over 14, agreed; and prohibiting contact if a parent’s rights were terminated because of severe and repeated abuse.

Mr. Hansell and other commissioners who oversee foster care and adoption throughout the state said court intervention could hamper the recruitment of potential adoptive parents, leaving children lingering in foster care for longer periods.

But Ms. Joyner, a lawyer who took office in 2015, said the bill was part of a larger progressive agenda that swept through this year’s legislative session in Albany. There is no reason to start over, she said.

There had been a push for change since the state Court of Appeals decided in 2012 that the current law prohibited judges from ordering contact between children and birth parents after adoption. A handful of judges had been doing that before the higher court made its decision.

Jeremy C. Kohomban, president and chief executive of the Children’s Village, a nonprofit foster care agency based in Dobbs Ferry, N.Y., said he sympathizes with the concerns of foster care and adoptive parents. But he said the biological parents whose rights have been ended are overwhelmingly black, and the family court system must consider the impact of its actions on black families.

There is no overall database that tracks visitation agreements statewide. But in a recent one-year period, the New York Foundling finalized 35 adoptions after biological parents surrendered custody, and 24 adoptions after those rights were terminated by a court. None of the parents whose rights were terminated were allowed contact or visitation, while most of those who agreed to relinquish rights had some contact with their children.

Ms. VanVleck said she understands biological parents love their children and want to fight to keep them. But love, she argued, could also mean letting go. When children grow up, they can understand that their birth parents were not able to adequately provide for them, she said.

Supporters of the bill countered that severing ties carries a finality that ignores the ability of parents to change and improve.

Tatianna, a 17-year-old girl who lives in the Bronx, said she has not seen her mother in 14 years. She blamed the pain of that separation for behavioral and social troubles she has had since then.

Tatianna, whose last name is being withheld because she is not an adult, said she is a high school dropout, pregnant and living in a group home after a relative who had adopted her voluntarily placed her back into foster care last month.

Meanwhile, she said, her mother was able to conquer an addiction and receive custody of one of Tatianna's siblings. "She's clean. I would have loved to go on that journey with her to help her get clean faster," Tatianna said.

Her mother did not respond to a request for comment.

Tatianna said she is now counting down the days to her 18th birthday. "I was told if I communicated with her, she and I can both get in trouble," she said. "She wants me back, but we all know how that goes in New York."

The New York Times

She Ran Away From Foster Care. She Ended Up in Handcuffs and Leg Irons.

By Ali Watkins

Dec. 6, 2018

It is not a crime to run away from foster care. But in Family Court hearings each week, the city is getting arrest warrants for children who do.

It is not a crime to run away from foster care. But in Family Court hearings each week, the city is getting arrest warrants for children who do.

Nevayah, 17, was arrested after she left her foster placement and went to her mom's house in Ohio. During the return trip, she was walked through the airport in handcuffs and leg irons.Credit...Elizabeth D. Herman for The New York Times

Nevayah still remembers the feel of the handcuffs. They were foreign to her; she had never been in trouble.

A latecomer to New York City's foster care system, Nevayah had been signed over to the Administration for Children's Services when she was 16. Rather than enter a group home, she told her caseworker she would prefer to live with her mother in Ohio. Eager to start school, she bought a bus ticket, made it to Cleveland and phoned the agency to let them know that she was safe.

Per protocol, A.C.S. said, they would send the authorities to make sure the home was suitable.

But when the police arrived that night, they told Nevayah that New York Family Court had issued a warrant for her arrest. Graciously, she said, officers waited to handcuff her until she was in the back of their patrol car. By midnight, she was in a cell.

In Family Court hearings every month, the A.C.S. is quietly being granted arrest warrants to detain foster children like Nevayah, whose only transgression is leaving the agency's care. The unusually draconian strategy has little precedent in any state's foster care system, and it is unclear if the A.C.S. even has the authority to use such warrants under New York State law.

It is the A.C.S.'s controversial solution to a complicated problem: how to find and keep runaway minors in foster homes they do not want to stay in. To not search for runaways is a dereliction of the agency's duty. But to use law enforcement over less adversarial approaches, like casework, puts some of the city's most vulnerable wards into volatile situations.

The full names of foster children who spoke with The New York Times are being withheld at their request because they are both minors.

