



Public Advocate for the City of New York

**CARING FOR THE
CHILDREN:
IMPROVING THE CITY'S RELATIONSHIP WITH
CHILDREN EXPOSED TO DOMESTIC VIOLENCE**

**A REPORT BY PUBLIC ADVOCATE BETSY GOTBAUM
JULY 2005**

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Executive Summary

Children are uniquely affected by the presence of domestic violence in the home. Even if they are not on the receiving end of a physical or verbal attack, they may experience lifelong consequences as a result of the exposure. While increased attention is being paid to the impact of domestic violence on child witnesses to domestic violence, more needs to be done to prevent the exposure in the first place and to provide services to those who have already been exposed.

This report explores the extent to which New York City has begun to take steps to aid this vulnerable population and identifies areas where improvements still need to be made. The Administration for Children's Services (ACS) has developed many new initiatives to improve its work with this population, but several of these have not been fully implemented and there are other areas that still need to be addressed. As a whole, the City needs to focus more attention on providing mental health and counseling services to those children who have witnessed domestic violence so that they can recover as fully as possible.

Summary of Findings

- ACS does not screen to determine whether anyone in prospective adoptive and foster homes has a history of perpetrating domestic violence.
- Batterers and their families and friends can continue to perpetrate abuse by calling the state child abuse hotline and making false allegations.
- As the result of a court case against the agency, ACS has dramatically decreased the number of removals of children from mothers who are victims of domestic violence and has implemented a series of initiatives to improve its handling of child welfare cases involving domestic violence.
- ACS is ineffectively and infrequently using Clinical Consultation Teams on domestic violence cases.
- ACS has failed to ensure adequate training for many important frontline workers and has not mandated that supervisors and directors of preventive services agencies receive training in domestic violence dynamics from domestic violence specialists.

Summary of Recommendations

- ACS must screen all potential adoptive and foster homes in the Domestic Violence Registry to ensure that the homes are violence free.

- ACS should make a public service announcement promoting the importance of calling the child abuse hotline if abuse or neglect is suspected but should also warn that deliberately making a false report is a crime.
- ACS must ensure that all workers are adhering to the domestic violence policy reforms the agency has implemented over the past few years and are integrating its Guiding Principles on domestic violence into the daily activities of its frontline caseworkers.
- ACS must mandate caseworkers to utilize Clinical Consultation Teams in every case involving domestic violence.
- ACS must mandate that all caseworkers at foster care contract agencies receive specialized training on domestic violence issues.
- ACS must mandate that all supervisors and directors at preventive services agencies receive training on the dynamics of domestic violence from domestic violence experts.

Introduction

Adults are not the only victims of domestic violence. Child witnesses of domestic violence can face lifelong consequences if they do not receive the appropriate interventions and services.

This report discusses the failures of the City to protect children who are exposed to or at risk of domestic violence in their homes and in foster care. While the Administration for Children's Services (ACS) has been forced by the courts in recent years to take significant steps to improve its approach to cases involving domestic violence, the agency has not yet fully implemented many of its progressive initiatives. ACS has also failed to ensure that foster children will not be exposed to domestic violence in their foster homes, and the City as a whole has not provided child witnesses to domestic violence the services that they need to recover as completely as possible.

The Impact of Domestic Violence on Children

Researchers estimate that between 10 and 20 percent of children nationwide are at risk of exposure to domestic violence.¹ Competent research about the effects on children of exposure to domestic violence is in its infancy.² Children's experiences vary depending on the level of violence, the degree of the exposure, other stressors to which the child may be exposed (e.g., community violence, media violence, school violence), the resulting harm such exposure produces for the child, the coping skills unique to the individual child, and the presence of other protective factors such as a child's relationship with his or her parents.³

While some children who are exposed to domestic violence in the home show no greater problems in adulthood than those who are not exposed, many other children can suffer lifelong consequences. Some problems associated with childhood exposure to domestic violence include higher levels of aggression, poor social relationships, lower cognitive functioning, belief in rigid gender stereotypes and increased tolerance for and use of violence in adult relationships.⁴ Studies further indicate that children who are exposed to domestic violence in their homes are at an increased risk of experiencing neglect or abuse themselves.⁵

Experts caution that child welfare interventions in cases in which a child has been exposed to domestic violence must be sensitive, non-punitive, and collaborative in order to promote safety, well-being, and stability for not only the child, but the adult victim as

¹ National Clearinghouse on Child Abuse and Neglect Information, National Adoption Information Clearinghouse, *Children and Domestic Violence: A Bulletin for Professionals*, August 2003, available at <http://nccanch.acf.hhs.gov/pubs/factsheets/domesticviolence.pdf>.

