



**L E G A L  
S E R V I C E S**

**I N C O R P O R A T E D**

**TESTIMONY  
ON  
KINSHIP CAREGIVER SERVICES**

**BEFORE:**

**NEW YORK CITY COUNCIL  
COMMITTEE ON GENERAL WELFARE**

**PRESENTED BY:**

**BARBARA GRAVES-POLLER  
*SUPERVISING ATTORNEY*  
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Thank you for affording our organization an opportunity to testify today. My name is Barbara Graves-Poller, and I supervise the Kinship Caregiver Law Project at MFY Legal Services. MFY envisions a society in which no one is denied justice because he or she cannot afford an attorney. To make this vision a reality, for 50 years MFY has provided free legal assistance to residents of New York City on a wide range of civil legal issues, prioritizing services to vulnerable and under-served populations, while simultaneously working to end the root causes of inequities through impact litigation, law reform and policy advocacy. We offer advice and representation to more than 8,000 New Yorkers each year. MFY's Kinship Caregiver Law Project represents and counsels New Yorkers who serve as *de facto* parents for non-biological children. MFY is the only civil legal services organization in the city that has a program dedicated to kinship caregiver issues. Children should be raised by their parents. However, if a parent is unable or unwilling to care for a child, MFY works to ensure that the child is placed with a family member and does not end up in the home of a stranger through the foster care system. We advocate on behalf of low-income caregivers who have no right to counsel and do not receive legal assistance from other legal aid programs in the City.

The horrific killing of Myls Dobson has made all of us re-examine our approaches to child safety and family support. Like tens of thousands of children in New York City, Myls did not enter the foster care system when his father was unable to care for him. But tragically, instead of leaving Myls in the care of his extended family, he was placed with a friend. Our experience working with families has shown that relatives often fail to receive the information and support services from the Administration for Children's Services ("ACS") and other agencies when children are in need of emergency care.

Many of Mayor de Blasio's child welfare reform proposals address interagency communications about parents who enter into the criminal justice system. To prevent future tragedies, these initiatives must expand opportunities for families to offer their collective support to vulnerable children and provide greater resources to all kinship families – without raising fears that the family will lose their children to foster care if they seek help. Today, I would like to briefly address the components of the Mayor's child welfare proposal that impact kinship caregivers, non-parents raising children whose biological parents are unable or, in some cases, unwilling to do so.

## **I. Kinship Caregivers and the Child Welfare System**

Tens of thousands of New York City's children live with a non-biological parent. They might be left with a relative with whom they have no legal relationship. Some caregivers may obtain orders of custody or guardianship for children in their care. Other children are cared for by relatives who become approved foster parents, subject to supervision by ACS. Recent reports

suggest that anywhere between 100,000 and 200,000 children in New York City live in kinship care arrangements outside of the foster system.<sup>1</sup> By way of comparison, fewer than 11,700 children were in foster care as of January 2014.<sup>2</sup>

Research shows that children in kinship care placements experience fewer behavioral problems, mental health concerns, and placement disruptions than children placed with foster parents outside of the family.<sup>3</sup> Accordingly, federal law requires state child welfare systems to accord preference to a child's relatives when removing a child from an abusive or neglectful home environment.<sup>4</sup> Various provisions of the New York Domestic Relations Law, Family Court Act, and Social Services Law also require the ACS and foster care agencies to offer family members the opportunity to care for their relatives before these children are placed in the homes of strangers, but ACS often fails to do so.<sup>5</sup>

## **II. Inadequate Family Notification Procedures**

The Mayor's proposal outlines protocols that ACS should follow when children are subject to the agency's supervision, but it fails to strengthen family involvement in the lives of vulnerable young people. When ACS first comes in contact with a child who must be removed from his or her parents' care, the agency is supposed to "exercise due diligence to identify and provide notice to all adult grandparents and other adult relatives of the child (including any other adult relatives suggested by the parents)."<sup>6</sup> Under Family Court Act § 1017, the court must direct ACS to undertake an "immediate investigation" to locate any relative of the child, including all grandparents and all "suitable relatives" identified by the parent or child five years of age or older. Likewise, Social Services Law § 409(f) requires caseworkers to record the results of their investigative search for suitable relatives. Yet every week, MFY receives calls from distraught relatives who never received notification that their young family members entered into the foster care system. In other cases, relatives who had

