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# The Permanency Legislation of 2005:

## An Unfunded Mandate — Critical Resource Needs for New York City’s Children and Families

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*A Position Paper of the New York City Bar Association’s Council on Children*

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## I. Executive Summary

This position paper highlights the goals of New York’s Permanency Legislation of 2005 and discusses the progress made toward those goals in New York City in the 1.5 years since the legislation was enacted. The evidence indicates that the Family Court, the Administration for Children’s Services (“ACS”), advocates for children and parents, and New York City’s numerous foster care agencies are trying in good faith to meet the objectives of the Permanency Legislation. However, these efforts are being undermined by a lack of resources that leaves the system stretched too thin. Significant additional resources are needed to meet these challenges and to meaningfully fulfill the objectives of the legislation. The New York City Bar Association’s Council on Children proposes to the state legislature the following recommendations:

- Recommendation 1: Increase funding for the Family Court system in New York City to hire additional judges and corresponding staff. Stakeholders have suggested anywhere from 13 to 34 additional judges are needed to reduce delay and increase effectiveness of the judicial role.
- Recommendation 2: ACS, the New York State Office of Children and Family Services (“OCFS”), and New York City’s Council of Family and Child Caring Agencies (“COFCCA”) should determine the cost of funding caseloads at the levels recommended in the OCFS Child Welfare Workload Study. Funds sufficient to support those caseload levels should be provided by the state and city with available federal funding support; this will enable city caseworkers to reduce their caseloads to a reasonable level and meet the objectives of the Permanency Legislation.
- Recommendation 3: Ensure better integration of the permanency reports with the New York State Family Assessment Service Plan report and the Connections databases, to increase efficiency and accuracy.
- Recommendation 4: Increase funding for law guardians in New York City by one-third to one-half of the current budget to reduce caseloads per attorney, ensuring that they can more adequately meet children’s needs.
- Recommendation 5: Enhance funding for preventive and diversion services, including services that provide parents with legal assistance prior to an Article 10 filing, to help families access appropriate services before a family problem or crisis devolves into an abuse or neglect case.
- Recommendation 6: Explore new means to fund parent advocates and community legal education in high-need communities so that parents have the support and knowledge necessary to access appropriate services and engage with Child Protective Services in a manner that averts unnecessary Family Court involvement.

Representatives from the New York City child welfare community were interviewed and contributed their views to the issues raised in this paper. Specific individuals and organizations are listed in Appendix A. Members of the New York City Bar Association's Council on Children are listed in Appendix B.

## **II. Introduction**

When a child is removed from his or her home and placed into foster care, the law requires New York's Family Court to hold permanency hearings so that the child is kept in foster care only as long as necessary. In December 2005, New York State enacted legislation known as the "Permanency Bill" to address numerous issues impacting families before the Family Court and made significant changes to the permanency hearing process in New York State.<sup>1</sup> Specifically, the legislation sought to achieve faster permanency for children in foster care by providing more frequent and continuous judicial and agency review of a family's situation.<sup>2</sup>

Key provisions of the Permanency Legislation include:

- Requiring a permanency hearing once every six months (rather than every 12 months as before);
- Continuing Family Court jurisdiction over parties after a child enters foster care, whether that child comes into foster care voluntarily, pursuant to Social Services Law ("SSL") Section 384-a or involuntarily under Article 10 of the Family Court Act, and after a child is freed for adoption until the adoption is final;
- Continuous legal representation for children and parents;
- Inclusion of 18- to 21-year old children voluntarily placed into foster care in the Family Court permanency process; and
- The requirement that foster care agencies provide the Family Court and all attorneys with a detailed 16-page report on the child and his or her family at least 14 days before the permanency hearing.

Achieving the Permanency Legislation's goal of more quickly attaining permanency for children in foster care depends on the ability of ACS and foster care agencies to address the needs of the child and/or family, so that either the family can safely reunify or the Family Court can conclude that the child should be adopted or cared for permanently by an appropriate

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<sup>1</sup> Governor's Permanency Bill, S. 5805, 2005-2006 Leg., Reg. Sess. § 27 (N.Y. 2005), hereinafter the "Permanency Legislation."

<sup>2</sup> While the legislation also addresses the process for children who are before the court but are *not* in foster care, i.e., children directly placed with relatives and/or children in the temporary custody of someone other than a parent, this Position Paper focuses on the impact of the legislation on children in foster care, who represent the overwhelming majority of children impacted by the Permanency Legislation.

guardian. The ability of the Family Court system to frequently and routinely address the child's situation and make appropriate orders is critical to achieving this goal.