² Jeffrey Edleson, Ph.D., *Should Childhood Exposure to Adult Domestic Violence Be Defined as Child Maltreatment Under the Law*, available at: <http://www.mincava.umn.edu/link/documents/shouldch/shouldch.shtml>.

³ See 2.

⁴ See 1.

⁵ *Ibid.*

well.⁶ It is also imperative for all agents of the child welfare system to be aware of the potential for racial bias when making removal determinations as studies have shown that children of color are overrepresented in the child welfare system.

Safety Hazard: ACS Places Children in Dangerous Foster Homes

Removing children from their parents' care does not necessarily ensure their safety.⁷ The incidences of abuse and death among children in foster care in New York City are twice that of children in the general population.⁸ According to ACS, over 400 children were reported abused or neglected in foster care in fiscal year 2004 in New York City.⁹ There is no way of knowing how many of these incidents could have been avoided by better screening of foster homes and no way of actually knowing how many more incidents of abuse in foster homes go unreported. ACS removes children from homes that it finds to be unsafe but does not ensure that the new homes actually are safer.

*Andre recently aged out of foster care. In one of his last homes, his foster brother, who was about twenty at the time, was dating a girl of the same age. Many times, in the presence of Andre, the foster brother and the girlfriend would argue, and he would hit her in the face, leaving marks. Andre complained many times to his foster mother, but she refused to intervene. He also complained to his caseworker, but months went by before she took any action. The violence brought back memories of the abuse that Andre had experienced before he entered foster care.*¹⁰

Adults wishing to become adoptive or foster parents are subjected to a screening process to determine whether or not their homes would be appropriate placements for foster children. Foster care agencies are responsible for investigating prospective adoptive or foster parents. Investigators ensure that the prospective foster parent is over the age of 21, in good health, has an independent source of income, and a home large enough to accommodate a child. Additionally, the applicant is required to provide character references and is interviewed regarding his or her motivations for becoming a foster parent. Finally, all members of the household over the age of 18 are screened to make sure that they have not been the subject of an indicated report with the State Central Registry of Child Abuse and Maltreatment. They also have to undergo a criminal history check with the New York State Division of Criminal Justice Services.¹¹

⁶ See generally National Council of Juvenile and Family Court Judges, *Effective Intervention in Domestic Violence and Child Maltreatment Cases: Guidelines for Policy and Practice*, 1999. Executive Summary available at: <http://www.vaw.umn.edu/documents/executvi/executvi.html>.

⁷ Linda Ostreicher, *Child Welfare and Domestic Violence*, Gotham Gazette, April 01, 2002, available at <http://www.gothamgazette.com/article/Social%20Services/20020401/15/656>.

⁸ *Nicholson v. Williams*, 203 F. Supp. 2d 153, 199 (E.D.N.Y. 2002).

⁹ Administration for Children's Services, *ACS Update Dec 2004*, available at http://www.nyc.gov/html/acs/pdf/monthly_update.pdf.

¹⁰ All case examples in the report are based on stories shared with the Public Advocate's office by survivors and domestic violence advocates. In all instances, names have been changed to protect the safety of the survivors.

¹¹ New York State Office of Children and Family Services, *Requirements to Become a Foster Parent*, available at <http://www.ocfs.state.ny.us/main/fostercare/requirements.asp>.

At no point in the screening process, however, is there an investigation to determine whether homes are free from domestic violence. This oversight is particularly striking given that a check for protective orders involving members of in a given household would be relatively easy. Since October 1995, New York State has maintained a statewide database of orders of protection and warrants issued in domestic violence cases. Known as the Domestic Violence Registry, the database includes orders issued in both criminal and civil matters and can be accessed by law enforcement and court personnel.¹²

The criminal background check undertaken by foster care agencies is not sufficient to discover incidents of domestic violence. While criminal convictions for domestic violence do appear in a criminal background check, plea bargains and dismissals do not, even if the case resulted in a final order of protection against the defendant.¹³ Furthermore, a criminal background check cannot determine whether any person in a prospective household has been the subject of a family offense proceeding in civil court. Both civil and criminal orders of protection do appear in the Domestic Violence Registry, however.

While in some cases it may be appropriate for children to stay in the custody of parents engaging in domestic violence, it is never appropriate for these children, or any foster children, to be exposed to domestic violence in their foster homes.

