



Families in Limbo: Crisis in Family Court

- There has been a dramatic surge in petitions brought against parents for neglect, according to state court statistics. In 1995, the city brought 6,658 new neglect cases. Last year, 10,395 cases were filed, a 55 percent increase in three years (see "Aggressive Prosecutions," page 4).
- In 1995, Family Court sanctioned the removal of 8,000 children. In 1997, that number skyrocketed to almost 12,000 (see "Aggressive Prosecutions," page 4).
- The increase in prosecutions is especially pronounced in the suburban boroughs. In the last two years, new neglect and abuse filings increased by 126 percent in Staten Island and 75 percent in Queens (see "Aggressive Prosecutions," page 4).
- In 1996, only one out of 10 parents who fought abuse or neglect allegations won, according to the state Office of Court Administration (see "Parent Lawyers," page 6).
- Nine out of 10 parents' attorneys failed to file a single court motion in their client's defense, according to a 1997 Vera Institute of Justice survey (see "Vera," page 7).
- According to a *Child Welfare Watch* analysis, eight of the Giuliani administration's 15 Family Court judicial appointments have had prosecutorial backgrounds. Only two of the others have practiced non-prosecutorial family law recently. The administration has yet to appoint a children's or parents' lawyer to the bench (see "Power Behind the Court," page 11).
- A state law requiring hearings on the status of adoptions has hit the courts hard. In 1994, the city held 287 status hearings. That number rose twenty-fold, to 5,500, last year (see "Judges," page 14).
- Children's lawyers routinely carry more than 120 open cases. An acceptable caseload level is around 75, supervising attorneys say (see "Children's Lawyers," page 9).
- According to a *Child Welfare Watch* analysis of city statistics, approximately 5,000 children will face permanent adoption if the new federal adoption law is strictly enforced (see "Adoption Law," page 14).
- Around 58 percent of the neglect petitions brought in Manhattan since last April have included allegations that parents suffered from substance abuse problems (see "Family Treatment Court," page 12).

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Introduction

Family Court Fails Families

THANKS TO A RECENT LAWSUIT, THE doors of Family Court have been flung open to the public and press.

Child Welfare Watch used the opportunity to monitor numerous abuse and neglect cases in four boroughs. The courts themselves are nothing special—the children are rarely there when their fates are decided. But we noticed one striking feature: The mothers almost always went home without their children.

In the fourth edition of *Child Welfare Watch*, we examine this brand of justice and its impact on the parents and children who endure months of separation while their case grinds through an overburdened, overstressed court system.

In the course of preparing this report, *Child Welfare Watch* conducted well over 100 interviews with lawyers, judges, parents and experts. We examined reams of court data and dozens of research reports.

Based on our work, we conclude that Family Court is failing—failing to force the city to provide services to at-risk families, failing to process adoptions rapidly and, most important of all, failing to fulfill its mandated mission of working to keep families from being split apart forever. A lot of these failures stem from Family Court's inability to cope with the Giuliani administration's crusade to bring more neglect and abuse cases to court.

We want to make one thing clear: We are not saying the court needs to be lenient in pursuing allegations of child neglect or abuse. As we have stated in our previous reports, the process of rooting out the facts in child protection cases is a complicated, delicate and fundamental function.

We are not saying it shouldn't be done. We *are* saying that we need to explore ways of doing it better—which might include alternative, non-adversarial court structures. Our research shows that child protective cases are being investigated slowly, inefficiently and without enough consideration of the impact on families that need help.

In this issue, we document how want of adequate funding for children's attorneys leads to huge caseloads and compromised representation.

We find the quality of parent representa-

tion even more questionable. Attorneys are selected on the basis of an antiquated ad hoc system. They are poorly paid, have no organizational support and can't easily access expert witnesses. As a result, mothers often have no continuity in their representation—many never spend enough time with their lawyers to remember their names.

In addition, we discover that many judges, motivated by the spate of recent high-profile child-abuse cases, have become reluctant to release children to their home.

We also have included an analysis of the impact of the new federal adoption law, which could dramatically accelerate Family Court's timetable for terminating parental rights.

But our most important findings center around the city's stepped-up policy of taking children out of their parents' care, which has increased the total number of new cases by 55 percent over the last three years. In interviews with lawyers, judges and the city's own employees we encountered escalating criticism of a policy that puts more emphasis on the courtroom than good casework.

One attorney who recently resigned her post at the city's Administration for Children's Services (ACS) told *Child Welfare Watch*: "I think that [caseworkers] just remove way too quickly, without any investigation. And once they remove and you're in court, then they never do an investigation."

Caseworkers and lawyers also say there needs to be greater access to services—drug treatment, counseling, coping skills and material assistance. "There are cases where services aren't given for years," the former ACS lawyer adds. "A lot of the parents get very frustrated because they don't get the services, so their kids have to stay in care longer."

"Stay," of course, is too tame a word. We are talking about forcibly removing children from their parents' care. At a time when government intervention is less and less tolerated by the public, it's hard to understand how this policy—the deepest possible intrusion into people's lives—is allowed to expand without much scrutiny.

We hope this report will help spark a debate on the issue.

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Watching the Numbers

Recommendations & Solutions

proposed by Child Welfare Watch

Any attempt to reform Family Court begs a larger question: Is a courtroom the appropriate place to deal with all but the most severe child abuse and neglect allegations?

Our answer is no.

Certainly, many cases warrant legal scrutiny. But those most familiar with Family Court tell *Child Welfare Watch* that many parents need counseling, drug treatment or better living conditions far more than the hard rap of a judge's gavel.

There are, of course, other ways to handle child welfare cases than the old prosecution-and-defense model. To the city's credit, it has recently created an innovative drug treatment court in Manhattan and is experimenting with a non-adversarial "case conferencing" project in Queens.

These alternative courts help families cope with common stresses in trying to hold together a poor family: drug and alcohol dependency, joblessness and the lack of a community support system.

It is important to mold these bold alternatives into a new system that more equitably balances the needs of children with the right of families to stay together.

We understand that the process of replacing the current system with one that supports families will take years to accomplish, but until then the culture of the court needs to change. Parents are not the enemy; the system needs to exhaust every conceivable option before pulling children from their homes. Too often, as the research in this report documents, splitting up families has become Option Number One.

With the understanding that more sweeping reforms are needed, *Child Welfare Watch* makes the following recommendations.

**PARENTS NEED to be
GIVEN A FAIR OPPORTUNITY
to DEFEND THEMSELVES.**

The most important task the court can undertake immediately is to assure that all parents facing the loss of their children receive adequate legal representation and access to legal-

ly-mandated services and support. Toward that end, we urge the creation of a government-funded organization analogous to Legal Aid's Juvenile Rights Division (JRD), to provide an institutional legal base for the defense of poor parents. Unlike JRD, this organization should receive adequate funding.

At the bare minimum, the state needs to provide parents' attorneys with substantial per-hour pay increases and greater resources to obtain expert testimony.

**CASELOADS THROUGHOUT the SYSTEM
must be REDUCED SUBSTANTIALLY.**

The state Office of Court Administration (OCA) needs to create a system to cap the number of cases any judge is allowed to handle on any given day.

One suggestion: Create a weighted point system that ranks proceedings by the severity of the allegations against the parents and the amount of time each case will require. A points-per-day limit could then be imposed, keeping courtroom traffic to a more manageable level.

Without imposition of a case cap, merely increasing the number of judges to accommodate higher caseloads could simply encourage the city to bring more borderline neglect cases against parents into court.

In addition, OCA must reduce the caseloads carried by JRD, which represents children in court, from its current level of 120 per attorney to a more manageable 75 cases. That means hiring more lawyers and giving JRD the right to refer cases to outside contractors without having to incur the cost.

**JUDGES NEED to FOLLOW THE LAW
by MAKING FAMILY REUNIFICATION
a HIGH PRIORITY in THEIR DECISIONS.**

Under state and federal law, Family Court judges are required to consider the need to

preserve families along with protecting the welfare of children. Judges admit, however, that they often fall short of their mandate to reunify families.

