



# TOWARDS JUSTICE

## FOR PARENTS

IN CHILD SUPPORT COURTS





March 2021

We are pleased to release the first Her Justice policy report, which includes original data about the experience of the mostly unrepresented litigants in New York City child support proceedings.

Her Justice stands with women living in poverty by training and mentoring volunteer lawyers across the City with a deep focus on economic justice issues. Early last year, Her Justice officially launched our Department of Law and Policy. This evolution of our legal department ratified our commitment to addressing the individual legal challenges faced by our clients, as well as our determination to convert those challenges into policy recommendations that could help even more women like our clients.

Her Justice chose to dedicate our first policy report to child support for several reasons. First, fair and enforced child support awards are essential for the well-being of our clients and their children. With a lawyer by their side, our clients see an average of a 70% increase in their income at the conclusion of these cases: that kind of result is a game-changer. Second, we know almost all litigants proceed in these cases in court without a lawyer. Third, because Her Justice has handled so many of these cases over the past 28 years, we have a unique depth of experience in the practice area. Finally, we found there was very little data or research about the nature of cases or outcomes in the New York City child support system. We decided to generate some data, and then combine that data with our experience and our clients' stories to aim for the most constructive system reform recommendations possible.

The findings of this report show some real strengths in the court system's ability to handle the volume of these cases, but they also ratify what we have seen in our practice. Most individual court appearances last a short time, while the overall proceedings drag on. Adjournments are the most common outcome of a day spent in the courthouse, many for operational not substantive reasons and because litigants are not equipped for court. Bottom line: the system is working day and night yet rarely succeeds to promptly or effectively award fair support to parents struggling to raise their children.

The good news is that we can do better, and now is the perfect time to rethink this system. The report outlines concrete suggestions that could reduce pressure on our overburdened court system while increasing the efficiency, effectiveness, and fairness of the courts' delivery of child support awards to parents. Fortunately, we were able to observe court proceedings before in-person appearances were made impossible by the COVID-19 pandemic. Now, as the courts are faced with re-imagining how to conduct the basic business of providing access to justice post-pandemic, we look forward to working together to improve the child support system in New York so that it is better able to support children.

A handwritten signature in black ink, appearing to read "Amy Barasch".

**Amy Barasch**  
Executive Director, Her Justice

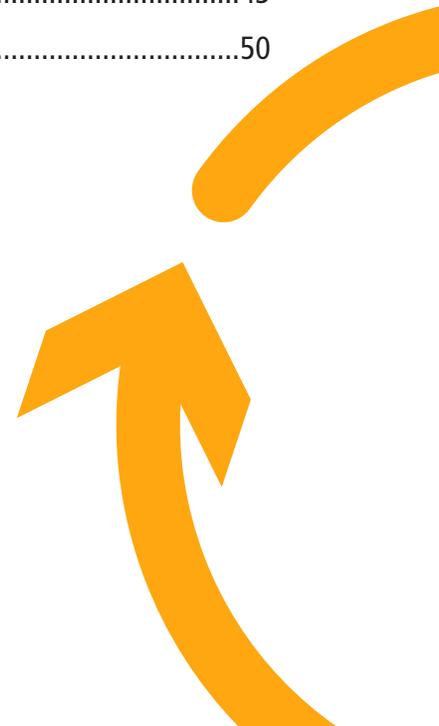


## Acknowledgments

Her Justice is grateful to the many people and partners who contributed to the Child Support Court Watch Project and this report. Her Justice is especially thankful to the thousands of clients who have trusted us to work with them to obtain the child support awards they deserve, in particular those who agreed to be interviewed for this report and shared their stories with honesty and wisdom. The court watch volunteers gave generously of their time and provided insightful feedback. The Fund for Modern Courts lent its considerable expertise in collaborating on the design of the court watch protocol, participating in training sessions, and reviewing the report. Ankura provided expert data visualization for this Project and design of the report. Zubin Jelveh and Sibella Matthews of University of Chicago Crime Lab provided guidance as to data analysis. Allen & Overy LLP conducted legal and policy research for the report and hosted a training session for court watch volunteers. The law firms of Cravath, Swaine & Moore LLP; Kirkland & Ellis LLP; Stroock & Stroock & Lavan LLP; and White & Case LLP also generously hosted training sessions for court watch volunteers. Professor Meredith Walters Seife at New York University Wagner Graduate School of Public Service and Capstone students Maria (Mili) Chapado, Lorelee Kampschnieder, and Jennifer Kaiser (2018-19) contributed significant research and the graphic visualization of the New York child support system featured in this report. Amanda Beltz reviewed a draft of the report and provided valuable insight and feedback. Understory Consulting provided valuable guidance in strategic planning around our policy work, including child support priorities. A broad team of Her Justice staff, fellows and volunteers assisted with project design, data collection and analysis, and research for the report, including Jacqueline Pitt, Kathy Del Beccaro, Shanni Davidowitz, and Shaina Weisbrot.

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# Executive Summary

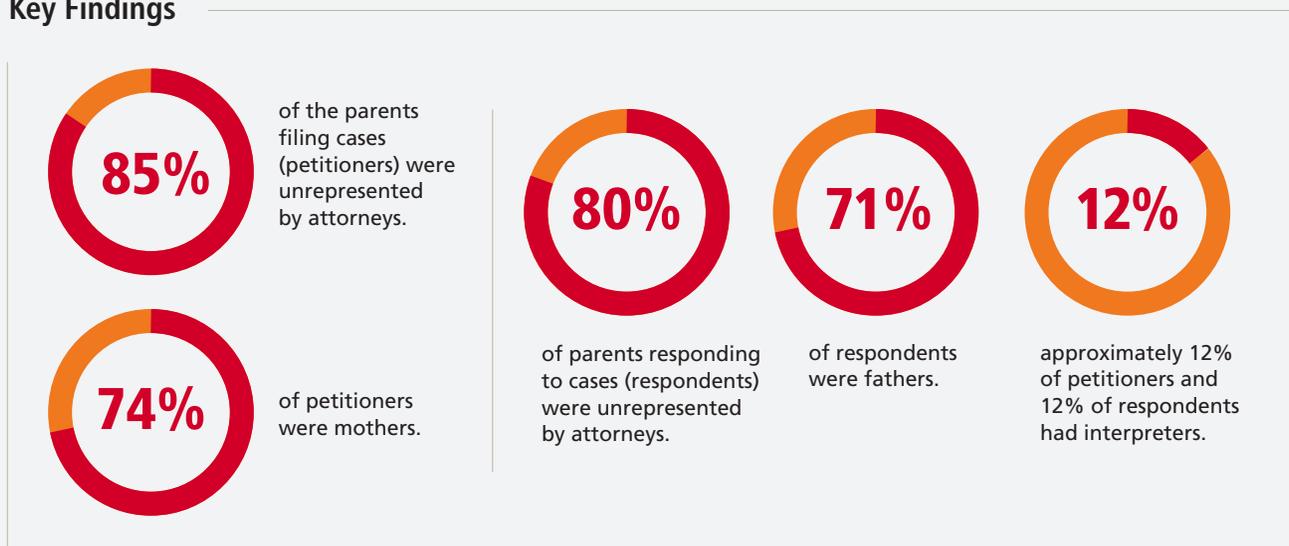
Her Justice stands with women living in poverty in New York City by providing free legal services in partnership with volunteer lawyers and other private sector professionals. Together, we reach an average of more than 8,200 women and their children every year. Economic justice has always been central to what we do. We know that economic justice is power, and Her Justice exists to shift the power to our clients.

For many of our clients and women living in poverty, the civil justice system provides a real path to economic stability. Child support orders, which must be determined by the courts, are critical for many mothers raising children. Informed by extensive experience working with clients and knowledge of systemic barriers to fair child support, in 2017, Her Justice launched the Child Support Court Watch Project. We worked in consultation with the **Fund for Modern Courts**, an organization with expertise in designing and implementing citizen-based court watch programs. We engaged volunteer court watchers to observe the courts from an average person's viewpoint and to provide common-sense perspectives on how courts serve the public. Our goal was to better understand the relatively invisible experience of litigants in child support proceedings since the majority are unrepresented. We focused both on the practical experiences of litigants like our clients, as well as on litigant trust in the system overall and procedural justice values, which recognize that how disputes are addressed in court can have more of an impact on litigants' view of their court experience than the case outcome.<sup>1</sup>

Over a period of two years, 89 volunteers observed 797 child support case appearances in the New York City Family Courts. The court watchers observed a range of types of child support cases, including cases filed by custodial parents to establish an order of support, as well as cases involving requests to modify and enforce orders. The court watchers completed the same questionnaire for each appearance observed and their responses were aggregated and tabulated. Their observations shed light on areas for improvement in the system that would benefit all parents and families.

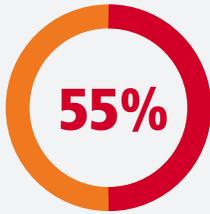
## COURT WATCH

### Key Findings





## Adjournments



of cases observed were adjourned.

Nearly **28%** were adjourned for improper or lack of service of the papers that provide initial notice of a case.

**25%** were adjourned for lack of financial documentation as required by law.

## Impact of Legal Representation



of cases would have benefitted from attorneys, according to court watchers.

Courts were more likely to adjourn an appearance when only one party had legal representation and least likely to adjourn when neither party had an attorney. Having an attorney reduced the likelihood that the case was adjourned for defective service.

Only **10%** of cases with a represented petitioner were adjourned for service

**v.**

**28%** where the petitioner was not represented.

**HAVING AN ATTORNEY REDUCED THE LIKELIHOOD THAT THE CASE WAS DISMISSED.**

Of the cases observed, **14.3%** were dismissed.

This percentage decreased when petitioners were represented to just over **3%**.

## Time in Court

Court appearances, on average, lasted slightly more than

**11 minutes.**

## Procedural Justice for Litigants

Court watchers responded to questions about procedural justice for litigants, painting a picture of how support magistrates informed litigants of their rights and explained the process, and the overall quality of the litigant experience. In many appearances observed, the support magistrate provided opportunities for litigants to ask questions or provided needed explanation of court process or legal terms. At the same time, the data show areas for improvement in the experience of litigants.



## QUESTIONS ON PROCEDURAL JUSTICE FOR LITIGANTS

% OF OBSERVERS ANSWERED YES

Did the parties appear to have enough time to explain their issues to the Magistrate?

88%

Did the Magistrate explain the courtroom process to the parties at the beginning of the proceeding?

56%

When a technical legal term arose, did the Magistrate explain its meaning to the parties?

84%

Did the Magistrate ask the parties whether they had questions?

60%

Did the Magistrate inform the parties of their right to seek legal advice?

71%

## CLIENT INTERVIEWS

In addition to the observational **data** collected through court watching, this report is informed by in-depth qualitative interviews that Her Justice conducted with six clients, former or current, involved in child support cases. These six clients experienced a range of issues and types of system contact. They were all represented in their cases by pro bono attorneys partnering with Her Justice; some had initiated child support cases before contacting Her Justice. These clients' experiences share themes with and provide important framing to the information collected through court observations.



## **RECOMMENDATIONS FOR CHANGE**

Based on the observations for this Project, client interviews, as well as more than 28 years of child support practice, we make the following recommendations for change:

### **Improve efficiency of process and accountability to reduce needless delays.**

- The court administration should consider triaging child support cases based on complexity and, along with policymakers, explore the opportunity to create a simple process for simple cases.
- The court administration must urgently address delays in all pending child support cases and formulate a plan to be shared with the public for efficiently moving forward cases that are filed in the future.
- The court administration should engage an advisory committee including external stakeholders to review the New York City Family Court's progress toward its 2016 strategic plan goals related to timely disposition of cases and to provide input for needed reforms given challenges that existed before the COVID-19 pandemic and which the crisis exacerbated.
- The court administration should hold itself accountable for case timeframes and other strategies for efficiency that are not contained within the New York City Family Court's 2016 strategic plan, and make data related to progress on these issues publicly available.

### **Undertake form changes for litigant education and prevention of legal crisis.**

- Family Courts should uniformly accept the "short form" financial disclosure affidavit which is more streamlined than the traditional form. The court administration should amend the instruction form as to acceptable financial documentation, in consultation with plain language experts, to prepare litigants to participate in child support proceedings. The court could consider a pilot program to test the efficacy of the modified instructions.
- The court administration should amend forms describing the requirements for service of process, in consultation with plain language experts, to prepare litigants to participate in child support proceedings. The court could consider a pilot program to test the efficacy of the modified instructions.

### **Prioritize data analysis and transparency.**

- The court administration should invest technological and other resources to engage in data analysis around the nature, duration, and outcomes of child support proceedings in Family Courts, and make that data publicly available to enhance efficiency and accountability to and by litigants.
- Data analysis and transparency will provide guidance for reform efforts (especially when the courts reopen after the COVID-19 pandemic), including strategies to avoid needless delays in the adjudication of cases, and for decisions system-wide around allocation of resources such as legal assistance.

### **Enhance training for magistrates and court personnel.**

- The court administration should provide regular training for support magistrates and Family Court judges on procedural justice values to improve litigants' experience.
- Courthouse petition room staff and other courtroom personnel should receive regular training on procedural justice values to improve litigants' experience.



# Introduction

Child support is an essential economic linchpin for many single mothers living in poverty. Child support represents one-third of the cases in the New York Family Courts. For many Her Justice clients navigating those courts, child support is often the determining factor in impossible financial choices. Yet, relatively little data is shared across the child support system, for example, about the nature or outcomes of court cases, whether or how the system is responsive to families given their financial circumstances and available legal remedies, or whether the system involves consistently fair processes and outcomes. Further, despite custodial parents' reliance on the child support system for the financial stability of their families, their trust in the system is not typically the focus of reform efforts. When national attention is directed towards challenges with the child support system, it has historically focused on the challenges for low-income men who pay or owe child support. Mothers' experiences – like that of Her Justice client Anica<sup>2</sup> and many others – largely have been left out of the conversation.

## Anica's Story

**“The judge should give mothers a chance to talk; a chance to tell their story and explain what they are going through. It's not easy to raise a child, especially a child with a disability. It's a lot.”** — *Anica, Her Justice client*

Anica has two children – Bryan who is six years old and Jackson who is ten years old. Anica and Jackson were born abroad and moved to the United States when Jackson was a baby. Anica married in 2013 and she and her husband had a son, Bryan. During their marriage, the husband was abusive. She had a high-risk pregnancy and the husband was unsupportive, often insulting her and telling her he wished she would end the pregnancy. Six months after the couple married, while she was pregnant, Anica left the husband and moved to New York. Her child was born deaf; her older son is deaf as well. After Bryan was born, the husband wanted nothing to do with him. Anica believes that this is because of the son's disability.

Once she left, Anica's husband provided no financial help to her or their son. Completely on her own with the children, Anica turned to family for a place to live. Anica is undocumented and, at the time she left her husband, she was not working. She found it impossible to get a job with two young children with medical needs and limited employment options without legal work authorization.

Approximately two years after she left her husband, Anica filed petitions for child support and custody in Family Court. She then came to Her Justice for legal help. In her petition for child support, Anica asked the court to award support based on the husband's income from his long-time job as a truck driver. Her pro bono attorney served the husband with the papers and he appeared on the first court date. He provided one paystub as proof of employment and the court issued a temporary order of \$100 per week. However, the husband failed to appear for the next court date. Based on the proof the father had provided and Anica's testimony about his income, the court entered a final order of \$426 monthly.

The father did not pay the child support ordered. A few months later he sued Anica for divorce in the state where he was living and submitted a document to the court claiming to earn more than four times the amount on the paystub he submitted in Anica's child support case. In the divorce case, he also requested custody of his and Anica's son, even though he had not seen the child in years. Anica's Her Justice pro bono lawyers filed in New York Family Court, seeking an increase in child support based on this new information. Because the lawyers could not locate the husband to serve him personally with the papers, and because the court refused to hold the husband's claim in the divorce case against him in the child support case, their request was denied. Eventually the husband's divorce case was dismissed because he did not appear in court. Months and then years went by and Anica did not receive child support.

In the more than five years since the court issued its support order, Anica has received only a few hundred dollars in child support. The father owes more than \$16,000 in support. Anica understands that the father has moved to another state and continues to work as a truck driver earning a six-figure salary. She says that he keeps moving "because he just doesn't want to pay." She has tried several times to get help from the child support agency in New York to collect support, but the father's employment in another state has proved to be a barrier. The agency tells Anica they need more information to garnish his wages. She wonders, "Why is it my job to track him down and call him?" When he occasionally calls to speak with Bryan, the father refuses to provide information about where he works, telling Anica, "If you take me off child support, I'll provide for our son." Anica says she has no reason to believe that he will support the child informally given his behavior over the last few years.

Without being able to count on child support, Anica has made ends meet in other ways, through public benefits and with the help of family. Anica has obtained her work authorization and is now studying to be a home health aide. She is hopeful that working will provide stability for her family. She says that her "story of being the parent who pays and is working for my kids alone was not heard," and she hopes that other mothers will have a different experience.





