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KIDS AND FAMILIES STILL CAN'T WAIT

THE URGENT CASE FOR NEW FAMILY COURT JUDGESHIPS

REPORT PREPARED FOR THE
NEW YORK STATE SENATE
COMMITTEE ON THE JUDICIARY

HON. JOHN L. SAMPSON, CHAIRMAN

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KIDS AND FAMILIES STILL CAN'T WAIT:
The Urgent Case for New Family Court Judgeships

This report examines Family Court's urgent need for new judgeships to address surging dockets, and concludes that speedy action is essential to ensure the quality of justice for New York families.

FINDINGS

- **Huge dockets are overwhelming Family Court and edging the family justice system toward danger.** Family Court dockets are larger and growing faster than in other trial courts. In 2009, Family Court appearances are growing at an annualized rate of 26% and now exceed 2.5 million.

- **Difficult economic conditions are clogging Family Court calendars with cases, affecting the safety and stability of millions of New York families.** At the same time, federal and state laws have expanded Family Court's jurisdiction and administrative duties. The result is that Family Court must hear an increasing number of cases that themselves are increasing in complexity.

- **For decades, the state has not created Family Court judgeships commensurate with dockets,** even as other trial courts have grown substantially. New York City hasn't received a single new Family Court judgeship in 20 years, while Family Court dockets have soared. Family Court in some suburban and upstate counties also is critically overburdened.

- **Family Court is working hard to make the best of a bad situation.** Despite their diligence and the Judiciary's laudable short-term fixes to stay ahead of docket growth, Family Court workloads has exceeded the ability of stopgap measures to address them.

- **The lack of adequate Family Court judgeships jeopardizes the quality of justice for vulnerable families, violence victims, and children.** Owing to docket congestion, some cases are delayed for a year, and hearings vital to child welfare may receive only five minutes before a judge.

- **Docket-related delays jeopardize federal funding and raise local social service costs.** Delays exacerbated by Family Court's impossibly large calendar are among the reasons that New York fails federal performance audits, which risks federal funding under the U.S. Adoption and Safe Families Act. These delays also increase NYC and county costs in providing social services.

- **These trends are not sustainable and require immediate redress.**

RECOMMENDATIONS

- **Enact S.5968 (passed Senate) to immediately create 21 new Family Court judgeships,** as proposed by Chief Judge Jonathan Lippman, for priority venues statewide based on dockets, with zero fiscal impact to the 2009-2010 budget.

- **Phase in another 18 Family Court judgeships** as New York's budget conditions improve.

- **Establish a process to periodically assess Family Court's needs.**

- **Expand temporary assignments in Family Court.**

- **Eliminate unnecessary legal barriers to temporary assignment in Family Court.**

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"Family Court is perhaps the saddest place in New York."[1]

EXECUTIVE SUMMARY

New York Family Court, entrusted under our Constitution to do justice for vulnerable children and families, is approaching the breaking point. Since voters approved a statewide Family Court in 1962, soaring caseloads have far outpaced the state's record of creating the judgeships necessary to hear Family Court cases with the speed, expertise, and sensitivity that these delicate matters require.

On September 10, 2009, the New York State Senate approved a bill (S.5968), sponsored by Sen. John Sampson, Chair of the Senate Judiciary Committee, to establish 21 new Family Court judgeships across New York State, in priority venues based on docket needs. This critical legislation was proposed by Chief Judge Jonathan Lippman to redress the Family Court's urgent and long-unmet needs. Chairman Sampson commissioned this report to explore the cause of Family Court's docket crunch and make additional recommendations to stem the unfolding crisis in New York's family justice system.

Using statistics and reports provided by the state Office of Court Administration ("OCA"), testimony from family justice professionals, articles from legal journals, primary news resources, and legislative history over 30 years, this report examines the evolution of New York State's Family Court system. It traces the development of the Family Court's docket crunch from the court's creation in the early 1960s until the present day and explores the process by which the state historically has created judgeships.

This report finds the state systematically has discriminated against Family Court in the creation of judgeships and, by extension, against at-risk New York families—and especially children—who often have nowhere else to turn for justice, support, and protection. In addition, this report finds that investments in New York's Family Courts have been delayed for so many years that they—and the children and families they serve—simply cannot wait any longer without jeopardizing the quality of justice that Family Courts and their hardworking judges, hearing officers, and staff deliver.

New York's present economic conditions have further swelled the demand on already overburdened Family Courts, causing cases involving child support, abuse, custody, and family offenses to flood into the courts. These same economic conditions also frustrate simple remedies: declining state revenues and soaring expenses across government demand budgetary austerity to ensure that the state can meet its fiscal responsibilities.

This report's most serious finding is that the state's longstanding failure to provide sufficient judgeships for Family Court is edging the family justice system toward danger. In 2008, Family Courts handled over 2.1 million appearances statewide. Current statistics point in 2009 to an unprecedented 26% increase in Family Court appearances over last year alone, to nearly 2.6 million appearances.[2] While this crushing workload is unsustainable under the best of circumstances, many of these cases are becoming more burdensome and complex due to statutory and regulatory modifications of procedure, as well as Family Courts' everincreasing obligations to check records, make findings, issue orders, and publish reports.

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1 See LeDuff, "Handling Sinners and Victims of Domestic Hell; Sad Hallways and Broken Lives in an Overburdened Family Court System," The New York Times, May 28, 2002, at B1.

2 NYS Office of Court Administration, Reports of the Chief Administrator, 2005-2008 (2009 figure is an estimate based on prorating of Office of Court Administration 2009 case statistics as of August 11, 2009).

Faced with this surging caseload and related obligations, some Family Court judges, support magistrates, and hearing officers routinely carry huge annual dockets, working with staff on nights, weekends, and sometimes around the clock to prioritize the most exigent cases (e.g., abuse, neglect) and meet growing legal mandates. Due to limited resources, other Family Court proceedings also vital to the lives of children, families, domestic violence victims, and other at-risk New Yorkers are either delayed or cut short. In some counties, matters necessary to provide children with safe and stable homes might be allowed as little as five minutes because there are simply too many cases. Calendars for some courts, social service agencies, and institutional legal providers reportedly have become so clogged that sensitive Family Court proceedings might wait a full year before they can receive a proper hearing. In some cases, a year may as well be an eternity, particularly in the life of a child, and triage justice may be of little consolation.

Family Court judges, support magistrates, hearing officers, and staff are working valiantly to make the best of this deteriorating situation. They are unsung heroes of a justice system in which case volume and heart-wrenching litigant stories often obscure the commitment, stamina, and skill of the professionals that make the courts function. Likewise, OCA and the institutional judiciary have worked diligently to leverage stopgap solutions and streamline procedures to expedite the flow of cases, harness efficiencies, provide crucial data, and make the family justice system's sprawling parts work better for families, children, and other stakeholders. No doubt such personal dedication and institutional commitment have helped keep a bad situation from becoming even worse.

This report concludes that, despite these efforts, Family Court's caseload crisis has grown beyond administrative remedies and short-term fixes. With calendars as large as those that many courts now typically experience, only a prompt infusion of new Family Court judgeships—commensurate with dockets—can ensure that New York's family justice system does not collapse under its own weight.

Absent a prompt infusion of new Family Court judgeships in priority counties, on the basis of need, the family justice system simply cannot be expected to continue meeting its constitutional duties to the most vulnerable New Yorkers. Only the creation of new judgeships can ensure that the justice system has the resources necessary to do wise and timely justice for the most vulnerable New Yorkers whose rights and safety are Family Court's constitutional responsibility. Only these new judgeships can keep faith with at-risk children and families, and with the judges, court staff, case workers, social service agencies, foster parents, schools, police agencies, and communities charged with their protection and support.

21 FAMILY COURT JUDGESHIPS INCLUDED IN S.5968

New York City (7)
Albany
Broome
Chautauqua
Chemung
Chenango
Erie
Fulton
Oneida
Oswego
Rensselaer
St. Lawrence
Schenectady
Steuben
Westchester

18 FAMILY COURT JUDGESHIPS REQUIRED IN FUTURE YEARS

New York City (7)
Columbia
Monroe (2)
Nassau
Niagara
Rockland
Saratoga
Suffolk
Tioga
Ulster
Warren

SOURCE: NYS OFFICE OF COURT ADMINISTRATION, 2009 OCA "JUDICIAL NEEDS ANALYSIS"

Accordingly, this report urges both an immediate infusion of new Family Court judgeships commensurate with dockets, commencing with prompt enactment of S.5968, the Senate/Chief Judge Family Court judgeship bill, and sustained focus on future judgeship needs.

Balancing the Family Court system's needs against the state's fiscal challenges, this report recommends a phase-in of 39 Family Court judgeships across the state in order of docket priority, starting with immediate enactment of the 21 new judgeships proposed in S.5968 (see list). This measure would have zero fiscal impact on the 2009-10 state budget; a phase-in of the remaining judgeships can allow ample time for preparations necessary to ensure

smooth implementation. This number and distribution of new judgeships is nearly the same as former Chief Judge Judith S. Kaye urged years ago, as current Chief Judge Jonathan Lippman proposed in legislation, as editorial boards statewide have supported, and as stakeholders and the City of New York long urged the Legislature to enact. While Family Court's challenges have grown even more exigent in the ensuing years, and higher dockets may justify more judgeships than these measures would establish, 39 new judgeships would be a welcome down payment for a system long deprived of needed resources.

In addition, this report makes a number of other recommendations in relation to other stopgap measures and longer-term initiatives, including:

- Limited constitutional reform to expand the corps of trial judges eligible for temporary assignment to Family Court, to ensure that Family Court continues to stay equal to its justice mission under difficult socioeconomic circumstances.

- Establish a process to periodically assess Family Court's needs, to ensure that Family Court never again experiences such protracted failure to make necessary investments commensurate with justice standards.

- Expand temporary assignments to alleviate the docket crunch.

- Eliminate unnecessary legal barriers to temporary assignments in Family Court, so OCA has the full measures of administrative tools needed to address short-term Family Court docket spikes.

Action now is especially vital precisely because of the difficult economic circumstances in which many New York families—and state and local governments—find themselves. Family Court delays, while certainly costly in quality-of-life impacts for New York families, also impose higher costs for counties and the City of New York, which bear Family Court-related expenses for legal services (e.g., indigent representation, guardians ad litem (also known as attorneys for the child)) and social services (e.g., foster care, medical care). Many of these costs rise with Family Court calendar congestion. New York's historic levels of job losses, evictions, foreclosures, and staggering consumer debt therefore not only swell Family Court dockets but also increase the legal and social service costs that local governments must bear. Thus, new Family Court judgeships will directly help local governments control rising social service costs, while improving the quality of life of at-risk families.