It is important for foster care agencies to screen for domestic violence in potential adoptive or foster homes because there is such a large overlap between adult domestic violence and child abuse and neglect. Research indicates that there are both adult and child victims in 30 to 60 percent of families affected by domestic violence.¹⁴ That means that if children are placed into a foster home with domestic violence, they will be at risk for further abuse.

The current foster home certification process also does not include interviews with minor members of the household. Young people experience violent dating relationships, but may be unlikely to have sought or been the subject of an order of protection, because of the limitations of the court system. Without interviewing all of the members of the household, there may be no other way to learn about this potential danger to foster children and no way to provide the appropriate services to ensure that the home will be safe for any foster children placed there.

¹² Division of Technology, Family Protection Registry Center, "Records Retention and Disposition Schedule," August 1998, available at http://www.courts.state.ny.us/admin/recordsmanagement/OCA/OCA_FamilyProtectionRegistryCenter.pdf.

¹³ Approximately one out of five criminally prosecuted domestic violence incidents result in plea bargains, called ACDs, or adjournments in contemplation of dismissal, in which the batterers are given probation and do not have to make guilty pleas, and almost half of the cases overall are dismissed. New York City Criminal Justice Agency, *Combating Domestic Violence in New York City: A Study of DV Cases in the Criminal Courts*, April 2003, available at <http://www.nycja.org/research/reports/ressum43.pdf>.

¹⁴ National Clearinghouse on Child Abuse and Neglect Information, National Adoption Information Clearinghouse, *Children and Domestic Violence: A Bulletin for Professionals*, August 2003, available at <http://nccanch.acf.hhs.gov/pubs/factsheets/domesticviolence.pdf>.

New York State Enables Batterers to Continue Abuse by Alleging Abuse

Domestic violence is not limited to physical abuse. It can take a number of other forms including mental, emotional, and financial abuse. Batterers also sometimes manipulate the system to carry out their abuse. Sometimes they harass their victims through the court systems by filing unnecessary lawsuits or motions within lawsuits, and sometimes they use the child welfare system.

For years Anita's boyfriend had subjected her to various forms of abuse. After one particularly bad beating she called the police. His arrest resulted in a conviction, and he was incarcerated for a few months. Anita felt relieved that he would be out of her life for a while. A few weeks after he was sentenced, she was awakened in the middle of the night by pounding at her door. Police officers were standing there with an ACS caseworker. A call had been made against her saying that she had tried to kill her children. Anita never even spanked her children. The officers searched her home, and the caseworker woke up her children and interviewed them. Both Anita and her children were terrified. Later, Anita learned that her boyfriend had managed to place a call to the child abuse hotline from prison and make the false allegation against her.

According to survivors of domestic violence, batterers and their family and friends frequently harass victims by calling the child abuse hotline and making false accusations against their victims.¹⁵ Phone calls to the child abuse hotline, which is run by the State Office of Children and Family Services (OCFS), can be made anonymously so, while the victim may suspect her batterer is her accuser, she is unable to prove it. As long as there is sufficient information to make a report, all calls to the hotline will be referred to ACS to be investigated, no matter how many previous calls have been made and determined to be unfounded.

The investigation process can be harrowing for victims and their children. They are interviewed by the investigating caseworker, and children often must be physically examined for bruises, as well. Children can even be pulled out of their classes at school to be interviewed and examined each time a report is made. It is a misdemeanor offense under the Penal law for a caller to knowingly make a false report, but because of the difficulty of proving the identity of the caller, such cases are seldom prosecuted.¹⁶

The abuse that survivors experience as a result of their batterers making false allegations of child neglect against them does not end with the investigation. ACS currently uses the name of the mother of the child(ren) to identify child protective cases, whether or not the agency believes the mother is directly involved in the alleged abuse or neglect. As a result her name may appear on the state child abuse registry, the consequences of which may be harsh if she currently works, or would like to work, in a field that involves contact with children, such as child care or teaching. This past March, the City Council

¹⁵ Voices of Women Organizing Project, Battered Women's Resource Center, *Battered Women's Experiences with the NYC Administration for Children's Services*, handout.

¹⁶ NY Penal Law Sec. 240.50.

passed legislation that would require ACS to stop tracking cases in this manner, but it remains to be seen how ACS will implement these changes.¹⁷

Following Orders: Lawsuit Forces ACS to Change its Ways

The Nicholson Case and the Need for a New Way of Thinking

The mission of ACS is to ensure the safety and well-being of every child in New York City.¹⁸ As part of this mission, ACS sometimes finds it necessary to remove children from their parents if their homes are considered to be unsafe due to parental abuse or neglect. During the 1990's,¹⁹ ACS began a practice of removing children from battered women because the women had "engaged in" domestic violence or because they "failed to protect" the children from witnessing domestic violence.²⁰ Since that time, ACS has taken significant steps in improving its approach to child welfare cases involving domestic violence.