# Child Support Policy Background

## Child Support as a Safety Net for Single Mothers

**According to U.S. Census Bureau nationwide data, in 2017 women were 38 percent more likely to live in poverty than men.**<sup>3</sup> There are gender discrepancies in poverty at the state and local levels as well. In New York State in 2016, 17.6 percent of women aged 18 and older were living in poverty, compared with 15.5 percent of men.<sup>4</sup> In 2018, women in New York City were 7 percentage points more likely to live in poverty than men.<sup>5</sup> The reasons women are more likely to live in poverty than men are myriad; public dialogue and policymaking has recently focused on issues such as the gender wage gap, the effect of gender discrimination on women's opportunities and earnings, and the impact of intimate partner violence on women's financial stability. The COVID-19 pandemic has exacerbated many of these disparities.<sup>6</sup> As parents, women – especially the mothers who head 81 percent of single-parent households in the U.S.<sup>7</sup> – suffer greater poverty, too.<sup>8</sup> The economic insecurity of these families is compounded by racial disparities, with children of Black and Latinx single mothers suffering greater poverty than White children of single mothers.<sup>9</sup> These statistics come to life in the civil justice system experience of Her Justice clients, the majority of whom are Black and people of color.

Many single mothers need child support to secure the basic necessities for their families. **Child support affects 16 million children and 11 million mothers in the U.S.**<sup>10</sup> Families involved with the child support system (including courts and government agencies) are generally low-income or poor.<sup>11</sup> In 2017, approximately 27% of custodial mothers living with children lived in poverty compared with 11% of custodial fathers.<sup>12</sup> For the lowest income households, child support from another parent living separately can represent more than 57% of income.<sup>13</sup> Thus, the child support system plays a critical role in determining economic justice for single mothers and children living in poverty.

### THE NEED FOR REFORM

Despite the critical nature of child support to families, many parents experience the system as inefficient and unjust, making fair child support difficult to obtain. In recent years there have been important discussions about the need to improve the system for parents. That discussion has largely centered on the burden of child support debt for low-income fathers,<sup>14</sup> in particular those who owe support orders to the government because their children receive welfare.<sup>15</sup> At the same time as the federal child support enforcement program was created to serve needy children, the driving force behind its creation was to enforce child support orders against noncustodial parents as a method of welfare cost recovery.<sup>16</sup> Policymakers view child support as critical to reducing the reliance of custodial families on public assistance; poor families who receive child support have less of a need for public assistance, and are more likely to be able to leave public assistance.<sup>17</sup> There have been important efforts made to examine the racial and socioeconomic factors that underlie fathers' interactions with the child support system, which in some cases delivers hefty penalties – including fines and incarceration – for failure to pay child support, and contribute to other barriers to participation in the justice system.<sup>18</sup>

The system is broken for all parents, and reforms to the system would and should improve the experience of many. But acknowledging the harm to the many mothers heading families whose financial well-being is determined by this system could provide direction for urgently needed reforms. As with Her Justice clients, many



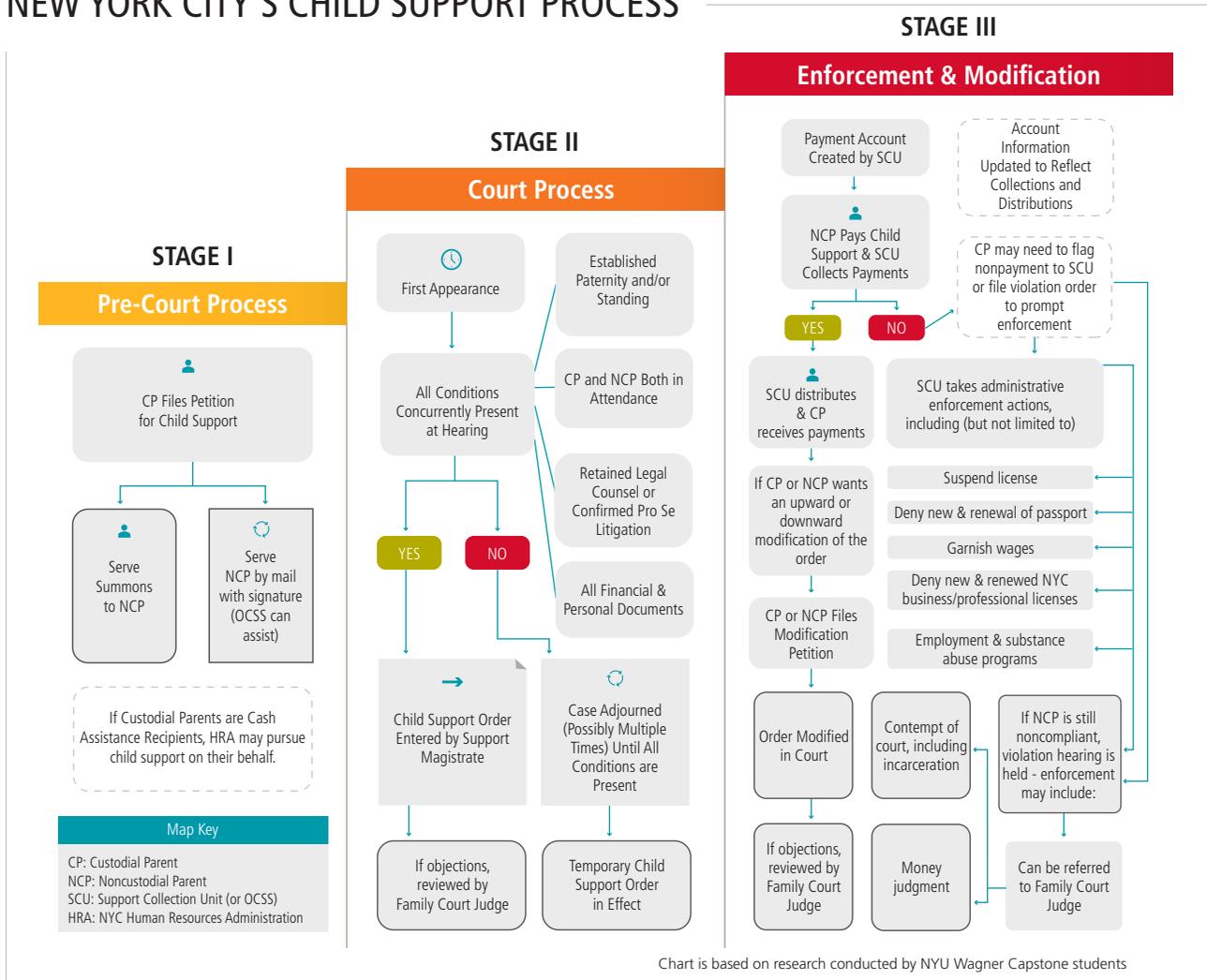
mothers raising children single-handedly are suffering and yet are largely invisible to a system which, especially for women living in poverty, plays a substantial role in determining the stability of their families. When courts calculate the most child support that parents can afford, custodial parents are better able to provide for children and give them a stronger chance of achieving stability, educational opportunities, and future financial success. These families, too, are harmed by inefficiencies and delays, lack of accountability, and a lack of responsiveness to individual needs as they cycle through the revolving door of government programs like welfare and child support. Centering welfare cost recovery in child support policy has had the effect of prioritizing recovery for states over financial empowerment of custodial parents. Resources are scarce for custodial parents in this process. Assistance with collection and enforcement, for example, is most readily available to those with child support orders that can be enforced against noncustodial parents who earn traditional, on-the-books income. Custodial parents facing parents with different income sources typically hit a dead end. The experience and needs of custodial mothers are often ignored or inadequately addressed in conversations about reform toward racial, economic and gender justice in the child support system. Their stories remain invisible without transparency by the courts about the nature and outcomes of these cases, and given challenges in coordination between the child support courts and the administrative agencies that can collect and enforce child support for the benefit of custodial parents. Thus, the shadows around this issue and the systematic burden on mothers “force individual women to bear the brunt of a major social problem.”<sup>19</sup>

## The New York Approach: Navigating the Courts

Within the child support system, each state runs a child support enforcement program with funding and regulatory oversight from the federal government, which must, among other things, establish, modify and collect/enforce child support orders.<sup>20</sup> States address child support differently, with some “administrative” states centering administrative agencies in determining child support, and other “judicial” states utilizing courts to make these decisions.<sup>21</sup> New York, along with approximately half of U.S. states, primarily utilizes its courts to determine and award child support, with the administrative agency handling some child support establishment and enforcement.<sup>22</sup>

The New York Family Courts are flooded with child support cases. **In 2019 alone, there were almost 200,000 filings for child support in the New York Family Courts, with more than 60,000 such filings in the New York City Family Courts.**<sup>23</sup> In order to determine child support, New York courts apply the Child Support Standards Act, which was enacted in 1989 to provide a fair and consistent method for determining child support payments based on parental income.<sup>24</sup> New York law defines child support as the financial responsibility of both parents until the child turns 21 years old, unless the child is considered emancipated by being self-supporting, married, a four-year college graduate, or in the military.<sup>25</sup> When a custodial parent decides to seek child support from the other parent, she typically files a petition in Family Court, or may request child support as part of a divorce in Supreme Court.<sup>26</sup> Generally, child support cases are determined by jurists called support magistrates who are appointed by the court administration and specialize in these cases in New York Family Courts.<sup>27</sup> The court considers the amount of support to be paid by the noncustodial parent to the custodial parent, the parent who lives with the child most of the time.<sup>28</sup> The award of support is based on a percentage of combined parental income provided for in the law that increases for each additional child (for example, support is set at 17% for one child and 25% for two children).<sup>29</sup>

# NEW YORK CITY'S CHILD SUPPORT PROCESS



In New York, neither party in a child support case is entitled to a court-assigned lawyer if they cannot afford one, with the exception of respondents in enforcement cases who are facing possible incarceration for failure to pay support.<sup>30</sup> **For the 90% of parents in child support cases in New York who do not have lawyers,** both parents will have to provide satisfactory proof of income and, in some cases, prove the other parent's income on their own.<sup>31</sup> For some parents, proof of income is straightforward, for example, where the parent earns traditional W-2 reportable income. For others who are paid in cash or own a business with complicated or sparse records, proof of income can be challenging.<sup>32</sup> Financial illiteracy can be a barrier, along with the challenge of navigating complex legal processes without an advocate. If the noncustodial parent refuses to produce accurate proof of income (for example, hiding or under-disclosing income), the court can impute income to the noncustodial parent based on prior earnings<sup>33</sup> or assess the child's need for support based on expenses.<sup>34</sup> In cases where the noncustodial parent has little or no income, or income is not proven, the court sets the child support order at **\$25 per month,** regardless of the number of children.<sup>35</sup> Once a support magistrate determines child support and issues an order, either parent can object to that order and the case will be reviewed by a Family Court judge.<sup>36</sup>

# Talia's Struggle to Get Fair Support in the Courts

The challenges Her Justice client Talia faced – where her husband not only evaded service, but then refused to disclose his full income without being held accountable – are typical of the burdens many custodial mothers shoulder in the court process. Talia and her husband married in 2013 and had their child in 2015. They separated when the child was two years old. After Talia and her husband separated, he provided little financial support for the child. When he spent time with the child, the father refused to provide diapers, clothes, or toys, asking Talia to bring these items. Talia says the father viewed anything material that he provided for the child as “giving [her] a break or making it easy” for her. Meanwhile, Talia was living paycheck to paycheck and falling short any time a large expense arose. The father told their mutual friends that he would not pay support and that he would fight Talia for custody if he had to. This was nothing new for Talia. The husband was abusive and controlling during their marriage, including about money, and continued to act this way once they separated. Talia knew that the only way she could get the support she needed for her child was to resort to the courts. Prior to consulting Her Justice, she filed petitions without the help of a lawyer in the New York City Family Court for child support, custody and an order of protection to keep her and her child safe.

Talia's need for urgent help through child support went unanswered in the courts. For several months, the husband dodged service of the legal papers. Though he told Talia he lived with his mother, no one was home during the multiple attempts Talia made to have him served there. Talia finally asked for help from the New York City Sheriff; this office, too, failed to find the father in order to serve him. During this time, Talia, unrepresented, appeared in court several times and it was reported that the husband had not been served. Each time, Talia missed work and was docked pay; sometimes she had to arrange childcare in case her Family Court appearance dragged on, as it often did. Talia felt exhausted and dejected before the court even began to address the family's financial issues.

The husband finally was served with papers and appeared in court. Talia did not have legal representation; under the law, she was not entitled to assigned counsel and she had not been able to find a pro bono or legal services lawyer to help. Her husband hired a private lawyer, who presented minimal information to the court that showed earnings Talia knew were inaccurate. The financial picture she needed to prove to the court in order to get fair child support was complicated. She knew he worked full-time and earned money from a side business he founded. Talia – unlike many Her Justice clients – knew a lot about her husband's earnings during their marriage of more than five years, and had some paperwork including joint tax filings and a few copies of his paystubs. She urged the court to look beyond his taxes, which showed artificially reduced income because of what he claimed were business expenses, including rent for their former marital residence, where neither party lived anymore, and several thousand dollars of expenses for “pens.” Talia even cross-examined him during the proceeding in an effort to undermine his claims. But the court, accepting all the husband's business expenses over Talia's objections, ultimately issued a low child support order. To boot, the court only required the father to pay 20% of the child's daycare fees after he challenged the cost, arguing that his mother should care for the child instead of a daycare facility, though Talia expressed misgivings about her being equipped to provide adequate care. Talia described the court experience as a “nightmare.”

The father made several payments and then stopped paying support for over a year. Talia was advised to go back to court and file a petition claiming he violated the order. Talia again had trouble serving him with the petition, and her case was dismissed which meant she had to refile (after also having to appear in court and miss another day of work). This happened twice. Finally, she connected with Her Justice and a pro bono attorney agreed to handle her violation case. Talia says: “It's very clear that no matter what you are trying to do in the court system, you need an attorney. Even if you have some knowledge, there's always a gray area that you're not aware of.” The father claims that he has paid support and that a “clerical error” by the City's support collection agency prevents Talia from getting the money. That agency has no record of any payments from him, and Talia has not received payments directly. With Her Justice by her side, Talia continues to fight for enforcement of her child support order.





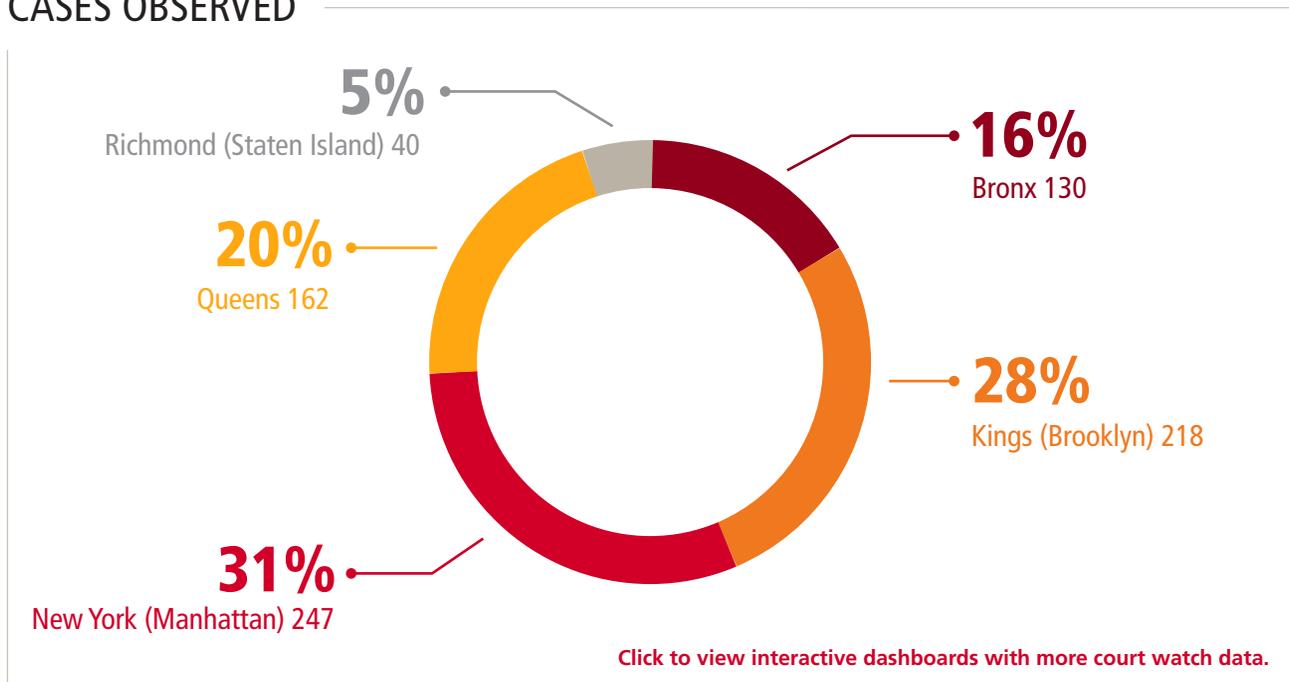
# Project Description

This report builds on Her Justice’s many years of experience working with women living in poverty involved in the child support system, and analyzes information from two sources: data collected through court watch observations; and in-depth client interviews conducted for this Project. A more extensive Project Methodology can be found in **Appendix A**.