Moreover, creating Family Court judgeships appears to be an indispensable step in complying with federal law, and ensuring continued New York State eligibility for vital federal funding in the justice area. Family justice cases routinely violate federal standards for timely adjudication under the Adoption and Safe Families Act ("ASFA"), which requires compliance as a condition of state eligibility for federal justice funding. While there are numerous reasons that New York consistently fails to meet these federal standards, one of them appears to be that there are too few Family Court judgeships to coordinate the vast array of governmental and nonprofit agency services associated with each case, causing delays to proliferate. In short, creating Family Court judgeships is vital to continued New York receipt of indispensable federal funding under ASFA.

It is hoped that these findings and recommendations will spur immediate action, lest continued delay jeopardize the welfare of children and families who truly cannot wait any longer.

INTRODUCTION

From his jail cell in Birmingham, Alabama, Dr. Martin Luther King, Jr., wrote in 1963 that "justice denied anywhere diminishes justice everywhere."[3] Dr. King might as well have been referring to the fate of New York Family Court, which was created the previous year to protect the most vulnerable New Yorkers.

Each day, New York litigants bring to Family Court the most difficult matters affecting at-risk families, children, and intimate relations, including abuse, neglect, adoption, custody, visitation, domestic violence, child permanency, juvenile delinquency, paternity, PINS (Persons in Need of Supervision), and child support. Each day, Family Court makes heart-wrenching decisions that shape the lives of children and families for years to come. And Family Courts do this sensitive work under a landslide of by far the largest dockets of any trial court in the state.

Yet, since its establishment, the Family Court system's caseloads have far out-paced the state's record of creating the judgeships necessary to hear cases with the speed, expertise, and sensitivity that these delicate matters require.

This story has been told tens of millions of times—once for each of the children and families, many of them particularly vulnerable to socioeconomic challenges, who have come before Family Court in the decades since its establishment in 1963. Since Family Court's inception, often a trip to court has involved long waits, mountains of paper, overburdened judges and staff, and triage justice.

As the last line of defense for a child, an abuse victim, or a family in need of support, it is obvious to any casual observer that the family justice system often seems to have far too few resources to provide all of its litigants with the timely, wise, and complete justice they require and deserve.

As this report explains in detail, new Family Court judgeships have become critically necessary both in New York City and in many counties across suburban and upstate New York. The results, in urban and rural counties alike, include increasingly severe docket crunches and justice delayed, and thus the risk of justice denied for already vulnerable children and families who may have nowhere else to turn for safety and security.

The stakes could not be higher. Delays can result in life-threatening danger for domestic violence victims, missed opportunities to halt child abuse and neglect, missed chances to rescue teenagers from delinquency and crime, and children growing up in foster care rather than permanent homes. In addition to the cost measured in quality of life for millions of at-risk families in the Family Court system, the costs of Family Court docket delays also fall on counties and the City of New York, which bear higher expenses for legal services (e.g., indigent representation, guardians ad litem (also known as attorneys for the child) and social services (e.g., foster care) associated with delays in Family Court. Hard economic times only compound the challenges both for fragile families struggling to cope with job losses, evictions, foreclosures, and staggering consumer debt, and for local governments struggling to support them. The strain means increased burden for Family Courts that are already stretched thin.

Unfortunately, this dynamic has existed for decades, to varying degrees, during which dockets have been growing without commensurate provision of new judgeships. The situation is further complicated by years of statutory modifications of Family Court procedure and jurisdiction that have increased the complexity of many Family Court proceedings. Remedies to ease this burden have been lacking due to insufficient funding of allied state, county, and local service agencies. These together dynamics have created the conditions for what constitutes a perfect storm in Family Court, in which caseloads soar and cases become more onerous for an already-clogged system.

3 Dr. Martin Luther King, Jr., "Letter from Birmingham Jail," April 16, 1963.

Perhaps the most important contributing factor to this crisis, however, is the state's longstanding failure to provide Family Court judgeships commensurate with these burdens. For the last 20 years, Albany leaders of both political parties have failed to create even a single Family Court judgeship for New York City, even as caseloads have skyrocketed. Counties across the metropolitan area and upstate New York have been similarly neglected. By contrast, the state routinely has expanded the corps of judgeships in other courts (e.g., the Court of Claims and City Courts outside New York City), even though Family Court litigants often are the most vulnerable, and by far the most numerous and fastest growing segment of New York's trial court litigants.

For years, the Judiciary, juvenile justice experts, courtmonitoring groups, bar associations, and editorial writers all have recognized this crisis and urged redress. Absent the creation of sufficient Family Court judgeships, judges, staff, social service agencies, and the Office of Court Administration together have devised numerous stopgap solutions using the resources available to them. But for these salutary measures and overwhelming diligence, the family justice crisis might have become even worse.

No matter how diligent and heroic the effort to hold the system together, however, nothing can make up for the protracted failure of successive governors and Legislatures to provide an adequate number of Family Court judgeships over the decades. As caseloads continue to grow, especially in response to present socioeconomic forces that exacerbate family justice problems, this gap is steadily increasing.

These dynamics are so deeply entrenched in the Family Court environment that practitioners, other stakeholders, and even the Family Court Act itself assume them to be unalterably true.[4] However entrenched they may be, they are shameful, unacceptable, and now so extreme in some parts of the state that they cannot continue without risking serious damage to the family justice system and the millions of lives entrusted to it. Continued failure to provide needed judges could jeopardize Family Court's purpose to provide complete and timely justice for children, abuse victims, and families.

4 Besharov, Prac Comm, McKinney's Cons Laws of NY, Book 29A, Family Court Act, § III, at 7 ("[Family Court] has rarely been accorded the priority it deserves and the resources it needs.... Besides the endemic problem of insufficient supporting services, the most critical problem facing the Family Court is the problem of ballooning caseloads").

UNDERSTANDING FAMILY COURT JURISDICTION AND DOCKETS

Family Court was established pursuant to constitutional referendum in November 1962.[5] In the words of the Joint Legislative Committee on Court Reorganization that drafted the Family Court Act to effectuate the will of New York voters, the Family Court was to be a "special agency for the care and protection of the young and the preservation of the family."[6] The drafters were keenly aware that the Family Court "may be the most important trial court" because it "deals with lives."[7]

Family Court's dockets have since have become the most diverse of any trial court in New York State. On the quasicriminal side, Family Courts adjudicate thousands of family offense petitions (including domestic violence), applications relating to guardianship and Persons in Need of Supervision ("PINS"), and juvenile delinquency proceedings each week. On the civil side, Family Courts are clogged with custody, visitation, and support actions. Family Courts also hear proceedings involving paternity and parental rights, often in the context of child abuse, neglect, and economic deprivation.

By their nature, some Family Court cases are exigent. Child abuse, neglect, and family violence cases require immediate judicial intervention. When moments count, there is no time to lose. Since Family Court dockets exceed the capacity of a limited corps of judges and staff to adjudicate all of them at the same time, Family Court judges and staff sometimes have little choice but to resort to triage justice. Cases that do not directly implicate jeopardy to life, liberty, or parental rights—the cases that federal and state laws require to be expedited and take precedence over other matters[8] —tend to make way for these highest-priority matters. The result is that other cases that also are important in the life of a child but not necessarily exigent—for instance, some child custody, visitation, support, and permanency matters[9] —can seem endlessly delayed, with some hearings delayed as long as a year owing to calendar congestion. When long-delayed hearings finally come, an unrelated emergency child welfare proceeding, an unavailable litigant, or missing data from a relevant social service agency can bump the case from the calendar and trigger still further delays. The frustrations, personal hardships, and societal costs multiply accordingly.

Exigent cases are not the only measure of Family Court's burdens. Many other Family Court cases, particularly relating to parental rights and juvenile delinquency offenses, implicate fundamental constitutional rights (e.g., counsel and proof beyond reasonable doubt) that raise the stakes and increase the time and resources necessary for full and fair adjudication. Some also require continued judicial monitoring that further strains court demands. Given the subject matter and emotionally charged context, as well as the inherent complexity of enforcing Family Court judgments, it is not unusual for parties to return repeatedly to Family Court for the same underlying dispute, requiring the repeated issuance and modification of protective orders, support orders, custody orders, and other measures to govern during the pendency of proceedings.

These dynamics also bring to Family Court a slew of allied justice agencies to an extent generally unknown in other courts. A child abuse or neglect proceeding may involve the agency making the accusation, such as New York City's Administration for Children's Services ("ACS") or a county Department of Social Services; counsel for each of the parents (including an indigent defense provider such as the Legal Aid Society, a public defender or a participant in an 18-B panel); the attorney for the child (also known as a law guardian); and any temporary guardian for the child, including the foster family, law enforcement agencies, and case workers. A juvenile delinquency proceeding may involve not only the prosecutor and defender but also a school or detention facility,

5 NY Const, art VI, §§ 1(a), 13 (1962).
6 Besharov, Prac Comm, McKinney's Cons Laws of NY, Book 29A, Family Court Act, § III, at 7.
7 Id. at 6.
8 See, e.g., Family Court Act §§ 153-c (orders of protection), 821-a(4) (family offense), 1049 (special priority for abuse cases where child removed from home).
9 Where federal law imposes schedules for timely disposition of state cases as a condition of receiving federal justice funding, these timetables too must be met. See generally 42 U.S.C.A. tit. IV-D (support), IV-E (Adoption and Safe Families Act). As elsewhere described in this report, however, these timetables often are not met for a variety of reasons (e.g., calendar congestion), many of which could be redressed at least in part with more judgeships deployed to these cases.

the parents, and any involved social service agencies. The effective disposition of Family Court cases thus often requires judges and staff to coordinate with many equally overburdened allied justice actors, at multiple levels of government, all of which play a crucial role in ensuring that case reports are complete as well as prepared and disseminated in a timely manner. These reports include information on home visits, drug tests, and psychological evaluations on which proper adjudications rely.

