



NEW YORK  
CITY BAR

COUNCIL ON CHILDREN

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January 18, 2022

DAWNE A. MITCHELL

**CHAIR**

Phone: (212) 577-7965

Mobile: (917) 991-6769

[damitchell@legal-aid.org](mailto:damitchell@legal-aid.org)

THERESA B. MOSER

**SECRETARY**

Phone: (212) 577-3284

Mobile: (646) 995-8790

[tbmoser@legal-aid.org](mailto:tbmoser@legal-aid.org)

Hon. Eric Adams  
Mayor of the City of New York  
City Hall  
New York, NY 10007

**Re: Policy Recommendations Concerning New York City's Children**

Dear Mayor Adams:

I write on behalf of the New York City Bar Association's Council on Children to share with you policy recommendations relating to children. The Council on Children (the Council) is comprised of representatives of the City Bar committees dealing with children, education, family, family court, juvenile justice, and the needs of lesbian, gay, bisexual and transgender youth. Also sitting on the Council are representatives of the child welfare, juvenile justice and foster care communities, including attorneys representing children and families and the heads of the City's major agencies and organizations dealing with child welfare and juvenile justice.<sup>1</sup>

We are excited by the opportunity that your administration offers to create a new agenda for New York City's Children. Based on the Council's collective experience and expertise, we propose the following policies for your consideration:<sup>2</sup>

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<sup>1</sup> For more information on the Council and its activities, please visit <https://www.nycbar.org/member-and-career-services/committees/children-council-on>. (All sites last visited Jan. 14, 2022).

<sup>2</sup> For further explication of a number of these recommendations, please refer to the attached addendum. *See also* New York City Bar Association, *Legal Steps to Implementation of Campaign Policy Proposals: Eric Adams Mayoral Transition*, Dec. 17, 2021, <https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/legal-steps-to-implementation-of-mayor-elect-adams-campaign-policy-proposals>.

**About the Association**

*The mission of the New York City Bar Association, which was founded in 1870 and has 25,000 members, is to equip and mobilize a diverse legal profession to practice with excellence, promote reform of the law, and uphold the rule of law and access to justice in support of a fair society and the public interest in our community, our nation, and throughout the world.*

## **EDUCATION**

- Analyze existing pandemic resources for public school students and staff and provide further support as needed.
- Analyze the impact of the recently released Foundation Aid funds and fill the funding gaps, if any.
- Ensure that all New York City public schools have adequate access to social workers, psychiatrists and psychologists.
- Provide arts instruction for all public school students (including music, theater, and visual arts).
- Close the digital divide for public school students (including ensuring device and Wi-Fi access for all students).
- Continue 529 Plan savings for every public school student, and/or implement a Baby Bonds program similar to the one in Connecticut.

## **MENTAL HEALTH SERVICES**

- Ensure high-quality, community-based mental health services for all children.
- Provide training in trauma-based therapies for all NYC workers who deal with children.

## **FOSTER CARE AND JUVENILE JUSTICE SYSTEMS**

- Design and implement a strategic plan to reduce racial and ethnic disparities in both systems.
- Increase resources and improve strategies for youth in firearms cases.
- Address stark inequalities in legal representation of youth by advocating with the State for necessary legislative changes.
- Guarantee transitional and permanent housing for youth aging out of foster care.
- Engage the private sector in providing paid internships and employment for youth aging out of foster care and youth involved in juvenile justice.
- Improve educational outcomes for children in foster care.
- Change Administration for Children's Services policy so that it does not use children's SSI/SS Survivor's benefits to pay for foster care.

## **FAMILY COURT**

- Advocate for an increase in the number of Family Court judges.
- Increase support and resources for the City's Assigned Counsel Panels.
- Engage the non-profit sector in providing IT and other supports in Family Court.
- Support engagement of noncustodial fathers or father figures within the family for youth involved in Juvenile Justice cases.

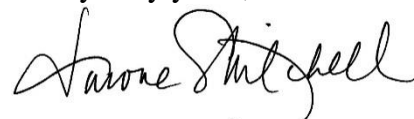
## **AREAS FOR INNOVATION**

- Initiate a Universal Basic Income Pilot, similar to the one begun in Ulster County.
- Improve living conditions for children in city-run juvenile justice, foster care and homeless facilities, focusing particularly on food services and provisions for visitation.

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We applaud your pledge to unlock silos among City agencies. Improving inter-agency coordination will better serve children and families facing multiple, intersecting needs involving health, housing insecurity/homelessness, food insecurity, joblessness, etc.. We look forward to working with you and hope you will call on us for assistance and support.

