



**Testimony before the New York State Chief Judge
Hearing on Civil Legal Services
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The Schuyler Center thanks Chief Judge Rowan D. Wilson and the Permanent Commission on Access to Justice for the opportunity to testify at this hearing on ways in which New York’s family serving systems – including the courts – can better work together to ensure all the state’s children have the supports, resources, and opportunities they deserve and need to thrive.

The Schuyler Center is a 151-year-old statewide, nonprofit organization dedicated to policy analysis and advocacy in support of public systems that meet the needs of disenfranchised populations and people living in poverty.

Schuyler Center’s priorities this year, as in the past, focus on strengthening families **before** they experience crises or trauma and **preventing** families from enduring hardships like ill-health, economic insecurity, child welfare involvement, or encounters with juvenile justice. Key to achieving this goal is ensuring that families experiencing poverty have ready access to civil legal services when they encounter barriers to accessing resources to which they are entitled to aid them in achieving economic security and stability. So too, key to ensuring that families who come into contact with the child welfare system are provided the resources they need, and preventing traumatic family separations, is ensuring families have access to timely, quality legal services.

OVERVIEW

We are appearing at this hearing today to focus on three issues:

1. To turn the tide on New York’s persistently high rate of child poverty, it is essential for all aspects of New York State government to treat this issue with the urgency it deserves, including the courts and judiciary.
2. Reducing child poverty. To turn the tide on New York’s persistently high rate of child and family poverty, New York must also eliminate unnecessary, punishing barriers to access to social services in a number of ways, including by making civil legal services readily available to those wrongly denied services.
3. Transforming New York child welfare. Too many New York families – disproportionately Black and brown families – are swept up in the child welfare system because they are poor and unable to traverse the maze of means-tested benefits that

might aid their family – IF they can gain, and retain, access. To prevent unnecessary and traumatic family separations and ensure families that encounter child welfare gain access to the services they need to thrive as a family, all families should have access to civil legal services from first contact with child welfare. The stakes are too high, the rules associated with child welfare too complex, to deny families representation from the start.

At Schuyler Center, we work every day to advance evidence-based policies that create services and supports to set up low-income New Yorkers to thrive. Over the years, we have helped achieve some significant wins, including establishing, expanding, and strengthening state refundable tax credits (EITC and child tax credit) – among the most effective strategies for reducing poverty and building economic security; dramatic expansions in access to child care assistance; and the reorientation of NYS Medicaid to focus on the state’s youngest residents during their “First 1,000 Days” of life. Our number one priority currently is to sharply – and quickly – reduce the number of children experiencing poverty in New York State. If New York can accomplish this goal, we will be on track to dramatically improve the overall well-being of the state’s children including their physical and mental health, academic achievement, future earnings potential.

Yet, those policies are meaningless when real families encounter obstacles to accessing those services and supports. The obstacles take many forms: from onerous paperwork, short deadlines, long processing delays, complex requirements, onerous immigration status, activity and work requirements, frequent reauthorization requirements, and more. The reasons for the obstacles are many. Some are processes that were designed to keep enrollment low. Other obstacles are created by misunderstandings, mistakes, or bad actors. Regardless the reason, access to civil legal services helps ensure these services are not just available on paper. Families with a civil legal services lawyer in their corner are much more likely to be able to access the services they need and deserve, and in this way, avoid the hardship and trauma that too often come with poverty, including a far greater likelihood of having contact with the child welfare system than higher income families. This is because poverty creates conditions that are often interpreted as parental failings.¹ As a result, families experiencing poverty have a higher likelihood of experiencing crises related to lack of basic needs, and of having the symptoms of poverty be construed as “neglect,” leading to entanglement with the child welfare system.

NEW YORK HAS COMMITTED TO CUTTING CHILD POVERTY IN HALF IN A DECADE: TO MEET THAT GOAL WILL REQUIRE ENGAGEMENT FROM GOVERNMENT AT EVERY LEVEL, ACROSS ALL SECTORS, INCLUDING THE COURTS AND JUDICIARY.

