

JOINT HEARING ON THE FAMILY COURT

Senate Committee on the Judiciary

Senate Committee on Children and Families

Remarks of Hon. Richard Rivera, Statewide Coordinating Judge for Family Court Matters and Hon. Anne-Marie Jolly, Administrative Judge of the New York City Family Court

November 1, 2023

Good morning, Senate Judiciary Committee Chairperson Hoylman-Sigal and Children and Families Chair Brisport. Many thanks for convening this hearing on the critically important topic of the Family Court. We appreciate the opportunity to address the accomplishments, challenges and recommendations for the future of the Court.

[Hon. Richard Rivera]: I am Richard Rivera, Statewide Coordinating Judge for Family Court Matters. I was elected to the Albany County Family Court in 2014 and have served as Supervising Judge for the Family Courts of the Third Judicial District since 2022, was designated as an Acting Supreme Court Justice in 2019 and preside over the Integrated Domestic Violence Court. I have also served as Co-chair of the Franklin H. Williams Judicial Commission. Prior to my election to the bench, I served as a Support Magistrate, an attorney for the child, an assistant county attorney prosecuting juvenile delinquency matters, an alternate public defender, and an attorney for the Domestic Violence Clinic at Albany Law School.

[Hon. Anne-Marie Jolly]: I am Hon. Anne-Marie Jolly, and I have served as Administrative Judge of the New York City Family Court since 2021. Prior to this position, I served as the Deputy Administrative Judge for the New York City Family Court. Prior to my appointment to the bench in 2010, I served at different times during the tenures of three previous Administrative Judges of the New York City Family Court, as a staff attorney at the NYS Judicial Institute, as a Court Attorney Referee in Queens County Family Court, as Deputy to the Chief Magistrate in the New York City Family Court, and as a Deputy Attorney in Charge of the Juvenile Rights Division¹ of the Legal Aid Society in New York City. Together we bring decades-long commitment to, and

¹ The Juvenile Rights Division is now called the Juvenile Rights Practice of the Legal Aid Society.

experience in, all sides of the Family Court and we appreciate the opportunity to share our perspectives with you today.

The judges and jurists of the New York Family Courts make decisions daily that are among the most profound and long-lasting imaginable, including whether to order that children remain in or be removed their homes, whether to order the return of children to the care of their parents or guardians, whether parental rights should be permanently terminated, whether children and youth accused or adjudicated for delinquent acts should remain in the community or be placed in detention or placement facilities, who should be guardians or adoptive parents of children, who should be adjudicated as parents and liable for support of children, when to issue protective orders intended to keep victims of violence safe and to what extent parents and grandparents should have access to children. These responsibilities are taken very seriously even though those these judges and jurists rarely receive the praise deserved for the challenging work they perform each and every day.

The judges, the Judicial Hearing Officers (JHO's), the court attorney referees and support magistrates of the Family Court and the non-judicial staff who support them work tirelessly to rise to the challenges posed by the enormous volume and complexity of these serious and emotionally charged cases. We take the opportunity to express gratitude for the professionalism and commitment of the judges, JHO's, referees, support magistrates, court attorneys, clerical staff, security staff, interpreter staff and court reporter staff, all of whom have enabled the Court to provide the best service possible. We thank them – and we thank you for convening this hearing to address how the three branches of government can collaborate to enhance the capacity of the Family Court to provide timely and effective justice to the children and families we serve.

I. Family Court Initiatives: Progress on Several Fronts, but Challenges Remain

[Hon. Richard Rivera]: As you know, Chief Judge Rowan Wilson has made improving the Family Court and the quality of justice it delivers major priorities for his administration. This is reflected in many ways, including in the Chief Judge's decision to create a new Statewide Coordinating Judge for Family Court Matters position, and my recent appointment to that position. While many challenges remain—and we are

eager to work with the Legislative and Executive branches to meet those challenges – we can report positive developments and important accomplishments in several areas.