Nicholson v. Scopetta,²¹ a recently settled federal class-action lawsuit brought on behalf of women who were battered and who had their children removed by ACS through no fault of their own, challenged this practice of removal.²² The named plaintiff was Sharwline Nicholson, a single working mother of two who was charged with neglect on the grounds that she failed to protect her children from domestic violence. Her story reveals the injustice of that policy:

One afternoon while her infant daughter was asleep in another room and her son was at school, Ms. Nicholson was severely beaten by the father of her daughter.²³ The assault began after Ms. Nicholson attempted to end the relationship. After the batterer left the apartment, Ms. Nicholson immediately called 911 seeking law enforcement and medical assistance. Before leaving with the paramedics, Ms. Nicholson arranged for her children to stay with a neighbor, who had frequently cared for the children. While Ms. Nicholson lay in the hospital with broken bones and bruises, ACS removed both of her children from the care of her neighbor, and informed Ms. Nicholson that in order to see them she would have to appear in court the following week.

¹⁷ New York City Council, *Prop.Int. No. 266-A*, March 9, 2005, available at <http://webdocs.nycouncil.info/attachments/65261.htm>.

¹⁸ Administration for Children's Services, *ACS Mission*, available at <http://www.nyc.gov/html/acs/html/whatwedo/introduction.html>.

¹⁹ The practice began in the mid-1990's, and ultimately took hold in 1998 after a state appellate court ruled on a case called *Lonell J.* ACS interpreted the decision to mean that they could remove children without demonstrating any actual harm to the children and without a court order for the removal. *See* 8 at 215.

²⁰ *See* 8 at 209-210.

²¹ This case began when Sharwline Nicholson, the named plaintiff in the class action, filed a suit in April 2000 on behalf of herself and her children. This case later was consolidated by the courts with cases of other women that had filed similar actions. In January 2001, the plaintiffs made a motion for class certification.

²² *In re Nicholson, Et Al.* 181 F. Supp. 2d 182, 183.

²³ Ms. Nicholson's experiences with ACS and the courts is fully recounted in *Nicholson v. Williams*, 203 F. Supp. 2d 153, 168-173.

The old policy failed to take into account the negative effect a traumatic separation from a parent can have on a child. Caseworkers did not weigh the known harm of removing a child from a parent against the potential harm a child may suffer by staying with the parent. Caseworkers did not try to mitigate the harm of removal by examining each case individually, nor did they offer appropriate services to domestic violence victims so that the removal of the child would become unnecessary. Caseworkers regularly removed the children without first getting a court order.²⁴

Nicholson brought about many of the changes in ACS's policy that advocates hope will continue to improve the agency's traditionally punitive treatment of women reporting domestic violence. It should be noted that while some of these initiatives had been talked about before *Nicholson* was filed, the case may have acted as a catalyst for progress to actually take place.²⁵

In December of 2004, after three years of litigation, the *Nicholson* plaintiffs were able to settle their case with ACS. The settlement became possible after the New York Court of Appeals issued a decision on a part of the case that had been referred to them by the Federal Appeals Court.²⁶ The New York Court of Appeals ruled that the law does not permit a domestic violence survivor to be charged with neglecting her child(ren) based solely on the fact that the child(ren) was (were) exposed to domestic violence.²⁷ In other words, the court found that exposing a child to domestic violence could not be considered neglectful, and instead some actual or threatened harm must be proved to remove a child.²⁸ In explaining why exposing a child to domestic violence is not presumptively neglectful, the court noted, "not every child exposed to domestic violence is at risk of impairment,"²⁹ and therefore government intervention in the family is not always justified.

²⁴ See 8 at 211-212, 228.

²⁵ See 7.