## Court Watch

Her Justice launched the Child Support Court Watch Project in 2017 in consultation with the Fund for Modern Courts. We engaged 89 volunteers – lawyers and law students, along with other professionals – to observe the Family Courts, and to provide a common-sense perspective on how courts serve the public. From the end of 2017 through the summer of 2019, volunteers observed 797 child support proceedings in the Family Courts in all five boroughs (counties) in New York City.

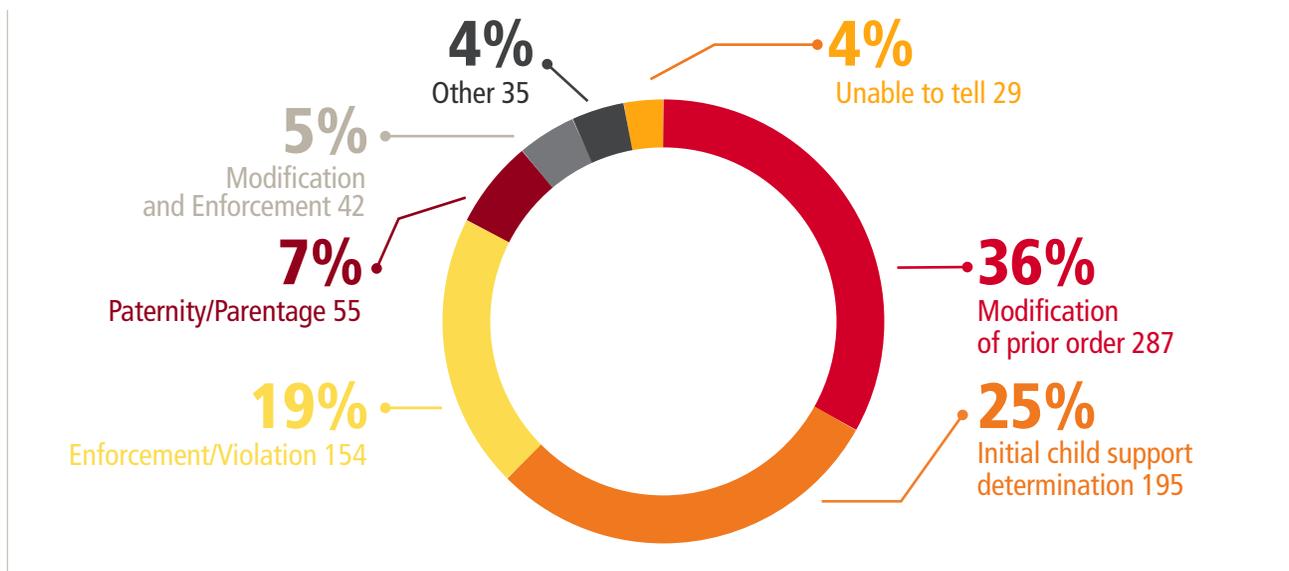
### CASES OBSERVED



For this Project, we conducted seven training sessions for volunteers focused on the basics of child support law and procedure, and how to record observations. Her Justice and the Fund for Modern Courts developed a protocol (**see Appendix B**) on which court watchers could record their observations. We asked the volunteers to observe and report on objective facts about the proceedings – the nature and posture of the proceedings, assumed gender of the parties, whether the parties were represented by lawyers or had interpreters – and subjective views about the fairness of the proceedings. In addition to quantitative data from court observations, the protocol allowed court watchers to provide narrative commentary about what they observed in court.



## CASE TYPES OBSERVED



Court watchers observed a range of types of child support cases (see figure above), including cases filed by custodial parents to establish an order of support and cases involving requests to modify and enforce orders. (The Court Monitoring Guide for volunteers at **Appendix C** defines many terms used in this report, including types of cases observed.) In addition to type of case, we asked volunteers to report on the stage of litigation for each appearance they observed. The cases observed were in various stages – for some, it was the first time the litigants had appeared in court, while others were in the discovery phase of litigation where parties exchange financial documentation. Others were at the final stage of litigation involving a hearing or trial. Court watchers observed and reported on private child support cases only (between parents), and were not asked to observe cases brought by the New York Department of Social Services on behalf of the child support agency against noncustodial parents to recover welfare costs.

This Project did not collect observational data about litigant race or ethnicity. Yet, we know from working with Her Justice clients, the majority of whom are Black and people of color, that race and ethnicity inform litigants' experience of the justice system in general and the Family Courts in particular. A recently released report about racial equality in the New York State Courts, which Chief Judge DiFiore commissioned, found that the Family Courts are historically and currently under-resourced despite being high-volume courts, perpetuating a "dehumanizing" experience that has had a disparate impact on Black and Hispanic litigants, who make up most of the people with cases in those courts.<sup>37</sup> This creates "a second-class system of justice for people of color in New York State."<sup>38</sup> As noted above, there has been some important scholarship and media attention around the impact of injustice in the child support courts on low-income Black men and men of color.<sup>39</sup> We see great need and opportunity to address justice and fairness in the experience of Black women and women of color as custodial parents in child support cases, and racism in the courts overall.

**Ankura**, a business advisory and expert services firm with offices in New York City, provided analysis and visualization of the court watch data. There were some limitations on the quantitative observational data, as further discussed in the Project Methodology at **Appendix A**.



## Client Interviews

To complement and expand on what we learned through court observation, we interviewed custodial parents who had litigated child support to highlight the individual experience that may be lost in the survey approach. Her Justice conducted in-depth qualitative interviews with six clients, former or current, involved in child support cases. These six clients experienced a range of issues and types of system contact. Despite some differences, there were common themes throughout their stories as they told them to Her Justice. These clients' stories are highlighted in this report and provide important framing to the information collected through court observations.

**“I have a voice and I’m not afraid to speak up. There are people who don’t have a voice, they’re intimidated.... I always think about those people who can’t speak up.”**

— *Talia, Her Justice client*



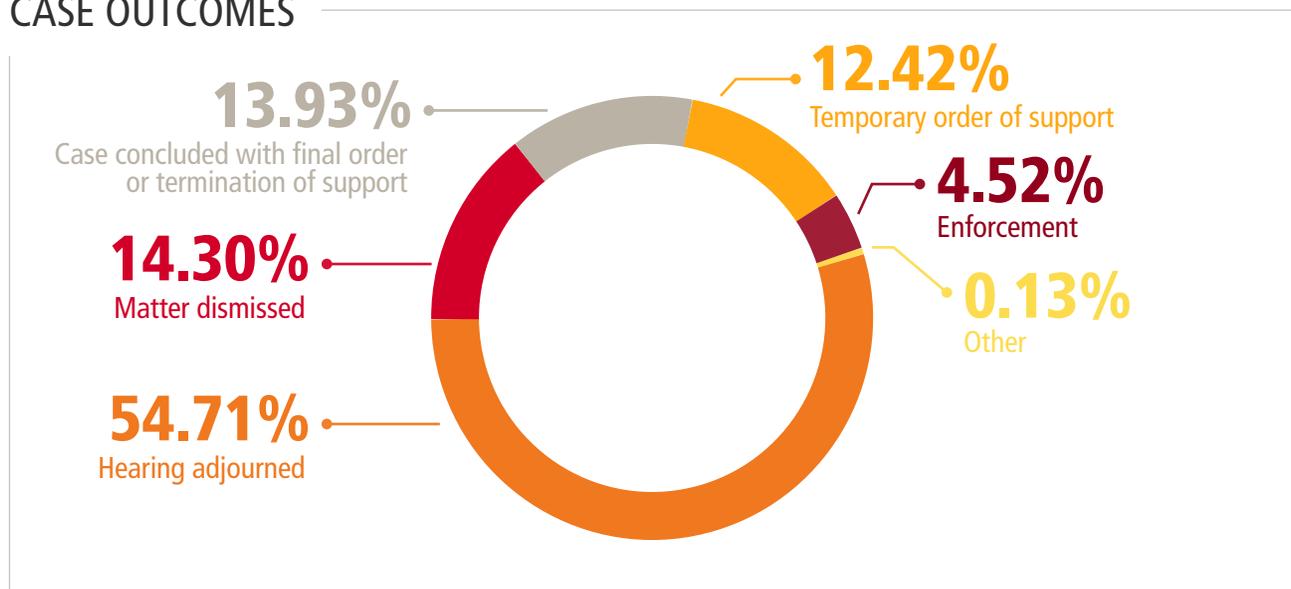


# Court Watching Exposes Challenges for Parents in Child Support Cases

## Key Findings: Delays

A key finding was the prevalence of delays or “adjournments” where little or no progress was made on the case. **More than half of the cases observed – nearly 55% – were adjourned.** Our observations in this Project confirmed what we understood to be an all-too-common reality in child support cases – that New York City Family Courts handling these matters are beset with needless delays.

### CASE OUTCOMES



**“I wish it would not take so much time. There is so much time wasted in court.”**

— Victoria, Her Justice client

**“It seems like court wastes so many resources, saying ‘come back, come back.’”**

— Heather, Her Justice client

**“I went to court 2 or 3 times too many, whether [that was] because something was overlooked as far as paperwork or [there were] too many cases so it was adjourned.”**

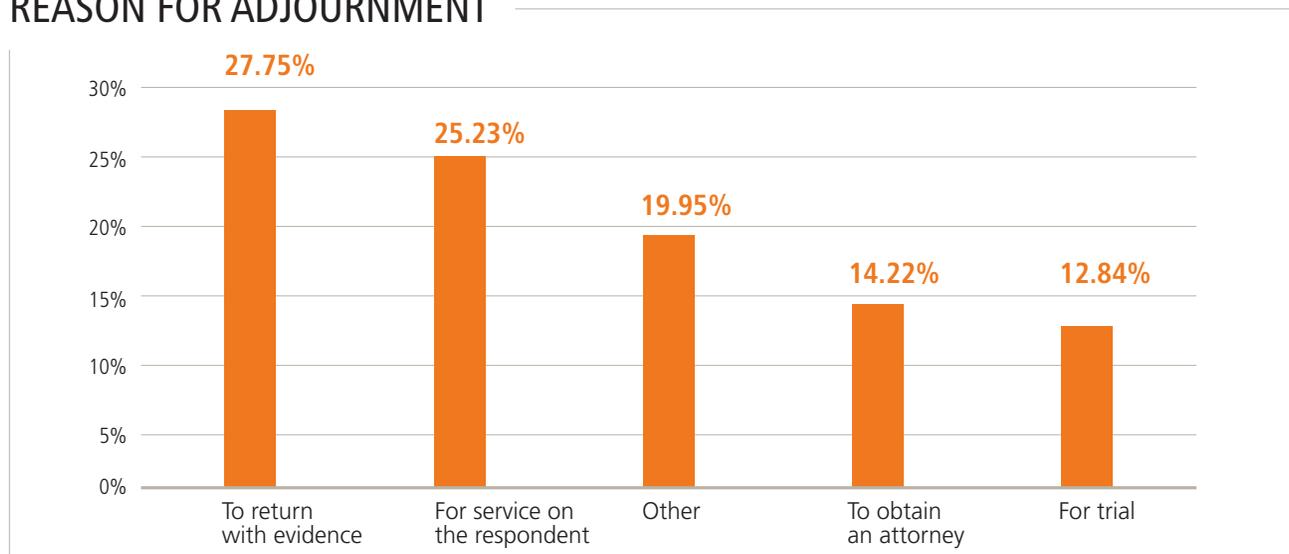
— Yvonne, Her Justice client



Court delays can be the worst enemy of custodial parents who are living in poverty. They can defer urgently needed support and, for some parents, mean having to choose between pursuing child support and keeping a job. Time wasted during an individual court appearance and over multiple appearances has costs for parents beyond the court experience. As Her Justice client, Talia, said, “I kept telling the judge, ‘I cannot afford to take time off of work, to pay for parking, for tolls, etc.’ The judge had nothing to say.” Another client’s life unraveled because she spent years litigating in Family Court. Victoria had a stable job at a gym in 2012 when she was involved in multiple Family Court cases, including custody and child support for her son. In 2014, she was fired from the job she loved because she was frequently either late or absent as a result of court appearances. The effect on her life was catastrophic. Surviving on only temporary child support and food stamps for which she reluctantly applied, she was unable to pay rent. Her landlord pursued eviction in court and she lost her home. Through the kindness of her new boss, she got help paying for a new apartment to get back on her feet.

Undoubtedly, the sheer volume of child support cases greatly burdens the system. To be sure, additional jurists (support magistrates and judges) would help manage the volume of cases. But there may be additional opportunities to ensure the efficiency of court operations in individual cases. This Project sought to elucidate the reasons for adjournments in the cases observed to highlight opportunities for reform, including solutions to avoid unnecessary delays.

## REASON FOR ADJOURNMENT



## IMPROPER SERVICE DELAYED CASES

**One quarter of the appearances that were adjourned (110 cases)** were adjourned due to issues with service of process.<sup>40</sup> Many Her Justice clients who get this far in a case before working with an attorney find service of process very challenging. Parents who file a child support petition in Family Court receive information about how to deliver legal papers to the other parent, but it can be confusing and overwhelming even if explained in plain terms. In New York City, the Sheriff’s Office is available to assist with service, but the fee may be unaffordable for some.<sup>41</sup> Some petitioners do not know where the other parent lives or works, having separated from him or her years earlier. Those who are victims of intimate partner violence may have maintained distance from their ex-partners to protect themselves. Challenges locating the other parent to have him or her served with court papers can cause cases



to be adjourned. Without information or advocacy as needed, litigants like Talia ([see her story on page 14](#)) risk attending court on multiple days only to have the case dismissed for lack of service, requiring them to refile.

This challenge was evident in the appearances observed through this Project, with some being adjourned for several months due to ineffective service. According to court watchers' comments, confusion about service was a great source of frustration for litigants. For some cases, it seemed to be the first time litigants were getting information about service. One court watcher commented: "The Magistrate gave thorough information regarding ... summons package to serve the respondent (which the petitioner was unaware about)." Another described this: "The petitioner failed to properly serve the respondent. The Magistrate clearly explained the process of serving the respondent. Petitioner asked: 'Why wasn't I told this when I filed the petition?' Magistrate replied, 'I cannot answer this Ma'am.'" Some court watchers noted that, even where the court explained service, the parties remained confused: "Petitioner was confused as he left about which papers to take with him."

In some of these cases, providing *proof* of service (or attempted service) was an issue for litigants. Some litigants brought paperwork with the dates of attempted service, but the papers had what the court considers defects – they were missing a proper title, dates, or the required notary signature – and the court rejected them. In one case observed, the "Magistrate did not accept notice of service because it did not state 'notice of service.'"

## THE NEED FOR MORE EVIDENCE POSTPONED CASES

**Approximately twenty-eight percent of the adjourned cases – or about 120 cases – were postponed so that one or both of the parties could return to court with proof of income and/or financial documentation.** This is often the reason for delay in child support cases that Her Justice handles. In a system that is so complex that many need lawyers to be fully informed, yet where more than 90% of parents are self-represented, custodial parents and noncustodial parents alike are frequently unprepared to provide the court with documentation of income. As Her Justice client Heather said about information posted in the courthouse: "Even with the know your rights posters they have, I didn't know mine." Language barriers compound the challenges for non- or limited English speakers, and the court administration's efforts to convey information in plain language do not go far enough.

Many observers commented on issues related to adjournment for parties to return to court with evidence. Their comments reveal how complex issues of financial proof can be, especially for parents without legal representation and where one or both of the parties is not a W-2 wage earner. In some cases, it was clear to court watchers that the litigants – including petitioners who had contact with court personnel when filing the initiating case documents – lacked information about the required financial documents. One observer noted: "Petitioner did not realize she had to prepare a financial disclosure affidavit and bring it to court." Parties were often confused about types of documents that were relevant, for example, W-2 forms and tax returns, along with lease documents and bank statements. Financial illiteracy also appeared to be a barrier for some litigants. One court watcher noted, "Magistrate goes through math calculations for adjusted gross income quickly and with jargon that is not explained."

In many cases where the parties had previously appeared in court, a party again failed to bring the necessary documents. One court watcher noted in a case involving a modification that "Petitioner was very angry – this is the second adjournment. Judge handled it very well and explained to petitioner all of the documents he needs.... [Petitioner] said some curse words and was escorted out of the room." The observer concluded that the litigant could have benefitted from an attorney because "he would have brought the proper materials."



**Individual accountability and proof of income were challenges.** The courts' routine failure to hold individual litigants accountable for failing to provide documents compounds delays resulting from court inefficiencies. In a system where litigants were fully informed about their rights and obligations, the court could and should hold individuals accountable for their part in delaying cases by flouting rules around mandatory financial disclosure. Her Justice routinely handles cases like Olivia's where the noncustodial parent refuses to provide financial documentation or proof of income.