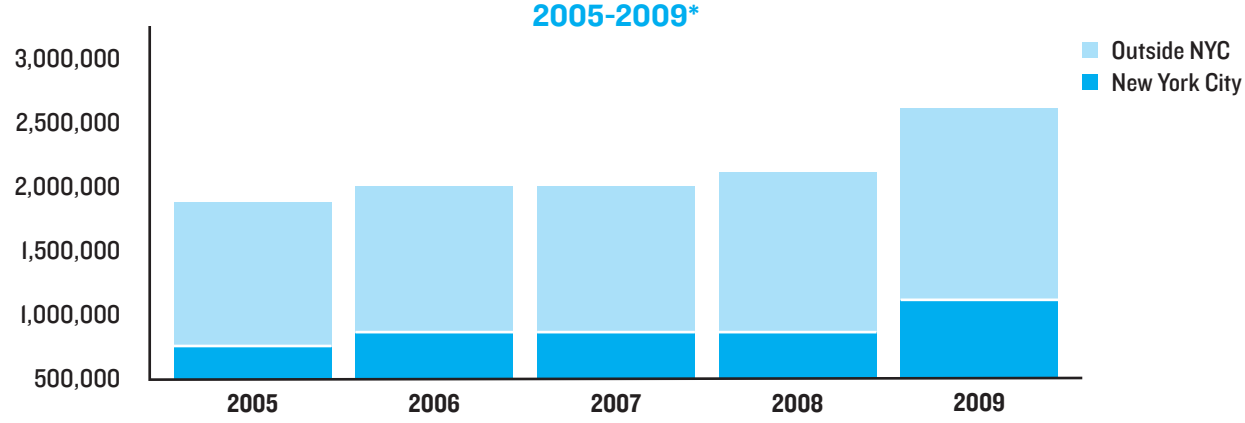
The same involvement of multiple partners is needed to coordinate the provision of emergency services for abused or neglected children, battered spouses, persons in need of supervision, juvenile offenders, and other at-risk litigants. If one or more Family Court litigants have a related matter pending before a criminal court or a matrimonial proceeding in Supreme Court, these coordina-tion responsibilities multiply so as to ensure the effective and efficient adjudication of all related cases. All of these "behind the scenes" aspects of Family Court adjudications greatly multiply the burden on the court, its judges, and staff for each case.

Were Family Court's dockets relatively small, these kinds of dynamics would be challenging but manageable. But Family Court has carried a heavy load of cases on its docket since its establishment in the 1960s, and today's dockets and growth rates far exceed those for any other trial court.

The most recent statistical snapshot available reveals that Family Courts in 2009 are on track to preside in nearly 2.6 million appearances—over one million in New York City and over 1.5 million in the counties outside New York City (see figure 1).

These staggering Family Court appearance rates reflect a whopping 26% increase over just the prior year. While it is too soon for precise explanations for this unprecedented surge in Family

FIGURE 1. APPEARANCES IN FAMILY COURT IN NEW YORK 2005-2009*



* FIGURES FOR 2009 ARE ANNUALIZED ESTIMATES BASED ON PRORATING DATA FROM 1/1/09 TO 8/11/09; APPEARANCES FOR THAT PERIOD TOTALED 632,664 IN NEW YORK CITY AND 942,861 IN THE COUNTIES OUTSIDE NEW YORK CITY.

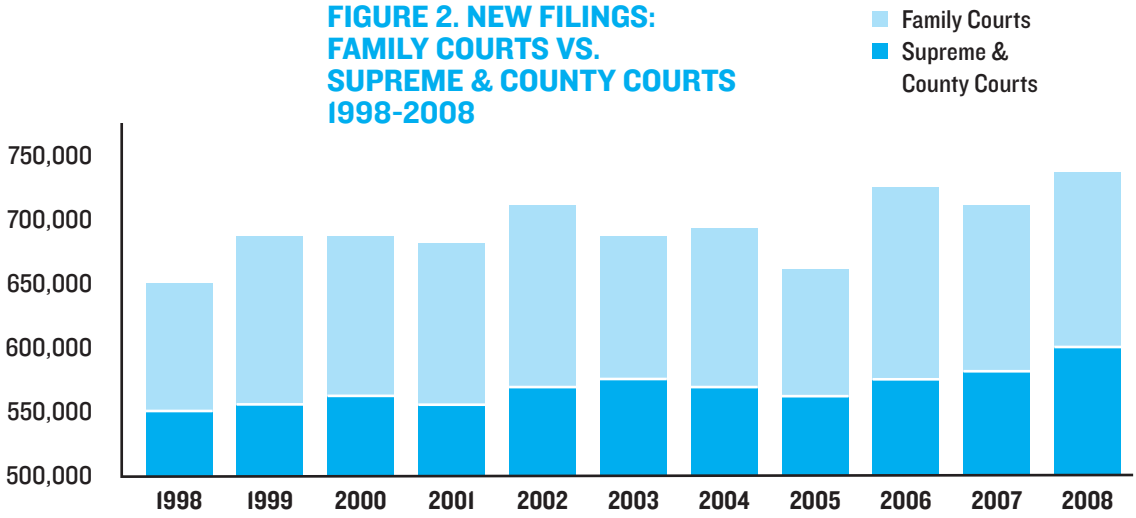
SOURCE: OFFICE OF COURT ADMINISTRATION, ANNUAL REPORTS OF THE CHIEF ADMINISTRATOR (VARIOUS YEARS).

Court workload, the soft economy likely has contributed to a large increase in support, custody, visitation, delinquency, and PINS cases—and the fact of the 26% increase itself is beyond question.

Moreover, even these extreme 2009 Family Court appearance rates are building off already escalating appearance levels. Between 2005 and 2008, appearances grew by 7% to 2.1 million statewide. In 2008, the most recent year for which complete data are available, 53 Family Court judges in New York City (including judges on loan from other courts) disposed of 102,164 matters—a staggering average of 1,927 cases per judge per year.

By any measure, Family Court's workload has reached staggering proportions. Statewide, Family Court new filings numbered 709,293 in 2007—fully 42% greater than all civil and criminal filings in Supreme Court statewide (see figure 2).

FIGURE 2. NEW FILINGS: FAMILY COURTS VS. SUPREME & COUNTY COURTS 1998-2008



SOURCE: OFFICE OF COURT ADMINISTRATION, ANNUAL REPORTS OF THE CHIEF ADMINISTRATOR (VARIOUS YEARS).

The number of abuse and neglect proceedings that ACS commenced in New York City skyrocketed by 147% from 2005 to 2006, and continued to escalate in 2007. In Kings County, abuse and neglect filings tripled in 2006 alone. In 2008, Family Courts held over 30,302 permanency hearings in New York City, and close to 19,000 additional permanency hearings in counties outside New York City.

These staggering workloads can yield disturbing implications for justice dispensed in Family Court parts. One particularly troubling analysis found that the average 2,200 case/year docket of the average Family Court child protective part allows the typical judge to dedicate to each case an average of only 42 minutes per year.[10] By contrast, national best-practice guidelines call for a bare minimum of an hour for each "routine" child permanency hearing.[11] Worse, in New York City, where the average child protective case can require 12 appearances to achieve complete fact findings, compliance, and disposition,[12] these 42 minutes translate into a meager 3.5 minutes per court appearance, assuming that the calendar keeps cases moving at that speed all day, every day.[13]

Ultimately, however, the most complete measures of the burden on Family Court judges, support magistrates, hearing officers, and staff defy mere numbers. Judges, staff, and allied justice agencies know firsthand that the human stakes in Family Court proceedings are very high both for litigants and the broader community. In the context of abuse and neglect cases, moments count: even a brief delay can be permanently damaging, if not deadly. Physical safety is paramount in the health development of any child. But children also need stable homes and permanent care givers, which is one of several reasons that national and state policymakers increasingly emphasize permanency over foster care. A child's emotional and psychological bonds are critical and fragile, and must be protected. Once disrupted, they must be restored speedily to avoid irreparable harm to cognitive and emotional development.

10 See Gendell, Citizens' Committee for Children, Testimony before New York City Council Committee on General Welfare, January 10, 2008.
11 See National Council of Juvenile and Family Court Judges, "Adoption and Permanency Guidelines: Improving Court Practice in Child Abuse and Neglect Cases" (2000).
12 See New York State Office of Court Administration, "Preliminary Report of the Chief Administrative Judge Pursuant to Chapter 626 of the Laws of 2007" (2007).
13 Family Court, like all trial courts, also are subject to case-processing Standards and Goals promulgated by OCA that gauge the time that various case types should take in various phases of adjudication. Family Court in many counties routinely exceeds these Standards and Goals benchmarks. Because many of these Family Court benchmarks were promulgated almost 30 years ago—at a time when jurisdiction, dockets, judicial corps, statutory case priority, and procedures were vastly different than they are now—this report does not use county-by-county Standards and Goals compliance as a metric for Family Court performance.

By contrast, Family Court's docket crunch often means that the family justice system that receives these exigent cases is ill-equipped to ensure that these cases are adjudicated with the dispatch they require. Docket-related delays in Family Court thus can mean not only missed opportunities to halt abuse and neglect, but also missed chances to avert children and teenagers from delinquency and crime. Delays also can mean children staying in foster care rather than getting permanent homes, and thus irreplaceable months and years of healthy relationships lost.

In describing her responsibilities, one Family Court judge recently noted that "[b]ecause we are dealing with children, science tells us that we must complete these cases quickly, and common sense tells us that we must be right."[14] In light of the human element and the tremendous workload that an increasing number of Family Court judges must bear, it is no surprise that some Family Court judges typically work a full day, conduct emergency hearings during evenings, then work nights drafting orders and opinions.

In response to their soaring dockets, Family Court judges and staff regularly work grueling schedules—some putting in 60-hour weeks to clear calendars by day and write decisions and orders by night—just to stand a chance of keeping up with the siege of cases, petitions, and appearances. Even if their tremendous level of commitment and performance were humanly sustainable, seemingly no amount of hard work can suffice given the size and complexity of modern Family Court calendars, especially when appearances are increasing at 26% per year.

The productivity of Family Court judges and staff should inspire pride not only because of their unparalleled commitment to doing justice for at-risk children and families, but also because their extraordinary performance often is the only thing that stands between Family Courts and systemic meltdown. For a variety of reasons detailed in this report—some relating to demographic and social change, others relating to federal and state legal developments, and most recently as a result of the economic downturn—demand for Family Court services has skyrocketed. With this surge of cases have come court calendars that are becoming all but unmanageable. It is not atypical for a Brooklyn Family Court part to be quadruple-booked throughout the day with child abuse and neglect cases, or for a judge to be so overburdened that he or she is forced to schedule hearings nearly a year ahead because calendars are too congested for earlier hearings. These distressing experiences—distressing to the litigants and distressing to the entire justice system—are disturbingly common across the family justice system. As crushing caseloads continue to build despite the extraordinary efforts of Family Court judges and staff, it is difficult to imagine what Family Court and its dockets would be like if judges and staff worked only regular hours or with any less dedication.

That Family Court judges and magistrates must work this hard merely to stay on top of the most exigent cases and legal mandates is itself a testament to Family Court's docket crunch: there are simply too many cases for the number of available judges. An objective assessment of the Family Court crunch and its growth and impact, however, requires a two-tiered exploration of not only the burdens on the court but also the judicial resources that state law allows Family Court to leverage in service of its obligations. This in turn requires exploration of the law, policy, and politics of creating judgeships in the state of New York.