A. Additional Family Court judges:

In 2022, four Family Court judges were added to the New York City Family Court² and in 2023, Senate Bill 7534, sponsored by Sen. Hoylman-Sigal, passed both Houses of the Legislature and now awaits action by the Governor. The bill amends Family Court Act §§121 and 131 to add 13 more judges to the Family Courts, three in NYC to take effect January 1, 2024, and one each in Albany, Chemung, Erie, Monroe, Niagara, Oneida, Onondaga, St. Lawrence, Suffolk and Westchester Counties to take office on January 1, 2025, following the November, 2024 elections.

In light of the enormous caseload of the Family Court – over 343,000 petitions filed statewide in Family Court so far as of Sept. 10th of this year, almost 100,000 of which were in New York City – these additions will be enormously helpful, but the need is far greater, particularly in New York City. The Franklin H. Williams Judicial Commission, in its recent report on the NYC Family Court, recommended the addition of 15 to 20 Family Court judgeships statewide,³ but we believe the need is significantly higher even than that. Along with judges, of course, there must be sufficient support staff -- court attorneys, court officers, interpreters, senior courtroom clerks and back-office staff – all personnel essential for the courts' capacity to function. In fact, the court system has been very busy filling support staff positions, a formidable challenge, perhaps most especially in the realm of ensuring language access for litigants both in and outside of the courtroom. And along with judges and non-judicial staff, of course, there needs to be sufficient courthouse space to accommodate the new jurists and personnel – space that is dignified and that reminds everyone of the significance of the cases, and that shows respect for the families that come before the courts.

We recognize that fragmented hearings spread out over many months, with only brief periods allotted for testimony on each adjourned date, does a disservice to the

² L.2022, c. 365.

³ Franklin H. Williams Judicial Commission, *Report on New York City Family Courts* (2022), at 8, 28.

children and families before the Family Court. Children’s need for stability underscores the importance of prompt resolutions of their cases and the effect of prolonged uncertainty upon parents, who may need to miss many days of work in order to attend multiple court dates, may be disruptive as well. Adding additional judges would go a long way toward addressing this problem. So, too, would addressing the paucity of counsel, addressed below. While these are not magic bullets, they are both critical elements of any solution. We have been and will continue to explore creative approaches to this multi-pronged problem.

Not only is it critically important to reduce the judges’ caseloads to facilitate timely commencement and completion of hearings on a time-certain basis, but it is also vital to provide a stable workforce of highly trained, specialized, dedicated Family Court judges. Research conducted by the Unified Court System’s Child Welfare Court Improvement Project has documented that frequent changes in jurists on a case – that is, departures from the “one family, one judge” approach—cause significant delays in resolving cases, with every additional jurist on a child welfare case adding 162 days of delay in the child achieving a permanent home, either through reunification with family or through adoption or other permanency plan.⁴ Compounding these problems, the *Report of the Special Advisory on Equal Justice in the NYS Courts* (the “Jeh Johnson Report”) cited research indicating that “implicit bias is more likely to be acted upon when a decision-maker is rushed”⁵ -- a particular problem when judges in high-volume courts are making quick, but significant decisions to remove children from their families, decisions that may have traumatic and permanent effects upon the children.

B. Attorneys for Parents and Children

We are gratified that, at long last, the rates of compensation for 18-B attorneys representing adults and for attorneys representing children in Family Court have been raised, although the lack of any automatic mechanism to provide appropriate periodic adjustments in the rates is likely to cause a similar crisis to arise in years to come. As

⁴ See UCS Child Welfare Court Improvement Project, *Exploring the Relationship Between Hearing Quality and Case Outcomes in NY* (Casey Family Programs, Nov., 2017) at 10.

⁵ *Report of the Special Advisor on Equal Justice in the NYS Courts* (Oct.2020) at 56.

