



**Jess Dannhauser, Commissioner
Testimony to the New York City Council
Committee on General Welfare and Committee on Finance
October 13, 2022**

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

**Int. 436-2022
Int. 554-2022
Int. 642-2022**

Good afternoon Deputy Speaker Ayala and members of the Committee on General Welfare. I am Jess Dannhauser, the Commissioner of the Administration for Children's Services (ACS). With me today is Ina Mendez, the Interim Deputy Commissioner for the Division of Family Permanency Services and Stephanie Gendell, the Deputy Commissioner for External Affairs. Thank you for the opportunity to testify today about the screening process and eligibility process for foster parents, as well as the three pieces of legislation being heard today.

I want to begin by thanking the thousands of foster parents in New York City who dedicate each day to provide care and support to some of the most vulnerable children and youth in New York City. Many of these foster parents are relatives or close friends of the children in their care, while others have decided to open their homes to children in need. I know that being a foster parent is both challenging and rewarding—so please know how grateful I am to each and every one of the foster parents caring for children in foster care.

ACS is committed to providing targeted services to support and strengthen families, so that children can remain safely at home with their families and in their communities. We currently have an historic low number of children in foster care, with fewer than 7,000 children in foster care for the first time ever.

In those situations where a child is at imminent risk of abuse or neglect, temporary foster care placement is a necessary safety intervention that we use as a last resort if there are no alternate safety plans available to keep the child safe at home. For a child who has faced the trauma of abuse or neglect, and removal from home, ACS has no greater responsibility than to provide a safe, nurturing foster care placement.

We continually strive to provide children with a safe place —optimally in the home of a relative or other safe adult who the child knows—while we work with the family to address the unsafe conditions that led to removal. To achieve this, ACS contracts with and oversees 26 non-profit foster care agencies that provide foster care placement and services for New York City children.

We are grateful for the Committee's focus today on the important topic of how ACS and our partner foster care provider agencies screen (as well as train and support) foster parents to provide safe placements for children.

Screening and Eligibility to be a Foster Parent

State Requirements:

The New York State Office of Children and Family Services (OCFS) regulates and supervises foster care in New York State, including the certification and approval of foster parents and foster homes. State law and regulations dictate the safety requirements that foster homes must meet, and OCFS authorizes foster care provider agencies to certify foster parents. Foster care agencies and OCFS coordinate on the certification process, which involves child welfare and criminal background checks, home studies based on home visits, and medical clearances.

Foster parents must be in compliance with criteria related to physical condition, character, motivation, and willingness to cooperate with the agency in providing services and carrying out the child's permanency plan. A careful evaluation of all of this information, including three references, is used to determine whether a proposed foster

parent is able to provide a safe and nurturing environment, and thus should be licensed by the state as a foster parent.

State regulations require foster parents be over the age of 21. Household members must be in good physical and mental health, and physician reports must be filed every other year, after the initial certification. Foster parents are able to be employed, and ACS can assist with child care when needed.

Pursuant to state law, the process includes both a criminal history record check of everyone over 18 living in the home as well as the completion of necessary forms to determine whether the applicant or any person 18 years of age or older who currently lives in the applicant's home has been the subject of an indicated child abuse or maltreatment report filed with the State Central Register of Child Abuse and Maltreatment (SCR) in New York State. Additionally, if the applicant, or any other person living in the applicant's home lived in another state in the five years preceding the application, they must obtain such information maintained by the SCR in each state or previous residency. Pursuant to federal and state law, there are some types of criminal history that are mandatory disqualifiers and some that are discretionary.

Foster parents are required by the state to complete mandatory training as part of initial certification, as well as annual refresher training as part of recertification. Initial training requirements are 30 hours of Model Approach to Partnerships in Parenting (MAPP). The goal of MAPP is to prepare individuals and families to make an informed decision about becoming foster/adoptive families. This decision is made mutually with the foster care agency and is based on the capability and willingness to take on the role and develop the skills needed to foster and/or adopt.

Additional City Requirements:

Given that the safety and well-being of children in foster care is so critical, ACS has some additional requirements beyond those set by the state, related to training and oversight of foster parents.

ACS now requires foster parents to participate in the Trauma-Responsive and Informed Parenting Program (TRIPP), which is both training and coaching support for a total of 24 hours over 8 sessions. TRIPP is a learning program that prepares and supports foster parents and child welfare professionals. Learners develop a trauma-informed lens and are equipped to understand and respond to their youth's challenging behaviors. The program includes a variety of learning approaches, including homework assignments, videos, group role-plays, and other interactive activities.

To meet the needs of LGBTQAI+ youth, ACS also requires all foster parents to be affirming and to participate in training specifically related to the needs of LGBTQAI+ youth.

In addition, as part of our LGBTQAI+ Youth in Care Action Plan, we are working with several foster care providers and LGBTQ organizations on new foster parent recruitment strategies. For instance, we have provided agencies with LGBTQAI+ recruitment best practices, information on community-based agencies they can partner with to increase recruitment opportunities, and a checklist for LGBTQAI+ inclusivity.

Because ACS is deeply committed to the safety and well-being of every child placed in our care, we have established a process to review foster home certification that is above and beyond State requirements. As part of our rigorous oversight and

monitoring of foster care agency practice and performance, ACS audits a sample of initial foster home certifications and first-time annual recertifications. While the foster care agencies and OCFS are ultimately responsible for certifying foster homes, we want to be sure that ACS-contracted foster care agencies are following the correct process and documenting it.

ACS and Our Providers Focus on Finding Family and Friends First

ACS believes that children in foster care should be placed with kin – relatives or family friends – whenever possible. Research shows that children in foster care who are placed with kin experience less trauma, better maintain community and family connection, have greater overall well-being, and are more likely to achieve permanency through reunification, adoption, or guardianship.

ACS has focused on increasing placements with family members, and in FY22, 56% of children who entered foster care as a result of an investigation of suspected abuse or neglect were placed with kin (up from 26% in FY14). Similarly, the proportion of all children in foster care who are currently living with kin has increased from 31% in FY17 to 43% today.

To accomplish this increase in kinship placements, ACS implemented a range of strategies specifically aimed at identifying kin and increasing the proportion of children and youth placed with kin. When placing a child in foster care, our process is to first search extensively for kin, asking children (as appropriate), youth and parents if they can identify potential relatives or family friends. As appropriate, we speak to relatives, neighbors, family friends, teachers, coaches, religious connections and other trusted

resources. Since 2019, ACS has had Kinship Specialist positions in the ACS Division of Child Protection (DCP). These staff have the dedicated function of finding and engaging kin caregivers for children entering foster care. For children who aren't initially placed with kin, ACS contracted foster care agencies implement targeted efforts to identify and move children to kin when this is in their best interests, including continuing to talk to children, youth and family members about who in the child's life can be a foster parent.

Unlike many jurisdictions, ACS and our foster care agencies work to make sure that kinship caregivers can become certified as foster parents to receive the same financial stipend and case planning support that non-kinship foster parents receive. When kinship caregivers are identified for emergency placement, ACS performs an expedited home study so that children may never need to spend one night outside of kinship placement, if possible. The assigned foster care agency then proceeds to work with the kinship foster parent to complete the full home assessment and training process to become certified by OCFS. We offer resources to eliminate obstacles for kinship caregivers, such as providing beds or other furniture the children may need, paying for safety enhancements to the home like radiator covers, providing a daily stipend to cover incidental costs while the kin resource awaits final certification, and arranging child care assistance.

ACS is Strengthening Foster Care

As you know, ACS is in the process of re-procuring the foster care system, but ACS and our providers are already implementing the funding and programmatic enhancements embedded in the RFP now. As it relates to foster parents, providers now have more resources for foster parent recruitment and for providing and supporting

kin. A key component is that we have changed the funding structure so that providers are no longer reimbursed by care days, which eliminates incentives for longer lengths of stay, while also giving providers more financial certainty and flexibility.

In addition, ACS has made significant investment in new resources as part of its new Enhanced Family Foster Care (EFFC) program, which replaced the separately contracted Family Foster Care (FFC) and Therapeutic Family Foster Care (TFFC) programs. EFFC provides increased therapeutic resources and services, responding to the increased acute needs of children in foster care and allows for greater flexibility of services based on the changing needs of the child and family. Additionally, the blended EFFC model allows children to remain in the same foster home and program as their needs fluctuate over time.