Very truly yours,



Dawne A. Mitchell

cc:

David Banks, Chancellor, Department of Education  
Jess Dannhauser, Commissioner, Administration for Children's Services  
Hon. Anne-Marie Jolly, Administrative Judge of the New York City Family Court  
Brendan McGuire, Counsel  
Roberto Perez, Director, Mayor's Office of Intergovernmental Affairs  
Sherif Soliman, Director, Mayor's Office of Policy and Planning  
Anne Williams-Isom, Deputy Mayor for Health & Human Services

Enclosure

### **Contact**

Elizabeth Kocienda, Director of Advocacy | 212.382.4788 | ekocienda@nycbar.org



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ADDENDUM

**COUNCIL ON CHILDREN MAYORAL TRANSITION LETTER**

**New York City should create a comprehensive, targeted school mental health system to provide high quality mental health services to all public school children.**

Access to high quality mental health services is critically important for all New York City children, particularly children of color. U.S. Surgeon General Dr. Vivek Murthy issued a new advisory to highlight the urgent need to address the nation's youth mental health crisis, specifically recommending mental health support for children and youth in educational settings.<sup>1</sup> Even prior to the COVID-19 pandemic, rates of depression, anxiety, and suicide were at record levels. The pandemic has exacerbated this mental health crisis. Moreover, Black and Latinx children have been disproportionately impacted by the COVID-19 pandemic, with many having lost his or her caregiver.<sup>2</sup> Yet, these communities lack sufficient access to mental health care, and the public schools that serve these children are in dire need of mental health professionals.<sup>3</sup>

Studies have shown that this lack of mental health services in our schools leads to the criminalization of youth, as teachers and schools seek help from law enforcement.<sup>4</sup> Students are 21 times more likely to seek support for mental health issues at school than at a community-based

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<sup>1</sup> Press Release: U.S. Surgeon General Issues Advisory on Youth Mental Health Crisis Further Exposed by COVID-19 Pandemic, U.S. Department of Health & Human Services, Dec. 7, 2021, <https://www.hhs.gov/about/news/2021/12/07/us-surgeon-general-issues-advisory-on-youth-mental-health-crisis-further-exposed-by-covid-19-pandemic.html>. (All sites last visited Jan. 14, 2022).

<sup>2</sup> Eama, Afia, *City's Black and Hispanic Youth Face Dire Need for Mental Health Care*, Gotham Gazette, Dec. 10, 2020, <https://www.gothamgazette.com/city/9973-nyc-black-hispanic-youth-dire-need-mental-health-care>.

<sup>3</sup> See Children's Defense Fund of New York, *Fiscal Year 2019 and 2018 Department of Education, Guidance Counselor and Social Worker Spending*, Oct. 2018, <https://www.cdfny.org/wp-content/uploads/sites/3/2018/10/FY1918-Department-of-Education-Spending-on-Guidance-Counselors-and-Soci..-1-1.pdf>. In the 2017-2018 academic year, only 2,800 full-time guidance counselors and 1,300 full-time social workers served New York's approximately 1 million students.

<sup>4</sup> See ACLU, *Cops and No Counselors: How the Lack of School Mental Health Staff Is Harming Students*, <https://www.aclu.org/issues/juvenile-justice/school-prison-pipeline/cops-and-no-counselors>.

**About the Association**

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clinic, if at all, bolstering the need to provide mental health support to children in school.<sup>5</sup> New York City must assure that every school has access to social workers, psychologists, and psychiatrists to support our children. Furthermore, the Administration must ensure all students have access to timely, effective direct mental health services in school through school mental health clinics or partnerships with community-based mental health clinics.

### **New York City should ensure adequate funding to support public school students.**

The new funds awarded by the legislature for the next three years are based on a cost study the State Education Department did in 2006 — but “whatever calculations they did in 2006 are hopelessly out of date....The demographics are different, the cost of living is higher, and there are new education policies and mandates that schools are required to fulfill — plus the impact of COVID. It’s a whole new world, and we need a foundation formula for 2021, not 2006.”<sup>6</sup> The City should conduct a comprehensive evaluation of needs, identify funding gaps resulting from inadequate State funding, and determine the best ways to provide additional funding in order to ensure that all needs are met.

### **New York City should increase support and resources for members of the city’s Assigned Counsel panels.**

Assigned Counsel (also known as “18-B attorneys”) advocate for indigent parties in Family, Surrogate, Supreme and Criminal Courts. They represent children and adults in extremely complex and sensitive cases, including, but not limited to, cases involving the separation of a parent from his or her child, cases where adults and/or children face a loss of liberty, and family disputes. As the majority of their clients are people of color, 18-B attorneys are the frontline in the struggles to preserve individual liberties, mitigate implicit bias and institutional racism, and keep families together and children safe. However, the state has failed to give pay raises to 18-b attorneys since 2004. Thus, they earn only \$75 per hour for family, felony and appellate matters; and \$60 per hour for misdemeanor cases. In contrast, assigned counsel in federal cases receive \$155 per hour.<sup>7</sup>