The law is the law. Judges need to be as zealous about assuring that families are kept together as they are in assuring the safety of children.

In addition, judges must be more willing to use their power to sanction the city's child welfare agencies and contracted foster care providers for failing to provide mandated services and assessments in a timely fashion.

**THE CITY SHOULD NOT PULL CHILDREN
out of HOMES UNLESS ADEQUATE
SERVICES are PROVIDED FIRST.**

**The ADMINISTRATION for CHILDREN'S
SERVICES MUST REDUCE the NUMBER of
CASES FLOWING into FAMILY COURT.**

ACS needs to moderate its policy of removing children from homes when severe neglect or abuse is not alleged. It is a policy that has flooded the courts with 50 percent more neglect cases over the last two years and resulted in thousands of family separations. In his interview with *Child Welfare Watch*, (see "On Family Court," page 5), ACS Commissioner Nicholas Scoppetta admits his staff could avoid long foster care placements through more diligent fact-finding early in cases.

Based on Scoppetta's comments and interviews with judges and lawyers, ACS must hire more caseworkers and support staff—and train for greater competence, speed and sensitivity in their work.

**A CODE of PROFESSIONAL
and PROCEDURAL CONDUCT
must be ESTABLISHED in FAMILY COURT.**

The city's Association of the Bar, OCA, ACS, parents and advocates for children need to convene a professional standards committee to create criteria for the practice of law in Family Court.

Family Court should convene an oversight committee modeled on the state Supreme Court's Indigent Defense Organization Oversight Committee of the Appellate Court, which was established in 1996 to evaluate representation of the poor in criminal court. By rule, the Appellate Court committee sets standards of representation and presents the court with an annual review and recommendations.

In Family Court, parents are represented by private attorneys rather than institutional lawyers. A Family Court Oversight Committee should establish and monitor strict standards of conduct that transform the court into an institution that treats all litigants, including parents, with respect and consideration.

Aggressive Prosecutions

Flooding the System

IF YOU'RE A PARENT, THIS IS A BAD time to cross paths with the city's child welfare agency. Since the nightmarish beating death of 6-year-old Elisa Izquierdo at the hands her mother in 1995, thousands of families have been swept up in a crusade to aggressively prosecute parents who are suspected of neglecting their kids.

That mandate is clearly articulated in Administration for Children's Services Commissioner Nicholas Scoppetta's December 1996 master plan for his agency. "Any ambiguity regarding the safety of a child," the former prosecutor wrote, "will be resolved in favor of removing the child from harm's way. Only when families demonstrate to the satisfaction of ACS that their homes are safe and secure will the children...be returned to the home."

Agency sources say that ACS enforces Scoppetta's edict to the letter: Unless a caseworker can convince her supervisor that a case shouldn't be filed, reports from credible sources of suspected neglect or abuse must be brought to court.

As well intentioned as this approach may be, judges and lawyers on all sides say that many cases are being dumped into the courts when the child is not truly in imminent danger.

The numbers tell a dramatic story. According to state court data, there has been a surge in new child neglect petitions. In 1995, the courts heard 6,658 new neglect cases. Three years later, 10,395 cases were filed, a 55 percent increase. Abuse cases rose 57 percent during the same period. "Our jobs got harder and harder because some of the cases got stupider and stupider," says an ACS attorney who recently left the agency. "There was less and less proof and worse and worse investigations by the caseworkers. Sometimes it was embarrassing."

Jana Newton knows about the new

prosecution strategy first-hand. Her trouble began in November 1996, when her estranged mother called in a neglect complaint to ACS after the two had a fight. When the caseworker arrived, she encountered a bleak scene: A belligerent, unemployed, pregnant Newton stood in a filthy living room filled with heaps of clothes. Overflowing garbage bags

FINDING:
In cases of suspected neglect, the city Administration for Children's Services pulls children out of their parents' homes first and asks questions later. ACS has stepped up prosecutions of parents, jamming courts with thousands of cases that should be dealt with out of court.

piled up in the kitchen. The children were, in contrast, clean, well-behaved, unbruised and unbattered, although they had missed some school days recently.

The caseworker—who had the power to pull the kids out of the house immediately if she thought they were in danger—only ordered Newton to clean up the place. Instead, Newton called her caseworker the next day and began bellowing. "I cursed her out, calling her every name in the book," says Newton, who admits to smoking marijuana at the time. "That night, six cops came for my kids."

For the next two years, Newton's children would remain with their grandmother as Family Court slogged through ACS paperwork. The city's aggressive stance in cases like Newton's has increased child protective filings to levels not seen since the crack era, according to the court

system's latest calculations. Last year, judges handled more than 47,000 child protective cases, each one requiring multiple hearings, a 23 percent increase over the 38,450 cases filed in 1994.

The increase has been particularly intense in three boroughs. Manhattan opened 1,458 new neglect cases in 1995; two years later, 3,247 came in. In Queens, new neglect and abuse filings increased by 75 percent between 1996 and 1998; in Staten Island, 126 percent.

"The child protective caseload in Manhattan has gone up 55 percent since the beginning of 1996," says Judge Richard Ross, chief of that borough's Family Court. "And we have the same number of judges, the same number of lawyers as before. What do people think is going to happen?"

What's happened is that more families are being split apart. In 1995, Family Court sanctioned the removal of about 8,000 children. In 1997, that number had skyrocketed to 11,958. Lawyers, judges and social workers tell *Child Welfare Watch* that the logjam in the courts has led to families being kept apart longer. So far, however, this hasn't been reflected in ACS's "average length of stay" statistics—the amount of time children spend in care appears to be going down steadily. ACS watchers note, however, that this statistic has been artificially depressed by the large influx of new children in the system. Their relatively short tenure brings down the average of the entire group.

The new burdens on the court also translate into increasingly long case delays.

In 1996, nearly a quarter of families had to wait more than six months before getting a trial. In cases where a child was removed from the home right away, that's a half-year of separation before the family got its day in court.

If a case results in a finding against the parent, a judge will hold a disposition hearing to decide whether a child will remain in ACS care or go back home under agency supervision. At this point, about three out of four kids are kept in foster care.

At each step, one minor set-back can set off a chain reaction of fresh delays. Absent parents, witnesses or lawyers, missing information or services, a crowded docket—any one thing may cause a judge to adjourn a hearing and reschedule it for the next available date—typi-

A CLOSER LOOK at LENGTHS of STAY

(Fiscal Year)	Average Length of Time in Foster Care	Number of New Children Admitted into Foster Care
FY 1998	4.0 years	12,536
FY 1997	4.3 years	11,453
FY 1996	4.4 years	8,912
FY 1995	4.2 years	7,949

Source: Mayor's Management Report 1998, 1997, 1996, 1995

The average length of time in foster care appears to have gone down over the last two years. But the average length of stay is heavily influenced by the number of children recently admitted into foster care. The short stays of the recent arrivals tend to offset the long stays that the majority of children are still experiencing. However, the fact remains that children in New York City still spend twice the time in care as their counterparts nationwide.

On FAMILY COURT: ACS COMMISSIONER NICHOLAS SCOPPETTA

CWW: Everyone agrees Family Court is overwhelmed—what contributes to that?

NS: An enormous volume of cases. We have 57,000 cases of abuse and neglect that we investigated last year. Every year, maybe 11,000 kids get removed, and every one of those cases involves the court. There's such an increased awareness, in part because of the media. If you go back over the numbers of annual complaints of abuse and neglect, you can plot them on a curve against high-profile cases—they went up after Lisa Steinberg, Adam Mann, Elisa Izquierdo.

We've also done mandated-reporter training—social workers, school teachers, law enforcement, medical personnel are required by law to report child abuse or suspicion of abuse. So we have more cases coming out of the Board of Ed.

