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**Testimony of the New York Civil Liberties Union
to
The New York City Council Committee on General Welfare
regarding
Racial Disparities in the Child Welfare System**

October 28, 2020

The New York Civil Liberties Union (NYCLU) respectfully submits the following testimony with respect to the New York City Council Committee on General Welfare oversight hearing on racial disparities within the child welfare system.

I. Introduction.

The NYCLU, an affiliate of the American Civil Liberties Union (ACLU), is a not-for-profit, non-partisan organization with eight offices throughout New York State and more than 180,000 members and supporters. The NYCLU's mission is to promote and protect the fundamental rights, principles, and values embodied in the Bill of Rights of the U.S. Constitution and the New York Constitution. This includes the constitutional guarantee of equal protection under the laws and the right to privacy and personal autonomy, including in the realm of family life.

Today's hearing examines the substantial racial disparities and inequities found throughout the family regulation system in New York City. This is a subject that touches on racial injustices deeply rooted in our country's history and our city's not-so-distant past. We thank the committee for its attentiveness to these issues and appreciate the opportunity to contribute. We also hope today's hearing can provide a forum for the families impacted by these systems and inequities to share their experiences with those who have the power to address them.

The subject of racial disparities in the child welfare system is an enormously complex topic to tackle in a single hearing, and in the course of this conversation, we look forward to learning from others closest to these issues about their insights into the causes for these disparities and ideas for change. Our testimony briefly discusses the roots and current status of racial inequities in the family regulation system and identifies some initial, if not sufficient, steps that the City Council can take now to improve these systems more broadly.

II. Racial inequality is a deeply rooted part of the family regulation system.

One cannot approach the issue of racial disparities in today's child welfare system without confronting the roots of family regulation as a means of racial oppression and subjugation. Throughout our country's history, systems of family regulation have often reflected biases about the fitness of nonwhite parents and dynamics of power and control.¹ The images of immigrant children being taken from their parents by immigration authorities at the border in 2018 brought to mind for many the separation of parents and children forced into slavery during 18th and 19th centuries and the systematic removal of Indigenous children from their parents and tribes through the 1970s.²

Government-operated child welfare systems in the United States historically ignored Black children and families for much of the country's history, only to treat them unequally within those systems in later years.³ Scholars of child welfare systems have noted that as Black children began to make up a larger share of those affected by the child welfare system throughout the latter half of the twentieth century, spending on out-of-home foster care shot up while money spent on in-home services decreased.⁴ According to one statistical compilation, Black children now make up nearly a quarter of children in foster care nationwide, and more than 40% of children in foster care in New York State.⁵ A number of factors have been identified as contributing to the historically disproportionate representation of Black families in foster care, including higher rates of poverty and cultural misunderstandings between case workers and the families they work with.⁶

New York City has a particularly problematic history with racially discriminatory effects in its foster care system. In 1973, the Children's Rights Project at the NYCLU – which was later merged into the ACLU's Juvenile Rights Project – sued New York City over its use of private religious agencies to provide foster care placements that gave preference to white children whose religious background matched the agencies' affiliations, frequently resulting in inferior and inappropriate placements for Black and Protestant children. The case resulted in a consent decree

¹ Dorothy E. Roberts, *Child Welfare and Civil Rights*, 2003 U. Ill. L. Rev. 171, 176 (2003).

² DeNeen L. Brown, 'Barbaric': America's cruel history of separating children from their parents, Washington Post (May 31, 2018), <https://www.washingtonpost.com/news/retropolis/wp/2018/05/31/barbaric-americas-cruel-history-of-separating-children-from-their-parents/>; see Dorothy Roberts, *Killing the Black Body: Race, Reproduction, and the Meaning of Liberty* (2d ed. 2017), pp. 34-36 (describing the process of Black children in slavery being separated from their parents and sold as property).

³ Tanya Asim Cooper, *Racial Bias in American Foster Care: The National Debate*, 97 Marq. L. Rev. 215, 234 (2013).

⁴ *Id.*

⁵ The Annie E. Casey Foundation Kids Count Data Center, *Children in foster care by race and Hispanic origin*, <https://datacenter.kidscount.org/data/tables/6246-children-in-foster-care-by-race-and-hispanic-origin#detailed/1/any/false/37,871,870,573,869,36,868,867,133,38/2638,2601,2600,2598,2603,2597,2602,1353/12992,12993> (data sorted for the United States and New York for 2018).

⁶ U.S. Government Accountability Office, *African American Children in Foster Care: Additional HHS Assistance Needed to Help States Reduce the Proportion in Care*, pp. 2-4, <https://www.gao.gov/assets/270/263615.pdf> (summarizing findings).

in 1984 requiring multiple reforms to the city's foster care placement setting, and years of subsequent litigation over compliance with the settlement terms.⁷

Indigenous families have also suffered unique, acute harms at the hands of government authorities seeking to regulate family life. Beginning in the 19th century, the U.S. government systematically forced Indigenous families to send their children to boarding schools specifically designed to strip them of their heritage.⁸ Throughout much of the 20th century, child protective agencies throughout the U.S. routinely removed Indigenous children from their homes without due process and placed them in non-Indigenous homes, severing the relationship of those children to their communities and traditions.⁹ The widespread abuses of child protective agencies with regard to Indigenous families led to the passage of the landmark Indian Child Welfare Act (ICWA) in 1978.¹⁰

The historical backdrop of the family regulation system's impact on Black, Brown, and Indigenous communities – which can scarcely be summarized here – is not merely a reminder of the darker chapters of our past. It is a critical lens to apply when evaluating the family regulation system as it exists today and its continuing outsized impact on minority families.

III. New York's modern family regulation system is plagued by racial disparities.

One need not assume malice on the part of today's local officials or social services workers to observe the vestiges of this history in New York's modern family regulation system. Black and Brown families are overrepresented throughout the course of a child protective case, from the initial investigation to placements in foster care. An examination of 2014 data cited by the New York State Office of Children and Family Services (OCFS) showed that Black children were involved in roughly 37% of state central registry (SCR) reports in New York City despite making up 24% of the child population, while white children were involved in just under 7% of SCR reports while comprising 27% of the child population.¹¹ The disparities were slightly larger when indicated SCR reports are tallied, and grew larger at successive decision points in the process, with black children making up more than half of all foster care admissions in that year.¹²

⁷ See ACLU, *ACLU History: Child Welfare Institutions*, <https://www.aclu.org/other/aclu-history-child-welfare-institutions>.

⁸ Ann Murray Haag, *The Indian Boarding School Era and Its Continuing Impact on Tribal Families and the Provision of Government Services*, 43 *Tulsa L. Rev.* 149, 150-58 (2007) (summarizing the history of Indian boarding schools).

⁹ See Matthew L.M. Fletcher, Michigan State University College of Law Indigenous Law and Policy Center, *The Origins of the Indian Child Welfare Act: A Survey of the Legislative History*, <https://www.law.msu.edu/indigenous/papers/2009-04.pdf>.

¹⁰ *Id.*

¹¹ See Vajeera Dorabawila & Nicole D'Anna, *Disproportionate Minority Representation (DMR) in Child Welfare and Juvenile Justice Systems (December 2015)*, p.2, <https://ocfs.ny.gov/main/contracts/docs/DMR-Section-Seven-of-Grant-RFP-2015.pdf>.

¹² *Id.* at pp. 2-4.

Those disparities are also reflected in more recent data on foster care admissions. In 2019 in New York City, Black children again comprised more than half of all new foster care admissions and made up roughly 53% of all children in care, while white children were just 5% of the foster care population.¹³ A 2019 analysis of New York City Administration for Children’s Services (ACS) data on indicated SCR reports by community district, conducted by the Center for New York City Affairs at the New School, shows a strong correlation between both poverty rates and the percentage of Black and Latinx residents and rates of ACS investigations.¹⁴

This data merely provides a glimpse at what impacted parents, children, advocates, and legal services providers have long observed firsthand: New York City’s family regulation system holds families of color to a double standard, punishing normal life challenges or minor missteps that would be overlooked in the cases of white families, and too often characterizing markers of poverty as child neglect.¹⁵ This is especially troubling in the current moment given the issues that many families have experienced difficulties with remote learning (i.e. lack of access to stable internet or an electronic device) that have caused issues with attendance, and thus put them at greater risk for being investigated for educational neglect. We have already seen this take place in New York City, where several parents received ACS visits when their child allegedly failed to sign in to remote learning programs.¹⁶ To many of those who encounter these systems up close, the child protective system bears striking parallels to criminal legal system as tool of discriminatory government surveillance and control that mostly affects Black and Brown communities.¹⁷

IV. The City Council can take steps towards reform now by passing previously introduced legislation to hold ACS accountable.

The racial disparities that permeate New York City’s family regulation system are endemic and must be met with meaningful structural change, not piecemeal reform. We would welcome an opportunity to work with the Council on the complex process of reimagining how our child welfare institutions should operate. Nonetheless, there are smaller steps the Council can take now to make the current system more just, beginning with a package of legislation introduced one year ago.

In October 2019, this committee held a hearing on a package of legislation aimed at holding ACS accountable. These included Intros. 1716-2019, 1717-2019, 1719-2019, and 1727-

¹³ OCFS, *2019 Monitoring and Analysis Profiles With Selected Trend Data: New York City (2015-2019)*, <https://ocfs.ny.gov/main/reports/maps/counties/New%20York%20City.pdf>.

¹⁴ Center for New York City Affairs, *Data Brief: Child Welfare Investigations and New York City Neighborhoods (June 2019)*, <http://www.centrernyc.org/data-brief-child-welfare-investigations>.

¹⁵ See, e.g., Stephanie Clifford & Jessica Silver-Greenberg, *Foster Care as Punishment: The New Reality of ‘Jane Crow’*, NY TIMES, July 21, 2017, <https://www.nytimes.com/2017/07/21/nyregion/foster-care-nyc-jane-crow.html>.

¹⁶ Eileen Grench, *Parents Expecting iPad Deliveries Got Knock on Door From Child Welfare Workers*, The City, April 28, 2020, <https://www.thecity.nyc/education/2020/4/28/21247059/parents-expecting-ipad-deliveries-got-knock-on-door-from-child-welfare-workers>.

¹⁷ See, e.g., Dorothy E. Roberts, *Child Welfare and Civil Rights*, 2003 U. Ill. L. Rev. 171, 172 (2003).

2019, which would together significantly expand the available public information on disparities within the city's child welfare system. In particular, Intro. 1717-2019 would require detailed reporting about each step in the child protective investigation process disaggregated by race, giving policymakers and the public a clearer and more complete picture of just how prevalent the disparities that are the subject of today's hearing are.

Other bills under consideration at the 1718-2019, 1729-2019, and 1736-2019, which together would give parents better and more timely information regarding their rights when interacting with ACS, Intros. 1715-2019 and 1728-2019, which would expand legal representation for affected parents beyond that currently provided in Family Court proceedings; and Intro. 1426-2019, which would require comprehensive reporting by ACS on investigations initiated in response to drug test results shared by public hospitals, shedding more light on the racially discriminatory practice of targeting pregnant people in hospital settings for drug testing, which leads to separation of newborns from nursing parents and deters pregnant people from seeking health care. The NYCLU testified in support of these bills at the time, though we urged the Council to work with stakeholders to amend the bills to ensure they served their intended purpose. We renew that call now.

Taken together, this legislative package can be an important first step both towards uncovering the depth of the racial disparities in the family regulation system and ensuring parents' right to due process is meaningfully honored. However, a year later, these bills remain laid over in committee without amendment or other movement. We strongly urge the Council to work with advocates to improve these bills where necessary and pass them without further delay.

V. Conclusion.

The topic of racial disparities in the child welfare system is critically important, and the causes and solutions are extraordinarily complex. We commend the City Council for turning its attention to these issues, and implore the Council to take immediate steps in its control to create a fairer child welfare system. We look forward to working with the Council on these issues going forward.



TESTIMONY FOR A HEARING ON:

Oversight: Racial Disparities in the Child Welfare System

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I. Introduction

Mobilization for Justice, Inc. (MFJ) envisions a society in which there is equal justice for all. Our mission is to achieve social justice, prioritizing the needs of people who are low-income, disenfranchised, or have disabilities. We do this through providing the highest quality direct civil legal assistance, providing community education, entering into partnerships, engaging in policy advocacy, and bringing impact litigation. MFJ assists more than 25,000 New Yorkers each year.

MFJ's Kinship Caregiver Law Project helps stabilize families by providing civil legal assistance to caregivers raising children who are not their biological children. Thousands of grandparents, other relatives, and fictive kin take care of children whose birth parents are deceased, incarcerated, or are otherwise unable or unwilling to provide a stable home. MFJ works to prevent these children from entering the traditional foster care system by representing caregivers in custody, guardianship, and adoption proceedings. Research has demonstrated several clear benefits of kinship care over the traditional foster care system including improved academic performance, lower incidence of mental illness, lower teen pregnancy rates, and improved self-esteem. MFJ's Kinship Caregiver Law Project is the only program in New York City that exists solely to assist kinship caregivers with their legal needs.

We thank the General Welfare Committee for the opportunity to describe how racial disparities in the child welfare system impact our clients.

II. Racial disparities in the child welfare system are rampant due to over-policing and lack of support and resources.

Throughout the United States, and here in New York, a disproportionate number of people of color are living in poverty. Black and Latinx families and children who are living in poverty are confronted with heightened "exposure to social service systems, such as financial or housing

assistance, which may further increase their exposure to mandated reporters.”¹ With each exposure to mandated reporters is another possibility to be subjected to the child welfare system. This is borne out by the demographics of children currently in foster care. According to the National Conference of State Legislatures, “[t]hirty-three percent of kids in foster care are African-American, but they make up only 15 percent of the child population.”²

The U.S. Department of Health and Human Services conducted a national study on child protective services and found, “minority children, and in particular African American children, are more likely to be in foster care placement than receive in-home services, even when they have the same problems and characteristics as white children.”³ This speaks directly to the punitive nature of the child welfare system, and its disparate racial impact. The child welfare system, as it currently exists, “is designed not as a way to assist parents in taking care of their children but as a way to punish parents for their failures by threatening to take their children away.”⁴ This punitive nature of the child welfare system impacts Black families most “because they are the most likely to suffer from poverty and institutionalized discrimination and to be blamed for the effects on their children.”⁵

The child welfare system involves “deeply embedded stereotypes about [B]lack family dysfunction,” that white families are not faced with.⁶ Increased interaction with the child welfare system inherently leads to increased removal of children from their parents and placement with kinship caregivers. Notwithstanding studies that show it is better to place children in kinship care

¹ *Racial Disproportionality and Disparity in Child Welfare*, Child Welfare Information Gateway, Issue Brief (2016), available at: https://www.childwelfare.gov/pubPDFs/racial_disproportionality.pdf

² *Disproportionality and Disparity in Child Welfare*, National Conference of State Legislatures (Sept. 28, 2020), available at: <https://www.ncsl.org/research/human-services/disproportionality-and-disparity-in-child-welfare.aspx>

³ Dorothy Roberts, *Race and Class in the Child Welfare System*, Frontline, Failure To Protect. <https://www.pbs.org/wgbh/pages/frontline/shows/fostercare/caseworker/roberts.html> (last visited Oct. 23, 2020).

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

with family members than in foster care with strangers, families experience a myriad of challenges to bring these children into their homes, which have only been exacerbated by the ongoing COVID-19 pandemic.

Presently, kinship caregivers are not afforded the right to an attorney nor are they invited to participate in court proceedings that determine a child’s placement once the child is removed from their parent’s care. As the sole program in New York City that offers legal counsel and representation to kinship care providers, we know all too well the barriers kinship caregivers encounter when attempting to access information about a child they love who has entered the foster care system. Their efforts to obtain adequate legal advice and assistance with having the child placed in their home often result in misinformation, dead ends, and outreach to multiple agencies before they reach us. As a consequence of these barriers, kinship caregivers can go months or longer sorting out the complexities of the family court and child welfare systems while their family member remains in traditional foster care, despite them being ready, willing, and able to provide care for their loved one. Beyond the difficulties of wading into the family court system, most of these individuals cannot afford to hire a private attorney.

A. Kinship caregivers experience a discriminatory child welfare system, fighting to keep their families intact while managing over-policing and inadequate resources.

