



## **TESTIMONY OF LAWYERS FOR CHILDREN**

To the New York City Council Committees on General Welfare

Oversight: Examining the Screening Process and Eligibility Requirements for Foster Parents

Int. 436-2022 - Creating a juvenile detention board

Int. 554-2022 - Child protective caseloads and workloads action plan

Int. 642-2022 - Quarterly reporting by the Administration for Children's Services on the amount of time children spend in the Children's Center or temporary placement facilities.

October 13, 2022

**Submitted by:**

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Thank you, Deputy Speaker Ayala and members of the General Welfare Committee, for holding this hearing on important topics for children served by the Administration for Children's Services.

Founded in 1984, Lawyers For Children is a not-for-profit legal corporation that represents individual children in voluntary foster care, abuse, neglect, termination of parental rights, adoption, custody, guardianship and delinquency proceedings in family court, and advocates for system-wide reform to improve the lives of children in foster care. This year, we will represent children and youth in more than 3,000 court proceedings. Based on our experience in individual cases, we have also successfully participated in numerous class-action lawsuits, helped to effectuate change in City and State policies and practices, and guided legislative reform in order to improve outcomes for children in foster care.

We are pleased that the Committee on General Welfare is continuing to focus its attention on children and families who are ensnared in the child welfare system. We are particularly pleased that the committee is returning to issues that have been raised in the past, while also exploring new issues for City Council oversight. Continued and renewed attention on the Administration for Children's Services is crucial to improving the experience of children and families served by that agency. We hope you will consider these written comments with respect to two related issues that are the subject of this hearing.

### **Int. No. 642: Children's Center and temporary placement facility reporting**

The prolonged stays of children at the ACS Nicholas Scoppetta Children's Center has long been recognized by the Council as a matter of serious concern.

At a hearing of this committee in 2019, we shared the story of our client, Kenneth,<sup>1</sup> who was confined to a wheelchair and remained at the Children's Center for over a year because ACS failed to find an appropriate foster care placement for him. While he was there, many of his most basic needs were ignored. Unfortunately, as the Council knows, Kenneth was and is not alone—too many children stay for too long at this institutional facility, which was designed to house children for no more than 48 hours.

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<sup>1</sup> Melissa Russo, Kristina Pavlovic, ACS Held in Contempt for Neglecting Wheelchair-Using Teen Soaked in His Own Urine (March 14, 2019), <https://www.nbcnewyork.com/news/local/ACS-Held-in-Contempt-for-Failing-to-Care-for-Wheelchair-Bound-Teen-Soaked-in-His-Own-Urine-506827971.html>; Michael Fitzgerald, Is New York State Responsible For Some Long Stayers at the City's Temporary Foster Home? City Child Welfare Commissioner Thinks So, *The Chronicle of Social Change*, (March 29, 2019) <https://chronicleofsocialchange.org/featured/new-york-childrens-center-child-welfare-commissioner/34364>.

In 2019, then-Commissioner Hansell testified before this committee that “most” young people are discharged from the Children’s Center within 72 hours.<sup>2</sup> If just “some” remain even that long, it is too long for children to be in a temporary institution awaiting placement.

A year ago (in October 2021), this committee held a hearing regarding an earlier version of Int. No. 642. At that hearing, ACS testified that The Children’s Center serves approximately 1,230 unique children and youth each year.<sup>3</sup> At that time, ACS also reported that “just 5%” of those children are at the Children’s Center for 30 days or more.<sup>4</sup>

This morning, Commissioner Dannhauser testified that the Children’s Center serves 1,700 children each year and that 40 children have been there for more than a month. This dramatic increase in the number of children served by the Children’s Center and the high number of children who spend weeks on end at this temporary placement highlights the urgent need for the Council to take action.

In our experience, the children who remain at the Children’s Center the longest are those who are hardest to match with foster homes. They are children who have autism spectrum disorder. They are children with physical disabilities. They are children/youth who identify as LGBTQIA. And, they are older teenagers, many with mental health challenges. In the three years that we have been presenting testimony to the City Council regarding the Children’s Center, this has not changed.

The reporting required by Int. No. 642 will hold ACS accountable for failing to promptly place children in appropriate foster homes. More importantly, it can help to address that failure by identifying the specific populations for whom new foster care placements need to be developed. Today, Commissioner Dannhauser testified regarding the efforts made to find placement for children after they are placed at the Children’s Center. With a clear understanding of who the children are that remain there the longest, ACS can develop its capacity to serve those children in appropriate foster care settings so that they never have to spend even one night at the Children’s Center or other pre-placement facility.