We want to teach mandated reporters about the kinds of cases they *should* be reporting and what they should be looking for. We want to increase the accuracy and validity of the reports, but inevitably you increase the volume of the reports.

CWW: What do the courts need to make them function better? More judges?

NS: They do have very big caseloads and need more personnel. We also need to make sure that we stay hired up to budgets. But I think we are all learning to do more with less.

CWW: What can we do to get kids through foster care and back with their families more quickly?

NS: About 22 percent of our kids are placed in foster care, their cases go to court, and within three months they're reunited with family or relatives. Some of those removals absolutely had to go through that process—there had to be certain things ordered by the court, they had to be someplace else other than home. But with that many cases coming in and out of the system in such a short time, we feel that if we had more information at the earlier stages and didn't have to get information through months of litigation, we might have been able to make better decisions in the first few days and not put the child through the system.

In December 1998, Child Welfare Watch reporter Alyssa Katz spoke with the city's child welfare chief Nicholas Scoppetta to talk about the crisis in Family Court. The interview took place nearly two years from the day Scoppetta began his overhaul of the Administration for Children's

Services.

CWW: What are some of the things you are doing to increase the information level? I've heard about a program out in Queens where you're trying out more intensive casework and fact-finding.

NS: The 72-hour Case Conferencing Project gives us as much information as we can put together about the child and the family at the earliest possible stage.

Usually after removal, once the case goes into the family court system, the process takes over and it can take months to reach a judgment that might have been reached within the first few days. What we're trying to do with this conferencing pilot is to find out how effective we can be in getting interested parties to the table with an experienced caseworker [one with a Master's in social work] within the first 72 hours of removal, including the birth parent when appropriate.

We get community representatives, a member of the clergy—anyone who knows the family and can help locate resources. The idea is to avoid having the child go into the system if possible. And if not, begin immediately to develop a service plan. It's a very simple concept that's not so simple to implement because of logistics and because our system is so enormous.

CWW: Is it working?

NS: Out of about 90 removals so far, parents were present and participated in 14 conferences. In all of those cases, we were able to reach a consensus on the most appropriate plan for the children. So, for example, in one case the allegation turned out to be true: excess corporal punishment. On the other hand, there were so many stresses going on in that family: Another family member had been shot late at night, while the child was out without permission. The mother was so overwrought by the shooting that when the daughter did reappear, there was a much more physical reaction than was appropriate. It was something that lends itself to counseling, and we immediately abbreviated the process.

We hope that by the end of this fiscal year that we'll have [the 72-hour project] going on citywide.

cally six weeks to two months later. A survey of 137 local cases conducted by the Vera Institute of Justice in late 1996 found that Bronx cases averaged five adjournments before they finished; Manhattan cases were relatively speedy, clocking in with four delays.

"Every time I turn around it's, 'Case adjourned,'" says Aloma Johnson, a Bronx mother whose two infants were put in foster care after they tested positive for cocaine at birth.

One of her children, now a toddler, was adopted. But now that Aloma is certified clean, she is determined to get her other daughter back. Her case has been adjourned nine times so far. "So that's another three months gone past, and another three months, and another three months," she says. "It adds up. If people were in court when they were supposed to be, she could be back home."

Because state law ranks protecting child safety above family reunification, the innocent-until-proven-guilty procedure of criminal court

is turned on its head. Families are often kept apart on the grounds that neglect might take place—and then it's up to the parent to disprove the city's contention that new instances of neglect are likely to occur.

Attorneys for both children and parents say that ACS is increasingly taking advantage of that latitude, splitting up families over allegations like marijuana use, surly behavior, even sloppy housekeeping. Contrary to popular impression, neglect cases historically outnumber abuse cases by about eight to one. Everything from insinuations of parental mental illness to reports of children being left alone for a couple of hours may wind up in front of a judge.

"They're trying to bring everything to court and let the court decide," acknowledges Judge Gloria Sosa-Lintner of Manhattan. Still, she adds: "I don't think they're accusing people unjustly—most of these cases are sustained." "I see cases that all parties once would have thought were junk cases or nonsense now being taken seriously by the court," counters

Edwina Richardson, who has represented parents for 10 years in Manhattan Family Court. Many of these cases might have been resolved through good social service programs. Jana Newton's attorney, Cheryl Solomon, believes her client wasn't an abusive mother, but was simply overwhelmed by a high-pressure, low-income life. And Solomon says her client was never offered the counseling and parent training she was legally entitled to.

"That didn't happen," Solomon says. "She was basically told, 'Your mother says you're doing drugs, pee in a cup.'" Newton was only offered one service before her children were taken away—housekeeping.

"Caseworkers are so scared now that they don't offer any preventive services," says the former ACS attorney. "Removals are done way too quickly, without any investigation...I would fight so hard not to file certain cases. But then my supervisor would make me file it, or ACS would. And the case would get filed."

Separation Anxiety

Parent Lawyers at a Loss

TWO DAYS BEFORE AGATHA SIBLEY was due in court last December to hear if the city would give back her grandchildren, she was near panic. Her court-appointed lawyer had not returned her calls for six weeks.

Sibley had raised her three grandchildren, ages 6, 9 and 13, since 1990, when her daughter put them in her care. Then the roof caved in—literally. Eighteen months ago, the bathroom ceiling in Sibley's city-owned Harlem apartment collapsed, she says. A child protective caseworker removed the children, alleging that Sibley was unable to properly care for them.

As of December, Sibley had complied with every request the court had made, including getting her ceiling fixed. But the Administration for Children's Services (ACS) wasn't satisfied with her efforts and was asking the court to hold the children in foster care for another six months.

Sibley wanted her kids back, but she wasn't getting much help. Like most parents and grandparents forced to defend themselves in Family Court, Sibley couldn't afford a private lawyer. So the judge assigned her one for the initial phase of her case. Then, to her horror, she was assigned a new one for the second phase.

This is one of Family Court's most glaring procedural failings: Free legal help is assigned only for the duration of a proceeding. When one proceeding ends—say, a fact-finding hearing—the parent is left without a lawyer, even though the case may be far from over. In complicated cases, parents may be assigned three or

more attorneys over the life of the case. Just as significantly, the parents must go for long stretches, often during critical turning points with ACS, without any representation.

There are 300 private attorneys who are eligible to serve as court-appointed parent advocates. The group is widely known as "18-B" lawyers, inheriting their moniker from the section of state law that created them. Unlike lawyers assigned to represent children (see "Crisis in Counsel," page 8), 18-Bs have no large organization to provide them with staff support and no mandate to work a parent's case from start to finish. Sibley had met her latest lawyer just once, briefly, in court. Now, with less than a day to go before the hearing, she hadn't had an extended conversation with him. "I've called him several times," Sibley said, late that afternoon. "After today, that's it."

Legal experts report that such limited contact with lawyers is typical. Jane Golden, an attorney in the office of Public Advocate Mark Green who directs an advocacy program for parents with children in foster care, has heard hundreds of similar complaints from the 1,500 parents who have called her office for advice over the last two years.

And the stakes for parents are rising. The number of petitions to permanently remove children from their parents increased by 22 per-

cent in 1998 over the previous year's tally, according to the Legal Aid Society.

"There are so many cases where findings of neglect and abuse are made not because the parents were neglectful or abusive but because they didn't have anybody to present their side of the case," says David Lansner, counsel to the New York State Assembly Committee on Children and Families and a former children's lawyer.

In 1996, parents prevailed in only 1.6 percent of their fact-finding hearings, Family Court's equivalent of a trial. That same year, according to the Office of Court Administration (OCA), 88 percent of the neglect and abuse petitions brought against parents by the ACS were approved by the court.

