

Testimony of the Westchester County Attorney's Office
to
The New York State Senate Standing Committees on the Judiciary and
Children & Families
regarding the
Conduct Oversight of the Family Court Throughout the State Including Its
Resources, Operations and Outcomes
November 1, 2023

Bertina Capuano, Assistant Chief Deputy County Attorney of the Westchester County Attorney's Office respectfully submits the following testimony in regard to the New York State Senate Standing Committees on the Judiciary and Children & Families public hearing on the conduct oversight of the Family Court throughout the State, including its resources, operations and outcomes. I have had the privilege to practice in various Family Courts for over 27 years and the comments expressed herein are based on my extended experience and not necessarily the position of Westchester County. I thank your Honorable Committees for the time to appear and express my concerns surrounding the Family Courts.

Introduction

The Westchester County Attorney's Office or Law Department was established in 1937 and to this day works to pursue justice while providing Westchester County with the highest quality legal representation. The Law Department represents the County Executive, the County Board of Legislators, other elected officials, and the many departments in all affirmative and defensive civil litigation and county contracts and transactions. The Law Department is comprised of four bureaus including the Family Court Bureau.

The Westchester County Family Court Bureau plays a critical role in promoting the well-being of the County's 200,000 children and protecting its almost one million residents in Family Court. The

Bureau investigates juvenile delinquency matters that are referred to the office and prosecutes when appropriate. Juvenile delinquency matters involve youth ages 12 to 17 who have been arrested for conduct that would constitute a crime if they were adults. The County Attorney's Office regularly prosecutes offenses from the very serious, such as attempted murder, rape, sodomy, robbery, arson, weapons possession, burglary and assault to those acts which are relatively less serious including petit larceny and criminal mischief. Additionally, the County Attorney's Office, on behalf of the Westchester County Department of Social Services, initiates child protective proceedings against parents and other caretakers who abuse and/or neglect children. Cases commonly brought on behalf of the Department include those in which allegedly responsible adults intentionally inflict physical injury upon children, inappropriately engage them in sexual activity, use excessive corporal punishment against them, or fail to provide for the children's basic nutritional, educational and medical needs. The County Attorney's Office works closely with the Department of Social Services throughout all stages of a child protective matter.

The County Attorney's Office also provides representation at child support proceedings under both the Uniform Interstate Family Support Act and Section 111-g of the New York State Social Services Law. In this capacity, each year the County Attorney's Office initiates proceedings against non-custodial parents who fail to meet child support obligations owed either directly to the County or to individual custodial parents. These proceedings include those to establish paternity, to seek initial support orders, to modify existing support orders, or to prosecute non-custodial parents who willfully fail to meet their support obligations. The Family Court Bureau is on the front line of every day law practice, filing thousands of cases each year and is uniquely situated as the largest institutional practitioner in the County's three Family Courts.

The Report from the Special Adviser on Equal Justice in the New York State Courts¹ in 2020 and The Report on New York City Family Courts by the Franklin H. Williams Commission² in 2022 are comprehensive reports focused on issues within our court system and the reforms which desperately need to be put in place. The reports noted that there is a second class system of justice for people of color. The Family Court, which overwhelmingly serves indigent litigants and people of color, was perceived as a “second-class court,” with the Special Adviser report describing the state of Family Court as “dehumanizing” and involving a “demeaning cattle-call culture.”³

The reports went on to give recommendations on ways to eradicate the aforesaid dehumanizing culture through a commitment of resources, training and oversight. I commend all those recommendations but would say they do not go far enough. While the report encouraged the NYS court system to start at the top, I will implore you to start with the law and look at the inequities created therein. With New York’s enactment of the Raise the Age law, we correctly codified the idea that juveniles processed in the criminal justice system should be treated differently than adults. As part of the law, Family Court Act Section 350.3(4) was amended to include that a victim in a case involving juvenile delinquency, “shall not be made aware of the final disposition of the case.”⁴ The practical effect of this one sentence has caused a consequence that has the real effect of treating victims of juvenile delinquencies differently than victims in criminal cases. Imagine for a moment being the presentment agency on a juvenile delinquency case where the youth is accused of a serious offense such as rape. Cases such as these happen in Family Court every day and the victims

¹ N.Y. State Courts, *Report from the Special Adviser on Equal Justice in the New York State Courts*, October 1, 2020.