This exploration reveals that, when it comes to creating judgeships, New York State systematically has shortchanged Family Court compared to other trial courts. The result is too few judges for too many cases, and in that formula lie the seeds of today's Family Court crisis.

14 Hon. Lee Elkins, Testimony before the New York City Council Committee on General Welfare, January 2008.

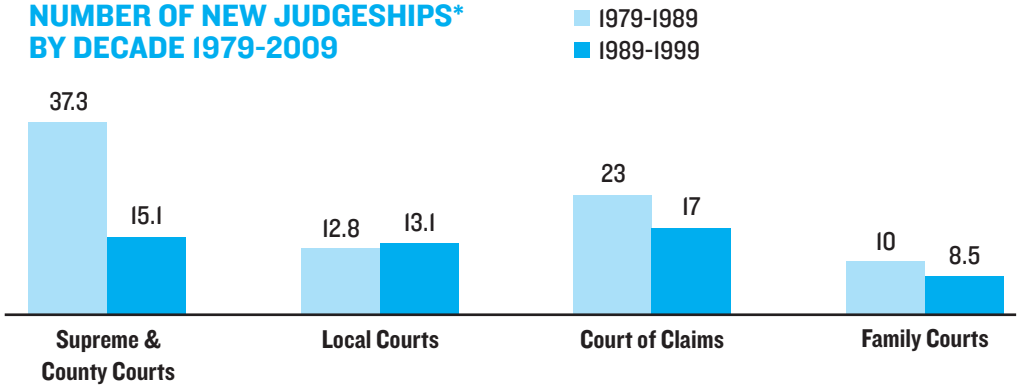
NEW YORK'S RECORD ON CREATING NEW JUDGESHIPS

With few exceptions, the Constitution vests in Albany's leaders full power to establish the number and distribution of judgeships among the various trial courts of the New York State Unified Court System. The Constitution explicitly directs that the Family Court in New York City and outside New York City shall have such number of judgeships as the Legislature may provide by law.[15] This is much the same authority the Legislature enjoys with relation to other courts—the Supreme Court, the County Court, the Surrogate's Court, the Court of Claims, and the various state-paid local courts (e.g., New York City Civil Court, New York City Criminal Court, the City Courts outside New York City, and the District Courts on Long Island).

Historically the State has created most judgeships in periodic packages that significantly increase the corps of judicial personnel in one or more other courts,[16] but these packages have never focused on Family Court. Instead, the State has tended to create Family Court judgeships only as small parts of larger packages, or as discrete single-judgeship supplements for an individual county with little effect on the family justice system overall. Never in the history of Family Court has there been a package of judgeships for Family Court itself.

Current law provides for 143 Family Court judgeships statewide: 47 for the citywide Family Court bench in New York City (appointed by the mayor on recommendation of a screening panel), and 96 divided among the Family Courts in the 57 counties outside New York City (elected county-wide). These judgeships constitute the full-time corps of Family Court jurists. In addition, primarily for less populated counties, the Legislature has established 44 "multi-hat" judgeships to serve in both County Court and other county-level tribunals, including Family Court. The Constitution also authorizes OCA to temporarily assign, on an as-needed basis, lower court judges from the New York City Civil and Criminal Courts and the City Courts outside New York City to serve in Family Court when the dockets of their home courts permit, consistent with the administration of justice.[17]

FIGURE 3.
NUMBER OF NEW JUDGESHIPS* BY DECADE 1979-2009



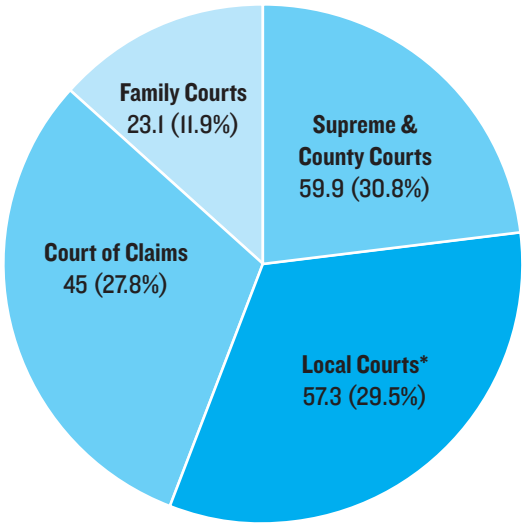
*PARTIAL JUDGESHIPS RESULT FROM USE OF AN ALLOTMENT FORMULA TO APPORTION RESPONSIBILITIES FOR MULTI-HAT JUDGES AND PART-TIME JUDGESHIP ADJUSTMENTS FOR CITY COURTS OUTSIDE NEW YORK CITY. NEW JUDGESHIPS IN THE SURROGATE'S COURTS, WHICH ACCOUNTED FOR A NEGLIGIBLE PROPORTION OF ALL NEW JUDGESHIPS, ARE NOT INCLUDED HERE.
**INCLUDES NEW YORK CITY CIVIL AND CRIMINAL COURTS, CITY COURTS OUTSIDE NEW YORK CITY, AND DISTRICT COURTS.
SOURCE: OFFICE OF COURT ADMINISTRATION, ANNUAL REPORTS OF THE CHIEF ADMINISTRATOR (VARIOUS YEARS); SENATE COMPILATION OF LAWS OF NEW YORK, 1979 - 2009, IN WHICH ONE OR MORE JUDGESHIPS WERE ESTABLISHED OR EXPANDED.

As described above, during this inordinately long judgeship freeze, New York City Family Court dockets soared, and statewide calendars have increased at a rate nearly quadruple the state's rate of creating Family Court judgeships to hear them.[18] As of this writing, it has been nearly 20

15 See NY Const, art VI, § 13(a).
16 See L 2005, ch 240 (21 judgeships among numerous courts); L 1990, ch 209 (32 judgeships among numerous courts); L 1986, ch 906 (23 judgeships for Court of Claims); L 1982, ch 500 (60 judgeships among numerous courts).
17 See NY Const, art VI, § 26.
18 See, e.g., Lauria, L. & Townsend, S., "A Decade of Reform in the New York State Family Courts," 80 NY St Bar J 1, at 46 (Jan. 2008).

years since New York established a single Family Court judgeship in New York City,[19] and in the last decade the state created a total of only four Family Court judgeships anywhere at all, one each in Clinton,[20] Monroe,[21] Oneida,[22] and Orange[23] Counties.

FIGURE 4. DISTRIBUTION OF NEW JUDGESHIPS 1979-2009



*INCLUDES NEW YORK CITY CIVIL AND CRIMINAL COURTS, CITY COURTS OUTSIDE NEW YORK CITY, AND DISTRICT COURTS.
NOTE: TOTAL DOES NOT INCLUDE JUDGESHIPS ADDED IN THE SURROGATE'S COURTS, WHICH ACCOUNTED FOR A NEGLIGIBLE PERCENTAGE.

SOURCE: OFFICE OF COURT ADMINISTRATION, ANNUAL REPORTS OF THE CHIEF ADMINISTRATOR (VARIOUS YEARS); SENATE COMPILATION OF LAWS OF NEW YORK, 1979 - 2009, IN WHICH ONE OR MORE JUDGESHIPS WERE ESTABLISHED OR EXPANDED.

By sharp contrast, the State created the equivalent of 53 judgeships between 1989 and 1999, and an additional 57 between 1999 and 2009, most of which were for the Court of Claims, the Supreme Court outside of New York City, and part-time City Courts[24] (see Figure 3).

Over the past 30 years, only about 12% of all judgeships created have been for Family Court, as opposed to Supreme Court, the Court of Claims, City Courts outside New York City, and other trial courts (see Figure 4).

For constitutional reasons, in most instances these other judgeships cannot hear cases sitting in Family Court.[25] As a result, the judicial system receives new judgeships that are welcome and may well be needed to assist with other aspects of the Judiciary's burgeoning dockets, but which cannot directly address Family Court dockets—the cases that comprise the largest, most sensitive, and most exigent part of the over 4 million cases flooding into the courts each year.

Beyond all other factors associated with the growth of Family Court dockets, it is the stark mismatch between Family Court's docket needs and the creation of judges that most directly contributes to today's brewing crisis in Family Court. Had the State consistently created Family Court judgeships at a pace comparable to the growth in Family Court's dockets, appearance rates, and case-processing obligations, then Family Court today would be far less burdened and far better positioned to do justice for the vast array of sensitive litigants and cases coming before them.

It is beyond the scope of this report to fully examine all of the reasons that the state has failed to create Family Court judgeships commensurate with docket need. Throughout the Family Court's 45-year history, however, it has been widely recognized that political considerations play significant roles in deciding which judgeships to create and where to create them. Often these dynamics cut against creating Family Court judgeships, however exigent the need for them.

As to the Court of Claims, whose bench has grown at the fastest rate compared to other state- and county-level courts, the most widely reported factor has been that the creation of these judgeships has unique appeal for governors and party leaders.[26] Because Court of Claims judgeships are appointed by the governor and confirmed by the Senate, historically there has been opportunity for agreements among leaders to support particular nominations and confirmations. For instance, in 1973, partisan allure was reported to contribute to interest in creating Court of Claims judgeships, coincident with passage of the Rockefeller-era drug laws:[27]

19 See L 2006, ch 493; L 2005, ch 240; L 2004, ch 280; L 2002, ch 279; L 2001, ch 584; L 2000, ch 178; L 1999, ch 330; L 1998, ch 293; L 1998, ch 232; L 1998, ch 117.
20 See L 1998, ch 232.
21 See L 2000, ch 178.
22 See L 1998, ch 117.
23 See L 2005, ch 240.
24 See L 1990, ch 209, L 1994, ch 440, L 1996, ch 448, L 1996, ch 731, L 2006, ch 493; L 2005, ch 240; L 2002, ch 279; L 2001, ch 584; L 1999, ch 330; L 1998, ch 293.
25 Cf. generally NY Const, art VI, § 26.
26 See Clarity, "Judicial Conference Asks Legislature for 125 Judgeships," NY Times, March 12, 1968.
27 See Lynn, "How Many Elephants on a Bench?; Drug Law Judges," NY Times, August 12, 1973.