The current level of funding, however, has proved to be highly inadequate and has stymied the ability of the agencies and the Family Court to meaningfully comply with the mandates of the legislation, or to meet its important goals for New York City foster children. The state legislature passed the bill without providing stakeholders any additional resources to implement its new requirements.

Further, while the Permanency Legislation's new requirements substantially increased the number of cases and hearings in the Family Court (and, accordingly, the number of cases and hearings assigned to law guardians, caseworkers, and attorneys), other factors have caused an increase in new child protective case filings. The widely publicized death of Nixzmary Brown in January 2006 resulted in a 30 percent increase in reports of suspected child abuse or neglect to ACS, an increase that has not abated one year later. The statute's mandated additional hearings, as well as the great increase of abuse or neglect reports, have further strained a child welfare system that was already overextended, and has created an urgent demand for additional resources.

The only reasonable conclusion that can be drawn from the first year's experience is that while all stakeholders in the New York City child welfare system are *trying* to achieve the goals of the Permanency Legislation, they are falling short, in large part due to a lack of resources. Further, the system is only as strong as its weakest link: insufficient resources that prevent one group from effectively doing its job delay the entire permanency process, as all stakeholders rely on each other's efforts. Thus, adequate funding must be provided to assist all parties involved—the court, law guardians, attorneys, foster care agencies, and parents, youth and children.

### **III. Benefits of the Permanency Legislation**

The Permanency Legislation of 2005 amended certain provisions of the New York Family Court Act ("FCA") and the Social Services Law with the goal of moving children more quickly through the foster care system, either toward reunification with their families or toward adoption, guardianship, or custody with other appropriate persons.<sup>3</sup> Currently, New York State ranks 49th out of the 50 states in terms of length of time that children spend in foster care.<sup>4</sup>

Specifically, supporters of the legislation cite these significant improvements to the permanency process:

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<sup>3</sup> Chapter 3 of the Laws of 2005 and Chapter 437 of the Laws of 2006.

<sup>4</sup> See *A Dangerous Cycle* A Report by the Public Advocate, September 2006, p. 13, citing statistics provided by ACS, the Child Welfare League of America and the United States Department of Health and Human Services; New York City's average length of stay is 49.9 months and is the second highest in the nation.

- **Continuing court jurisdiction:** The Court now retains jurisdiction over parties after a child enters foster care in all actions under Article 10 of the FCA and for children placed voluntarily.<sup>5</sup> The case remains with the same judge through final disposition.<sup>6</sup> Prior to the Permanency Legislation, ACS was required to file a petition 60 days prior to the expiration of a child’s foster care term to re-establish jurisdiction over the family, in order to start the permanency hearing process. If ACS failed to do so, it would need to initiate an entirely new neglect case against the parent in order to have a child remain in foster care. In both scenarios, ACS had to file additional petitions to renew jurisdiction over the family and have the child’s situation reviewed. Continuing jurisdiction eliminates this procedural hurdle and creates more consistency.
- **Continuous calendaring:** The Permanency Legislation replaces the permanency hearing petition process with continuous calendaring from the inception of the case. Specifically, the court must calendar a specific date for the next permanency hearing until all orders expire or all appeals are decided.<sup>7</sup> Stakeholders now leave each hearing knowing the next date they are expected in court and can plan accordingly.
- **Permanency hearings:** The court must hold an initial permanency hearing within eight months following removal of a child from his or her home. The court must set this initial hearing for a specific date and must complete the hearing within 30 days of that calendared date. Subsequent permanency hearings must be held at least every six months until permanency is achieved (compared to the previous state requirement, as well as the current federal requirement, of every 12 months).<sup>8</sup> Many supporters of the Permanency Legislation believe that additional court hearings have the potential to prompt greater agency action and judicial oversight, and thus result in faster permanency for children.
- **Permanency reports:** The local social services district (or ACS in New York City) must submit a Permanency Hearing Report to the court and all other parties 14 days prior to each permanency hearing. The Report requires detailed information on the child’s health, educational progress, visitation plans, status of the parent, services offered, and reasonable efforts to achieve the permanency plan for the child.<sup>9</sup> Much of this information was not required in the previous status reports completed by agency caseworkers, and the quantity and quality of information provided in status reports varied greatly; also, some judges never required reports of any kind. Stakeholders feel that, if

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<sup>5</sup> Cases involving abuse or neglect of a child are brought into Family Court under Article 10 of the Family Court Act.