Grandparents and other kinship caregivers often find themselves involved with the child welfare system long after they have finished raising their own children. A 2018 national study from the Current Population Survey (CPS) states that, “an estimated 2.7 million children were living with kin instead of their parents.”⁷ The majority of these families are people of color due to

⁷*HHS Could Enhance Support for Grandparents and Other Relative Caregivers*, United States Government Accountability Office (July 2020), available at: <https://www.gao.gov/assets/710/708020.pdf>.

the over-policing and institutionalized discrimination against families of color. Often, family members receive a call from the Administration for Children's Services (ACS) when a loved one enters the child welfare system and are asked to take over care of the child. For many of our clients, there is no hesitation when they receive that call. However, these potential kinship caregivers are not encouraged or supported.

When a child enters the child welfare system, a kinship caregiver is sometimes given the option of being certified as a kinship foster parent, which enables the caregiver and child to receive all of the benefits that this entails, including money and significant resources that provide support to the children, parents, and caregivers. However, kinship caregivers are more often not certified as foster parents. ACS will often be overly punitive in deeming the removal of a child necessary, while simultaneously deciding that the circumstances do not merit prosecution in family court. The result is to foreclose the caregivers' access to resources associated with being a certified kinship foster parent and place the burden directly on the kinship caregiver to become a sole provider for the child. The number of children placed with kin outside of the formal foster care system is "roughly 20 times" the number of those in the formal foster care system.⁸ This disparity results in burdening families who already struggle against a child welfare system created to police, not to help, families of color.

Kinship caregivers who are certified as kinship foster parents and who ultimately receive a foster care subsidy must submit to invasive investigative processes by the state. Kinship caregivers who have had prior involvement with the criminal legal system or ACS in the past, are frequently deemed safe enough to care for a child but deemed inappropriate to be certified as a

⁸ *Id.*

foster parent. MFJ receives countless calls from family members who want to care for a loved one but are faced with impractical barriers.

For example, Ms. M contacted MFJ for assistance when her niece was placed into foster care. Ms. M, a woman of color, was not initially certified as a kinship foster parent due to her estranged husband's prior involvement with the child welfare system. Despite assuring ACS that her husband no longer resided in the home, Ms. M was penalized and not allowed to care for her niece. Ms. M was permitted only supervised visits with her niece until she sought legal assistance. MFJ represented Ms. M in family court and assisted her in navigating the complex child welfare system. Ms. M was ultimately successful not only in taking over care of her niece, but also in being certified as a kinship foster parent. Without an attorney, Ms. M may never have had the opportunity to care for her niece or access the resources that only come with being certified as a foster parent.

Children suffer when ACS removes them from their parents but does not then offer meaningful support. Studies show that children involved in the child welfare system experience trauma, negative impacts on their mental and emotional health, gaps in education, and poverty at higher rates. Caregivers are forced to stretch their financial means, time, and energy to provide for the children that they have taken in. At a time when families are experiencing severe financial strain, all options should be available to help minimize families slipping into poverty, including, but not limited to increasing Temporary Assistance for Needy Families (TANF) funding for children in kinship care. Kinship caregivers are more likely to take in entire sibling groups, thus promoting the goal of ensuring siblings are raised together. However, when this happens outside the foster care system, kinship caregivers are effectively punished for taking in more children – as the amount of “Child-Only” TANF funding radically decreases per child. Increasing TANF Child-

Only grants will help families that are diverted out of the foster care system to have access to public assistance that is more equitable to a foster care subsidy.

The current child welfare system is one of policing, not support. In this moment of nationwide reckoning of racial injustice, it is imperative that changes in the child welfare system be at the forefront of the conversation. Changes in the system are necessary to address the rampant injustice and to provide support to children and families.

B. Covid-19 has disproportionately impacted our most at-risk communities and left thousands of children vulnerable.

At the height of the pandemic, each day, upwards of 600 New York City residents lost their lives to COVID-19.⁹ Statewide, the number of lives lost daily to the virus swelled well over 1,000.¹⁰ As we move towards the end of 2020, and are now eight months into the pandemic, research has begun to reveal the devastating effects of COVID-19 on our city, state, and national economies, as well as our communities. We now know that Black and Latinx individuals, including children, contract the virus at disproportionately higher rates than White individuals – this is evident across all national regions¹¹ as well as throughout New York counties and boroughs. Research has also shed a light on the collateral effects of COVID-19 on children and families that lose a parent, guardian, or caregiver to the disease.

A study conducted by the United Hospital Fund (UHF) and Boston Consulting Group found that 4,200 children in New York state had lost a parent or caregiver to coronavirus between

⁹ NYC Health, COVID-19: Data, NYC.gov (Oct. 21, 2020), *available at*: <https://www1.nyc.gov/site/doh/covid/covid-19-data.page>.

¹⁰ *New York Covid Map and Case Count*, N.Y. Times, updated October 21, 2020, *available at*: <https://www.nytimes.com/interactive/2020/us/new-york-coronavirus-cases.html>.

¹¹ Richard A. Oppel Jr. et. al, *The Fullest Look Yet at the Racial Inequity of Coronavirus*, N.Y. Times (Jul 5, 2020), *available at*: <https://www.nytimes.com/interactive/2020/07/05/us/coronavirus-latinos-african-americans-cdc-data.html>.

March and July 2020, exceeding the number of children who lost parents in the wake of 9/11.¹² According to the study, “[p]arental and caregiver deaths from COVID-19 occurred at a rate of 1 per 1,000 children,”¹³ with 57% of the deaths occurring in three New York City counties: Bronx, Kings (Brooklyn), and Queens.¹⁴ When further extrapolated by race, Black and Latinx children experienced the death of a parent or caregiver due to COVID-19 at double the rate of their White and Asian peers.¹⁵

In the midst of the current pandemic, we now know that long-existing and deeply entrenched systemic racial inequities in wealth, health care access, food security, education, stable and affordable housing, economic opportunity, and upward mobility can create even greater hardships for Black and Latinx families.¹⁶ A parent’s or caregiver’s death by COVID-19 engenders even greater hardships, adding to existing trauma, stress, and need for low- and no-income New York families. A particularly acute need is the provision of care for children who have lost a parent to the virus. The UHF study found that “[u]p to 23% of children who lost a parent or caregiver due to COVID-19 may be at risk of entry into foster or kinship care,” and “[a]pproximately 50% of children who lost a caregiver due to COVID-19 may enter poverty.”¹⁷ For many families, guardianship planning and arrangements were not in place prior to a parent or

¹² Suzanne Brundage & Kristina Ramos-Callan, *COVID-19 Ripple Effect The Impact of COVID-19 on Children in New York State*, United Hospital Fund (Sept. 2020), available at: https://uhfnyc.org/media/filer_public/b3/50/b3504a0d-44cb-44a4-80df-95a3ab2f7497/covid_ripple_effect_part_1_final.pdf.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ Kelly Glass, *Black Families Were Hit Hard by the Pandemic. The Effects on Children May Be Lasting*, N.Y. Times (Jun. 29, 2020) (“According to research from the Center on Poverty and Social Policy at Columbia University, working-age adults, children and Black Americans will fall below the poverty line at the highest rates as a result of the coronavirus pandemic’s economic effects.”), available at: <https://www.nytimes.com/2020/06/29/parenting/coronavirus-black-children-inequality.html>.

¹⁷ Suzanne Brundage & Kristina Ramos-Callan, *COVID-19 Ripple Effect The Impact of COVID-19 on Children in New York State*, United Hospital Fund (Sept. 2020), available at: https://uhfnyc.org/media/filer_public/b3/50/b3504a0d-44cb-44a4-80df-95a3ab2f7497/covid_ripple_effect_part_1_final.pdf.

guardian’s passing. Families also often lack strong support networks and may not have extended family who can assist with the care of additional children.

Court closures, including family courts, due to the pandemic, have also made it challenging for surrogate parents or stand-in guardians to navigate the process of formalizing care.¹⁸ Limited access to family courts has also made it difficult for children in foster care to be reunited with and visit their families.¹⁹

Equally concerning, many children placed in the foster care system have nowhere to go. In the early months of the pandemic, ACS reported that it was “aggressively looking for spaces to house foster children whose group homes [were] going understaffed as caretakers increasingly stay[ed] home, or whose foster parents are elderly and can’t be around young people[.]”²⁰

Pre-pandemic, Black and Latinx children were particularly vulnerable to encounters with the family welfare system, largely in part due to over-policing of poor Black and Brown parents. Despite data reflecting the realities of Black and Latinx children’s increased risk of being placed in the child welfare system during this unprecedented time, we have seen aunts, uncles, grandparents, siblings, other family members and next-of-kin step up to keep families together and out of the traditional foster care system.²¹ In light of the compounding effects of COVID-19 on Black and Latinx families, we propose that the General Welfare Committee consider how the City might endeavor to keep more families together through kinship placement and provide the necessary supports to those families.

¹⁸ Eli Hager, *Coronavirus Leaves Foster Children With Nowhere to Go*, The Marshall Project (Mar. 24, 2020), available at: <https://www.themarshallproject.org/2020/03/24/coronavirus-leaves-foster-children-with-nowhere-to-go>

¹⁹ *Id.*

²⁰ *Id.*

²¹ Nikita Stewart, *He Is 16 and His Mother Died of Covid-19. What Happens To Him Now?* N.Y. Times (Aug. 13, 2020), available at: https://www.nytimes.com/2020/08/13/nyregion/coronavirus-ny-parents-dead.html?campaign_id=44&emc=edit_ur_20200814&instance_id=21273&nl=new-york-today®i_id=60614773&segment_id=36097&te=1&user_id=547f730b93bacba6c0a06031d85b0cb5

III. Key Recommendations

Ensure Access to Counsel for Kinship Caregivers

To date, there is a dearth of legal resources for people seeking to care for loved ones in foster care. MFJ stands alone in serving this community without cost. Kinship caregivers generally do not have a right to assigned counsel in family court proceedings, and unfortunately are often left out of the process. The New York City Council Committee on General Welfare must make efforts to ensure that resources like those provided by MFJ are made available to families looking to be a source of stability and comfort for children placed in, or at risk of being placed in, the traditional foster care system, particularly during the current pandemic.

Provide Sufficient Financial Resources and Safety-Net Supports to Kinship Caregivers

The Child-Only TANF funding for children in kinship care should be the same amount per each child, as it is in foster care, rather than incrementally decreasing per child. Increasing the current TANF subsidy offers families affected by the new economic realities resources to address their daily needs.

Provide Sufficient and Timely Information to Current and Potential Kinship Caregivers Via a Neutral Third-Party

The law mandates that kinship caregivers be informed of the option to become a certified foster parent.²² It is unclear whether this information is being disseminated consistently and in a way that people unfamiliar with the child welfare system can understand. We propose that the Committee on General Welfare support organizations, such as MFJ, that can provide this information in a timely and unbiased manner.

²² N.Y. Fam. Ct. Act § 1017(1)(a) (2020)

Provide Sufficient Services in this Pandemic-era to Young People of Color

In light of data presented which shows that Black and Latinx children are disproportionately impacted by the pandemic, and at greater risk of entering the child welfare system, we urge the Committee on General Welfare to also increase support for programs dedicated to serving this population and meeting its overwhelming need: addressing gaps in education, food access, and mental health resources.

IV. Conclusion

COVID-19 has exacerbated pre-existing racial disparities in the child welfare system. Mobilization for Justice, Inc. respectfully urges the General Welfare Committee to implement these recommendations to begin to address disparities throughout the child welfare system to ensure better outcomes for Black and Latinx children tragically, and often unnecessarily, foisted into the child welfare system.

Thank you for the opportunity to provide this written testimony. For more information or if you have any questions, please contact Senior Staff Attorneys Karla Johnson (kjohnson@mfjlegal.org) or Arlene Rodriguez (arodriguez@mfjlegal.org).

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TESTIMONY

Hearing of the Committee on General Welfare Oversight: Racial Disparities in the Child Welfare System

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New York City Council
Committee on General Welfare
Stephen T. Levin, Chair

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Introduction

The Legal Aid Society is grateful for this opportunity to testify before the New York City Council Committee on General Welfare regarding the extent to which children and families of color, especially Black children, experience significantly worse outcomes in the child welfare system than white children including outcomes related to maintaining children in their homes, reducing the number of foster care placements, supporting family reunification, and providing timely adoptions. We additionally will discuss the City's efforts to address racial disparities in the child welfare system and how the City can improve these efforts.

About The Legal Aid Society

The Legal Aid Society (LAS), the nation's oldest and largest not-for-profit legal services organization, is more than a law firm for clients who cannot afford to pay for counsel. LAS is an indispensable component of the legal, social and economic fabric of New York City. It is an organization that advocates for low-income individuals and families across myriad civil, criminal, and juvenile rights matters, while also fighting for legislative reform.

The Legal Aid Society consists of three major practices—the Civil, Criminal, and Juvenile Rights practices. These practices comprise a network of borough, neighborhood, and courthouse offices in 26 locations in New York City. With its annual caseload of more than 300,000 legal matters, LAS handles more cases for more clients than any other legal services organization in the United States; in doing so, LAS brings a breadth of perspective unmatched in the legal profession.

The Legal Aid Society's Juvenile Rights Practice provides comprehensive representation as attorneys for children who appear before the New York City Family Courts in abuse, neglect, juvenile delinquency, and other proceedings affecting children's rights and welfare. Last year, LAS staff represented approximately 34,000 children. Our perspective comes from daily contact with children and their families, and from our interactions with the courts, social service providers, and City and State agencies.

The Legal Aid Society's Civil Practice provides free direct legal assistance in some 38,000 legal matters annually through a network of 10 neighborhood and courthouse-based offices in all five boroughs, and 23 citywide specialized units, including a Family Law Unit.

In addition to its individual representation, LAS also seeks to create broader, more systematic change through its special litigation and law reform units in each practice area. These units work in conjunction with the trial offices to address issues that are most pressing to LAS clients. To accomplish the most effective law reform, LAS uses affirmative litigation and policy advocacy to improve existing laws and policies.

The Legal Aid Society's extensive history representing low income children and families who almost exclusively come from NYC's low income communities of color puts it in a unique position to speak directly to the problematic issues addressed in today's hearing.

I. Racial Disparities in the Child Welfare System Are Rooted in History

To gain a complete understanding of contemporary racial disparities in New York City's child welfare system—and in child welfare systems throughout the country—one must start with the concepts and practices that laid the foundation for America's relationship with Black families, and Black motherhood, in particular. Though established long ago, these practices span hundreds of years, from the early decades of this nation and its history of enslavement and human trafficking of Africans to more recent decades that have led to Black families and poor families of color experiencing hyper-surveillance and constant regulation and interference by government actors at alarming numbers.

A. Slavery as a starting point

For nearly two and a half centuries, European colonial settler merchants on American soil were permitted to sell and barter Black children away from their enslaved kin and caregivers. American lawmakers sanctioned these practices with a series of "slave codes" that labeled Blacks as chattel to be bought, sold, disciplined, and regulated almost exclusively at their enslavers' will.¹ Consequently,

¹ In the slave-dependent portions of North America, varying degrees of legal authority-backed patrols by plantation owners and other free whites to ensure that enslaved people were not free to move about at night, and to generally enforce the restrictions on slaves. Hadden, Sally E. (2001). *Slave Patrols: Law and Violence in Virginia and the Carolinas*. Harvard Historical Studies. Cambridge, MA: Harvard University Press. Throughout colonial America, states required any slaves away from their plantations or outside of the cities in which they resided to have a pass signed by their enslaver. Many cities in the slave-states required slave-tags, small copper badges that enslaved people wore, to show that they were allowed to move about. Harlan., Greene (2004). *Slave badges and the slave-hire system in Charleston, South Carolina, 1783-1865*. Most jurisdictions restricted the marriage rights of enslaved people ostensibly to prevent them from trying to change masters by marrying into a family on another plantation. Ingersoll, Thomas N. (1995). "Slave Codes and Judicial Practice in New Orleans, 1718-1807". *Law and History Review*. Marriage between people of different races was also strictly prohibited.

enslavers used family separation as a tool of intimidation. That is, the looming threat of family separation, among other threats of brutal violence, hovered frighteningly over the heads of enslaved Black people—specifically, Black mothers—as an impending consequence of disobedience.