**Mothers and children suffer when the father refuses to provide evidence.** Her Justice client Olivia described the challenges that proof of the father's income posed in the child support case before she began working with Her Justice. Olivia had information about the father's earnings because he had worked for a family company for years and she was close with that family. Though initially he did not bring documentation to court, the father finally produced his tax return and several paystubs. The paystubs did not show how much he earned per hour and the hours listed did not seem right. Olivia was suspicious as he "kept switching his story." The court "started catching on" and demanded that the father bring documentation from his employer. At the next appearance, the father gave the court "a letter that looked like a fifth grader wrote it." Olivia believed that the father's employer fabricated the letter. This caused many delays in the case and resulted in a lower support award.

Custodial parents who are represented may be able to pursue in-depth investigation of the noncustodial parent's finances, for example, by engaging forensic accountants or other experts. But these avenues are often foreclosed to custodial parents without an attorney. Further, it can be challenging if not impossible for an unrepresented custodial parent to advocate for the court to impose penalties for a noncustodial parent's refusal to provide proof of income. Without the court holding the noncustodial parent accountable, custodial parents with whom Her Justice works report that it can feel as if the court is biased against them. Litigants like Olivia then view the outcome of the case – a low support order – as resulting from an unfair process. Ultimately, critical and accurate support for custodial parents and their children can be unfairly deferred.

Court watchers commented on moments where the court failed to hold a party accountable for failing to provide documentation, though it could have. Several court watchers noted that the court began the appearance by asking for documentation – including the mandatory financial disclosure affidavit – where the litigants had already been reminded, and yet again adjourned the case because documentation was missing.

- **At one appearance, the respondent** – who had already missed several temporary child support payments – failed to bring updated tax returns even though the court had directed him to do so at the previous hearing. The court simply "advised respondent to meet his payment obligation on time."
- **In another appearance, the father** – for the second time – failed to provide proof of income. The magistrate gave him a "last chance" to return with documentation and explained that this hearing should have been his last chance.

In a system that prioritized procedural justice, parents would be better equipped to participate, fully informed of expectations and consequences for failure to meet obligations, and would experience a fair process that produces fair results.



## Legal Representation and its Impact

**“I was shocked. I feel like the court system makes it hard for mothers to try to do it on their own.”** — *Olivia, Her Justice client*

As stated earlier, more than 90 percent of litigants in Family Court child support proceedings do not have lawyers. Data on representation of litigants collected for this Project painted a similar picture: 85% of petitioners and 80% of respondents were unrepresented. For this Project, we were curious about the impact of legal representation on the experience of parents in court, in addition to the outcomes of court appearances. Clients we interviewed for this Project highlighted how important it was for them to have a lawyer to help them navigate the courts.

### Heather’s Story

Her Justice client Heather started her child support case without a lawyer. Her husband retained a lawyer who was also representing him in a custody case he filed against Heather. Even though the husband was working in construction and getting paid on the books, he did not provide proof of income the first time they appeared in court and the court did not enter a temporary child support order. Heather felt she was not given the opportunity to share her knowledge of his finances. Before the second court appearance, Heather was matched with a pro bono attorney through Her Justice. She says that **once she had a pro bono lawyer to represent her, “Things felt different 100%.... It always seemed like the [magistrate] was only able to talk to the lawyers and not to me.” Once she had a lawyer, “everything changed; the [magistrate] even seemed nice.”** Using information she presented to the court about typical salaries for the construction industry, Heather’s attorney argued for and secured a temporary order that was double the amount that the husband’s lawyer proposed. At the third court appearance, with the help of her attorney, Heather felt prepared to reach an agreement on child support. Heather recalls thinking, **“Whatever these higher up people decide they hand over. I didn’t know there was a way to negotiate, to tell your side.”** The agreement included childcare costs to which the husband would contribute – a possibility that Heather was not aware of until her lawyer informed her about it. Heather says: “I couldn’t believe that this was done. I was so relieved.”

Further, we asked court watchers to report various observations around legal representation, including whether parties were informed of their right to seek legal advice. Court watchers who answered this question reported that **the magistrate informed parties of their right to seek legal advice only slightly more than two-thirds of the time.** At the same time, court watchers responded that in approximately **52% of cases the parties would have benefitted from legal representation.** This theme appears in watchers’ comments as discussed throughout this report. Generally, court watchers commented that legal representation would have helped litigants:

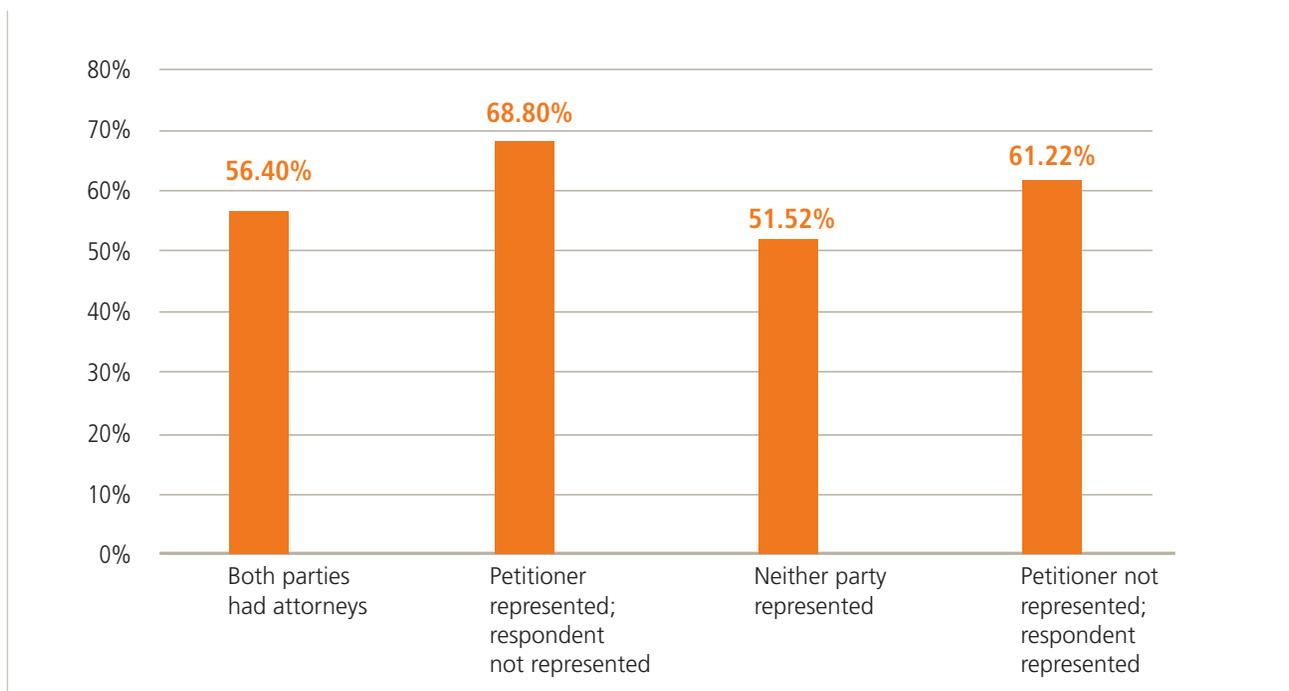
- understand the proceedings and technical terms;
- effectuate service;
- prepare and present proof of finances to the court; and
- facilitate enforcement of support orders and obtain proper accounting of support arrears from the Office of Child Support Services.



Additional court observation data suggests that representation by an attorney may have had an impact on some of the *outcomes* of court appearances recorded.

*Effect on adjournment.* In the appearances observed where the outcome was “adjourned,” the court was more likely to adjourn the appearance when only one party had legal representation and least likely to adjourn when neither party had an attorney.

## PERCENTAGE OF CASES ADJOURNED BASED ON REPRESENTATION



Further analysis of this data to isolate the impact of legal representation could highlight whether the adjournment had *value*, for example, if it benefitted the parties by giving them more time to gather financial documentation to prove income or to obtain counsel in the first instance where representation was critical.

In *enforcement* cases in particular, legal representation impacted the likelihood of adjournment. In 17% of the willfulness cases observed (defined as cases where the custodial parent alleges that the noncustodial parent has willfully failed to pay support), the petitioner was represented; 94% of the time the petitioner was the mother. In 55% of the willfulness cases observed, the respondent was represented (likely an increase from the overall sample because of the right to counsel for respondents in these cases); 91% of the time the respondent was the father. The data show that the **rate of adjournment in willfulness cases went from 50% to 74% when the respondent was represented**. Further analysis to isolate these factors from others would be useful to understand the impact on litigant experience of process or outcome. For example, it is in enforcement cases where courts make resources available to noncustodial parents, such as job placement and job training. To the extent these resource interventions are responsive to individual needs and viewed as increasing individual engagement in a process that is also efficient, adjournments may be productive and valuable. It would be important to understand better whether having a lawyer makes it more likely a party would obtain these resources.



**Further, having an attorney reduced the likelihood that the case was adjourned as a result of defective service.** Where the petitioner was represented by an attorney, the percentage of cases adjourned for service on the respondent decreased to 10% from 28% where the petitioner was not represented by counsel. While this data is for a small sample of the cases, it would be valuable to understand better why representation may positively impact service of process, and whether that points to opportunities for improvement for the many unrepresented litigants. Court watchers also reported their views that litigants would have benefitted from legal representation to better understand and accomplish service of process. The court echoed this in some cases. For example, in one case, the court watcher noted: “Father filed a petition to modify the order. The mother was not sure of what was going on and whether she wanted to waive her right to a lawyer. Mother was not served and seemed confused about the whole proceeding, so the Magistrate adjourned and issued new service and advised the mother to consult with a volunteer attorney at the courthouse.”

We recommend that the courts explore litigants’ needs around service further and what resources, including clear information at the earliest point of contact with the court system, would help ensure that parents are able to accomplish this step.

*Effect on dismissals.* **Another positive effect of legal representation was on case dismissals. Of the cases observed, 114 or 14.3% were dismissed. This percentage decreased when petitioners were represented to just over 3%.** We did not collect data on the reason for dismissals generally, but our experience in Family Court tells us that cases are often dismissed for threshold issues such as lack of proper service, or if the court does not have the power to decide an issue presented by a petition. We view this data as pointing to the inefficiency of the process, and again the need for litigants to be fully informed at the outset of interaction with the court system. While custodial parents can generally re-file the case, the resources – time and sometimes money – expended in filing for the first time will have been wasted and the courts clogged with cases causing needless delays.

The client feedback and observational data together illustrate the experience of complex processes that seem able to be handled most effectively with legal representation and in which, in some cases, lawyers do make a difference. This consistent procedural complexity makes the system inaccessible – and procedural fairness elusive – for many parents. The first step in reform should be simplification – of court forms and processes – and enhancement in litigant education.<sup>42</sup> Simplified financial disclosure forms, for example, and clearer instructions for those forms, will help litigants participate more fully and with greater accountability in their support cases and will benefit the efficiency of the process overall. Even with this and similar reforms, however, some support cases, like Heather’s case as described above, will remain complex. Understanding where lawyers made an impact in the cases observed for this Project points to opportunities for reform toward fair process and outcomes. Court administrators and policymakers should also consider the need for legal representation especially for litigants in these complex cases and how to make assistance available.

## **Custodial Parents Need Fair and Timely Temporary Orders**

By law, the court must issue a temporary order of support at the first court appearance in a child support case.<sup>43</sup> As *final* orders of child support are retroactive to the date the petition was filed, the court accounts for any temporary support paid in the final order (and if the final order is higher than the temporary order, the noncustodial parent will owe more support for some time). Yet court inefficiencies, along with unprepared or uncooperative litigants, can delay temporary orders of support in the first place and cause them to be unaffordable for noncustodial parents. Temporary orders can also be too low for custodial parents. In Her Justice cases, magistrates



have issued very low temporary orders, seemingly conservative to account for the income the noncustodial parent will eventually prove, and since the order can be adjusted at the conclusion of the case. **This ignores the mandate of the law<sup>44</sup> and reality of need, along with the challenges of enforcement, and makes delays that much more harmful.**

Of the appearances observed through the Project, the court issued temporary orders of support in 99 cases or 12.42% of cases. Observations and narrative commentary about the experience of obtaining a temporary order of support shed light on some challenges at this stage of the litigation.

- In one case, the parties were self-represented and relying on assistance from an interpreter. “[T]he Magistrate proceeded to ask how much [the father] earned, where he worked, and other relevant child support questions, before adjourning the matter until relevant financial disclosure was provided by the father. He clearly said to the father, ‘the last thing we want is for you to lose your job’ and suggested he politely ask for a letter from the employer. . . . The Magistrate then asked if [there were] any questions, and the husband asked how much he would be expected to pay for child support. The Magistrate said temporarily it would be \$50/week, whereby the father expressed this was too much, and would like \$150/month. The Magistrate immediately reduced this to \$40/week. The mother expressed she was not happy about this, and the Magistrate responded by saying it was temporary and adjourned the matter. **I thought it seemed somewhat unfair that the Magistrate would not take into account the mother’s needs and was very quick to reduce the child support at the father’s request. I also thought the Magistrate gave a lot of time to the father’s needs and ensuring he was understanding of the procedure, and not equally as much time to ensuring whether the mother understood or had any questions.**”
- In another case observed, the parties had provided proof of income and the support magistrate calculated the father’s child support obligation as \$358 biweekly. The “magistrate then asked the father whether the order was unjust, and the father replied that it was ‘way too much’ and that \$300 biweekly ‘would be fine’ instead. **Upon hearing this, the magistrate adjusted the calculation and set the order at \$300, without requiring any evidence or giving the mother a chance to respond.** The magistrate also offered to the father that he could bring in evidence of his other life expenses like rent and utilities and that he would take that into consideration.”

These examples highlight issues around litigants’ lack of preparedness and accountability for providing proof of income, and also raise serious concern about the courts’ departure from the critical mandate to order temporary support that parties can afford (or children need) at an early stage of the case. Without informed litigants and a predictable approach, many custodial parents and their families suffer without essential, timely support.

## **Key Findings: Opportunity to Improve Fairness for Litigants**

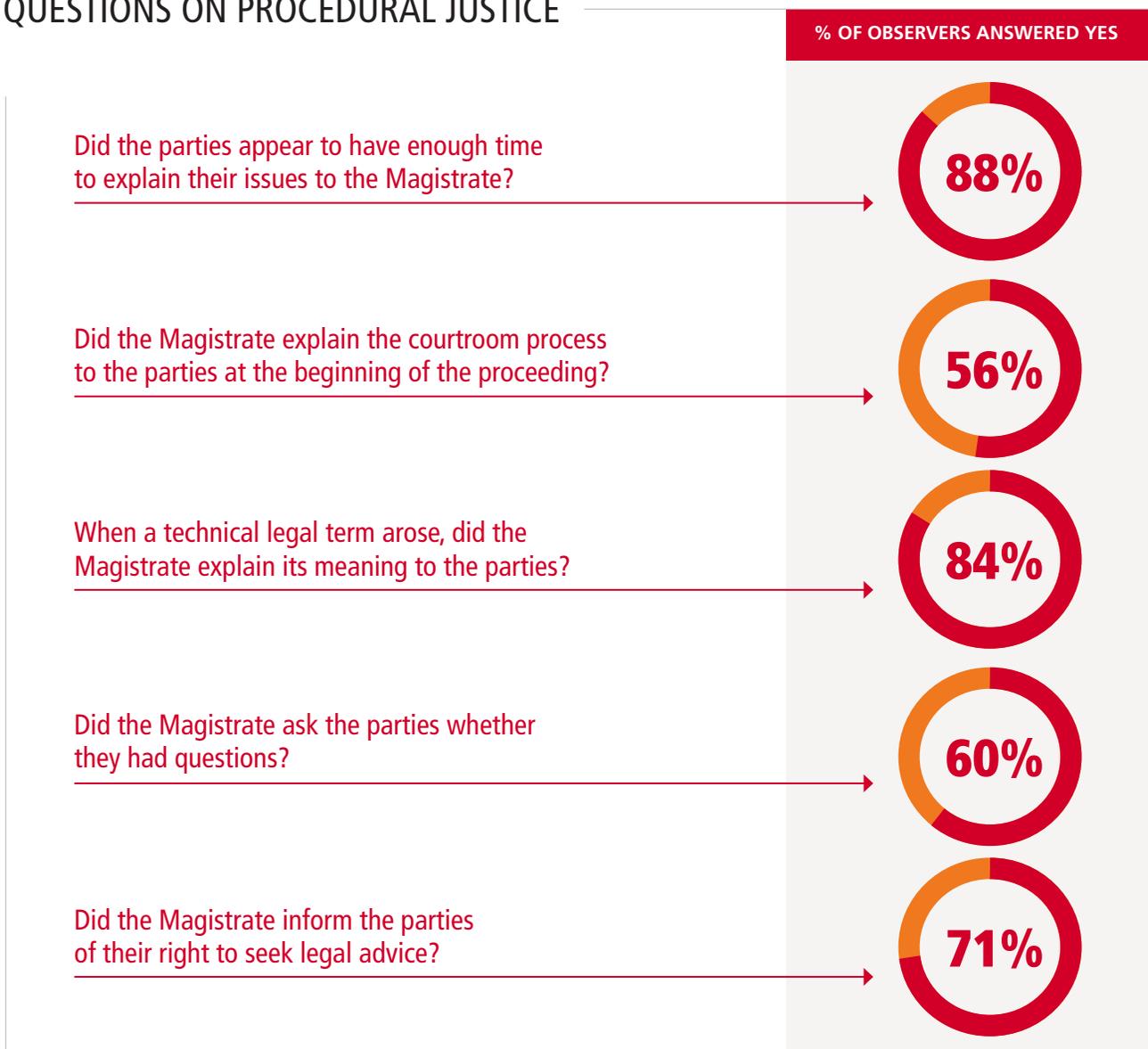
The Project principally sought to investigate and understand the experience of litigants in child support proceedings in terms of procedural justice. Procedural justice recognizes that the “manner in which disputes are handled by the courts has an important influence upon people’s evaluations of their experiences in the court system.”<sup>45</sup> It holds that “how people and their problems are managed” by “the courts has more influence than the outcome of their case” on people’s experience.<sup>46</sup> The concept centers on key values, including: **respect, understanding of the process, helpfulness of those in authority, decision-maker neutrality, and opportunity for an individual to have voice in the process.**<sup>47</sup> The application of these values to the Family Courts is not novel; some are highlighted in the **New York City Family Court’s Strategic Plan**, including the commitment to respect for



those using the courts to ensure their confidence in the system.<sup>48</sup> Further, these values have been highlighted in the child support policy context. The federal Office of Child Support Enforcement has recognized the importance of these principles in the context of exploring attitudes of noncustodial parents in child support enforcement.<sup>49</sup> The New York City Office of Child Support Services similarly recognizes those values as key to its work with parents.<sup>50</sup> For the many parents who navigate the child support system without an attorney, these values provide useful guideposts toward which to aim reform efforts in the system as a whole, and in the courts in particular.