Family Court panels throughout the State lost members at an astounding clip, and as the Family Courts struggled mightily to find enough attorneys to handle the cases, the rate increase was absolutely critical and long overdue. Those attorneys who remain on the panels often have excessive caseloads. Their competing obligations to provide representation to parents and children in various courtrooms in various courts contribute to the problem of fragmented, prolonged hearings, significantly exacerbating the challenges in scheduling and completing cases on a timely basis.

It is too early to discern whether the rate increase will eventually restore the panels to sufficient sizes. But one significant problem which remains is the insufficiency of resources provided to institutional providers statewide for both parents and children. This has led to excessive caseloads and high attrition rates in those organizations. As a result of the increase in the 18-B rate without a corresponding increase in the funding of institutional providers to increase the salaries of staff attorneys, attorneys have resigned from some of the smaller contract agencies because they can now earn more money on the panels. The Unified Court System has provided some additional stop-gap funding to organizational providers of attorneys for children and has been able to amend some of their contracts accordingly. However, this is likely to be an issue going forward, as the Legislature addresses the budget for the coming fiscal year. Likewise, as has been recommended by the Commission on Parental Legal Representation,⁶ and as you will no doubt hear from the New York State Office of Indigent Legal Services during the upcoming budget discussions, it is vitally important for the State to shoulder the costs of providing attorneys for parents and not relegate these costs almost entirely to the counties and New York City under Article 18-B of the County Law.

The critical importance of providing effective assistance of counsel for both parents and children is of constitutional dimension.⁷ Its importance has been recognized

⁶ Commission on Parental Legal Representation, *Interim Report to Chief Judge DiFiore* (2019) [[Parental Legal Representation \(nycourts.gov\)](https://www.nycourts.gov/parental-legal-representation)] at 8, 40-42.

⁷ See, *Matter of Ella B.*, 30 N.Y.2d 352 (1972); *Matter of Jamie TT.*, 191 A.D.2d 132 (3d Dept., 1993).

as well by the Children’s Bureau of the US Department of Health and Human Services.⁸ Most recently, the critical need for legal services to address the multiple needs of families was emphasized by Chief Judge Wilson and witnesses at a public hearing at the Court of Appeals on September 18, 2023. While the Legislature’s funding of civil legal services in New York State for the past several years has made it a national leader, Chief Judge Wilson reported that “New York’s commitment falls far short of any conceivable measure of need.”⁹

[Hon. Richard Rivera]: In my testimony at the hearing on access to legal services, I noted a significant gap in the provision of counsel in the Family Court.¹⁰ Neither party is entitled to appointed counsel during the adjudication of a child support case, resulting in most child support obligations being established and ordered without any representation provided to either side. Once it is alleged that an order has been willfully violated, a right to counsel under Family Court Act §262 arises, but only for the alleged violator. Surely, if the parties had been represented, the Family Court would be better informed in its crafting of an appropriate order and, if that were the case, numerous violations would probably be prevented. Likewise in paternity cases, only the respondent, not the petitioner, is entitled to counsel, even though petitions are often filed by alleged fathers, as well as mothers.

These gaps in the law affect over one third of the Family Court’s caseload – that is, over 120,000 petitions filed as of September, 2023, of which approximately 30,000 were filed in New York City. We would strongly recommend that the Legislature consider amending Family Court Act §262 to provide a right to appointed counsel to eligible litigants in each of these proceedings -- and, at the very least, to press for passage of the judiciary’s program bill regarding support violation, paternity and parentage proceedings.¹¹

⁸ See e.g. Information Memorandum, *High Quality Legal Representation for All Parties in Child Welfare Proceedings*, Children’s Bureau, Administration for Children and Families, United States Department of Health and Human Services, ACYF-CB-IM-17-02 (Jan. 17, 2017) [<https://www.acf.hhs.gov/sites/default/files/cb/im1702.pdf>].

⁹ *Transcript of the Chief Judge’s Statewide Hearing on Civil Legal Services* (Sept. 18, 2023), at 4.

