



TESTIMONY OF LAWYERS FOR CHILDREN

To the New York City Council Committees on General Welfare and Justice System

“Oversight - Removals from Parents and Caretakers In Child Welfare Cases”

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Lawyers For Children (LFC) thanks the City Council Committees on General Welfare and the Justice System for providing us with the opportunity to submit testimony as part of your hearing on Child/Family Separation in Family Court.

Lawyers For Children is a not-for-profit legal corporation dedicated to protecting the rights of children in foster care and compelling system-wide child welfare reform in both New York City and New York State. Since 1984, LFC has provided free legal and social work services to children in cases involving foster care, abuse, neglect, termination of parental rights, adoption, guardianship, custody and visitation. Currently, we represent children and youth in more than 6,000 judicial proceedings in New York City’s Family Courts each year. From our experience in individual cases, we have also successfully filed numerous class-action lawsuits and advocated for policies that promote good outcomes for all children in foster care.

As attorneys and social workers who directly represent children in child welfare proceedings, we are well aware of the impact of removing children from their families. Like other advocates who represent parents and children, we share the goal that children should be removed *only* as a last resort. The vast majority of children involved in the child welfare system can be safe with their families with the right support in place. Nearly fifteen years ago, the New York Court of Appeals held that children should be removed only if absolutely necessary and only after weighing the trauma of removal against the imminent danger of staying at home.¹ We are proud that these efforts along with many other improvements including a focus on preventive services, have helped dramatically reduce the number of children in foster care from a high of over 50,000 in the 1990s to under 9,000 today.

Based on our experiences representing child-welfare involved children, we will discuss the importance of keeping children safely with their families whenever possible, and areas we believe should be addressed to prevent and reduce unnecessary child/family separation.

Impact of Removal on Children & Importance of Preventive Services

The vast majority of children fare best with their families. As we have argued and see in practice, family separation is often devastating to vulnerable children. Young children in particular experience traumatic stress even if they are eventually reunified. That stress can disrupt the development of brain architecture and increases the risk of stress-related disorders and cognitive impairment well into the adult years.”² Furthermore, research has

¹ See *Nicholson v. Scoppetta* (NY Ct. of Appeals 2004), available:

http://www.courts.state.ny.us/Reporter/3dseries/2004/2004_07617.htm

² See American Academy of Pediatrics, *Adverse Childhood Experiences and the Lifelong*

² See American Academy of Pediatrics, *Adverse Childhood Experiences and the Lifelong Consequences of Trauma* (2014), available here: <https://www.aap.org/en->

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shown that children who have spent time in foster care are more likely to commit crimes, drop out of school, become dependent on public assistance, experience substance abuse problems, and enter the homeless population, as compared to their peers.³ The impact of changing neighborhoods, switching schools, experiencing relationship disruption and adjusting to placement in foster care should not be underestimated.

Mindful of the harm that foster care placement can cause, federal and state laws recognize that children should only be removed if there are circumstances that seriously endanger the safety and well-being of the child. Additionally, children cannot be separated without approval from a family court judge unless there is “imminent” risk of harm. This standard is deliberately stringent. Even with a finding of “imminent risk,” New York State law requires that the court make a finding that the removal is in the best interest of the child before removal is appropriate. Finally, even when these circumstances are present, prior to removal, New York like all states require the child welfare agency to make “reasonable efforts” to preserve the family and prevent removal. Such efforts commonly come in the form of preventive services, such as substance misuse treatment, family therapy, and mental health treatment. These laws reflect the seriousness of removing children from their families and codify nationally accepted professional child welfare standards which also reinforce the importance of maintaining family unity whenever possible.

Supporting Highest Standards of Professionalism

Children and families in crisis deserve the best resources available from our City, including professionalized and fully credentialed social workers. Of all responsibilities the City undertakes, there are few as serious and consequential as separating children from their families.

Like the Council, we fully appreciate the challenges that child protection staff face and the difficult responsibilities of assessing safety risks, understanding family needs and strengths, as well as evaluating the health and well-being of children they come into contact with. Decisions about child removal must only be made with highly individualized assessments by highly credentialed professionals on the frontlines.

There are numerous City and contracted workers that make life changing decisions—whether at the beginning of a case during a child protection investigation, at a child safety conference, pre-placement care at the ACS Children’s Center, or later when conferences are held to determine whether a child can return home. Child Protection Specialists (CPS) are responsible for engaging with family members and children, as well as assessing safety risks in complex cases often involving domestic violence, sex abuse, and mental health concerns.