² Franklin H. Williams Judicial Commission of the New York State Courts, *Report on the New York City Family Courts*, January, 2022.

³ *Supra*, pg. 54.

⁴ F.C.A., §350.3(4).

are often also young people of color. Victims are often treated as nameless, faceless second class citizens of a second class court. As part of their investigation of the case and due diligence, an Assistant County Attorney goes to great lengths to forge a relationship with the victim and sees the victim through initial investigation, preparation for trial, the agony of testifying all the way to the disposition of the case. However, at the end, the attorney is precluded from telling the victim the outcome of the case. No such prohibition exists in the criminal law. Victims should be afforded protections, including a right to be treated fairly and with dignity and a right to be heard at critical stages in the proceedings. They should not be precluded from knowing the outcome of the case. Often, the County Attorney's Office must explain to victims why they cannot know the outcome of a case leading to more angst and dismay. The relationship built is immediately damaged and victims feel like an afterthought in a large process that does not care for them. This, in and of itself, is dehumanizing and I implore this committee to rectify this situation, repeal this section of the law and treat victims in Family Court as they are in all others.

Additionally, I would implore these committees to look at settling the issue of court openness. It is fundamental that all judicial proceedings, both civil and criminal, are presumptively open to the public.⁵ The Family Court is generally open to the public, in addition to those persons who are directly involved with a particular case. However, the judge or support magistrate presiding over each case has the authority to exclude the public from the courtroom depending upon the nature of the case or the privacy interests of the parties. Judges often use this caveat as a weapon to exclude victims and their families from viewing court proceedings. In one such instance, a Family Court judge yelled at a mother of young person about to testify and had her removed from the courtroom noting that she was not involved with the case all in front of her child who was sitting on the

⁵ See generally, Matter of Hearst Corp. v. Clyne, 50 N.Y. 707 (1980).

witness stand. This does not instill public confidence in the judicial system nor should a judge just be allowed to treat someone involved in a case in such a harsh manner. If Family Court was truly a transparent and open court, instances like this would be less likely to occur. I would urge your Honorable Committees to consider codifying the ability for parents of child witnesses and victims to be allowed to observe proceedings and limit the Court's discretion in this regard.

The Special Advisor's Report makes recommendations for additional Family Court judges, amongst other resources, in order to alleviate the backlog of cases and to give judges the opportunity to have the time to thoroughly contemplate cases while checking for internal and external biases.⁶ This is indeed commendable and should be implemented all over the State and not just New York City as it would help to lighten an already overburdened system. That being said, I have worked in Family Court in one capacity or another for over twenty-seven years. The number of judges, court attorney referees and support magistrates has grown and yet little has been accomplished or changed as a result. While it can be argued that family courts are the hardest working courts in the system, they do still have significant delays. Even with more court parts, backlogs continue to occur, trials are still often delayed and justice often takes years. This seems to be the largest issue for children and families and is ironic given the fact that the numbers of foster care and juvenile delinquency cases has decreased as the number of court parts increased. For example, in one current child protective proceeding my office is presenting, the initial matter has been pre-disposition for over four years leaving three children without permanency for a protracted period of time. That is a long time in a child's life and while it may be an outlier case, it is not far from normal. Child protective proceedings linger for years, are still fraught with delay

⁶ N.Y. State Courts, *Report from the Special Advisor on Equal Justice in the New York State Courts*, October 1, 2020, pg. 56.

after delay and hearings become protracted and cluttered. While more resources are desperately needed, there needs to be accountability built into the system. We often hear about the court's standards and goals; but there is no real consequence when an Article X Section 1028 hearing goes on for months.⁷ There is no public scrutiny since many proceedings are closed; there is no accountability for going beyond standards and goals and the system continues to perpetuate onto itself. Adding more judges to a system with no true accountability will only add to the continuation of the dysfunction. I would implore your Honorable Committees to not only add the court personnel desperately needed but implement a real system of oversight and accountability. While this may be difficult since judges are generally appointed or elected to ten year terms, it is desperately needed and to date, there has been none. I would suggest making supervising judges of each Family Court have real oversight and not be in name only. Currently, supervising judges of the various family courts have no ability to implement a system of caseload management, regularly observe court proceedings, give feedback and review performance. Often, the supervising judges are carrying large caseloads themselves making oversight a second thought.