¹⁰ *Id.* at 18-21.

¹¹ Judiciary Program Bill #2023-64.

C. Equal Justice Initiative

In response to the Jeh Johnson Report, the Unified Court System has established a wide-ranging “Equal Justice Initiative” under the leadership of Hon. Edwina Richardson-Mendelson, Deputy Chief Administrative Judge for Justice Initiatives. Among the steps undertaken that affect the Family Courts is the comprehensive implicit and explicit bias training required of all judges and nonjudicial staff. The first program, part of what will be a continuing series, was completed in October 2022. In addition to establishing a clear policy against bigotry, the initiative, which is, in fact, more than an initiative, but our standard, includes, among other elements, an intensive effort to diversify the court workforce, strengthening of the Inspector General’s response to bias complaints and establishment of “Equal Justice Committees” in each judicial district. Recognizing the intersectionality of bias issues, the initiative has collaborated with the Richard C. Failla LGBTQ Commission on development of a bench-card and on judicial training¹² and with the Court System’s Family Violence Task Force to provide judicial training on gender and all forms of bias in domestic violence cases.

D. Technology in the Family Courts

The pandemic presented multiple, unique challenges for the Family Court and the Court rose to meet those challenges. Restrictions of court filings to “essential” proceedings for the period during which the Governor’s Executive Orders were in effect understandably caused a spike in filings and consequent longer-than-normal adjournments following that period, but the Family Courts are working assiduously to shorten those adjournments. The switch to the use of virtual and hybrid proceedings proved to be both beneficial and challenging – a significant benefit for those who found it easier to participate in proceedings without having to travel and take time off from work and for youth who are comfortable with digital technology and were able to participate in reviews of their placements without missing school. The benefits of this approach will not be lost, as many proceedings are still conducted virtually, to the extent

¹² NYS Unified Court System Office of Justice Initiatives, *Equal Justice in NYS Courts 2022* (Mar., 2023)[[22-Equal-Justice-Review.pdf \(nycourts.gov\)](https://www.nycourts.gov/22-Equal-Justice-Review.pdf)]

that this does not interfere with fair trial rights. The Pandemic Practices Working Group, in its report in March, 2023, in fact, identified several categories of Family Court proceedings that may continue to be conducted virtually, where appropriate.¹³

At the same time, the pandemic sharpened the focus on the digital divide for those litigants without access to Wi-Fi or means of participating in remote proceedings. Starting with outreach to the faith community to set up locations with equipment where litigants could participate in court proceedings, the Court System collaborated with the Center for Justice Innovation to set up a virtual accessibility network of sites, including at the Community Court in Red Hook and in additional community facilities.

Fortunately, on the technology front, the Family Court had actually been on the cutting-edge prior to the pandemic, in digitizing its records to make the Court virtually paperless and installing state-of-the-art technology in courtrooms. A few recent technology initiatives should be mentioned:

- While being mindful of the unique confidentiality protections applicable to records of proceedings involving children and families, the Unified Court System implemented a new system to facilitate appropriate access by professionals serving the Family Courts to its Universal Case Management System (UCMS).
- The Court System has established a successful, voluntary e-filing pilot program, which started in New York county and has expanded to Richmond, Saratoga, Suffolk and Fulton counties. We have been delighted to see that among the heaviest users of the e-filing system are self-represented litigants. Our technology staff is in the process of fully integrating the new e-filing system with the Universal Case Management System, an important step in maximizing the efficiency of the new system.
- The Family Court in Queens county has initiated a pilot “Do It Yourself I-Pad” project in which iPads are placed in the court waiting area near its

¹³ *New York Courts’ Response to the Pandemic: Observations, Perspectives, and Recommendations: A Report of the Pandemic Practices Working Group* (January, 2023) at 68 [https://www.nycourts.gov/LegacyPDFS/press/pdfs/PR23_03.pdf]

Help Center. Litigants can use them to prepare various petitions, including family offense petitions for filing or receive assistance from petition clerks. This pilot, which increases the speed at which emergency requests for temporary orders of protection can be filed, will be expanded to additional counties.