"Warrants can be helpful in locating children because they engage law enforcement resources," said Chanel Caraway, a spokeswoman for A.C.S. "That said, we've taken a number of steps to ensure that we only seek warrants in cases where they're necessary."

The agency itself has acknowledged that the practice — sometimes resulting in the arrest of children as young as 14 — can be problematic. In an industry newsletter in 2015, it announced it intended to adopt more stringent guidelines to govern its use of warrants.

"In practice, the execution of a warrant can have unintended negative consequences to the child or youth that is absent from care," the newsletter, which is still available online, stated.

In the months immediately following that announcement, the number of warrants issued to A.C.S. dropped steeply — to 81, down from 125 the year before. In 2016, the number of approved warrants dipped even further, to 48.

But last year, the numbers crept back up as A.C.S. was granted 69 arrest warrants for children, according to statistics provided by the agency.

Despite fluctuations in their frequency, the warrants create a tension that can undermine A.C.S.'s goals, straining an already fragile relationship between wary foster children and the agency they are supposed to trust.

"It's disturbing that New York does this. These are kids that have committed no crime, and it's particularly disturbing because they're the most vulnerable kids," said Betsy Kramer, director of special litigation at the Manhattan-based Lawyers for Children, which represents several foster children who have been the subject of arrest warrants.

The warrants are different from juvenile delinquency warrants, which are used to arrest minors who are wanted for breaking the law. Though runaway arrest warrants come by way of A.C.S., they are standard civil arrest warrants and are entered into the state's warrant database.

The warrants for runaways are often executed like traditional arrest warrants, with handcuffs and lockups. While the fine print states that handcuffs should not be used — except in extreme circumstances — advocates and foster children have said almost every warrant case involves the use of handcuffs.

A.C.S. officials said the arrest warrants are handled through the Police Department's warrant squad, but would not comment on the use of handcuffs.

A review of foster care policies across the country shows no other similar practice of using arrest warrants to detain runaways. Many other states use court orders or court-ordered requests to pick up a child, often deploying protective officers or caseworkers who are not in uniform, but are sometimes accompanied by law enforcement. Some states use "child protective warrants" that allow the agency to take the child into custody.

In 2017, New York City had 8,945 children in 24-hour foster care. Of those, 354 children were considered by A.C.S. to be Absent Without Leave, or A.W.O.L., for a week or more.

"In most cases, they are going home to their home communities to spend time with their families and friends," Ms. Kramer said of missing youth. "To subject them to arrest for that is just really particularly egregious."

Across the city, lawyers described a system in which the police are frequently directed by caseworkers to a child's location in order to have them detained.

"Half the time, maybe even more, A.C.S. knows exactly where the child is when they ask for a warrant," said Dodd Terry, an attorney with The Legal Aid Society.

Jasmine, one of The Legal Aid Society's clients, was 16 when the agency was granted a warrant for her arrest. She had left her foster home, but was still showing up daily to her internship — with A.C.S.

“It was kind of weird because A.C.S. called my phone and told me, ‘Oh, you have an arrest warrant,’” she said. “They see me every Monday through Thursday from 1 to 4.”

For Jasmine, the warrant did the opposite of what the agency said it intends: It drove her farther away. At 16, she was caught in a prostitution ring and had left her foster home to live with her pimp. Though she was attending high school in the Bronx and continued to show up for her internship, she said she feared seeking help from her caseworker.

“I don’t get that. You don’t come to me like I’m an actual person. You come to me like I’m a criminal. I’m not a criminal,” said Jasmine. “If they really talked to me how I actually needed to be talked to, listen, I would work with them. I really would’ve.”

The warrant was vacated by a Family Court judge after Jasmine’s lawyers challenged its validity. She has since returned to her foster home and has stopped prostituting herself, she said; she is on track to graduate early from high school.

The agency said it adheres to a “limited use policy” that considers factors like age and special needs when it seeks warrants, but it would not provide the specific policy. It is unclear what differentiates situations when warrants are issued from scenarios when a softer outreach is employed — for example, when a caseworker or a child protective specialist is deployed to try to return the child to their placement.

“What is troubling about this is that for communities of color that are disproportionately represented in the child welfare system, you have law enforcement getting involved in basic life situations that should be social services matter,” said Mr. Terry. “Do your casework before you seek law enforcement.”

