



NEW YORK
CITY BAR

COUNCIL ON CHILDREN

CATHY CRAMER
CHAIR

ccramer@familylegalcare.org

March 8, 2024

By Email

Hon. Kathy Hochul
Governor of the State of New York
New York State Capitol Building
Albany, NY

Hon. Carl Heastie
Speaker
New York State Assembly
Legislative Office Building 932
Albany, NY 12248

Hon. Andrea Stewart-Cousins
Majority Leader
New York State Senate
Legislative Office Building 907
Albany, NY 12247

Re: FY24-25 New York State Executive Budget

Dear Governor Hochul, Speaker Heastie, and Majority Leader Stewart-Cousins:

On behalf of the New York City Bar Association's Council on Children¹, we write regarding the proposals in the FY24-25 Executive Budget and related amendments that we believe will have a significant impact on children and families in New York State.

¹ The Council on Children is comprised of representatives of all 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 parents and children.

About the Association

The mission of the New York City Bar Association, which was founded in 1870 and has 23,000 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.

I. We Support the Proposed \$20.3 Million in Additional Funding for Family Court Judges

Family Court manifests a “demeaning cattle-call culture,” causing a “dehumanizing effect [] on litigants,” and “disparate impact ... on people of color.”² Backlogs, delays, and inefficiencies are almost synonymous with Family Court in New York City. The pandemic compounded those delays, which studies show doubled the time from a scheduling appearance to the commencement of a trial, from four months to eight months.³ Based on the experience of the practitioners on the Council, these pandemic-caused delays persist, and have caused a ripple effect that has further overwhelmed the system. For these reasons, we support the Unified Court System’s request for an increase of \$20.3 million dollars in funding for 41 new Family Court judgeships—including the 13 judgeships already authorized by Chapter 749 of the Laws of 2023 (\$8.7 million), plus an additional 28 judges (\$11.6 million partial year funding).

While we applaud the inclusion of this additional funding in the budget, we note that a statutory change is also required. The Family Court Act caps the number of Family Court judges state-wide at 163, 63 of whom are seated in New York City.⁴ Further, some Family Court judges sit, temporarily, in other courts. For example, in 2022, 57 appointed Family Court Judges sat in Family Court, while three sat in other courts.⁵ Similarly, elected Civil Court judges often sit temporarily in Family Court to meet needs and fill vacancies, a practice that comes with complications when that jurist is moved back to Civil Court—either rendering any mid-hearing matter a mistrial or requiring the jurist to return to Family Court to complete that hearing.⁶ Thus, in order to effectuate the proposal for 28 additional judges, the statutory cap must be lifted. We recommend as an initial matter that the Family Court Act be amended as part of the FY24-25 budget to reflect the proposed 28 new judges; in addition, the Legislature should consider enacting future legislation that would remove the statutory cap in its entirety and require a regular assessment of the number of judges necessary to meet the demands of the Family Court and its litigants.

² New York City Bar Ass’n Report “Repeal the Cap and Do the Math: Why we need a modern, flexible, evidence-based method of assessing New York’s judicial needs.” September 8, 2023, at 14, <https://www.nycbar.org/wp-content/uploads/2023/09/NYCBarReportRepealTheConstCapOnJudges.pdf> (All websites last accessed on March 8, 2024) (citing Johnson, Jeh, Report from the Special Adviser on Equal Justice in the New York State Courts, Oct. 1, 2020, at 54 (<https://www.nycourts.gov/whatsnew/pdf/SpecialAdviserEqualJusticeReport.pdf>) [hereinafter “Repeal the Cap and Do the Math”]).

³ Repeal the Cap and Do the Math, *Id.*, at 13.

⁴ N.Y. Const. Art. VI, § 13(a); Family Ct. Act §§ 121, 131. *See also* Repeal the Cap and Do the Math, *Id.*, at 12. The number of judges state-wide increased from 150 to 163, and the number of judges in NYC increased from 60 to 63 as of January 2024, once S.7534 (Ch. 749, Laws of 2023) was signed into law by the Governor.

⁵ Repeal the Cap and Do the Math, *Id.*, at 12.