For these reasons, in addition to the reporting required by this bill, we urge you to require ACS, to:

- Identify the number of children placed at the children’s center who have a physical disability, who have been diagnosed (or are reported to be) on the autism spectrum, and who identify as LGBTQIA, disaggregated by length of stay and age.
- Analyze the data, not just report, and present a plan for addressing any trends that are identified.

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<sup>2</sup> *New York City Council Budget and Oversight Hearings on the Fiscal Year 2020 Preliminary Budget* Before the City Council Committee on General Welfare, March 25, 2019 (Statement of Commissioner David A. Hansell, Administration for Children’s Services)

<sup>3</sup> <https://www1.nyc.gov/assets/acs/pdf/testimony/2021/GeneralWelfareBills.pdf>

<sup>4</sup> *Id.*

The lack of available foster care placements remains of paramount concern. Understanding who the children and youth are who are awaiting placement, as well as the true number of children awaiting placement, is key to addressing that problem.

### **Oversight - Examining the Screening Process and Eligibility Requirements for Foster Parents.**

As is made painfully clear by the large number of children who spend far too long in the Children's Center, the shortage of appropriate available foster homes is a critical problem for New York City.

While the requirements for eligibility to become a foster parent are largely set by federal and state statute, two issues that are within ACS's control continue to contribute to the shortage of certified homes for children: (1) the failure of ACS and its contract agencies to exercise their discretion to certify foster homes in appropriate cases when a prior criminal history or child protective agency involvement does not pose an ongoing threat to children; and (2) the failure to act in a timely manner to certify family members who step forward to become foster parents.

New York State law and regulations contain important provisions designed to ensure that kinship foster homes are quickly certified whenever safely possible. Kinship foster homes may be certified on an emergency basis so that children can be cared for by relatives and other adults in their lives as soon as they are removed from their parents or as soon as the resources are identified for children who are already placed in foster care.<sup>5</sup> Federal and State law also provide for certification of foster parents who have had prior criminal or child protective agency involvement when it is determined that that prior history would not pose a risk of harm to the child.

In a Memorandum dated September 20, 2016, ACS set forth policy guidance for implementation of those laws and regulations. That memorandum explained to the foster care provider agencies: "ACS expects that foster care provider agencies make diligent and continued efforts to place children who require out-of-home care with kinship resources."<sup>6</sup> The memo further directs, "when a potential kinship resource has an SCR, SEL, criminal or DIR history, or pending charge for a crime other than a mandatory disqualifying crime, the foster care agency Homefinding Director may approve the home based on consideration of the clearance results in the context of all other information gathered, including a safety assessment. This information must inform, not determine, the safety assessment of the potential foster home and the placement decision."

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<sup>5</sup> 18 NYCRR §§ 443.1 and 443.7

<sup>6</sup> A copy of that Memorandum is attached to this written testimony.

Despite the clear guidance of ACS, its contract agencies continually fail to certify kinship resources expeditiously and fail to conduct proper safety assessments for kinship resources with prior SCR<sup>7</sup>, criminal or DIR<sup>8</sup> history.

The recent experiences of three LFC clients are not unusual or uncommon:

V.<sup>9</sup> came into foster care at age 15, when her adoptive mother decided that she no longer wanted to care for her. After being placed in a temporary pre-placement facility, V. identified Ms. F., a friend's parent, as a potential foster parent but the agency listed a litany of reasons for refusing to certify Ms. F as a foster parent. These included: "review of her SCR history, her criminal and DIR history, her son's active criminal case and DIR history." And yet, if the agency had conducted a safety assessment in the context of all the information, as required, rather than summarily refusing to certify Ms. F. based on the "hits," it would have found the following: Ms. F. had been arrested 20 years earlier and 8 years earlier but never been convicted or pled guilty to any crime; while the SCR reportedly had two indicated cases, there was no information regarding the year of those cases, the substance of those cases, or any other facts regarding her purported child welfare involvement that would suggest that V. would be in danger in her home; the DIR history was more than 7 years old, and showed Ms. F as the victim – not the aggressor; and finally, her son, who was incarcerated, was not expected to be released before V. reached adulthood.

Despite the agency's refusal to certify Ms. F. as a foster parent, V. remained in the home – without any funding or supportive services from the agency. Six months later, the agency reversed course and agreed to certify Ms. F. as a foster parent. Inexplicably – and despite the clear regulations providing for the home to be certified from the date of child's placement there, Ms. F. did not begin to receive funding until five months later – nearly a year after Ms. F. came forward to care for V.

