

John K. Carroll  
*President*

Janet E. Sabel  
*Attorney-in-Chief*  
*Chief Executive Officer*

Dawne A. Mitchell  
*Attorney-in-Charge*  
Juvenile Rights Practice

Lisa A. Freeman  
*Director,*  
Special Litigation and Law Reform Unit

Tel (212) 577-7982  
Fax (646) 616-4982  
LAFreeman@legal-aid.org

January 5, 2022

Hon. Kathy Hochul  
Governor of New York State  
NYS State Capitol Building  
Albany, NY 12224

Hon. Andrea Stewart-Cousins  
Democratic Leader, New York State Senate  
188 State Street LOB - Room 907  
Albany, NY 12247

Hon. Carl Heastie  
Speaker, New York State Assembly  
New York State Capitol Room 349  
Albany, NY 12247

Re: The Legal Aid Society Legislative Priorities for Child Welfare and Juvenile Legal System Reform

Dear Governor Hochul, Majority Leader Stewart-Cousins, and Speaker Heastie:

As New York City's primary provider of attorneys for children in the child welfare and juvenile legal systems, we write to share our priorities for the 2022 legislative session.

We applaud Albany's passage of measures raising the lower age of juvenile delinquency jurisdiction, clarifying and expanding foster care reentry, prohibiting the routine use of shackles on children in family courts, ensuring that children charged with violations or subject to warrants are treated equitably whether in family court or the youth part, among others. These victories were the result of tireless advocacy by many of the communities directly affected and advocates on their behalf.

While these accomplishments go far toward ensuring brighter futures for New York's young people, thousands of our clients continue to suffer from decades of deeply flawed practices in both the child welfare and juvenile legal systems. The devastating effects of these practices cause trauma to Black and Latinx children and families and forever shape their lives.

We urge your offices to throw your fierce support behind the proposals we lay out below, proposals that would reduce the racist legacy of the child welfare system and juvenile legal systems and make them more just. Albany must lead by enacting legislation that supports and invests in children and families. On the juvenile legal system front, this includes prohibiting the interrogation

**Justice in Every Borough.**

of youth until they have counsel, sealing and expunging juvenile delinquency records, ending draconian suspension practices that feed the school to prison pipeline, curbing discriminatory hyper-surveillance, and providing fair discovery in delinquency proceedings. And we must defend the reforms brought by New York's historic Raise the Age legislation. On the child welfare front, these reforms must include adequately funding preventive services to support families, reforming the State Central Register to reduce abuse, protecting the Social Security benefits of children in foster care, providing adequate resources for youth aging out of foster care, and prohibiting discrimination against unmarried parents. The legislation we are championing below is a reinvestment in children and families who suffer from the legacy of systems that cause tremendous harm in our most vulnerable communities.

*We urge Governor Hochul to include important measures in the Executive Budget:*

**The Children and Families Reinvestment Act – Brisport/Hevesi**

Children and Families Committee Chairs Senator Brisport and Assembly Member Hevesi, have put forward The Children and Families Reinvestment Act, a comprehensive framework to support children and families in dealing with the devastating effects of the COVID-19 pandemic and beyond. The Act includes several measures that we have supported for several years, which are more important now than ever, including:

**Remove KinGAP from the Foster Care Block Grant** – New York's subsidized Kinship Guardianship program should be funded outside of the foster care block grant, just as the adoption subsidy is a separate, uncapped funding stream.

**Restore preventive services funding** – State reimbursement for preventive services is set in statute at 65 percent, yet for over a decade the State has been reimbursing localities at only 62 percent. Restoration is even more critical now, to enable the State to draw down federal dollars for approved preventive services under the Family First Prevention Services Act.

**Increase Preventive Services Housing Subsidy** – this subsidy, set in statute at \$300 per month, must be increased to be a viable support to ensure housing stability for youth leaving foster care, families reuniting with children in foster care, and to prevent children from entering foster care.

*We urge the Legislature to pass the following critical bills:*

**Increase Protections for Youth Interrogated by Police – S2800B (Bailey) / A5891B (Joyner)**

Young people are far more vulnerable than adults to police coercion and more apt to falsely confess. Adolescent brain development research demonstrates why Miranda warnings are insufficient to protect young people's 5th Amendment right against self-incrimination. This bill would require that young people under the age of 18 consult with an attorney before being subjected to custodial interrogation, ensuring that any waiver of rights under Miranda is genuinely knowing, voluntary, and intelligent. Violation of this requirement would result in suppression of the child's statement at trial.

**Family Court Delinquency Discovery Reform – S4554 (Bailey) / A4952 (Joyner)**

Consistent with Constitutional Due Process and Equal Protection principles, New York statutes governing juvenile delinquency proceedings must, to the extent that they affect substantial rights, provide at least as much protection as Criminal Procedure Law provisions governing criminal proceedings. Those principles mandate the proposed legislation, which would provide discovery rights in juvenile delinquency proceedings that mirror discovery rights in criminal proceedings that were put in place with the enactment of CPL Article 245.

**Exclusionary School Discipline – S7198 (Jackson) / A5197 (Nolan)**

School districts throughout New York state over-utilize exclusionary discipline practices, including suspensions and classroom removals. These punitive practices have a disproportionate impact on students of color and students with disabilities. They deprive students of critical instructional time and increase the likelihood that students will be held back a grade or drop out. This legislation would require school districts to develop discipline codes that mandate the use of age-appropriate, graduated and proportionate disciplinary interventions, including restorative practices. It would limit the use of suspensions for students in kindergarten to 3rd grade, shorten the maximum length of suspensions from one year to 20 school days, and require school districts to provide suspended students with alternate instruction so that they don't fall behind academically.