<sup>6</sup> FCA §§ 1062-1066.

<sup>7</sup> This applies to children voluntarily placed or surrendered under Article 10 of the Family Court Act. FCA § 1088.

<sup>8</sup> FCA § 1089(a). The federal 12-month requirement is mandated by the Adoption and Safe Families Act of 1997 (“ASFA”), Pub. L. No. 105-89, 111 Stat. 2115 (1997).

<sup>9</sup> FCA § 1089(b)-(c).

completed correctly and on a timely basis, this additional information can greatly assist them in reaching positive outcomes for children and families and help to prompt action if necessary.

- **Inclusion of 18-21 year old children:** Permanency hearings for children who are voluntarily placed in foster care, are between the ages of 18-21, and who consent to continue in foster care must be held at least every six months.<sup>10</sup> Prior to the Permanency Legislation, these children’s placements were not subject to judicial oversight.
- **Continuous legal representation:** A law guardian appointed to a child or an attorney appointed to a parent who cannot afford one continues to represent that child or parent for the duration of the case.<sup>11</sup>
- **Increased compliance with federal law to receive federal funding:** In 1997, Congress passed the Adoption and Safe Families Act (“ASFA”), requiring more frequent judicial reviews, criminal records screening, extensive judicial monitoring, and documentation of children’s progress toward achieving a permanent home.<sup>12</sup> In addition, ASFA expedites the timelines for filing petitions to terminate parental rights and imposes monetary sanctions if a state does not comply with these federal requirements. In order to receive federal funding, ASFA requires states to develop a permanency plan and hold a permanency hearing within 12 months of the date that a child “is considered to have entered foster care,” or within 30 days of a judicial determination that reasonable efforts to reunify the child and family are not required. The statute also requires that “reasonable efforts” be made to achieve permanency for children and to finalize a permanency plan.<sup>13</sup>

Prior to enactment of the Permanency Legislation, hearings were scheduled every 12 months but were often adjourned for longer periods.<sup>14</sup> The Permanency Legislation enhances the state’s compliance with federal standards by requiring that a permanency hearing be held at least once every six months. The Legislation also provides for greater judicial monitoring over whether the parties are making “reasonable efforts.”

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<sup>10</sup> FCA § 1087(a).

<sup>11</sup> FCA § 1090.

<sup>12</sup> Pub. L. No. 105-89, 111 Stat. 2115 (1997).

<sup>13</sup> Pub. L. No. 105-89, 111 Stat. 2115, amending 42 U.S.C. §§ 671-675 (1997).

<sup>14</sup> In its first audit under ASFA, New York failed to meet the national standards for stability of foster care placements, length of time to achieve adoption, or length of time to achieve reunification. Several additional areas were rated as needing improvement: stability of foster care placement, permanency goal for children, independent living services, adoption, and permanency goal of other planned living arrangement. See U.S. Dept. of Health and Human Services Administration for Children and Families, Final Report of the Child and Family Services Review of New York State (January 2002), at 3. Furthermore, the review committee determined that New York was not in substantial conformity with 8 of the 14 factors that are considered in the withholding of federal funds. See *id.* at 97.

- **Mediation and conferencing:** To expedite permanency planning, the Family Court may authorize mediation and conferencing that may include participation of a child's family members and other adults significant to the child.

#### **IV. Increase in Workload for All Stakeholders in the Child Welfare System Due to the Permanency Legislation**

The Permanency Legislation mandates expedited time frames for filing a petition and holding a hearing when a child is removed from his or her home. The Permanency Legislation also doubles the number of permanency hearings the courts must hold (and parties must attend) simply by requiring those hearings every six, rather than 12, months. Further, because of the inclusion of 18-21 year old voluntarily placed foster care children, the system took in approximately 500-600 additional cases in New York City within the first six months after the Legislation was passed.<sup>15</sup>

Notably, no additional funding was provided to support the increase in hearings and cases created by the Permanency Legislation, or the added burden on ACS and the foster care agencies of preparing the permanency reports. Similarly, no additional funding was provided to address the dramatic increase in reports, filings, and foster care placements.<sup>16</sup>

#### **V. The Impact of Increased Initial Child Protective Filings**

Shortly after the New York State Legislature passed the Permanency Legislation, New York City experienced a dramatic increase in reports of child abuse and neglect and, as a result, new proceedings filed in Family Court. This recent spike is often attributed to the highly publicized death of Nixzmary Brown, a seven-year-old child allegedly killed by her stepfather in January, 2006. Media attention to the case and heightened public awareness of the failure of those who might have identified Nixzmary Brown as being at risk may have contributed to increased public awareness of other potential children at risk. ACS estimates that the New York State registry received a 30 percent increase in calls reporting suspected abuse or neglect in 2006: 67,953 reports in 2006, up from 47,640 reports in 2005.<sup>17</sup> New York City experienced a

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<sup>15</sup> Telephone interview with Karen Freedman, Executive Director, Lawyers for Children, in New York, N.Y. (Jan. 10, 2007). ACS estimates that there were 600 additional cases in 2006 under this provision. Interview with Ronald Richter, Deputy Commissioner, ACS, in New York, N.Y. (Jan. 16, 2007).