To support the continuous efforts to recruit, support and retain caring foster parents, the Division of Family Permanency Services provides an array of technical assistance and support to provider agencies to expand the pool of caring foster parents in New York City. The Home Away from Home framework supports foster care agencies to develop processes to support children placed with kin, improve their practices of transitioning children to kin, increase foster parents' capacity to care for older children and children with complex needs, and improve the recruitment, training, and support strategies to retain a greater number of foster parents.

Our foster care agencies use a variety of approaches to support foster parents. These strategies include planning events facilitated by foster parents to recruit within their own social, family, professional circles; creating mentoring opportunities between experienced foster parents and newly certified foster parents to provide supports to

each other; and leveraging Foster Parent Ambassadors who develop team-building activities for other parents and holding roundtable discussions that are facilitated and attended by foster parents to discuss trainings needs or any other topics impacting foster parents. The Mockingbird Model, implemented by one agency, creates clusters of foster homes in close proximity. These parents provide support and back-up to each on a regular basis.

In addition, ACS recently rolled out Binti, a web-based tool to assist foster parents and foster care agencies with the certification and re-certification process. This software has helped to streamline the process and make it paperless.

Finally, this past year, the state settled a lawsuit and then passed legislation to increase the rate provided to foster parents to care for the children. While ACS was deeply disappointed that the state did not include any state resources in the state budget to help pay for this increase, we believe that increasing the rate is an essential support so that foster parents are able to provide for all the needs of the children.

Int. 642-2022 (Williams)

Int. 642-2022 would require ACS to create quarterly reports regarding the number of days children are placed at the Nicholas A. Scoppetta Children's Center, the Youth Reception Centers (YRC) and the Rapid Intervention Centers (RIC).

ACS's pre-placement continuum includes the Nicholas A. Scoppetta Children's Center, operated by ACS with a capacity of 100 children, and four YRCs with a total capacity for 45 children. When children must be removed from a parent due to imminent risk to the child's health and safety, ACS makes every effort to immediately identify a foster home setting to meet the child's needs, with priority for kinship placements. We

have established pre-placement settings to make sure we can immediately meet the needs of a child following removal or reentry to care, in a safe and nurturing environment, while we expeditiously work to find an appropriate foster home. Our goal is always to make sure stays at the Children's Center or YRCs are as short as possible.

The YRCs include the Sheltering Arms Reception Center, which has 15 beds to serve boys and girls age 0-12; Mercy First Virginia Residence, which is a 12 bed co-ed facility for youth ages 14 and up; the Good Shepherd Services Shirley Chisholm Center which is a 10 bed facility serving girls ages 14 and up; and Heartshare/St. Vincent's Fox Hills, which is an 8 bed co-ed facility for youth ages 14 and up.

YRCs are settings where youth can be engaged in a trauma-focused, strengths-based, clinical assessment and case planning process that will result in the implementation of a safe, supportive, timely out of home placement or family reunification plan.

ACS also contracts for three Rapid Intervention Centers (RICs), which are not pre-placement facilities but instead provide respite and residential care for youth in foster care who need crisis stabilization and/or assessments. RICs provide a short-term stabilizing and safe environment where individualized assessments and strengths-based therapeutic treatment plans tailored to youth and family needs are developed.

The Children's Center is a 24/7 temporary foster care pre-placement facility where we provide care and support for some of NYC's most vulnerable children and youth who enter foster care due to abuse or neglect, or family disruptions. The Children's Center serves approximately 1,700 unique children and youth each year, from newborns up to age 21. Sixty-five percent of the children reside at the Children's

Center for 10 days or less and 45% of the children reside there for less than three days. As you can see in our most recent monthly Flash report from September 2022, the average daily population at the Children's Center was 68 in August 2022, and calendar year to date (January 2022-August 2022), it was 76 children. The census on October 7, 2022 was 58 children.

We are taking a number of steps to try to reduce both the number of children at the Children's Center and the length of stay for children at the Children's Center. This past year, the Children's Center added its own kin finding unit to further intensify efforts to identify safe kin resources for children as an alternative to the Children's Center or foster care stay. The Office of Placement Assistance (OPA), within the Division of Family Permanency Services, works closely with foster care agencies to facilitate the matching of children into appropriate, safe and caring homes. In addition to using the Placement Module, an automated referral system, OPA has leveraged other practices to engage agencies around expediting placements through the exploration of available homes that meet best with the needs of the children.

The Children's Center is staffed with child care specialists, social workers, programming and wellness staff, education, and engagement and visiting specialists. There is also an on-site full-time pediatrician and nursing staff, the ACS-Bellevue Mental Health Team (MHT), and JCCA provides additional clinical services to youth with high needs. ACS also contracts with Safe Horizon to provide consultants specialized in engaging youth at risk or victims of sex trafficking. In addition, we have on-site Cure Violence Credible Messenger Mentors, Youth Advocate Program (YAP) Family Finders/Advocates, a CASAC and ACS Peace Officers help maintain safety.

ACS has taken a number of steps to improve the experience youth have at the Children's Center including creating 4 additional programming spaces for children to use for community meetings and developmentally appropriate programming workshops and recreation and a multi-faith room which offers children a private, quiet area to practice their faith.

Programming offers youth healthy prosocial and emotional outlets, provides enrichment and recreation, and helps reduce the impact and systems of trauma. The Children's Center programming ranges from therapeutic art classes, financial literacy, music, performing arts, nutrition, fitness, youth voice and empowerment, health education, and much more. Staff also chaperone youth to Broadway shows, professional sporting events, and celebrate holidays and diverse cultural traditions.

ACS looks forward to discussing this bill with the Council.

Int. 554-2022 (Rivera)

Int. 554-2022 would require ACS to, in consultation with DOI and other experts in child welfare and child safety, to create an action plan to implement the recommendations in the workload study ACS published in 2019 pursuant to Local Law 18 of 2018. Specifically, the legislation would require the action plan to include best practices related to the maximum number of cases child protective specialists can manage to improve child safety and well-being outcomes.

The Child Welfare League of America recommends child protection staff carry 12 cases during the investigative or assessment phase. The Council on Accreditation standards state that caseloads should not exceed 15 investigations. For quite some

time, ACS has had a target for our Child Protection Specialist caseloads not to exceed an average of 12 cases. To maintain this, OMB enables ACS to hire enough CPS to stay ahead of attrition.

For the month of September 2022, the average child protection caseload was 8.1 citywide. (It was 8.9 in the Bronx; 7.7 in Brooklyn; 7.4 in Manhattan; 7.5 in Queens; 8.5 in Staten Island; and 9.3 in the Office of Special Investigations.)

Thus, ACS caseload averages remain well below 12. ACS hires CPS based on need, and we currently have a strong staffing position thanks to our successful hiring and retention strategies. We recently onboarded a class of 124 new CPS who are currently in the training academy. For the remainder of FY 23, we plan to hire two additional classes in February and May 2023.

ACS looks forward to discussing this bill with the Council.

Int. 436-2022 (Stevens)

Int. 436-2022 would create a Juvenile Detention Advisory Board to advise ACS, the Mayor and the Council on issues related to juvenile detention.

NYC's juvenile justice system safely serves youth through a trauma-informed lens, in the community whenever possible, and with appropriate structure and supports in place. DYFJ, oversees services and programs for youth at every stage of the juvenile justice continuum. Our continuum includes community-based services for youth who are at risk of delinquency, as well as for their families. In addition, we provide secure detention services and oversee nonsecure detention for youth who have been arrested and the court has ordered to be detained while awaiting resolution of their cases. We

also oversee the Close to Home placement system for youth ordered to be placed by the Family Court. And finally, ACS will soon oversee the City's Alternative to Detention programs as they transfer from MOCJ to ACS.

ACS appreciates the Council's interest in ACS benefiting from the input of others, including youth and parents who have been personally impacted by the juvenile justice system. ACS has a new Deputy Commissioner for our Division of Youth and Family Justice (DYFJ), Nancy Ginsburg, who comes to ACS from Legal Aid with over thirty years of working directly with, and advocating for, youth impacted by the system. Our new Deputy Commissioner is in the process of setting up a Juvenile Justice Advisory Board to lend expertise to us as we seek to continuously strengthen our efforts to prevent youth from coming into contact with the system, to meeting the needs of youth in the community, detention and Close to Home.

We look forward to discussing this bill with the Council.

Conclusion

In conclusion, ACS is committed to strengthening all components of our work from child protection to foster care to prevention to juvenile justice to child care. We look forward to continuing to partner with the Council as we work together to support New York City's children, youth and families.

