



NEW YORK CITY LAW DEPARTMENT  
OFFICE OF THE CORPORATION COUNSEL

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Press Release

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*For Immediate Release*

**STATE'S HIGHEST COURT UPHOLDS CITY'S RIGHT  
TO INTERVENE IN CASES WHERE DOMESTIC VIOLENCE  
MAKES CHILDREN VULNERABLE**

***DECISION ANSWERS STATE LEGAL QUESTIONS IN CITY'S FAVOR  
AS DECISION NOW MOVES TO FEDERAL APPEALS COURT***

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New York, Oct. 26, 2004 – The state's highest court, the New York State Court of Appeals, today issued its opinion in a major legal case, *Nicholson v. Scoppetta*, in which New York City appealed a Federal district court's injunction imposing restrictions on how the City's Administration for Children's Services (ACS) may respond in cases where a child has been harmed, or is at risk of harm, from witnessing domestic violence. After the Federal district court ruling in 2002, a Federal appellate court asked questions of law to the New York Court of Appeals, which unanimously found today in the City's favor on how certain elements of New York State law are interpreted. The case will now return to the Federal appeals court, where the larger legal case is being heard on appeal.

"This is a thoughtful decision that clearly affirms our existing practice of considering each case carefully when weighing the risk of harm to children," said ACS Commissioner John B. Mattingly.

The *Nicholson* case has a long history. In January 2002, a lower Federal district court first ruled against the City on its ability to bring child neglect proceedings and remove children from victims of domestic violence whose children face physical or emotional harm from witnessing that violence. The City then took its appeal to the Federal U.S. Court of Appeals for the Second Circuit. In September 2003, that court issued an opinion asking the New York Court of Appeals, a State court, to answer several questions about New York State law. The Court of Appeals today answered these questions 7-0 in the City's favor, and its decision will be transmitted to the Federal appellate court (the U.S. Court of Appeals), which will ultimately decide the City's final appeal.

In its decision today, the New York Court of Appeals agreed with the position taken by ACS that it is sometimes appropriate to institute child neglect proceedings against a mother or father who has been the victim of domestic violence if that parent does not take appropriate action to prevent physical or emotional harm to his or her children from witnessing the violence. In the Court's opinion, Chief Judge Judith Kaye joined with the Court's six other judges in saying that, in some cases, the abuse can be sufficiently serious to warrant removal of the child from the home – the most serious step that the Family Court can take to alleviate danger to a child. The Court also recognized that each situation must be taken on a case-by-case basis.

"This is obviously a very sensitive issue in which the City recognizes that domestic violence victims should not be punished. However, at times the violence escalates to the point where the children in the household are put at risk, and the City needs the legal authority to intervene," noted Alan G. Krams, a Senior Counsel in the New York City Law Department's Appeals Division and the lead attorney on the appellate case. "We are pleased that the State Court of Appeals has agreed with the rulings of Family Court and Appellate Division judges throughout the

state, who have recognized that, unfortunately, it is necessary sometimes to commence child neglect proceedings against a parent who has been the victim of domestic violence when that parent does not take proper measures to protect his or her children from harm as a result of witnessing that violence.”

As the State Legislature and State courts have recognized in the past, households in which children have seen violence often lead to these children growing up to be abusers themselves. In addition, the City asserted in its case that it had a legal right to protect children from the emotional or physical harm caused by witnessing such violence when no action is taken to insulate them from it.

Like the Court, ACS considers such proceedings warranted only in the minority of cases where a parent will not exercise a minimum degree without court intervention and the children are in danger of physical or emotional injury. ACS also shares the Court's view that removal of a child may sometimes be necessary, but only in those cases where the danger facing the child is both serious and imminent.

"ACS is hopeful that when the Federal appellate court considers the State court's answers to its questions, the Federal court will set aside the district court's injunction against ACS," noted Corporation Counsel Michael A. Cardozo, the head of the New York City Law Department, which litigated the case for the City. "That injunction erroneously prevents ACS from using the authority of the Family Court to protect children in cases where state law allows ACS to act."

In addition to Alan Krams's work at the appellate level, General Litigation Division attorneys Jonathan Pines, Carolyn Wolpert and Martha Calhoun handled the case in the lower court.

The New York City Law Department is one of the oldest, largest and most dynamic law offices in the world, ranking among the top three largest law offices in New York City and the top three largest public law offices in the country. Tracing its roots back to the 1600's, the Department's 650-plus lawyers handle more than 100,000 cases and transactions each year in 17 separate legal divisions. The Corporation Counsel heads the Law Department and acts as legal counsel for the Mayor, elected officials, the City and all its agencies. The Department's attorneys represent the City on a vast array of civil litigation, legislative and legal issues and in the criminal prosecution of juveniles. Its web site can be accessed through the City government home page at [www.nyc.gov](http://www.nyc.gov) or via direct link at [www.nyc.gov/html/law/home.html](http://www.nyc.gov/html/law/home.html).

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