- The Court System has been providing the courts with new technology – including fixed or portable infrared assistive listening systems-- to assist litigants with hearing challenges. Digital signage has been installed in all of the New York City Family Courts, which assists court users by providing helpful information within the court.

E. Alternative Dispute Resolution: Community Dispute Resolution Centers

One of the most effective means of reducing the caseload of the Family Court has been to increase the availability of Alternative Dispute Resolution (ADR) mechanisms with their attendant benefit to litigants in facilitating resolution of their cases in a non-adversarial manner. Pursuant to the ADR initiative of the past few years, all districts have ADR plans, many of which include Family Court. ADR coordinators have been hired in the various districts and within New York City, to assist the courts in the expansion of ADR. ADR in the form of its Custody/Visitation Mediation Program has been particularly effective in the Family Courts of New York City. In this calendar year through October 13th, 1,094 cases have been referred for mediation, putting the program well on track to meet or exceed the 1,180 referrals made during calendar year 2022.

Enhancing the provision of a wide array of services in communities – especially in the area of mental health and additional assistance to families – would greatly reduce the need for Family Court intervention in many cases, significantly ameliorating the current racial and economic disparities evident when one looks at the litigants in Family Court waiting-rooms. Alternatives to the court need to be made more widely available, and these include ADR services, particularly in the areas of child custody, visitation and child welfare. But much, if not most, of the mediation in these plans is carried out by volunteer mediators.

The Community Dispute Resolution Centers (CDRCs)¹⁴ have some capacity to provide mediation, but to truly meet the need, an increase in the State investment in these Centers is essential. Likewise, ADR has been used successfully in the child welfare area, particularly in New York City, to resolve problems that can be addressed through agreements for provision of services. Scaling up of these programs statewide would be enormously helpful in limiting child protective proceedings to serious cases in which voluntary agreements would not ameliorate the risks to children.

Finally, ADR has significant potential to be of assistance in resolving child support cases, so long as the program is entirely independent of child support agencies and the Family Court itself.¹⁵ We would suggest that the Legislature consider enhancing State funding for the CDRCs or similarly independent providers for an ADR program for child support matters.

F. Judicial training

Several branches within the Unified Court System have conducted seminars for both judicial and non-judicial staff regarding a wide array of Family Court topics. Increasingly, those seminars have been made accessible both in-person and virtually. Chief among the arms of the Court System responsible for training is the NYS Judicial Institute, which provides comprehensive training each January for new judges, summer seminars to meet the Court System's requirements for continuing judicial training, seminars for discrete categories of court staff, such as court attorneys and support magistrates, periodic intensive programs on cutting-edge issues and a substantial menu of virtual "lunch and learn" webinars that can be accessed at any time by judges and non-judicial staff..

¹⁴ See Judiciary Law Art. 21-A; Rules of the Chief Administrative Judge, 22 N.Y.C.R.R. Part 116.

¹⁵ Current legislation proposed by HerJustice (S 5269/A 5735) would require the Court System to hire a whole new layer of staff to conduct conferences that would duplicate those of Family Court Support Magistrates and would require the Support Magistrates to conduct full allocutions of the litigants regarding the additional conferences, thus actually delaying, rather than expediting, child support resolutions. Additionally, earlier proposals advanced by the State's child support agency proposed that conferences would be conducted within and by the local child support agency that prosecutes child support proceedings and enforces collections, thus not providing sufficient independence and violating ADR ethical norms. In short, independence is essential for ADR to be effective in this area.