Brooklyn (BDS)
Defenders

**The Bronx
Defenders**

**Redefining
public
defense**

CFR
CENTER FOR FAMILY
REPRESENTATION
Every Family Matters

NDS
HARLEM

TESTIMONY OF:

**Brooklyn Defender Services, The Bronx Defenders, Center for Family
Representation, Neighborhood Defender Service of Harlem**

Presented Before

The New York City Council Committee on General Welfare

**Oversight Hearing on the Screening Process and Eligibility Requirements for
Foster Parents**

October 13, 2022

This testimony is submitted jointly by Brooklyn Defender Services (BDS), the Bronx Defenders (BxD), Center for Family Representation (CFR), and Neighborhood Defender Service of Harlem (NDS). Our offices are the primary providers of mandated legal representation to indigent parents in Article 10 cases filed in family court in each of our boroughs (collectively the “family defense providers”). Together, we have created a model of interdisciplinary representation for parents charged with abuse or neglect and at risk of losing their children to the foster system. Our model connects clients with attorneys, social workers, and parent advocates to provide comprehensive representation and advocacy both in and out of court. We thank the Committee on General Welfare for the opportunity to testify about the family regulation system¹ and its impact on the families we serve.

¹Commonly referred to as the “child welfare system” or the “child protection system,” defenders and parent advocates have followed the leadership of directly impacted people and adopted “family regulation system” language to reflect the system’s prioritization of and roots in surveillance and control over genuine assistance to families living in poverty, who struggle to access quality health and mental health treatment, basic necessities, and appropriate education and services for children with disabilities. For more information about this language shift see, Dorothy Roberts, *Abolishing Policing Also Means Abolishing Family Regulation*, The Imprint (June 16, 2020 5:26 a.m.), <https://imprintnews.org/child-welfare-2/abolishing-policing-also-means-abolishing-family-regulation/44480>.

When Poverty is Treated as Neglect

Our office represents parents at every stage of an Administration for Children's Services (ACS) case: during an initial investigation before a family court case is filed; in Article 10 cases when ACS has filed a petition against a parent or caretaker alleging neglect or abuse; at termination of parental rights proceedings and in administrative proceedings to clear a parent's record to help them expand employment opportunities to support their families. From the onset of an investigation, to the threat or actuality of family separation, and the prolonged surveillance of a court proceeding, a report to ACS is traumatic and destabilizing for parents and children. At each stage of the case, our clients often have family or friends who are sources of support and can be resources for their children.

The overwhelming majority of parents we represent face allegations of child neglect that mistakes poverty and a lack of resources as maltreatment.² Too often a report to ACS is used to address issues caused by our city's failure to help meet families' basic needs, like clean and safe housing, accessible and culturally competent mental health care, or quality special education services. Most of the parents we represent are people of color living in poverty, raising their children in homeless shelters or public housing, and in highly policed neighborhoods, making them vulnerable to government surveillance, including ACS. Families under incredible economic stress, are living under the fear that one argument between parents or one moment of impatience with a child may lead to a knock on their door from an ACS worker. School attendance interrupted by homelessness, or an angry landlord seeking to evict a family illegally can result in a call to the State's Central Registry of Child Abuse and Maltreatment (SCR) and begin an ACS investigation.

Instead of relying on community-based resources, such as food pantries, support groups, or helping families access government benefits, social workers, teachers and case workers report families to ACS. Once ACS is involved in a family's life, the risk of family separation increases exponentially. Recent research has shown that 44% of Black children in New York City are investigated and approximately 6% are placed into the foster system, and that 43% of Latinx/Hispanic/Latino/a/é children in New York City experience an investigation.³ In 2019, over 216,000 New York children were subjected to child welfare investigations.⁴ The vast majority of investigations clear the accused parent of wrongdoing; in nearly 70% of its investigations, CPS finds no credible evidence of child maltreatment.⁵ This number is dropping due to changes in the law that created a more equitable standard for indication.⁶

² Jerry Milner and David Kelly, *It's Time to Stop Confusing Poverty with Neglect*, The Imprint, January 17, 2020, Available at <https://imprintnews.org/child-welfare-2/time-for-child-welfare-system-to-stop-confusing-poverty-with-neglect/40222>

³ Kinya Franklin & Sara Werner, 'A Call to Action': New Research Finds Extremely High Rates of Investigations of Black, Brown and Native Families, *Rise Magazine* (Nov. 3, 2021), <https://www.risemagazine.org/2021/11/a-call-to-action-research> (citing Frank Edwards, Sara Wakefield, Kieran Healy, Christopher Wildeman, "Contact with Child Protective Services is pervasive but unequally distributed by race and ethnicity in large US counties," *Proceedings of the National Academy of Sciences* 118 (Jul 2021)).

⁴ Williams, Sarah Catharine, "State Level Data for Understanding Child Welfare in the United States," *Child Trends* (October 28, 2020), available at <https://www.childtrends.org/publications/state-level-data-for-understanding-child-welfare-in-the-united-states>

⁵ U.S. Department of Health & Human Services, Administration for Children and Families, Administration on Children, Youth and Families, Children's Bureau. (2020). *Child Maltreatment 2018*. Available at <https://www.acf.hhs.gov/cb/research-data-technology/statistics-research/child-maltreatment>.

⁶ <https://www1.nyc.gov/assets/acs/pdf/data-analysis/flashReports/2022/09.pdf>

The Importance of Early Defense Representation and Family Miranda Rights

For these reasons, our Early Defense practice is a crucial resource to *prevent* family separation. Our attorneys, social workers, and advocates work with parents at the onset of an investigation to ensure that parents and caretakers understand their rights, have help navigating the process of an investigation and Court filing, and to provide speedier referrals to supportive services that families believe could be beneficial and that help avoid family court filings. Thanks to the generous support of the City Council, many parents in New York City have been able to access the support of legal advocates at the early stages of an ACS investigation. Eighty percent of the families we work with during an initial investigation are able to remain together and avoid Court proceedings altogether. This representation has led to less family separation and fewer Court filings.

There is widespread agreement that families facing child welfare investigations benefit from early representation. In February 2018, after conducting an extensive investigation and hearing from many child welfare and Family Court stakeholders, the New York State Commission on Parent Representation issued a report to Chief Judge Janet DiFiore which recommended that parents be “timely provided with relevant information about the right to counsel, and that parents be granted access to counsel during a child protective agency investigation and sufficiently in advance of the first court appearance.”⁷ Even the federal Administration for Children and Families has come out in support of early assignment of counsel: “[t]here is a growing body of empirical research linking early appointment of counsel (at or prior to a party’s initial appearance in court) and effective legal representation in child welfare proceedings to improved case planning, expedited permanency and cost savings to state government.”⁸ Most recently, the Office of Court Administration issued a rule that “counsel shall be provided at the first court appearance or immediately following the request for counsel, whichever is earlier.” Family Court Rule 205.19 (a).

City Council has introduced a critical bill that would address the imbalance of power and bias in ACS investigations by ensuring parents are aware of their rights - including the right to counsel - at the onset of the investigation. When ACS investigates a family after a call is made to the SCR, ACS will often begin their investigation by visiting the family’s home and speaking with the subject parent or caretaker. Parents we work with have long described these investigations as frightening and overwhelming. Families already living under close surveillance by police, shelter, and hospital staff, are subjected to middle-of-the-night visits, body searches of their children, and invasive questioning about their family, and are often asked to sign documents waiving privacy rights out of fear of losing their children.⁹

⁷http://ww2.nycourts.gov/sites/default/files/document/files/2019-02/PLR_CommissionReport.pdf?fbclid=IwAR2DGVUGk86o8SH4HkViJ7a9uJyYHWZt7rktZ044xQlnyKH3K9HYNBwqLiw, page 16.

⁸ US Dept of Health and Human Services, ACYF-CB-IM17-02, January 17, 2017 (citations omitted).

⁹ Eli Hager. “Police Need Warrants to Search Homes,” ProPublica, October 13, 2022, <https://www.propublica.org/article/child-welfare-search-seizure-without-warrants>

We are well-aware that empowering parents with knowledge better protects children. Providing parents knowledge of their full legal rights serves to educate parents in order to make the best decisions for their children.