Due to this lack of adequate compensation, attorneys have fled the panel, leading to a deficit number of attorneys available to represent indigent clients, and depriving adults and children of their right to representation.<sup>8</sup> New York City should take action to recruit and support

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<sup>5</sup> Linda Juszczak et al., *Use of health and mental health services by adolescents across multiple delivery sites*, 32 J. of Adolescent Health 6, 108–118, June 1, 2003, [https://doi.org/10.1016/s1054-139x\(03\)00073-9](https://doi.org/10.1016/s1054-139x(03)00073-9); see also Mir M. Ali et al., *Utilization of mental health services in educational setting by adolescents in the United States*, 89 J. of Sch. Health 5, 393–401, March 18, 2019, <https://doi.org/10.1111/josh.12753> (finding that adolescents from low-income households and students of color are more likely to access mental health services in an educational setting only, as opposed to in a combination of school and non-school settings or only outside of school).

<sup>6</sup> Levine, Joe, *Show Him the Money: Michael Rebell is glad the state will begin paying New York City long-owed school funding, but he’s not celebrating yet*, <https://www.tc.columbia.edu/articles/2021/april/tcs-michael-rebell-on-long-owed-nyc-school-funding-payments/>

<sup>7</sup> Denney, Andrew, *Bar Groups Sue Over Stagnant Pay for Assigned Counsel*, New York Law Journal, July 26, 2021.

<sup>8</sup> *Id.*

members of the panel. New York City should advocate with the State to increase the statutory compensation rates for assigned counsel and implement a mechanism for periodically reviewing and updating assigned counsel compensation rates. In the interim, New York City should strongly consider supplementing the statutory rate to ensure that assigned counsel compensation matches the federal assigned counsel rate of \$155 per hour.

**New York City should ensure equity in representation in the juvenile justice system.**

The inequity of representation of youth whose cases originate in the family court has become apparent over the course of the pandemic, especially since the emergency order by Judge Ruiz that appointed Attorneys for Children to youth at the pre-filing stage. As such, during the pandemic, youth were afforded counsel pre-filing and during the crucial initial periods of a case. The chart below demonstrates the inequities:

<b>Youth Whose Cases Originate in the Family Court</b>	<b>Youth Whose Cases Originate in the Youth Part</b>
No attorney assigned until or unless a case is filed *Youth whose cases originate in detention within the family court do have an attorney appointed immediately upon the first court appearance. However, if that custody ends, the case is not immediately filed and the youth is released, the representation does not continue by law.	Attorney assigned virtually on the day of arrest as youth are arraigned within 24 hours of arrest and all youth are entitled to an attorney.
FCA procedural rules require a longer period from arrest to filing (adjustment; investigation; filing must contain non-hearsay allegations).	Raise the Age law implementation codifies continuous representation of youth whose cases are transferred from youth part to the family court
Unless youth has means to hire an attorney – they go through adjustment and investigation stages <b>unrepresented</b> . Youth with means to hire an attorney are represented from the moment they enter the family court	Youth whose cases originate in the youth part and are transferred to the family court are represented by counsel through the adjustment and investigative stages of the case.
If a case is filed, an attorney is assigned to represent the youth and meets youth and family for the first time at the court appearance when crucial custody determinations are made.	If a case is filed, the same counsel continues representation upon the filing of the case. They have an established relationship with the youth and the family.

To address this inequity in representation, the City should advocate with the State to amend article three of the Family Court Act to ensure that young people whose cases originate in the Family Court are represented during the investigation and adjustment stages of their cases.

## **New York City should lobby the State to increase the number of Family Court Judges, and ensure its Family Court Judges are trained in the relevant substantive areas.**

As documented in a December 2020 Report by the New York City Bar Association, New York City's Family Courts, which are amongst the nation's busiest, lack an adequate number of judges.<sup>9</sup> Even before the pandemic, this contributed to consistent and ongoing delays in the resolution of sensitive cases involving our City's most vulnerable children. However, the lack of family court judges has become a crisis given the enormous backlog of unheard cases caused by the Covid-19 pandemic. Each case that is not resolved means a family remains in a state of uncertainty and crisis.

