



## **TESTIMONY OF LAWYERS FOR CHILDREN**

To the New York City Council Committees on General Welfare

**“Hearing on Int. 1304-2018, Int. 1829-2019, Int. 1992-2020, Int. 2419-2021, Int. 2419-2101, Int. 2420-2021, Int. 2379-2021”**

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Thank you, Chair Levin and the Committee, for holding this hearing on a series of proposed legislation that would promote better outcomes for children and families served by the Administration for Children’s Services and other agencies.

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 and guardianship 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 and helped to effectuate change in City and State policies and practices to promote good outcomes for all children in foster care.

We are pleased that the Council has taken decisive action on issues that have been the subject of subject of hearings before this committee over the last several years. And we thank you for your continued commitment to holding the Administration for Children’s Services to account for the care and services provided to children in its custody. We hope you will consider these written comments with respect to the bills that are the subject of this hearing.

**Int. 2419: Regular & Comprehensive Reporting on Length of Stay at the Children’s Center**

The prolonged stays of children at the ACS Nicholas Scoppetta Children’s Center on First Avenue in Manhattan has long been recognized by the Council as a matter of serious concern.

As Chair Levin and the Council may recall, we shared the story of our client, Kenneth, with the Council<sup>1</sup> in 2019. Kenneth, who was confined to a wheelchair, 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

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

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stay for too long at this institutional facility, which was designed to house children for no more than 48 hours. .

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

The reporting required by this bill 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.

ACS reports monthly on the number of children who stay at the Children’s Center each night. While those numbers may appear to be lower than they were in the past, they may not actually represent the number of children who are in temporary shelter awaiting placement. Those numbers do not include children placed in Rapid Intervention Centers, or “Reception Centers,” including a 20-bed facility opened just last month on Staten Island.

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

- Break down length of stay by age and by disability, which is important to understand what needs these children have and what placements are necessary to avoid long-term stays at the Center.
- Analyze the data, not just report, and to present a plan for addressing any trends identified.
- Include, in its monthly Flash Reports, the number of children placed each night in all temporary facilities – including Rapid Intervention Centers, and Reception Centers.

The lack of available foster homes 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.

**Int. 2420: Requiring an audit and report on foster care placement notices**

New York State law requires that notice of any change in foster care placement be given, forthwith, to the attorney for the child and the child’s parents. That law recognizes

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

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that changing placements can cause serious trauma for children in foster care. Emotional ties are severed when a child is moved from a foster home. School placements are often disrupted, as are community ties with therapists, friends and other resources. If notified before a move occurs, the child’s attorney and parents can often play an important role in reducing that trauma. They may identify services that could help avert the need to move the child. When a move cannot be prevented, they might propose family resources who could step in to care for the child, or the attorney might identify other appropriate foster care placements where the child’s needs can be met. And, they may provide valuable information that can help make a transition as safe and comfortable for the child as possible.

Unfortunately, the law includes no enforcement mechanism and no penalty for ACS’s failure to provide the required notice. And, too often, we receive notice that our client has been moved days, weeks, or months after the transition has taken place.

The need to ensure that ACS provides timely notice of placement changes is particularly important with respect to children who are placed in residential programs. The federal Family First Preventive Services Act, which went into effect in New York on September 29, 2021, also establishes strict time frames for notifying the court and all counsel whenever it is recommended that a child be placed in a Qualified Residential Treatment Program. If the agency fails to comply with the dictates of that law, federal reimbursement will not be available for the child’s placement.

For these reasons, we urge the City Council to modify this bill to require:

- Reporting regarding **all** placement changes, not just a statistically significant sample; and,
- ACS to analyze the data in an effort to identify any trends in the failure to provide timely notice based on placement agency, level of care, or any other factors that might help to address significant lapses in compliance with the federal and state statutes.