The Harms of Family Separation and the Importance of Family Bonds

Once ACS files a petition against a parent and they are brought to Court, far too frequently ACS will seek, and judges will grant, a request to remove a child from their parent's custody and place that child in the foster system. The trauma caused by forced family separation is well documented. There are hundreds of studies that detail the long-term harmful effects on children when separated from a parent¹⁰. The removal of children often occurs without serious regard for family unity or well-being, and child removals, though purportedly intended to protect children from abuse or mistreatment, often do more harm than good. As told by one expert, when a young child is separated from a parent for a long period of time, "they remain on high alert, and their bodies endure prolonged and severe toxic stress as a result. That interrupts the brain's architecture at a critical time of development, when neural circuits — the pathways necessary to carry information to and from the brain — are forming rapidly, at a rate of more than 1 million neural connections each second¹¹ in infants and toddlers. Stress hormones block those neurons. This can lead to delayed development in reason, learning and emotional development... If continuously exposed to toxic stress over time, damage done to the child's brain cannot be changed,¹² studies have shown."¹³

Once a family is separated and while families fight to reunify, it is vital for a child to be able to be cared for by family or familiar community members. However, it is far too common for children to be placed into the home of a non-relative, and to have their family visits with their parents supervised by strangers. Nearly 60 percent of children in foster care in New York City are placed in nonkinship settings.¹⁴ There are a few reasons why so many children end up in nonkinship foster care: the process to clear a kinship visitation or placement resource takes far too long after our parents and children identify kinship resources for their family; and ACS rejects many kinship resources based on old and irrelevant indicated SCR records without conducting the legally required safety assessment. In our experience, we have seen grandparents denied the ability to care for their newborn grandchildren because of an indicated case regarding a teenager's truancy years or decades prior; and an aunt who is unable to supervise family visits for a beloved niece because she was found to have used an illicit substance twenty-years prior even though she has since abstained.

In addition to family resources being cleared to care for children full time, it is vital that ACS quickly clear these resources to be family visit supervisors. A visit between a child and

¹⁰Laura Santhanam. "How the toxic stress of family separation can harm a child," PBS News Hour, June 18, 2018, <https://www.pbs.org/newshour/health/how-the-toxic-stress-of-family-separation-can-harm-a-child>

¹¹"What is Early Childhood Development,"

<https://developingchild.harvard.edu/guide/what-is-early-childhood-development-a-guide-to-the-science/#cps>

¹²The Center on the Developing Child. "How Toxic Stress Derails Healthy Development,"

<https://www.youtube.com/watch?v=rVwFkcOZHJw>

¹³Bruce S. McEwen. "Protective and damaging effects of stress mediators: central role of the brain," December 2006,

<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3181832/>

¹⁴NYC Mayor's Office of Administration, Mayor's Management Report, Administration for Children Services, 2022,

Available at <https://www1.nyc.gov/assets/operations/downloads/pdf/mmr2022/acs.pdf>

their parent at home, at the park, or at the library with family and friends is a far better environment for a child than an agency office. Moreover, when a parent or child's work or school schedule does not allow for family time to take place at an agency office during business hours - and the family can only spend time together in the evenings or weekends - delays in clearing kinship resources can delay any possible contact between a parent and a child. This delay can result in weeks and months when a child is unable to see their parent.

To address these problems, which contribute to the trauma of family separation, and delayed reunification and longer stays in the foster system, we offer the following recommendations:

Recommendations

1. Reduce Family Separation, and Promote Quicker Reunification to Avoid the Need for Placing Children in Relatives' Homes

The Committee should prioritize policies and programs that support families and keep children in their homes. Families need stable and permanent housing. Parents need safe, flexible, and dignified employment that allows them to support their families, and access to quality child care that accommodates a variety of schedules and needs. Families need access to affordable health services, including mental health services, that do not have months-long waitlists, and quality educational services. Parents struggling with substance use, or mental health issues should be able to access supportive housing programs that allow families to stay together in a safe and caring environment. Currently, immense resources are poured into investigations, surveillance, court proceedings, and the foster system – all that work to punish parents and separate families. We recommend channeling these immense resources into supporting parents in their efforts to create safe and stable environments for their children.

We also recommend better training and equipping those that work closely with families - medical providers, teachers, and case workers - with these resources. These providers will then be better able to connect parents and children with the resources and support they need, and avoid the unnecessary harm of a report to ACS.

2. Expedite Clearances of Kinship Resources for Placement and Resource-Supervised Visitation

We recommend that the Committee take steps to ensure that ACS expedites investigations of relatives, both for placement and for family visitation, and create timelines by which these investigations must be completed. ACS has acknowledged the importance of keeping children with family or community members, if they are separated from their parents, and

the law requires an immediate investigation of any such kinship resources.¹⁵ ACS should be required to document their efforts and provide data to support these efforts.

3. Minimize The Unnecessary Disqualification of Kinship Resources Based on Indicated cases

We recommend the Committee ensure that ACS does not misuse its discretion to approve or reject kinship resources. The law currently requires ACS to complete individualized assessments of each kinship resource, and document their investigations. The Committee should monitor the frequency with which ACS fails to clear a kinship resource; the frequency the investigation is fully documented; the reason a resource is not cleared; and the duration of each investigation so that ACS is held accountable for its actions regarding placing children with relatives.

4. Shorten Stays in the Children’s Center

Finally, we recommend that this Committee require that ACS report on its efforts to prioritize family reunification as an alternative to a lengthy stay in the Children’s Center. There is wide-agreement that children should never have to be placed in the Children’s Center, and certainly not for an extended period of time. Once placed at the Children’s Center, we have seen siblings being separated and unable to see each other; families being denied regular visits even when Court ordered; schooling and medical care being disrupted; phones taken away from children; and children being able to leave the Center unaccompanied day or night - leaving a parent to wonder where in New York City their child may be.

Rather than solely focusing on placing children languishing in the Children’s Center in the foster system, ACS should make every effort to reunify the family immediately. The law requires that the harm of removal - like lengthy stays in the Children’s Center – be considered in assessing whether a child should be removed or remain separated from their family.¹⁶ The law also requires that ACS make reasonable efforts towards the goal of reunification.¹⁷ ACS must consider the harm of removal caused by extended stays in the Children’s Center in assessing risk to the children and do an ongoing assessment about family reunification.

Conclusion

We are grateful to the City Council for highlighting concerns about the harm the city’s foster system causes families. We see everyday how low income Black and Latine parents are

¹⁵ Family Court Act Section 1017 provides that, “[i]n any proceeding under this article, when the court determines that a child must be removed from his or her home, pursuant to part two of this article, or placed, pursuant to section one thousand fifty-five of this article: (a) the court shall direct the local commissioner of social services to conduct an immediate investigation to locate any non-respondent parent of the child and any relatives of the child, including all of the child's grandparents, all relatives or suitable persons identified by any respondent parent or any non-respondent parent and any relative identified by a child over the age of five as a relative who plays or has played a significant positive role in his or her life.”

¹⁶ *Nicholson v. Scoppetta*, 3 N.Y.3d 357 (2004).

¹⁷ N.Y. Fam. Ct. Act § 1027; 1089.

unfairly treated by the child welfare and foster systems - which we more accurately describe as the family regulation system - and urge the City Council to consider ways to reduce the city's reliance on foster placements and invest in strengthening families so that children can remain home, in their communities and schools. We welcome the opportunity to work with you on this issue.

If you have any questions, please feel free to contact Nila Natarajan, Supervising Attorney & Policy Counsel in the Family Defense Practice at Brooklyn Defender Services, at nnatarajan@bds.org.



New York City Council Committee on General Welfare

TOPIC: The Screening Process and Eligibility Requirements for Foster Parents

Thursday, October 13, 2022

Testimony by

Amiee Abusch, Senior Vice President of Foster Care, Prevention and Community Partnership

Good morning Deputy Speaker, Chair Ayala, and members of the Committee. Thank you for allowing me to testify on behalf of JCCA and the youth, their families, and foster parents who care for them.

My name is Amiee Abusch, Senior Vice President of Foster Care, Prevention and Community Partnership at JCCA. I have spent most of my career working in child welfare. I began as an ACS Child Protective Services (CPS) worker and also served as Clinical consultant to CPS, Preventive Director and Vice President for Foster care programs. I have worked with hundreds of foster parents throughout my career and admire their dedication to our children.

JCCA works with about 17,000 of New York State's children and families each year, providing foster and residential care, preventive, mental and behavioral health care services, and educational assistance and remediation.