<sup>16</sup> We note that ACS received additional funding to create 30 new attorney positions in 2006 and 65 new attorney positions in 2007, as well as additional new staff and case worker positions. That funding has helped to alleviate the burden on ACS, but similar funding was not provided to the foster care agencies or the other stakeholders that contribute to New York City's child welfare system.

<sup>17</sup> New York City Administration for Children's Services, *Safeguarding our Children: Safety Reforms Update*, Nov. 2006, at 5.

similar jump, and the number of reports referred to ACS by the New York State registry remained high throughout 2006 and 2007.<sup>18</sup>

<b>NY State Child Abuse/Neglect Reports Referred to ACS</b>	
December 2005	4,337
January 2006	7,775
February 2006	6,207
March 2006	7,109
April 2006	5,261
May 2006	7,164
June 2006	5,404
July 2006	3,428
August 2006	3,648
September 2006	4,607
October 2006	6,212
November 2006	6,108
December 2006	5,269
January 2007	6,567
February 2007	4,841
March 2007	6,794
April 2007	5,110

The number of Article 10 abuse/neglect petitions filed in Family Court in New York City also increased dramatically:

<b>County</b>	<b>2005 Filings</b>	<b>2006 Filings</b>
Bronx	1,372	3,464
Kings	865	2,940
New York	906	2,004
Queens	898	2,208
Staten Island	229	607

<sup>18</sup> New York City Administration for Children's Services, Office of Research and Evaluation, Monthly Updates, April 2007, FY 2007 and November 2006, FY 2007, available at [http://www.nyc.gov/html/acs/downloads/pdf/stats\\_monthly\\_update.pdf](http://www.nyc.gov/html/acs/downloads/pdf/stats_monthly_update.pdf).

Similarly, the number of children entering foster care increased significantly. For example, in New York City, 442 children were placed in foster care in December 2005, while 746 entered foster care in January 2006.<sup>19</sup> From January to April 2006, placements of children into foster care in New York City rose by 52 percent compared to the same period in 2005, reflecting the tremendous increase in ACS protective caseloads.<sup>20</sup>

This increase in reports of suspected child abuse or neglect, petitions filed in Family Court, and foster care placements added strain to a child welfare system that was already operating at capacity. For example, the Family Court in New York City handles over 200,000 cases per year, or 15 percent of the 1.4 million cases heard annually in all New York City courts. Seven percent of these Family Court cases involve abuse and neglect proceedings, which equates to roughly one percent of New York City's total court caseload.<sup>21</sup>

## **VI. Resources Needed to Further the Goals of the Permanency Legislation**

While it may not be possible to separately determine funding needs to address the mandate of the Permanency Legislation apart from the increase in reports and filings that otherwise occurred in 2006, many stakeholders are in need of additional resources to address the increased workload.

**A) New York Family Court:** The number of Family Court judges in New York City is limited by statute to 47, only approximately half of whom handle abuse and neglect proceedings. There are 90 Supreme Court judges within the same geographic area, but the number of cases handled by Family Court far exceeds those of the Supreme Court. In 2005, 79,500 contested civil cases and 24,500 criminal cases were filed in Supreme Court in New York City. In contrast, 211,000 cases were filed in Family Court in New York City in 2005.<sup>22</sup>

Family Court judges who handle child protection cases currently carry an average of 547 cases per judge in New York County, 950 cases per judge in the Bronx, 725 cases per judge in Kings County, 688 cases per judge in Queens, and 835 cases per judge in Staten Island.<sup>23</sup>

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<sup>19</sup> New York City Administration for Children's Services, Office of Research and Evaluation, Monthly Update, November 2006, FY 2007, *available at* [http://www.nyc.gov/html/acs/downloads/pdf/stats\\_monthly\\_update.pdf](http://www.nyc.gov/html/acs/downloads/pdf/stats_monthly_update.pdf).