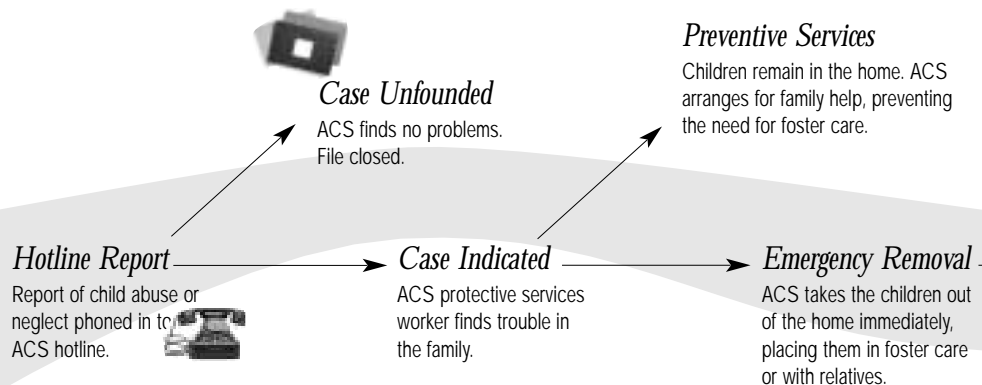
A major part of the problem is that parents' attorneys are so poorly paid. 18-B lawyers earn \$25 an hour for out-of-court work and \$40 an hour for court work. Only six states pay less for out-of-court time; seven for in-court time. Attorney compensation is capped at \$800 per case. And to make matters worse, they cannot submit their bills until a case ends.

The rates, set by the New York State legislature, have not been increased since 1986, though the OCA and family court judges have joined the state and city bar associations in pleading for attorney raises. Last spring, OCA

FINDING:

Lawyers who defend parents in court are so poorly paid, overworked and outgunned, their representation often borders on malpractice.

Navigating Family Court: The laws & the language



proposed a modest increase to \$50 an hour for in- and out-of-court work, but legislators held firm. The Giuliani administration opposes the hike because it would increase the city's budget by \$21 million.

But it's not just the pay that's a problem. Walk by the tiny rooms that serve as assigned counsel offices in each of the Family Courts on any day and you'll find lawyers sitting, waiting.

No other court wreaks such havoc on attorneys' schedules. 18-Bs are forced to wait for hours while judges and the city's lawyers try other cases, making it hard to maintain their outside practices.

Even more significantly, 18-Bs have none of the institutional supports that JRD and ACS lawyers have: supervisors, social workers, investigators, access to expert witnesses. As a result, their brand of representation often consists of scanning a case file, sitting down for two minutes with a client and then jumping in front of the judge.

Gary Brown, until recently executive director of the Fund for Modern Courts, a watchdog group, says these attorneys may be skating on the edge of professional misconduct. "It's walking malpractice to do all your lawyering in front of a judge," he says.

Andrea Brown (no relation to Gary), a Bronx parent whose daughter was taken away in 1995, says her child languished in a stranger's home months longer than necessary because her lawyer did not realize Brown had completed a drug treatment program. "He'd

Impaired Judgment

"Ideally, the Family Court should have all the information necessary to make well-reasoned decisions about foster care placements," offer the authors of a federally funded study examining the effectiveness of New York's family courts. Unfortunately, they conclude, tight work schedules, poor case reporting and the frequent absence of key players—like parents, parents' attorneys and social workers—conspire against this goal.

The Vera Institute of Justice spent four months in New York City's Family Courts tracking the cases of 137 children, divided between New York and Bronx counties. In each case, the researchers reviewed the court files and attended at least one proceeding. What follows is a snapshot of some of their findings on parent representation. The report, "New York State Family Court Improvement Study," is available by calling the ABA Center on Children and the Law in Washington, D.C. at (202) 662-1720.

	New York	Bronx
Proceedings where ACS attorneys are present (%)	99	100
Proceeding where children's attorneys are present (%)	88	100
Proceedings where parents' attorneys are present (%)	61	47
Proceedings where parents are present (%)	34	40
Files reviewed containing at least one motion by child's attorney (%)	17	21
Files reviewed containing at least one motion by parent's attorney (%)	15	5

say, 'Explain your case to me again. Oh, and what's your name?'" she recalls.

Brown says she urged him to tell the court about her progress but the importance of the request never seemed to register. "I'd say, 'Why aren't you telling them I'm in a program, I'm complying with everything the judge told me to do?' He just read off the ACS file. He never added anything."

A 1997 study of Family Court cases conducted by the Vera Institute for the state's Permanent Judicial Commission on Justice for Children showed that 90 percent of parents' attorneys in the cases surveyed didn't file a single written motion. These motions are critical if parents are to get much-needed services or case information.

"It's amazing. It's absolutely amazing to me," says Beth Harrow, a Legal Services attorney who

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Court Supervision

ACS takes the case to Family Court recommending that children stay in the home. Services offered under judge supervision.

Children Returned

Judge determines that imminent risk doesn't exist and sends children back home.

Intake Hearing

Usually an informal hearing, Family Court judge decides fate of the family, determining if there is "imminent risk" of harm if children are left with their parents.

1028 Hearing

Parents are entitled to a formal 1028 Hearing within 3 days of intake. ACS must prove "imminent risk" of danger. Children aren't supposed to be removed unless this risk is present.

Children Remanded into Foster Care

Judge rules that enough evidence of risk exists and orders that the child be formally placed into foster care.



Children's Lawyers: Crisis in Counsel

ONE RECENT MONDAY MORNING, Brian Zimmerman was in the midst of his usual courtroom scramble, a technique he's perfected as a senior attorney in the Legal Aid Society's Juvenile Rights Division (JRD). He first dashed around the courthouse, registering in all the courtrooms he'd be working in that day. Today he would be trying to make progress on nine of his 130 cases.

Spotting a social worker and a city attorney chatting by the elevators, Zimmerman stopped to listen in while the two talked about resolving the case of a two-week-old baby he represents who was born addicted to crack. These impromptu meetings are practically the only time he has to discuss his cases.

JRD attorneys have one of the toughest jobs in Family Court. They are, by law, required to advocate for an individual child from the first day to the last day that their client is in the system. They have always been overworked, but lately things have gone from frenetic to frantic. As a result of the city's stepped-up efforts to prosecute neglectful and abusive parents (see "Aggressive Prosecutions," page 4), the number of court cases has shot up while the number of attorneys has lagged.

According to state court statistics, in 1994, there were 9,495 new abuse and neglect petitions filed and 130 JRD attor-

neys. Last year, there were more than 12,500 new cases but only 15 additional JRDs. That is a 31 percent hike in cases, but only a 12.5 percent increase in the number of children's lawyers to handle them.

Many cases are also becoming more time-consuming, thanks to the city's belated compliance with a state law requiring hearings to track the status of adoptions. In 1994, the city held 287 status hearings. That number rose twenty-fold to 5,500 last year. Adding to the burden, JRDs also represent children in non-protective cases.

"We can't really do an efficient job with this number of cases," Zimmerman says. "Invariably you're asking for adjournments because you're doing too much."

According to both the JRD attorneys' union and JRD management, the lawyers now carry an average of 120 to 130 open cases. It's an astounding number, considering that each case includes all the children in a given household. The case burden has risen 15 to 20 percent during the last three years. A truly manageable caseload would be about 75 cases, says Jane Spinak, a Columbia University law school professor who was JRD's chief until last April.

The result of such high volume, Spinak and others agree, is a massive slowdown in cases. According to the state Office of Court Administration, 72 percent of cases in Family Court are adjourned four or more

times before trial. A decade ago, only 52 percent of cases were adjourned multiple times.

Because attorneys spend so much time scrambling between courtrooms just to be present at case proceedings, they have little time to write and file the motions that might move cases along at a more rational pace. An example: Jonathan Roman, a Bronx JRD attorney, says that many court delays happen because lawyers and judges don't force foster care agencies to provide required psychiatric and physical evaluations in time for the court dates.