This year JCCA is proudly celebrating its 200th anniversary serving vulnerable New Yorkers. We began as New York City's first Jewish orphanage, helping children who had lost one or both parents, or whose families were too overwhelmed—often due to poverty or mental illness—to take care of them. In 1929 we began placing children in family foster homes in the Bronx. We have learned much over these many years.

Foster parents are unsung heroes. They open their homes—including during the pandemic—to young people who are incredibly vulnerable, struggling with depression and other mental illness, and the trauma of being removed from their home, neighborhood, often school, and everything familiar. Foster parents build delicate relationships with birth parents, schools, therapists, and other adults in the child's life.

More Flexibility in the Screening Process and Eligibility Requirements for Foster Parents

To become a foster parent, an individual must undergo checks in the State Central Register (SCR) for Child Abuse, New York State Division of Criminal Justice Services (DCJS) and the Federal Bureau of Investigation. These checks were put in place to keep children safe—an admirable goal. However, we need more flexibility in how these checks are implemented.

Many of our most successful, loving, and committed foster parents have lived experience as the subject of an ACS investigation. Why doesn't the credible messenger movement apply to foster parents? Once a parent successfully completes the demanding process of having their child returned home, they have expertise.

- That person is expert in the pain and trauma a parent experiences when their child is removed.
- They are expert in the mandatory classes and other demands of the child welfare system.

- They are expert in how foster parents can support a child AND a birth parent through this process.

ACS has embraced parent advocates to help those involved in the child welfare system. At JCCA we have embraced the RISE model and peer advocates. Why are we not changing the system for foster parents as well?

Historically, the child welfare system has had a drastically disproportionate impact on families of color. We continue to penalize potential foster parents who may have successfully had their children returned home many years prior and done everything right since then. In addition, we penalize people who never had a child removed. A foster parent applicant may have been a victim in an indicated report, and now needs to defend themselves. An applicant may have been a household member, or even just listed the home as their address and be named in a case they did not know existed.

JCCA recommends that more flexibility be introduced to the screening process for foster care parents. When an applicant to be a foster parent has a past State Central Register allegation on their record, that may be 20 years old, organizations like JCCA are not always given the ability to make case-by-case decisions. Some allegations result in automatic rule-outs and limit our ability to recruit and hire some of our preferred applicants. JCCA and other child welfare agencies aim to set up families for success. By having a robust cadre of foster parents in local communities to care for children, we are building an infrastructure for success.

Viable Wage for Foster Parents

We make countless demands on foster parents. They must undergo almost **60** hours of training, they are responsible for ensuring children, including teens, make it to school, attend medical, therapeutic, and casework appointments, and visit with family members that may be

emotionally triggering. New York should PAY foster parents a viable wage to provide for children. Some states have embraced this. They view foster parents as care professionals and pay a wage commensurate with the undeniable value of their work—work that is incredibly complicated and difficult.

We aim to keep children in the same neighborhoods they lived in before being removed. There is added financial burden to those who live in these neighborhoods to become foster parents and embrace these children. We and we owe it to our communities to, at a minimum, support foster parents with a viable wage.

Conclusion

Thank you for taking the time to consider a more flexible screening process and eligibility requirements for foster parents. We aim to provide New York's children with the support of foster homes that are equipped to best meet their needs.



**New York City Council
Committee on General Welfare
October 13, 2022**

Oversight: Examining the Screening Process and Eligibility Requirements for
Foster Parents
and Int. 436, 554, and 642

Testimony of The Legal Aid Society

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Introduction

The Legal Aid Society (Legal Aid) thanks Chair Ayala and the members of the Committee on General Welfare for holding this hearing on the screening process and eligibility requirements for foster parents. Several aspects of this process must be improved to allow more children to be placed with kin foster parents. Moreover, we support the bills before the Committee today – Int. 436, 554, and 642 – which would increase transparency and accountability within the child welfare and juvenile legal systems.

About The Legal Aid Society

Legal Aid’s Juvenile Rights Practice provides comprehensive representation as attorneys for children who appear before the New York City Family Courts in abuse, neglect, juvenile delinquency, and other proceedings affecting children’s rights and welfare. Our staff typically represent approximately 34,000 children each year. Legal Aid has dedicated teams of lawyers, social workers, paralegals and investigators devoted to serving the unique needs of children and youth placed in to foster care through New York City’s Family Courts. Legal Aid also represents children and youth charged as juvenile delinquents, juvenile offenders and adolescent offenders, and represents the majority of children and youth prosecuted in New York City’s Family Courts and Criminal Courts.

In addition to representing our clients in trial and appellate courts, we also pursue impact litigation and other law reform initiatives. To accomplish the most effective law reform, Legal Aid relies on data and uses affirmative litigation and policy advocacy to improve existing laws and policies. Our perspective comes from daily contact with children and their families, and from our interactions with the courts, social service providers, and City and State agencies.

Failures in the Foster Home Certification Process Unnecessarily Deny Children Foster Care Placement With Their Kin

Our clients are routinely denied safe, loving and familiar kin foster homes because of the kin's criminal history or records on the state registry of maltreatment. This history can be decades old and have no bearing on the relative's current ability to care for the child. These denials have grim consequences: children who could have been placed with family are thrust into stranger foster care or institutional group care, or are deprived of necessary services and support. This practice only serves to magnify the trauma of parental removal children experience in foster care and leaves children unnecessarily vulnerable. We urge City Council to examine these practices and urge ACS to certify and support children in kin foster care.

Every year, the Administration for Children's Services (ACS) removes thousands of New York City children from their parents or guardians pursuant to Article 10 of the Family Court Act due to allegations of abuse or neglect. A disproportionate number of these children come from homes of poor and marginalized families of color. African American children enter the child welfare system in numbers far greater than their proportion of the general population. For example, Black and Latinx youth in NYC are 12.8 times and 5.6 times, respectively, more likely than their white counterparts to be admitted into foster care.¹ And over 80% of children who remain in foster care are Black or Latinx.²

ACS may place children it removes in a pre-placement shelter, a stranger's foster home, a group home or other congregate care setting, or a kin's home. Each foster home must be certified according to New York State law, regulations promulgated by the Office of Children and Family Services (OCFS) and ACS policy. During the certification process, ACS is required to collect

¹ https://ocfs.ny.gov/main/bcm/DMR_Section%20Seven%20of%20Grant%20RFP_2015.

² <https://ocfs.ny.gov/main/reports/maps/counties/New%20York%20City.pdf>.

detailed information about the prospective foster parent's household, and determine if the specified physical, health, and safety requirements are met. In addition, ACS must request records from the New York State Central Register of Child Abuse and Maltreatment (SCR), a registry of persons who have been investigated for child abuse or neglect, for the applicant and all adult household members. ACS must also obtain the fingerprints of the applicant and all adult household members and submit them to OCFS. OCFS then requests a criminal history check from the New York State Division of Criminal Justice Services (DCJS) and the Federal Bureau of Investigation (FBI). The requirements for certifying a kin applicant are the same as those for a non-kin applicant.

In general, children are better able to cope with the massive disruption of removal from their homes when they are placed in a kin foster home. The reason is obvious: a placement in a familiar, loving environment provides comfort and continuity at a time when these children are most vulnerable. Placement with kin can minimize the trauma of removal and provide the child with a much-needed sense of security and comfort. For a child, the opportunity to live with kin can provide a dramatically better outcome than stranger foster care and can allow the child to maintain a sense of "normalcy" after removal from a parent. It may mean the child continues to live with someone to whom the child has been close throughout their life, an adult who has played a major role in their childhood, and/or someone who has been a part of their family support system. These kin can be a child's lifeline during a traumatic period of change.

As such, there is a national and local push to increase the number of children placed with kin once they are removed from their parent or guardian. ACS too acknowledges the benefits of kin foster care. **As reported in ACS's Interagency Foster Care Taskforce report, children placed with kin are better able to preserve community and family ties, have reduced**

trauma and higher rates of behavioral and emotional well-being, are more likely to achieve permanency through reunification, adoption or guardianship and are less likely to re-enter foster care.³ Because of these benefits, when ACS decides to remove a child from the home, the Social Services Law, Family Court Act and OCFS regulations require ACS to identify and notify kin of the child’s removal and consider their ability to care for the child.

Despite the recognition that children removed from their parents generally do best when placed with kin, only 43% of New York City children currently in foster care are in kin care placements.⁴ That failure is due, in significant part, to ineffective practices during the screening process and discriminatory eligibility requirements for prospective kin foster parents which focus primarily on the kin’s past rather than their current ability to provide a safe home for the child.