The Unified Court System's Office for Justice Initiatives, led by Deputy Chief Administrative Judge Edwina Richardson-Mendelson, also presents numerous programs, including, among others, the annual two-day symposium for specialized domestic violence and integrated domestic violence courts presented by its Division of Policy and Planning and the numerous programs offered by its Child Welfare Court Improvement Project. The Court System's Family Violence Task Force has offered seminars on myriad domestic violence-related topics since 1995 and the New York State-Federal Tribal Nations Justice Forum holds annual conferences regarding the *Indian Child Welfare Act*.

Additionally, the various judicial districts and the New York City Family Courts also present periodic programs, including, for example, training for judges assuming temporary assignments to Family Court and, in New York City, recent training on human trafficking. Educational seminars are also presented all over the State in conjunction with Black History Month, Women's History Month, Latino Heritage Month, Adoption Month, Domestic Violence Month and other commemorations that provide teachable moments to enhance awareness of specific issues, all of which are integral to Family Court proceedings.

G. Family Court as a Laboratory for Innovation

When the Family Court Act was enacted in 1962, it was envisioned as a forum that would integrate the handling of "the most pressing problems facing society" into one 'experimental court.' " The framers of the Family Court Act characterized the legislation as "leav[ing] room for experimentation and improvements based on experience and observation."¹⁶ In keeping with that premise, the Family Court has long been a laboratory for innovation, hosting a variety of cutting-edge programs, often in conjunction with the Court System's public-private partnership, the Center for Justice Innovation.¹⁷ Two current examples bear noting:

¹⁶ *Report of Joint Legislative Committee on Court Reorganization*, No. 2, "The Family Court Act," 1962 McKinneys Session Laws, vol. 2, p. 3429.

¹⁷ The Center was formerly known as the Center for Court Innovation.

- The “Strong Starts” Court Initiative: Starting in 2015 and now in place throughout New York City and Westchester County, the Family Courts have implemented a special protocol for child abuse and neglect cases involving very young children, aged zero to three, and their often very young parents. Judges and attorneys have been given extra training on early-childhood issues. Case coordinators provide assistance to families and reports to the courts and implement a collaborative approach, incorporating procedural justice. While the period of intervention may last longer than in other child protective proceedings, it has resulted in the reunifications of infants with their families with a reduced incidence of further child maltreatment.¹⁸
- The Parent Support program: Operating in Kings County Family Court, with the assistance of a Resource Coordinator, the Parent Support program has demonstrated notable success in assisting non-custodial parents (child support obligors) to find employment, obtain needed education and training, comply with child support orders and enhance their relationships with and engagement with their children.¹⁹
- Family Treatment Courts: In October, 2023, with the aid of a federal grant from the Office of Juvenile Justice and Delinquency Prevention, the Family Court in Saratoga county opened a Family Treatment Court, the 22nd of such courts statewide. With a trauma-informed model of care, comprehensive services and regular court monitoring, these courts provide a path forward for parents with substance abuse addictions to obtain treatment and, through their recovery, to resolve charges of child neglect and reunify with children who may have been removed from their care.²⁰

¹⁸ Jeffrey Sharlein, *Helping the Youngest Start Life Strong: A Mixed Methods Evaluation of the Strong Starts Court Initiative* (Center for Justice Innovation, August 2021)[<https://www.innovatingjustice.org/publications/helping-youngest-start-life-strong>]

¹⁹ Center for Justice Innovation, *Parent Support Program* [<https://www.innovatingjustice.org/publications/Fact-Sheet-Parent-Support-Program>]

²⁰ *Times Union (Albany)*, “New Family Treatment Court Program for addiction Opens in Saratoga County,” Oct. 19, 2023. See also *The Path Forward: A Strategic Proposal for New York’s Family Treatment Courts* (2021) [<http://inside-ucs.org/courts/problemsolving/FTC/index.shtml>]

II. The Needs of Systems Serving Children and Families Before the Family Court

Family Court does not exist in a vacuum and can only be successful if it has needed services available from the various systems serving the Court. We would like to highlight three areas in which collaboration among all three branches of government to augment the services available would greatly improve the quality of justice provided by the Family Court to the families who come before it and to the community at large.