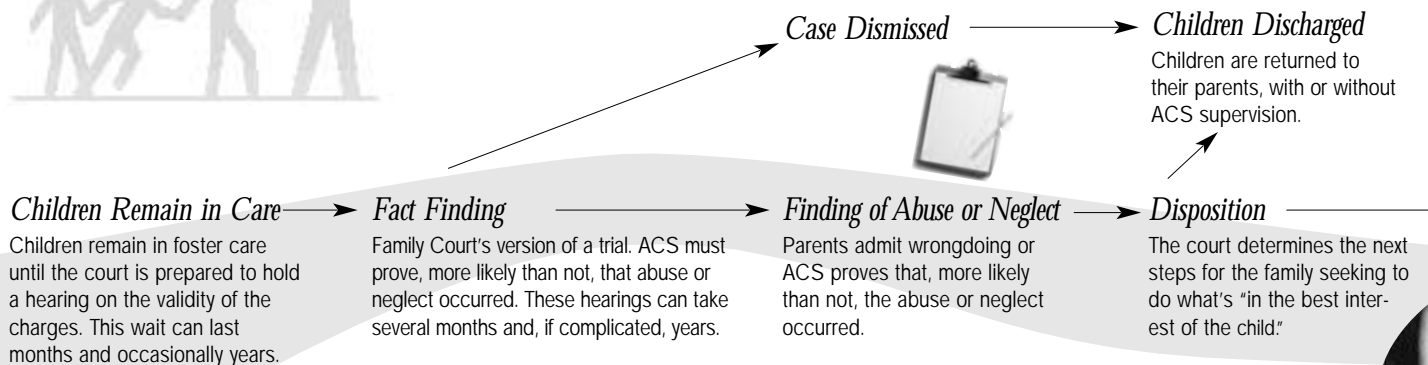
"Let's say I have a neglect case that I get in December that won't be scheduled for court until March," Roman explains. "I call the child's agency and say the kid needs an evaluation, and they don't do it. I need to make a motion to have the court order the evaluation before the March court date. But the motion takes time to put together. So now it's March, and the evaluation hasn't been done."

At that point, says Roman, who has 130 cases to tend to, there's nothing to do but ask for an adjournment.

"If I had the time, which I'd have if I had two-thirds the [number of] cases, that motion would have been done. The court would have ordered the evaluation, and we'd be ready to go," Roman says.

"For some reason," Spinak adds, "the

Continued on page 13



Insider's View

When in Doubt, Yank 'Em Out

A longtime ACS case supervisor found that the crusade against "neglect," splits up families needlessly.

By Doreen Davis

"When in doubt, yank them out!" People were actually saying that to each other, more and more with each passing day of the Giuliani administration.

It became the office credo at the Administration for Children's Services when I worked there. I had a superior—a good, hands-on type of person—and even she would walk through the office telling caseworkers, urging them to remove kids from their parents, "When in doubt, snatch 'em out." It wasn't a joke. It was office policy.

I had a different approach with parents. I figured I was standing in the door to the child welfare system. I wanted to keep these families out because once they got inside the system, they were dead meat.

In 1985, I started off as a child protective caseworker. The job, then and now, means you are the first investigator to go out and diagnose a family's situation after someone has filed an abuse or a neglect complaint. For my last 11 years at ACS, until my retirement last August, I was, all at once, a casework supervisor, a trainer

and a part-time caseworker on some of the agency's more difficult cases.

Child protection is a very complex and stressful job. On one hand, you're supposed to help parents, match them with appropriate services and give them advice. I really got to like the clients, a lot of them were just overwhelmed, scared and depressed. Many times, I needed to sit down with them and say, "C'mon now, you can take care of these babies."

Some of them needed serious intervention, but many others just needed some sound parenting advice. I'll give you an example. A lot of times when the little guys were driving their mother crazy, I'd tell mom to use a little trick I used with my own kids. "Tell the kids, 'Let's have a race.'" Then you go outside and have them run around the block. They run, mom walks. By the time they come back around the third time, they're tired and mom's head is clear. You'd be surprised how far a little creative thinking goes. But I always presented a threat. I was basically a total stranger with all the power. I might be back in an hour to take away their kids.

Still, I would say that 98 percent of our clients could have kept their kids at home with

more assistance from us. But now they're not getting the chance. So many of these relatively minor cases are resulting in removals and are being thrown into the courts.

If you are a parent and your case goes to court, you're in big trouble. A parent's ability to negotiate the system is paramount.

The parent's attorney often seemed to be a ghost. He would appear in the courtroom as if out of nowhere and ask for a 30-minute recess so that he could interview his client for the first time.

Seldom have I met the parent who could identify their attorney by name. A lot of times, I had to provide the lawyer's telephone number to the parent.

In my opinion, most of these cases shouldn't even be in court in the first place. The problem is that the city doesn't recognize that the indicators of neglect are so closely aligned to the indicators of poverty that they are sometimes impossible to separate. Too often, the city has an Ozzie-and-Harriet view of families. Most of the time, the city is basically punishing parents for being poor without giving them the tools to keep their families together.

So when my caseworkers would come back to me and ask, "Doreen, should we pull this kid out?" I'd ask them this: "What have you done to help that client?"

That's a question the city needs to ask in all neglect cases.



One Year

→ **Extension of Placement Hearing**

ACS can ask for another 12 months to keep the child in foster care to work on reunification or adoption. This can be repeated for years until ACS and the court feel comfortable moving to the next stage.

→ **Trial Discharge**

All parties agree that it is safe to return the child home. Court orders the child returned with appropriate monitoring and services.

→ **Termination of Parental Rights**

Family Court reviews the history of the case and rules that the child is available for adoption.

→ **ACS Monitoring**

→ **Adoption**

Family Court reviews the history of the case and rules that the child is available for adoption.

Judges

Flying Tandem

JUDGES IN FAMILY COURT ARE caught between two judicial mandates that often conflict: saving children and saving families.

The basic guidelines for the court rest in Article X of the New York Family Court Act, which governs child protective proceedings. It says that judges must first decide how to eliminate "imminent risk to the child's life or health" as well as determine "whether continuation in the child's home would be contrary to the best interests of the child."

Keeping families together is also a goal articulated in the law—but the first mandate always takes precedence. The law stipulates that reunifications can only take place once the judge determines that a child can return to a safe environment.

It's these two competing missions—family preservation and child protection—that makes the job so tough. In the course of serving two legal masters, Family Court judges must often delve into cases more deeply than Civil Court judges, often questioning witnesses directly.

Judicial caseloads have risen steadily during the last decade, with the courts seeing about 100,000 more cases last year than in 1987, according to a *Child Welfare Watch* analysis of state court data. In recent years, the state has added 38 hearing examiner positions to field less complicated cases. But since 1987, the state legislature has funded only five more judges—a 12 percent increase—to cover a 75 percent caseload increase in the last 10 years. It's not just the number of cases. The kind of

cases—and the kind of media attention they've garnered—has changed the nature of Family Court. Child-beating deaths are now front-page news and judges have become more cautious about sending children back to potentially dangerous parents.

Child Welfare Watch's own in-court observations, coupled with dozens of interviews with judges and lawyers paint a picture of a Family Court bench that has grown increasingly inclined to deal with potentially neglectful parents by taking their children away—and keeping them away longer. When judges do return children home, they come with a long list of conditions and reporting requirements.

FINDING:

Family Court judges are so wary of returning children to abusive homes, they keep kids in foster care longer than necessary.

"I'm more satisfied in the way in which I believe my rulings have protected children than I am convinced that my rulings will keep families unified," admits Richard Ross, supervising judge of Manhattan's Family Court.

"This area of the law is perhaps more art than science," writes federal judge Richard Berman, who served on the Family Court bench until last October. "There are no easy answers, not even with the benefit of hindsight."