First, New York law deprives children in foster care of placement in a potential foster home with kin if the kin has a mandatory disqualifying conviction.⁵ Rather than conduct an individualized assessment of whether the placement is safe, state law *mandates* the denial of the kin’s application to be a child’s foster parent if the kin has ever been convicted of certain felony crimes. There are nearly **300** felonies in the New York Penal Law that require *lifetime* mandatory disqualification, including certain “attempted” felonies. There are approximately 40 other felonies that require a five year mandatory disqualification, including certain drug possession offenses. As a result, a child will be denied foster placement with kin even where a conviction mandating disqualification is decades old, even where the child has a loving, long term relationship with the kin, and even where the kin has been fully rehabilitated and maintains a

³ Interagency Foster Care Taskforce, Final Report, March 2020

<https://www1.nyc.gov/assets/acs/pdf/testimony/2020/taskforcemarch2020.pdf>.

⁴ <https://www1.nyc.gov/assets/acs/pdf/data-analysis/2021/FCStrategicBlueprintFY2021.pdf>. Importantly, it is unclear how many of these placements are foster care placements as opposed to an unsupported direct placement, as described below in footnote 5.

⁵ Social Services Law § 378-a(2)(e)(1).

safe home. The kin could be the mother of the president of the United States but nonetheless would be ineligible to serve as a foster parent if she has a mandatorily disqualifying conviction.

Second, a child may also be denied foster placement with kin if the criminal history record of the kin, or *any* household member over 18, reveals a *charge* (even if the charge resulted in no conviction) or a conviction for *any* crime at *any* point in the past.⁶ ACS provides woefully inadequate guidance and oversight to ensure ACS decision makers are appropriately screening and evaluating a child's kin who has a discretionary disqualifying conviction. As a result, ACS is routinely denying children kin foster care placements based upon the mere fact that the kin or adult household member has a criminal charge or conviction, without an individualized assessment of whether placement in a foster home with the kin is safe.

Finally, ACS may also deny a child placement with kin if the kin or any household member over 18 was ever the subject of an "indicated report" in the SCR.⁷ OCFS maintains the SCR, and SCR investigations are carried out by local district social services, such as ACS, acting under OCFS supervision. It is important to note that even when ACS substantiates, or indicates, a report, it is not required to take any action at all. The case may never be filed in Family Court and the family may never hear from ACS again. Thus, in and of itself, an indicated SCR record is not a reliable basis on which to determine that kin actually committed child abuse or neglect, or that the kin's home is not safe for the child.

ACS again fails to provide adequate guidance and oversight to ensure that ACS decision makers are appropriately screening and evaluating a child's kin with an SCR record. As a result, children are routinely denied kin foster care placements based upon the mere fact that the kin or

⁶ Social Services Law § 378-a(2)(e)(3).

⁷ 18 NYCRR § 43.2(b)(8).

adult household member has an SCR record, without an individualized assessment of whether placement in the home is safe.

As a result of these policies and practices, children who could have been placed in loving, familiar kin foster homes are instead thrust into stranger foster care or institutional group care or are left without necessary services and supports.⁸ These children suffer numerous harms, and those who are sent into institutions are “raised” by a rotating cast of staff instead of by caring family.

To try and combat this injustice, Legal Aid, along with Dechert LLP, filed a class action lawsuit on behalf of the many clients who are harmed by these policies and practices. Our lawsuit, which names several child plaintiffs, details the implications of these unnecessary certification denials. For example, ACS removed one client, six year old C.P., from the care of his mother. His uncle, with whom C.P. had always had a close relationship and who was eager to maintain C.P.’s connections to his extended family during this traumatic time, came forward and sought certification as a foster parent in order to care for C.P. However, ACS, in reliance upon this grossly deficient system for screening family members as foster parents, denied C.P.’s uncle certification as a foster parent due to a prior misdemeanor conviction for driving under the influence. As a result, C.P. has been deprived of his uncle’s loving home and continued connection to his family and is instead in foster care with a stranger.

ACS removed another young client, B.B., from his mother’s care and placed him with his grandparents who eagerly wished to be his foster parents. B.B. has had a loving, stable

⁸ The fact that these denials are not premised on actual determinations that the kin’s home is unsafe or that placement with the kin is not in the best interest of the child is made apparent by ACS’s practice of permitting many children to be placed with *disqualified* kin as a “direct placement.” A direct placement is not a long-term option and requires the family to forgo the services and support that come with being a certified foster parent. According to OCFS data, across New York State, since 2012, “16,183 children [have been diverted] from foster care through the use of direct custody placements.” When ACS directly places a child with kin, it shirks its responsibility to support and adequately care for these children and unnecessarily strains the child and his or her family.

relationship with his grandparents his whole life and is very playful and affectionate with them. His grandparents adore B.B. and want to provide a long term home for him. Despite his grandparents' eagerness to be his foster parents, and their care for him since removal from his mother, ACS did not take action to screen B.B.'s grandparents for certification until nearly two years after B.B.'s removal from his mother's care. ACS then informed B.B.s grandparents that despite meeting all of B.B.'s medical, emotional and physical needs, they could not be certified as foster parents due to a 25 year old conviction. In 1995, B.B.'s grandfather was convicted of Attempted Burglary 2nd degree, a mandatory disqualifying offense. His offense was a youthful aberration in an otherwise overwhelmingly law-abiding life. Since 1995, B.B.'s grandfather has successfully raised five children of his own and has had no further criminal history. Yet, he cannot be a foster parent for his grandson.

There are a dozen other children who courageously stood up to be Named Plaintiffs in our lawsuit against the City and the State. We encourage the Committee to read our complaint as well as the *New York Times* article detailing the harm this practice imposes on children and their families.⁹ **We urge City Council to examine eligibility barriers as they pertain to kin of children in foster care, push ACS to provide meaningful evaluations of prospective kin foster parents so children are not needlessly denied kin foster care, and ensure all children have the services and supports that they need.** City Council must take action and join us in advocating for sensible, compassionate policies and practices that will keep children with their families.

⁹ *B.B. v. Hochul*, 1:21-cv-06229 (E.D.N.Y.), class action complaint available at <https://legalaidnyc.org/impact-litigation-docket/>; Andy Newman, *They Wanted to Foster Their Great-Grandson. Why Did New York Say No?*, *New York Times*, Nov. 10, 2021, available at <https://www.nytimes.com/2021/11/10/nyregion/foster-care-lawsuit-nyc.html>.

Int. 642: Children Languishing in Pre-Placement Shelters

Int. 642 would provide critical oversight over children's length of stay in temporary pre-placement shelters while in the custody of ACS. The bill requires quarterly public reporting on children in ACS' Nicholas Scoppetta Children's Center and other temporary placement facilities, including the amount of time children are housed in these facilities, their needed level of care, age and other demographic information.

This legislation is needed as children often languish in the Children's Center and other temporary placement facilities for weeks and even months after having been removed from their families. Several Legal Aid clients have spent as many as 16 months in these facilities while waiting for placement. The COVID-19 pandemic only exacerbated this crisis. ACS testified on October 13, 2022 that 40 children currently at the Children's Center have been there for more than 30 days – that is **more than half of the current census**. This is not a new problem. According to ACS's 2019 testimony before City Council, one-third of the children who come to the Children's Center remain there for more than 4 days.¹⁰ **From April 2020 through March 2021, at least 153 children were held in the Children's Center for over 20 days, and children as young as 8-years-old spent up to 8 months waiting for a home.**¹¹ While ACS has described this population as “a relatively small number of high-need children and young people for whom placement is complex and may take longer,” without regular reporting it is impossible to monitor changes in performance or identify problematic patterns. As a result, there is also no data indicating whether extended stays at the Children's Center are correlated to the type of

¹⁰ Administration for Children's Services Testimony at the City Council Oversight Hearing on the Nicholas Scoppetta Children's Center, (June 25, 2019).

¹¹ Data provided by ACS to Legal Aid, June 9, 2021.

placement, such as foster home, therapeutic foster home or institutional placement, sought by ACS.

Although the research shows that children belong in families,¹² ACS keeps children in pre-placement settings for extended periods of time, depriving them of family care and trapping them in dangerous facilities. In many cases, these lengthy stays in the Children’s Center are caused by ACS’s lack of appropriate foster home placements, particularly for older children and children with disabilities.¹³ In order to craft effective solutions to curb long stays in pre-placement shelters, we must first understand the extent of the problem. This bill is a critical first step.