As time passed, enslavers and others in power found Black family separation during this period of institutionalized human enslavement to be an incredibly effective, and equally terrifying, tool for subduing Blacks. As Laura Briggs noted in her book, *Taking Children*:

What distinguished this era was not a failure to understand the heartbreak of child separation. It was that those with power, government and slave owners, found that pain to be a reasonable path to putting down rebellion. Taking children wounded people fiercely, and it was meant to hurt and terrify them into submission.... [T]he threat that children could be taken from kin and caregivers was one of the “essential features” of enslavement, as sociologist and Black radical theorist W.E.B. DuBois wrote a generation after slavery’s end.²

The continual practice of Black family separation became a long-enduring stain in the hearts and minds of Black families during the time of enslavement. Countless slave narratives recalled accounts of Black children being separated from their mothers and families on auction blocks.³ Additionally, these stories recounted the stark realities of living on a plantation under constant threat of losing the last bit of symbolic freedom to which one could cling as an enslaved person—familial connection. Even after many Southern states in America banned taking infants from their mothers in the 1850s, the damage arguably had been done. While Black families experienced the direct harms of Black family separation, another lasting consequence of this practice was that a battery of state-sanctioned systems became efficient at targeting Black families. These systems were largely publicly funded and included, and continue to include, education, law enforcement, health care, and most importantly for our purposes, the child welfare system.

² Briggs, Laura, *Taking Children: A History of American Terror* (2020), University of California Press, pp. 30 – 32.

³ See, e.g., Jacobs, Harriet Ann, *Incidents in the life of a slavegirl* (2001), Dover Publications; Gates, Henry Louis, *Classic Slave Narratives* (1987), Penguin Publications; and Equiano, Olaudah, *The Interesting Narrative of the Life of Olaudah Equiano, or, Gustavus Vassa, the African* (2001), Peterborough, Ont.: Broadview Press.

B. Child welfare system as surveillance tool

Roughly 50 years after institutionalized, legal Black enslavement ended, U.S. lawmakers slowly began establishing what are now known as child protective services across the country.⁴ This moment in history arguably was an opportunity to reverse centuries of state-approved violence against Black families. However, no such reckoning occurred. At their inception, child welfare services, initially dubbed “mothers’ pensions” programs, almost exclusively served white women and children. In fact, a 1931 government study found that 96% of welfare recipients at the time were white. This is no surprise, because this system was a product of the Jim Crow Era where “separate but equal” was the law of the land.

Not until decades later were more Black families permitted to receive a fairer share of child welfare-related funds; but even that came at a depressingly exorbitant price—community and family surveillance. During the 1960’s and beyond, more and more families in America fell at or below the nation’s poverty line. This descent made families increasingly dependent on public government funding and services to assist with everyday living. Impoverished Black people and other racial minorities in increasing numbers found themselves constantly under the watchful eye of various government institutions and agencies. In turn, government agencies seemingly created a network of surveillance that made Black families, in particular, susceptible to government scrutiny. Scrutiny was justified by the notion that Black families were broken and in need of repair—specifically, repair that mirrored privileged white society’s picture of a properly functioning family.⁵ This scrutiny mixed with centuries of racial bias, both explicit and implicit, created a recipe for Black families and Black individuals being systematically prosecuted in criminal and family courts alike. Local child protective services through abuse and neglect investigations became a tool of racial oppression.

As child welfare systems took shape in the manner they exist today, child maltreatment investigations became a vehicle for controlling, subjugating, and often destroying Black homes and families in the name of rehabilitation. Statutorily mandated reporters⁶ began calling in most child welfare or “child protective” cases decades ago when government funded services became more widely available to non-white families. These mandated reporters’ calls originated primarily from medical professionals; education workers in public schools; law enforcement agents; and social

⁴ Briggs, Laura, *Taking Children: A History of American Terror* (2020), University of California Press, pp. 30 – 32

⁵ From “The Black Family in the Age of Mass Incarceration” (October 2015), by Ta-Nehisi Coates, <https://www.theatlantic.com/magazine/archive/2015/10/the-black-family-in-the-age-of-mass-incarceration/403246/>

⁶ New York’s “mandated reporter” laws and requirements for child welfare services currently are governed by N.Y. Social Services Law § 413 (McKinney 2005).

services personnel. Historically, these same reporting professionals have funneled Black families that are in frequent proximity to public services to child protective agents and services (“CPS”). Unfortunately, many local CPS projected their own racism and bias, as well as institutional racism and bias, onto the stakeholders they were tasked to protect.⁷ As a result, the rate of Black family separation and unnecessary court/administrative intervention spiked throughout the 1970’s, 80’s, and 90’s.⁸ The greater the systemic scrutiny of Black families, the greater the coercive demands for compliance with services and unwanted intervention. Those who failed to comply faced the inevitability of family separation—a high price to pay for noncompliance of this nature.

Although publicly–operated social service agencies functioned with the stated intent of helping families, their interactions with Black families closely mirrored the style of family separation used to terrify Blacks into submission a century-and-a-half ago. Child welfare scholar Dorothy Roberts once stated that the child welfare system went from being a system that ignored the needs of Black children to one that seemed primarily designed to break up Black families. In recent years, ACS has begun policy and practice changes intended to improve the racial injustice of the system; however New York City still records high rates of disproportionality and racial disparity in child welfare involvement and more must be done.

II. More Must Be Done to End Racial Disparities

The rate of family separation has decreased over the past decade, but Black families and families of color still experience family separation and disruption at the hands of child welfare services at disproportionately higher rates than their white counterparts in New York City.⁹ This disproportionality is a near direct result of continued over-surveillance of Black and Latinx families, and poor Black and Latinx communities. The poverty these families and children experience amplifies their exposure to social service systems, such as public health, public benefits or housing assistance, and education systems; which further increases their exposure to mandated reporters. For example, as of October 2020, approximately 57% of heads of household in New York City’s homeless shelters are Black, and 32% are Latinx, 7% are White;¹⁰ these shelters are staffed primarily with mandated

⁷ Briggs, *supra* note 2.

⁸ See, “The Adoption History Project” (February 2012), by Ellen Herman, <http://pages.uoregon.edu/adoption/topics/fostering.htm>.

⁹ See, e.g., “What’s Behind the Drop in New York City Foster Care Numbers?...” (January 2018), by Child Welfare Monitor, <https://childwelfaremonitor.org/2018/01/02/whats-behind-the-drop-in-new-york-city-foster-care-numbers-more-than-the-commissioner-chooses-to-say/>

¹⁰ From “New York City Homelessness: The Basic Facts” (October 2020), Coalition for the Homeless, https://www.coalitionforthehomeless.org/wp-content/uploads/2020/10/NYCHomelessnessFactSheet8-2020_citations.pdf

reporters. What happens as a result is referred to as “visibility bias” or “exposure bias.”¹¹ Until this exposure bias is recognized and checked, the child welfare system will continue to destabilize and destroy Black families and families of color.

A. Racial Disparity by the Numbers

Implicit bias and exposure bias in New York City’s child welfare system have led to the hyper-surveillance of low-income Black communities and communities of color for decades. The statistics demonstrate that disproportionate representation of these communities in the child welfare system is even more stark in New York City than in the rest of the state. African American children in NYC are 6.2 times more likely to be reported to the State Central Register (“SCR”) as white children, the report is 7.8 times more likely to be indicated, and the child is 12.8 times more likely to be admitted into foster care, according to 2014 data.¹² Latinx children in NYC are likewise more likely to be implicated in an SCR record when compared to their white counterparts and are 5.4 times more likely to be involved in an indicated case.¹³ In the rest of the state, Black children are only 2.3 times more likely to be involved in an SCR report than white children, 2.3 times more likely to be involved in an indicated report, 4.9 times more likely to be admitted to foster care.¹⁴ The overrepresentation of Latinx youth in the rest of the state is even smaller. Latinx children are only 1.1 times more likely than white children to be involved in an SCR report, and 1.1 times more likely to be involved in an indicated report.¹⁵

Not surprisingly, poverty plays a key role in the quantity of cases of abuse and neglect called in against Black and Latinx families in the City. According to a study by the Center for New York City Affairs, the 10 community districts in New York City with the highest rates of child poverty had four times more child welfare investigations on average than the 10 community districts in New York City with the lowest rates of child poverty. The study showed a significant overlap in the concentration of child poverty and of Black and Latinx residents.¹⁶ However, despite the increased number of investigations, there was no corresponding increase in the indication rate in Black and Latinx neighborhoods. The study demonstrated unusually high rates of investigation rather than correlative

¹¹ “Racial Disproportionality and Disparity in Child Welfare” (November 2016), https://www.childwelfare.gov/pubpdfs/racial_disproportionality.pdf

¹² https://ocfs.ny.gov/main/bcm/DMR_Section%20Seven%20of%20Grant%20RFP_2015.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ When controlling for child poverty, the study found that neighborhoods with Black and Latinx residents had higher rates of investigation. This suggests that living in a community district with high child poverty is a significant predictor of investigation rate. Adding the percentage of Black and Latinx residents to the analysis increases the predictive factor.

rates of actual abuse and neglect in poor Black and Latinx communities in New York City.¹⁷ Poverty is often mistaken for neglect, which has a disparate impact on communities of color who are more likely to be poor in NYC.

B. Skewed racial imaging dictates child protective practices

More damaging than the existence of implicit bias in New York City's systems that regulate family life are the practices that keep Black families and families of color under a discriminatory lens. At nearly every decision-making point in a child protective investigation, Black families are represented disproportionately more as the investigation progresses compared to that of their white counterparts.¹⁸ Further, the circumstances under which Black families in New York City are brought to ACS's attention are routinely laden with prejudice—prejudice on the part of child protective workers, law enforcement, and other social service personnel. Some of the instances where Black families and families of color are unwittingly exposed to ACS intervention and regulation are:

- calls in matters of domestic violence and intimate partner violence;
- hospital calls reporting parents, usually Black mothers;
- school workers and school officials reporting perceived maltreatment;
- city homeless shelters reporting their residents' behaviors.

One of the most common points of origin of child protective reports of child abuse and neglect is New York City public schools. In a controversial NY Times article in June 2020, it was reported that child abuse and neglect reports dropped 51% as a result of schools moving to remote learning, among other changes made Citywide in response to COVID-19.¹⁹ While the article acknowledges that “most reports called into [ACS]... are unsubstantiated,” it goes on to characterize the decrease in reported cases as a dangerous occurrence. However, the reduction in CPS calls could just as likely reflect that many fewer unwarranted calls are being made, rather than solely reflecting an epidemic of abuse and neglect that is hidden from view by the circumstances of the pandemic. Indeed, it may be that this drop is an indicator that poor Black families and other low-income families of color finally experienced a brief window of reprieve from an overzealous eye of child services

¹⁷ *Id.*

¹⁸ See “Racial and ethnic disparities: A population-based examination of risk factors for involvement with child protective services,” *Child Abuse & Neglect: The International Journal*, Volume 37, Issue 1, January 2013, Pages 33-46.

¹⁹ “Child Abuse Cases Drop 51%. The Authorities Are Very Worried” (June, 9, 2020), by Nikita Stewart, NYTimes, <https://www.nytimes.com/2020/06/09/nyregion/coronavirus-nyc-child-abuse.html>

Even when seeking healthcare while pregnant, many Black mothers and other mothers of color must endure heightened levels of scrutiny and the possible threat of being funneled into the child welfare system; even before the birth of their child. Maternity care and invasive attention from hospitals and health care workers treat low-income mothers from communities of color as potential respondents in child protective cases. For instance, many public hospitals in New York City, which treat a disproportionate percentage of low income people of color, are permitted to drug test pregnant woman and their newborns absent their consent.²⁰ This practice is rife with Constitutional Due Process implications; is an invasive investigative tool with roots in the racist war on drugs; and is carried out disproportionately on mothers of color.

C. Real consequences of racial disparity in child welfare

Lost in many national and local reports about racial disparities in the child welfare system is the reality that this disproportionality has long-lasting, very real negative consequences for children of color. Children involved in the child welfare system generally experience poorer long-term outcomes as compared to other children.²¹ As a result, the disproportionate involvement of children of color in the child welfare system, has a correspondingly disproportionate negative impact on

²⁰ New York’s mandated reporter requirements generally lead hospitals to file an SCR report if a baby or mother tests positive for illegal drugs at birth, but the state does not regulate when physicians and hospitals can or should conduct such screens. See <https://www.guttmacher.org/state-policy/explore/substance-use-during-pregnancy>. This is concerning because evidence suggests that punitive measures related to positive tests are not applied evenly across race and socioeconomic status. In a landmark study among anonymously drug tested pregnant women, although drug use was found to be similar between African American women and White women, African American women were 10 times more likely to be reported to law enforcement as a result of positive screening results. Chasnoff IJ, Landress HJ, Barrett ME., “The prevalence of illicit-drug or alcohol use during pregnancy and discrepancies in mandatory reporting in Pinellas County, Florida,” *N Engl J Med* 1990;322:1202–6. A Daily News article from 2012 reviewing the testing policies of NYC hospitals uncovered that those which served impoverished sections of the City often required drug testing of all new mothers, while hospitals serving more affluent communities did not. See <http://www.nydailynews.com/new-york/weed-dozen-city-maternity-wards-regularly-test-new-mothers-marijuana-drugs-article-1.1227292>. Whether informed consent for these tests is obtained is another key concern. The American College of Obstetricians and Gynecologists guidance states that for drug testing “there is an ethical responsibility to notify patients of [drug] testing and make a reasonable effort to obtain informed consent.” See <https://www.acog.org/Clinical-Guidance-and-Publications/Committee-Opinions/Committee-on-Ethics/Alcohol-Abuse-and-Other-Substance-Use-Disorders-Ethical-Issues-in-Obstetric-and-Gynecologic-Practice>. It further notes that “obstetrician–gynecologists have an ethical responsibility to their pregnant and parenting patients with substance use disorder to discourage the separation of parents from their children solely based on substance use disorder, either suspected or confirmed.” The lack of regulations in New York on drug testing mothers and/or babies at birth means that there is no assurance that such consent is obtained.

²¹ See “The Foster Care to Prison Pipeline” (May 25, 2018) by Rachel Anspach, <https://www.teenvogue.com/story/the-foster-care-to-prison-pipeline-what-it-is-and-how-it-works>

children of color. Moreover, when CPS involvement is paired with a history of state sanctioned racist violence through legal discrimination, slavery, and mass incarceration, the impact is felt not only in individual households, but has repercussions felt through multiple generations and across the Black communities and communities of color.

Studies show that children in foster care have mental health problems, anxiety, depressive symptoms or general mental difficulties at far higher rates than their peers.²² And the overall health of children who have been in care for more than six months is significantly worse than for those living in their own homes. Children with child protective experience, past or current, underperform in all school settings from elementary school to college.

III. Working to Combat Racial Disparities in the Child Welfare System

In the past five years, ACS has attempted to make efforts to address racial disparities in the system. In America's largest city, ACS is charged with overseeing a child welfare system that historically has conflated poverty with "bad parenting," which arguably is a result of centuries of ingrained American racism throughout its many governmental systems.

A. ACS's efforts, and more to be done

ACS has taken steps to acknowledge and begin to address racial disparities in the child welfare system; however much more must be done.

Some of ACS's initiatives include:

- ACS's emphasis on increasing Kinship Guardianship applications, which allow relatives to get subsidies for caring for their young kin when they leave care and when adoption is not appropriate;
- increased implicit bias trainings for child protective staff, who interact directly with individuals and families under ACS investigation;

²² "For first time, national data reveal just how hard foster care is on children's health" (October 2016), by Ryan White, Center for Health Journalism, [https://centerforhealthjournalism.org/2016/10/19/first-time-data-describe-toll-foster-care-takes-childrens-health#:~:text=Kids%20placed%20in%20foster%20care%20were%20twice%20as%20likely%20as,have%20behavioral%20problems%20\(17.5%20vs.](https://centerforhealthjournalism.org/2016/10/19/first-time-data-describe-toll-foster-care-takes-childrens-health#:~:text=Kids%20placed%20in%20foster%20care%20were%20twice%20as%20likely%20as,have%20behavioral%20problems%20(17.5%20vs.)

- bolstering its visitation policies, increasing visitation for respondents, families, and children removed from their caretakers; and
- expanding the Family Assessment Response program, which is an alternative intervention for families accused of child maltreatment whom ACS believes to be lower risk.

As laid out above, racial injustice is embedded in the child welfare system. While these initiatives at the very least begin to chip away at the tip of that iceberg, there is far more that ACS can do to meaningfully begin dismantling the underlying issues that continue to harm children of color in our City. For instance, ACS can and should:

- Conduct *RACE-BLIND* assessments during (or in addition to) child safety conferences that may result in a child's removal—this includes removing any collateral markers that may suggest a person's or family's race, culture, ethnicity, etc.;
- Increase primary prevention services that do not trigger an ACS response, so families need not face ACS intervention to obtain support;
- Provide adequate housing subsidies for families charged with inadequate housing;
- Offer funds directly to families that struggle to acquire bare necessities, such as food, clothing, toiletries, medication, school supplies, safety items for their homes, etc., *despite* that family's reliance on public assistance;
- Further elevate public housing applications for families where housing is a barrier for family reunification;
- Invite independent auditors who specialize in address racial inequities to assess and re-evaluate ACS's practices and procedures case investigations with an emphasis on promoting racial equity;
- Advocate with NYS to relax mandatory reporting standards that often result in frivolous investigations being conducted against low-income families;
- Improve its efforts to accommodate visitation for families ACS has separated; and
- Include affected children and families in decisions about policies, practices and data collection.