In a system where the majority of children are black and Hispanic — including 89 percent of the foster children who were considered A.W.O.L. in 2017, according to agency statistics — the psychological impact of these police interactions can be devastating.

“I still have nightmares to this day,” said Nevayah, who is now 17.

She passed the time in her detention cell reading the Harry Potter series, and said she marked each day by scratching a mark on her wall. The A.C.S. had ordered her to come back to New York but Nevayah, who identifies as transgender and is currently transitioning, wanted to stay in Ohio. The A.C.S., she said, would not guarantee her L.G.B.T.Q.-friendly housing in New York.

After three weeks, when she finally agreed to fly back, the police walked her through the airport in handcuffs and leg irons. It was an experience that Nevayah described as humiliating.

“I felt stereotyped. I’m a minority. I’m Puerto Rican, Latino, and I’m being put through the justice system,” she said. “The statistics don’t care how I ended up in jail.”

Nevayah has since found an accepting group home in the city and attends an L.G.B.T.Q.-friendly high school in Manhattan. She plans to go to college, where she wants to study to become a software engineer.

The Legal Aid Society has filed an appeal with the Appellate Division of State Supreme Court that challenges whether the court and the A.C.S. have the authority to even issue arrest warrants. That case is expected to be argued this month. In the meantime, Family Court judges have delayed decisions on two of the warrants for unnamed children involved in the case, bolstering advocates' confidence that the agency is on dubious legal footing.

Even undecided, the appeal is having an impact in courtrooms, where judges have started voicing more skepticism over the use of warrants.

At Nevayah's court hearing in October, Jessica Brenes, a Family Court referee, was distraught when she discovered that the A.C.S. had known Nevayah was with her mother in Ohio when the court granted the warrant for the teenager's arrest.

The agency had not told Ms. Brenes it was aware of Nevayah's whereabouts. Had she known, Ms. Brenes said, the warrant likely would not have been granted.

"It is not a mechanism to make it easier to retrieve the youth," she said, frustrated. "I need to make sure something like this doesn't happen again."

teenVOGUE

The Foster Care to Prison Pipeline: What It Is and How It Works

By Rachel Anspach

May 25, 2018

Twenty-two-year-old Bronx native Randy, who asked us to use only his first name for anonymity, entered into foster care when he was 10, moving through 13 placements and three boroughs of New York City during his time in the system. When he was 14, Randy got into a fight with another boy in his foster home: “The foster parent was quick to call 911 instead of mediating and resolving the issue,” Randy tells *Teen Vogue*.

It was his first arrest and neither of the boys were seriously injured, but Randy was incarcerated for 14 months in juvenile detention.

According to the latest data, there are 437,500 children in America's foster care system, who like Randy, face a disproportionate risk of being incarcerated. The problem is so severe that one quarter of foster care alumni will become involved with the criminal justice system within two years of leaving care. Black youth, LGBTQ youth and those with mental illnesses are more likely to be in foster care, and discrimination in the system exacerbates these populations' already disproportionate vulnerabilities to criminalization. Advocates refer to the "foster care-to-prison pipeline" to describe the practices and policies that funnel young people from the child welfare system into the criminal justice system.

Juvenile justice involvement has particularly adverse effects on foster youth because it can impact their treatment and home placements for the rest of their time in foster care, according to the advocates *Teen Vogue* spoke to. "As soon as kids get labeled [as 'bad' kids] it's really hard for them to get unlabeled," Christina Wilson Remlin, lead counsel for Children's Rights, an organization that works to change the child welfare system through legal action, tells *Teen Vogue*. "For teenagers in foster care, they're already a group of kids that our society looks down on and thinks is troubled, so having a juvenile justice charge only exacerbates all those existing vulnerabilities."

Being incarcerated as a juvenile increases foster youth's risks for continued involvement with the criminal justice system. In NYC, where Randy was in the system, 57.1% of young people who were in both foster care and the juvenile justice system experience incarceration within six years of exiting care, as compared to 14.7% of all NYC foster alumni.

When he was 17, Randy got into another altercation for which he was charged with assault. Because New York is one of the last states that allows 16- and 17-year-olds to be prosecuted as adults, a policy that will be phased out by 2019, Randy was still a teenager when he was incarcerated for eight months on Rikers Island, the city's adult jail complex.