New York – a state with vast wealth and resources – has for too long allowed hundreds of thousands of children endure the hardships of poverty – in times of recession, and in times of plenty. New York entered the pandemic with more than 700,000 children living in poverty, representing 18% of all New York children.² Due to systemic, historic and ongoing racism, Black children live in poverty at twice the rate of white peers, and children in immigrant families are more likely (33%) to live in low-income, working households than their non-immigrant peers (21%).³ Compared to the rest of the nation, New York’s children are more likely to live in poverty than children in 31 other states.⁴ The urgency of child poverty cannot be overstated.

The American Academy of Pediatrics has bluntly described child poverty as being associated with “lifelong hardship,” and notes that “children who experience poverty, particularly during early life or for an extended period, are at risk of a host of adverse health and developmental outcomes through their life course.”⁵

While these statistics are sobering, in early 2022 New York took the historic step of enacting landmark legislation, the New York State Child Poverty Reduction Act, committing New York State to cutting child poverty in half in a decade.⁶ The Act had near-unanimous, bipartisan support from upstate and downstate, rural, urban, and suburban legislators and constituents. Late in 2022, the State convened, and has continued to regularly convene, the Child Poverty Reduction Advisory Council to identify and recommend evidenced-based strategies to ensure New York fulfills this commitment. This historic effort is an opportunity for New York to act boldly to once and for all, take aim at child poverty with the urgency it deserves.

One of the key learnings of the last three years is that government policy can make a real and immediate difference in the lives of children and families who are struggling to make ends meet. Pandemic-era federal supports confirmed that it is possible to quickly and sharply cut child poverty and boost family economic security. The most dramatic example was the temporary pandemic expansion of the Federal Child Tax Credit in 2021, which contributed to a 46% decline in child poverty nationwide.⁷ Another success: no one was cut from Medicaid roles during the pandemic state of emergency – referred to as “continuous eligibility.” This government action caused the rate of uninsured children to decline during the pandemic nationally, from 5.7% in 2019 to 5.4% in 2021. According to a December 2022 report by Georgetown Center for Children and Families, “[c]ontinuous health insurance prevents harmful gaps in coverage, increases access to care including mental health services, checkups and vaccinations, and reduces expensive ER visits.⁸ Gaps in coverage are harmful especially today when families are struggling to keep up with the rising cost of food, housing and other essentials.”

With New York’s Child Poverty Reduction Advisory Council convened and working hard to meet the state’s bold poverty reduction goals, it is imperative that all New York leaders, across agencies and disciplines, including the courts and judiciary, act with intention, determination, and coordination, to once and for all turn the tide on child poverty in New York State.

1. To meet its child poverty reduction commitment, New York must prioritize knocking down the complex, dehumanizing, and unnecessary administrative barriers that keep many New Yorkers experiencing poverty from accessing critical services.

In large part due to the lessons learned from the pandemic, there is growing recognition that erecting onerous application processes, long delays, and frequent reauthorizations is bad policy, harmful for families, and costly for government. New York leaders, including the Governor, have begun to take steps to knock down these barriers, including in the area of child care assistance, where last year New York passed policies to streamline, centralize, and standardize the onerous child care assistance application process and eligibility criteria, and create uniform eligibility rules among counties. In the area of Medicaid, New York leaders have been considering offering young children continuous Medicaid eligibility from birth to age six, a policy that the pandemic confirmed can dramatically reduce churn (children falling on and off

coverage, most of the time because of missed deadlines, not because they have become ineligible), and improve child health outcomes in numerous ways by ensuring children get necessary check-ups, screening, and treatments during their critical developmental stages, with long-term and short-term benefits.⁹

An even more effective approach to alleviating access barriers is to eliminate eligibility requirements altogether by making essential services universally available, free of means-testing or other eligibility requirements. One success story is New York's enactment of universal pre-K for four-year-olds in New York City and some other communities across the state. In the area of child care, the Governor has re-convened the Child Care Availability Task Force and charged it with creating a plan for implementing universal child care in New York State.

Another dramatically effective strategy for reducing poverty that carries few restrictions are refundable tax credits. Tax credits are among the very few government resources made available to low-income families that, once accessed, come with few requirements or bureaucratic hurdles. The data overwhelmingly demonstrates that nearly all families use those resources for essentials.¹⁰ This example of the efficacy of refundable tax credits has helped animate interest in dismantling the many administrative barriers that prevent many New Yorkers from accessing or continuing to be able to access services to which they are eligible.