Additionally, I would suggest that performance statistics such as standards and goals should be regularly published so the public can see whether or not their resources are being put to good use. While the reports suggest a system of public feedback through survey and applaud new signage, the average person entering the courthouse would never know one existed. Even if they did fill out a survey, the results are never known or published and it is unclear if they are ever shared with the judge in question. Family Court practitioners would be hard pressed to fill out surveys for fear of

⁷ See Family Court Act, Article X, §1028.

retribution or being cut off from assignments. Family Court needs real transparency in order to improve the culture.

Also, in the respect of being an overburdened court, I would point out that over the years, the amount of litigation in Family Court has increased dramatically. For example, with the Family First Prevention Services Act, additional motion practice and hearings have been added to juvenile delinquency and child protective proceedings when a youth enters a congregate facility.⁸ Subsequent court rules promulgated by the Office for Court Administration and the New York State Children and Family Services have added hearings to determine if the youth is in the correct facility. The Adoption and Safe Families Act signed into law in 1997 improved the safety of children, promoted adoption and other permanent homes for children and supported families.⁹ While the federal law and the subsequent New York State rules had a profound impact on the child welfare system, it added more litigation into the Family Courts. Going forward, I would suggest being more creative with promulgating rules and regulations that add more litigation into an already overburdened system.

The Williams Commission Report suggests that Family Court could improve through the use of technology.¹⁰ During the pandemic, Westchester Family Court quickly pivoted to virtual court appearances much earlier than our NYC counterparts. As a result, there was no backlog of case filings. The Westchester Courts quickly implemented the use of Microsoft Teams, set up public access areas for people without access to internet services and enlisted the help of community to

⁸ The Family First Prevention Services Act was signed into law in February, 2018 as part of the Bipartisan Budget Act (HR. 1982).

⁹ Adoption and Safe Families Act, 2 U.S.C. 901.

¹⁰ Franklin H. Williams Judicial Commission of the New York State Courts, *Report on the New York City Family Courts*, January, 2022, pg. 5

ensure the public knew about them. This was a monumental task and after a while, virtual appearances became the new normal. Very few appearances were missing litigants and cases moved forward. Westchester Family Court was even able to conduct some trials virtually. As the pandemic subsided, Family Court went back to almost all in-person appearances. We learned a lot about maneuvering in the virtual world during the pandemic but have reverted back to our old ways. Virtual appearances benefit everyone but most importantly, it benefits the litigants who come to family court to seek resolution to a crisis situation. People do not have to take off whole days from work or arrange for costly child care to attend court only to see their case adjourned for one reason or another. A hybrid structure should be implemented with many preliminary appearances done virtually and the more important appearances in-person alleviating the need for litigants to jeopardize their jobs or pay for childcare.

Conclusion

The work of the Senate Judiciary and Children and Families Committees is important and directly effects the lives of all New Yorkers. Your Honorable Committees are correct to be concerned with the findings and the urgent need to act to implement true and meaningful reform. Recommendations on ways to eradicate the dehumanizing culture through a commitment of resources, training and oversight is commendable. However, I would implore your honorable committees to start with the law and repeal Family Court Act Section 350.3(4) and end the disparaging ways the juvenile justice and criminal justice systems treat victims. Additionally, there needs to be true transparency in the Family Court. Family Court judges often exclude the public from the courtroom including victims and their families. Lightening an already overburdened system with more judges and resources seems reasonable. However, without accountability, those resources will be used and there will be no relief to burden. Additional resources without

accountability, proper caseload management, publishing statistics by judge and true judicial supervision will only lead to business as usual in Family Court. As it considers how best to act in tackling these and other pressing issues facing our courts, I urge your Honorable Committees to work with urgency as each day that goes by another family is lost in the delays and confidence in the system continues to erode.