<sup>20</sup> New York City Administration for Children's Services, Office of Management, Development, and Research, *cited in* Preliminary Fiscal 2007 Mayor's Management Report, at 33.

<sup>21</sup> *See* Testimony of John Feinblatt, New York City Criminal Justice Coordinator, before the Council of the City of New York, General Welfare Committee (January 11, 2007). There are 22 types of cases heard in Family Court, including child abuse and neglect, adoption, child custody and visitation, domestic violence, juvenile delinquency, and child support.

<sup>22</sup> Data provided by the New York City Family Court, January 2007.

<sup>23</sup> Data provided by the New York City Family Court, January 2007. Also note that the estimate for Staten Island reflects an average between the two Family Court judges' all-purpose calendars.

However, the data kept by the Family Court to track judges' caseloads do not include permanency hearings, so these figures significantly understate each child protection judge's total workload.<sup>24</sup> One way of estimating this unreported additional case burden is just to count the number of children for whom permanency hearings must be held: since there are currently approximately 17,000 children in New York City foster care, the Family Court is required to hold 34,000 hearings a year, excluding temporary custody and family placements. In Kings County, where an effort is being made to capture permanency hearings in case load figures, in 2006 judges and their assigned referees had as many as 1,300 individual cases assigned to their docket, twice the average tracked by the Family Court.<sup>25</sup> Moreover, the workload has increased for the entire Family Court system, not just judges, and sources estimate a 30 percent increase in overtime for court staff occurred citywide in 2006.

As a result of increased caseloads, the Family Court has had to institute temporary measures to attempt to address the overwhelming caseload assigned to each Family Court judge. For example, the Family Court has enlisted court referees, rather than judges, to hold more permanency hearings, even in cases where the parties and families have become familiar with the judge over the course of the case. The court administrators also have temporarily transferred eligible judges from other courts to the Family Court, thus increasing the number of sitting Family Court judges to 51 at times through temporary assignments. Further, the Family Court has expanded the use of alternative dispute resolution to enable parties to resolve their cases more quickly.<sup>26</sup> And while court consolidation and restructuring plans currently under discussion ultimately may offer some solutions, the need for additional Family Court resources is immediate.<sup>27</sup>

Family Court stakeholders estimate a need for between 13 to 24 additional judges throughout all counties. They also estimate a corresponding need for increased staff to support those judges and additional referees. It is estimated that this staffing increase would require funding of \$36 million.

Family Court stakeholders are willing to better use other means for increasing the efficiency of the system, such as exploring alternative dispute resolution or other mechanisms to address families' problems before they go to court. Other representatives have called for creating a permanent role within the Family Court for trained social work staff to assist judges in evaluating whether the service plan offered by the agency is reasonably likely to result in family reunification and whether the family has meaningful access to services, for example. But while

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<sup>24</sup> The Office of Court Administration's efforts to effectively capture the number of hearings and more accurately track caseloads should be supported.

<sup>25</sup> Data provided by Hon. Bryanne Hamill, Family Court Judge, Kings County, March 2007.

<sup>26</sup> See Testimony of John Feinblatt, New York City Criminal Justice Coordinator, before the Council of the City of New York, General Welfare Committee (January 11, 2007).

<sup>27</sup> Other mandated court hearings on an emergency basis, such as under FCA §§ 1027 and 1028, drain limited Family Court resources away from permanency hearings.

these may be alternative means for improving the current Family Court system, they too require additional resources in order to be implemented effectively.

**B) ACS and Foster Care Agencies:** The New York State Office of Children and Family Services (“OCFS”) is the State agency responsible for oversight of all child welfare services. OCFS regulates and monitors the local social services districts and maintains the Statewide Central Register for Child Abuse and Maltreatment (“SCR”), which receives all reports of suspected incidents of child abuse, neglect, and maltreatment, and refers them to the appropriate district for investigation. With the exception of New York City, each county in New York State has its own social services agency. In New York City, ACS governs the provision of child welfare services. ACS and the county agencies are responsible for conducting investigations of alleged child abuse and maltreatment that are referred to them by the SCR and determining whether they are substantiated under state law. The districts provide child protective services, preventative services, foster care services, Article 10 direct placements with relatives, adoption services, post-adoption services, and after-care services. The districts also contract with voluntary agencies to provide various child welfare services.<sup>28</sup>

Additional Case Workers Needed: OCFS issued a Child Welfare Workload Study in November 2006 to track the time case workers spend in various activities (time spent with children and families, time spent in court, etc.) and to recommend a “reasonable” caseload per worker. Ultimately, the Study recommended that New York State reduce its caseload for all workers to 12 investigations per month per worker for child protective services investigations. The Study recommended 11-12 children per month per worker for foster care planning services and 12-16 families per month per worker for preventive case planning services.