"In both cases I wasn't given the opportunity to show that I was a better person. They were quick to throw the time and throw the sentences on me instead of looking for ways to help me grow so it won't happen again," says Randy. "I feel like since I'm just a black kid in foster care [the justice system] doesn't want to see us given opportunities or help us grow."

Randy went to school while he was on Rikers Island, but none of those credits ended up transferring toward his high school diploma. As a result, Randy didn't finish high school until January 2017. Because of his criminal record, Randy also had his application to NYC public housing denied. Housing support is critical for former foster youth, as over one fifth face homelessness after age 18.

Like Randy, many foster youth have the police called on them by their caregivers and face incarceration for small infractions, according to the advocates *Teen Vogue* interviewed. Foster youth in government-run group homes are particularly at risk of having police called on them by staff, Jarel Melendez, a youth advocate at Lawyers For Children who grew up in foster care,

says. Behaviors for which group home staff call police include verbal arguments, physical fights, throwing things, running away, smoking marijuana or even masturbation, according to advocates.

"A lot of group home staff are not as educated as you would hope. Some just have a high school diploma or a GED, so [there is a] lack of education, training, and experience," Jarel tells *Teen Vogue*. "If a young person has an episode because of the trauma and emotional circumstances that they faced, instead of matching [the young person's] adolescent behavior one would think [staff] would demonstrate professionalism to them. But that's not the case a lot of time."

Foster children can also face an increased risk of arrest in school because they may not have a parent to pick them up or advocate on their behalf, according to Jarel. "Teachers and school staff may not know the particular system that you're involved with, but they know there's a lot of different people coming for you that's not your biological family," Jarel says. "So for foster youth, a lot of times it's easiest for the school to call the police to get somebody to come in."

Certain populations within foster youth are disproportionately at risk for criminalization, too. Black children are around twice as likely to be placed in foster care as white kids. Because black kids are already subject to disproportionate rates of school discipline and criminalization, being a foster youth compounds this risk. Foster youth, particularly girls, are targeted by sex traffickers, and the criminalization of sex work can funnel these victims of modern-day slavery into the criminal justice system.

Another major driver of the foster care-to-prison pipeline is the criminalization of mental illness. Foster children often have serious trauma and mental illness, and some advocates believe they are routinely over-prescribed psychotropic medications and under-served with the therapy and trauma-informed care they need to heal. NPR reported that, according to a U.S. Government Accountability Office analysis, foster youth are up to four times as likely to be prescribed antipsychotic drugs as other minors, and that hundreds of children are on five or more psychotropic medications at once, something not supported by medical evidence.

Foster youth can be locked up for going through a mental health crisis. California resident Arianna, a 23-year-old whose first name is provided for anonymity, tells *Teen Vogue* that she went to juvenile hall four times, twice for fighting and twice for mental health crises. "I had to stay there for like three weeks and it was terrifying," Arianna says about the first time she was incarcerated for a mental health crisis. "The lady told me that if I didn't calm down she would have to restrain me."

Arianna entered foster care at age 15 after showing up to school with bruises from her mom, who she says was "mentally, verbally, and physically abusive." Foster care was supposed to keep her safe, but Arianna says it "made things worse." She was constantly bounced around between group homes and stints in juvenile hall. Although she's been diagnosed with post traumatic stress disorder, bipolar disorder, depression, and anxiety, Arianna was provided with minimal and sporadic mental health care.

Being incarcerated instead of receiving the support she needed has had serious consequences on Arianna's life. She's been homeless and couch surfing since she aged out of a housing program for foster youth two years ago. Although she completed almost two years of college, she ended up dropping out due to severe anxiety.

"Stuff would get overwhelming too fast because I didn't know how to handle things," Arianna says. "My mind would automatically self-destruct itself, like 'it's going to turn bad.' Because it's always turned bad."

Advocates support a number of solutions to combat the foster care-to-prison pipeline. Young people need adequate mental health services, with close regulation of the use of psychotropic medications on children. Trauma-informed care should be implemented in all systems dealing with children. They believe there should be a drastic reduction or elimination of group homes, with strict regulations on when staff can call the police. All states should pass and implement anti-discrimination policies to protect LGBTQ youth in the child welfare system, which currently only exist in 27 states and D.C. At the end of the day, advocates stress that all young people should be granted the same levels of compassion and second chances.