For this Project, we asked court watchers to answer several key questions that align with procedural justice principles. The responses make clear that, even with a substantial volume of cases, many support magistrates provided opportunities for litigants to ask questions and gave needed explanations of court processes or legal terms. At the same time, the data show areas for improvement in the experience of litigants.

## QUESTIONS ON PROCEDURAL JUSTICE





## DID THE PARTIES APPEAR TO HAVE ENOUGH TIME TO EXPLAIN THEIR ISSUES TO THE MAGISTRATE?

**“When I felt very confident was when I was on the stand, once I got heard. Even if I don’t get a lot, for once, the [magistrate] listened.”**

— *Olivia, Her Justice client*

**“One of the most significant aspects of the experience is going from the ‘victim mentality’ to you can have some say.”**

— *Heather, Her Justice client*

Through interviews conducted for this Project and through case experience, Her Justice clients have conveyed the importance of being heard in court. At the same time, Her Justice pro bono attorneys and clients tell us that they often feel rushed in court. Victoria, a Her Justice client, said, in an interview: “They are in a rush in court all the time. It’s like chop, chop let’s go.... They are like ‘hurry up, what do you want to say.’” Talia, another Her Justice client said, **“The process happens too quickly and sometimes you don’t even realize that you didn’t say what you needed to. You look at how many people are waiting, and you know you don’t have enough time.”**

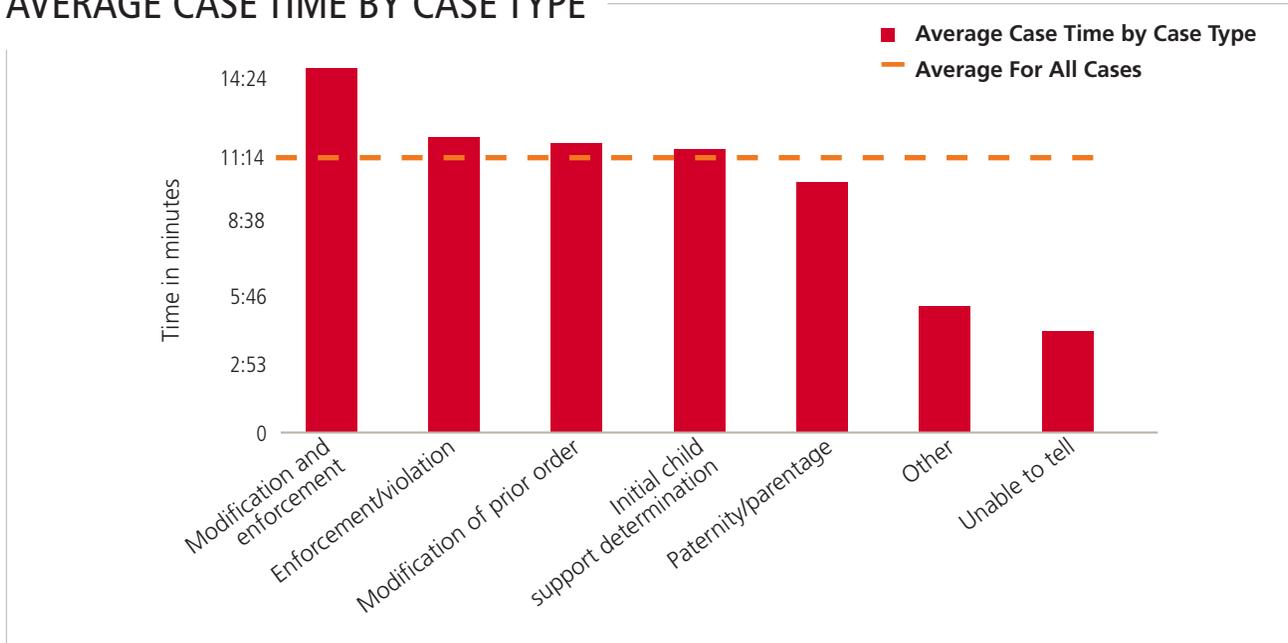
To learn more about the quality of litigants’ experience in court, we asked court watchers to report on whether the parties appeared to have enough time to explain their issues to the magistrate. Those that answered this question reported that in **88% of the appearances observed, litigants appeared to have enough time to explain their issues to the magistrate.**

### Can you really be heard in court in just 11 minutes?

To provide additional context for these perceptions, we asked court watchers to record the duration of court appearances observed. **The court appearances observed for this Project, on average, lasted slightly more than 11 minutes.**<sup>51</sup> Court observation data show that case time before the magistrate changed slightly depending on the *type of case* in ways that we might expect. Case time increased slightly above average for modification and enforcement cases; since these involve parties who had already litigated child support, they may require the court to address more extensive background information. As shown below, the longest case times averaging approximately 14 minutes were for cases that involved petitions to modify along with petitions to enforce support orders.

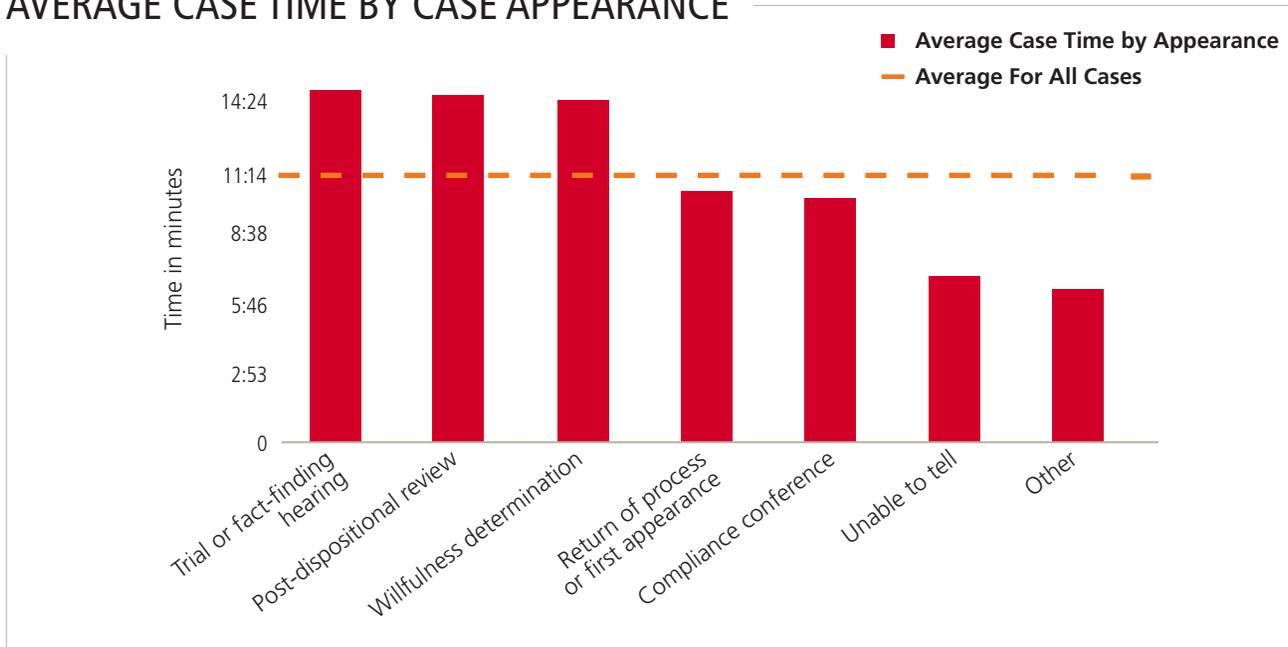


## AVERAGE CASE TIME BY CASE TYPE



Data also show that case time before the magistrate changed slightly depending on the *type of appearance* in ways that we might expect. For example, case times were shortest where the case was dismissed (averaging approximately 6 minutes). Cases being heard for a “return of process/first appearance” and for a compliance conference (where the court typically checks in with the parties on the discovery process) were slightly shorter than average. And, as shown below, hearings or trials were longer than average, lasting 13 to 14 minutes.

## AVERAGE CASE TIME BY CASE APPEARANCE





Court watchers reported issues around adequacy of time in court in their narrative comments, noting that in some cases, the court ran out of time to address significant matters at hand. Some narrative comments highlighted important areas for improvements so that litigants “have voice in the process” and a meaningful opportunity to explain their issues to the magistrate.

- **For example**, in an enforcement case observed, the mother wanted to add another child to the support order, but the hearing was adjourned for three months because the parties ran out of time after addressing the father’s failure to comply with the current support order. The court watcher understood that the parties had a fixed amount of time – 15 minutes – to address these issues, and that the magistrate “seems to have a firm policy of not exceeding the allotted time so he will adjourn to resolve any remaining issues.” The court watcher reacted: “it’s a little disturbing that the mother will go without support for her new child for over two months, or possibly longer, depending on whether they have time to get to the issue at the next hearing.”
- **In another appearance**, the court watcher commented that the respondent claimed he was unable to work – a significant issue that is relevant to his ability to pay the child support order – but that this was not explored since “the hearing [was] adjourned because of lack of time.”
- **In yet another case observed**, the court watcher noted that the appearance “was listed for 30 minutes.” Yet “the magistrate had to cut off the parties while evidence was still being given, and put them on recall to return later in the day. This must have been frustrating to the parties, to get part-way through their matter and then have to sit around until late afternoon....”

There is no question that the courts are overburdened with a large volume of cases. The court administration itself recognizes the need to address these significant individual needs with urgency, and to “set guidelines for the efficient disposition of each case type.”<sup>52</sup> We know that many court appearances are truncated due to issues with service or production of financial documents and, therefore, efficiency is challenged. The courts should evaluate processes and the impact on litigants’ experience and strive to resolve these important issues expeditiously and effectively for families.



**In just over half of the court appearances observed** for which court watchers answered this question, the magistrate explained the courtroom process to litigants. In the current system in New York, with so few parents in child support cases being represented by lawyers and information for litigants being limited, the responsibility largely falls to magistrates to explain the process to litigants. Her Justice clients interviewed did not have a better understanding of the system after litigation, for some even after working with lawyers. Victoria, a Her Justice client, said, there are “many rules about child support that I am not familiar with,” even after litigating child support in Family Court for several years. Similarly, Anica, another Her Justice client, said, “Even after many years, it is still



confusing.” And Talia, another client, who litigated initially without a lawyer but then had a lawyer for her enforcement case, said, “for something I’ve never done before, there’s a lot of gray area.”

Court watchers’ narrative comments shed light on both positive and negative instances where the court undertook the responsibility to explain process. Some court watchers reported that magistrates explained aspects of the process in a way that litigants appeared to understand.

- **“The magistrate** did a great job of explaining legal terms to the petitioner and ensured that the petitioner understood her options.”
- **In one case**, the magistrate clearly explained the evidence requirements for a pro se petitioner (where respondent was represented) and asked questions to help the process along. The court watcher noted that “neither of the parties appeared confused with the outcome or the proceedings.”
- **“The magistrate** was very comprehensive in explaining to the parties what documents to bring to the hearing, and gave each a customized check-list to take with them. He was kind and polite. Explained consequences [to the respondent] of not showing a job search diary.”

In other cases, it was clear that the magistrate failed to adequately explain the process and litigants remained confused.

- **For example**, one court watcher observed an enforcement case in which only the respondent appeared. The court watcher noted: “The magistrate asked the respondent if he had had any contact with the petitioner and if so if he knew why she was not at the hearing. (This all happened so quickly, the magistrate looked and talked as if he was trying to get rid of the man as quickly as he could.) He explained in language that was *obviously* not clear to the respondent that the case was dismissed. When the respondent tried to respond (clearly confused by the situation) the magistrate told him the matter was dismissed and that he could go.”

**Court watchers also noted the challenges for litigants – especially those proceeding without a lawyer – in providing evidence to the court and understanding the procedure around using documents or oral testimony to prove a case.** For example, one court watcher observed an enforcement case in which the non-custodial parent – a college graduate with a finance/business administration degree – attempted to prove that he could not pay child support because he was unemployed, and his unemployment benefits had run out. The court watcher noted the difficulty for the unrepresented petitioner/custodial parent in objecting to the documents the father asked the court to consider as evidence. According to the court watcher, “The magistrate struggled to explain the evidentiary process to the petitioner in a way that a non-lawyer would understand, and I do not think that she understood what basis she could object on.... I think the technicalities of the evidentiary process, and the uncertainty of what kind of evidence is permitted at different parts of the hearing may significantly disadvantage the petitioner here, who has been unable to get anything from [the noncustodial parent] for a couple of years....”

Enforcement cases involve additional processes, for example, post-dispositional review, during which the court may refer a respondent to a job placement program, and enforcement remedies such as money judgments with statutory interest and the opportunity to partially satisfy arrears through a “purge” payment. Court watchers noted that litigants were confused about these processes. For example, one court watcher noted that “the petitioner seemed upset since there was a past judgment that had not been paid. However, since the respondent was paying his current order, there was no violation. The petitioner seemed confused and could have used a lawyer to explain to her what her remedies were regarding a past judgment. Matter was dismissed without prejudice.”



There is opportunity for improvement in courts' explanation of the process overall and enforcement in particular. It may be, as one support magistrate explained to a court watcher, that "if the schedule is really tight, she confessed they simply do not have enough time to explain everything to parties." But given the largely unrepresented group of litigants, and the high-stakes issues, procedural justice demands that litigants be adequately informed about courtroom process.



In addition to the importance of explaining the judicial process, it is critical that the court provide adequate explanation of technical legal terms. **In approximately 84% of the appearances for which court watchers answered this question, the magistrate explained the meaning of technical legal terms.** This is especially important given that almost all litigants are unrepresented. For litigants who are not native English speakers, the court's explanation of technical terms is even more critical.

*Willfulness cases.* Court watchers provided rich commentary on issues around whether magistrates explained technical terms in enforcement cases and willfulness cases in particular. In these cases, respondents – noncustodial parents who have failed to pay child support – have the right to a court-assigned attorney if they cannot afford to retain counsel. In the cases observed for this Project, it was typical that the petitioner (almost always the mother) did not have an attorney, even when the respondent (almost always the father) did in some cases. These cases involve special terms related to the willfulness of respondent's failure to pay child support and available enforcement remedies, in addition to the standard procedural and technical terms that apply in establishment and modification cases. The stakes are high in enforcement cases. If the court finds that the noncustodial parent has *willfully* failed to pay child support, he or she can be incarcerated for up to six months pursuant to New York law, and can face other penalties such as suspension of licenses and passports.<sup>53</sup> For custodial parents, the stakes are high in that many have gone without child support for months or even years and have struggled to support their children. Many custodial mothers who become Her Justice clients report that the magistrate asks them what penalty they seek for noncustodial parents' failure to pay support, yet, without an attorney to explain, they lack the information to make this choice wisely. This experience was reflected in some narrative comments from court watchers.

- **In one case,** the unrepresented petitioner had petitioned for enforcement of unpaid child support. In court, she said she did not want the court to order incarceration, and that she wanted to forgive any arrears (past due support) and have the court compel respondent to pay child support going forward. According to the court watcher, she "kept saying she doesn't want to worry about past payments, only moving forward." The magistrate told petitioner that she could withdraw the violation petition and "zero out" the arrears, but petitioner did not seem to understand this. The magistrate also directed respondent to come prepared to the next hearing with all required financial documentation and adjourned the case so that the respondent could retain an



attorney. The court watcher noted: “The petitioner and respondent didn’t seem to know what was really going on. I think they struggled with the definition of arrears and what type of filing/order should have taken place.”