To deal with the ambiguities of their mandate—and protect themselves from being pilloried in the press—many Family Court judges have created their own cautious rule books. Berman had only been on the Queens Family Court bench for several weeks in the spring of 1995 when he heard the city's case against Michelle Skinner, a mother who was charged with neglecting her four children by using crack. A few months later, when all the lawyers

on the case agreed that the children should be sent back home, Berman put on the brakes, ordering more information from city attorneys. His decision came at a critical time in child welfare jurisprudence. Around that same time the news broke that a 6-year-old Elisa Izquierdo was beaten to death by her mother. In January 1996, Berman—who was working towards a master's degree in social work at the time—formalized his misgivings into a concrete checklist for use in neglect cases when the agency wanted to send kids back to their parents. These requirements, which became known through the Queens courthouse as the "Skinner Test," after Berman's pet case, included mental health evaluations of the parents, the Administration for Children's Services supervision plan for the family, written motion papers by ACS and a written response by the child's attorney.

Few other Family Court judges have adopted guidelines as formalized as Berman's Skinner Test, but such thumbnail standards are not uncommon, according to lawyers and jurists. Attorneys familiar with Manhattan Judge Rhoda Cohen, for instance, say she generally requires that parents be drug-free for at least one year before their children are returned.

The Skinner Test and other, less formal judicial guidebooks may be helpful for judges, but they can be yet another time-killer for families eager to be reunited. Lawyers say the paperwork hurdle Berman built in the Skinner Test added months to the time it took for children to be returned home.

"Particularly where drugs were a problem, I don't think adding a little more time to placement is a problem," Berman says.

Separation Anxiety

Parent Lawyers at a Loss (cont.)

represents a small caseload of parents in Family Court. When 18-Bs do file motions, they get the court's immediate notice—just because they are so rare. Says Harrow: "If one of us files a motion like this, everybody pays attention."

It doesn't have to be this way. In 1993 and 1994, Harrow ran a three-lawyer unit at Brooklyn Legal Services Corporation A, funded by the state

legislature to provide continuous representation for each parent—like the kind the state requires for children in the system.

In Harrow's program, a social worker helped clients who needed social services enroll in community-based programs. Attorneys had access to the institutional resources of the Legal Services Corporation. During the two years the program

was funded, the unit handled 71 cases and helped returned 58 children to their families.

But when the money ran out, the legislature refused to renew its funding. The legislature was being short-sighted, Lansner argues. "I think the most cost effective preventive service we could provide would be good attorneys for parents."

The POWER BEHIND the COURT

For all their failings, New York City's family courts may be succeeding in at least one respect: the overall quality of their 46 judges. It's a tough job. For a salary of \$113,000 a year, jurists get a ten-year term of hearing 50 cases a day and ultimate responsibility for thousands of children.

Unlike the rest of New York State—and much of the country—the city's family court judges are appointed, not elected, freeing them to focus on the law more than politics. And since 1978, when Mayor Koch set up a commission to approve candidates for criminal and family courts, they are chosen by a process that's supposed to consider merit above all else.

The Mayor's Advisory Committee on the Judiciary consists of 19 appointed members, nine of whom, including the chair, are picked by the mayor. The rest of the committee is selected by a panel of the presiding judges of the state's city-based appellate courts and a rotating pair of deans plucked from local law schools. The committee nominates three candidates for each judicial vacancy and holds public hearings to determine their fitness for the bench; the mayor is then free to choose from among them.

Even some of the court system's critics say that the process has made for a committed judiciary. "Until merit selection, you'd see people appointed because of their political qualifications—it was a patronage slot," says Gary Brown, former executive director of the Fund for Modern Courts and a vocal advocate of the merit system. "Now they actually have family law qualifications."

But there's concern that the process could be coming under increased pressure from the Giuliani administration. According to a *Child Welfare Watch* analysis of Giuliani's judicial appointments, eight of its 15 Family Court judicial appointments have prosecutorial backgrounds.

There's concern that the appointment process for judges could be coming under increased pressure from the Giuliani administration.

Of the remaining seven, one is a former Legal Aid criminal court supervisor who later engineered the administration's plan to bring in competing public defenders. Another, who has already moved on to federal court, was a GOP-connected corporate lawyer. Only two Giuliani appointees recently practiced non-prosecutorial family law, and the administration has yet to appoint a children's or parents' lawyer to the bench.

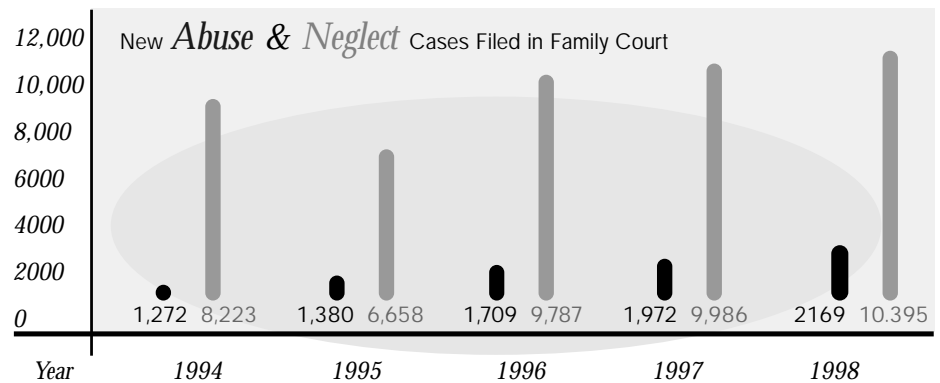
In contrast, former mayors Dinkins and Koch appointed not only city prosecutors but children's law guardians, Legal Services lawyers, hearing examiners, civil court judges and litigators—even a welfare rights lawyer and a former director of the city's homeless services program.

In 1994, Giuliani was also attacked for reducing the size of the advisory committee from its original complement of 27 and eliminating a requirement that women, members of minority groups and non-lawyers be included. Giuliani hasn't appointed any Family Court candidates rejected by the commission—as he did with a pair of criminal court jurists in 1997—but his Family Court selections haven't been without controversy.

Last year's reappointment of Queens Family Court Judge Fran Lubow was especially contentious. By tradition, the city bar association weighs in on prospective judges, and its recommendations are always heeded. In Lubow's case, the association heard several disturbing complaints—one report had Lubow telling the mother of a sexually abused child that she was "shedding crocodile tears" over her daughter's condition—and recommended that she not be reappointed. Mayor Giuliani approved the onetime Family Court prosecutor anyway, with the commission's consent.

SPOTLIGHT

Navigating Family Court Cases Under Giuliani



	1994	1995	1996	1997	1998
Total Filings	200,356	198,989	226,309	230,599	235,150
Child Protective Filings *	41,764	38,450	39,795	44,881	47,271

* Includes all new and ongoing proceedings involving neglect, abuse, permanent neglect, voluntary placement and adoptions.

Source: New York State Unified Court System Family Court, NYC Report of Caseload Activity by Type of Proceeding; 1998 projected year-end totals, Office of Court Administration.

Gentler Justice

Family Treatment Court

REFORMING FAMILY COURT promises to be a big job, but at least one program is encouraging the court to treat neglectful parents as something other than common criminals—and attempting to cut the staggering length of cases.

Since last spring, Manhattan's Family Treatment Court has offered drug- and alcohol-addicted parents an opportunity to get sober and bring their children home more quickly, with the assistance of more supportive services than parents would get in a traditional courtroom. Treatment-focused prosecution has already become a popular strategy in 400 criminal courts nationwide, but New York is among the first cities to bring the model into child welfare cases. The new program, not surprisingly, has been created by the group that set up the city's criminal drug courts.

Around 58 percent of the neglect petitions brought in Manhattan since last April included allegations that parents suffered from substance abuse problems, says Raye Barbieri, the treatment court's architect. Drug use itself is grounds for a finding of neglect if there is evidence that a child's physical, mental or emotional health is at risk.

Each year, between 1990 and 1994, the city routed up to 1,400 drug and alcohol users suspected of abuse or neglect into its Family Rehabilitation Program (FRP) network, where caseworkers offer referrals to drug treatment, as well as preventive services like counseling and day care, as an alternative to court and foster care. The effort was considered a success. Outside assessors documented that 55 percent of parents in one survey group completed treatment. In comparison, fewer than a quarter of all drug cases in regular Family Court end with family reunification, according to court administrators.