⁶ *Id.* (citing New York City Bar Ass’n Report, “The Family Court Judicial Appointment and Assignment Process,” (Dec. 2020), <https://www.nycbar.org/wp-content/uploads/2023/05/2020790-FamilyCourtJudicialAppointmentProcess.pdf>).

II. We Support the Judiciary’s Proposed \$19.7 Million Increase in Funding for Attorneys for Children (AFC), But Believe that More is Necessary

On March 10, 2023, this Council wrote to you to share its concerns regarding the substantial underfunding of AFC offices across New York State, and the threat that underfunding posed to the safety and well-being of the children whom AFCs serve, most of whom are from low-income communities and communities of color. Given those concerns, we were dismayed by the absence in the FY23-24 budget of any additional funding for AFC offices. However, we were pleased to learn that the Unified Court System has proposed a much-needed \$19.7 million increase for FY24-25, which we enthusiastically support. We must stress, however, that much more funding is necessary for AFC offices to achieve adequate staffing and manageable caseloads.⁷

Indeed, the institutional AFC offices that handle over 90% of the legal representation of children in Family Court in New York City and other cities across our State are in dire need of this additional funding. After the onset of the pandemic, New York’s AFC offices suffered State budget cuts of 10% or higher. Further, prior to the pandemic, attorneys in AFC offices already had endured years of only nominal budget increases of 1.5% or less, which is far below cost of living increases. Thus, New York’s AFC offices have suffered essentially flat budgets for close to twenty years. Moreover, such funding conditions, coupled with the outrageously high caseload cap of 150 child clients per attorney, have driven experienced staff to resign and have severely hampered the ability of AFC offices to hire new staff. This, in turn, has impacted the ability of those offices to provide crucial legal representation to some of New York’s most vulnerable children and young people.

Unfortunately, the conditions and challenges about which we wrote to you last year persist. New York State must correct the gross funding inequity that has for years plagued the attorneys who represent children in our Family Courts. The \$19.7 million increase in the Judiciary budget is a first step toward advancing equal justice for at-risk young people and litigants in our Family Courts and achieving the race equity required for the fair administration of justice in New York City and State. However, substantially more funding is needed in order for AFC institutional providers to create sustainable, equitable workplaces, which in turn will ensure zealous advocacy and access to justice for the vulnerable youth whom they serve.

III. We Oppose the “Sweep” of Funds from the Indigent Legal Services Fund to the General Fund and Call for Increased Funding for Parent Representation

The Legislature established the Indigent Legal Services (ILS) Fund to assist New York City and other counties in providing legal representation to indigent persons in Criminal and Family Court cases who are unable to afford counsel. The entirety of the ILS Fund was intended to support ongoing efforts to improve the quality of public defense representation throughout the State. Although some improvements have occurred with respect to the representation of defendants in Criminal Court, there still is much work to be done to improve the quality of representation in

⁷ It is the Council’s understanding that a coalition of AFC organizations from across the State has calculated that an additional \$60 million is needed to achieve these goals and ensure provision of the highest quality services to the children whom they represent. A forthcoming White Paper, co-authored by Executive Directors and Managing Attorneys of AFC organizations across New York City and State, details the analysis conducted to reach this amount.

Family Court. Thus, across the State, and in New York City, counties are struggling to fulfill their mandate to provide quality representation to Family Court litigants who are facing the most trying of circumstances, including the potential removal of their children due to allegations of child maltreatment, and restrictions on their custody of and visitation with their children. Moreover, low-income families and families of color, who are the majority of New Yorkers litigating in the State’s Family Courts, primarily bear the brunt of this failing.

Unfortunately, the FY24-25 Executive Budget poses an even greater threat to the counties’ ability to provide quality representation to Family Court litigants. The Governor proposes to transfer, or “sweep,” the \$234 million of critical funding from the ILS Fund into the General Fund, with \$120 million of that funding being transferred for unspecified purposes.⁸ Such a sweep would undermine the purpose of the ILS Fund, as the \$120 million transferred for unspecified purposes would be vulnerable to raiding and thus diverted from that funding’s intended purpose. We vigorously oppose this proposal, which will place families and children who already are vulnerable at even greater risk of unnecessary family separation and foster care placement.⁹