> [A]long with the tough drug law, the Republican-controlled Legislature created 68 Court of Claims Judgeships…to handle the increased workload in narcotics cases [in Supreme and County Courts]. There are over 16 Court of Claims Judges now and they are all appointed by the Governor—which is the catch. Mr. Rockefeller would have no say in the appointment of Supreme Court and Criminal Court judges, who normally handle drug cases, and are either elected or appointed by local officials. But Mr. Rockefeller will have a big voice in the new Court of Claims judgeships, and so, obviously, will the Republican Party.
>
> The Republican state chairman has asked each of the G.O.P. county leaders in the City to submit three recommendations for the first batch of 15 judges. For New York City Republicans…appointed judgeships are like an oasis in the desert.[28]

Likewise, in 1986, when New York City Criminal Court experienced a surge in cases arising from the crack cocaine epidemic, the press again described the role politics played in adding judges to address the problem:

> The addition of [needed criminal] judges would be complicated because of political considerations and actually involve three different courts. Under the plan, Mr. Cuomo would appoint new judges to the State Court of Claims, but they would not serve on that court and would instead be assigned to hear felony cases in State Supreme Court. That move would free some of the more than 50 city Criminal Court judges who have been temporarily reassigned to State Supreme Court to clear a backlog. They would return to Criminal Court where some 60 of their colleagues face 26,000 pending misdemeanor cases.[29]

In the 1990s, the press again focused on the political contours of creating judgeships. One journalist correctly observed that the Constitution imposes a cap on the number of Supreme Court justices that can be created in various parts of the state, and that because Court of Claims judgeships face no such constraint and can be assigned to Supreme Court, creating Court of Claims judgeships can be the most expeditious way to funnel resources into the Supreme Court.[30] The same report noted, however, that the Court of Claims selection system—legislative enactment of the judgeships, gubernatorial appointment, and Senate confirmation—politically favors creating Court of Claims judgeships above all: in the annals of creating judgeships, "[this] system is an institution in Albany."[31]

These dynamics perhaps best explain why, among all the state- and county-level trial courts, it is the Court of Claims that experienced the largest growth. Because these judges constitutionally are ineligible to sit in Family Court, however, the creation of judgeships in New York has systematically devalued if not ignored the needs of Family Court for decades.

Family Court is disfavored in the judgeship-creation process in other ways bearing on political distinctions among trial-level judgeships. Uniquely among New York State's 11 trial courts, only elective Supreme Court justices are eligible for designation to the Appellate Division. Supreme Court justices and some Surrogate's Court judges serve 14-year terms, decidedly longer than the Family Court's 10-year terms. Outside New York City, Supreme Court and Court of Claims judges earn significantly more money than Family Court judges. Together these factors render Supreme Court and Court of Claims judgeships more prestigious than Family Court judgeships, and therefore the creation of these other judgeships tends to attract the greatest amount of political support.

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28 Id.
29 See Barbanel, "Cuomo Backs a Plan for More Judges in City," NY Times, August, 11, 1986.
30 See Purnick, "Judges, Patronage and Status Quo," NY Times, December 8, 1994.
31 Id.

Another anecdotal reason for Family Court's disfavored treatment in terms of the creation of judgeships may relate to the constituency that Family Court serves. The day-to-day challenges facing the at-risk families and children who comprise the overwhelming majority of Family Court litigants leave little opportunity to lobby Albany for expansion of the corps of Family Court judgeships. For many Family Court litigants, involvement in politics by any fair measure is a luxury they cannot easily afford. While the bar and bench broadly have called for reforms to ensure adequate judicial resources for Family Court, as a later section of this report describes, and while it is beyond the scope of this report to undertake a broad examination of this matter, there is little cause for surprise that judgeships dedicated to serving the most vulnerable New Yorkers will be created in the fewest numbers relative to need.

THE "STEPCHILD" COURT: DECADES OF ELUSIVE SOLUTIONS

The history of Family Court, since its founding in the early 1960s, has been one of searching for solutions to perennial resource inadequacy, and especially for needed judgeships, often without success. The dynamics described in this report are thus by no means new: they have been the common refrain of judges, child and family welfare experts, and editorial observers for nearly 50 years. In most cases, this common refrain for new judgeships has gone largely unheeded.

As early as January 1964, on the heels of the 1962 referendum that first established the Family Court, the Administrator of the State Judicial Conference, Thomas F. McCoy, described the need for additional Family Court judges. In his report, McCoy wrote that the corps of Family Court judges were not yet sufficient to enable Family Court to handle the cases referred to it by the Supreme Court. McCoy described procedures whereby, absent sufficient judges and staff, probation staff "'adjusted' thousands of matters that would otherwise become courtroom cases."[32] "This process," McCoy wrote, "[gives] the judges sitting in the court more time to handle cases that did appear before them in a more thoughtful and truly judicial manner."[33]

Five years later, in 1969, the two downstate Appellate Divisions covering New York City ordered a complete reorganization of New York City Family Court.[34] Their joint order, which addressed multiple issues including specialized parts for intake, adoption, and child abuse, and new procedures to improve coordination of cases and services for families and children, underscored the inadequacy of Family Court resources. In an almost eerie foreshadowing of decades of future reports on the Family Court, including this one, the 1969 Appellate Division reports also discussed the "'dedication' of judges, administrators and probation officers which 'enabled the court to face, but not to manage, the ever increasing caseload.'"[35]

In a 1982 New York Times article on how Family Courts were coping with the increase in juvenile crime, the issue of insufficient judges relative to soaring docket size again arose as a major factor in the litany of problems described.[36] Critical of many aspects of Family Court's ability to address its caseloads, the article described multiple adjournments for a single case, a lack of availability of trusted social service agencies, too much discretion granted to probation officials in dealing with delinquency cases, deep problems with the foster care system, and the very complex issues and decisions about juvenile justice faced by judges, lawmakers, and policymakers. Among the root causes of these problems, the article concluded, was the perennial lack of sufficient Family Court judgeships:

> The court, which is part of the state's court system and has seats in each of the five boroughs, is inadequately financed, understaffed and overworked. Its 28 city judges—11 short of an authorized strength of 39—handle tens of thousands of cases annually. In addition to juvenile delinquency, the judges must consider cases in such areas as child support, paternity, incorrigibility and child neglect and abuse.
>
> The shortage of judges has left little time to do more than adjourn [these] cases or settle them by hearing pleas.[37]

In 1987, amidst New York's crack cocaine epidemic, which caused a surge of cases in both Family Courts and the criminal courts, then-Chief Judge Sol Wachtler joined over 200 judges, lawyers, social workers, and others interested in family and child welfare issues in commemorating the Family Court's 25th anniversary. Chief Judge Wachtler noted that, in New York City alone, child neglect

32 See McCoy, Report of the Statewide Administrator, Judicial Conference of the State of New York (1964); Crowell, "More Aides Asked for Family Court: Need for Probation Workers and Judges Reported," NY Times, January 3, 1964.
33 Id.
34 See Kihss, "Reforms Ordered for Family Court: Appellate Divisions' Ruling Seeks to End 'Fragmented' Approach to Problems," NY Times, September 16, 1969.
35 See id.
36 See Chambers, "Family Court Assailed," NY Times, March 1, 1982.
37 Id.

cases had almost quadrupled in under three years, from 3,757 in 1984 to more than 13,500 in 1986. Tracing Family Court's history of receiving fewer resources and far less support than other courts, Chief Judge Wachtler called Family Court the "stepchild" of the state's judicial system, and found this result "intolerable because there is no more important court in the state court than the Family Court."[38]

During the decade (1978-1987) before Wachtler's now-famous comment that Family Court had become a "stepchild" court, New York State had created fully 101 judgeships in other courts, mainly the Court of Claims and Supreme Court. Of these, only 11 judgeships, just 10% of the total, were created for Family Court.[39]

Wachtler's words would become Kaye's warning. After reviewing the record of Family Court's dockets and judgeships, Chief Judge Judith S. Kaye in 1997 ordered that most Family Court hearings be opened to the public. A contemporaneous New York Times article describing her decision reported that one of Kaye's motivations was to help the public better understand the dire conditions in the court, where caseloads had continued to grow rapidly.[40] After a string of particularly notorious cases—from the abuse case of Elisa Izquierdo, the 6-year-old who was murdered by her mother, to the trial of Malcolm X's grandson for setting a fire that led to the death of his grandmother—Kaye said:

> It is high time public consciousness was raised about the issues surrounding Family Court as well as about the people inside Family Court....The conditions of the courts do so much to undermine the experience of the people who work there and who come there. Days for Family Court judges are unbelievable. This can't go on forever.[41]

The state paid little heed to Kaye's words, continuing the complete freeze on Family Court judgeships that for New York City had begun in 1990.

By the late 1990s, due to increasing caseloads, limited resources, and a spike in pro se litigants, matters in the Family Court system rarely reached timely disposition. In response, the Judiciary launched Phase I of its "Family Justice Program," initiating a number of reforms designed to eliminate delays and adjournments, reduce the number of scheduling conflicts, and increase the continuity of trials in the system. Family Justice I established Family Drug Treatment Courts, put in place a pilot Family Court Domestic Violence Part, initiated "Adoption 2100" to expedite permanency for thousands of children then identified as lingering in foster care, and took the first steps toward a modernized court management system. Sufficient new judgeships, however, continued to remain elusive.

In a 1998 press release announcing Phase 2 of the Family Justice Initiative,[42] the Judiciary described the conditions that Family Court continued to face:

> These factors—an overwhelming and increasing caseload, limited resources and many litigants without counsel—too often result in prolonging cases or disrupting trial proceedings. The crush of cases means that Judges must assess cases quickly, without time for unhurried reflection or complete factual records. Indeed, a case may be concluded within minutes, so the Judge can move on to the average of 60 cases on his or her daily calendar. Disruptions also result from competing demands on attorneys who cover a multitude of different cases. The Family Court's current operational framework thus fails to ensure the expeditious resolution of cases with the resources at hand. All too often, it is the litigant who suffers.

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38 See Marriott, "Family Court Is Struggling With Caseload, Experts Say," NY Times, November 15, 1987.
39 See L 1987, ch 318; L 1986, ch 909, L 1985, chs 547-548; L 1984, ch 572; L 1982, ch 790; L 1982, ch 500; L 1981, ch 873; L 1981, ch 694; L 1980, ch 513; L 1979, ch 207; L 1978, ch 699; L 1978, ch 561.
40 See Sexton, "Opening the Doors on Family Court's Secrets," NY Times, September 13, 1997.
41 Id. The same article described gruesome conditions in Family Court: "Women seeking orders of protection sit in waiting rooms alongside their victimizers. Child welfare caseworkers are next to the parents of children they have removed from dangerous households. Law assistants to the judges negotiate pleas and parents agree to foster care placements in the building's hallways."
42 Available at http://www.nycourts.gov/press/old_keep/phase2.htm.