**Int 2405: Requiring CityFHEPS Voucher Access to Runaway and Homeless Youth**

No young person who is without a place to live should have to enter the City shelter system in order to have access to the City’s housing programs. For this reason, we support this proposal to include time spent in a youth shelter in the definition of “shelter” for purposes of determining eligibility for the CityFHEPS.

However, we are deeply concerned that the Council has not included youth leaving foster care among those who are eligible for the voucher program. LFC’s Youth

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Advocate, Chelsea Velez, testified before this committee in November 2020<sup>3</sup>, explaining that she was able to access housing programs upon aging out of foster care only by entering the City shelter system. Like young people leaving the youth shelter system, young people leaving the foster care system should not be forced to enter the City shelter system simply to confirm that they have no other housing available.

We understand that 50 CityFHEPS vouchers were provided to ACS for youth in foster care through a pilot program created this past summer. Those vouchers have already been distributed – a clear indication of the need for youth aging out of foster care to have access to this resource. For this reason, we urge the City Council to modify the bill to:

- include youth aging out of foster care in the definition of homeless individuals who are eligible for rental assistance, thereby making the pilot program a permanent law.

**Int. 1992: Establishing a pilot program to train case workers who specialize in developmental, intellectual and physical disabilities**

Understanding the needs and limitations of each family member, along with the services available to address those needs and limitations is key to keeping families safe and intact. While the intent of this legislation is laudable, a pilot program that trains just 5% of ACS’ diagnostic protective specialists regarding developmental disabilities in parents is simply not sufficient. This law would unnecessarily leave too many caseworkers who are charged with providing assistance without readily-available crucial training regarding how to make assistance, services, and conferences accessible to developmentally disabled parents and children.

While recognizing the need for training, this law would leave 95% of child protective specialists without it. It would leave one hundred percent of workers in the Family Services Unit – those charged with providing supervision and support after an initial investigation is completed – untrained. And, after a child has been removed, it would leave every case planner and supervisor working with families through a voluntary foster care agency without the training necessary to provide effective assistance to parents who have a developmental disability. This is simply unacceptable and undermines the premise of this bill that such training is, in fact, necessary.

ACS’s failure to properly identify and serve children who have developmental disabilities has been the subject of litigation for nearly two decades.<sup>4</sup> While relief has been slow to

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<sup>3</sup> Testimony available here:

<https://www.dropbox.com/home/Lawyers%20For%20Children%20Team%20Folder/Web%20site/Public%20Documents?preview=Lawyers+For+Children+11.24.20+Full+Testimony+FosterCareTaskForce%26Int.148+UPDATED.pdf>

<sup>4</sup> *City of New York v. Maul*, 14 NY3d 499 (2010).

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come through the courts, the time is ripe for the Council to help address this issue by including training regarding children in this bill.

ACS has the infrastructure in place to provide comprehensive training and support to all workers serving families in the child welfare system. According to the ACS website, the ACS Developmental Disabilities Unit (DDU)

...works on behalf of the intellectually disabled (ID) and developmentally disabled (DD) child, youth, and parent during the protective, preventive, and foster care phases of their ACS involvement. The Unit's daily outreach to foster care case planners, preventive agencies and CPS workers offers case consultation, training on developmental disabilities, identify local community resources and services, as well as provide free psychological testing to children in foster care suspected of having a developmental disability. The unit's focus has expanded to include a Parent Resource Manager (PRM). The PRM will provide referrals to resources specifically for the parent with cognitive impairment which supports the reunification of the child and/or resources to maintain custodial care of the child in the community.

Lawyers For Children staff have attended virtual trainings conducted by the DDU for workers and advocates. In just one hour, a DDU training provides a wealth of information to assist providers who are working with families impacted by developmental disability. It is information that could alter the course of a family's involvement with ACS.