However, the Giuliani administration eliminated FRP's drug treatment component and closed half of the program's centers as part of a 1995 budget-cutting initiative. Parents still receive referrals to treatment programs, but monitoring and follow-up is inconsistent. Meanwhile, the New York police department's drive to arrest petty dealers and users has pushed more parents into Family Court. In response to the flood of new drug cases, and the loss of FRP, the Center for Court

Innovation (CCI) has created a more parent-responsive alternative—but only for defendants who make up-front admissions of guilt. Since it opened last March, 221 Manhattan drug-related cases have been channeled to Judge Gloria Sosa-Lintner's courtroom. Only 95 parents have chosen to undertake the rigors of the heavily monitored treatment regimen.

Here's how the program works: Once a parent admits to a substance abuse problem, the parent, judge, and attorneys for the parent, child and city get together to collaborate with a special treatment court caseworker to create a treatment plan.

As the details are worked out—and shaped into a contract that the parent must sign—the court makes referrals to one of about 35 recovery agencies and assigns other services. Parents must come back to the court every two weeks for at least a year to update the court on their activities and submit to drug testing.

According to CCI, several mothers in the program have already had their children returned to them and the majority are doing well. However, 20 parents are not complying, and seven have dropped out. So far, the court has not asked any one to leave, and Sosa-Lintner says she makes every effort to work something out. "Eventually, though, we'll have to fish or cut bait," she adds.

One or two positive drug tests won't get a parent remanded to regular court, but failing to show up for court appearances and treatment, as one parent recently did, is bad news. As a last resort, Judge Sosa-Lintner could issue an arrest warrant to track down missing parents.

The program's developers are still learning how to adapt the criminal treatment court model to the more complex problems of child neglect. That means being more judicious in using some sanctions, like preventing parents from having visitation rights with their kids. Ironically, putting parents under greater scrutiny, as treatment court does, could result in quicker terminations if they fail to get with the program. And a new federal law which

puts adoption on the fast track could increase the threat that parents will lose their children (see "Washington's Parent Trap," page 14). "We have to ask ourselves, are we harming our clients by participating in the treatment court?" says Edwina Richardson, an attorney who represents parents.

Despite the court's goal of gentler justice, the city is still playing hardball. The Administration for Children's Services initially told attorneys that parents in the program would be likely to have their cases dismissed at the end of the treatment process and any admissions of guilt would be expunged from the court record. Since then, however, the agency has reportedly backed off from the promise.

Parents who've been arrested as part of the city's recent push to prosecute a greater number of severe child neglect cases in criminal court aren't given much protection either. Any admissions they make in the program can be used against them by the district attorney.

It's this blurring of the lines, this confusing fusion of hard-edged judicial reality and helping-hand case management that may pose the greatest difficulties for the fledgling court.

Attorneys say they just don't know what to expect when they approach the bench in treatment court.

Parent's attorney Michael Wroblewski says that the court's atmosphere can be downright surreal. "I was in Amway for a day, and I left because I couldn't deal with the pressure to go along," he says. "It's like that here—it can be like a cult sometimes."

State court administrators plan to create treatment courts in other boroughs if this pilot project is successful. But the biggest obstacle to expanding the experiment citywide may be getting judges who are willing to step out of their usual roles as inquisitors and adopt the mantle of social workers. It's a job that requires a little more tact and a lot more background work. "A lot of judges don't want to take this kind of commitment—they don't want to see a case more often than once every six months," says Richardson. "Judge Sosa-Lintner is already burning out."

Manhattan's Family Treatment Court aims to reunite substance abusing parents back with their children through counseling, case management and gentler jurisprudence.

Children's Lawyers: *Crisis in Counsel*

connection has not been made that if a lawyer had the time to think hard and take some steps on a case, that case would not come back year after year."

To deal with the logistical problems, JRD increased the number of paralegals from five in 1995 to 35 today. It also created new subdivisions to increase efficiency, as per the recommendations of an independent consulting firm, the Spangenberg Group.

A large part of the problem, the consultants

found, is that Legal Aid's contract effectively prohibits JRD from turning down any cases, even when the lawyers don't have the capacity to take them on. If JRD refuses to accept a case, the Office of Court Administration is entitled to hire outside attorneys—and bill Legal Aid.

"We have seen no other contract for public defender services which, at least on paper, has such restrictive conditions," auditor Robert Spangenberg wrote.

Redrawing the contract would be helpful, but there is no substitute for increasing the division's budget and cutting caseloads. "The single highest priority for the Juvenile Rights Division," the evaluators concluded, "is the need to relieve staff of their overwhelming caseloads. Until this problem is addressed, many of the changes suggested in the recommendations will be impossible to undertake, and client representation will continue in a triage fashion."

JUDGE KAYE'S REFORMS ARE STALLED

If New York State Chief Judge Judith Kaye has her way, Family Court would outgrow its role as the state court system's neglected stepchild.

For two years, Kaye has been pushing to consolidate all of New York's courts into two streamlined divisions. The move, among other changes, would link Family Court and Supreme Court into one truly unified system. Such a move would increase three-fold the number of judges available for family cases by allowing regular Supreme Court judges to serve in Family Court.

But her proposal requires a state constitutional amendment, which would have to be approved in two consecutive sessions by two-thirds of the Democratic-majority assembly and GOP-controlled senate. Last year, her bill passed the senate but died in the lower house. It turned out to be a hard sell to lawmakers on a number of counts, especially Kaye's insistence on having Supreme Court judges appointed, an anathema to county political organizations which currently derive power from doling out nominations in elective judicial races.

With a major overhaul in limbo, Kaye has instituted reforms to stretch current Family Court resources as far as they can go. Most notably, each court has been divided up into specialized sections that handle different kinds of cases, including one that exclusively handles child protective proceedings.

Last March, the Bronx and Manhattan courts restructured accordingly; Brooklyn followed in November. Reviews have been mostly positive, and lawyers on all sides say the system is running more efficiently. Still, Kaye was not able to institute more precise starting times for proceedings, a key reform many

With her major reforms on hold, New York's Chief Justice tinkers with minor adjustments to the city's Family Court.

in the system say is long overdue. Most cases still start much later than their standard-issue 9:30 a.m. calendar appointment.

And specialization has done nothing to cut the duration between adjournments. In fact, some courts are getting slower, with attorneys in the Bronx reporting three and even five months between hearings.

One culprit: the continued lack of court scheduling flexibility. By law, the court's juvenile delinquency division must have at least two judges available for each defendant, even though most children are convinced to make a plea bargain before their cases go to trial. The result is that some judges sit on their hands while their colleagues on the child protection bench drown.

Kaye has also implemented several cosmetic improvements, including little-used computer information kiosks in court lobbies that are of more use to curious visitors and bored children than litigants.

What parents see-if they're able to find the menu button for "Abuse and Neglect"-is the following synopsis: "The Court will hold a fact-finding hearing to determine whether the child has been abused or neglected. During the fact-finding hearing, the child protective agency will present its case.... The person accused of child abuse, called the Respondent, has the right to cross-examine witnesses and challenge the evidence. The Respondent can also present his or her own case."

No mention is made of the Respondents' most fundamental right: to ask for a court-appointed attorney if they cannot afford one of their own.

The New Adoption Law: Washington's Parent Trap

IF NEW YORK'S FAMILY COURT IS already adrift, last year's dramatic change in federal child welfare law could push the system into truly uncharted waters.

In November 1997, President Clinton signed into law the Adoption and Safe Families Act of 1997 (ASFA), the first major child welfare reform bill since the Adoption Assistance and Child Welfare Act of 1980.

On its face, the law has laudable goals: to hasten the sluggish deliberations of child welfare agencies around the country and keep kids out of abusive homes. But it also has a second, more controversial, intent: to speed up the permanent removal of children from their parents' custody.