In addition to ACS making structural changes to its city-wide operations, those involved in the child welfare administration directly and collaterally should also be mandated to undergo training in race

equity. This includes judges, referees, agency workers, agency attorneys, child maltreatment, investigators, and emergency services workers.

ACS also should adopt early representation for children in the investigation phase of an ACS case. It is well established in New York State that children have independent rights to counsel in child protective court proceedings.²³ Attorneys for children participate in all aspects of a Family Court case and serve as the children's voice in those proceedings. However, children have no right to representation during an ACS investigation, which can be very difficult for children to navigate, and can have serious consequences for child and family well-being. Providing children with an independent voice in the investigation stage can help ensure the safety of the children, identify resources to assist the family, and provide important information that might not otherwise be elicited. Involving attorneys for children at the earliest point of contact may also serve to mitigate bias and ensure outcomes do not confuse poverty with safety concerns.

B. City Council's role in oversight and accountability

City Council plays a significant role in overseeing ACS's efforts to improve its racial justice work to protect the City's most vulnerable children and families. One way it can assist is to mandate that ACS sharpen its data collection to include outcomes for its many programs seeking to combat racial disparities in the child welfare system. Data can drive improvements in practice. While ACS already collects and publishes a substantial amount of data, analyzing the data through a racial equity lens would provide greater transparency, and would help ACS work to reduce the traumatic impact of separating children of color from their parents and siblings, especially in low-income communities. The excessive involvement of ACS in the lives of families in impoverished communities of color has a devastating impact on children and their families. Requiring ACS to demonstrate substantive changes as a result of its programs would hold one of the nation's largest child welfare systems accountable to once and for all end racial disparities.

Conclusion

²³ N.Y. Fam. Ct. Act § 262(a) provides that respondents in child protective proceedings have a right to counsel. Family Court Act § 249(a) provides that independent counsel must be provided to represent children in child protective proceedings. For the same reasons that the state legislature has determined that it is valuable for children to be assigned counsel like other parties in child welfare court proceedings, the City Council should place value on providing children with access to counsel during the preliminary stages of child welfare involvement, just like other parties.

Thank you to the New York City Council for holding this hearing and bringing to the forefront an issue that has plagued low-income communities of color throughout the City and the nation for centuries. We are happy to answer any questions regarding this testimony.

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Rise's Written Testimony

To the New York City Council Committee on General Welfare
"Oversight: Racial Disparities in the Child Welfare System"
October 28, 2020

Thank you, Chair Levin and the General Welfare Committee for holding this hearing and providing us with the opportunity to testify and offer this written testimony.

Founded in 2005 and led by parents impacted by the child welfare system, Rise believes that parents have the answers for their families and communities. Our mission is to support parents' leadership to dismantle the current child welfare system, eliminate cycles of harm, surveillance and punishment and create communities that invest in families and offer collective care, healing and support.

We envision communities that are free from injustice, family policing and separation, and a society that is cultivating new ways of preventing and addressing harm. We imagine a radical commitment to ensuring that all families have what they need to live beyond survival and truly thrive.

Each year, Rise works with dozens of parents in New York City to document their experiences with the child welfare system, inform parents about their rights, train parent advocates to support parents in navigating community supports or child welfare involvement, and advocate and organize for community investments and for law, policy and practice changes to reduce the reach and harm of the child welfare system.

Disparities That Are Visible Every Day

Thank you for holding this hearing to focus on racial disparities. Racism is evident in the design, practice and impact of child welfare in New York City. While the child welfare system claims to support NYC families, it causes trauma, stress and shame to parents and children.

The parents that we work with are black and brown parents living in low income communities. These are parents who are guilty of poverty. They are parents who reach out for help and get a hotline call and investigation from the people they trust during hard times in their families.

For parents simply walking into Family Court, it is obvious that this is a system that almost entirely impacts Black and brown families and communities. As Rise Parent Leader Imani Worthy put it in her testimony:

“Going to family court is like the feeling of marching to the guillotine. You're ashamed and your mistakes are put out to the public.

“While in the courthouse, I couldn't help but notice a barrier when you enter. Lawyers, judges, clerks, ACS caseworkers, and staff walk in on one side. On the side where the employees were walking in, I noticed a lot of Caucasian people entering.

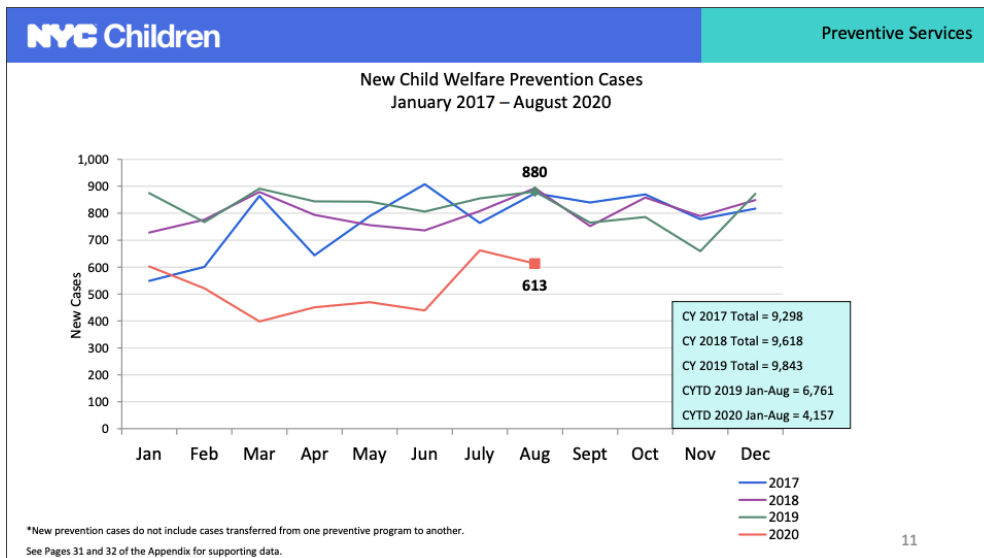
“The other side is for the general public. The general public had so many black and brown faces.”

For Black and brown parents, the roots of the system's disproportionate impact on low-income families of color are also obvious: under-investment in supports for low-income families.

Support That Comes with Strings Attached

Too often, the only supports available to low-income families come with strings attached: the strings of surveillance, of loss of control, of punishment. Parents who need help with school challenges, a winter coat or box of food know that every request for assistance can put their families at risk of a hotline call, an investigation and even family separation.

Parents would rather hide their struggles that reach out to an agency that is connected to ACS. You can see it in the numbers. ACS' most recent data shows that families did not utilize ACS-funded Preventive services during the pandemic, even though these were highly stressful months for families.



Families needed and still need basic resources and support—cleaning supplies for their homes, help with technology, support to de-escalate tensions, especially as parents are teachers now for their children. But the system is known for punishing families for their struggles instead of providing support.

This is inequity--white families and more well-off families do not have to carry the fear that asking for help will destroy their families.

Achieving racial equity means reducing stress on Black and brown families and removing barriers to resolving family challenges without fear.

When we continue to structure child welfare and family support as they are now, we continue a system that is widely recognized as racist in design and impact.

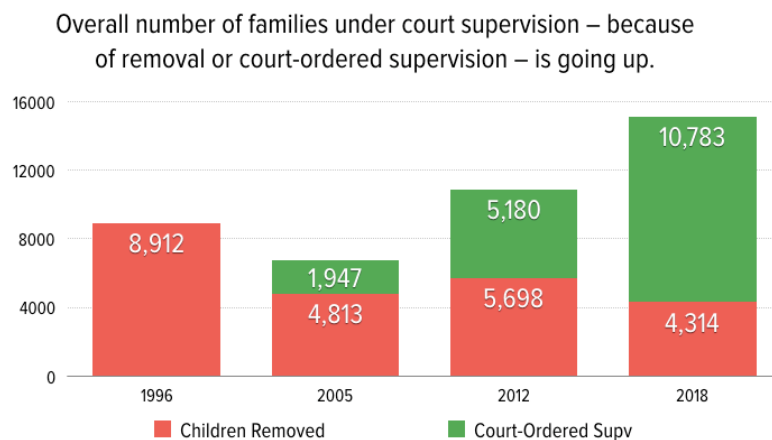
Despite the best intentions to protect the well-being of children that people may have working within this system, the child welfare system reproduces cycles of harm and trauma that impact Black and brown low income communities. This is unacceptable and must end.

Policing of Families in Black and Brown Communities

We want to call your attention especially to rising rates of family surveillance in New York City. City Council frequently hears from ACS that, in New York City, the number of children in foster care has dropped dramatically in the past 20 years. This is a critical success. However, it's time for ACS to acknowledge another statistical fact: ACS' threatening presence in poor communities of color has grown.

Investigations have increased from [54,039 in 2013](#) to [59,166 in 2018](#) and are concentrated in poor communities of color. In Hunts Point in 2017, 10% of families were investigated. Between 2010-2014, nearly one in three families in Brownsville were subjected to an investigation, according to ACS.

In addition, the city has aggressively increased use of invasive “court-ordered supervision” to monitor families. While 5,000 families per year were typically under court monitoring until recently, that number has doubled. In 2017, [more than 10,000 families](#) had to report to a judge about how they were addressing family challenges, under constant threat of removal.



In our communities, [an accident](#), a conflict with a child's school, or one overheated moment in our family life can turn into a knock on the door.

Child welfare involvement has climbed even as the number of children living in poverty in NYC has dropped, to 23.8% in 2018 from 30.1% in 2011-2015

Living in Fear

At Rise, we hear constantly that families are fearful of the support ACS claims to provide. I'm sure you're hearing the same from your black and brown constituents.

Lou endured seven investigations, even while enrolled in a family support program. She wrote: "I made it part of my daily routine to take pictures of my kids before taking them to daycare and school so that I would have proof that my children were fine before they left my home," she wrote. "That's probably not something many parents would even think of doing, but for a parent like me, it just makes sense."

Can you imagine living in this daily fear?

Cynthia wrote: "I followed all their instructions. I didn't go to work once a week for months in order to take my daughter to a psychologist who was an hour away by public transportation. I left my job early every two weeks to receive CPS investigators at my home. My daughter, who was only 3, was so nervous being interrogated by strangers so many times that she started behaving irregularly. And, as the investigation dragged on, I was so nervous at work that I couldn't concentrate. Plus, my boss was losing patience with my increasing absences. Eventually, I lost my job."

Surveillance hurts families and weakens communities. We are scared to talk to our doctors or our children's teachers. These people are supposed to be our helpers, but because of over-reporting, we see them as people who can harm us. That makes children more vulnerable. Parents who are struggling hide what they're going through, and struggles can become crises.

Parents raising children under the double burden of economic hardship and racism should not have to live with unprecedented scrutiny of our parenting. Families under stress need opportunities to decompress. We need safe places for our children. We need opportunities to develop strong relationships with other parents. We need outlets from isolation and stress.

Steps to Reduce Family Policing

In New York City, we know stop-and-frisk didn't improve safety, and neither does over-reporting and monitoring of families. It's time for ACS to set a new goal—to strengthen families without surveillance.

Two major shifts in investment can immediately reduce unnecessary surveillance:

1. Greater investment of city dollars in support strategies that help families find assistance and support without child welfare involvement, such as community-based parent advocates and parent support groups, school guidance counselors with capacity to assist families, or increased advocates for parents navigating children's behavioral and educational needs.
2. Creation of a family support hotline that parents can call for confidential information about community-based supports, with parents/parent advocates designing the protocols and assistance provided.

City Council can support a goal of reducing family policing by holding ACS accountable to working with other city agencies and the state Office of Children and Family Services to reduce unnecessary hotline calls and investigations, and by making public essential data so that advocates and the media can hold ACS accountable as well.

This includes:

1. ACS must provide data on the results of reports made by mandated reporters. That should include the number of substantiated and unsubstantiated reports made by all mandated reporters, as well as breaking out that data by type of reporter (school or hospital personnel, for instance), and by the child/family's race and community district.
2. ACS must work with other city agencies including the Department of Education, Health and Hospitals Corporation, and Department of Homeless Services to aggressively target schools, hospitals, shelters and other institutions that disproportionately and erroneously report families. Past efforts to determine individual schools that have a pattern of overreporting, to clarify the mandated reporter role to those school personnel, and to connect those schools to local community organizations that can support families in distress have made a difference. Not only do these efforts protect families from intrusive and stressful investigations, but they save money now spent on investigations that can be invested in strengthening community supports. ACS must report publicly on these efforts and results.
3. ACS must work with OCFS and city agencies to train mandated reporters to understand both the need for reporting and the seriousness of reporting a family to the hotline when issues could be dealt with by supporting the family through a school's guidance department, PTA, Beacon Program (which are usually underutilized in referrals from school personnel but serving families referred by CPS investigators), or through community organizations trusted by parents. This training should include parents who have experienced unnecessary and harmful hotline calls. City Council must require ACS to report its efforts to reduce unnecessary calls and route families to supportive resources.

In addition, City Council must advance legislation and funding to protect families that are investigated. This include:

1. Expansion of free legal support to parents at risk of or facing an investigation.
2. Creation of a “Miranda”-type warning so that parents know their most basic rights at the beginning of an investigation, including the right to seek legal counsel, and provision of written information in multiple languages explaining parents’ rights and resources.

Target Conditions, Not Families

More broadly, City Council must use its political will to support a culture shift in how NYC support vulnerable families. In our communities, schools, parks, sports and arts programs for children, mental health supports for families, affordable and safe housing, and crisis services are often inaccessible or low quality. Yet rather than target community conditions, the child welfare system targets individual families.

It's critical to align city spending with families’ real needs and move dollars into community supports that are not connected to ACS.

ACS has recently expanded programs intended to approach families more compassionately. You might think this is a reason to applaud, but we ask the City Council to think differently. These programs still represent an investment in ACS, not an investment in community-led and community-accountable organizations that parents trust. These programs have been created with good intentions but a fatal flaw—their affiliation with an agency that strikes fear in families’ hearts.

These ACS programs intended to offer a softer landing to families include FAR (Family Assessment Response), now called CARES, which replaces a full investigation for low-risk families, and the Family Enrichment Centers, which offer support without monitoring. However, parents do not want to receive supports or resources through ACS-affiliated programs. Instead of a CARES investigation, we need to work to eliminate unnecessary investigations and create a support hotline that families feel safe calling when they need help. Instead of enrichment centers run by ACS-affiliated social service agencies, we need to shift that funding to expand the capacity of trusted community organizations to welcome and support parents under stress.

We recommend that, as City Council members, you ask your constituents about the organizations they trust in a family crisis -- and learn the barriers and opportunities to build up those organizations. Contracts through DYCD or even HRA, or through an expanded Children’s Cabinet or newly created Mayor’s Office on Families, can support the development of family-serving organizations independent of ACS that can support families without making them “known to the system.”

We already know that ACS-funded prevention programs have extremely low rates of voluntary utilization. Surely, city dollars can be better spent on inherently trusted and committed community-led organizations.

Invest in Communities, Not ACS

To be clear, we are asking City Council to commit to DEFUND ACS and FUND communities.

We're sure the Council has heard and seen and heard parents and advocates calling for abolition of the child welfare system. That is because we know that the current child welfare system does not work and simply calling for reform of the system will not work either.

We are seeking to create new ways address the pain, fear and hurt people are carrying, from a place of compassion, care and humanity. We can look to the ways prison and police abolition organizations are creating credible messenger interventions and community healing outside of system. Those point the way to abolition of the child welfare system. As Dorothy Roberts says, "Abolishing policing also means abolishing family regulation." And Ruth Wilson Gilmore reminds us "Abolition requires that we change one thing: everything."

To truly support low-income families of color, New York City must reduce the footprint of ACS and channel funding to trusted community-based organizations that can assist families, prevent and address harm without the terror of system involvement, and support community healing so that all families in NYC have the opportunity to thrive.

I was never asked during my investigation what type of support I needed. My words were twisted from the start, false impressions were made of my parenting, mental health, and overall character.

From as early as two months, my son struggled with his feeding. By the time he was 5 months, he was already diagnosed with failure to thrive. I began going to his pediatrician every week for weigh-ins. I was so worried about my baby, he was so small and fragile.