- **In another case**, the court watcher noted that the “legal terms were explained clearly, but I didn’t think the [petitioner] actually understood it and [she] didn’t ask questions. Very little time given to decide between entering a money judgment or willfulness hearing for the petitioner and weighing the consequences.”
- **In yet another case**, the magistrate did her best to explain the order regarding child support arrears to the petitioner, who was unrepresented, and answer all of the petitioner’s questions. The court watcher noted that “the petitioner was confused what it means to waive a hearing and the judge explained. I think that the petitioner would have benefitted from having an attorney because she was confused by how the system works and seemed to be confused by the order of the court (she had follow-up questions). The judge explained to the best of her abilities, but the judge is not authorized to give advice to the petitioner, which the judge said as well.”

We encourage the courts to continue prioritizing their role, especially given that most litigants are unrepresented, in explaining child support process to litigants.



**In approximately 60% of the cases for which court watchers answered this question, the magistrate asked the parties whether they had questions.** This is a very important opportunity for the court to confirm that the parties – almost all of whom are unrepresented – understand the proceeding. Data collected show that magistrates were somewhat *less* likely to ask the parties whether they had questions in enforcement cases (49%) than they were in cases where child support was being established (62%). It would be valuable to explore whether this change results from a greater percentage of respondents with legal representation in enforcement cases and, if so, the impact of lawyers on the court’s behavior in this regard.

Court watchers noted that, in some cases, when magistrates asked parties if they had questions and the parties indicated that they were confused, the magistrates explained the issues, but left litigants confused. For example, one case involved an unemployed father who the court watcher noted “was confused with the legal system.” The mother had not been served and did not appear in court. The court discussed with the father that he must look for a job, and that the court could refer him for assistance to the STEP program (Support Through Employment Program). The court watcher noted: “The Magistrate clearly stated all of this to the father. He asked the father if he had any questions, and the father responded that yes, he was confused about what was happening. The Magistrate patiently retold the father what was happening... The father would have instead benefitted from legal representation.”



In other cases, the parties did not have the opportunity to ask questions and have them answered. One court watcher provided interesting insight into this issue: “The Petitioner was very well-spoken and appeared to be educated. In my opinion, this changed how the Magistrate spoke to her. The Magistrate was less authoritative and stern in her tone of voice when responding and allowed the Petitioner to speak without interruption. However, the Respondent was not as well-spoken and appeared to be very confused about the petition and the proceedings. The Magistrate was much more domineering in response to his questions, often interrupting when he was speaking and showing very little patience for his questions. The Magistrate did encourage him to seek legal counsel and provided resources several times. It felt as though there were two different Magistrates in the room. One speaking to the Petitioner and another speaking to the Respondent.”

Another court watcher conveyed concerns about the magistrate’s response to questions. “The Magistrate’s tone was stern and she spoke very quickly. I felt that everything was rushed.... The parties definitely expressed some confusion in the final order of what exactly was owed, and the Magistrate kept repeating the same terms over and over rather than rephrasing them differently or providing some more explanation. It got to the point where the parties just acquiesced and did not continue to ask any more questions.” Creating more meaningful and consistent opportunities for litigants to ask questions about court proceedings would help improve litigants’ perception of fairness of the experience.

## Language Barriers Compound Challenges for Parents in Court

**“I talk too slow because my second language is English. I get very nervous in court and I can’t express myself.”** — *Victoria, Her Justice client*

We were also interested in understanding the experience for non-English speakers in child support cases. In approximately 12% of the cases observed, the petitioner had an interpreter and in approximately 12% of the cases observed, the respondent had an interpreter.<sup>54</sup> Court watchers observed that language barriers compounded challenges for litigants. In one case without an interpreter, the court watcher noted that the respondent “was not able to communicate clearly what it was he wanted and the Magistrate did not help him by explaining what was needed or the process.... The Magistrate seemed to rush the respondent and did not give him enough time to explain himself, which he would have benefitted from given the language barrier. The Magistrate asked the respondent if the respondent was asking for an adjournment, and he said yes, but it appeared he really wasn’t aware of what was going on. The Magistrate used a harsh tone and ended the trial abruptly.”

In other cases, there were some challenges with interpretation in court.

- **In one case**, a court watcher reported that “the interpreter was speaking at the same time as the Magistrate and the parties, and was very overwhelming and difficult to follow. The Magistrate kept asking questions to the petitioner, which were then interpreted, and the petitioner repeatedly responded saying he did not understand the question. This made the Magistrate incredibly frustrated, which was clear in her tone of voice and the multiple sighs she would give before restating the question. As an observer, this made me nervous and anxious as there was a clear miscommunication occurring, yet the Magistrate was almost blaming and taking her frustration out on the petitioner, heightening an already difficult situation. The dynamic felt very tense and chaotic.”



- **Another case** involved a fact-finding hearing where the father provided some but not all of the mandatory financial documentation. The father had failed to pay the temporary child support ordered at a previous appearance. A single interpreter for both non-English-speaking litigants provided “simultaneous interpretation.” The court watcher noted that the “Magistrate was mindful of the simultaneous interpretation and spoke with sufficient breaks and in a reasonable pace (which others fail to do).” The court watcher also noted that the interpreter “had a terrible attitude, making facial expressions to parties and making side comments/giving instructions to parties (e.g. speak loudly, that father should take vitamins to refresh his memory). Parties rely on interpreter for clarification, and they should not have this experience.”

Best practices for in-court interpretation are well-studied; a full discussion about those issues is beyond the scope of this report. But to the extent that the courts are not responsive in all instances to language barriers and litigants’ needs, and that this may make the process inaccessible to some litigants, we encourage the courts to examine the impact of the need and possible resource interventions to improve the experience of parents in the child support system.





## RECOMMENDATIONS FOR CHANGE

Based on the court observation **data** collected and interviews conducted with Her Justice clients through this Project, along with the collective wisdom of advocates and clients developed over years of experience with child support proceedings, we propose the following recommendations for reform to improve the system's delivery of individualized justice that accords fairness in process and outcome:

### **Improve efficiency of process and accountability to reduce needless delays.**

- The court administration should consider triaging child support cases based on complexity and, along with policymakers, explore the opportunity to create a simple process for simple cases.
- The court administration must urgently address delays in all pending child support cases and formulate a plan to be shared with the public for efficiently moving forward cases that are filed in the future.
- The court administration should engage an advisory committee including external stakeholders to review the New York City Family Court's progress toward its 2016 strategic plan goals related to timely disposition of cases and to provide input for needed reforms given challenges that existed before the COVID-19 pandemic and which the crisis exacerbated.
- The court administration should hold itself accountable for case timeframes and other strategies for efficiency that are not contained within the New York City Family Court's 2016 strategic plan, and make data related to progress on these issues publicly available.

### **Undertake form changes for litigant education and prevention of legal crisis.**

- Family Courts should uniformly accept the "short form" financial disclosure affidavit which is more streamlined than the traditional form. The court administration should amend the instruction form as to acceptable financial documentation, in consultation with plain language experts, to prepare litigants to participate in child support proceedings. The court could consider a pilot program to test the efficacy of the modified instructions.
- The court administration should amend forms describing the requirements for service of process, in consultation with plain language experts, to prepare litigants to participate in child support proceedings. The court could consider a pilot program to test the efficacy of the modified instructions.

### **Prioritize data analysis and transparency.**

- The court administration should invest technological and other resources to engage in data analysis around the nature, duration, and outcomes of child support proceedings in Family Courts, and make that data publicly available to enhance efficiency and accountability to and by litigants.
- Data analysis and transparency will provide guidance for reform efforts (especially when the courts reopen after the COVID-19 pandemic), including strategies to avoid needless delays in the adjudication of cases, and for decisions system-wide around allocation of resources such as legal assistance.

### **Enhance training for magistrates and court personnel.**

- The court administration should provide regular training for support magistrates and Family Court judges on procedural justice values to improve litigants' experience.
- Courthouse petition room staff and other courtroom personnel should receive regular training on procedural justice values to improve litigants' experience.

# Conclusion

Child support is critical to families. Yet the child support system in New York is so complex that it impedes fair access for the many parents that navigate it without legal representation or even basic legal information. At the same time, justice can be elusive because the system is challenged by the volume of families engaging with it and litigants who have not been prepared for court, and parents lack the opportunity to have a voice in such a critical process. Custodial mothers, and especially those living in poverty, shoulder a substantial burden of navigating complex processes because many must engage with the child support system to achieve financial stability. Achieving the vision of a system that treats litigants fairly and with dignity through a more efficient and effective process demands an acknowledgment of the experience of custodial mothers and will ensure that the system works better for all families.





# Appendix A

## Methodology

### SAMPLING STRATEGY

In total, 89 court watchers participated in the Project. Of that group, 45% were associated with law firms that partner with Her Justice, 27% were law students, 19% were Her Justice staff and interns, and 8% were associated with corporations or non-profit organizations. Over 72% of the observers had some level of law school training.

Rachel Braunstein, Director, Policy at Her Justice, and Denise Kronstadt, Deputy Executive Director/Director of Advocacy and Policy at the Fund for Modern Courts, trained court watchers. Braunstein and Kronstadt conducted seven trainings over the course of the Project, with the final two held in the summer of 2019. The trainings included an overview of child support law and court procedure, what to observe in the courtroom and how to record observations. **(See Appendix C for training information.)** Her Justice conducted regular data analysis during the data collection period and refined the trainings as needed to make clarifications and ensure the collection of more accurate data.

At the conclusion of the training sessions, Her Justice assigned volunteers specific dates and courtrooms to observe. We aimed to have court watchers observe as many support magistrates and judges who preside over child support cases as possible given volunteers' availability and courtroom schedules. As data collection progressed, we assigned court watchers to certain magistrates so that we were able to collect more representative data from all courtrooms, magistrates, and counties.<sup>55</sup> Once in the courtroom, the court watchers reported on a variety of areas including case and appearance type, whether parties were represented by counsel, availability of interpretation services, and procedural justice issues. The court watchers recorded their observations on a paper form while in court **(see Appendix B)**, and then entered the observations in an identical online response collection form, which was available to Her Justice for review.

The court watchers contributed 797 observations of 36 magistrates across the boroughs, with the number of magistrates observed for each borough varying based on staffing. On average, each court watcher observed approximately 10 court appearances. In total, 29 court watchers observed more than one day in court. For the Project, we observed child support proceedings in the Family Courts of all five of New York City's boroughs. **(See graph on page 15.)** Within each Family Court, our approach was to observe each of the support magistrates; the number of observations per support magistrate varied slightly based on the availability of volunteers to travel to certain boroughs.

There are several different types of support proceedings in New York Family Courts, which were observed for this Project: (1) establishment cases are those in which a custodial parent is seeking an order from the court that establishes an award of child support where none has been issued for the subject child before; (2) modification cases are those in which an award of child support has been established by a court and one or both parties has petitioned the court for a change in the amount, generally based on a "change in circumstances"; and (3) enforcement cases are those in which the custodial parent alleges she is not receiving child support and, therefore, the noncustodial parent has violated the court order. In some enforcement proceedings, one or both parties also seeks a modification of the order (i.e., the noncustodial parent alleges that he is unable to pay the order,



which led to an alleged violation, and seeks a reduction or modification in the order going forward. Further discussion of case types and appearance types observed for the Project is in the Court Monitoring Guide at **Appendix C**.

We asked court watchers solely to observe cases involving private parties, i.e., one parent seeking child support (or a change in support) from the other. We did not ask court watchers to monitor cases involving the New York Department of Social Services seeking child support from a noncustodial parent for welfare recoupment. We excluded these cases from the Project because there are other dynamics at play given the presence of a lawyer for the government and the fact that the custodial parent is required to cooperate but is not a party to the case seeking her own outcome.

We provided the opportunity for the court watchers to record their own narrative comments to amplify other information reported. Of the 797 observations recorded for the Project, more than 400 responses contained narrative commentary from court watchers.

## **DATA ANALYSIS**

Analysis of the observation data was made possible through a partnership with Ankura, a business advisory and expert services firm. Ankura provides valuable pro bono support on individual child support cases for Her Justice clients, including forensic analysis of financial records to assist clients proving income of the other parent where this information is not disclosed to the court and analysis of incomplete records the noncustodial parent provides. For the Child Support Court Watch Project, Her Justice worked with a data analytics team at Ankura. After standardizing and cleansing the data, Ankura used an SQL database to create visualizations of the collected data, using the technology of Tableau. This visualization includes interactive and responsive “dashboards” for the following data points: outcomes, legal representation, average case time, access to justice questions, and prevalent narrative commentary themes. These **dashboards** can be filtered by key variables, such as county, case type, appearance type, and petitioner and respondent legal representation. By layering these filtering criteria, we identified trends and isolated key factors to analyze their impact.

On the online response collection form, court watchers were given space to leave commentary on what they observed. Although this was an optional portion of the form, many volunteers provided rich and thoughtful comments about what occurred in the courtroom. The court watchers provided comments that expanded upon the questions asked of them, provided context for court process and decisions, and raised imperative questions about the system that they were observing. Ankura reviewed and sorted this qualitative data into thematic categories, manually and through a word prevalence analysis the team developed in consultation with Her Justice. This deeper dive into the narrative data revealed patterns and common experiences. Additionally, it gave insight into the emotional experience of appearing in Family Court, with the court watchers acting as stand-ins for the litigants.

## **PROTOCOL REFINEMENT AND DATA STANDARDIZATION**

Throughout the Child Support Court Watch Project, revisions were made to the collected data to ensure accuracy and reflect new information. For example, recorded observations involving the Department of Social Services on welfare recovery cases, duplicate records and cases involving spousal support rather than child support were extracted from the data set. Additionally, responses that were blank, “unable to tell” or “other,” were reviewed and corrected using the court watchers’ comments, when possible.



Her Justice made changes to the online response collection form during the summer of 2019 to improve the quality of data in the second round of data collection. After analyzing the responses in the first round of data collection, it became clear that allowing court watchers to choose “other” on the online response collection form for case type, appearance type and outcome also made it possible for observers to insert their own descriptions. These descriptions became deviant responses that strayed from the standard categories and diluted the data. To remedy this, these responses were standardized where possible, using comments from the court watcher and Her Justice’s knowledge of child support proceedings. For the final round of observations, we adjusted the electronic court monitoring form so that, while “other” remained an option, additional descriptions could not be added.

We adjusted the electronic court monitoring form so that only one “outcome” and “reason for adjournment” could be selected to ensure clear data about significant points. Further, we added conditional rules to the electronic form, in response to adjournments and enforcement hearings. If court watchers chose “hearing adjourned” for “outcome,” the electronic form directed them to a page to choose a “hearing adjourned reason.” If court watchers chose enforcement as the “outcome,” the electronic form directed them to a series of questions to determine which enforcement measures were taken. We were interested in the reasons for adjournment because we know from our involvement in individual child support cases that appearances frequently result in adjournments, and observational data was also pointing to this. We were also particularly interested in outcomes generally without overall court data and outcomes in enforcement cases in particular because we know that these cases pose serious challenges to custodial parents who are owed significant and much-needed support by the time they file an enforcement/violation petition. We were also particularly interested in enforcement cases because of administrative changes around these cases in the New York City Family Courts that were implemented during the Project, including the dedication of some courtrooms/magistrates to these matters. We communicated these changes and their implications to volunteers in trainings. We also cleaned the earlier data collected to reflect these changes and ensure that the data sets conformed to one another.

## DATA LIMITATIONS

Ankura provided critical support in analyzing and visualizing the data. We did not engage with researchers to analyze the data, but we believe this could be a valuable endeavor as it would allow additional conclusions to be drawn from the data, and suggest areas for further study. Some limitations of the data include:

- ***Single appearance observed.*** As an initial matter, court watchers observed a single appearance in a given case and did not have the benefit – through review of court files or otherwise – of understanding more about each case, including the ultimate case outcome. While we initially had hoped to use court calendars to provide guidance to court watchers as to what types of cases they observed and at what stage of litigation, since not all courtrooms post calendars (which are available online) or hear cases in the order listed, the calendars were of limited value to court watchers.
- ***“Unknown” responses.*** While we were able to clean data for some individual case observations where it appeared inconsistent, in some cases this was not possible or desirable. For some records, court watchers answered that some aspects of cases observed were “unknown,” for example, the appearance or case type. We believe this is valuable information: to the extent it suggests confusion for the court watchers, it may speak to confusion on the part of litigants.