A. Supervised Visitation Programs

As delineated in the July, 2023 report issued by the Office of Justice Initiatives,²¹ the dearth of programs throughout the State to provide professionally supervised visitation has been a long-standing and serious problem. The report documented that 20 counties in New York State have no programs at all, and those programs that exist elsewhere often have long waitlists, are costly for litigants, will only cover a certain number of visits and are often limited in the hours during which they may be available. Moreover, they often lack essential services, such as interpreters; for litigants with Limited English Proficiency (LEP) and transportation may be lacking.

Professionally supervised visitation programs are sorely needed in child custody and visitation, family offense and child welfare proceedings, most often in cases in which there is domestic violence and/or child maltreatment, especially where there are orders of protection in effect. While local departments of social services sometimes have resources to arrange supervised visitation for their child protective cases, the most acute unmet needs arise in custody, visitation and family offense proceedings where litigants in Family Court cases share scant resources with those in matrimonial proceedings in Supreme Court. Because of the insufficiency of programs, courts often must resort to use of friends or family members of the litigants as supervisors, which may not be safe for the children, the “supervisors” or the litigants.

As the report recommends, there should be a State-funded social services initiative delineated in an amendment to Social Services Law §398 in which the NYS

²¹ *Report of the Working Group on the Future of Supervised Visitation in New York State* (NYS Unified Court System Office of Justice Initiatives, July, 2023).

Office of Children and Family Services (OCFS) would distribute State funds to counties and NYC to contract with private, non-profit providers in order to ensure that every locality will have at least one program and that those localities already having limited programs could expand their reach. Regional programs may be possible so long as they are accessible to litigants by public transportation. Although this initiative would require a State investment, it could be phased in and expanded over time and would garner broad support as it is a critically needed service.

B. Juvenile Detention and Alternatives to Detention and Placement

The juvenile justice system can only be effective in fulfilling its dual goals of preparing youth to be responsible, productive adults, while ensuring public safety,²² if the agencies serving the Family Court and the Youth Parts in superior courts provide a full array of alternatives to detention, alternatives to placement, appropriate placement facilities when needed and suitable secure and non-secure detention facilities.

All too often, in part because the funding restrictions in the “Raise the Age” law have impeded the counties and New York City in accessing sufficient resources,²³ the courts are limited in the tools available. Significantly, New York City has never qualified for “Raise the Age” funding and, although the State paid a share of the costs of placement of New York City youth prior to the implementation of the salutary “Close to Home” program, the State does not contribute to the cost of “Close to Home.”

A particular, long-standing problem that we would like to highlight is the serious lack of sufficient “specialized secure detention” facilities for accused Adolescent Offenders in several parts of the State. This leads to two all-too-frequent, unacceptable outcomes, that is, housing juveniles many hours away from the court, their attorneys and their families (e.g., Long Island youth detained in the western part of the State) and housing youth in adult jails for prolonged periods contrary to the intent and far in excess of the very limited authority included in the Federal *Juvenile Justice and Delinquency Prevention Act*, as amended in 2018.²⁴ We know that youth placed in adult jails are far

²² See Family Court Act §301.1.

²³ See L. 2017, c.59 §104 (State Finance Law §54-n).

²⁴ See Public Law 115-385 [34 U.S.C. §11103, 11133].

more likely to be physically and sexually assaulted, to die from suicide at alarming rates (five times higher than their peers in the general population and eight times higher than youth in juvenile detention facilities) and to recidivate at higher rates than their peers in juvenile facilities.²⁵

We would strongly suggest that the Legislature consider adding flexibility regarding funding, contribute to the cost of “Close to Home” and “Raise the Age” programs and amend the statutes to allow accused adolescent offenders to be detained in non-secure, not simply specialized secure, detention facilities.²⁶ Perhaps most important, we would urge the Legislature to spearhead a State-funded initiative to assist the counties in ensuring sufficient, appropriate and locally-accessible juvenile detention and specialized juvenile detention facilities.