One day, I started noticing my son would keep his leg up while I would hold him. He didn't cry, and it looked a little swollen, but I did not immediately take him to the doctor and decided that I would address his leg at the next visit we had the following week. That Sunday my husband was holding him up and my son dropped his head and hit his father by accident which resulted in the baby having a really red bruise under his eye.

That Monday we went to the doctor, and she sent us to the hospital. We were investigated by SVU and then by ACS. My son had a CT scan done and it showed that he had a fractured tibia and fibula. My heart was broken. I was confused, and worried about my baby who was experiencing so much.

Then I got the call from my sister that my mother had to be rushed to the hospital, where she was put on a ventilator. I couldn't immediately visit my mom, because I was so wrapped up in everything going on with my son. The next day I met with the abuse doctor at Montefiore Medical Center. She asked if I felt overwhelmed, and if I ever was in therapy to which I replied yes, I voluntarily went during my youth because I was going through a rough time. I said I had a depressive episode. ACS reported that I admitted to suffering from major depression. They never even considered my mother who was in the hospital, or my sadness in my son's injuries. I was still able

My mother died April 4, 2019. 5 days later I had to appear in court to fight for my son. I was on trial for four days. I wasn't able to even pick up my mother's ashes and had to postpone her memorial. I was in court during the most vulnerable time of my life. I was advised to control my emotions. But realistically how could I?

When it came time to settle I overheard ACS's lawyer suggest I go to anger management. My lawyer said i didn't need it. But i was so angry that this man would even suggest that! I had every right to be angry, hurt, depressed, and to feel defeated in that moment. As a black woman I felt totally robbed of empathy.

The five stages of grief are: denial, anger, bargaining, depression, and acceptance
As a black woman, I am not allowed to have any grief. If I do, I am labeled as mentally unstable, angry, difficult to work with, a danger to my child. However if I choose to not show emotion then I am stoic, cold, I don't care, and I am still a danger to my child. You can't win for losing.
My humanity it feels has been stripped from my own existence.

**New York City Council
General Welfare Committee**

**Oversight Hearing: Racial Disparities In the Child Welfare System
October 28, 2020**

**Written Testimony of The Bronx Defenders¹
By Emma Ketteringham, Miriam Mack, and Jessica Prince**

The family regulation system, like the criminal punishment system, is the product of hundreds of years of racism in this country. It continues to reinforce racial inequality by surveilling, separating, and dissolving Black, Latinx, Indigenous, and marginalized low-income families and fails to provide adequate support and resources to the families caught in its web. As renowned scholar Dorothy Roberts told us over twenty years ago:

If an outsider looked at the American child welfare system, she would likely conclude that this is not a system designed to promote the welfare of America's children. Rather, it is a system designed to regulate, monitor, and punish poor

¹ The Bronx Defenders is a public defender non-profit that is radically transforming how low-income people in the Bronx are represented in the legal system, and, in doing so, is transforming the system itself. Our staff of over 350 includes interdisciplinary teams made up of criminal, civil, immigration, and family defense attorneys, as well as social workers, benefits specialists, legal advocates, parent advocates, investigators, and team administrators, who collaborate to provide holistic advocacy to address the causes and consequences of legal system involvement. Through this integrated team-based structure, we have pioneered a groundbreaking, nationally-recognized model of representation called holistic defense that achieves better outcomes for our clients. Each year, we defend more than 20,000 low-income Bronx residents in criminal, civil, child welfare, and immigration cases, and reach thousands more through our community intake, youth mentoring, and outreach programs. Through impact litigation, policy advocacy, and community organizing, we push for systemic reform at the local, state, and national level. We take what we learn from the clients and communities that we serve and launch innovative initiatives designed to bring about real and lasting change.

Our Family Defense Practice has been in place since 2005 and represents parents in family regulation and all of the related Family Court proceedings that arise out of an abuse or neglect case. Since New York City first funded institutional parent representation in 2007, we have represented more than 16,000 parents in the Bronx and helped thousands of children either safely remain at home or safely reunite with their families. Our multidisciplinary staff of more than 50 attorneys, social workers, and parent advocates represents 1,000 to 1,500 new parents each year.

*families, especially poor Black families.*²

The same is true today. Black and Latinx children are profoundly and disproportionately vulnerable to surveillance, family separation, and the negative consequences of the foster system at the hands of the family regulation system.

Today's hearing comes at a particularly tense and important moment for race relations in America. The COVID-19 pandemic has laid bare race disparities and inequities at every level, including in our health, education, and employment systems. Black Americans continue to watch an unrelenting parade of videos of their lives being snuffed out at the hands of law enforcement, with little to no consequence. Less visible, but no less inhumane, are the separations of thousands of Black children from their parents at the hands of so-called child protection officials for reasons rooted in poverty. Like the deaths of Black people at the hands of police, the separation of Black families is caused and justified by centuries of racism and economic inequality in this country. Black families conclude, with considerable supporting evidence, that their lives and their family bonds do not matter as much as those of white families.

We thank the City Council for holding today's hearing on race disparities in the family regulation system. We join the growing chorus of voices calling for pronounced and sweeping changes to how our city responds to families in crisis and in need of material resources and support to raise healthy children and our future leaders. As we discuss in greater detail below, racial disparities are not merely an unfortunate byproduct of our current system or a problem in need of slight course adjustments, to wit:

- Race disparities in the family regulation system are broad and deep;
- The family regulation system reflects and reinforces race disparities;
- The family regulation system is a product of its racist origins; and
- Disregard for Black, Latinx, and low-income parents' humanity and family bonds perpetuates the system at every stage of a family's involvement.

Racial disparities are a manifestation of the structural racism that is the defining characteristic of the system itself.

I. The Race Disparities in the Family Regulation System Are Broad and Deep.

² Dorothy E. Roberts, *Poverty, Race, and New Directions in Child Welfare Policy*, 1 WASH. U. J. L. & POL'Y 63, 64 (1999), https://openscholarship.wustl.edu/law_journal_law_policy/vol1/iss1/7

The family regulation system uses its powers of family surveillance, separation and dissolution almost exclusively against predominantly Black and Latinx, low-income, and marginalized families. In New York State, Black children make up 16% of the population, but a resounding 48% of the foster population.³ In New York City, disparities are even greater, with Black children accounting for 23% of the children under the age of eighteen in the city, but a staggering 53% of the children separated from their families and in the foster system. In contrast, 26% of the children in New York City are white, but white children comprise less than 6% of the foster population.⁴ Black children in New York City are more likely to be involved in the family regulation system than white children at each and every stage of the process: Black children are 5.2 times more likely to be involved in a report of abuse or neglect than white children; 6.6 times more likely to be involved in a report that is substantiated by ACS; and 13.6 times more likely to be placed in the foster system.⁵

Racist narratives about Black and Latinx motherhood pervade the family regulation system and permeate social service systems. These assumptions, compounded by policies and practices based on outdated junk science, contribute to the overrepresentation of Black and Latinx children in the family regulation system. Racist Narratives about Black and Latinx motherhood pervade the family regulation system and permeate social services systems. These assumptions, compounded by policies and practices based on outdated junk science, contribute to the overrepresentation of Black and Latinx children in the family regulation system. For example, similar to NYPD “stop and frisk” practices, there are extraordinary race disparities in who is subjected to drug testing at birth and reported to ACS. Despite similar or higher rates of drug use among white women, Black women are 10 times more likely to be reported to the family regulation system for a positive drug test at the time of birth.⁶ The New York Daily News conducted a survey and found that “[p]rivate hospitals in rich neighborhoods rarely test new mothers for drugs, whereas hospitals serving primarily low-income moms make those tests routine and sometimes mandatory.”⁷ A 2010 study of a hospital in Rochester

³ New York Profile Transition-Age Youth in Foster Care (Distributed by Indigent Legal Services in November of 2018 and on file with The Bronx Defenders).

⁴ New York State Office of Children and Family Services, 2019 Monitoring and Analysis Profiles With Selected Trend Data: 2015-2019, at 7 (2019), available at <https://ocfs.ny.gov/main/reports/maps/counties/New%20York%20City.pdf>; Citizens’ Committee for Children, Keeping Track Online, The Status of New York City Children, Child Population Race/Ethnicity, 2017, <https://data.cccnewyork.org/data/map/98/child-population#11/12/1/18/25/a>.

⁵New York State Office of Children and Family Services, *The OCFS Initiative to Address Racial Disproportionality in Child Welfare and Juvenile Justice*, Sept. 23, 2020, available at <https://ocfs.ny.gov/main/reports/maps/counties/New%20York%20City.pdf>.

⁶ The Guttmacher Report on Public Policy, State Responses to Substance Abuse Among Pregnant Women, (December 2000, Vol. 3, No. 6)

⁷ Terplan, Cannabis and pregnancy: Maternal child health implications during a period of drug policy liberations, 104 Preventative Medicine 46, Abstract (2017).

demonstrated that despite race-blind testing guidelines, the hospital tested and reported greater numbers of women of color regardless of whether such women met medical guidelines for testing.⁸ Other hospitals in other cities across the nation had similar results.⁹ This evidence, as well as what we have seen over the past decade in the Bronx, demonstrates that great racial disparities exist in who is tested and who is reported to the system.¹⁰

Unchecked racist practices at pediatric emergency rooms in hospitals result in Black children being reported to the system as alleged victims of child abuse at higher rates, despite presenting with the same medical conditions as white children.¹¹ While white parents with children with injuries or medical findings without explanation are given the benefit of the doubt and often met with compassion, it is our experience representing

<https://www.nydailynews.com/new-york/weed-dozen-city-maternity-wards-regularly-test-new-mothers-mar-juana-drugs-article-1.1227292#ixzz31hXS2sUE>

⁸ Ellsworth MA, Stevens TP, D'Angio CT. Infant race affects application of clinical guidelines when screening for drugs of abuse in newborns. *Pediatrics*. 2010;125(6):e1379–e1385.

⁹ Brenda Warner Rotzoll, Black Newborns Likelier to be Drug-Tested: Study, *Chicago Sun-Times*, Mar. 16, 2001 (noting that “[b]lack babies are more likely than white babies to be tested for cocaine and to be taken away from their mothers if the drug is present, according to the March issue of the *Chicago Reporter*”); Troy Anderson, Race Tilt in Foster Care Hit; Hospital Staff More Likely to Screen Minority Mothers, *L.A. Daily News*, June 30, 2008. Another study concluded that “Black women and their newborns were 1.5 times more likely to be tested for illicit drugs as nonblack women in multivariable analysis.” Kunins et al, The Effect of Race on Provider Decisions to Test for Illicit Drug Use in the Peripartum Setting. *Journal of Women’s Health* (2007);16(2):245–255 available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2859171/pdf/nihms-182195.pdf>

¹⁰ This disparity has its roots in the media fueled “crack epidemic” in the late 1980s and early 1990s, where women who used drugs, specifically women of color in urban areas, were demonized based on non-scientific misinformation regarding the effects of drug use during pregnancy. In 1986, when crack cocaine began to attract substantial media attention, six prestigious national news magazines and newspapers had featured over one thousand stories about crack: “Time and Newsweek each ran five ‘crack crisis’ cover stories [T]hree major network television stations ran 74 stories about crack cocaine in six months. . . . Fifteen million Americans watched CBS’ prime-time documentary ‘48 Hours on Crack Street.’” See Laura Gómez, *Misconceiving Mothers: Legislators, Prosecutors, and the Politics of Prenatal Drug Exposure* 14 (1997) (reporting that without knowing that cocaine was used by their mothers, clinicians could not distinguish so-called crack-addicted babies from babies born to comparable mothers who had never used cocaine or crack). See also John P. Morgan & Lynn Zimmer, *The Social Pharmacology of Smokeable Cocaine Not All It’s Cracked Up to Be*, in *Crack In America: Demon Drugs And Social Justice* 131, 152 (Craig Reinerman & Harry G. Levine eds., 1997); Ruth Rose-Jacobs et al., Do “We Just Know?” Masked Assessors Ability to Identify Children with Prenatal Cocaine Exposure, 23 *Devel. & Behav. Pediatrics* 340 (2002). We know now that the sensationalization of the crack epidemic in the main-stream media was highly prejudicial and presented often inaccurate information about the effects of in-utero drug exposure. See The Editorial Board, “Slandering the Unborn,” *The New York Times*, Dec. 28, 2018, <https://www.nytimes.com/interactive/2018/12/28/opinion/crack-babies-racism.html>. This racist narrative went largely unchallenged for decades, however, and today’s family regulation system continues to reflect and reinforce that racist, unsupported narrative. See Dorothy Roberts, *Unshackling Black Motherhood*, 95 *Mich. L.R.* 938 (1997); Gómez, *supra* note 16; Morgan & Zimmer, *supra* note 16.

¹¹ Carole Jenny et al., Analysis of Missed Cases of Abusive Head Trauma, 282 *JAMA* 621, 623 (1999); Wendy G. Lane et al., Racial Differences in the Evaluation of Pediatric Fractures for Physical Abuse, 288 *JAMA* 1603, 1606 tbl. 2 (2002).

clients in the Bronx that Black and Latinx parents are more often suspected as the cause of a child's injury.

We see a disturbing pattern of City officials using the threat of a call to ACS as means of controlling families. Public school officials use ACS when a child lacks a device to participate in remote education.¹² Shelters managed by the Department of Homeless Services use the threat of ACS as a means to enforce shelter rules. The 2018 highly publicized arrest of Jazmine Headly and the violent removal of her child by HRA officials because she was sitting on the floor with her child against HRA rules was notable not because of the violence and cruelty of the incident, but because video cameras captured what is an all too common occurrence in municipal buildings. The over-reliance on ACS by City agencies to surveil and control low-income parents of color, under the guise of keeping children safe, is a major driver of race disparities in the system.

In addition to being more likely to have contact with the family regulation system on the front end, families of color fare far worse than white families once a case has been opened against them. In New York City, on average, Black children remain in foster placements longer than white children.¹³ Nationwide, studies show that Black children are more likely to be separated from their families and placed in the system than white children.¹⁴ Moreover, the harm of separation is more likely to be exacerbated for Black children because they spend more time separated from their families; change placements more frequently; are less likely to receive necessary services; are less likely to ever reunify with their families; and are more likely to age out of the foster system without being adopted.¹⁵ At every point, it is Black families who are the most likely to suffer the harmful consequences of system involvement.

II. The Family Regulation System Reflects and Reinforces Race Disparities.

¹² See Eileen Grench, As Cuomo Shuttters Schools in COVID Flare Zones, Ground Rules Lag for Child Welfare Reports During Remote Learning, The City, Oct. 5, 2020, available at <https://www.thecity.nyc/education/2020/10/5/21503499/cuomo-shuttters-schools-child-welfare-reports-remote-learning>; and see Eileen Grench, With School Start Confusion, New Concern Over Child Welfare Probes of Kids Lacking Tech, The City, Sept. 21, 2020, available at <https://www.thecity.nyc/education/2020/10/5/21503499/cuomo-shuttters-schools-child-welfare-reports-remote-learning>.

¹³ Dorothy Roberts, SHATTERED BONDS: THE COLOR OF CHILD WELFARE (2003).

¹⁴ See, e.g., U.S. Gov't Accountability Office, GAO-07-816, African American Children in Foster Care: Additional HHS Assistance Needed to Help States Reduce the Proportion in Care 8 (2007); Administration for Children's Services, Division of Child and Family Well-being, Office of Equity Strategies, presentation to legal providers, slide 2a (9/30/2020).

¹⁵ See Elisa Minoff, Entangled Roots: The Role of Race in Policies that Separate Families, Center for the Study of Social Policy (2018); Fluke, et al. A Research Synthesis on Child Welfare Disproportionality (Jan. 2011).

Poverty is the main driver of a family's involvement in New York City's family regulation system. The vast majority of families are surveilled, investigated, and separated due to allegations of neglect which reflect conditions and consequences of poverty, rather than parental failure, ill will, or abuse. Indeed, studies have shown that families who are "below the poverty line are twenty-two times more likely to be involved in the child protective system than families with incomes slightly above it."¹⁶ A study of "lack of supervision" cases in New York City by the Child Welfare League of America found that in 52% of the cases studied, the service needed most was child care, but the "service" offered most was foster placements.¹⁷ Other studies have found that families are kept apart solely because they lack decent housing, yet the system is unable to ensure stable housing.¹⁸ Although the parents in the family regulation system are overwhelmingly low-income and face structural hardship raising their children, this is not to say that all people who are low-income neglect their children. It is equally true that not all people who harm their children are low income. The point is that poverty—not the kind or severity of child maltreatment—is the leading predictor of both placement into the foster system and the amount of time that children spend separated from their parents.¹⁹

New York City is the third most segregated city for Black people in the world.²⁰ Since the 1600s, due to a legacy of segregation in health, housing, education, and employment, Black families have been relegated to low-income neighborhoods, locked out of opportunities, and denied the resources that would meet the material needs of their children. Key findings from the Citizens Community for Children of New York's most recent annual report demonstrates the stark community-level disparities experienced by

¹⁶ 28 Martin Guggenheim, General Overview of Child Protection Laws in the United States, in REPRESENTING PARENTS IN CHILD WELFARE CASES: ADVICE AND GUIDANCE FOR FAMILY DEFENDERS 1, 17 (Martin Guggenheim & Vivek S. Sankaran eds., 2015).