- **“N/A” responses to procedural fairness questions.** For some of the questions regarding procedural fairness or “access to justice” issues, court watchers provided a greater number of “N/A responses” than expected. We provided this option because some questions did not apply to all appearances. For other questions, there was a greater percentage of “N/A” responses than anticipated. We do not know whether the court watchers chose “N/A” because in their view the question did not apply or to signal that they did not know the answer to the question.
- **Misunderstood questions.** While we provided in-depth training to all court watchers, some responses suggest that they misunderstood the question.
  - For example, there were 502 responses to the question, “Did the court explain the final order?” Yet, there were not 502 cases in which this question could have been answered because there was a final order. We chose to exclude the responses to this question from the analysis.
  - We asked court watchers to indicate whether “Interpreter provided by the court when requested (or when it became clear the party could not understand).” Language access is an important component of access to justice. Moreover, pursuant to New York Family Court rules (Part 217 of the Uniform Rules for New York State Trial Courts), the court will provide interpreting services free of charge to all participants in the court process. Given the large number of “no” responses to this question, we believe that this question was not answered by all court watchers in the way it was intended, and that observers responded as to whether an interpreter was *present* for the appearance. Nevertheless, this information, along with valuable qualitative data through court watchers’ comments, illustrates how language barriers impacted litigants’ experience of court appearances. Therefore, we included this data in our analysis.

## CLIENT INTERVIEWS

Her Justice conducted in-depth qualitative interviews with six clients, former or current, involved in child support cases. These six clients experienced a range of issues and types of system contact. They were all represented in their cases through the Her Justice pro bono model, but some were involved with the courts or the child support agency prior to engaging with Her Justice. Her Justice conducted these interviews both in-person and via telephone and recorded notes from the interviews.



# Appendix B

## Child Support Court Monitoring Project

Submit online at <https://forms.gle/Xc63gpxRVZW6puxc8>

**Observer name:** \_\_\_\_\_

**Magistrate surname:** \_\_\_\_\_

**County:** \_\_\_\_\_

**Date:** \_\_\_\_\_

**Case scheduled time:** \_\_\_\_\_

**Case start time:** \_\_\_\_\_ **Case end time:** \_\_\_\_\_

<b>1. Appearance type</b>	<input type="checkbox"/> Return of Process / First Appearance <input type="checkbox"/> Compliance Conference <input type="checkbox"/> Trial / Fact-finding Hearing <input type="checkbox"/> Willfulness Determination <input type="checkbox"/> Post-Dispositional Review <input type="checkbox"/> Other: _____ <input type="checkbox"/> Unable to tell
<b>2. Case type</b>	<input type="checkbox"/> Initial child support determination <input type="checkbox"/> Modification of prior order <input type="checkbox"/> Enforcement / violation (nonpayment) <input type="checkbox"/> Paternity / Parentage <input type="checkbox"/> Other: _____ <input type="checkbox"/> Unable to tell
<b>3. Posture of proceeding</b>	<input type="checkbox"/> Contested <input type="checkbox"/> Default <input type="checkbox"/> Settled
<b>4. Petitioner information</b>	<input type="checkbox"/> Father <input type="checkbox"/> Mother  Represented by counsel? <input type="checkbox"/> Yes <input type="checkbox"/> No  Interpreter provided by the court when requested (or when it became clear that the party could not understand)? <input type="checkbox"/> Yes <input type="checkbox"/> No
<b>5. Respondent information</b>	<input type="checkbox"/> Father <input type="checkbox"/> Mother  Represented by counsel? <input type="checkbox"/> Yes <input type="checkbox"/> No  Interpreter provided by the court when requested (or when it became clear that the party could not understand)? <input type="checkbox"/> Yes <input type="checkbox"/> No



## Child Support Court Monitoring Project

Submit online at <https://forms.gle/Xc63gpxRVZW6puxc8>

	Yes	No	N/A
<b>6. Did the Magistrate explain the courtroom process to the parties at the beginning of the proceeding?</b>			
<b>7. Did the Magistrate inform the parties of their right to seek legal advice?</b>			
<b>8. When a technical legal term arose, did the Magistrate explain its meaning to the parties? (E.g., "willfulness", "purge amount")</b>			
<b>9. Did the parties appear to have enough time to explain their issues to the Magistrate?</b>			
<b>10. Did the Magistrate ask the parties whether they had any questions?</b>			
<b>11. Did the Magistrate clearly explain the order to the parties?</b>			
<b>12. Did the Magistrate inform the parties of their right to file objections?</b>			
<b>13. In your opinion, would the unrepresented parties have benefitted from representation by counsel?</b>			

### 14. Outcome

- Temporary support order entered
- Final support order entered
- Enforcement
  - Money judgment entered
  - Purge amount set
  - Warrant issued
  - Incarceration recommended
- Noncustodial parent ordered to participate in a job training program
- Hearing adjourned to (date) : \_\_\_\_\_
  - For trial
  - To obtain an attorney
  - To return with evidence (e.g. proof of income or job search)
  - For service on the respondent
  - Other reason: \_\_\_\_\_
- Matter dismissed

**15. Other comments** (provide a brief narrative about what happened in this hearing, and what could have been improved)



## Appendix C

### **Monitoring Child Support Courts in New York City A Court Watcher's Guide**

October 2018

A project of Her Justice, Inc., with the assistance of the Fund for Modern Courts





## WHY WE MONITOR CHILD SUPPORT COURTS IN NEW YORK CITY

Child support is critically important to children and parents: it lifts children out of poverty, and promotes fairness between parents in meeting the costs of raising children. Each year, hundreds of thousands of parents go to Family Court to seek urgently-needed support orders. Child support cases are often legally and procedurally complex, yet there is no right to counsel in support cases in New York State, leaving parents to navigate the system alone. Many of these parents report delays and other challenges which prevent their access to equal and timely justice.

This project aims to shine a light on urgent issues of access to justice in the New York Family Court system, which are often invisible to lawyers and policy-makers. By volunteering with this project, you will gather information and record your insights into the workings of child support proceedings. This knowledge will inform Her Justice's client advocacy, and drive its work with the Family Court to improve the services offered to all parents.

## LOGISTICS: HOW TO OBSERVE NEW YORK'S CHILD SUPPORT COURTS

1. Once you have completed your training, you will choose or be assigned to a court watching shift based on your availability.
2. Before your shift, familiarize yourself with the survey and this guide. This is important, and will help you take note of all important features of the case without needing to read the survey in the courtroom.
3. On the day of your shift, take a copy of the courtroom's calendar with you. You can access this calendar at <https://iapps.courts.state.ny.us/webcivil/ecourtsMain>. When you arrive at your allocated court, you will need to find the waiting area for your assigned courtroom.
4. Sit at the back of the courtroom, without disturbing litigants or the Support Magistrate. The Support Magistrate may ask you why you are in the courtroom: you can answer that you are a volunteer with Her Justice, and that you are observing the proceedings as part of a research project being conducted by Her Justice.
5. Use either the online court watching survey, or a paper copy of the pdf survey, to record your observations. If you have a buddy, you may wish to take turns observing the cases, and then completing the form with your observations while your buddy observes the next case. You may find it easiest to take general notes while the case is unfolding, and then to complete the survey after the appearance has ended.
6. Submit your observations online via the survey tool. If you are assigned to a courtroom with wifi, you can do this from the courthouse; if not, please submit your observations as soon as possible after leaving the courthouse.

**Note:** The courtroom you will be observing may also conduct hearings for spousal support cases, and cases brought by the Office of Child Support Enforcement to enforce obligations owed to the government by noncustodial parents of children who receive cash welfare. We are not recording data on spousal support or OCSE cases for this project; however, if you see a case involving both child support and spousal support, please do observe it and record your observations.



## COMPLETING THE SURVEY: GUIDE TO THE QUESTIONS

### Preliminary information

**Observer name:** Enter your own name.

**Magistrate surname:** Enter the name of the Magistrate whose court you are watching (you can find this on the name plate on the bench).

**County:** Bronx, Kings (Brooklyn), New York (Manhattan), Richmond (Staten Island) or Queens.

**Case scheduled time:** Each court publishes a calendar of hearings for each courtroom. Take this with you to identify the time that the case was scheduled. Some Support Magistrates provide a “time certain”—i.e., a scheduled time unique to that case—whereas others will list a series of cases with the same start time, and then hear cases as they are ready to proceed. Regardless of which approach is used, enter the time that the case was listed to begin. If you cannot determine what time the case was scheduled to begin, enter “Unknown.”

### Part A

#### 1. Appearance type

Courtroom calendars identify the type of appearance for each case. Each type of appearance is described below:

- **Return of process/first appearance:** Occurs immediately following the filing of a petition for child support, or for modification or enforcement of child support. This will be the first time that the parties have attended court for this petition.
- **Compliance conference:** The court will monitor compliance with financial discovery.
- **Trial or fact-finding hearing:** Hearing in which parties may present evidence in support of, or opposition to, a petition for child support.
- **Willfulness determination:** Hearing in an enforcement or violation proceeding to determine whether the noncustodial parent has deliberately refused to pay child support, despite having the ability to do so.
- **Post-Dispositional Review:** Hearing in an enforcement or violation proceeding to achieve compliance with child support order.

#### 2. Case type

- **Initial child support determination:** A petition for a child support order seeks to establish a child support obligation for the first time.
- **Modification of prior order:** A petition for modification of a child support order may be filed by either parent, and may seek an upwards or downwards modification on the basis of a change in circumstances.
- **Enforcement/violation:** A petition for enforcement of a child support order alleges that the noncustodial parent has violated the extant order by failing to pay all or some of the child support owed. This may lead to the scheduling of a willfulness determination, which is also a type of enforcement or violation case.
- **Paternity:** A petition to establish paternity alleges that the respondent is the father of a child who is being cared for by the custodial parent.



**Note:** The matter you are observing may involve the hearing of multiple petitions of different types – for example, a petitioner may bring a petition for enforcement of a child support order, and the respondent may bring a cross-petition for a modification of the order to decrease his monthly payments. Tick all boxes that apply.

### 3. Posture of proceeding

- **Contested:** Both parties have appeared in court to contest the petition.
- **Default:** Respondent has failed to appear to contest the petition.
- **Settled:** The parties resolved the dispute outside court, and may request that the Magistrate enter an order that reflects their agreement.

### 4. Petitioner

Record whether the petitioner is the mother or the father, and whether they are represented by counsel. The calendar for each part includes information about whether counsel has been retained or assigned in the case. Record whether the petitioner is assisted by an interpreter (which may have been court-appointed, or may be a friend or family member).

In some cases, each party may be both the petitioner and the respondent to a cross-petition. If this occurs, mark the custodial parent as the petitioner.

### 5. Respondent

Record whether the respondent is the mother or the father, whether they are represented by counsel, and whether they are assisted by an interpreter.

## Part B

### 6. Did the Magistrate explain the courtroom process to the parties at the beginning of the proceeding?

At the commencement of the proceeding, the Magistrate may explain the courtroom process to the parties. This may include explaining to the respondent the allegations in the petition brought by the petitioner, or explaining to the petitioner that they must meet a certain burden of proof. This may also include explaining the basic legal obligation to pay child support, and the role of the court to consider the evidence and set a child support sum that is consistent with the law and fair in the circumstances. Magistrates may also explain basic courtroom procedures, such as the duty of each party to tell the truth and disclose all relevant information. Providing this information is important, particularly for pro se litigants, who may feel confused or intimidated by a lack of knowledge about how the court operates.

Assess whether the Magistrate provided an explanation that is consistent with the circumstances of the case. For example, in an enforcement hearing, the parties are likely to already have been informed about the basic obligation of child support and the role of the Magistrate; however, the respondent may need information about the meaning of the allegation of non-payment, and both parties may need to be informed that the petitioner must prove not only non-payment but also willfulness to succeed in the petition.

Provide comments to explain your assessment, including any strengths or weaknesses of the Magistrate's explanation.



**7. Did the Magistrate inform the parties of their right to seek legal advice (or, for the respondent in a violation proceeding, their right to counsel)?**

At the commencement of the hearing, the Magistrate may explain to the parties that they have the right to seek an adjournment of the case to obtain legal advice or representation. Further, in a violation proceeding, the respondent has a statutory right to be represented by counsel at no cost, due to the authority of the Magistrate to recommend incarceration if a ruling of willful noncompliance is made. It is important that litigants are aware of these rights, so that they can seek the advice of an attorney regarding their entitlement and/or obligation.

Listen to the opening remarks of the Magistrate and assess whether the Magistrate has adequately informed the parties of these rights.

**8. When a technical legal term arose, did the Magistrate explain its meaning to the parties?**

Throughout child support proceedings, Magistrates often need to use technical legal terms. It is important that litigants understand these terms, so that they can provide the Magistrate with relevant information and represent themselves to the best of their ability.

For example, in an enforcement proceeding, the Magistrate must determine whether the respondent's failure to pay was "willful," which means that it was done deliberately despite the ability to pay the child support obligation. Similarly, a Magistrate may order or refer to a "purge amount," which is a sum of money that may be paid by a respondent to discharge a contempt finding, or to a "money judgment," which is an order by a Magistrate reducing a child support obligation to a judgment debt that is enforceable against the respondent.

In your comments, identify which legal terms were used without explanation and what impact this had on the proceeding.

**9. Did the parties appear to have enough time to explain their issues to the Magistrate?**

Child support proceedings are often scheduled for a short hearing, lasting only fifteen or thirty minutes. Depending on the case, this may be ample time, or may be insufficient for the parties to present their concerns and their evidence to the Magistrate.

Indicators that the parties had sufficient time to present their case may include that the parties had time to ask questions and have them answered, or to fully explain their financial situation. Indicators that the parties did not have enough time may include that a party appears rushed when explaining their side of the dispute, or an unwillingness of a Magistrate to address any issues or questions that are not essential to the legal issues.

**10. Did the Magistrate ask the parties whether they had any questions?**

Clients of Her Justice have often expressed that they felt confused by parts of their child support hearings, and that they did not feel comfortable interrupting the hearing to ask a question. When litigants do not understand proceedings, they risk failing to comply with orders, being delayed in seeking enforcement of orders, or misunderstanding what payments to expect from the noncustodial parent.

**11. Did the Magistrate explain their decision to the parties?**

It is important that parties understand the Magistrate's decision in their case. Noncustodial parents must understand the effect of a child support order, and the consequences if they do not comply with the order. Failing to understand this can lead to non-payment without justification, and spark conflict between parents. Similarly, custodial parents need to understand what to do next so that they can start to receive the child support payments.



Indicators that a Magistrate has adequately explained their decision include the Magistrate clearly describing what orders they are making. For example, a Magistrate could inform the noncustodial parent that they are obliged to pay, that consequences for not paying can include racking up debt and other penalties, and that if the noncustodial parent is having trouble paying, they must approach the court or the collections agency for a modification, and should not simply stop making payments. Similarly, indicators that a Magistrate has explained the next steps include informing the custodial parent that they can set up an account with the Support Collection Unit of the New York State Office of Child Support Enforcement. If the hearing is in an enforcement matter, the Magistrate may explain to the custodial parent that they can register their money judgment with the Sheriff's Office.

### **12. Did the Magistrate inform the parties of their right to file objections to a final order?**

Where a final order is made, the parties may file objections – however, litigants may not know that this avenue is open to them. Record whether the Magistrate informed the parties of this if a final order was made, or mark “N/A” if the only orders made were temporary in nature, or to adjourn the case.

### **13. In your opinion, would the unrepresented parties have benefitted from representation by counsel?**

Many pro se litigants report difficulties with advocating for themselves in court. They may struggle to convert their concerns into language that is easily understood by magistrates, or to explain their problems in a way that fits the categories of information that are relevant and admissible in court. This may hamper their ability to present their case to the best of their ability, and to receive a fair outcome. Further, many cases are procedurally complex, and even the best-prepared laypeople may have trouble presenting their own case – for example, where they are required to cross-examine another party, or make valid objections to evidence.

Indicators that a party is struggling to communicate with a judge include that the party is often raising issues or evidence that is being treated as irrelevant or inadmissible, or is constantly raising the same issue without understanding that it has already been taken into account by the Magistrate.

## **Part C**

### **14. Outcome of the proceeding (tick all that apply)**

At the conclusion of the hearing, the Magistrate will make orders such as setting the quantum of support owed, or adjourning the proceeding for a further hearing. Identify which type of order has been made by reference to the explanations below:

- **Temporary support order:** An order made before the final resolution of the petition, setting a sum of child support to be paid by the noncustodial parent periodically.
- **Final support order:** An order made to resolve a child support petition, setting a sum of child support to be paid by the noncustodial parent periodically.
- **Enforcement:**
  - **Money judgment:** A money judgment is an order that establishes the sum of arrears owed by a noncustodial parent, and orders payment of that sum. It is enforceable as a judgment debt against the noncustodial parent.
  - **Purge amount:** A Magistrate may set a sum that must be paid by the noncustodial parent to avoid a recommendation that the noncustodial parent be incarcerated due to willful failure to pay child support.



- **Warrant:** A Magistrate may issue a warrant to compel a respondent to attend court to answer a petition.
- **Recommendation for incarceration:** A Magistrate may make a finding that the respondent is willfully refusing to make child support payments, and may recommend that the respondent be incarcerated for contempt of court. This recommendation results in the case going before a judge of the Family Court.
- **Noncustodial parent ordered to participate in job training program:** A Magistrate may order a noncustodial parent to engage in a job-training program, in addition to making other orders such as a final support order.
- **Hearing adjourned:** A Magistrate may adjourn a matter for a subsequent hearing on another date, instead of making a final determination during the hearing. Reasons may include for one of the parties to obtain an attorney or seek legal advice, to search for a job, or to provide proof of financial circumstances to the court. Record the reason provided for the adjournment if possible.
- **Paternity order:** An Order of Filiation is a court order establishing legal parentage.
- **Matter dismissed:** A Magistrate may find that a burden of production or proof has not been met, and dismiss the petition completely.