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<sup>1</sup> U.S. Children's Bureau, available at <http://www.acf.hhs.gov/programs/cb/resource/fy2003-2012-foster-care-entries-exits>; Stepping Up for Kids: What Government and Communities Should Do to Support Kinship Families, The Annie E. Casey Foundation, available at <http://www.aecf.org/KnowledgeCenter/Publications.aspx?pubguid={642BF3F2-9A85-4C6B-83C8-A30F5D928E4D}>; New York City Administration for Children's Services, available at [http://www.nyc.gov/html/acs/html/statistics/statistics\\_links.shtml](http://www.nyc.gov/html/acs/html/statistics/statistics_links.shtml); Kinship Care in New York: Keeping Families Together, available at [assets.aarp.org/www.aarp.org/\\_cs/.../aarp\\_kincarekeepingfamilies6.pdf](assets.aarp.org/www.aarp.org/_cs/.../aarp_kincarekeepingfamilies6.pdf)

<sup>2</sup> A significant percentage of those children live with family members who became certified kinship foster parents.

<sup>3</sup> See Marc Winokur, et al., Kinship Care for the Safety, Permanency, and Will-being of Children Removed from the Home for Maltreatment: A Systematic Review, *Campbell Systematic Reviews*, 2014:2; see also Eun Koh, et al., What explains instability in foster care? Comparison of a matched sample of children with stable and unstable placements, 37 *Children and Youth Services Review* 36–45 (2014).§

<sup>4</sup> See Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. 104–193, and the Adoption and Safe Families Act of 1997, P.L. 105-89

<sup>5</sup> See, e.g., Family Court Act §§ 1017, 1027; Soc. Svcs. L. § 409(f); 18 N.Y.C.R.R. § 443.

<sup>6</sup> See 42 U.C.A. § 671(a)(29)

long-standing relationships with children have told us that their family members were placed directly into the home of a friend identified by the parent, even when that person had only a limited relationship with the parent and child. The following examples are typical of the complaints that we hear.

*Ms. L., a grandmother who lives outside of New York City, had been caring for her teenage daughter and granddaughter for years. Ms. L. reached out to her local child welfare agency for preventative services. Instead of offering support, the agency simply commenced an abuse and neglect investigation, threatening to place Ms. L.'s granddaughter in foster care. Not long thereafter, Ms. L.'s daughter traveled to New York City with the grandchild and came to the attention of ACS when she was arrested. Ms. L. contacted ACS to claim her grandchild, but the agency turned her away because the child had been placed with "a friend" whom the mother met during her few months in the City.*

*Ms. M., a great-aunt who lives in the Wakefield section of the Bronx, had been the kinship foster parent for her great nephew for the first four years of the child's life. The child was then reunified with his mother for a few months before being placed back in foster care in the home of a non-kinship family. Although the foster care agency handling his case confirmed that Ms. M. would take the child back if his return home was unsuccessful, they never reached out to her. Ms. M. lost contact with the child's mother and only learned that he was in foster care after she ran into a family friend on the subway. She repeatedly contacted the foster care agency to have the child returned to her home where she already cares for some of the child's cousins. After the agency ignored her many telephone calls and voicemail messages, its Director of Permanency Planning ordered her to "leave the child alone" since he was "comfortable" with his non-kinship foster family.*

These examples reflect the tension between ACS's goal of quickly finding homes for children in need of emergency care, on the one hand, and the rights of grandparents and other extended family members to care for their relatives, on the other. Not every parent in the throes of a crisis can or will identify the full range of relatives able to care for their children. Yet, federal and state laws acknowledge that it is in the best interest of these young people to have family members engaged as caregivers. These laws require independent action by child welfare officials to notify family members. However, ACS practices insufficiently address this issue. MFY reached out to ACS during the previous administration to gather information on how caseworkers comply with their duties to locate suitable relatives for children in care.<sup>7</sup> At that time, an ACS social worker explained that caseworkers relied exclusively on information supplied by a child's parents during the removal process and that caseworkers did not routinely

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<sup>7</sup> The agency has not yet responded to our March 2014 request for updated information, submitted under the Freedom of Information Law.

follow the investigative procedures to contact other relatives required by law.<sup>8</sup> As a result, many children end up in the homes of strangers where they are more susceptible to abuse and lose the support of their extended family.