We urge New York leaders, including the courts and judiciary,¹¹ to continue to identify and take steps to knock down those barriers that have the effect of keeping New Yorkers from accessing essential services for which they are eligible and desperately need. Breaking down barriers to accessing services by advancing universal programs that eliminate all means testing and bureaucratic hurdles, like universal pre-K, child care, and school meals; by extending certification periods to minimize barriers and reduce churn; and adopting commonsense reforms to reduce paperwork and administrative hurdles, like categorical eligibility, are all policies that would dramatically improve access, and help reduce the overwhelming demand for civil legal services.

2. New York must invest in civil legal services attorneys to ensure that when New Yorkers face barriers to accessing benefits, they get a second chance to gain access, in a timely manner.

While there is a shift in the conversation, and movement toward reducing barriers to accessing services, at present, the barriers remain intact and formidable in many service areas. That is certainly the case with respect to public assistance, which offers cash and other assistance for New Yorkers who are among the lowest income. During the period July 2021 to June 2022, more applications for Family Assistance were denied than opened (75,383 opened; 83,619 denied).¹² Of those denied, more than half – 45,133 – were denied due to “compliance issues.” Notably, when New Yorkers deemed ineligible for public assistance pursue a fair hearing, the majority either prevail or achieve a settlement. (During the period July 2021 to June 2022, 61 hearings objecting to eligibility determinations were held. Of those only 5 decisions were affirmed; 6 reversed; and 44 were settled).¹³

Further, even as New York breaks down unnecessary access barriers, there will always be families and individuals who are denied access to benefits and services to which they are eligible. Typical families that are low-income have an average of \$600 to \$1,000 of savings.¹⁴

This leaves many of them one denied-benefit – or even delayed-benefit – away from tragedy. Delayed or denied rental assistance or heating assistance or SNAP nutrition benefits can cause a family to miss rental payments, or find themselves unable to fix their car, which can lead to the loss of a job, which can lead to a downward spiral into homelessness.

The solution: more funding for legal services attorneys. New York’s lack of civil legal services has been considered at crisis levels for over ten years.¹⁵ The legal community has fought to establish the right to counsel at the city, state, and national levels because of the basic needs that are often at stake for families without access: shelter, food, safety, health, and child custody.¹⁶ Cost-benefit analyses of funding comprehensive legal services have found that doing so would save money in other systems, i.e. having access to counsel to fight evictions in New York City would save the state money in shelters, health care, and law enforcement.¹⁷ In order to better support families, civil legal services need more, competitively paid, and well-trained attorneys to fill the gaps. There need to be enough attorneys so that each attorney’s caseload allows them to fully focus on and support each client, so that they can be most effective in breaking down barriers to public assistance access.

TRANSFORMING NEW YORK’S CHILD WELFARE SYSTEM: ROBUST CIVIL LEGAL SERVICES CAN HELP INCREASE THE ACCOUNTABILITY OF THE CHILD WELFARE SYSTEM.

Families involved in the child welfare system also often face barriers to public assistance, including legal services. By the time a family has been reported to the State Central Register, they have fallen through the cracks in other systems (i.e. health, mental health, public assistance, housing, etc.) either because they couldn’t afford services, were never referred to services, or are on public assistance waiting lists.¹⁸ Additionally, the symptoms of poverty and being rent-burdened are often confused with neglect once a child protective services (CPS) investigation begins: food insecurity, housing insecurity, inability to pay energy bills in the winter, inability to afford laundry and other basic necessities.¹⁹

The racial disparities in the child welfare system, which begin from the reporting stage, also indicate some level of discrimination in practice, at the very least due to cultural differences (i.e. differing ideas of “good parenting” v. whether the child is actually in danger) and at the most due to racial and other systemic biases.²⁰ The State Central Register receives about 150,000 reports every year. The vast majority (76%) of those reports are later deemed unfounded,²¹ after a traumatic investigation has occurred, before legal counsel is ever accessed.

We urge New York leaders to expand funding for legal services and support related accountability measures such as requiring CPS workers to read families their rights, including the right to counsel, at first contact.