²⁶ After the federal district court made its initial decision to issue a preliminary injunction preventing ACS from removing children from battered women without a court order, ACS appealed that decision to the United States Court of Appeals for the Second Circuit. Recognizing that some of the issues involved in the case were issues of state law, the Second Circuit asked that the New York Court of Appeals answer three certified questions about New York state law:

1. Does the definition of a 'neglected child' under N.Y. Family Ct. Act § 1012(f), (h) include instances in which the sole allegation of neglect is that the parent or other person legally responsible for the child's care allows the child to witness abuse against the caretaker?
2. Can the injury or possible injury, if any, that results to a child who has witnessed domestic abuse against a parent or other caretaker constitute 'danger' or 'risk' to the child's 'life or health,' as those terms are defined in the N.Y. Family Ct. Act §§1022, 1024, 1026-1028?
3. Does the fact that the child witnessed such abuse suffice to demonstrate that 'removal is necessary,' N.Y. Family Ct. Act §§ 1022, 1024, 1027, or that 'removal was in the child's best interest,' N.Y. Family Ct. Act §§ 1028, 1052(b)(i)(A), or must the child protective agency offer additional, particularized evidence to justify such removal?

²⁷ *Nicholson v. Scopetta*, 3 N.Y.3d 357.

²⁸ *Id* at 368.

²⁹ *Id* at 375.

As part of the December 2004 settlement agreement, the City stated that it intended to comply with the Court of Appeals ruling.³⁰

Mere Words? ACS Articulates Praiseworthy Policy Changes for DV Cases

In part, the settlement was possible because ACS had already begun to take steps to modify its antiquated approach to domestic violence cases prior to December 2004. ACS had been forced to act when early in the case, Judge Jack Weinstein, the federal district judge who heard the case, issued a preliminary injunction that prevented ACS from removing children from battered women solely because they were victims of domestic violence.³¹ As a result of that injunction and earlier work done by advocates in cooperation with ACS before the suit was even filed, ACS began to make changes to comply with the conditions the court had set forth and continued to implement them throughout the litigation.

In 2001, ACS began distribution of, “Domestic Violence Guiding Principles,” which address how the agency should approach cases involving caretakers who experience domestic violence.³² There are four major themes to the Guiding Principles: children should live in homes free of domestic violence; families suffering from domestic violence should receive proactive services that are uniquely designed to meet the needs of the particular family; batterers must be held accountable for their actions; and all people and systems involved with a child’s well-being must work together to ensure a positive outcome for children and their families.³³

According to the principles, when ACS detects domestic violence in a home, the preferred approach is for caseworkers to conduct an assessment of the family and offer preventive services so as to avoid removing the children if at all possible. Examples of preventive services may include assistance in setting up mental health counseling, information about filing for an order of protection, and help relocating to a safe location.

Following the development of the Guiding Principles, with the help of a large number of outside stakeholders, ACS issued a strategic plan on domestic violence in 2003. The Strategic Plan has many different components, including integrating domestic violence into caseworker training, continuing to address domestic violence through preventive services, and developing a community-based response to domestic violence.³⁴

ACS’s Strategic Plan for handling domestic violence cases initially through the offering of preventive services goes hand-in-hand with its overall plans to reduce the number of cases in which children are removed from their parents by offering home support to

³⁰ *Nicholson v. Scopetta*, “Stipulation and Order of Settlement,” December 16, 2004.

³¹ See 22.

³² Administration for Children’s Services, *Quality Child Welfare Practice with Families Affected by Domestic Violence: A Strategic Plan*, p. 2, available at http://www.nyc.gov/html/acs/pdf/domestic_violence_plan.pdf.

³³ Administration for Children’s Services, *ACS Domestic Violence Principles*, available at http://www.nyc.gov/html/acs/html/whatwedo/domestic_violence.html.

³⁴ See 32.

families before removal becomes necessary. Indeed, ACS now serves more children and families through preventive services than through foster care.³⁵

ACS Has Not Integrated Policy Reforms into Practice

One element of the Strategic Plan is the implementation of Clinical Consultation Teams (CCTs). These teams are comprised of a coordinator, domestic violence specialist, mental health specialist, and substance abuse specialist, and are available to provide guidance to caseworkers in complex cases, in particular those involving domestic violence. ACS contracted with four nonprofit human service organizations to create twelve CCTs based in ACS field offices throughout the city.³⁶

ACS has not mandated its caseworkers to consult with the teams on all relevant cases, nor are there any guidelines requiring that a caseworker follow the recommendations of the CCTs. Consequently, advocates remain concerned about the efficacy of the teams.