Similarly,

Four-year-old E. was removed from her mother's care in October 2021 and placed in the custody of ACS. E's maternal grandmother immediately came forward as a kinship foster care resource and the court approved E's placement in her home. Although a foster care agency was assigned to the case, the home was not certified until February of the following year, leaving E's grandmother struggling to support her 4 year old granddaughter on her fixed income for several months.

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<sup>7</sup> State Central Registry of child abuse and maltreatment.

<sup>8</sup> Domestic Incident Report

<sup>9</sup> Clients and their caregivers are identified only by an initial in order to preserve their confidentiality.

And finally,

When S. was removed from her parents' custody, her maternal aunt agreed to take care of her temporarily. Several months later, the strain of providing for her without any additional support became overwhelming. She asked to be certified as a foster parent in the hope of receiving funding and assistance in obtaining therapeutic services for S. More than two months passed without any response to that request. During that time, she received neither confirmation that her request had been approved nor a denial of that request and notice of her right to appeal. Finally, ACS responded "other family members in the aunt's home had prior criminal convictions that will likely bar her from being certified as a foster parent." No assessment was done to determine what those convictions were for, how recent they were, or whether they posed any ongoing threat to the child. Notably, ACS had no objection to allowing the child to remain in the home, but failed to conduct the assessment to determine if the aunt could be certified as a foster parent before S. was returned to her parents.

ACS must be held to account for the failure of its contract agencies to certify appropriate kinship resources in a timely manner. To that end, ACS should be required to publish quarterly reports regarding:

- the number of kinship resources who come forward to care for children;
- the number of kinship resources who are certified;
- the number of kinship resources who are refused certification;
- the reasons that kinship resources are refused; and,
- the length of time for each certification to be complete.

In addition, ACS should be required to provide all potential kinship resources with information regarding their rights to be certified as foster parents, including the right to appeal any certification of denial.

### **Conclusion**

Thank you for your attention and commitment to young people in foster care. We are happy to answer any questions you may have about our testimony and to assist the Council in developing legislation that will help create oversight and accountability measures for ACS.

Gladys Carrión, Esq.  
Commissioner

## MEMORANDUM

Andrew White  
Deputy Commissioner  
Policy, Planning, and  
Measurement

### Assessment, Clearance and Approval of Kinship Placement Resources

**Implementation Responsibility:** Division of Family Permanency Services (FPS)

**Date:** September 20, 2016

Julie Farber, MSW  
Deputy Commissioner  
Family Permanency  
Services

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ACS expects that foster care provider agencies make diligent and continued efforts to place children who require out-of-home care with kinship resources. In an effort to support provider agencies in this endeavor, ACS' Division of Child Protection (DCP) should share with provider agencies<sup>1</sup> information that DCP has

Raymond Toomer, Esq.  
Associate Commissioner

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1 The information should be shared as soon as a provider agency case planner is assigned to the case.

2 See 18 NYCRR § 443.7.

3 If a potential foster parent indicates that s/he or any household member over the age of 18 has resided in another state within the past five (5) years, the foster care agency must also conduct a clearance with that state(s)'s centralized register for child maltreatment reports.

4 This is conducted by OCFS and includes a statewide criminal record check and an FBI clearance.

5 See 13-OCFS-ADM-09, *Justice Center Staff Exclusion List Clearance Requirements*, dated 8/29/2013.

6 See ACS Guidance #2008/09, *Revised Federal Criminal History Record Check for Prospective Foster and Adoptive Parents*, dated 10/1/2008, 07-OCFS-ADM-01 and 08-OCFS-ADM-06.

7 See 18 NYCRR § 443.5 and the Notice of Removal.

8 See 18 NYCRR § 443.7. ACS Guidance #2008/04 is available via this link.

9 If the family does not live in one of the five boroughs or is known to have lived in a different district of social services or state within the past five (5) years, the foster care agency must make a written request to the other jurisdiction for a clearance.

10 See 08-OCFS-ADM-06 and Children's Services Guidance #2008/04, *Requirements for Certifying or Approving Emergency Foster Boarding Homes*, dated 6/1/08, for additional guidance regarding any child who has been in an approved emergency relative foster home or a certified foster home for more than 90 days. This document is available via search on the ACS internet policy library at [http://www.nyc.gov/html/acs/html/home/policy\\_library.shtml](http://www.nyc.gov/html/acs/html/home/policy_library.shtml).