The Children’s Center, as well as other Pre-Placement Shelters, Were Never Intended as Long-Term Placements

Although the number of children placed into care and held at the Children’s Center plummeted during the pandemic, the numbers have begun to soar back to pre-pandemic levels. In July 2022, the last month for which data is available, **there was an average of 75 children at the shelter each day, including 8 babies and toddlers and 22 children under 10 years old.**¹⁴

As former ACS Commissioner Gladys Carrion stated, the Children’s Center is “designed [as a place] for children to be for a couple of hours, not even days.”¹⁵ It certainly is not the least restrictive, most homelike setting to which children are entitled. Yet, as we pointed out over 3 years ago at the City Council’s oversight hearing on the Children’s Center, youth, particularly

¹² American Academy of Pediatrics, Guidance for Children and Families Involved with the Child Welfare System During the COVID-19 Pandemic, <https://services.aap.org/en/pages/2019-novel-coronavirus-covid-19-infections/clinical-guidance/guidance-for-children-and-families-involved-with-the-child-welfare-system-during-the-covid-19-pandemic/> (January 25, 2021).

¹³ <https://www.nbcnewyork.com/news/local/nyc-moves-to-protect-children-after-i-team-report-asc-nicholas-scoppetta-childrens-center/1567649/>

¹⁴ <https://www1.nyc.gov/assets/acs/pdf/data-analysis/flashReports/2021/09.pdf>.

¹⁵ https://www.nbcnewyork.com/investigations/i-Team-Exclusive_-ACS-Children_s-Center-Beyond-Capacity_New-York-397146051.html.

teenagers and those with higher needs, are languishing at the Children’s Center and suffering as a result.

Lengthy Stays in Temporary Placement Facilities Harm Children in Foster Care

As children wait in temporary placement facilities, many are not provided with proper case management services, adequate medical and mental health care or educational services. This lack of services can lead to catastrophic results, including severe mental decompensation and, in at least one case, a suicide attempt.¹⁶

Over the past few years, there have been multiple news stories regarding the troubling conditions at the Children’s Center. In 2019, staff working at the shelter described a chaotic atmosphere, and frequent physical fights – *with staff averaging two or three physical confrontations with children per week.*¹⁷ ACS officials have not disputed any of these allegations.¹⁸ These concerns have been tied directly to overcrowding in the shelter – which has been as bad this summer as it was in 2019.¹⁹

In one highly publicized case, ACS left a disabled child in the Children’s Center for over a year, where they failed to fix the child’s broken wheelchair, failed to secure an updated medical exam, failed to apply for a home health aide, and failed to provide him with the required occupational, speech, or physical therapy he needed and deserved. On one occasion, ACS left this child sitting for hours soaked in his own urine, in clothes and shoes that did not fit him.²⁰

¹⁶ See, The Legal Aid Society Testimony at the City Council Oversight Hearing on the Nicholas Scoppetta Children’s Center, (June 25, 2019).

¹⁷ <https://www.nbcnewyork.com/news/local/nyc-moves-to-protect-children-after-i-team-report-asc-nicholas-scoppetta-childrens-center/1567649/>

¹⁸ *Id.*

¹⁹ <https://www1.nyc.gov/assets/acs/pdf/data-analysis/flashReports/2022/08.pdf>.

²⁰ *Matter of Kenneth R.* 2019 NY Slip Op 29042 (Fam. Ct. New York. Co., 2019) http://nycourts.gov/reporter/3dseries/2019/2019_29042.htm

In addition to news reports revealing shocking conditions in temporary placement facilities such as the Children’s Center, City Council has heard testimony from at least one family member who described how ACS left her autistic, cognitively delayed sibling languishing at the Children’s Center for months without clothes that fit him, and required him to quarantine from COVID-19 without bedsheets, pillows, or blankets.²¹

Notwithstanding the initial dip in the census created by the COVID-19 pandemic, there is no indication that conditions at temporary placement facilities have substantially improved. Instead, because temporary placement facilities are congregate care settings, they have presented unique dangers and challenges to our clients throughout the COVID-19 pandemic. Much like jails, temporary placement facilities house multiple youth in close quarters, with shared dining rooms, common recreational areas, and communal bathrooms. COVID-19 has also exacerbated the psychological harms from lengthy pre-placement stays. Children in temporary placement facilities have been required to isolate and quarantine more frequently, sometimes repeatedly, as they are exposed to large numbers of residents and rotating shifts of staff. Youth in temporary placement facilities, including those in isolation and quarantine wards, have also been exposed to violations of mask and social distancing requirements by children and staff. Once exposed, children in temporary placement facilities have been required to isolate or quarantine, and have been denied in-person family contact for weeks – often adding to the trauma they are already experiencing due to removal from their families.

Length of Stay Data is Critical for Targeted Advocacy on Behalf of Children in Care

ACS does not currently report on how long children remain in temporary placement facilities without foster care placement. Without data and public reporting, there is no way to

²¹ Testimony of Irma Rodriguez, New York City Council Committee on General Welfare, Oversight: The Child Welfare System During COVID-19, (June 14, 2021).

effectively understand and monitor the experience of children placed in these facilities by the government. Over three years ago ACS started a number of initiatives, including added case planners, a Family Finder pilot for long-stayers, and 144 new therapeutic family foster care slots, among others. Without any data regarding the length of time youth have spent in temporary placement facilities, there is no way to assess whether these initiatives have led to tangible gains.

In addition, every day, as judges in Family Court make determinations regarding whether or not to put a child into foster care, they balance the harms of foster care placement against a parole home. The length of stay that a child may remain in the Children’s Center is a critical component of that balancing test – a child without family resources may be required to spend up to a year waiting for placement, and the child’s attorney and the judge need that data to balance the significant harms of foster care against the possibility of going home with services in place.

Public reporting regarding the identified level of care needed for youth who spend significant time in temporary placement facilities will shed light on the systemic deficiencies. If most children languishing in temporary facilities are waiting for family foster homes to become available, that suggests a crisis in foster home recruiting. Without accurate data and reporting, there is no way to know the underlying causes and extent of the crisis.

At a hearing in October 2021, ACS did not explicitly support or argue against Int. 2419, a previous identical version of Int. 642. Instead, ACS testified that “an essential part of our work is providing access and information to the City Council ... advocates, legal service providers, and most importantly children and families.” ACS also agreed that “transparency and accountability are essential.” We urge the City Council to pass Int. 642 and provide this necessary transparency and accountability for children in foster care.

Int. 436: Creation of a Juvenile Detention Advisory Board

The Legal Aid Society commends the intent of Int. 436, establishing a juvenile detention advisory board, but recommend that the bill be strengthened in order for the board to have its intended impact. Additional oversight of the juvenile detention system is necessary to ensure the safety and care of children housed in these facilities. Oversight is essential in all places where people are locked in. The power differential in such settings creates the potential for abuse and disincentivizes victims from reporting, particularly because those incarcerated are rarely credited. This is especially true for children, who are more vulnerable to coercion and even less likely to be credited by those in power.

As background, ACS's Division of Youth and Family Justice (DYFJ) is responsible for juvenile detention in New York City. Youth between the age of 7 and 18 who are prosecuted in Family Court are charged as juvenile delinquents (JDs).²² If detained, they are remanded to either secure²³ or non-secure detention. Youth charged with crimes at age 13-15 who are prosecuted in Criminal Court are charged as juvenile offenders (JOs), and youth charged with crimes at age 16 or 17 and prosecuted in criminal court are charged as adolescent offenders (AOs).

ACS DYFJ operates secure detention and contracts with non-for-profit providers who operate non-secure detention. Only youth charged as JDs can be remanded to non-secure detention, which, while designated as "non-secure," are nonetheless locked facilities. Each of these facilities has the capacity to house twelve detained youth.²⁴ Youth in non-secure detention

²² As of January 2023, children under 12 will no longer be arrested and prosecuted in Family Court. A4982A / S4051A.

²³ Currently, youth under ten years of age may not be held in secure detention. Family Court Act § 304.1. As of January 2023, children under 13 may not be held in secure detention. A4982A / S4051A.