The administration should take steps to ensure that all judges sitting in Family Court timely receive comprehensive training in the substantive areas they are hearing, in trial procedure and evidence, and in case management. Family Court Judges should also have more training related to youth development. As described in the Secretary Johnson's 2020 Equal Justice Report,<sup>10</sup> the court system is routinely characterized as "dehumanizing" and a "demeaning cattle-call culture," that impacts children and families in Family Court. Family Court Judges need ongoing training and support so that these court rooms are grounded in age-appropriate and trauma-informed practice. According to the National Council of Juvenile and Family Court Judges, "[y]outh may fail to meet adults' expectations to be respectful and compliant or to show empathy and remorse. Youth may be rude and disrespectful, talk back, refuse to make eye contact, laugh, or otherwise appear uninterested. . . . We may misunderstand the behavior we see and use harmful language based on faulty assumptions and expectations. . . . We bring our own experiences and biases to every interaction, including those with youth. Those biases may cause us to perceive normal adolescent behavior and body language of Black, Latinx, and Indigenous youth as more dangerous, defiant, and disrespectful than that of white youth."<sup>11</sup>

As the Equal Justice Report described, this issue is compounded by the workload facing the Family Courts: "[a] group of Family Court judges surveyed cited research showing that implicit bias is more likely to be acted upon when a decision-maker is rushed. They noted that if a judge has time to slow down, unpack the case before them, look at it from multiple angles and 'surface their own biases and reactions' to the individuals involved, that judge is more likely to second-guess their own assumptions and biases."<sup>12</sup> This is a crucial procedural justice and racial justice issue for our clients.

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<sup>9</sup> New York City Bar Association, *The Family Court Judicial Appointment and Assignment Process*, Dec. 2020, <https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/the-family-court-judicial-appointment-and-assignment-process>.

<sup>10</sup> Johnson, Jeh, *Report from the Special Advisory on Equal Justice in the New York State Courts*, Oct. 1, 2020, <https://nycourts.gov/whatsnew/pdf/SpecialAdviserEqualJusticeReport.pdf>.

<sup>11</sup> National Council of Juvenile and Family Court Judges, National Juvenile Defender Center, Juvenile Justice Initiative, Fair and Just Prosecution, *Seeing What's Underneath: A Resource for Understanding Behavior and Using Language in Juvenile Court*, <https://fairandjustprosecution.org/wp-content/uploads/2021/04/Seeing-Whats-Underneath-Behavior-and-Language-in-Juvenile-Court.pdf>.

<sup>12</sup> *Supra* note 10.

To address these significant concerns, the City should advocate with the State to increase the number of Family Court judges and to replace the statutory framework setting a finite number of judges with a mechanism that provides for assigning more Family Court judges based upon the volume of cases. In addition, we urge the City to consider and implement ways that the judges sitting in NYC Family Courts can be better prepared for the work they are charged with doing. While the State Court system has extensive training for all new and existing jurists, there should not be a disconnect between the appointment of jurists to the Family Court and an expectation that the appointees - or those loaned from the Civil bench - have experience with the Family Court prior to appointment. If that is not the case, then the Mayor should share in the expectation of full circle training and consider adopting a mechanism that supplements or supports the training needs of Family Court jurists.

**New York City should change ACS policy so that it does not use children's SSI/SS Survivor's benefits to pay for foster care.**

In-depth reporting by the Marshall Project and NPR revealed that “Roughly 10% of foster youth in the U.S. are entitled to Social Security benefits, either because their parents have died or because they have a physical or mental disability that would leave them in poverty without financial help. This money — typically more than \$700 per month, though survivor benefits vary — is considered their property under federal law.”<sup>13</sup> But, in nearly all states (including in New York and in New York City), foster care agencies find youth entitled to these benefits, apply to Social Security to become each child’s financial representative and, upon approval, receive the money and use it to pay the costs of the child’s foster care.<sup>14</sup> This policy should end.

**New York City should initiate a universal basic income (UBI) pilot.**

Ulster County is currently undertaking a UBI pilot, and similar programs around the country have shown promising results.<sup>15</sup> We encourage the Administration to study and consider implementing similar programs in New York City.

**New York City should continue the implementation of 529 plan savings for every public school student, and/or implement a baby bonds program.**

An existing program that starts a 529 college savings account for each kindergartner in New York City public schools should be continued, or a baby bonds program should be created that is similar to Connecticut’s, which allows funds to be used for education, home purchase, investing in a business or retirement.<sup>16</sup>

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<sup>13</sup> The Marshall Project, May 17, 2021, <https://www.themarshallproject.org/2021/04/22/foster-care-agencies-take-thousands-of-dollars-owed-to-kids-most-children-have-no-idea>.

<sup>14</sup> *Id.*

<sup>15</sup> Sheffey, Ayelet, *Upstate New York's trial with universal basic income: \$500 per month to 100 people for 1 year*, July 22, 2021, <https://www.businessinsider.com/universal-basic-income-upstate-new-york-trial-500-monthly-payments-2021-7>.

<sup>16</sup> Chang, Sophia, *NYC To Create College Savings Accounts For Every Public School Kindergartener In 2022*, June 17, 2021, <https://gothamist.com/news/nyc-create-college-savings-accounts-every-public-school-kindergartener-2022>.