Advocates' concerns are shared by the Nicholson Review Committee which,³⁷ in its final report to Judge Weinstein before the case was settled, remarked specifically about the effectiveness of the CCTs. The Committee noted that ACS's goals continued to be held up by systemic obstacles to compliance with the preliminary injunction, and that, "Among these, most marked were the role of the Clinical Consultation Teams."³⁸

Advocates also express frustration that the CCTs cannot reach out to caseworkers, even to check in on a case for which they had previously given advice. Case consultations are initiated by ACS staff, and the CCTs do not have the authority to make any child welfare decisions³⁹ If the caseworker chooses not to follow up with the CCT, or chooses not to seek advice from the CCT in the first place, there is no recourse the CCT, or the family under investigation, can take. Some caseworkers continue to resist the involvement of the CCTs.⁴⁰

Laura is a domestic violence advocate. One of her client's had been in an extremely violent relationship, and her boyfriend ultimately even hit one of her children. The children were removed by ACS and placed in foster care. Listening to her client's reports, Laura felt that the caseworker did not understand her client's needs as a victim of domestic violence, or even the dynamics of domestic violence in general. Laura tried reaching out to the domestic violence specialist on the Clinical Consultation Team in the related field office to ask for help with the case. The specialist agreed that she

³⁵ Administration for Children's Services, *Protecting Children and Strengthening Families: A Plan to Realign New York City's Child Welfare System*, February 2005, available at http://www.nyc.gov/html/acs/pdf/protecting_children.pdf.

³⁶ Child Welfare Watch Report, *First On the Scene: Reformers are Looking to Frontline Workers to Fix the System*, Fall 2003, available at http://www.citylimits.org/images_pdfs/pdfs/CWW%20Fall%202003.pdf.

³⁷ The Nicholson Review Committee was set up as one of the requirements of the preliminary injunction to assist in the enforcement of the preliminary injunction. The Committee provided periodic updates to the court, and listened to complaints of ACS violations.

³⁸ Nicholson Review Committee, Final Report, December 17, 2004.

³⁹ Administration for Children's Services, *Q&A Clinical Consultation Program*, August 2002.

⁴⁰ See 36.

could be of help but indicated that she was unable to take any action unless the caseworker initiated contact.

ACS reports that CCTs gave 8000 case consultations in 2003,⁴¹ an increase over the 5500 that were given in 2002; however, the majority of the consultations were for mental health and substance abuse cases, not domestic violence cases.⁴² Although advocates support the CCTs, there is no way to assess the quality, nature, or duration of a contact or consultation between a CCT and caseworker, and there is concern that the overall number may be inflated, preventing a clear understanding of the program's true impact on domestic violence cases.

Plans are underway for CCTs to begin work with preventive service caseworkers as well. No new experts were hired as part of the expansion of responsibilities, and while the expertise of current CCT personnel is welcome and needed on preventive cases, some worry that they are spread too thin.⁴³

As mentioned above, ACS's Strategic Plan includes the integration of domestic violence into caseworker training and addressing domestic violence through preventative services. In its final report, the Nicholson Review Committee noted its concern regarding the accountability of caseworkers and the integration of these principles into frontline practice.⁴⁴ Preventive service agencies participate in a program, which uses an outside organization specializing in domestic violence to train preventive service caseworkers on issues specific to domestic violence cases; however, foster caseworkers at contract agencies do not attend these trainings. Advocates are also concerned about the accountability of caseworkers. Clients are inhibited from filing complaints against caseworkers because they are concerned about retribution if the caseworker is not replaced.

ACS has expressed interest in providing similar domestic violence training for the caseworkers in its foster care contract agencies as that provided to caseworkers at preventive service agencies. ACS has not made such training mandatory, however, and consequently most agencies have chosen not to participate.⁴⁵ As of December 2004, over 93 percent of foster children are placed with foster care contract agencies,⁴⁶ which means that nearly 20,000 foster children have caseworkers who have not received specialized domestic violence training.

Advocates assert that the lack of specialized training is symptomatic of a larger problem. They are concerned that foster care caseworkers are not internalizing the guiding

⁴¹Administration for Children's Services, *2003 Year End Review: Protecting Children, Strengthening Families, Supporting Communities*.

⁴² See 36.

⁴³ See 36.

⁴⁴ See 38.

⁴⁵ Alisa del Tufo, Co - Executive Director, CONNECT, a community-focused domestic violence intervention organization, speaking to Public Advocate's Committee on Domestic Violence, Children, and Youth, on February 22, 2005.