Once a family comes into contact with the child welfare system, they are often left to navigate interactions with the caseworker investigating them, getting assigned Preventive Services that may not be appropriate for their needs, and facing family separation, all before meeting or being made aware of their eligibility for legal representation. By the time a family reaches court they have already gone through a traumatic investigation, likely without any support or knowledge about their rights and options. Currently, families cannot access counsel until CPS files a petition and parents have to appear in court.²²

CONCLUSION

Robust legal representation is a necessary part of New York's implementation of the Child Poverty Reduction Act's commitment to halving child poverty by 2032. Families should not be left to navigate complex systems without support, yet that is what is happening. In order to access the resources for which they are eligible, families must be provided high-quality legal representation as early as possible, whether they are navigating the child welfare system, housing, food, health, or other public benefits.

Thank you. We appreciate the opportunity to present testimony and look forward to continuing to work with you to build a strong New York.

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- ⁶ Schuyler Center for Analysis and Advocacy. December 15, 2021. The Child Poverty Reduction Act is Law: What Does it Do? <https://scaany.org/the-child-poverty-reduction-act-is-law-what-does-it-do/>
- ⁷ [Child Poverty Fell to Record Low 5.2% in 2021 \(census.gov\)](https://www.census.gov/newsroom/press-releases/2022/child-poverty.html)
- ⁸ Georgetown University McCourt School of Public Policy Center for Children and Families. December 7, 2022. Lesson from Pandemic: Medicaid Continuous Coverage Works! <https://ccf.georgetown.edu/2022/12/07/lessons-from-pandemic-medicaid-continuous-coverage-works/>
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- ¹⁰ A recent [report](#) by the National Bureau of Economic Research modeling households’ use of the pandemic era expanded federal Child Tax Credit confirmed what has been reported for years: give families experiencing poverty ready access to resources, and they will use them to meet their needs. Specifically, the report found that for every extra \$100 received, families spent \$28 on food, \$31 on housing, and \$15 on child-related services or goods.
- ¹¹ See, Thomas P. DiNapoli, New York State Comptroller. New Yorkers in Need: A Look at Poverty Trends in New York State for the Last Decade. Report. December 2022. Calling upon the New York State to “[m]ake poverty reduction a cross-agency priority.” <https://www.osc.state.ny.us/reports/new-yorkers-need-look-poverty-trends-new-york-state-last-decade>
- ¹² [Family Assistance](#) “provides cash assistance to eligible needy families that include a minor child living with a parent/parents or a caretaker relative . . . operating under federal Temporary Assistance for Needy Families (TANF) guidelines.”
- ¹³ NYS Office of Temporary and Disability Assistance. 2022 Statistical Report On the Operations of New York State Public Assistance Programs. <https://otda.ny.gov/resources/legislative-report/2022-Legislative-Report.pdf>
- ¹⁴ <https://www.jpmmorganchase.com/institute/research/household-income-spending/household-cash-balance-pulse-families#finding-1>
- ¹⁵ The Task Force to Expand Access to Civil Legal Services in New York. November 2010. Report to the Chief Judge of the State of New York. <https://ww2.nycourts.gov/sites/default/files/document/files/2018-04/CLS-TaskForceREPORT.pdf>

¹⁶ Brito, T. L. Winter 2019. The Right to Counsel. *Daedalus*. <https://www.amacad.org/publication/right-civil-counsel>

¹⁷ *Ibid.*

¹⁸ American Public Human Services Association. May 21, 2021. Poverty and Neglect Are Not the Same – It's Time to Realign Our Response. <https://aphsa.org/APHSABlog/mhhspp/poverty-and-neglect-are-not-the-same.aspx>

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²⁰ New York State Office of Children and Family Services. 2022. Disproportionate Minority Representation Packet 2022 – County Comparison. <https://ocfs.ny.gov/reports/sppd/dmr/Disparity-Rate-Packet-2022-County-Comparison.pdf>

²¹ New York State Office of Children and Family Services. 2023. 2022 Monitoring and Analysis Profiles With Selected Trend Data: 2018-2022. <https://ocfs.ny.gov/reports/maps/counties/New%20York%20State.pdf>

²² Commission on Parental Legal Representation. February 2019. Interim Report to Chief Judge DiFiore. <https://www.nycourts.gov/ip/Parental-Legal-Rep/PDFs/InterimReport-FINAL.pdf>