**Sealing and Expungement – S3603 (Bailey)**

Children should not suffer collateral consequences of legal system involvement that follow them into adulthood, interfering with their ability to secure education, housing and gainful employment, among other things. While current law provides some protections relating to arrest and family court records, those protections do not go far enough; moreover, New York law currently provides greater opportunities for sealing and expungement of records to adults than it does to children. This bill is a promising starting point, and should be amended to ensure adequate protections for children.

**PINS Sealing and Expungement – A7621 (Hevesi)**

**Justice in Every Borough.**

Records of status offenses should not be used against children in perpetuity. This bill would ensure that such records, which currently are not sealed even when there is a favorable outcome, are not used to deprive young people of education, employment and other opportunities.

**JD and PINS Permanency Planning –**

This bill would add permanency planning requirements such as permanency hearing reports to the provisions of Article 3 and Article 7 of the Family Court Act, ensuring that children in placement receive services supporting a prompt return to the community.

**End Rogue DNA Databanks – S1347 (Hoylman) / A6124 (Zinerman)**

When New York's legislature authorized the State DNA index to store profiles from people convicted of crimes, New Yorkers were assured that their genetic privacy would remain protected against law enforcement overreach. Local governments – most notably New York City – are ignoring that balance by running their own, rogue DNA indexes, without any regulation, accountability, or oversight. New York City's shadow databank contains profiles from children as young as 11, people never charged or prosecuted, and innocent people from communities of color who were specifically targeted based on their race. The Legislature never intended for cities to run amok with DNA collection and storage. This bill clarifies the law to protect the State DNA index and end the other databases that perpetuate genetic stop-and-frisk and erode sacred privacy rights.

**Confidential Reporting -- S7326 (Jackson) / A7879 (Hevesi)**

This bill would require a caller making a report of suspected child abuse or maltreatment to the state central register (SCR) to leave their name and contact information, reducing the potential for abuse of the SCR to harass innocent individuals.

**Preserve Social Security Benefits of Children in Foster Care –**

Approximately 10 percent of youth in foster care are eligible for Social Security Benefits because they have lost their parents or other caregivers (SS survivor's benefits) or because of a disability (SSI). Local departments of social services (LDSS) identify children in foster care eligible for these benefits, file claims on their behalf, and request to be assigned as the representative payee. The LDSS then keeps the child's benefits to reimburse itself for the cost of foster care. This measure would require LDSS to place Social Security Benefits into savings accounts designated for the beneficiary children in foster care.

**Application to Return a Child from Placement –**

This measure would amend Family Court Act section 1088 to provide for an expedited hearing to be held within three days regarding the return of a child in foster care or direct placement to their parent or other person legally responsible for their care, under terms comparable to expedited hearings during Article 10 proceedings under section 1028.

**Parental Equity Act – S6389 (Brisport) / A7347 (Hevesi)**

This bill would amend the domestic relations law and social services law to address the inequitable treatment of unmarried fathers. It would benefit the children of unmarried fathers by providing these fathers with the same opportunities available to mothers and married fathers to obtain the services and support needed to establish meaningful and supportive relationships with their children. It would also ensure that these parental bonds are maintained absent a showing, by clear and convincing evidence, of permanent neglect, abandonment or other irremediable parental unfitness.

**Extended Reunification Time for Minor Parents –**

This measure would create a specific exception to the Social Services Law requirement that a petition to terminate parental rights be filed if the child has been in care 15 out of the previous 22 months in cases where the respondent parent is themselves in foster care. While there is already a general exception, a specific exception would highlight that young parents who are in foster care and lack an extended family support network have an exceptional need for supportive services and the LDSS has an enhanced responsibility to support them as parents.

**Expedited Appeals of Termination of Parental Rights –**

Expedited appeals of family court orders terminating parental rights would benefit children in foster care by minimizing delay and confusion; for children who will be adopted, adoptions will be able to move forward more expeditiously, and when the appellate court determines that parental rights should not be terminated, reunification planning will move forward promptly.

**Adoption Subsidy – S4055 (Persaud) / A2477 (Hevesi)**

This bill would amend the Social Services Law to (1) require adoptive parents to certify that they are fulfilling their obligation to provide support to their adoptive children and (2) provide social services officials with a means to transfer the adoption subsidy to the individual who is providing for a child if that child's adoptive parent is failing to do so. The bill would ensure that adopted children benefit from the subsidy that their adoptive parents receive for their care, and reduce the risk of young people experiencing homelessness after the disruption of an adoption.

**Protect Youth Transitioning from Foster Care –**

This measure would protect youth who remain in foster care after turning 21 by expanding family court jurisdiction to include enforcement of orders entered on behalf of those young people before they turn 21, thus ensuring that youth receive the services to which they are entitled and they are not left without recourse to the court upon turning 21.

If you have questions about any of these proposals, please do not hesitate to contact me.

Very truly yours,

A handwritten signature in black ink that reads "Dawne Mitchell". The signature is written in a cursive style with a large, looping initial "D" and a long, sweeping underline.

Dawne A. Mitchell