Instead of raiding the ILS fund, we urge the Legislature and the Governor to include an additional \$50 million in the FY24-25 budget, as called for by the Office of Indigent Legal Services, in order to support high quality parent representation in Family Court. We also urge the Legislature and the Governor to include an additional \$6 million to increase the rates paid to attorneys assigned pursuant to Article 18-b of the County Law, to the same level as federal defenders, as called for in the recent report of the NYS Senate Children and Families and Judiciary Committees.¹⁰

IV. We Urge the Creation and Funding of a State-Wide Supervised Visitation Program

Also regrettable is the absence from the FY24-25 budget of legislation and funding to establish a State-wide supervised visitation program. We urge the Legislature and Governor to implement and fund the proposal, detailed in S.8116 (Sen. Hoylman-Sigal), to create a new section of the Social Services Law, §398-f.¹¹ If created, that section would establish a state-wide

⁸ Pursuant to the proposal, \$114 million would fund the increased rates paid to assigned counsel, which was enacted in the FY23-24 budget.

⁹ Relatedly, we are so pleased that the Governor has abandoned a similar plan that would have swept \$100 million from the Interest on Lawyer Account (IOLA) Fund, which assists low-income New Yorkers in obtaining civil legal services.

¹⁰ The Crisis in New York’s Family Courts (Feb. 2024), <https://www.nysenate.gov/sites/default/files/admin/structure/media/manage/filefile/a/2024-02/2.12-family-court-hearing-report-w-graphics-1.pdf>. The Chairs of the Children and Families and Judiciary Committees in both the Senate and the Assembly have endorsed these requests in their Call to Fully Fund New York’s Family Courts in the FY 2024-25 Budget, *see* <https://www.nysenate.gov/newsroom/press-releases/2024/brad-hoylman-sigal/legislators-legal-experts-and-advocates-call-fully>. *See also* City Bar Testimony Presented at NYS Senate Children and Families and Judiciary Committees Joint Public Hearing on New York State Family Court (Nov. 1, 2023), https://www.nycbar.org/wp-content/uploads/2023/11/20221219_NYCBARAssnTestimonyNov1FCTHearing.pdf.

¹¹ That proposal was also included in the January 2024 Report of the Family Court Advisory and Rules Committee to the Chief Administrative Judge of the Courts of the State of New York.

supervised visitation program, administered by the NYS Office of Children and Family Services, in consultation with the NYS Office for the Prevention of Domestic Violence.

As documented in the July 2023 *Report from the Working Group on the Future of Supervised Visitation in New York State*,¹² there is a woeful lack of resources available to effectuate supervised visitation orders¹³ in custody/visitation cases in New York City, and elsewhere in the State.¹⁴ Unfortunately, in New York City there are not enough individuals and organizations that provide these desperately-needed services, which keep children safe, reunite fractured families, and provide valuable information to courts regarding interactions between children and parents. Additionally, due to the shortage of free or low-cost visit supervision providers, many low-income families that litigate custody and visitation in New York City's Family Courts and the Integrated Domestic Violence Parts of the Supreme Court find it cost prohibitive and/or impossible to exercise visits that the court has ordered.

Moreover, the few providers that exist in New York City simply do not have the capacity and/or staff to meet the demand for their services. Based on the experience of practitioners on the Council, that limited capacity leads to unconscionably long waitlists for implementation of court-ordered supervised visits, with families in New York City routinely waiting six months to a year between a court's entry of a supervised visitation order and the commencement of visits. Such lags hinder efforts to normalize fractured parent-child relationships and delay pending litigation, as courts await reports from providers so that they may make fully informed decisions regarding what restrictions, if any, to impose on a parent's contact with a child.

Thus, the State should implement and adequately fund a supervised visitation program, as such programs not only protect children's physical safety and emotional well-being, but also help families heal.

V. We Urge the Passage of the Informed Consent Provisions of the Health and Mental Hygiene Article VII Bill, with Important Modifications

We applaud Governor Hochul for recognizing in her State of the State Briefing Book that current testing practices exacerbate inequities in maternal health,¹⁵ and for including informed consent provisions in her 30-day amendments to her proposed 2024-25 Health and Mental Hygiene

¹² The Working Group was convened by the New York State Office of Court Administration's Office of Justice Initiatives. The report is available at <https://www.nycourts.gov/LegacyPDFS/ip/nya2j/SV-Working-Group-Report-July-2023.pdf>.