The Mayor's proposal calls for enhanced ACS supervision authority outside of the abuse and neglect investigation context. However, New York's family notification procedures only apply when children are removed from their parents by ACS as part of those investigations, not under other circumstances when children may be in need of care. Even when the notification procedures apply, neither the Social Services Law nor the Family Court Act outlines an enforcement mechanism to ensure that ACS actually complies with these requirements. Without improving family notification procedures, Mayor de Blasio's enhanced interagency communication proposal may do little to help relatives monitor children's safety.

### **III. Arrests and Caregiver Fitness**

All of the caregivers we work with are low-income New Yorkers, 97% of whom are women of color. Given the disproportionate and unnecessary contact that many poor, minority communities have with the New York Police Department, we strongly oppose the proposed expansion of caseworker access to court databases on arrests. This administration has taken important steps to end the era of stop and frisk policing. However, its commitment to pursuing criminal justice equality cannot end there.<sup>9</sup> Allowing caseworkers to review the arrest records of prospective caregivers and reject prospective caregivers on the basis of those records will not provide the indicators ACS is looking for but will simply perpetuate racial disparities and impose their effects on the next generation.

Not only will basing caregiving decisions on arrest data reverse the administration's progressive criminal justice momentum, it will also prejudice survivors of domestic violence. Abuse victims are frequently arrested along with their abuser under New York's "mandatory arrest" policies.<sup>10</sup> Litigation now pending against the NYPD describes, in harrowing detail, how women subjected to violence have been arrested based on their abusive partner's retaliatory

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<sup>8</sup> This information is consistent with the findings in a recent investigative report in which the head of one foster care agency admitted, "There was a time when we didn't work with families at all ... The general attitude was that we can raise children better than these families can." See Mara Gay, "New York City Is Trying a New Strategy to Find Good Homes for Foster Kids — and It's Working," *New York Magazine*, Daily Intelligencer, December 18, 2013, available at: <http://nymag.com/daily/intelligencer/2013/12/nycs-new-strategy-for-helping-parentless-kids.html>.

<sup>9</sup> As the State Attorney General's 2013 report confirmed, racial disparities are not confined to street encounters with police but are evidenced "in the identities of those arrested [and] also in disposition and sentencing." See Eric T. Schneiderman, Office of the New York State Attorney General, "A Report on Arrests Arising from the New York City Police Department's Stop-and-Frisk Practices," Nov. 2013, available at: <http://www.ag.ny.gov/press-release/ag-schneiderman-releases-report-arrests-resulting-stop-and-frisk-practices-and-their>

<sup>10</sup> See N.Y. Crim. Prac. Law § 140.10.

allegations.<sup>11</sup> The risk of unjustified arrest is heightened when abuse survivors have limited English proficiency or communicate using sign language. MFY has worked with a number of women whom ACS and foster care agencies rejected as caregivers because those survivors were arrested during incidents of domestic abuse years previously.

We understand the Mayor's desire to protect children from being placed with violent individuals and persons likely to engage in child abuse. Nevertheless, giving caseworkers broad access to arrest records will not solve this problem. It will exacerbate existing inequalities.

#### **IV. Improved Support Instead of Increased Supervision**

We applaud the Mayor's call for a thorough review of the ACS Family Support Unit ("FSU"). However, we feel troubled by the overarching goal of increasing ACS communication with law enforcement which will deter people like our clients from seeking preventative services instead of expanding support for families in need of help.

