


Lawsuit: New York Created a Shadow Foster Care System

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Lawsuit Alleges New York Created ‘Extremely Harmful’ Shadow Foster Care System

By [Michael Fitzgerald](#)



Three New York firms that represent children have filed a lawsuit seeking to halt “extrajudicial” host home programs from operating.

Attorneys for kids in Family Court have sued New York’s state child welfare agency, arguing that recently approved regulations allow for a “shadow” foster care system that could be “extremely harmful” to vulnerable children and families. The lawsuit, filed Tuesday in Rensselaer County Supreme Court, centers on rules the Office of Children and Family Services finalized in December, naming the state agency and its commissioner as defendants.

The rules at issue allow nonprofits to apply for permission to recruit, vet and train volunteer “host” families to care for other people’s children overnight, arrangements made outside the oversight of the courts. The international faith-based organization Safe Families For Children created the model, and its local chapters have conducted roughly 50,000 such informal “hostings” nationwide.

According to the lawsuit filed by New York City-based Lawyers for Children and the Legal Aid Society, and Legal Aid Bureau of Buffalo, Safe Families and its attorneys lobbied state officials to tailor regulations that would legalize their home-hosting method. The group has sought to operate in New York City since it began seeking church volunteers to care for needy children in 2015.

“This program establishes a system of family separation outside the court system that removes critical safeguards for both children and parents,” the lead attorney on the case stated in a press release. Attorney William Silverman of the international private law firm Proskauer Rose said the new state regulations conflict with legal standards required for New York’s “voluntary” foster care program — which require court oversight, legal representation for parents and children, and sustained efforts by child welfare agencies to reunite families as soon as possible.

In allowing host home organizations to operate, the state Office of Children and Family Services “acted well beyond its regulatory authority,” Silverman said.

Betsy Kramer, director of special litigation at Lawyers For Children, noted that home hosting represents a return to the nation’s history more than 100 years ago, before New York and other states established family courts.

“Host Homes is a frightening experiment that harkens back to a time when too many children were separated from their families to be sent to live with strangers without any legal recourse and with little apparent concern for their well-being,” Kramer stated.

Jeannine Smith, a spokesperson for the Office of Children and Family Services, said the agency could not comment on pending litigation.

The state’s new host home rules were first proposed in 2020. An in-depth [report](#) in The Imprint found strong opposition to the arrangement from leading advocates for children and parents and domestic violence survivors, prominent Family Court judges and officials, and the president of the American Bar Association.

[Anne-Marie Jolly](#), New York City’s top administrative judge for the family courts, has disputed the Office of Children and Family Services’ description of the home hosting model as a way to prevent foster care. In an August letter to the office’s Commissioner Sheila Poole, she wrote that the arrangements amounted to “a form of out-of-home care but without any of the protections afforded in foster care cases.”

Now, the three leading firms representing children in foster care and delinquency cases in New York City and Buffalo are making a similar argument in state court, and seek to halt the program from operating. The plaintiffs allege that the state agency has improperly created an “extrajudicial system” without approval from the Legislature, exceeding its authority under existing family law.

The suit also describes energetic lobbying by Safe Families for the state to create rules or laws authorizing its model. Internal Children and Family Services emails obtained by the plaintiffs via public records request indicate a Safe Families chapter leader in Brooklyn first sought state approval to operate in early 2017. A series of emails and meetings between state attorneys and staff — and then-Acting Commissioner Poole — Safe Families, and the nonprofit’s legal representations followed.

“We are thrilled that the Commissioner is supportive of our model and taking the next steps to figure out the legal part of things,” wrote Laura Galt, the Safe Families chapter leader, in June of 2018 to Cassandra Kelleher-Donnaruma, an attorney in the state office’s bureau of legislation and intergovernmental affairs.

Now, New York’s leading children’s attorneys seek an order “annulling the Host Homes regulations in their entirety as an abuse of discretion, as unlawful, and as arbitrary and capricious,” according to the court petition.

In a December press release, Commissioner Poole announced the rules as a “bold new initiative,” that aimed to provide “temporary help caring for children during a surgery, illness or death in the family or other temporary family crisis.”

Supporters of the home hosting model say its strength lies in the absence of involvement with the child welfare system — an option that provides a rare respite for stressed and isolated parents who have no one else to turn to. They say parents often need a simpler pathway to help than court-overseen placements in licensed foster homes, which can drag on for years.

Safe Families for Children has received praise from national and evangelical media and has grown rapidly since its founding in Illinois in 2003. One leading social work scholar, Mark Testa, said his evaluation of the program in that state found it had successfully reduced foster care placements, compared to a control group of at-risk families.

According to its website, Safe Families’ hosting model offers “a positive alternative to the State child welfare system,” whose hallmark is its “voluntary and non-coercive nature.” The program is described as serving at-risk children, from infancy through age 18, who “are not believed to be victims of physical or sexual abuse.” Volunteers who open up their homes receive support from congregations and paid local staff. The parents are said to be experiencing hardship due to unemployment, homelessness, abusive relationships or



Sheila Poole, Commissioner of the Office of Children and Family Services.

substance abuse disorders. To screen the hosting households, Safe Families conducts background checks and ongoing home visits, calls references and provides training for hosts.

Safe Families had not responded to a Wednesday morning request for comment by press time.

But speaking to The Imprint in 2020, Rachel Wolverton, a program support specialist for the Portland, Oregon-area Safe Families chapter, praised the program in her state. “If they are right on the edge of losing their kids, if the parent is willing to let us support them, it might prevent that,” she said, adding that “it’s 100% voluntary on all sides. We just want to provide the support they need to get back on their feet again and provide a safe home for their kids.”

One prominent group of New York City mothers who have faced child welfare investigations or lost their children to foster care joined a press statement with the plaintiffs. They do not see the program as benign.

“Parents in the program may risk fighting for the return of their children from Host Homes or even losing them to the child welfare system,” stated the group Rise, an organization whose mission is to “support parents’ leadership to dismantle the current family policing system by eliminating cycles of harm.”

RISE parents envision a different path.

“Instead, New York State should be investing directly in families and in safe, accessible temporary respite care options unaffiliated with the child welfare system.”

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