11 A foster/adoptive parent applicant may request an administrative hearing from OCFS if he or she believes that he or she was the victim of physical, sexual or psychological abuse by the victim of such offense and such abuse was a factor in causing the prospective foster/adoptive parent to commit the offense. For additional information, see OCFS *Denial/Revocation Letter/Notice of Results of Fingerprinting/Criminal Record Found* also referred to as the *Notice of Intent to Disapprove the Home*. This document is available in CNNX in English and Spanish.

12 Household members charged with a crime that, if committed by the foster/adoptive applicant (including those certified or approved on an emergency basis), will be categorized as "discretionary disqualifying crimes" by OCFS. Form CS-187-H refers to such crimes as "Discretionary Level 1" crimes.

13 Removals must be conducted in accordance with 18 NYCRR § 443.5. The case planner may also seek a Court order that one or more of the children remain in the home in the "temporary custody" of the applicant. (This situation is also known as a "parole" and is no longer foster care.)

14 See Child Safety Alert #15 (revised 12/2014) Children's Services regarding Kinship Care and Parole Resources.

15 See 18 NYCRR § 443.2.

16 The content of the DIRs and the actions noted by the police officer should be considered more than the actual number of DIRs.

17 See ACS Procedure #2011/04, *Assessing the Safety and Quality of Life in Foster Boarding Homes*, 6/28/2011.

obtained about potential kinship resources, including the names of kin who have already been or are being explored, as well as kin who have recently been suggested by the family. Placement with kin can help mitigate trauma and has been linked to better outcomes for children in foster care. This document provides policy guidance for foster care provider agency staff who are responsible for the screening and assessment of kinship caretakers who have been identified as potential placement resources for relative children in out-of-home care.

In addition to interviewing the kinship resources, verifying kinship, and assessing the safety and appropriateness of the home,<sup>2</sup> provider agency staff must conduct clearances of the kinship resources by checking the State Central Register (SCR),<sup>3</sup> checking the resource's criminal history,<sup>4</sup> and obtaining and reviewing the resource's Domestic Incident Reports (DIRs), if any. Provider agency staff must also check to see if the kinship resource has been listed on the Staff Exclusion List (SEL), managed by the New York State Justice Center's Vulnerable Persons Central Register (VPCR).<sup>5</sup>

Foster care agencies must continue efforts to identify kinship resources at the time of placement and throughout a child's time in out-of-home care. While state and federal guidance allows for some discretion when considering approval of a placement resource with a known SCR, SEL, criminal or DIR history, certain felony convictions mandatorily disqualify a resource from approval as a foster parent (see the section entitled "Clearance Disqualifiers," below).<sup>6</sup>

When a potential kinship resource has an SCR, SEL, criminal, or DIR history, or pending charge for a crime other than a mandatorily disqualifying crime, the foster care agency Homefinding Director may approve the home based on consideration of the clearance results in the context of all other information gathered, including a safety assessment. This information must inform, not determine, the safety assessment of the potential foster home and the placement decision.

If the placement with a kinship resource results in the removal of a child from a foster boarding home, a Placement Preservation Conference must be held to discuss the planned move with the foster parent. In addition, the current foster parent must be given ten (10) days' notice and has the right to an independent review and/or fair hearing to contest the removal decision.<sup>7</sup>

### **Emergency Kinship Home Placements**

If an eligible relative or non-relative kinship resource is identified by the child, the child's parent(s), stepparent(s), the court or foster care agency staff as a



potentially appropriate placement resource, an emergency placement may be approved provided the foster care agency staff follow the clearance procedure and timelines outlined in the section below, as well as the expectations established in ACS Guidance #2008/04, *Requirements for Certifying or Approving Emergency Foster Boarding Homes*, 6/1/2008 and section 443.7 of Title 18 of the New York Codes, Rules and Regulations.<sup>8</sup>

### **Requesting Local Clearances for Emergency Placement**

A home study, safety assessment and local clearances must be conducted before placing a child in any placement, including a kinship placement. Emergency home studies may be conducted to facilitate kinship placements; the agency's Homefinding Director must review, approve of and sign a completed Emergency Home Study Package prior to the placement of any child in a kinship home. Documentation of the approval must be entered in CONNECTIONS.