C. Therapeutic Foster Homes, Including Therapeutic Kinship Homes

One of the noteworthy trends in New York State -- and most dramatically in New York City -- during the past several years has been a radical reduction in placement of children in foster care. However, one of the most intractable problems facing the Family Court and child welfare community is that all too many of these children are in congregate foster care settings, often for lack of alternatives. The Federal and State *Family First Prevention Services Acts*²⁷ are intended to limit the use of congregate settings and both specifically prohibit group care from being ordered because of a lack of suitable family settings. Yet, suitable family settings are often unavailable, particularly where children, and in particular, teenagers, have mental health needs. While the Family Courts and the agencies have worked assiduously to meet the requirements of the statute -- and we are pleased to report that according to OCFS the Courts complete their reviews on a timely basis 86% of the time— the needle has barely moved in the

²⁵ See Final Report of the Governor’s Commission on Youth, Public Safety and Justice (2015) at 79-80; L. Knoke, “See No Evil, Hear No Evil: Applying the Sight and Sound Separation Protection to All Youths Who Are Tried As Adults in the Criminal Justice System,” 88 *Fordham L. Rev.* 791, 793 n.14 (2019).

²⁶ See C.P.L. §510.15(1); Exec. L. §§502(3), 503; County Law §218-a.

²⁷ Public Law 115-123; L. 2021, c. 56, Part L. See also, *Uniform Rules of the Family Court*, 22 N.Y.C.R.R. §205.18.

level of usage of congregate settings after, as compared to before, the 2021 effective date of the State statute.²⁸

Efforts to ensure family preservation and minimize disruption are critical. To that end, community mental health and other vital services should be augmented and greater State assistance in that regard would be invaluable. Where family preservation is not possible, the *Family First Act* provides that kinship care, broadly defined, presents the next best approach. We were gratified that, in 2017, the Legislature enacted the judiciary's proposal to amend Social Services Law §458-a(3) to include virtual (fictive) kin, that is, individuals with positive relationships with the children, among those eligible to receive kinship guardian (KinGAP) assistance and that this year, the Legislature passed and the Governor signed our proposal to expand KinGAP assistance to children whose parents' rights are surrendered while they are in foster care.²⁹ Among the considerable documented evidence of the advantages of kinship care, recent research in North Carolina demonstrated that children placed in the care of kin have higher educational achievement levels than those in stranger foster care.³⁰ We would suggest that the Legislature spearhead a major State-funded campaign to recruit more kinship homes and, importantly, to train kinship care providers in order to qualify as therapeutic foster homes.

Conclusion

As you can see, there are many areas where action by the Legislature and Governor in enhancing critically necessary services for children and families involved in the Family Courts would be of tremendous benefit. The creation of the Coordinating Judge for Family Court Matters provides a unique and timely opportunity to develop an agenda after careful exploration of current practices. Our agenda is not written in stone as we are engaged in an intensive process of reviewing the concerns and needs of Family Courts throughout the State -- which is to say, you can expect to hear more from

²⁸ See <https://ocfs.ny.gov/main/sppd/family-first-data.php>

²⁹ See L. 2017, c. 384; L. 2023, c. 580..

³⁰ Washington, T., & Mihalec-Adkins, B. P. (2023). Kinship care supports the academic performance of children. *Child Trends*. <https://doi.org/10.56417/6688s365k>

from us about needs and concerns as this process unfolds. We would also be happy to try different approaches in different places, not simply because communities across the State differ from one another, but also to allow experimentation with different programs to determine which ones work best. We are looking forward to working with you on all of these and other issues and we welcome your ideas and suggestions.

Thank you for your attention this morning. We would be more than happy to answer any questions you may have.