ASFA, passed almost unanimously through both houses of Congress, mandates that states consider the health and safety of children as a "paramount" concern. The measure weakens existing requirements that local child welfare systems take vigorous steps to reunify children with their parents. Localities still must make a "reasonable effort" to get families back together, but they are no longer required to do so if a parent previously committed child abuse or had parental rights terminated for another child.

The law's enthusiasm for adoptions as an alternative to family preservation can be most clearly seen in its incentives package. The measure provides \$4,000 to \$6,000 in bonus money for every child adopted out of foster care. No additional money is provided to states for bringing families back together.

But the part of the bill that

Adoption Delays

*Average Length of Time to
Complete an Adoption in New York City
(from the time ACS sets the goal of adoption)*

<i>Fiscal Year 1998</i>	<i>3.8 years</i>
<i>Fiscal Year 1997</i>	<i>3.4 years</i>
<i>Fiscal Year 1996</i>	<i>3.3 years</i>
<i>Fiscal Year 1995</i>	<i>3.2 years</i>

Source: Mayor's Management Reports

will have the greatest impact on Family Court—and poor families—is a provision forcing the courts to move to terminate parental rights after a child has spent 15 of the last 22 months in foster care. Currently, there are no such time limits.

The intent is to speed up child welfare deliberations, but much of the real effect on families will be determined by how the state legislature interprets the federal law when it passes companion legislation this year. Much, too, will depend on how individual judges interpret the law.

But Family Court will have to get far more efficient or hundreds of families are going to be split up. According to a Child Welfare Watch analysis of Administration for Children's Services (ACS) statistics, approximately 5,000 children will face permanent adoption in the first year of ASFA, based on the amount of time they have already spent in the system.

"I think it's going to put us under a certain amount of time and work pressure that doesn't exist now," says Manhattan Chief Judge Richard Ross.

Others are not so circumspect. "I don't understand how we're going to follow that law," says Bronx children's attorney Leslie Abbey. "The court can't even get a case done in 15 months."

The end result, child advocates say, could be a population of legal orphans who are trapped in perpetual foster care, getting older and less adaptable.

But the law has significant loopholes that may mitigate that nightmare scenario.

ASFA suspends the 15-month rule in cases where children are placed with relatives—so-called "kinship care." The Giuliani administration, however, has become increasingly reluctant to place children with relatives.

The federal government also

grants extensions to families that can prove they haven't been given access to necessary services that could help a child return home, like counseling, drug treatment or caseworker visits.

Some experts believe this provision could be used as the basis for a class-action lawsuit against the city for failing to provide family services. In individual cases, adjournments are frequently granted when the city fails to arrange services.

Parents may be able to avoid the adoption law time limits using the same defense. But securing such an exemption would require an embarrassing *mea culpa* on the part of city lawyers, who would have to admit

FINDING:

The new federal Adoption and Safe Families Act was passed to protect kids, but it might end up permanently splitting up New York City families

sooner than ever before.

their agency's pre-trial incompetence in open court.

"It leaves enormous room for discretion," says Madelyn Freundlich, executive director of the Evan B. Donaldson Adoption Institute.

If a parent's attorney can't make a case on any of these provisions, there's a final catch-all exemption to the terminations clause. If the

court can prove there is a "compelling reason" that splitting up a family would be detrimental to a child's development, it can keep foster care placements temporary for as long as necessary. The feds leave the definition of "compelling" intentionally vague. Washington originally imposed a January 1 deadline for states to pass their own ASFA regulations, but lawmakers have been giving states extra time to come up with implementation plans. New York's deadlocked state legislature may test this lenience.

Governor George Pataki plans to re-introduce a bill that would outdo ASFA by further speeding up the adoption process. Pataki's bill—which passed the GOP-controlled state Senate last year—makes it even easier to terminate parental rights than the federal law. The more family-friendly Assembly bill, sponsored by Brooklyn Democrat Roger Green, includes incentives for family reunification and provisions that make it more difficult for the court to remove children from their parents. Negotiations over the law were due to begin as *Child Welfare Watch* went to press.

Watching the Numbers

*A six-year statistical survey
monitoring New York City's
child welfare system.*

	FY '93	FY '94	FY '95	FY '96	FY '97	FY '98
1 Protective Services						
A. Reports of abuse and neglect (The # of abuse and neglect reports increased by 8% in FY'98 and reached a six-year high)	52,458	49,129	47,591	52,994	53,567	57,732
B. Reports substantiated (%) (More than one-third of all reports were substantiated by child protection workers)	29.6	29.2	25.1	33	35.6	35.6
C. Pending rate (The # of new cases assigned each month to each child protective caseworker remained high)	6.6	7.6	6.3	6.5	7.3	7.3
D. Average child protective caseload (The average # of protective caseloads continued to drop)	21.5	21.7	19.6	24.1	16.8	13.7
E. Number of child protective workers (The average number of caseworkers declined slightly in FY '98)	806	718	711	882	909	862
F. Child fatalities in cases known to ACS (Child fatalities increased)	25	25	27	24	30	DNA
2 Preventive Services						
A. Families receiving services (cumulative) (The # of families receiving preventive services increased for the first time in six years)	29,060	28,383	27,726	27,660	25,525	26,616
B. New families receiving services (active) (New families receiving services remained the same)	14,405	13,675	13,156	13,172	13,026	13,012
C. Referrals from ACS (%) (% of all new families receiving preventive services who were referred by the city child welfare agency)	44	36	34	32	40	DNA
3 Foster Care Services						
A. Number of children admitted (The number of children admitted to foster care increased by another 9 % in FY '98)	9,809	9,022	7,949	8,912	11,453	12,536
B. Number discharged (The number of children leaving foster care dropped)	11,961	11,592	12,057	11,928	13,300	12,815
C. Total foster care population (The six-year foster care population decline continued)	48,036	46,855	43,484	42,008	41,771	40,909
D. Average years spent in foster care (The average length of time spent in foster care declined)	3.46	3.86	4.14	4.42	4.28	4
E. Children with reunification goal (%) (Slightly more than one-half of the children in foster care are scheduled to return home)	56.8	51.1	46.8	44.7	47.1	50.9
F. Percentage of siblings separated (The total number of separated brothers and sisters returned to its FY'94 level)	53	51	50	48	49	51
G. Recidivism rate (%) (The rate of re-entry into the foster care system remained roughly the same)	12	12	13	13	11	12
H. Percentage of foster children in kinship care (%) (The decline in the number of children placed with extended family continued unabated)	44.1	42.7	41.5	46.1	36.1	33
I. Children placed with contract agencies (The percent of children placed with contract agencies increased significantly)	DNA	DNA	68.7	69.4	70.8	74.9
4 Adoption Services						
A. Children with adoption as a goal (%) (The percentage of children with adoption as a goal declined to a five-year low)	34.2	40	43.4	44.6	42.1	38
B. Finalized adoptions (Finalized adoptions decreased slightly)	2,443	2,312	3,665	3,666	4,009	3,848
C. Children with slow adoption progress (%) (Children with adoption as a goal who have not reached their adoption milestone within the last year improved)	DNA	DNA	58.2	60.4	62.7	60.7
5 Miscellaneous						
A. Foster care funding, per child (Average foster care claims per child increased slightly)	\$15,520	\$14,679	\$16,617	\$16,270	\$12,843	\$13,401
B. State preventive funding, per child	\$2,731	\$2,686	\$3,093	\$3,197	\$2,650	\$2,627



Center for an Urban Future

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The Center for an Urban Future, the sister organization of *City Limits* magazine, is committed to incubating and promoting proactive public policies that are affordable, practical and humane. It gives community leaders and on-the-ground practitioners a vehicle for sharing ideas and experiences with a wider audience.

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Child Welfare Fund

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The Child Welfare Fund is interested in supporting projects to implement the recommendations in the *Child Welfare Watch*. Please contact the Child Welfare Fund for application guidelines.

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