Local clearances of the kinship placement resource and all household residents are facilitated by ACS, by contacting the following offices:

- To conduct a local SCR clearance for families residing in New York City,<sup>9</sup> contact Deborah Brooks at [deborah.brooks@acs.nyc.gov](mailto:deborah.brooks@acs.nyc.gov). The password-protected email must include the names, dates of birth, social security numbers (if known) and address for all household members aged 18 or older; and
- To conduct a local clearance of the criminal history and DIR history clearance of the kinship resource and all household members aged 18 or older, contact the ACS Office of Shared Response at [acs.sm.shared.response@acs.nyc.gov](mailto:acs.sm.shared.response@acs.nyc.gov).

### **Clearance Disqualifiers**

Provider agency staff must disqualify and therefore deny or revoke an application for foster parent certification or approval (including emergency approved or emergency certified foster parent)<sup>10</sup> if the applicant has been convicted of a felony that falls within one of the following categories of crime:

- Child abuse or neglect;
- Spousal abuse; <sup>11</sup>
- Crime against a child, including child pornography;
- Crime involving violence, including rape, sexual assault or homicide, other than a crime involving physical assault or battery; or
- Physical assault, battery, or drug-related offense conviction within five (5) years of the application.

When the OCFS criminal history record summary of a fingerprinted prospective foster parent applicant,<sup>12</sup> including emergency approved foster parents, indicates

the existence of a mandatory disqualifying crime, the provider agency must complete the following actions:

- Deny the application or revoke approval of the foster home;
- Alert the Division of Family Court Legal Services (FCLS) attorney on the matter and discuss next steps;
- Remove any children placed in the home; 13 and
- Close the home.

Please note that if the person who has been convicted of one of the crimes listed above as mandatorily disqualifying is a household member, rather than the foster parent applicant, the agency must use this information at its discretion, as described in the section that follows below.

**Guidance for Homefinding Directors: Assessing a Kinship Resource’s Child Protective, Criminal, and Domestic Violence Histories**

Whenever a criminal, SCR, DIR or SEL history is found, the case planner must conduct a careful and thorough assessment to determine the risk to the health, safety, and well-being of the foster children who currently reside in the home; this information should further inform consideration of the safety of those who may be placed there in the future.

For clearance results that indicate a criminal history or presence on the SEL for any non-mandatorily disqualifying crime and for known SCR and DIR histories, the agency has the discretion to consider the information in the context of the safety assessment and home study conducted, and may use such information to inform its decision to approve a foster home.

In such cases, the specific case circumstances must be assessed and weighed against the current functioning of the family and the best interests of the child.<sup>14</sup> This assessment of a potential kinship resource or household member’s SCR history and/or SEL presence shall include consideration of the following factors:

- The seriousness of the incident(s) and/or the extent of the abuse or maltreatment;
- The number of indicated incidents of abuse and maltreatment which includes an assessment of each individual incident and considers the cumulative effect of all indicated incidents;
- The age of the subject and child at the time of the incident of child abuse and maltreatment;
- The amount of time that has elapsed since the most recent incident of child abuse and maltreatment;
- The extent to which the person, if a household member, rather than

the prospective foster parent, with the criminal, DIR or SCR history will have contact or caregiving responsibilities with the child;  
Information should be obtained from staff and providers who previously worked with the family (if available);  
For those present on the SEL, whether the offense was a substantiated category one case of abuse or neglect;<sup>15</sup> and  
The current family functioning and household conditions to determine whether there has been a change in circumstances since the prior report(s).

When analyzing the criminal and DIR history, the foster care agency should consider the following:

- Whether the information reveals a potential for harm and/or pattern of behavior that pose a risk to children;
- The severity of the crime or incident, and how long ago the crime or incident occurred;
- Whether the criminal or DIR history obtained is similar to or departs from information the household members have shared to date;
- Whether the information points to a history of violence on the part of the caretaker;
- Whether there are any current orders of protection in effect or any recent arrest on a DIR;<sup>16</sup>
- The presence of a child in the home during any incident;
- Threats of homicide, suicide, or stalking, and any escalation in frequency or severity of the violence (i.e., choking, stabbing, hitting with objects) over time.
- Whether the household composition has changed since the incident(s) occurred, and how the change impacts the safety assessment.

If the Homefinding Director makes the determination that it is safe for a child to be placed in a home with an SCR, criminal, or domestic violence history, the decision to proceed with approval of the foster home must be documented in CONNECTIONS. The case must be monitored closely with regular supervision of this home and continuous assessment for safety and arising risk factors.<sup>17</sup>