By May 2002, approaching the 40th anniversary of Family Court's creation, Family Court's dockets were continuing to grow relative to available judgeships. A New York Times exposé that month, entitled "Handling Sinners and Victims of Domestic Hell; Sad Hallways and Broken Lives in an Overburdened Family Court System,"[43] illustrated that Family Court conditions remained grave, especially in New York City. One Queens Family Court attorney representing a mother accused of starving her infant said, "This is not Family Court: it's a disaster court."[44] Speaking for the Citizens' Committee for Children in New York, an independent advocacy group, executive director Gail B. Nayowith said, "The courts are understaffed, caseloads are really high, the buildings are inadequate for the amount of people going through there. The backlog for these cases [is] weeks and months. The workloads are incredible considering that we are making life and death decisions for kids."[45]

In 2005, the New York City Bar Association's Council on Children issued a position paper titled "The Permanency Legislation of 2005: An Unfunded Mandate—Critical Resource Needs for New York City's Children and Families."[46] Harkening back over 40 years to the Family Court's creation, the report's first recommendation was to significantly expand judgeships and staff: "anywhere from 13 to 34 additional judges are needed to reduce delay and increase effectiveness of the judicial role."[47] Moreover, the New York City Bar Association report noted that while the 2005 Legislature had focused on the needs of children and families by enacting landmark permanency-reform legislation to impose new duties on Family Court in the service of providing children stable homes, in no respect did the Legislature provide judicial resources to Family Court commensurate with these new duties:

> Evidence indicates that the Family Court, the Administration for Children's Services ("ACS"), advocates for children and parents, and New York City's numerous foster care agencies are trying in good faith to meet the objectives of [New York's permanency legislation of 2005]. However, these efforts are being undermined by a lack of resources that leaves the system stretched too thin. Significant additional resources are needed to meet these challenges and to meaningfully fulfill the objectives of the legislation.[48]

The following year brought the death of Nixzmary Brown, which shined a bright and painful light on child abuse and focused public attention on the issue. In response to this attention, Family Court became even more deluged with cases, worsening the existing problems of a struggling court. Once again, the burdens of Family Court and its judgeship drought were in the spotlight:

> The brutal death of 7-year-old Nixzmary Brown is taking a dramatic toll on the city's already overburdened Family Court system. Exhausted judges, lawyers, clerks and court officers are struggling to keep up with the workload—and prevent another deadly mistake.... In the week starting January 12, the Administration for Children's Services (ACS) logged 1,848 reports of suspected abuse or neglect and removed 146 children from their parents. On January 19 alone, 44 cases were filed by ACS, compared to 12 on the same day in 2005.... Meanwhile, the courts are also wrestling with the burden of the [permanency law], new state legislation enacted last month that requires periodic updates for every open case.
>
> That one-two punch is 'having a devastating effect on the Family Court calendar,' said Manhattan Judge Jody Adams. 'We're not removing any cases, only adding them. Just consider the chaos that is causing.' Hon. Lee Elkins, described in the story as a Family Court Judge that attorneys consider a model, is quoted as saying, 'You can't just institute change without providing the infrastructure,' he said, referring to the new state law. The whole system,

43 See LeDuff, "Handling Sinners and Victims of Domestic Hell; Sad Hallways and Broken Lives in an Overburdened Family Court System," NY Times, May 28, 2002, available at http://www.nytimes.com/2002/05/28/nyregion/handling-sinners-victims-domestic-hell-sad-hallways-broken-lives-overburdened.html.
44 Id.
45 Id.
46 Available at www.nycbar.org/pdf/report/Position_Paper_Permanency.pdf.
47 Id.
48 Id.

> he said, needs more resources to function well. 'If you want judges to consider on a case by case basis, they need to have time to make good decisions.'[49]

Two months later, a New York Daily News editorial urged, "Let's Remember Nixzmary: Overloaded System Needs a Big Fix to Prevent Another Tragedy."[50] In the wake of the Nixzmary Brown death, the newspaper reported:

> The city's 22 judges who deal with child abuse and neglect are still swamped, with each judge handling 35 to 40 cases every day. A huge backlog is inevitable, since a small army of lawyers, parents, teachers, witnesses and social workers must all arrive in court at the same time for every case, making postponements common. It's not unusual for more than a year to pass between an allegation of abuse and a trial and final court ruling. The overburdened judges have had too little time to arrange court-ordered social services in recent years: interventions like family counseling, which help prevent abuse, fell by 45% between fiscal years 2001 and 2005.
>
> And unless we get Family Court the resources needed to handle alleged cases of abuse and neglect, we'll be setting the stage for the next tragedy.[51]

The state did not respond.

For years, the institutional Judiciary has been calling on the executive and legislative branches to establish new Family Court judgeships across the state. In 2005, Chief Judge Kaye reported that the "severely limited" corps of Family Court judgeships was insufficient for the "staggering volume of Family Court filings," particularly outside New York City where dockets were growing fastest, and urged a "coherent, permanent solution" of new judgeships commensurate with demand for Family Court services.[52] Also in 2005, the Judiciary sent the executive and legislative branches a quantitative judicial needs assessment detailing disproportionate per-judge docket growth in Family Courts across the State. Following the Chief Judge's report, the State created 21 state- and county-level judgeships, but just one new Family Court judgeship.[53]

Starting in 2007, Chief Judge Kaye amplified her calls to enhance support for Family Court by directly asking the Legislature to establish 39 new Family Court judgeships across New York State, on the basis of docket need. By 2008, attention to Kaye's call had increased to the extent that The New York Times urged that the creation of these Family Court judges was "urgently need[ed]" to "repair] New York's justice system."[54] As had prior commentators, the Times narrated that Family Court's already pressing need for new judgeships was amplified by "caseload soaring, and new duties imposed by a 2005 law mandating more frequent court review of children in foster care."[55]

In response, the state created no Family Court judgeships at all.

These entreaties were not the only ones to urge additional resources, and particularly judgeships for Family Court. During the most recent decade ending in 2008, academicians, practitioners, government officials, and other stakeholders in the family justice system published fully 17 different reports on the Family Court and its resource crunch.[56] Many of them spoke directly to the "crisis" conditions in Family Court, about the exigent need to align judgeships and other resources with mounting dockets, about the state's longstanding practice of foisting obligations on, or expanding

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49 Feldman, "Courting Trouble: Family Court Overwhelmed With New Cases," www.citylimits.org, January 26, 2006.
50 See Louis, "Let's Remember Nixzmary: Overloaded System Needs a Big Fix to Prevent Another Tragedy," NY Daily News, March 21, 2006.
51 Id.
52 Kaye, "State of the Judiciary Address" (2005), at 6, available at http://www.courts.state.ny.us/admin/stateofjudiciary/soj2005.pdf.
53 See L 2005, ch. 240.
54 Editorial, "Repairing New York's Justice System," NY Times, June 2, 2008, available at http://www.nytimes.com/2008/06/02/opinion/02mon2.html.
55 Id.
56 See Fund for Modern Courts, "A Call to Action: The Crisis in Family Court," February 2009, available at www.moderncourts.org/documents/family_court_report.pdf.

the jurisdiction of, the Family Court without providing for (or in some cases even considering) sufficient resources commensurate with the obligations and jurisdiction imposed.

Today, 17 reports later, there still has not been a single Family Court judgeship established for New York City in nearly 20 years; Family Court in other counties across the state remains critically overworked. Despite broad agreement among stakeholders as well as the press and court monitoring organizations, about the shortage of judges in Family Court, the above record demonstrates that never in New York State's modern history has there been concerted focus on the creation of sufficient Family Court judgeships to redress this growing deficiency. The overwhelming majority of new state and county-level judge-ships instead have gone to the Court of Claims and local courts, even as Family Court filings and dockets consistently outpace all other courts. The result is that while the corps of judicial personnel in other trial courts has grown apace, the statewide corps of Family Court judges has lagged far, far behind relative need.

A MODERN SNAPSHOT: FAMILY COURT FALLOUT

Many of the foregoing entreaties to create new Family Court judges came before the current economic downturn. By all accounts, current socioeconomic conditions and their effects on already vulnerable families and communities—layoffs, consumer credit, housing problems, crime, and constrained social services—have only increased the caseload burdens that Family Court and allied justice agencies must bear.

A March 2009 New York Times article offers a representative snapshot of this surge in caseloads, through the lens of cases to modify child support orders:

> The same story echoed a dozen times through Room E8 of Manhattan Family Court in a single day: fathers, pinched by the recession, pleading for a reduction in child support. A salesman at Saks Fifth Avenue who is estranged from his teenage daughter said he feared he would be included in the next round of layoffs expected at his store. A man who had been laid off from a factory said he managed to find work at Mets games, but for less pay, $9 an hour. Another man, on the verge of eviction, begged for a break from his $315 monthly payments. 'Last week was my child's birthday, and I couldn't get him a present,' he said, burying his head in his hands. 'This is killing me.'
>
> Since January, Family Court in New York has been filled with urgent requests like these, alarming judges and overwhelming calendars with what are known as modification cases.[57]

Likewise, a recent survey by the American Academy of Matrimonial Lawyers ("AAML") cited a significant increase in modifications being made to child support payments, with corresponding increases in dockets for the family justice system. "With job losses becoming so widespread," the AAML report concluded, "our members are subsequently noticing a sizeable increase of these modifications taking place."[58] Overall, 39% of AAML members responded that they have seen an increase in child support payment modifications during the current economic downturn, while only 5% reported a decrease.

At the same time, the economy is causing surges in foreclosure filings, evictions for low-income people, and evictions among higher income tenants who have lost jobs and can no longer pay their rent. A May 2009 report indicated that lawyers, judges, and tenant advocates say the staggering economy has sent an increasing number of middle-class renters across New York City to the brink of eviction, straining the legal and financial services of city agencies and charities.[59] Middle-class New Yorkers once deemed affluent in some circles are crowding into Family Court and Housing Court, part of the New York City Civil Court, seeking relief from obligations. In the first two months of 2009 alone, cases alleging nonpayment of rent jumped 19% from the same period last year (to 42,257, from 35,588), with corresponding impacts across the justice system.[60]

These kinds of impacts directly impact Family Court in terms of the number, urgency, and complexity of matters coming before the court, and also indirectly affect Family Court to the extent that the economy is impacting other tribunals whose judges and staff otherwise might serve as "backups" for Family Court (i.e., New York City Civil Court and Criminal Court and City Courts outside New York City). These reasons probably best explain why Family Court appearances are on track to increase 26% in 2009 alone. The result is a perfect storm of even more work for Family Court to do but less flexibility among lower courts to help Family Court meet these burgeoning obligations.