New York City agency workers are dramatically overextended by these or any other standards. While ACS has received additional funding to reduce its workers’ caseloads to an average of 14 per worker, little additional funding has been passed along to the foster care agencies to reduce their workers’ caseloads. For example, New York City’s Council of Family and Child Caring Agencies (“COFCCA”) estimates that its foster care agency case workers carry an average of 20-22 cases per month, almost twice the OFCS suggested case load. It is recommended that OCFS, ACS, and COFCCA determine the cost of funding caseloads at the suggested level and that funds to support these be provided by the state and city with available federal funding support.

Further, additional resources are required to reduce the time workers spend in court and in completing paperwork, and to increase the amount of time they can spend with children and families. The OCFS Study found that on average throughout the state, case workers spent approximately 31 percent of their case-related time on documentation and paperwork, and 6.5 percent of their time in court-related activity. Case workers from New York City’s ACS and its voluntary agencies spent more time in court-related activities (5.6 and 4.9 hours, respectively, or

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<sup>28</sup> From July 1, 2005 to June 30, 2006, the districts throughout New York State provided child protective services to approximately 229,900 children, preventive services to almost 46,000 cases, foster care and Article 10 direct placement with relatives services to about 47,000 children, and adoption services to about 5,500 children. New York State Office of Children & Family Services, New York State Child Welfare Workload Study, November 2006, at 1-4 (hereinafter “OCFS Workload Study”).

10 percent of case-related time) than did the caseworkers from other districts and voluntary agencies, according to the Study.<sup>29</sup> Similarly, New York City's ACS caseworkers reported that they spent an average of 36.9 percent of their case-related time on documentation, and its agencies reported an average of 30.9 percent.<sup>30</sup> COFCCA also has estimated that New York City foster care agency case workers spent much more time in court than caseworkers in other districts and voluntary agencies: on average 17.6 percent of their time, with an average wait time of 2.3 hours for a hearing that averages 32 minutes.<sup>31</sup> Additional resources to alleviate caseloads would assist with these issues as well.

Additional Resources Needed to Increase Timeliness and Accuracy of Permanency Reports: Because New York City's foster care agencies are operating with fewer resources and the agency workers' caseloads are so high, workers have difficulty completing the required permanency reports 14 days in advance of the permanency hearing as required by the Legislation. According to Family Court judges, law guardians, and parents' attorneys, most reports are not submitted to the other parties until the day of the hearing.

This delay in submission of the reports by agency workers often results in a delay in the entire permanency process. In many cases when the reports are not timely submitted, judges must adjourn the permanency hearing because the parties do not have time to adequately review the information and therefore cannot address the often complicated issues involved. Some judges have begun setting conferences two weeks in advance of the permanency hearing just to ensure timely submission of the reports. Thus, the widespread failure to timely submit reports also results in an increase in court appearances.

The Family Court in New York City conducted a survey of judges and referees for one week in March 2006, studying a total of 315 cases/families. During this week, 175 of the 315 families were scheduled for a first time permanency hearing. Of the 175, 99 families came to court and had their hearing completed on that first date. The other 76 had to return for a future court appearance. Of the 140 families who were in court previously for a permanency hearing, 74 hearings were completed during the week that was studied, while 66 had to return to court yet again. Based on these numbers, 45 percent of families, attorneys, agency workers and others will have to appear more than once for a permanency hearing to be completed. The study indicated that over 50 percent of all adjournments were the result of no notice or late notice of the hearing date, while 30 percent of adjournments were due to a missing or late permanency report or a report in which information was missing. In one out of every three cases there was a lack of notification to the parties; in one out of five, the permanency reports were missing. Moreover, in those cases where permanency reports were submitted, only 12 percent were

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<sup>29</sup> OCFS Workload Study, at 4-6.

<sup>30</sup> OCFS Workload Study, at 4-8.