¹⁷ See Mary Ann Jones, PARENTAL LACK OF SUPERVISION: NATURE AND CONSEQUENCE OF A MAJOR CHILD NEGLECT PROBLEM 29, 40 (1987).

¹⁸ See Deborah S. Harburger & Ruth A. White, Reunifying Families, Cutting Costs: Housing–Child Welfare Partnerships for Permanent Supportive Housing, CHILD WELFARE, Sept./Oct. 2004, at 493, 502-05.

¹⁹ See Leroy H. Pelton, The Continuing Role of Material Factors in Child Maltreatment and Placement, 41 CHILD ABUSE & NEGLECT 30, 35 (2014) ("Children in foster care have been and continue to be placed there from predominantly impoverished families."); see also ROBERTS, supra note 18, at 27, 29 (noting that "[p]overty—not the type or severity of maltreatment—is the single most important predictor of placement in foster care and the amount of time spent there" and describing the "high and well-established correlation between poverty and cases of child abuse and neglect"); MARTIN GUGGENHEIM, WHAT'S WRONG WITH CHILDREN'S RIGHTS, 192-93 (2005) ("[O]nly a very small percentage of children in foster care have suffered serious forms of maltreatment."); cf. Mark E. Courtney, The Costs of Child Protection in the Context of Welfare Reform, FUTURE CHILD., Spring 1998, at 88, 100 ("The political debate over how poor children will be protected in the postreform era has often betrayed a poor understanding of the interdependence of the child welfare system with the welfare system.").

²⁰ Segregated by Design, New York City, UNIS Human Rights Project 2019 (January 2020), at <https://storymaps.arcgis.com/stories/024a559c38a647eab362843f14380e12>.

families and children in racially segregated, low-income neighborhoods. Compare, for example, the economic security of children in Brownsville, a predominantly Black neighborhood where the child poverty rate is 35.7%, the median parental income is \$33,782, and the parental employment instability rate is 44.5%, with Greenwich Village, a predominantly white neighborhood where the child poverty rate is just 6.6%, the median parental income is \$250,001, and parental employment instability rate is 5.9%.²¹ So long as BIPOC families are relegated to the least resourced neighborhoods in New York City and thereby remain vulnerable to family regulation, the system will suffer from race disparities.

Almost all of the families in the family regulation system live in communities that lack the resources relied upon by white, privileged, and wealthy parents to raise healthy children. We have worked with thousands of parents who are without safe and adequate permanent housing, meaningful employment, quality child care and schools, or safe neighborhoods. Rather than provide the meaningful material assistance all families need, the family regulation system responds with investigation, surveillance, child removal, and, in many cases, family dissolution. These toxic interventions do not provide meaningful support and assistance. Instead, like the criminal punishment system, it deals punitively with problems that have their roots in poverty and racism and further destabilizes families and communities.

Nor is the family regulation system equipped or designed to confront the actual roots of family problems or make the lives of families better. Rather than provide parents with the critical material resources necessary to raise healthy children, the system traumatically separates children from their parents and provides generous monetary stipends to foster caregivers. Parents are then required to participate in classes or therapeutic interventions focused on behavior modification. The system is reminiscent of outdated Victorian ideas that people with fewer economic and material resources are at fault, unwilling to conform, unfit, or in need of intervention. The result is that our clients are pathologized while asked to meet unmeetable standards of proper parenting and child-rearing—standards infused with white supremacy and that lack cultural competence—while the children, rather than the parents, serve the time away from their families. The family regulation system reinforces racial disparities by drawing lines between fit and unfit parents based on racism, classism, and ableism, and simultaneously failing to provide material support and advantage historically denied to Black, Latinx, and poor families.

²¹ Citizens' Committee for Children of New York, *Keeping Track of New York City's Children: 2020*, available at https://www.cccnewyork.org/wp-content/uploads/2020/03/2020-CCC-Keeping-Track_forweb.pdf.

The family regulation system creates a womb-to-foster-system pipeline that disrupts familial bonds across generations. Bearing down against the resilience of New York's Black, Latinx, Indigenous, and low-income communities is a system that not only breaks apart families, but also fails the children in its custody. Placement in the foster system and subsequent placement changes affect children's ability to build healthy attachments and has negative effects on their quality of life in the long term.²² Research shows that many children exit the foster system facing a host of negative life circumstances and outcomes.²³ Indeed, one recent study found that by age 24, 16% of young men who had aged out of the foster system were incarcerated and nearly three-fifths had been convicted of a crime since age 18.²⁴ Surveys have found that nearly one third of homeless youth and well over half of victims of child trafficking also had experience in the foster system.²⁵ Overwhelming research undermines the assumption that children in the foster system do better than they would living with their own families. Studies show that even for children who live in homes with identifiable risks that put them in jeopardy of placement in the foster system who remain home with their families, with supports in place, are more likely to have positive life outcomes than if they were removed.²⁶

As long as our society responds to family poverty with family separation, rather than ensuring adequate social service safety nets and the real material resources that all families need, the system will continue to be defined by race disparities. Eradicating the inequality in the system requires us to confront the fundamental problem-- that the family regulation system reflects and reinforces racism and economic inequality in our society.

III. The Family Regulation System Is a Product of Its Racist Origins.

²² For a summary of this research see Sankaran, Vivek and Christopher Church, *Easy Come, Easy Go: The Plight of Children Who Spend Less Than Thirty Days in Foster Care*, Penn Law, 2017.

²³ See generally Catherine R. Lawrence et al., *The Impact of Foster Care on Development*, 18 *Dev. & Psychopathology* 57 (2006); K. Chase Tovall & Mary Dozier, *Infants in Foster Care: An Attachment Theory Perspective* 2 *Adoption Q.* 55 (1998); U.S. Gov't Accountability Office, *GAI-12-270T, Foster Children: HHS Guidance Could Help States Improve Oversight of Psychotropic Prescriptions* 7 (2011); Patrick J. Fowler et al., *Pathways to and From Homelessness and Associated Psychosocial Outcomes Among Adolescents Leave the Foster Care System*, 99 *Am. J. Pub. Health* 1453 (2009).

²⁴ Jennifer L. Hook & Mark E. Courtney, *Employment of Former Foster Youth as Young Adults: Evidence from the Midwest Study 9* (Chapin Hall at the University of Chicago, 2010), available at www.chapinhall.org/sites/default/files/publications/Midwest_IB3_Employment.pdf.

²⁵ See "Missed Opportunities: Youth Homelessness in America," Chapin Hall and Voices of Youth Count, November 2017; Debra S. Wolfe et al., *Human Trafficking Prevalence and Child Welfare Risk Factors Among Homeless Youth* (January 2018), available at <https://fieldcenteratpenn.org/wp-content/uploads/2013/05/6230-R10-Field-Center-Full-Report-Web.pdf>

²⁶ Joseph J. Doyle, Jr., *Child Protection and Child Outcomes: Measuring the Effects of Foster Care*, 97 *Am. Econ. Rev.* 1583, 1584 (2007) (comparing young adults who had been in foster care to a group of adults who had been similarly neglected but remained with their families and finding that, compared to the group who stayed with their birth families, those placed in foster care were more likely to be arrested).

The race disparities in today's family regulation system are not surprising when one considers that the practice of separating children from their families of origin and placing them in the care of "more suitable" strangers has its inception in racist and classist beliefs. As Dorothy Roberts notes, the devaluation of Black families and Black motherhood "has its roots in the unique experience of slavery and has been perpetuated by complex social forces."²⁷ Since the founding of this country, Black enslaved women were routinely separated and alienated from their children in order to enrich white slave owners.²⁸ Similarly, family separation was used as a tool of control in indigenous communities. The Civilization Fund Act of 1819 gave rise to the creation of a network of boarding schools for young indigenous Americans. Overtime, indigenous children were forcibly taken from their families and homelands and placed in these faraway boarding schools to be subjected to a traumatic and degrading process of assimilation.²⁹ This practice was not outlawed by Congress until the late 1970s and is understood by many as an effort to stamp out Indigenous culture.

Modern day foster care was the brainchild of white protestant minister Charles Loring Brace who founded New York City's Children's Aid Society in 1853. The endeavor for which he is most known is the "placing out" of Irish and Italian children born to immigrant families to white Christian farmers so that they would be "suitably socialized." Brace's program was premised on the idea that the children of these recent immigrants who, at the time, had not been racialized as white and were deemed as genetically inferior, would ruin the fabric of Anglo American society.

The current family regulation system, cloaked in claims that it keeps children safe, is a reflection of its racist origin. Indeed, the Children's Aid Society remains today as one of the largest foster agencies in New York City. It continues to separate Black and Latinx children from their parents and prosecutes termination proceedings to permanently dissolve their families. When one considers the history of today's family regulation system, it is not surprising that the system is rife with race disparities. Through social control and racist and classist subjugation, it is operating as intended.

²⁷ Dorothy E. Roberts, Punishing Drug Addicts Who Have Babies: Women of Color, Equality, and the Right to Privacy, 1-4 Harv. L. Rev. 1419, 1424 (1991).

²⁸ See Peggy C. Davis, *The Black Family in Modern Slavery*, 4 Harv. Blackletter J. 9, 14 (1987) (noting, "The thirteenth and fourteenth amendments were conceived by men who regarded the deprivation of family rights as a fundamental vice of slavery and the protection of family rights as an essential component of citizenship.").

²⁹ Treuer, David, *The Heartbeat of Wounded Knee: Native America From 1890 to the Present* (2019).

IV. Disregard for Black, Latinx, And Low-Income Parents’ Humanity And Family Bonds Perpetuates The System at Every Stage of a Family’s Involvement.

Throughout the decade and a half that The Bronx Defenders has represented parents in the family regulation system, we have borne witness to the tacit and overtly racist sentiments directed at our clients. From the first knock at the door to the end of family court proceedings, our clients are met with a complete disregard for their humanity.

Our clients are routinely subject to far reaching probes into every aspect of their lives and are deemed “uncooperative” when they raise their privacy rights. Any emotional reaction during these invasive investigations and subsequent traumatic court proceedings are labeled as aggression, or even mental instability. Rather than acknowledging their role in the tragedy that is family separation, Family Court Legal Services (FCLS) attorneys and ACS child protective advocates speak over parents and demand that attorneys and advocates “control” their clients. Parents are routinely asked to submit to drug tests to “rule out” substance use, even where there are no allegations of substance misuse. They are held to arbitrary standards that uniquely apply to them. Our clients are not allowed to be late; they cannot miss appointments. They cannot use substances, whether or not legal, *and still be* deemed good parents, unlike parents who occupy spaces of race and class privilege.³⁰ Our clients cannot speak openly about their stressors or their struggle to cope with and manage raising children during a global pandemic, without fear of being reported to ACS.

These examples of the ways the family regulation system disregards our clients’ humanity and family bonds are a symptom of the family regulation system’s deeply racist, classist, and ableist roots. The roots can be neither “cured” nor shifted by the inadequate programs and policies proposed by ACS.³¹ Ultimately rooting out racism, classism, and ableism in our society requires dismantling the systems that maintain white supremacy, including the family regulation system. Moving toward dismantling, means shifting the power differential ACS and the families enmeshed in the family regulation system. In addition to imagining and building alternatives—actual systems of support—to the family regulation system, shifting power begins with equipping parents with the information and access to resources. As a baseline, with the first knock at the door, ACS must communicate to parents their basic rights, the allegations waged

³⁰ *But see* Jessica Gross, *Mother’s Little Helper is Back and Daddy’s Partaking Too*, New York Times, Oct. 3, 2020, available at <https://www.nytimes.com/2020/10/03/style/am-i-drinking-too-much.html> (noting that the increase of substance use among parents is “just kind of understandable” during the COVID-19 pandemic).

³¹ ACS programs and policies to address racial disparities include: bias training programs, ensuring merely ‘proper’ removals, expanding preventative services, and using kinship homes whenever possible.

against them, and the fact that the parent can consult an attorney before speaking with ACS. Without a requirement that ACS inform parents of their rights, the rights of families against government intrusion have no meaning. Finally, all parents must have access to legal representation at *all* stages of ACS involvement and collateral proceedings resulting from ACS involvement. To truly shift power and disrupt the family regulating system, low-income communities, like privileged families, must be afforded access to counsel and advocates that will help them fully understand legal rights, obligations and options.

Conclusion

The issue of race disparities in the family regulation system has been discussed and criticized by ACS commissioners, politicians, advocates, and directly impacted families for decades, with little to no change. Hundreds of so-called equity initiatives, training programs, reforms, studies, and conferences, much like those reforms that will undoubtedly be promised by the Administration for Children's Services at today's hearing, have been proposed over the years to address the problem. And yet the family regulation and foster system in New York City remains one of the most racially segregated systems in the city. This is due to the failure to recognize that efforts seeking to reform, fix, and tinker will never eradicate the race disparities that contaminate the system because it reflects, reinforces, and perpetuates the economic, social and race inequities in our society and does nothing to eradicate them. We need transformative change:

Wholesale Transformation of the Family Regulation System

- The City Council should defund ACS and invest the money in community solutions which provide families with support and funding to raise healthy and well children, including a flat family living wage, housing subsidies, and child care.
- The City Council should dismantle pipelines to the foster system which lead to racial disparities, including mandated reporter laws and hospital drug testing.

Steps the City Council Can Take Now

- The City Council should ensure that parents have access to attorneys and advocates during investigations, at child safety conferences, and at SCR

hearings where decisions to separate families and prosecute families are made by expanding programs such as the Right to Family Initiative currently funded by the City Council.

- The City Council should require ACS to report on race disparities at every decision-making point in the system, including, but not limited to, family separations by race and type (court removal, emergency removal, order of protection etc), resolution of fact finding, length of time in the foster system, placement with kin, termination of parental rights, reunification, and adoption.
- The City Council should work with the community to create mechanisms that hold ACS accountable for individual acts of bias, as well as policies and practices that cause and exacerbate existing race disparities. This should include a well publicized standing process for making and investigating bias complaints against ACS and its employees.
- The City Council should invest in community organizations, entirely independent of ACS and the court system, engaged in transformative justice models for accountability for child abuse and domestic violence.

Reform at the State Level

- The City Council should urge the New York state legislature to pass the Family Miranda Rights bill (S.7553-A) which would require family regulation officials to notify parents of their rights, including their right to consult with an attorney, during an investigation, and build from legislation introduced in 2019 and pass a robust NYC Family Miranda Rights bill, mirroring the state-level protection, in order to ensure that New York City families are informed of their rights by ACS.
- The City Council should urge the New York state legislature to pass A.5478-A, legislation prohibiting medical providers from drug testing pregnant people, perinatal people, and or their newborns without first obtaining specific informed consent.

Reform at the Federal Level

- The City Council should urge the United States Congress to pass H.R. 7976, Suspend the Timeline on Parental Rights in a Public Health Crisis Act, legislation tolling ASFA during the Covid-19 pandemic and ultimately to repeal ASFA.

So long as the family regulation system and its hallmark responses of child removal, family separation, court supervision, therapeutic interventions, and family dissolution remain our society's response to families in need of support, race disparities will remain. Until all branches of government commit to a wholesale new response to the inequalities in our society caused by years of racist exclusion, wealth disparities, and resource hoarding by the privileged few that cause a number of families, disproportionately of color, to struggle. The billions of dollars used to fund the family regulation and foster system need to be transferred into the communities they harm.