⁴⁶ See 9.

principles and legal issues articulated by the Nicholson case, and that some caseworkers do not completely understand the importance of keeping a survivor's actual location, and not just her place of residence, confidential at all times.⁴⁷ While most caseworkers appear to be aware that the lesson of *Nicholson* is that they cannot remove children from the home solely or primarily because of domestic violence, they appear less familiar with the reasoning behind this prohibition and the alternate interventions that increase safety and stability.⁴⁸

Despite their participation in the training program, preventive service agencies still have a long way to go to be able to fully address and respond to domestic violence cases. Supervisors and directors at these agencies are not currently required to receive training on the dynamics of domestic violence from agencies that specialize in domestic violence. As a result, they may not understand the subtleties of relationships with domestic violence and the need for unique analysis of each situation before giving advice and may be unprepared to provide adequate supervision of caseworkers. They are required to fulfill annual training requirements, and ACS requires that yearly training plans be submitted to them to ensure that training is completed, but training from domestic violence experts is not mandated.⁴⁹

City Lacks Programs for Child Witnesses

For years, young witnesses of domestic violence have been unable to receive critical mental health services in New York City.⁵⁰ As discussed above, child witnesses to domestic violence are at risk of suffering long term consequences as a result of their experiences. Children are resilient, but in order to recover as much as possible, it is critical for them to receive mental health services after their traumatic experiences.

Unfortunately, there is a tremendous shortage of mental health programs in the City specifically targeted to children who have witnessed domestic violence. The programs that do exist are not necessarily a part of domestic violence programs that currently serve battered women. Advocates report that the primary cause of this problem has been funding policies on the state level. One particularly restrictive policy dates back to 1994, when New York State began to prohibit the development of new out-patient mental health programs if the new programs required additional Medicaid funding. The result of this prohibition is that providers cannot create new programs or expand old ones unless they can secure non-Medicaid funding through independent sources.⁵¹

⁴⁷ Conversation with Public Advocate's Committee on Domestic Violence, Children, and Youth, February 22, 2005

⁴⁸ Conversation with Jill Zuccardy, Director, Child Protection Project, Sanctuary for Families Center for Battered Women's Legal Services, based on advocates' reports, May 4, 2005.

⁴⁹ Administration for Children's Services, *Preventive Services Quality Assurance Standards & Indicators and FRP Addendum*, April 1998.

⁵⁰ The Council of the City of New York Office of Communications, *Domestic Violence Groups Receive \$1 Million to Help Kids*, October 28, 2004, available at http://www.nycouncil.info/pdf_files/newswire/10-28-04children_violence.pdf.

⁵¹ Committee on Mental Health, Mental Retardation, Alcoholism, Drug Abuse, and Disability Services, Council of the City of New York, *Briefing Paper of the Human Services Division, Oversight, "Caps, COPS, and the Lack of Funding for Mental Health Services for Children Ages 0-5,"* March 1, 2004,

In recognition of the serious lack of programs for child witnesses, the New York City Council gave one million dollars to four organizations this past fall to help fund programs that provide these important mental health and counseling services.⁵² The funding provided by the Council is a good start, but more will be needed if the programs are to succeed.

The Department of Education (DOE) also fails to provide appropriate services for child witnesses to domestic violence. Many DOE personnel do not receive training on recognizing trauma among students or on how to initiate school-based interventions that can aid the children.⁵³ This oversight is troubling because school-based interventions have been shown to contribute positively to a child's resiliency and recovery from the trauma of witnessing domestic violence.⁵⁴

Findings

ACS does not screen to determine whether anyone in prospective adoptive and foster homes has a history of perpetrating domestic violence. ACS does not require its contract agencies to screen foster parents or other members of the foster home to determine whether an order of protection has ever been entered against them and does not require them to screen other children in the household to determine if they are experiencing violent dating relationships. Thus, children may be removed from their home due to exposure to domestic violence, only to be placed in another home where domestic violence exists, or where there is a perpetrator of domestic violence. Over 400 children were reported abused or neglected in foster care last year, and some of these incidents may have been prevented by screening prospective foster parents using the Domestic Violence Registry.

Batterers and their families and friends can continue to perpetrate abuse by calling the state child abuse hotline and making false allegations. They are rarely held accountable for these actions, and many callers may believe that they cannot be held accountable.

As the result of a court case against the agency, ACS has dramatically decreased the number of removals of children from mothers who are victims of domestic violence. In 2002, the *Nicholson* litigation halted the ACS practice of removing children from their battered mothers solely or primarily because the children were exposed to violence against their mothers. Although the injunction prohibiting such removals expired in December 2004, ACS has not re-instituted the practice, appears to recognize that re-instituting such a

available at

<http://webdocs.nycouncil.info/attachments/60324.htm?CFID=262779&CFTOKEN=79665141>.

⁵² See 50.

⁵³ Advocates for Children of New York, *Children in Crisis: Advocates for Children's Domestic Violence Education Advocacy Project*, May 2004, available at

http://www.advocatesforchildren.org/pubs/DV_Report.doc.