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57 See Bosman, "Fighting Over Child Support After the Pink Slip Arrives," March 28, 2009, NY Times, available at http://www.nytimes.com/2009/03/29/nyregion/29support.html.
58 See American Academy of Matrimonial Lawyers, "Rising Unemployment Creating More Work for Divorce Lawyers; Spike in Child Support and Alimony Modifications According to Latest Survey of Nation's Top Attorneys," available at http://www.aaml.org/go/about-the-academy/press/press-releases/rising-unemployment-creating-more-work-for-divorce-lawyers/.
59 See Fernandez, "Once 'Very Good Rent Payers' Now Facing Eviction," NY Times, May 5, 2009, available at http://www.nytimes.com/2009/05/05/nyregion/05evict.html.
60 See id.

The economy's effects on Family Court and the state's protracted failure to provide sufficient judgeships transcend already vulnerable litigants to affect even state eligibility for needed federal funds. Under the federal Adoption and Safe Families Act ("ASFA"), New York's eligibility for hundreds of millions in federal financial assistance depends upon improvement on, and ultimate compliance with, a variety of metrics bearing on child safety and permanency. New York failed the 2008[61] Child and Family Services Review (CFSR), a federal-state collaborative effort designed to help ensure that quality services are provided to children and families through state child welfare systems. The review identifies strengths and areas needing improvement in state programs and systems, focusing on outcomes for children and families in the areas of safety, permanency, and child and family well-being. The State fared poorly on numerous metrics in May 2008, and while there were some bright spots in the CFSR in August 2009, key findings show that New York was not in substantial compliance with any of the outcomes that assessed safety and permanency and fared poorly relative to other states.

Of key concern to the reviewers was the state's failure to achieve timely adoptions: only in 18% of applicable cases did the state meet federal guidelines in this area. New York also fell below 50% performance on visiting with parents and siblings on foster care, relative placements for children in foster care, relationship of children in foster care with parents, needs and services of child, parents and foster parents, child and parent involvement in case planning, and caseworker visits with parents.[62]

To be sure, many steps in the child permanency process depend on the timely performance of local child protective agency obligations, not the Family Courts themselves. By law, these agencies must conduct fact-findings and prepare extensive reports that, in turn, require the coordination of caseworkers, schools, custodial parents, foster families, and professionals across the justice system. Because new Family Court filings have grown and remain so high, the intensive judicial monitoring that ASFA and New York's 2005 permanency law assume—monitoring that the law specifically intends to help keep agencies and litigants on track—is becoming increasingly difficult. As a result, courts cannot always superintend or otherwise coordinate timely agency performance of obligations with the rigor that legal deadlines and child welfare require. Thus, while there are many reasons for New York's apparently continuing trend of ASFA non-compliance, and while the Judiciary does not appear to be primarily responsible for ongoing noncompliance, inadequate Family Court judgeships are an important factor because plainly more judgeships would permit the Judiciary to provide the coordination function that, for ASFA audit purposes, appears to be so vital in collaborating across agencies to enhance child safety and permanency. In short, creating Family Court judgeships appears to be an indispensable step in complying with federal law, and ensuring continued New York State eligibility for vital federal funding in the justice area.

61 See "2008 Child and Family Services Review", available at http://www.ocfs.state.ny.us/main/reports/2008%20Statewide%20Assessment.pdf.
62 See generally id.

MAKING DO

Because new Family Court judgeships have not been forthcoming, the Judiciary has been working with allied agencies to do everything reasonably possible to make the best of a bad situation. Aside from relying on extraordinary efforts by judges and staff, these initiatives generally fall into three categories.

The first category of initiatives diverts cases from clogged Family Court calendars that might be resolved in whole or in part by other means. Family Courts use trained support magistrates, hearing officers, and referees to expedite certain fact-findings and custody and support orders that otherwise might lag while awaiting an open Family Court part. New York City Family Courts use approximately 85 non-judicial hearing personnel, including 13 part-time judicial hearing officers representing 8.5 full-time equivalents ("FTEs"), to help control dockets and conserve judges' time for the most sensitive or contentious matters.[63] Family Court referees also sit in night court in all five boroughs and can issue various forms of temporary relief (e.g., temporary orders of protection). Use of these personnel is even more prevalent in the highest docket counties outside New York City, where approximately 130 full-time non-judicial personnel perform adjudicative functions in cases that otherwise would await open calendars.[64] In all instances, cases proceed under close supervision of a Family Court judge, to whom litigants may appeal adverse determinations, thus helping promote uniform, fair, and timely application of the law.

In addition to these quasi-judicial dispositions, Family Courts make increasing use of alternative dispute resolution ("ADR") to divert cases from clogged courts that might be resolved by more amicable means. In New York City, the Family Court Child Permanency Mediation Program uses a professional team of court staff and agency mediators to resolve selected child abuse and neglect cases. Likewise, the Family Mediation Program uses staff from the nonprofit Community Mediation Service to screen child custody, visitation, juvenile delinquency, and PINS cases for diversion from court to consultant mediators admitted to practice on a specialized Family Court roster. Outside New York City, court-annexed mediation programs handle custody cases in Nassau and Schenectady County Family Courts, and permanency cases in Albany, Chemung, Erie, Nassau, Niagara, Onondaga, and Orange Counties. Across the state, eligible Family Court cases also route to a statewide network of Community Dispute Resolution Centers supported by the Judiciary. These ADR programs allow thousands of child- and family-welfare cases to be speedily resolved rather than further clog Family Court dockets.

A second category of initiatives uses administrative and operational steps to reduce courtroom delays by speeding access to information and the filing of papers. The Judiciary's Uniform Case Management System for Family Courts now allows real-time focus on child welfare cases and particular enhancements of judicial monitoring that help accelerate child permanency. An increasingly extensive network of "data-share" programs between Family Courts and allied justice agencies synchronizes agency reports and other case data that otherwise might be inconsistent or missing—a common source of docket delays. An extensive information technology project is helping bring together Family Courts and the Office of Court Administration with the New York State Office of Children and Family Services and New York City ACS to synchronize adjourn dates and permit electronic filing of Family Court petitions as soon as agencies open case files. The project decreases data entry time, reduces the need for physical transfer of papers, and markedly improves communication about cases—all reducing avoidable adjournments. This project also encourages early scheduling of permanency hearings for children in foster care, and cues the preparation of case reports needed for effective judicial action, thereby helping accelerate child permanency. An array of model Family Court parts, "best practice" parts, and Family Treatment Courts across the State also speed dispositions and remove barriers to permanency.

63 As of this writing, 38 support magistrates, 34 referees, and 13 part-time judicial hearing officers (FTE approximately 8.5) serve the New York City Family Court.
64 As of this writing, 91 support magistrates, 37 judicial hearing officers, and 23 full-time and four part-time referees serve Family Courts in the 57 counties outside New York City.

A third group of initiatives leverages the Judiciary's temporary-assignment authority to bring to Family Court judges appointed or elected to other courts. As of this writing, 13 judges from the New York City Civil and Criminal Courts are temporarily assigned or "loaned" to Family Court to help relieve dockets, and Justices of the Supreme Court also are helping clear New York City Family Court backlogs on an as-needed basis. Reliance on such temporary assignments is even greater outside New York City, where approximately 20 judges from County Court, Surrogate's Court, and the City Courts preside temporarily in the Family Courts to help clear backlogs.[65] All of the foregoing temporary assignments greatly help to address mounting dockets and minimize delays: without them, Family Court's per-judge dockets would be even higher than they are now.

In concert with these initiatives is a broad-based Judiciary pro bono program to leverage attorneys working reduced schedules or looking for work due to the economy, to provide legal services and advice to pro se litigants, especially in Family Court.[66] Describing this current initiative, Chief Administrative Judge Ann Pfau indicated that the need for these attorneys is particularly acute in the cases generated by difficult economic circumstances, including child support and other matters in Family Court.[67] Former Chief Judge Kaye, to whom Judge Pfau gave credit for the program, noted that this initiative is essential to help "courts just flooded with foreclosure cases, flooded with credit card debt cases, flooded with Family Court filings."[68]

Temporary assignments, ADR, and operational innovations of all sorts have helped make the difference for Family Court cases they divert from overcrowded dockets or otherwise expedite to completion. They cannot, however, begin to redress the crushing volume of cases with the dispatch that the administration of justice requires. At best, temporary assignments are a short-term and limited fix; even if this short-term fix has taken on the appearance of a permanent one, it cannot possibly be enough for two reasons. First, as this report has demonstrated, there simply are too many cases. Second, greater supplementation of the permanent Family Court bench cannot come by temporary assignments without risking substantial impairment to the effective operation of the courts whose judges would be temporarily assigned to cover Family Court, as the current era's spikes in other courts' dockets of consumer credit, housing, small claims, and other cases attributable to the economic downturn amply demonstrate. Likewise, operational initiatives can help promote the more efficient use of the limited time of overworked judges and allied stakeholders in the family justice system, and can greatly assist in reducing adjournments, but cannot alone stem this rising tide of cases. So too can ADR be a helpful supplement to adjudicative processes, but may not be appropriate for all Family Court matters (e.g., abuse and neglect).

For these reasons and others, it is impractical to imagine that the Judiciary can use these kinds of initiatives alone to serve all Family Court litigants' needs without a new infusion of Family Court judges commensurate with the courts' workloads. This same conclusion has appeared in many of the 17 reports on the subject published over the last 10 years. Accordingly, while the Judiciary is to be commended for its careful attention to making increasingly efficient use of its limited resources, the final analysis—and the first step in helping rescue Family Court from the overwhelming weight of its dockets—must focus on more judgeships.

65 Judges of the County Court, Surrogate's Court, Supreme Court in New York City and City Courts outside New York City may be temporarily assigned to Family Court on a part-time or part-year basis, consistent with docket needs both in the Family Court and the court to which the judge originally was elected or appointed. See generally N.Y. Const., art. VI, § 26. Such temporary assignments are denoted as fractional FTEs.
66 See Stashenko, "Economy Prompts N.Y. Courts' New Program for Volunteer Attorneys," NY Law Journal, March 30, 2009.
67 See id.
68 Id.

RECOMMENDATIONS

This report has described the perfect storm that New York Family Court now faces after so many years without new judgeships commensurate with docket growth. New substantive obligations that federal and state statutes impose on courts and justice agencies, and the enhanced motion practice arising from continuous representation under the 2005 permanency law, make each case more complicated and time intensive. Add that new filings have soared due to the doubling of permanency hearings, increase of the PINS age, and more aggressive reporting in the wake of the Nixzmary Brown case, and Family Court judges and staff increasingly have too little time for the volume, complexity, and sensitivity of matters coming before them. Further add that many allied justice agencies themselves are overworked, causing necessary reports and other case files to be delayed and coordination among the many participants in a juvenile justice case to be impaired, and docket delays become even more endemic.