<sup>31</sup> Council of Family and Child Caring Agencies (COFCCA), *Time at Family Court*, April 2005, at 1 (hereinafter "COFCCA Report"). This report includes recommendations for reducing the wait time for court hearings by scheduling specific times for hearings. It also recommends that case workers' wait time be spent more efficiently, by providing technology to allow them to complete paperwork while waiting.

identified as submitted in a timely manner (14 days in advance), and 219 out of 315 were submitted late, with the majority of those, 62 percent, submitted on the day of the hearing.<sup>32</sup>

Lawyers for Children, an independent agency offering legal representation for children in foster care, provides another example of the problem in receiving timely permanency reports: it drew a one month sample and found that of the 269 permanency hearings that were scheduled for December 2006 (to be represented by Lawyers for Children), their office received only 39 permanency reports two weeks prior to the permanency hearing, a compliance rate of just 14.5 percent.

ACS also tracked compliance rates for reports submitted to the Legal Tracking System, the database utilized by ACS's legal division, and found that on average only 38 percent of all permanency reports were received and accepted by the ACS attorneys. Some individual agencies averaged a submission rate of just 14 percent.<sup>33</sup>

Many stakeholders have raised concerns that the information included in the new, longer, and more detailed permanency reports is outdated, incomplete, and/or inaccurate, even if submitted. Better integration of the permanency reports with the New York State Family Assessment Service Plan ("FASP") report and the Connections databases would increase efficiency and accuracy.<sup>34</sup>

The increased funding to reduce the average caseload of agency case workers proposed above would enable workers to better complete these permanency reports within the statutorily mandated timeframe and with more accurate information.

**C) Law Guardians and Representatives for Children:** The Juvenile Rights Division of New York City's Legal Aid Society estimates that each staff attorney currently has a caseload of 200-300 clients, while prior to 2006, caseloads for staff attorneys averaged 150-200 clients. Many Division staff consistently appear in court until 7 or 8 P.M. without receiving any overtime compensation. To address this increase in case loads, the Division offered a budget proposal to the New York State Office of Court Administration in 2006 requesting increased State support, and currently estimates additional resource needs of one-third to one-half its current budget. Specifically for New York City, the Division estimates that an increase of one-half the current budget, or \$13 million, is necessary.

Similarly, Lawyers For Children requested additional State funding but received insufficient increases to meet caseload demands. Advocates estimate that the Permanency

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<sup>32</sup> New York City Family Court, Survey conducted March 27, 2006 through March 31, 2006.

<sup>33</sup> Data provided by New York City Administration for Children's Services, January 2007.

<sup>34</sup> The state requires foster care agency workers to file a FASP report electronically through the state's single comprehensive integrated computer system, called Connections. Beginning April 2007, foster care agency workers could also draft permanency hearing reports in Connections, with a pre-fill option that automatically inserts information from the FASP into relevant sections of the permanency hearing reports. This new integration of the FASP reports with the permanency reports should increase efficiency and cut down on duplicative work.

Legislation requires a one-third to one-half increase in Law Guardian staffing statewide.

**D) Impact on Parents, Youth and Children:** Advocates cite many ongoing problems in addressing the needs of families and children, such as the growing waitlist for family services and lack of access to legal information. Organizations have requested additional funding for preventative services and education programs that would free up Family Court resources by reducing the number of abuse and neglect cases filed. Programs that provide parents with legal assistance prior to an Article 10 filing can help families access appropriate services before a family problem or crisis devolves into an abuse or neglect case. Further, funding for parent advocates and community legal education in high-need communities will help provide parents with the support and knowledge necessary to access appropriate services and engage with Child Protective Services in a manner that averts unnecessary Family Court involvement.

## **VII. Recommendations**

Based upon the information collected above, this position paper recommends the following:

- Recommendation 1: Increase funding for the Family Court system in New York City to hire additional judges and corresponding staff. Stakeholders have suggested anywhere from 13 to 34 additional judges are needed to reduce delay and increase effectiveness of the judicial role.
- Recommendation 2: OCFS, ACS, and COFCCA should determine the cost of funding caseloads at the levels recommended in the OCFS Child Welfare Workload Study. Funds sufficient to support those caseload levels should be provided by the state and city with available federal funding support; this will enable city caseworkers to reduce their caseloads to a reasonable level and meet the objectives of the Permanency Legislation.
- Recommendation 3: Ensure better integration of the permanency reports with the New York State Family Assessment Service Plan report and the Connections databases, to increase efficiency and accuracy.
- Recommendation 4: Increase funding for law guardians in New York City by one-third to one-half of the current budget to reduce caseloads per attorney, ensuring that they can more adequately meet children's needs.
- Recommendation 5: Enhance funding for preventive and diversion services, including services that provide parents with legal assistance prior to an Article 10 filing, to help families access appropriate services before a family problem or crisis devolves into an abuse or neglect case.
- Recommendation 6: Explore new means to fund parent advocates and community legal education in high-need communities so that parents have the support and knowledge necessary to access appropriate services and engage with Child Protective Services in a manner that averts unnecessary Family Court involvement.