²⁴ 9 NYCRR § 180-1.3(D)(3).

are transported daily to one of two specially designated schools outside the facility. Aside from school, these youth remain locked into their housing facility, where they eat together, use common bathrooms and showers, and spend their time together in common areas. ACS DYFJ's Crossroads Juvenile Center, located in Brooklyn, is a secure detention facility, holding JDs, JOs and AOs. The Horizon Juvenile Center in the Bronx is a Specialized Secure Detention Center housing AOs.

To have the most impact, we propose the following additional amendments to the bill. First, we urge that the advisory board be *required* to include public members who were formerly incarcerated in the juvenile detention system. As the bill currently is written, Section (b)(6) merely states that the “appointees of the speaker shall include at least four family members of currently or formerly incarcerated juveniles, *or persons who have been previously incarcerated in a juvenile detention facility.*” [Emphasis added.] It is critical that this “or” be changed to an “and” requirement so that it is not optional to include formerly detained youth on the board. The perspective of formerly detained young people is integral to establishing a meaningful board, since they can provide firsthand insight unlike any of the other members.

Second, the advisory board must have the ability to visit detention and placement facilities without advance notice and to speak with incarcerated youth and staff. The advisory board should also have access to DYFJ records and documents, including but not limited to those related to the facilities, staffing, and programming. These functions are essential to having a full understanding of detention and a prerequisite to providing informed recommendations.

Third, the board's mission is broad and includes analysis of: “1. [f]actors that contribute to juvenile detention, including those related to pretrial detention decision and inequities in law enforcement; 2. [r]educing juvenile detention and lowering violence in detention facilities; 3.

[p]romoting family connection and reunification while juveniles are detained....; [and] 4. [e]nsuring that juveniles are given access to educational programming and schooling, including individualized education programs.” Mental health and medical services as well as discharge planning should be included in the bill as additional areas for the board’s review and analysis.

Finally, for the board to be effective, it should be required to meet more often than a minimum of twice annually, and to issue reports more frequently than annually. (See Sections (2)(d) and (e).) Instead, we ask that the board be required to meet a minimum of once every other month, and to issue quarterly public reports which must include, in detail, the recommendations being made by the advisory board to the mayor, City Council, and ACS. More frequent meetings are necessary to fulfill the mission of the board. Moreover, the public has a right and a need to what the board deems essential actions needed to further its stated goals. Without frequency of reporting to the public, the board’s oversight is not meaningful. In addition, there should be a mechanism established for public comment on the reports, as well as for public reporting as to follow up by the mayor, City Council, and ACS, regarding the board’s recommendations.

The above additions to Int. 436 would make the board more effective, responsive, and meaningful to the City and the community.

Int. 554: Child Protective Caseloads and Workloads Action Plan

We support Int. 554 and its requirement that ACS produce an action plan regarding child protective caseloads based on its 2019 study. In 2018, local law number 18 was added requiring ACS to complete a study of child protective caseloads and workloads and report the findings and recommendations to the Speaker of the City Council. ACS selected the Chapin Hall Center for State Child Welfare Data to conduct the workload and caseload study. In 2019, ACS produced a final report based on the study which included several key recommendations to ensure high

quality, consistent and thorough investigations and child protective practice. Int. 554 now requires that ACS, in consultation with the Department of Investigations and experts in child safety and child welfare, create and publish an action plan to implement the recommendations from the caseload and workload study. The bill also requires ACS to publicly report on efforts undertaken to implement the action plan.

These additional requirements would push ACS to take action in response to the study's recommendations and require that those actions are made public. This is a necessary step in ensuring that caseworkers have manageable caseloads and can provide high quality services to children and families. The public reporting will guarantee transparency and accountability for one of the most critical functions of the child welfare workforce. We urge City Council to pass Int. 554 and fulfill the promise of local law 18 of 2018.

Conclusion

Thank you again for holding this hearing on the foster parent screening and eligibility requirements. We encourage City Council to examine eligibility barriers as they pertain to kin of children in foster care and push ACS to provide meaningful evaluations of prospective kin foster parents so children are not needlessly denied kin foster care.

We also thank the Committee for considering these important pieces of legislation. We urge the City Council to quickly pass each bill and enable much needed transparency and accountability within the child welfare and juvenile justice systems. We look forward to continuing to work with the City Council and are happy to answer any questions you have.

Contact:
Lisa Freeman
(914) 400 7429 (During COVID)



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:

Karen J. Freedman, Executive Director

kfreedman@lawyersforchildren.org

Betsy Kramer, Director of Policy & Special Litigation

bkramer@lawyersforchildren.org

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,¹ 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.

¹ 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.² 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.³ At that time, ACS also reported that “just 5%” of those children are at the Children’s Center for 30 days or more.⁴

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.

² *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)

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

⁴ *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.⁵ 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."⁶ 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."

⁵ 18 NYCRR §§ 443.1 and 443.7

⁶ 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 SCR⁷, criminal or DIR⁸ history.

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

V.⁹ 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.

⁷ State Central Registry of child abuse and maltreatment.

⁸ Domestic Incident Report

⁹ 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

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 agencies¹ information that DCP has

Raymond Toomer, Esq.
Associate Commissioner

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.

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,² provider agency staff must conduct clearances of the kinship resources by checking the State Central Register (SCR),³ checking the resource's criminal history,⁴ 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).⁵

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).⁶

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.⁷

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.⁸

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,⁹ contact Deborah Brooks at 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.

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)¹⁰ 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; ¹¹
- 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,¹² 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.¹⁴ 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;¹⁵ 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;¹⁶
- 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.¹⁷

Testimony of Anthony Wells,
President SSEU Local 371

To
The City Council Committee on
General Welfare

Good morning:

Thank you, Chairperson Ayala and committee members. My name is Anthony Wells, president of the Social Service Employees Union Local 371, representing over 20,000 social service employees. We are in every city agency, NYCHA, Health and Hospitals, City Hall and the borough presidents' and district attorneys' offices. We represent nearly 6,000 members in ACS including CPSS, CPS and CCS workers as well as YDS, AYDS, community titles, Caseworkers and support staff in detention centers.

We come to comment on the Committee's proposals. In general, we are supportive of any efforts that promote and support the workers in carrying out their duties effectively and efficiently. This includes having an adequate number of workers, proper equipment and safe working environments, both within offices and facilities and in the field.

With respect to Intro 436, the idea of a juvenile detention advisory board is a good idea. Conceptually, a lot could be accomplished if the stakeholders discuss and resolve issues around juvenile detention. The one glaring omission in the bill is that all of the stakeholders are not at the table. The workers are not there, because the union is not there. Clearly the workers can

add so much to the discussion. I always tell my members they are the experts. They do the work.

With respect to Intro 554, a review of child protection caseloads and workloads is always welcome. However, it should not be just about caseload numbers. We all want lower caseloads but never at the expense of the safety of the children and families we serve. A long-term hiring plan is essential, along with methods to retain those hired. Other workload issues, like redundant and unnecessary paperwork, need to be revamped, reduced and removed. And we are concerned about the role of the Department of Investigations in this process.

Finally, we turn to Intro 642. We welcome any review of, and adjustments to, the Children's Center. We have long questioned its physical placement between an adult men's shelter and Bellevue Hospital. Nevertheless, our members have provided great care to the children under their charge even in the most difficult and challenging circumstances. We would want the proposal to include the number of "out of age" children housed there, the available and appropriate resources and safety around the center.

We look forward to working with the City Council, City Hall and ACS in addressing these critical issues that affect our children, families and communities.

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: _____

(PLEASE PRINT)

Name: Ina Mendez, Interim Deputy Commissioner

Address: Family Permanency

I represent: Administration for Children's Services

Address: _____

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: _____

(PLEASE PRINT)

Name: Stephanie Gendell, Deputy Commissioner

Address: external Affairs

I represent: Administration for Children's

Address: Services

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: 10/13/22

(PLEASE PRINT)

Name: Jess Dannhauser / ACS Commissioner

Address: 150 William St NY, NY 10038

I represent: ACS

Address: 150 William St

Please complete this card and return to the Sergeant-at-Arms

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: _____

(PLEASE PRINT)

Name: Amice Abuse

Address: 425 Westchester Avenue

I represent: JCCA

Address: 425 Westchester Avenue, Box, 10935

Please complete this card and return to the Sergeant-at-Arms

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: 10/13/22

(PLEASE PRINT)

Name: ELLEN AMPKO

Address: Grand Carouse Bunk

I represent: NEW YORKERS FOR CHILDREN

Address: 450 7th AVE. NY

Please complete this card and return to the Sergeant-at-Arms