Add then the statutorily required prioritization of abuse, neglect, and domestic violence cases, and other Family Court matters (e.g., custody, visitation) can face even greater delays that directly impact at-risk families. Further add that the current economic crisis is adding additional stress on at-risk families and further burdening the family courts. Finally, add that the continued New York ASFA noncompliance could jeopardize New York eligibility for federal funds, and justice agencies risk having to do even more with less. By any of these measures, and certainly by all of them together, the harm to children, families, substantive justice, the rule of law and government itself cannot be overstated.

In a sense, the solution has been clear for years, even decades. Since the 1960s, leaders of the bench and bar have urged the creation of more Family Court judgeships. Now, nearly 20 years after the last judgeship was established for New York City, with dockets soaring across the system and with new economic challenges affecting families and children across the state, it is past time to heed these calls.

For the foregoing reasons, this report recommends as follows:

I. PHASE IN 39 FAMILY COURT JUDGESHIPS ON THE BASIS OF NEED

The Judiciary's judicial needs analyses of 2005 and 2009, and subsequent legislation proposing to create 39 Family Court judgeships across the state, offer a roadmap to redress Family Court's most urgent needs. While dockets and economic forces have continued to evolve, these factors appear only to exacerbate the need for the judgeships requested. It is no exaggeration that the Family Court and the broader family justice system's ability help at-risk New Yorkers weather the current socioeconomic storm depends on the rapid infusion of necessary judgeships commensurate with need. Accordingly, the 39 judgeships that the Judiciary requested should be the state's down payment toward ensuring that the Family Court is equal to the heavy burdens placed on its shoulders.

To be sure, today New York State faces critical revenue shortfalls and budget challenges worse than any since the 1970s if not the Great Depression. The state cost of implementing the Judiciary's Family Court judgeship request is not insignificant (approximately $750,000 per judgeship, on average),[69] and given the current fiscal climate, this cost appears to be higher in relative terms than it was a few years ago. On the other hand, it is precisely because the economy has greatly swelled demand for Family Court services, while constraining the Judiciary's practical capacity to temporarily assign judges from increasingly busy lower courts to serve in Family Court, that these difficult economic circumstances weigh in favor of creating Family Court judgeships at this time. Likewise, the establishment of Family Court judgeships, to the extent that new judicial resources

69 This figure is an estimate and includes security, court attorney and clerical staff, as well as non-personnel services, for each new judge.

can help clear backlogs and enforce a culture of punctual adjudication of child- and family-welfare cases, will help control costs that counties and New York City expend in social service and justice agencies interacting with Family Courts, foster care, and other agencies. Further, as described above, continued New York State eligibility for federal funding under AFSA may well depend on the kind of improved performance that only an infusion of new judgeships can help ensure.

The task, then, is to balance these goals in a way that serves both the administration of justice and the state's fiscal needs. Accordingly, New York State should begin with immediate enactment of 21 new Family Court judgeships, allocated among the City of New York and counties outside New York City on the basis of need (see list below). Chief Judge Jonathan Lippman proposed precisely this legislation in 2009, and the Senate passed it on September 10, 2009 (S.5968). It awaits final action in the Assembly. Critically, this legislation would have zero fiscal impact on the current budget year: judgeships would take effect January 1 and, under this legislation, would be funded out of the existing Judiciary budget. The remaining 18 judgeships would be phased in over a period of time, depending on the speed with which the New York State economy recovers and the infusion of 21 new Family Court judgeships frees up other judicial resources that might be reallocated to cover unmet needs. This lead time, in turn, would allow the Judiciary to budget for new judgeships and provide necessary facilities, while at the same time providing the steady infusion of resources the system requires. If judgeships slated to be established in out-years turn out not to be necessary, then this phased approach also would allow state leaders an opportunity to revisit the creation of those judgeships before funds are expended in their support.

21 FAMILY COURT JUDGESHIPS INCLUDED IN S.5968	18 FAMILY COURT JUDGESHIPS REQUIRED IN FUTURE YEARS
New York City (7)	New York City (7)
Albany	Columbia
Broome	Monroe (2)
Chautauqua	Nassau
Chemung	Niagara
Chenango	Rockland
Erie	Saratoga
Fulton	Suffolk
Oneida	Tioga
Oswego	Ulster
Rensselaer	Warren
St. Lawrence	
Schenectady	
Steuben	
Westchester	

SOURCE: NYS OFFICE OF COURT ADMINISTRATION, 2009 OCA "JUDICIAL NEEDS ANALYSIS"

Together, this approach would allow the state to provide the largest infusion of Family Court judgeships since the Family Court was first established in the early 1960s, in a way that keeps faith with at-risk New Yorkers and the height-ened duty of fiscal responsibility that these austere times require.

2. ESTABLISH A PROCESS TO PERIODICALLY ASSESS FAMILY COURT'S NEEDS

One of the most important lessons of this report is that Family Court might have been better situated to absorb the economic downturn's docket impacts if it had not faced such a long drought without new judgeships. As much as speedily addressing Family Court's most exigent unmet needs, it is this protracted inaction that must be redressed going forward. Accordingly, the three branches should together explore a new process, whether formal or informal, by which the needs of Family Court can be examined and addressed on a periodic basis, sheltered from undue political influences that over the last half century have caused the perceived "stepchild" status of Family Court to harm New York children and families.

While there may be many models for such a multi-branch approach, one finds precedent in the manner in which the state has expanded the corps of City Courts judgeships outside New York City over the decades. For nearly 30 years following state takeover of local court funding,[70] the

70 See L 1976, ch. 966; Judiciary Law § 39.

Judiciary and the Legislature have collaborated increasingly closely to ensure that the structure and re-sources of the state's 61 City Courts are well suited to community needs. Every four or five years, OCA, with assistance of a committee of sitting City Court judges representative of all regions of the state and courts of varying sizes, undertakes a detailed study of City Court operations and dockets around the state, including socioeconomic influences that may bear on future docket growth. Their study produces a series of recommendations for reform, which then are passed on to the Legislature for approval. The Legislature and Executive, in turn, have come to rely on this periodic City Court assessment not only because of its objectivity but also because it tends to substitute for a less efficient process by which individual legislators, judges or other stakeholders may press for enactment of new individual City Court judgeships for each of five dozen City Courts around the state. A uniform, periodic, predictable, objective, and fair approach thus has inured to the benefit of all three branches of government, and thus to the administration of justice itself.

A similar system might assist Family Court. With support from OCA, a committee of Family Court judges and administrators could establish a procedure to evaluate dockets, docket growth rates, economic factors, societal factors, new statutory and regulatory mandates, and other measures tending to bear on Family Court dockets and workloads. These procedures, in turn, could help provide a consensus approach that periodically leads to a legislative proposal for changes in apportionment of Family Court judgeships.

Such an approach, while perhaps also advisable for other judgeships in other courts, plainly appears necessary for Family Court given that its judgeship needs have been unmet for so long. Such a periodic approach would help ensure that Family Court never again goes so long without the judgeships that nearly every major stakeholder in the justice system has urged the state to create.

3. EXPAND TEMPORARY ASSIGNMENTS IN FAMILY COURT

While recognizing that lower courts already are overburdened with civil and criminal dockets swelling on account of the economy, this report concludes that Family Court resources have been stretched so thin for so long that remedial steps are urgently necessary. Especially if the state does not create enough new Family Court judgeships to allow Family Court to meet its responsibilities compatibly with the administration of justice, the Judiciary may have little choice but to consider additional administrative measures, including additional temporary assignments and case transfers, to ensure that Family Court timely can meet its obligations.

Such measures, as described in this report, would not be easy. Already the Judiciary has undertaken a slew of laudable operational and administrative steps to improve the efficiency of Family Court parts, expedite the hearing of selected cases, leverage new technology and procedures to minimize adjournments and other delays, and temporarily assign lower court judges to Family Court as needed. These operational steps should continue and be expanded as appropriate given docket needs in other courts.

It is hoped that a swift infusion of new Family Court judgeships will make unnecessary the most difficult kinds of choices—which cases in which courts to delay so that others can have their day in court—so that all case types in all courts can be treated with the dispatch they deserve.

4. ELIMINATE UNNECESSARY LEGAL BARRIERS TO TEMPORARY ASSIGNMENT IN FAMILY COURT

While the Constitution vests in the Judiciary an expansive temporary assignment power, it is not complete. Under current law, judges of the Supreme Court outside New York City, the Court of Claims, and the District Courts on Long Island cannot constitutionally preside in Family Court.[71]

71 See NY Const, art VI, § 19.

These anachronistic restrictions, which date from the establishment of the Unified Court System in 1962, should be revisited in light of modern caseloads and governance standards.

Moreover, decades of experience and innovation have created, albeit in patchwork form, the broader array of assignment options that this proposal would institutionalize statewide. Supreme Court outside New York City already hears Family Court matters in the context of Integrated Domestic Violence parts, and thus already hears the very cases that, were they assigned directly, would appear to be unconstitutional for them to hear. Court of Claims judges routinely sit in Supreme Court and thus can hear these very Family Court matters, provided they are styled as Supreme Court matters. While full-time City Court judges outside New York City routinely sit in Family Court on a temporary basis, District Court judges – who are Long Island's version of City Court judges – cannot constitutionally preside in Family Court.

For these reasons, and given the high volume of Family Court matters entering the family justice system each day, constitutional reforms to ensure that a broader class of trial judges lawfully may hear these cases, compatibly with the administration of justice and the needs of their home courts, appear to be in order. To ensure proper judicial expertise, such reforms and temporary assignments would need to be twinned with proper judicial training and other operational steps to ensure that these judges receive the support they require to do justice in these difficult cases.

CONCLUSION

Over 30 years ago, former presidential candidate Hubert H. Humphrey said that "The moral test of government is how that government treats those who are in the dawn of life, the children; those who are in the twilight of life, the elderly; those who are in the shadows of life; the sick, the needy and the handicapped." Modern New Yorkers today might use slightly different words to convey these sentiments, but they are as true today as they were 30 years ago.[72]

Such was the founding purpose of the New York Family Court, and yet too often, the most vulnerable New Yorkers who are Family Court's litigants by the millions—the young and the fragile—still await the full realization of the Family Court's mission: to provide family litigants the full measure of protection and justice that the Constitution promises.

As dockets continue to soar and economic challenges continue to fray the fabric of allied justice and social service agencies, it is more critical than ever that New York solve its quiet family justice crisis by providing the infusion of new judgeships that this report and 17 others like it have recommended for the last 20 years.

It is hoped that this report, and the continuing efforts of so many who care for the welfare of children, women, families, abuse victims, intimate partners, and their communities, will help draw closer the day that Family Court and its hardworking judges and staff will have the tools they require to do the complete and timely justice that New Yorkers deserve.

72 Hubert H. Humphrey, Speech of November 1, 1977, Washington D.C.