The FSU's stated purpose is to "strengthen and stabilize families, prevent the need for out of home care, expedite permanency and prevent the replacement of children into foster care."<sup>12</sup> However, not one of our clients has ever reported that she either knew about or sought services from this division of ACS. Indeed, our clients tell us that they fear being "reported" to ACS or losing custody of their children if they reach out for help. Ms. P., for example, is a grandmother caring for two grandchildren who have been in her care for years. Both children had been subjected to horrendous sexual abuse before moving in with her; one of them recently began to display troubling behavior at school. Yet, Ms. P. is terrified of accessing mental health services for the boy because she believes that doing so would subject her to a child protective investigation by ACS and possible removal of the children. Research has shown that low-income persons are more likely to be accused of child abuse by medical professionals than more affluent families who present similar medical concerns; and anecdotal evidence reveals that Ms. P.'s fears of an ACS investigation and possibly removal are well-founded. Forging a closer relationship between the FSU and law enforcement will only deepen the already substantial fear that families in crisis have of seeking support services.

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<sup>11</sup> See Yanahit Padilla Iorres, *et al.*, v. City of N.Y., Index. No. 13-CV-0076 (E.D.N.Y.) (MKB) (RER). On November 22, 2013, the U.S. Attorney for the Eastern District of New York filed a statement of interest, urging the court to deny the City's motion to dismiss the action, based on the facts of national origin discrimination alleged by the LEP domestic violence survivors who are the plaintiffs in that action.

<sup>12</sup> See <http://www.nyc.gov/html/acs/html/about/divisions.shtml>

## **V. Recommendations**

MFY lauds the Mayor's swift action and attention to the need for comprehensive child welfare reform. Nevertheless, we are concerned that the enhanced law enforcement and supervision called for in the administration's proposals will do little to strengthen the existing resources within families to protect children. To improve this plan of action, we offer the following recommendations:

### **A. Enhance Family Notification Procedures and Policy Enforcement**

At present, ACS's procedures for notifying family members of a child's removal from his or her parents suffer from insufficient compliance and inadequate enforcement. The Mayor's proposal to expand ACS communications with the Departments of Parole and Probation will do little to improve a family's ability to protect its own children unless the proposal addresses the need for more thorough notification procedures. Caseworkers who come in contact with children needing supervision must be required to conduct an investigation into all of the child's relatives who may serve as caregiving resources. Using language that protects a parent's privacy with respect to the circumstances underlying the need for supervision, the agency should notify such relatives that the child is about to receive services from ACS and invite the family members to contact the agency for additional information.

### **B. Maintain Existing Limits on Arrest Information**

Families who come in contact with the child welfare system already suffer from criminal justice inequalities. Expanding caseworker access to arrest records will compound the effects of existing discrimination within law enforcement and unnecessarily deprive children of an opportunity to be cared for by their relatives. It will also have a chilling effect on the willingness of relatives to come forward as prospective caregivers.

### **C. Improve the Family Support Unit's Communication with Families**

Family members do not know how to secure support services and have reasonable fears of being subjected to ACS investigations if they seek help. Right now, the agency discusses its "preventative services" in the context of abuse and neglect investigations, and its support resources are described in terms of preventing "child abuse." Most caregivers who need help are not potential abusers and do not know that the FSU and affiliated organizations offer a variety of community-based support services that may be useful outside of the abuse context. ACS should redefine its Family Support Unit to clarify the range of supports available to families that are not involved in an abuse or neglect investigation. It should also establish a dedicated hotline for

caregivers to obtain information and resources for relatives that is separate from its child abuse hotline.

**D. Address Rights of Relatives in Public Awareness Campaign**

Any public awareness campaign regarding child safety must address the rights of and resources available to families. Many relatives do not know about the preventative services available through community based organizations affiliated with the FSU. They are also unaware of their right to challenge ACS child placement decisions in Family Court. To better serve these children and their families, the Mayor's public awareness initiative should include information about these issues in its messaging.

Once again, thank you for allowing us to speak about these important issues today. MFY is available to provide additional information on caregiver legal concerns. We are also happy to assist caregivers in your respective communities.