## **VIII. Conclusion**

In order for the courts, ACS, foster care agencies, and advocates for children and parents to effectively meet the goals of the Permanency Legislation, additional resources must be committed. The funds requested in this position paper would enable all stakeholders in New York City's child welfare system to better provide quick and permanent placement for children and to facilitate positive outcomes for children and their families.

## **Appendix A: Contributing Organizations and Individuals**

<b>AIDS Center of Queens County</b>	Ed Campanelli, Staff Attorney
<b>Bronx Defenders</b>	Kara Finck, Project Director, Family Defense Project
<b>Center for Family Representation</b>	Elizabeth Fassler, Litigation Supervisor Jacob Maeroff, Staff Attorney
<b>Child Welfare Organizing Project</b>	Michael Arsham, Executive Director
<b>Citizens Committee for Children of New York, Inc.</b>	Stephanie Gendell, Senior Policy Associate for Child Care and Child Welfare Services
<b>Council of Family and Child Caring Agencies</b>	Jim Purcell, Executive Director
<b>Juvenile Rights Division, Legal Aid Society of New York</b>	Tamara Steckler, Attorney-in-Charge
<b>Lawyers for Children</b>	Karen Freedman, Executive Director
<b>Lansner &amp; Kubitschek</b>	Darius Charney, Associate
<b>Legal Services for New York City</b>	Caroline Kearney, Family Law Coordinator Maxine Ketcher, Senior Staff Attorney
<b>New York City Administration for Children's Services</b>	Ronald Richter, Deputy Commissioner Nancy Thomson, Associate Commissioner Wendy Perlmutter, Chief of Staff to the Deputy Commissioner
<b>Family Court of New York City</b>	Honorable Lee H. Elkins, Family Court of Kings County Honorable Bryanne A. Hamill, Family Court of Kings County Honorable, Joseph M. Lauria, Administrative Judge, Family Court of New York City Honorable Rhea Friedman, Family Court of Queens County
<b>New York Office of Court Administration</b>	Janet Fink, Deputy Counsel
<b>Queens Legal Services Corp.</b>	Lisa Isaacs, Director, General Practice Unit Debra Sambataro, Staff Attorney
<b>South Brooklyn Legal Services</b>	Lauren Shapiro, Director, Family Law Unit Lynn Vogelstein, Staff Attorney

**Appendix B: New York City Bar Association’s Council on Children**

<b>Alton Abramowitz</b>	<b>Sienna Fontaine</b>	<b>Christine Pendry</b>
<b>Robert Bacigalupi</b>	<b>Hon. Rhea Friedman</b>	<b>Wendy Perlmutter</b>
<b>Ailin Chen</b>	<b>Karen Freedman</b>	<b>Bonnie Rabin</b>
<b>Maria Cilenti</b>	<b>Stephanie Gendell</b>	<b>Lois Raff</b>
<b>Cathleen Clements</b>	<b>Jane Golden</b>	<b>Sarah Reynolds</b>
<b>Diane Cohen</b>	<b>Karen Goldstein</b>	<b>Ronald Richter</b>
<b>Michele Cortese</b>	<b>Karen Gutheil</b>	<b>Jonathan Rosenberg</b>
<b>Mary Jane Cotter</b>	<b>Marlene Halpern</b>	<b>Joseph Sahid</b>
<b>Wendy Deer</b>	<b>Susan Halpern</b>	<b>Michael Scherz</b>
<b>Hon. Monica Drinane</b>	<b>Hon. Bryanne Hamill</b>	<b>Stephanie Shapiro</b>
<b>Lynne Echenberg</b>	<b>Hon. Patricia Henry</b>	<b>Carol Sherman</b>
<b>Julia Einbond</b>	<b>Susan Jacobs</b>	<b>Meredith Sopher</b>
<b>Laurel Eisner</b>	<b>Jaclyn Jenkins</b>	<b>Jane Spinak</b>
<b>Franca Fanizzi</b>	<b>Deborah A. Lashley</b>	<b>Tami Steckler</b>
<b>Amy Feldman</b>	<b>Hon. Joan B. Lobis</b>	<b>Eve Stotland</b>
<b>Janet Fink</b>	<b>Katherine Locker</b>	<b>Paul Talbert</b>
<b>Lisa Fischel-Wolovick</b>	<b>Natasha Parrett</b>	

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