¹³ These supervised visitation orders include temporary orders granted in on-going custody/visitation litigation, and final orders entered in custody/visitation cases that have concluded with a directive that a parent have his or her visitation supervised by an agency. S.8661 appears to establish a supervised visitation program for only those cases in which there is a temporary visitation order.

¹⁴ According to the Working Group's report, 20 counties in New York State lack any supervised visitation programming for families involved in custody/visitation litigation.

¹⁵ State of the State 2024, at 59, <https://www.governor.ny.gov/sites/default/files/2024-01/2024-SOTS-Book-Online.pdf>.

Article VII bill.¹⁶ However, those provisions fall short of what is required to ensure equity. Most notably, unlike the Informed Consent Act (A.109-B / S.320-B), the amended Article VII bill does not require informed consent before a newborn may be tested or screened, does not require informed consent from a pregnant or postpartum patient before a verbal screening, and requires only verbal consent rather than both oral and written consent of a pregnant or postpartum patient before testing.

The Informed Consent Act is a more comprehensive measure that will better reduce racial disparities in accessing prenatal healthcare. Among other things, the Informed Consent Act would require, absent medical emergency, written and oral informed consent to drug, cannabis, or alcohol testing and screening of pregnant or postpartum patients or their newborns in hospitals. The Act also would require oral consent to drug, cannabis, or alcohol testing and screening of pregnant or postpartum persons or their newborns outside of a hospital setting. In all cases, the Act also would prohibit testing or screening that does not fall within the scope of medical care being provided to the pregnant or postpartum person or their newborn.

Each of these components is essential to address the disproportionate non-consensual testing of Black and Latine pregnant and postpartum patients and their newborns by hospitals. Such non-consensual testing leads too many people to avoid seeking appropriate prenatal care, given their mistrust of the healthcare system, and their fear of entanglement in the child welfare system. In fact, both the American College of Obstetrics and Gynecologists¹⁷ and the American Academy of Pediatrics recommend specific, informed consent prior to drug testing.¹⁸ We therefore urge you to adopt the language of the Informed Consent Act into the FY24-25 budget in place of the current informed consent proposal in the Health and Mental Hygiene Article VII bill.

In sum, the City Bar applauds the inclusion of much-needed funding for additional Family Court judges and AFC institutional providers in the budget, as those measures will help the State's Family Court better serve vulnerable children and families. However, in order to address the significant backlog of cases and ensure that the rights of court-involved individuals, including children, are protected, the State still must provide adequate additional funding for the entirety of the Family Court system, including for assigned counsel for parents and children. The State also should invest in programs that keep children safe while permitting them to maintain crucial family relationships, such as a State-wide supervised visitation program. Without such critical investments, children and Family Court litigants, particularly those who are from communities of

¹⁶ Amendments to S.8307/A.8807, 2024-25 Executive Budget Health and Mental Hygiene Art. VII bill, Part N, at 8, (https://nyassembly.gov/2024budget/bills2024/executive_30day/hmh.pdf).

¹⁷ American College of Obstetricians and Gynecologists Committee on Health Care for Underserved Women, Opposition to Criminalization of Individuals During Pregnancy and the Postpartum Period, Statement of Policy (Dec. 2020), <https://www.acog.org/clinical-information/policy-and-position-statements/statements-of-policy/2020/opposition-criminalization-of-individuals-pregnancy-and-postpartum-period>.

¹⁸ American Academy of Pediatrics, A Public Health Response to Opioid Use in Pregnancy (2017), <https://publications.aap.org/pediatrics/article/139/3/e20164070/53768/A-Public-Health-Response-to-Opioid-Use-in?autologincheck=redirected>.

color and low-income communities, undoubtedly will be denied crucial supports and access to justice.

Respectfully,

Cathy Cramer
Cathy Cramer, Chair
Council on Children

CC: Senator Jabari Brisport
Assembly Member Andrew Hevesi
Senator Brad Hoylman-Sigal
Senator Liz Krueger
Assembly Member Charles D. Lavine
Assembly Member Linda Rosenthal
Senator Julia Salazar
Assembly Member Helene E. Weinstein

Contact

Maria Cilenti, Senior Policy Counsel | 212.382.6655 | mcilenti@nycbar.org