**Citizens' Committee
for Children** *of* NEW YORK



Testimony Submitted to the New York City Council General Welfare Committee
Oversight Hearing: Racial Disparities in the Child Welfare System

M. Mena, Ph.D.
Policy and Budget Analyst
Citizens' Committee for Children

October 28, 2020

Good afternoon, my name is M. Mena and I am a policy and budget analyst at the Citizens' Committee for the Children of New York (CCC). CCC is a 75-year-old independent, multi-issue child advocacy organization dedicated to ensuring that every New York child is healthy, housed, educated, and safe. We would like to thank Chair Stephen T. Levin, and the other members of the General Welfare Committee for the opportunity to present testimony on Racial Disparities in the Child Welfare System. Our child welfare advocacy is fact-based and prioritizes, first and foremost, the **safety and well-being of children**, and recognizes the critical importance of **strengthening families and keeping them together whenever possible**.

In this testimony, CCC will discuss two areas that highlight existing racial disparities in the child welfare system that compromise family stability and wellbeing, especially for Black and Latinx children whom we know are overrepresented in the child welfare system. First, the disparate impact of COVID-19 on Black and Latinx communities: as of mid- October, Black and Latinx New Yorkers are still being hospitalized and dying from this virus at more than twice the rate of white and Asian residents.ⁱ Second, we know that poverty is a significant driver of child welfare involvement. In New York City, Black and Latinx families—who have the highest poverty rates in the Cityⁱⁱ – make up nearly 80% of child welfare investigationsⁱⁱⁱ and 89% of the foster care population,^{iv} despite representing only 57% of New York's child population.^v Finally, CCC will draw attention to the critical role the preventive service system has played in responding to the heightened needs of children and families during the COVID-19 pandemic. There is a need not only for continued monitoring of new preventive service contracts put in place July 1st, but also to assure that the preventive service system will be protected from state and local budget cuts in the coming months and year so that it can be leveraged to promote pandemic recovery.

CCC thanks the Committee for holding this oversight hearing as the Administration for Children's Services (ACS)'s new contracted preventive service system went into effect on July

1st. This system that will be in place for the next decade and will have long-term effects for New York City's most vulnerable children and their families. We urge the Committee to continue to monitor and to analyze how this new system is impacting New Yorkers and its effectiveness in meeting the needs of children and families. Ongoing monitoring is especially important given the critical role general preventive services have played as the COVID-19 pandemic left families socially isolated with heightened stress and insecurity. We look forward to working with the General Welfare Committee and other stakeholders to **address racial disparities** in the child welfare system, and to shed light on the **critical role that general preventive programs have and are playing** in keeping children safe, and strengthening and stabilizing families.

COVID-19 IMPACTS ON BLACK, LATINX, AND IMMIGRANT COMMUNITIES

As of October 14th, New York City has witnessed the death of nearly 20,000 residents due to COVID-19.^{vi} According to a recent report by the United Hospital Fund and the Boston Consulting Group, 2,400 Black and Latinx children from the Bronx, Queens, and Brooklyn lost at least one parent in the first few months of the pandemic. This figure represents 57% of parental loss for the entire state of New York.^{vii} Sadly, the majority of deaths in the City are concentrated in communities of color and immigrant households that were already struggling with poverty, housing instability, and poor health. The report also highlights that 325,000 children have been plunged into or near poverty,^{viii} a figure that should worry us considering that the City was already grappling with more than 1 in 5 children living in or near the poverty level.^{ix}

Beyond the loss of life, the pandemic's impact on social engagement and economic security on a wide scale continues to disproportionately harm communities of color. These challenges are heightened as parents and caregivers face disruptions in employment and pay, growing health concerns, and new barriers to accessing affordable food, maintaining safe and stable housing, and meeting other basic necessities.

COVID-19 has created a health and economic crisis and has laid bare profound social injustice and systemic racism. It has resulted in hard hit communities and children within them experiencing disproportionate loss of life, income loss, and heightened food and housing insecurity. As children have fallen deeper into poverty, their school and friendships and contact with other adults have also been disrupted due to shelter in place and social isolation requirements. In short, COVID-19 has exacerbated factors that are known to compromise child safety and can bring children to the attention of the child welfare system. The cumulative nature of trauma experienced by children is profoundly concerning.

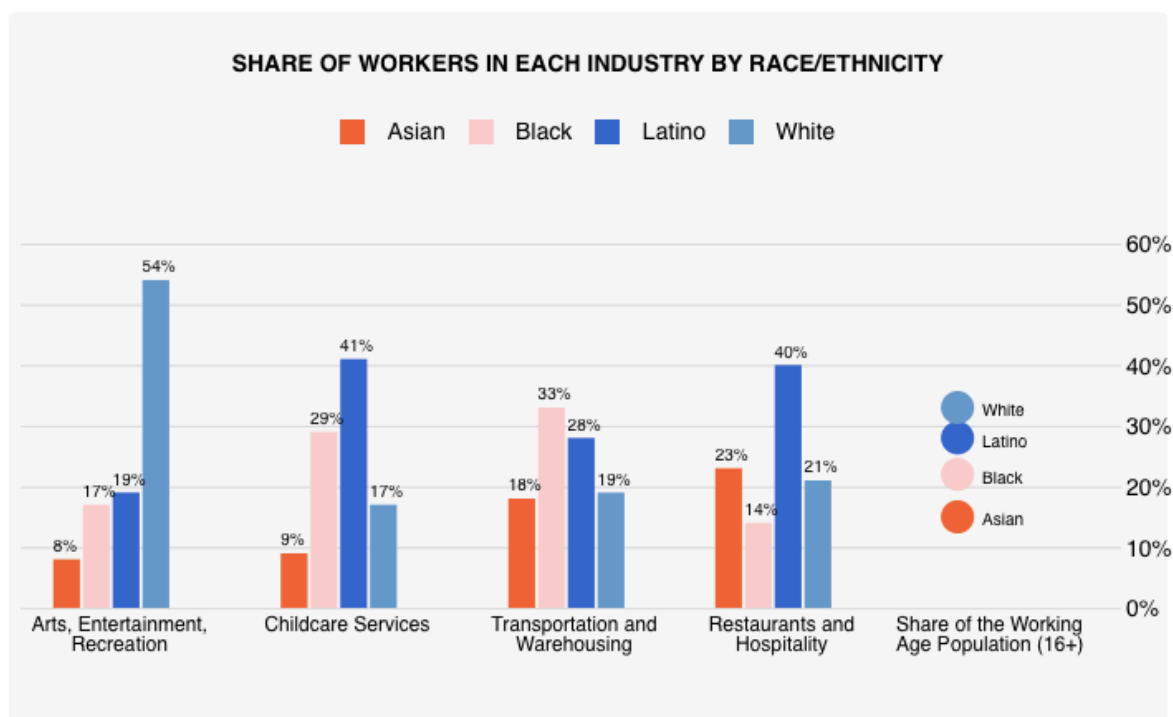
Economic Insecurity and Child Welfare

More than two-thirds of investigations of child maltreatment are a result of neglect, or in simpler terms, these investigations reflect parent or guardian inability to meet basic needs such as nutrition, health care, or education.^x Most reports of child maltreatment are made by mandated reporters, such as school staff, doctors, and other professionals. During this public health crisis, there has been a sharp decrease in reports made by mandated reporters due to limited observations of children while many childcare programs, schools, and afterschool programs were

closed, or now operate with reduced capacity or rely on remote engagement. Importantly, despite the heightened needs of children and families, there has also been a decrease in referrals to preventive service programs that play the role of strengthening families, ameliorating risk factors, and keeping children safe and families intact.^{xi} We are concerned about the safety, stability, and well-being of Black, Latinx, and immigrant children and their families as a result of worsened economic and social conditions due to the pandemic,^{xii} the related economic fallout, and declining referral to preventive services.

Below we highlight areas where Black, Latinx, and immigrant communities faced hardship prior to COVID-19. These hardships are now exacerbated, heightening the potential risks to children of neglect and maltreatment and impeding access to essential supports. As the city moves forward with implementation of new preventive service contracts, it must ensure that the new system can adequately respond to these heightened needs and risk factors and importantly, address racial inequity and its intersections with child welfare.

Disruption to employment workforce – Black, Latinx, and immigrant populations are overrepresented in sectors that are deemed essential – health care, education and social services, hospitality, and transportation – and are also at great risk of job loss. Data on the racial stratification in New York shows communities of color have a higher chance of employment disruption, and that they make up the majority of people working in sectors with face-to-face contact who are at greater risk of exposure to the virus.^{xiii}



Food Insecurity – Before COVID-19, estimates of the share of the population experiencing food insecurity in New York City were already high in some boroughs, totaling nearly 318,000 children citywide.^{xiv} As we point out in a recent report,^{xv} about one in five children in the Bronx

and Brooklyn experienced food insecurity, compared to about one in seven children in Manhattan, Queens, and Staten Island. As job loss and loss of income continue, food insecurity needs persist and are heightened.

Housing instability – Prior to the pandemic, in 2019 nearly 25% of community districts in New York City were severely rent burdened^{xvi} and over 10% of residents lived in overcrowded conditions,^{xvii} with a majority of these populations being communities of color. As unemployment rates for lower wage workforce participants continues to increase and the moratorium on eviction is set to be lifted in January, the housing crisis is worsening.^{xviii}

Digital Divide – 800,000 New Yorkers across 500,000 households^{xix} lack internet access in New York City, impeding effective remote learning, access to unemployment insurance, public benefits, and access to tele-health and tele-therapies in addition to basic health and safety information. As programming across the health and human service system moved to remote service delivery models during the first wave of the pandemic – and even now many critical supports continue to be offered through digital or online platforms – the digital divide is a serious barrier to essential supports.

BLACK AND LATINX CHILDREN OVERREPRESENTED IN CHILD WELFARE SYSTEM

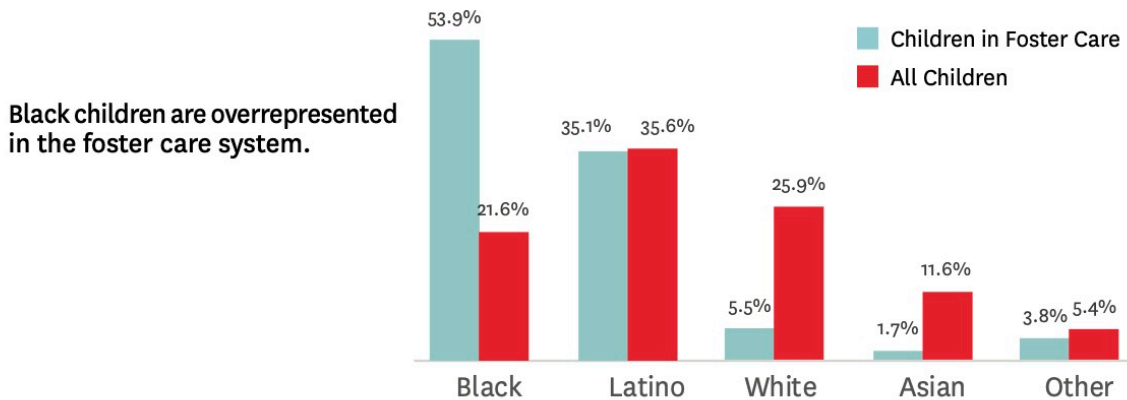
History of Race-Based Income Disparities

CCC cannot emphasize enough the implications of the fact that 73% of cases under ACS’s purview are cases related to neglect, due to unmet basic needs for things such as healthcare, food, education, and other basic needs. In New York City, Black and Latinx communities with high rates of child welfare involvement (rates of reports, indication rates, foster care placement) are also affected by higher economic insecurity, pre-dating COVID-19.

There is a relationship between high rates of child welfare involvement and high rates of poverty by district. As noted above, though 22.2% of New York City’s children live in poverty, there are communities where this number is more than twice as high, such as several community districts in the Bronx: 54.1% of children in Mott Haven and Hunts Point live in poverty, followed by Morrisania and East Tremont at 46.7%, while in Manhattan’s Lower East Side 43.1% of children live in poverty, and in Brooklyn’s Bushwick 41.7% of children live in poverty. Among the communities outlined here, nearly all are in the top 25 out of 59 districts with high numbers of child welfare involvement.

In New York City, ACS investigated 54,985 cases of child abuse and neglect with Black and Latinx families making up nearly 80% of investigated cases (36.9% and 39.7%, respectively) of child abuse and neglect^{xx} and served 45,273 children and families through community-based preventive services programs in 2019.^{xxi} It is important to note that Black and Latinx children are also over-represented in the foster care system, making upwards of 89% of the population (53.9% and 35.1%, respectively) despite being 57% (21.8% and 35.2% respectively) of the total child population in New York City.^{xxii}

Black and Latinx Make Up the Majority of the Foster Care Population



Research has shown that poverty is correlated with child welfare involvement, and that families who are poor are at increased risk of being reported for neglect as they come to the attention of mandated reporters when seeking services.^{xxiii} The compounding factors related to poverty (e.g. greater surveillance, inability to meet basic needs, precarious employment) have resulted in the correlation between poverty and child maltreatment.^{xxiv} Parents and community stakeholders have raised legitimate concerns about the surveillance of poor families as an indication of systemic racism within the child welfare. Fortunately, research has also demonstrated that general preventive services can strengthen and stabilize families, keeping children safe and out of foster care.

GENERAL PREVENTION'S ROLE IN STABILIZING FAMILIES

The hallmark of an effective child welfare system is one that supports families during a time of crisis by preventing the trauma caused by removal, while also strengthening a family's ability to provide a safe home for their child. New York City has one of the largest and most effective preventive services systems in the country, offering diverse services that prevent foster care placement. Since 2007, the number of children in foster care has decreased steadily from 14,783 to 7,827.^{xxv} Beyond being an extremely impressive feat, it behooves us to continue to strive to ensure all of New York's children and their families are safe and well-resourced.

Preventive services play a role in this effort as community-based programs strengthen and support families in ways that are tailored to meet unique family needs. Preventive services aide in the reduction of risks and in the assessment of child safety through home visits and casework contacts. Preventive services enable children to remain safely at home, with their families and out of foster care.

Before COVID-19, ACS's *Family Experience Survey 2019* report published suggested that most families have favorable experiences after receiving preventive services, and often express a desire for continued service engagement and/or would recommend preventive services to friends and family members.^{xxvi} Several findings from the *Family Experience Survey* echo results from a CCC report a decade ago^{xxvii} which found that a majority of system-involved families are Black and Latinx,^{xxviii} and families surveyed cited the importance of access to services that fall under the category of general prevention, including the provision of basic resources, such as food, clothing, beds and cribs, and/or household items.^{xxix}

Importantly, during the initial outbreak of COVID-19, the City's general prevention service providers pivoted quickly to meet the urgent needs of children and families, building upon existing preventive service delivery models to respond to the heightened needs of brought about by the pandemic and economic fallout. The role of preventive programs was even more critical as children and parents were no longer in-person contact with trusted adults in schools and afterschool programming during the shutdown and only recently began to reengage with community providers and schools. Preventive programs have played an important role in bringing stability and safety to households by:

- helping stabilize immigrant families by providing a wide range of necessities, including formula, diapers, food, and more because parents and caretakers are not only fearful of exposure to COVID-19 but also the possibility of being discovered by ICE authorities;^{xxx}
- providing families with basic food supports to feed their children;
- ensuring families have access to financial relief, including enrollment for unemployment and entitlement benefits;
- helping families pay cell phone bills, purchase phones and tablets, or access free or affordable broadband Internet;
- providing families with case management, risk assessments, and counseling services through telephone and video conference;
- helping children and youth remain connected to their peers, through participation in virtual programming including arts, recreation, and academic supports; and
- helping caregivers through virtual support groups to mitigate caregivers who are overwhelmed and isolated and who have experienced loss due to COVID-19.

As the crises in public health and economic and social unrest persist, we must pay close attention to what families need in the aftermath of COVID-19 to ensure child safety, family strength, and stability, and we must examine whether the preventive service system can adequately respond to these needs. The ability to understand how the system is responding now and its impact on communities of color is critical, especially as a sea change in preventive contracting commenced on July 1st. This change resulted in not only a new array of program models offered, but also created dramatically different catchment areas of borough or community district.

We believe pandemic recovery requires protecting and expanding investments in child welfare prevention (as well as a wide range of health and human service supports). Without a robust federal stimulus, we are seriously concerned that the City's November modification and anticipated State budget actions could detrimentally impact the preventive service system and negatively impact the City's ability to keep children safe and out of foster care. The State's

insistence on flat appropriations for prevention and history of cost shifts^{xxxi} to NYC, as well as failure to reimburse at statutory levels, is certainly problematic as well. A concerted effort is needed among city stakeholders to prevent local and state budget cuts and additional state cost shifts that can harm children, families, and communities.