⁵⁴ Joy D. Osofsky, *The Impact of Violence on Children*, Domestic Violence and Children, Winter 1999, available at http://www.futureofchildren.org/usr_doc/vol9no3Art3.pdf.

practice would violate state law, and appears to have internalized the prohibition on such a practice.

ACS has implemented a series of initiatives to improve its handling of child welfare cases involving domestic violence. Many of these ACS initiatives resulted from, or were expedited because of, the *Nicholson* litigation. They provide a good starting point for continued improvement in ACS practices. These initiatives are reflected in ACS's Strategic Plan and Guiding Principles on Domestic Violence, but have been imperfectly and incompletely implemented up to this point.

ACS is ineffectively and infrequently using Clinical Consultation Teams on domestic violence cases. In 2002, ACS created Clinical Consultation Teams. Each team includes a domestic violence specialist, whose role is to provide guidance to caseworkers in child welfare cases involving domestic violence; however, consultation with a specialist is voluntary and must be initiated by the caseworker. Absent the caseworker's request, specialists are unable to continue involvement in a case, meet with the domestic violence victim, or ensure that their recommendations are followed. The current consultation system leaves too much decision-making authority with the front-line caseworkers and far too little authority with the specialists with particular expertise in domestic violence.

ACS has failed to ensure adequate training for many important workers.

- **ACS has failed to provide adequate training to front-line foster care caseworkers on best practices or safety planning in child welfare cases involving domestic violence.** Front-line foster care caseworkers continue to threaten domestic violence victims with removal of their children if the victims do not take a series of pre-determined steps – for example, ordering them to separate from their batterers, go into shelter, or obtain an order of protection – without a case-specific assessment of whether these steps are appropriate and whether they will cause further danger or other detriment to the children. Over 90 percent of children in foster care are placed with foster care contract agencies, yet ACS has not mandated that caseworkers at these agencies undergo specialized domestic violence training.
- **ACS has not mandated that supervisors and directors of preventive services agencies receive training in domestic violence dynamics from domestic violence specialists.** Over the past few years, ACS has increasingly focused on engaging families in preventive services rather than removing children; however, while ACS requires supervisors and directors to fulfill annual training requirements, these requirements do not include training by experts in the dynamics of domestic violence.

Recommendations

ACS must screen all potential adoptive and foster homes to ensure that the homes are violence free. As part of the application process for becoming certified as a foster home, all household members must be screened in the New York State domestic violence

registry to determine whether any household member currently, or has been in the past, the subject of an order of protection. If there is a recent record of violence, the home should not be certified (with the exception of kinship placements, in which case the home can be certified as long as the family can demonstrate there is no longer any violence in the home). If ACS does find domestic violence in the home, ACS should not certify the home. Because of the presence of domestic violence, however, ACS must take steps to ensure that the denial of certification does not endanger anyone in the household. Where appropriate, ACS should offer services and referrals to help make the home safe to be certified in the future.

ACS should make a public service announcement promoting the importance of calling the child abuse hotline if abuse or neglect is suspected but should warn that deliberately making a false report is a crime. Such an announcement could help discourage false reports by alerting the public that persons making false reports can be held accountable.

ACS must ensure that all workers are adhering to the domestic violence policy reforms the agency has implemented over the past couple of years.

- **ACS must make sure that its Guiding Principles are being integrated into the daily activities of its frontline caseworkers.** ACS must fully implement its strategic plan. While the policy reforms and *Nicholson* settlement are important first steps for ACS, implementation and practice by frontline staff has been inadequate and compliance with the new protocols on all levels must be enforced.
- **ACS must mandate that caseworkers use Clinical Consultation Teams in every case involving domestic violence.** Currently, the use of the Clinical Consultation Teams is optional for caseworkers, and the CCTs are only used in a small minority of the possible cases. Consultation with clinical specialists on every case in which there is a family history of domestic violence must be mandated. The fact that it is not currently mandated undermines the very rationale behind this program, which is that caseworkers are not able to identify and address many of the underlying problems associated with domestic violence without expert assistance. In addition, CCTs should be able to reach out and provide follow-up on appropriate cases.
- **ACS must mandate that all caseworkers at foster care contract agencies receive specialized training on domestic violence issues.**
- **ACS must mandate that all supervisors and directors at preventive services agencies receive training on the dynamics of domestic violence from domestic violence experts.** The training should be mandated as part of the annual trainings that they must undergo. Annual training audits should include a check to ensure that at least one of the trainings attended by the supervisors and directors meets this standard.