Unfortunately, it appears that too few caseworkers have been exposed to these trainings to have a meaningful impact in the lives of families. For these reasons, we urge the Council to revise this bill to:

- Require that all Child Protective Specialists and Family Services Unit workers, as well as all foster care agency Case Planners and Case Planner Supervisors receive training regarding (1) identification of developmental disabilities in children and adults; (2) accommodations that must be afforded when working with parents and children who have a suspected or confirmed developmental disability; and (3) how to access specialized services for parents and children who have a suspected or confirmed developmental disability.

**Int. 1304: Authorizing council members and the public advocate to visit and inspect detention facilities**

Launched in Spring 2021, Lawyers For Children's Juvenile Justice Project represents children involved in juvenile delinquency proceedings. We wholeheartedly support this legislation, which would provide an additional layer of accountability for a system that like the adult corrections system, is rife with abuse and mismanagement. Currently

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under federal monitoring, these juvenile detention facilities should be subject to additional oversight by the Public Advocate and the City Council, which has the ability to improve conditions through its own legislation.

By amending the City Charter, this law would be analogous to the City Council’s ability to inspect Department of Corrections facilities.<sup>5</sup>

**Int. 1829-2019: Child’s Presence Requirement at Shelter Intake**

Right now, there are over 8,600 families with nearly 15,000 children residing in Department of Homeless Services shelters.<sup>6</sup> On any given day, more than one hundred families request temporary housing at PATH. As advocates for children, we support Int. 1829, which would prevent children from being forced to be present during the shelter intake process. This is one small but significant step in creating a more child and family-centered experience within the homeless family shelter system. Up to 90% of children with families in shelters are school-age<sup>7</sup>. Taking them out of school and daily routine, increases instability and interrupts learning. Parents should have the option to shield their children from what is already a very difficult, disruptive, and traumatic process. We also urge the Council to continue to encourage and support initiatives that create a welcoming, respectful, environment and process for families who bring their children to PATH intake, ACS and other social service centers such as HRA offices.

**Int. 2379: Requiring the department of social services to create a domestic violence shelter designated for men**

While all of LFC’s attorneys and social workers see the impact of domestic violence upon families in custody, visitation, child welfare and family offense matters, the attorney and two masters level social workers assigned to our Domestic Violence Project in the Integrated Domestic Violence part of the Supreme Court are particularly attuned to the needs of families impacted by domestic violence. Our understanding of those needs was further enhanced by our role as counsel for the subclass of plaintiff children in *Nicholson v. City of New York* (challenging ACS’ practices with respect to parents who are victims of domestic violence). While we unequivocally support any effort to create gender parity with respect to services provided by the city – especially with respect to families and individuals impacted by violence – we would urge the Council to ensure that the funding committed to a shelter for male victims of domestic violence is appropriately allocated.

Few, if any, of the families in LFC cases would benefit from emergency shelter developed specifically for men who’ve been harmed by intimate partner violence. In our

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<sup>5</sup> See NYC Charter: <https://nyccharter.readthedocs.io/c25/>

<sup>6</sup> NYC Department of Homeless Services Daily Report, October 20, 2021

<sup>7</sup> See <https://www1.nyc.gov/assets/dhs/downloads/pdf/dashboard/FYTD21-DHS-Data-Dashboard-Charts.pdf>

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experience on hundreds of IPV cases, we only know of one father who may have used the shelter system while also having primary parenting responsibility.

We understand that there may be a great need for such shelter among men who are not parties to matters involving LFC. This might include, for example, members of the LGBTQ community who do not have children. While we hope to ensure the safety of those men, we urge the Council to make the following modification to the bill prior diverting scarce resources to develop a shelter for men:

- HRA to conduct a needs assessment to determine the scope of the need for a men’s shelter, including an evaluation of the number of men who might seek such shelter each night, the availability of alternative resources to address the needs of male victims of intimate partner violence, and the feasibility of including male victims in existing shelters for victims of intimate partner violence.

### **Conclusion**

Thank you for your attention and commitment to young people in foster care and the juvenile justice system. We are happy to follow-up with you on 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.