[us/Documents/ttb_aces_consequences.pdf](#); John Harlow, *Pediatricians Know Why Family Separation is Child Abuse*, CNN, July 10, 2018

³ See Joseph J. Doyle, Jr., *Child Protection and Child Outcomes: Measuring the Effects of Foster Care*, 97 AMER. ECON. REV. 1583 (2007); see also ACS Report on Youth in Foster Care, 2017, available at: <https://www1.nyc.gov/assets/acs/pdf/data-analysis/2017/YouthInFosterCare2017.pdf>

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While ACS has boasted hiring over one thousand new Child Protection Specialists (CPS), upgrading technology, and “enhancing review protocols”—all of which are important—it is incumbent upon our City to not only have a consistent stream of new staff, but the highest qualified staff on the frontline, to the fullest extent possible. We believe our City can and should do better. Studies indicate that fewer than 15% of child welfare agencies require their staff to have social work degrees and that fewer than 40% of the child welfare workforce are social workers.⁴ Indeed, in New York City, prospective CPS and Child Protection Manager candidates are not required to have social work degrees, and do not have to have any experience working with children or families. While ACS provides training and has expanded its professional development efforts, it simply cannot compare to professional training Master Level Social Workers complete through two years of coursework and field placements. Although decisions around removal are often made by higher level Child Protection managers and supervisors, they are directly informed by the very critical assessments completed by Child Protection Specialists.

At Lawyers For Children, every child our office serves is assigned both an attorney and a licensed masters-level social worker. Through our model of affording every child with a masters-level social worker, we have helped thousands of children remain safely at home and helped engineer the safe return of thousands more from foster care to their families.

We urge the Council to work with the City to identify ways to enhance the qualifications, training and retention of child welfare staff throughout the child welfare system—from child protection, preventive services, to foster care. We urge and would support the City to identify ways to modify its civil service title to provide for higher qualifications as well as allocating additional funding that would allow for the City to attract and retain more frontline masters-level social workers. We would also support the City Council’s efforts to better understand ACS’ workforce needs, credentialing and background checks⁵, and how many frontline staff are licensed social workers.

Stopping the Intergenerational Child Welfare Involvement

One of the most concerning aspects that we see in our practice, is the cycle of parents who have spent time in foster care, mostly young mothers, who then become re-involved in the system as respondents on neglect cases.⁶ In fact, according to ACS, between 2006 and 2012, one third of the young mothers in foster care had their own children removed

⁴ See Tracy R. Whitaker, “Professional Social Workers in Child Welfare Workforce: Findings from NASW,” *Journal of Family Strengths* (Vol. 12, Issue 1), December 2012, available here: <https://digitalcommons.library.tmc.edu/cgi/viewcontent.cgi?referer=https://www.google.com/&httpsredir=1&article=1146&context=jfs>

⁵ See *NY Times*, “City Investigates Hiring of Convicted Killer as Youth Counselor,” (Aug., 7, 2018), available here: <https://www.nytimes.com/2018/08/07/nyregion/murder-counselor-boy-assault.html>

⁶ See Rise Magazine, “Where I Come Doesn’t Determine Where I Go,” <http://www.risemagazine.org/wp-content/uploads/2018/03/Rise-INSIGHTS1-Final.pdf>; see also Child Welfare Information Gateway, “Intergenerational Patterns of Child Maltreatment: What the Evidence Shows,” <https://www.childwelfare.gov/pubs/issue-briefs/intergenerational/>

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from their custody while they were in foster care.⁷ Data from other advocates suggest that that as many as 25-40% of mothers under 25 whose children enter foster care in New York City were themselves in foster care in childhood.⁸

In particular, there are three issues we would like to call attention to:

First, young mothers in foster care are often subjected to unnecessary and misguided scrutiny. In our experience, we have found that foster care agencies often use threats to call in a report of abuse or neglect to the State’s Central Register when concerns arise regarding typical teenage behavior that does not place the young parents’ children at risk of harm. This includes, most typically, curfew violations. We urge the City Council to require ACS to develop a clear protocol for addressing concerns regarding the behaviors of young parents in foster care.

Second, young parents are often discharged from foster care without appropriate supportive networks in their communities. ACS and its contract agencies should be required to connect all young parents to a range of services and supports in their communities prior to discharge from foster care. These should include, in particular, programs that will connect them to other young parents.