### 15. Other comments

Record a short narrative about what happened in this case. Please include any additional observations that you think may be relevant – we value your insights. As an observer who had never met the parties before, were you satisfied with their experience in the courtroom?

Share your observations regarding how the Magistrate engaged with the parties: Magistrates' conduct can have significant effects on litigants' perceptions of the justice system. You can discuss the language they used when addressing litigants, their tone of voice, and body language; whether they appeared patient or irritated.



# Endnotes

- <sup>1</sup> See E. Allan Lind, Tom R. Tyler, *The Social Psychology of Procedural Justice* (1988), at 26.
- <sup>2</sup> Client names used throughout this report have been changed to protect their privacy.
- <sup>3</sup> Meika Berlan & Morgan Harwood, National Women's Law Center, *National Snapshot: Poverty Among Women & Families in 2018*, at 1 (September 2018), <https://nwlc-ciw49tixgw5lbbab.stackpathdns.com/wp-content/uploads/2018/09/National-Snapshot.pdf> (noting that almost one in eight women, or just under 16 million women, lived in poverty in 2017, with more than two in five living in extreme poverty defined as having income at or below 50 percent of the federal poverty level).
- <sup>4</sup> Institute for Women's Policy Research, *Status of Women in the States, The Economic Status of Women in New York*, at 1 (March 2018), <https://statusofwomendata.org/wp-content/themes/witsfull/factsheets/economics/factsheet-new-york.pdf>.
- <sup>5</sup> Robin Hood Foundation and Columbia University, *The State of Poverty and Disadvantage in New York City*, at 12 (February 2020), [https://robinhoodorg-production.s3.amazonaws.com/uploads/2020/02/PT\\_2019\\_ANNUAL\\_PRINT\\_PDF.pdf](https://robinhoodorg-production.s3.amazonaws.com/uploads/2020/02/PT_2019_ANNUAL_PRINT_PDF.pdf).
- <sup>6</sup> See Center for American Progress, *How COVID-19 Sent Women's Workforce Progress Backward* (October 2020), <https://cdn.americanprogress.org/content/uploads/2020/10/29/133659/Womens-Labor-Force-Participation.pdf>.
- <sup>7</sup> Gretchen Livingston, *The Changing Profile of Unmarried Parents*, at 6 (April 25, 2018), <https://www.pewsocialtrends.org/2018/04/25/the-changing-profile-of-unmarried-parents/>.
- <sup>8</sup> Many women are impacted by the "motherhood penalty," which recognizes that working mothers lose wages and seniority in the workplace as they shoulder much of the burden of childrearing. See National Women's Law Center, *Equal Pay for Mothers is Critical for Families* (May 2018), <https://nwlc-ciw49tixgw5lbbab.stackpathdns.com/wp-content/uploads/2017/05/Motherhood-Wage-Gap-2018.pdf>. Moreover, researchers argue that the U.S. imposes an unusually high "penalty attached to single motherhood" in the form of poor policies. See David Brady, Ryan M. Finnigan, Sabine Hubgen, *Single Mothers are Not the Problem*, N.Y. Times (February 10, 2018), <https://www.nytimes.com/2018/02/10/opinion/sunday/single-mothers-poverty.html>.
- <sup>9</sup> In New York City, 28 percent of White children of single mothers live in poverty, while 56% of Latinx children and 46% of Black children of single mothers live in poverty. See Citizens' Committee for Children, *NYC Children & Families 2018: Statistics from the U.S. Census Bureau's 2018 American Community Survey*, <https://cccnyc.org/census-highlights-single-parent-households-in-nyc/>. More than half of Black children are living with a single parent, with 47% of those children living with a single mother. See Gretchen Livingston, *About one-third of U.S. children are living with an unmarried parent* (April 27, 2018), <https://www.pewresearch.org/fact-tank/2018/04/27/about-one-third-of-u-s-children-are-living-with-an-unmarried-parent/>.
- <sup>10</sup> See U.S. Office of Child Support Enforcement, *The Child Support Program is a Good Investment*, at 2 (December 2016), [https://www.acf.hhs.gov/sites/default/files/documents/ocse/sbtn\\_csp\\_is\\_a\\_good\\_investment.pdf](https://www.acf.hhs.gov/sites/default/files/documents/ocse/sbtn_csp_is_a_good_investment.pdf) [hereinafter *Child Support Program is a Good Investment*]. Sixty percent of child support-eligible children participate in the program. *Id.* at 3.
- <sup>11</sup> See Timothy Grall, U.S. Census Bureau, *Custodial Mothers and Fathers and Their Child Support: 2017*, at 10, 13 (May 2020), <https://www.census.gov/content/dam/Census/library/publications/2020/demo/p60-269.pdf> [hereinafter *Custodial Mothers and Fathers 2017*].
- <sup>12</sup> See *id.* at 5.
- <sup>13</sup> See *id.* at 11. This number has varied in recent years, with data for 2013 showing that for deeply poor families with income below 50 percent of the federal poverty level, child support represented 65 percent of income. See *Child Support Program is a Good Investment*, *supra* note 10, at 6.
- <sup>14</sup> See, e.g., Stacy Brustin, *Child Support: Shifting the Financial Burden in Low-Income Families*, 20 Geo. J. on Poverty L. & Pol'y 1 (2012); Courtney E. Lollar, *Criminalizing (Poor) Fatherhood*, 70:1 Alabama L. Rev. 125 (2018). See also Courtney E. Martin, *Child Support vs. Deadbeat States*, N.Y. Times (Sept. 10, 2019), <https://www.nytimes.com/2019/09/10/opinion/child-support-states.html>.
- <sup>15</sup> Custodial parents who receive public assistance must cooperate with the local child support agency in establishing paternity and obtaining child support payments from the noncustodial parent, unless they report a history of domestic violence with the other parent and their participation is excused. See Congressional Research Service, *Child Support Enforcement: Program Basics*, at 1, 5 (July 25, 2019), <https://fas.org/sgp/crs/misc/RS22380.pdf> [hereinafter *Child Support Enforcement Basics*]. Many states have "pass-through" allowances whereby child support agencies pass on designated amounts of support collected to custodial parents directly. See National Conference of State Legislatures, *Child Support Pass-Through and Disregard Policies for Public Assistance Recipients* (May 29, 2020), <https://www.ncsl.org/research/human-services/state-policy-pass-through-disregard-child-support.aspx>.
- <sup>16</sup> See *Child Support Enforcement Basics*, *supra* note 15, at 1.
- <sup>17</sup> See *Child Support Program is a Good Investment*, *supra* note 10, at 8.
- <sup>18</sup> See, e.g., Tonya L. Brito, *Fathers Behind Bars: Rethinking Child Support Policy Toward Low-income Fathers and their Families*, 15 Iowa J. Gender, Race & Justice 417 (2012). That paper addresses important issues related to indigence and child support debt that were raised in the U.S. Supreme Court case, *Turner v. Rogers*, decided in 2011. In that case, the Court found that a child support contempt finding and incarceration penalty violated Turner's due process rights because, among other things, the South Carolina court had failed to issue findings as to his ability to pay child support. 564 U.S. 431, 447-48 (2011). The issue of penalties for failure to pay support continued to garner attention through tragic events like the 2015 death of Walter Scott, who had a history of court involvement because of nonpayment of child support. See Frances Robles and Shaila Dewan, *Skip Child Support. Go to Jail. Lose Job. Repeat.*, N.Y. Times (April 19, 2015), <https://www.nytimes.com/2015/04/20/us/skip-child-support-go-to-jail-lose-job-repeat.html>.
- <sup>19</sup> Nan D. Hunter, *Child Support Law and Policy: The Systematic Imposition of Costs on Women*, 6 Harv. Wom. L.J. 1, 19 (1983).
- <sup>20</sup> Congressional Research Service, *The Child Support Enforcement (CSE) Program*, at 1 (August 5, 2019), <https://crsreports.congress.gov/product/pdf/IF/IF10113>.
- <sup>21</sup> National Conference of State Legislatures, *Child Support Process: Administrative vs. Judicial* (April 20, 2017), <https://www.ncsl.org/research/human-services/child-support-process-administrative-vs-judicial.aspx>.
- <sup>22</sup> See *id.*
- <sup>23</sup> New York State Unified Court System, *2019 Annual Report*, at 40, [https://www.nycourts.gov/legacypdfs/19\\_UCS-Annual\\_Report.pdf](https://www.nycourts.gov/legacypdfs/19_UCS-Annual_Report.pdf).
- <sup>24</sup> *Child Support Calculator*, NYC HUMAN RESOURCES ADMIN., <https://www1.nyc.gov/site/hra/help/child-support-calculator.page> (last visited March 1, 2021); JEFFREY H. GALLET & MAUREEN M. FINN, *SPOUSE AND CHILD SUPPORT IN NEW YORK* §7:1 (2020).
- <sup>25</sup> N.Y. F.C.A. § 413(1)(a); Merrill Sobie, Practice Commentary, McKinney's Cons. Laws of NY, Book 10, NY FAM CT §413. New York is an outlier, where most states impose child support obligations for parents until the child is 18 or 19. See National Conference of State Legislatures, *Termination of Child Support - Age of Majority* (April 29, 2020), <https://www.ncsl.org/research/human-services/termination-of-child-support-age-of-majority.aspx>. This can complicate cases in New York where parents seek enforcement or modification of child support orders issued in other states with stricter or divergent laws.



- <sup>26</sup> *Child Support*, NEW YORK STATE UNIFIED COURT SYS., <https://www.nycourts.gov/courthelp/family/childSupport.shtml> (last visited March 1, 2021).
- <sup>27</sup> F.C.A. § 439; N.Y. Uniform Rules for the Family Court, §§ 205.32-205.44.
- <sup>28</sup> *Child Support*, NEW YORK STATE UNIFIED COURT SYS., <https://www.nycourts.gov/courthelp/family/childSupport.shtml> (last visited March 1, 2021).
- <sup>29</sup> F.C.A. § 413(1)(b)(3); *Information about Child Support Services and Application/Referral for Child Support Services*, NEW YORK STATE OFFICE OF TEMPORARY AND DISABILITY ASSISTANCE, 3, <https://www.childsupport.ny.gov/dcse/pdfs/LDS5-4882W.pdf>.
- <sup>30</sup> F.C.A. § 262(a)(vi). This is different than some other Family Court cases where the law provides a right to counsel for indigent litigants, for example, in custody/visitation matters. See *id.* §§ (i)-(ix).
- <sup>31</sup> See Permanent Commission on Access to Justice, *Report to the Chief Judge of the State of New York*, at 24 (2015), [http://www2.nycourts.gov/sites/default/files/document/files/2018-04/2015\\_Access\\_to\\_Justice-Report-V5.pdf](http://www2.nycourts.gov/sites/default/files/document/files/2018-04/2015_Access_to_Justice-Report-V5.pdf); NYC Human Resources Administration, *Child Support Handbook for Noncustodial Parents*, at 6 (July 2016), [https://www1.nyc.gov/assets/hra/downloads/pdf/services/child\\_support/noncustodial\\_parents.pdf](https://www1.nyc.gov/assets/hra/downloads/pdf/services/child_support/noncustodial_parents.pdf).
- <sup>32</sup> “Income” is defined broadly under the New York Family Court Act governing child support determinations. See F.C.A. § 413(1)(b)(5). Immigrant parents may suffer particular challenges in providing adequate proof to the courts of income if they are paid in cash or through other informal methods.
- <sup>33</sup> F.C.A. § 413(1)(b)(5)(v).
- <sup>34</sup> *Id.* § 413(1)(k). For some Her Justice clients, this analysis may not account for the actual expenses of raising a child if they cannot afford to pay single-handedly for childcare needed to work full-time and therefore have deferred this expense altogether.
- <sup>35</sup> *Id.* § 413(1)(d).
- <sup>36</sup> *Id.* § 439(e).
- <sup>37</sup> See Jeh C. Johnson, *Report from the Special Adviser on Equal Justice in the New York State Courts*, at 3 (October 1, 2020), <http://www.nycourts.gov/whatsnew/pdf/SpecialAdviserEqualJusticeReport.pdf>.
- <sup>38</sup> *Id.*
- <sup>39</sup> See, e.g., Tonya L. Brito, *The Child Support Debt Bubble*, 9 U.C. Irvine L. Rev. 953 (2019).
- <sup>40</sup> The New York Family Court Act sets forth the requirements for service of the summons and petition in child support cases in accordance with due process principles around providing actual notice of court actions. See F.C.A. § 427. Generally, papers must be served (by someone over the age of 18 who is not a party to the case) to the respondent in person, but the law allows alternative approaches if personal service cannot be accomplished. See *id.* § 427(c).
- <sup>41</sup> In one appearance observed, the court advised contacting the Sheriff’s Office for assistance, but the fee was unaffordable for the petitioner. According to the court watcher, “The judge suggested that he could hire a sheriff to serve the respondent, but the petitioner became visibly upset when he learned that he would have to foot the bill for it.”
- <sup>42</sup> See American Academy of Arts & Sciences, *Civil Justice for All*, at 21 (2020) (noting, “Simplification should proceed on the assumption that most people pursuing matters in court are not lawyers and do not have lawyers representing them. . . .”), [https://www.amacad.org/sites/default/files/publication/downloads/2020-Civil-Justice-for-All\\_0.pdf](https://www.amacad.org/sites/default/files/publication/downloads/2020-Civil-Justice-for-All_0.pdf).
- <sup>43</sup> F.C.A. §§ 433, 434, and 435(b).
- <sup>44</sup> *Id.* § 434 (“The court shall make an order for temporary child support notwithstanding that information with respect to income and assets of the respondent may be unavailable.”).
- <sup>45</sup> Tom R. Tyler, *Procedural Justice and the Courts*, Court Review: The Journal of the American Judges Association, Volume 44, Issue 1/2, at 26 (2007), <https://digitalcommons.unl.edu/cgi/viewcontent.cgi?article=1254&context=ajacourtreview>.
- <sup>46</sup> *Id.*
- <sup>47</sup> See Caroline Mage, Peter Baird, and Cynthia Miller, MRDC, *A New Response to Child Support Noncompliance*, at 2 (June 2019), [https://www.mrdc.org/sites/default/files/PJAC\\_Study%20Brief\\_2019.pdf](https://www.mrdc.org/sites/default/files/PJAC_Study%20Brief_2019.pdf).
- <sup>48</sup> See *Our Vision for the Future*, New York City Family Court Strategic Plan (2016), [https://www.nycourts.gov/LegacyPDFS/courts/nyc/family/strat\\_plan.pdf](https://www.nycourts.gov/LegacyPDFS/courts/nyc/family/strat_plan.pdf).
- <sup>49</sup> See *A New Response to Child Support Noncompliance*, *supra* note 47.
- <sup>50</sup> See New York City Office of Child Support Services, *Biennial Report 2016-2017*, at 6, [https://www1.nyc.gov/assets/hra/downloads/pdf/services/child\\_support/occs-biennial-report-2016-2017.pdf](https://www1.nyc.gov/assets/hra/downloads/pdf/services/child_support/occs-biennial-report-2016-2017.pdf).
- <sup>51</sup> For this Project, we asked court watchers to record, to the extent possible, the start and end times for which each case was scheduled, and the time each case was heard. This information was not available for all cases, as magistrates do not routinely call cases to be heard in the order in which they are listed on the daily calendar (which may or may not be posted outside the courtroom). This made it difficult for court watchers to know at what time a particular case was scheduled to be heard, in order to record that information.
- <sup>52</sup> *Our Vision for the Future*, New York City Family Court Strategic Plan (2016), [https://www.nycourts.gov/LegacyPDFS/courts/nyc/family/strat\\_plan.pdf](https://www.nycourts.gov/LegacyPDFS/courts/nyc/family/strat_plan.pdf). The Family Court also recognizes the value of a “time certain schedule” for all case types. *Id.* This would mean that instead of the typical practice of scheduling multiple court appearances, in particular “first appearances,” for a general calendar call of 9:00 a.m., the court would assign specific or “certain” times for each case. We think this, coupled with improved efficiency in individual cases, would help create a predictable process for litigants and lawyers alike.
- <sup>53</sup> See F.C.A. § 454.
- <sup>54</sup> As discussed in more detail in the Project Methodology, Appendix A, it appears that court watchers answered the question about the availability of interpreters differently than expected.
- <sup>55</sup> As discussed further at note 51, we had anticipated being able to rely on court calendars to not only choose the best mix of case types for observation, but also to provide court watchers with a source of information to confirm their observations about particular cases (for example, appearance type). We were not able to consistently rely on court calendars because they are not always posted outside the courtroom and the cases are not heard in the order listed on the calendar.