Third, parenting youth are often not prepared to be on their own with a baby when they leave foster care. We call on the Council to support living arrangements that better support this transition.

In addition to specialized programming and services for expectant/parenting youth, one lifeline is the Supervised Independent Living Programs (SILP), which was dismantled by the City in 2010. We ask the Council to support its reinstatement. SILP is an independent transitional living program for older youth, which helps teach young adults to live as self-sufficient adults to ease the transition from foster care to independent living. Youth live in a home-like setting with their own living space, and experience paying rent, grocery shopping, cooking and supporting themselves. Professional staff are present at the residence and guide the young people as they attempt to navigate all of the stressors of living on their own.

While we support and encourage the City’s efforts to identify foster families for older youth, SILPs provide a crucial transitional option for youth – especially expectant and parenting youth.

Over our decades of experience, we have found that SILPs offer young people structure and support to become more independent and prepared for adulthood. SILPs also provide a graduated approach to independent living, rather than an abrupt “you’re on your own” discharge that so many of our clients face every year.

⁷ Rise Magazine at footnote 5, see pg. 5

⁸ *Id.*

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Last year, ACS released a concept paper for reintroducing SILPs, which we supported. However, to our knowledge, ACS will no longer be proceeding with this program. In light of the negative outcomes for foster youth that have been reported to the City Council, young people need additional living options that effectively support their independence.

In addition to bringing back SILPS, we would ask the City Council to call upon ACS to renew its approval of placing young parents and their children in the same foster home, even when neglect charges have been filed against the parent. Previously, ACS recognized the particular importance (for both the parent and child) of young parents and their children being placed together. In order to facilitate the joint placement, while mitigating the risks to the child, ACS permitted the child to be placed in the same foster home as the young parent but under the care and control of the foster parent – rather than the parent. The Federal Government specifically allows for such placements⁹, which should be encouraged by ACS.

Ensuring Due Process for Voluntary Placements

To ensure that children are not unnecessarily placed into foster care and to ensure that all parents fully understand their rights and responsibilities before placing their children, Lawyers For Children would like to call attention to potential due process concerns that we have noticed in our practice involving voluntary placements.

In New York, families can voluntarily place their children in foster care without a report of child abuse or neglect made to the child welfare agency. Lawyers For Children is the primary legal services provider that represents children who are voluntarily placed. In our experience, voluntary placements are a critical safety net for struggling families to obtain assistance. However, we also believe that this mechanism for entering the foster care system needs to be better monitored and adequate safeguards should be in place to prevent unnecessary entry.

In order to voluntarily place a child in care under state law, a parent or guardian must sign a “Voluntary Placement Agreement,” which transfers the care and custody of the child to the foster care system. That agreement spells out the rights and responsibilities of each of the parties to the agreement. It includes important information, including the parents’ right to consult an attorney, the parents’ right to demand the return of the child, and the right to have visits with the child.

We have been quite concerned, recently, regarding ACS practice of placing a child in foster care pursuant to a voluntary agreement prior to obtaining a signed agreement from the parent. In some cases, the agreement – which appraises the parents of their rights and obligations regarding their children – is not signed until several weeks after the child has been removed and placed into foster care. The delay in signing the agreement raises

⁹ See “Child Welfare Policy Manual, Q&A #3,
https://www.acf.hhs.gov/cwpm/public_html/programs/cb/laws_policies/laws/cwpm/policy_dsp_pf.jsp?citID=53

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serious concerns of whether parents are adequately apprised of their rights and responsibilities before a child is removed and placed in foster care.

Because the petition for judicial approval of the child's placement is not filed until after the agreement is signed, some children are spending significantly more than a month in foster care before the court is asked to review the necessity of the removal, the appropriateness of the placement and the permanency plan for the child.

In order to address this issue, we urge the City Council to require ACS to account for each voluntary placement by reporting to the City Council annually. Such report should include information regarding the date the voluntary placement agreement was signed, as compared to the date the child was removed from the home, and the date of the subsequent filing of a petition for approval of the placement in court. We would also call on ACS to better explain and counsel parents who are considering voluntary placement by providing clearly written informational pamphlets, videos or other tools that can help ensure parents are adequately informed of their rights and responsibilities.

Conclusion

We thank the City Council for its support to reduce the number of children unnecessarily placed into foster care. We are available to discuss the Council's questions and are happy to provide additional information.