For this reason, CCC and child welfare partners continue to advocate for protection of state-reimbursement for preventive services. We encourage the General Welfare Committee and all Council Members to champion this effort to protect these crucial resources, especially as we seek to promote long-term recovery. We additionally urge the General Welfare Committee to redouble their efforts to address the racial disparities in the City's child welfare system. CCC looks forward to continued partnership with the Committee to improve outcomes, especially for Black, Latinx, and immigrant families and children involved the child welfare system.

Thank you for your consideration and the opportunity to submit our testimonial to advance your commitment to the wellbeing of New York City's families.

Respectfully,

M. Mena, Ph.D.

ⁱ New York City Department of Health and Mental Hygiene, COVID-19 Data (2020). Retrieved from: <https://github.com/nychealth/coronavirus-data>

ⁱⁱ Indicator Data: Citizens' Committee for Children of New York. *Keeping Track Online Database: Poverty*, 2019. <https://data.cccnewyork.org/data/map/99/poverty#101/11/3/154/62/a/a> Accessed on 26 October 2020.

ⁱⁱⁱ Indicator Data: Citizens' Committee for Children of New York. *Keeping Track Online Database: Children in Child Abuse and Neglect Investigations*, 2018 <https://data.cccnewyork.org/data/map/1/children-in-child-abuse-and-neglect-investigations#1383/12/3/1634/40/a/a> Accessed on 22 October 2020.

^{iv} In 2019, there was a record low of 7,804 children in foster care, a decrease of 647 from 2018. Indicator Data: Citizens' Committee for Children of New York. *Keeping Track Online Database: Foster Care Population*, 2019. <https://data.cccnewyork.org/data/map/1399/foster-care-population#1399/a/3/1661/62/a/a> Accessed on 22 October 2020.

^v Indicator Data: Citizens' Committee for Children of New York. *Keeping Track Online Database: Child Population*, 2019. <https://data.cccnewyork.org/data/map/98/child-population#11/12/3/18/62/a/a> Accessed on 22 October 2020.

^{vi} Indicator Data: Citizens' Committee for Children of New York. *Keeping Track Online Database: COVID-19 Deaths*, 2020. <https://data.cccnewyork.org/data/map/1430/covid-19-deaths#1430/a/6/1710/108/a/a> Accessed on 21 October 2020.

^{vii} Susan Brundage and Kristina Ramos Callan. *COVID-19 Ripple Effect: The Impact of COVID-19 on Children in New York State*. September 30, 2020 <https://uhfnyc.org/publications/publication/covid-19-ripple-effect-impact-covid-19-children-new-york-state/> Accessed on October 23, 2020

^{viii} *Ibis*. See also: Carson Kessler "Thousands of New York Children Lost a Parent or Guardian to COVID-19, Study Finds." September 30, 2020. *The City* <https://www.thecity.nyc/health/2020/9/30/21494764/thousands-of-new-york-children-lost-a-parent-to-covid-19-study-finds> Accessed on 23 October 2020

^{ix} Indicator Data: Citizens' Committee for Children of New York. *Keeping Track Online Database: Child Poverty*, 2019 <https://data.cccnewyork.org/data/map/96/child-poverty#96/a/3/146/62/a/a> Accessed on 26 October 2020.

^x Marija Drobnyak, Jack Mullan, Sophia Halkitis, and Bijan Kimiagar. *Keeping Track of New York City's Children: 2020*. March 20, 2020. Citizens' Committee for the Children of New York. https://www.cccnewyork.org/wp-content/uploads/2020/03/2020-CCC-Keeping-Track_forweb.pdf Accessed on 27 October 2020.

^{xi} Elysia Murphy and Sophia Halkitis. "Blog: Child Abuse & Neglect Prevention During Covid-19: Promoting Child Safety & Supporting Families." May 28, 2020.

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- ^{xii} Citizens' Committee for Children. "CCC Releases Preliminary Analysis Of New Census Data." September 17, 2020. <https://www.cccnewyork.org/blog/24428/> Accessed on 26 October 2020
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- ^{xv} *Ibid.*
- ^{xvi} Indicator Data: Citizens' Committee for Children of New York. *Keeping Track Online Database: Severe Rent Burden*, 2019. <https://data.cccnewyork.org/data/map/74/severe-rent-burden#74/a/3/116/62/a/a> Accessed on 23 October 2020.
- ^{xvii} Indicator Data: Citizens' Committee for Children of New York. *Keeping Track Online Database: Overcrowded Rental Housing*, 2019. <https://data.cccnewyork.org/data/map/75/overcrowded-rental-housing#75/a/3/117/62/a/a> Accessed on 23 October 2020
- ^{xviii} Bijan Kimiagar, Jack Mullan, and Raysa Rodriguez, "Blog: NYC Housing Affordability and Homeless Crises Exacerbated by COVID-19." May 19, 2020. <https://www.cccnewyork.org/blog/nyc-housing-affordability-and-homelessness-crises-exacerbated-by-covid-19/> Accessed on 26 October 2020.
- ^{xix} Citizens' Committee for Children. "NYC's Digital Divide: 500K Households Have No Internet Access When it Is More Important Than Ever." April 24, 2020. <https://www.cccnewyork.org/wp-content/uploads/2020/04/CCC-COVID-19-Series-NYC-Digital-Divide-Child-Well-being.docx.pdf> Accessed on 26 October 2020.
- ^{xx} Indicator Data: Citizens' Committee for Children of New York. *Keeping Track Online Database: Child Abuse and Neglect Investigations*, 2019. <https://data.cccnewyork.org/data/map/3/child-abuse-and-neglect-investigations#3/a/3/5/62/a/a> Accessed on 22 October 2020
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**TESTIMONY OF JULIA L. DAVIS
DIRECTOR OF YOUTH JUSTICE & CHILD WELFARE
CHILDREN'S DEFENSE FUND-NY**

**Submitted to the New York City Council
Committee on General Welfare**

October 28, 2020

The Children's Defense Fund-NY (CDF) would like to thank Committee Chair Levin, and Council Members Gibson, Grodenchik, Holden, Lander, Reynoso, Salamanca, Torres and Treyger for holding this Oversight Hearing on Racial Disparities in the Child Welfare System. We offer this written testimony to help inform the scope of your inquiry and conversation with the Administration for Children's Services (ACS) today.

At CDF, our mission is to ensure every child receives a healthy start, fair start, safe start, and moral start in life so that they are able to achieve a successful passage into adulthood with the help of caring families and communities. We provide a strong, effective, and independent voice for all children who cannot vote, lobby, or speak for themselves. Our unique approach to improving conditions for children combines research, public education, policy development, community organizing and advocacy activities, making us an innovative leader for New York's children, particularly in the areas of health, education, early childhood, youth justice and child welfare.

As a member of the New York State Child Welfare Coalition, CHAMPS-NY and the City's Family First Advisory Committee, we work to advance child welfare policies that support families and help children thrive. Now, more than ever in the recent history of our City, is a critical time for families.

Racial Disparities in Child Welfare in NYC

Black youth are disproportionately represented in all aspects of the child welfare continuum in NYC. For example:

- Child Welfare Investigations: Recent analysis from the Center for New York City Affairs at The New School demonstrated that "rates of child welfare investigation correlate closely with both child poverty and race. For example, Greenwich Village and the Upper East Side, which have among the lowest child poverty rates and proportions of Black and Latino

residents of the city's 59 community districts, had fewer than 10 investigations per 1000 children. Hunts Point, Morrisania, and Mott Haven, with among the highest child poverty rates and concentrations of Black and Latino residents in the city, each had more than 70 investigations per 1000 children."¹ Investigations, however, do not necessarily signify that children have been maltreated. While families in predominantly Black and Latinx neighborhoods are more likely to face an ACS investigation, the same research showed that there is "not systematically higher rates of indications [findings against parents]" in those communities.

- Removal of Children and Placement in Foster Care: Black youth represent 22% of the city's children, but 47% of all children who are removed from their families and living in foster care.² By some estimates, Black children are 14-times as likely as their white peers to be separated from their families.³ Unnecessary removal of children from their families can be traumatic, even for short periods of time.
- Children Living in Institutional (Congregate) Care Instead of Family-Based Care: Black children in NYC who are removed from their family are more likely to be placed in group care than their white peers, and more likely to remain there for longer periods of time.⁴ Congregate care has both short-term and long-term impacts on children, in terms of their health and well-being, and their long-term permanency (family stability).

Recent Practice Changes Intended to Address Racial Disparities

On October 14, 2020, the state Office of Children and Family Services (OCFS) issued new directives requiring all local departments of social services (LDSS), including ACS, to embrace practices designed to mitigate racial disparities in removals (child separation and placement into foster care) and increase placement of Black and Latinx children with family or close friends (kinship care). These policies, which have been piloted in LDSS offices in different parts of the State, are promising practices. Based on the OCFS directive, they are effective immediately.

Blind Removal

Under this process, prior to a decision to remove a child from their home, a CPS worker must strike all demographic and identifiable information (race, gender, language needs, zip code) from the case summary and present the information for review by a Blind Removal Committee (including administration, supervisors, attorneys, caseworkers and home finders). It applies to many – but not all – types of removal decisions. This policy is intended to eliminate bias in

¹ <http://www.centrernyc.org/data-brief-child-welfare-investigations> (emphasis added).

² <https://data.cccnewyork.org/data/map/98/child-population#11/12/3/18/62/a/a;>
<https://ocfs.ny.gov/reports/custody/cwstats/NYC-CW-Custody-Stats-2020-Q2.pdf>.

³ <https://supportnotseparation.blog/2020/06/23/black-parents-march-to-demand-racial-justice-in-nyc-child-welfare-system/>.

⁴ <https://ocfs.ny.gov/main/sppd/docs/ffpsa-regional-data/supplemental/2017-NYC-Region-FFPSA-Supplemental-Tables.pdf>.

decision-making during the child removal process and reduce the disproportionate number of Black children in care. Developed in Nassau County, the practice has been shown to impact removals overall, and reduce racial disparities.⁵

Questions for ACS: What is the status of ACS practice in this area? Does its current policy conform with the new directive? What is the timing for training and support for ACS staff to be operating in compliance with this new policy? What data reporting will it use to track and examine the impact of this practice?

Kinship Firewall

This policy is intended to increase the likelihood that a child removed from their home will be placed with family or close friends (known as fictive kin) immediately, or as soon as possible after they are separated from their family. It also applies to moves that children might have while in foster care. It establishes additional processes to deter non-kinship placement, and pathways to provide resources that might alleviate barriers that prevent some families from serving as a kinship home. This practice is central to the state's implementation of new federal legislation called the Family First Prevention Services Act (FFPSA), which creates fiscal disincentives for placing children in unnecessary group care.

Questions for ACS: How does the new directive from OCFS alter ACS's current kinship practice? What new policy development and/or training is needed to comply with the directive? Where is ACS in this process now?

Areas of Concern

The long-standing racial disparities in our child welfare system will be exacerbated by the impact of COVID-19 on our City. Because of the pandemic's disproportionate impact on people of color, this burden falls most heavily on Black and Latinx families. Indeed, state-wide 1 in 600 Black children and 1 in 700 Hispanic children have already lost a parent/caregiver. More than half (57%) of the COVID-19 related parent deaths in New York State were concentrated in New York City.⁶ In Brooklyn and Queens alone, nearly 1800 children lost parents to COVID-19 as of the end of July.⁷

But NYC's Black and Latinx families are not only suffering because of the loss of parents. The community experience of illness and loss of life, the economic stress, the disruption of school, and the social isolation of the last 8 months is also disproportionately visited upon them. With the threat of state budget cuts to safety-net services, including primary prevention and child welfare preventive services, we urge this Committee and the City to stand with advocates to

⁵ <https://www.governor.ny.gov/2020-state-state-address/2020-state-state-proposals>.

⁶ <https://uhfnyc.org/news/article/uhf-report-4200-children-nys--lost-parent-covid-19/>.

⁷ https://uhfnyc.org/media/filer_public/22/4b/224bf5ba-6ab2-42f6-8744-929135f2f42b/covid_ripple_effect_part_1_final.pdf.

ensure that the State and City budgets are not balanced on the backs of children and families – especially those at disproportionate risk of contact with the child welfare system.

One specific area of concern related to the COVID-19 crisis is reports of parental Educational Neglect.⁸ Recent news coverage has amplified the concerns of advocates that students who have missed “remote classes because of faulty devices and unreliable internet are being threatened with having child services notified.”⁹ While public reporting indicates that these allegations are down compared to prior years, ongoing problems ensuring all children have access to technology, especially students living in City shelters, makes this an urgent concern. We should not be relying on ACS to respond to Department of Education (DOE) problems delivering devices and ensuring reliable internet access for all students. This will become more pressing as remote learning becomes longer in duration and with larger proportions of students opting for online learning for the remainder of the academic year.

Questions for ACS: How is ACS working with DOE on reducing unnecessary educational neglect reports and linking families back to DOE to resolve technology-based problems?

Thank you for your consideration of this testimony. If you have any questions concerning this testimony, please contact Julia L. Davis, at jdavis@childrensdefense.org.

⁸ <https://www.thecity.nyc/education/2020/4/28/21247059/parents-expecting-ipad-deliveries-got-knock-on-door-from-child-welfare-workers>.

⁹ <https://www.nydailynews.com/new-york/ny-homeless-mother-nyc-truancy-school-doe-shelter-wifi-remote-learning-20201026-jl55pntulfefjbfwt3etgxyfsm-story.html>.

Center for Court Innovation Testimony
New York City Council
Committee on General Welfare
Racial Disparities in the Child Welfare System
October 28, 2020

Racial disparities are an historic and seemingly intractable problem in the child welfare system. In 2016 in the United States, Black families were 6 times more likely than white families to be investigated by child welfare authorities;¹ Black children are represented in foster care at more than double their numbers in the general population;² and Black parents are two times more likely to have their parental rights terminated than white parents.³ Many of these disparities are related to higher rates of poverty among families of color and the multiple adversities and instabilities that accrue as a result of underinvestment in communities, and systemic inequities in housing, education, healthcare, and criminal justice. However, racial disparities in the child welfare system also reflect the bias and discrimination of multiple categories of mandated reporters and practitioners in the child welfare system and family court.

The Center for Court Innovation is committed to working in partnership with systems to create transformative change and respond to racism and its impacts. The Center for Court Innovation’s Strong Starts Court Initiative (“Strong Starts”) is a project that serves children birth to three years of age who are subjects of child protection cases in the NYC Family Courts, and their parents and families. Strong Starts is an important program that in mitigates these disparities. With more than 90% of the population we serve identifying as persons of color, Strong Starts is uniquely positioned as a witness to, and advocate against the racial disparities in the child welfare system.

Racial disparities in the child welfare system represent an intersection of systems that target the individuals who become entangled in State oversight. According to data we collected in 2019, among our participants, these factors vary, and often cooccur. This includes previously being the minor subject in a prior child welfare case (48%), to criminal justice involvement (39%), to housing insecurity (65%), to untreated mental health (63%), etc. *Table 1*. In certain instances, such as substance abuse

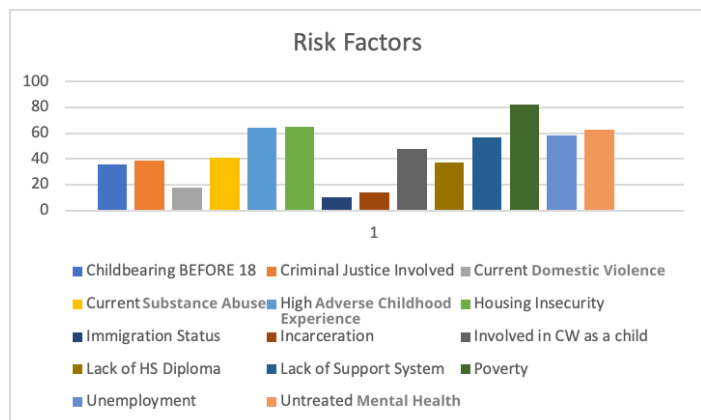


Table 1

¹Office of Children and Family Services, “Black Disparity Rate: Unique Children in SCR Reports CY,” 2016; Wildeman, Edwards and Sara Wakefield. 2019. “The Cumulative Prevalence of Termination of Parental Rights for U.S. Children, 2000–2016,” <https://doi.org/10.1177/1077559519848499journals.sagepub.com/home/cmz>.

²Child Welfare Information Gateway: Racial Disproportionality and Disparity in Child Welfare: Issue Brief, November 2016, retrieved from <https://www.childwelfare.gov/pubs/issue-briefs/racial-disproportionality/>.

³ Dorothy Roberts and Lisa Sangoi, “Black Families Matter: How the Child Welfare System Punishes Poor Families of Color,” *Appeal*, 26 March 2018, <https://theappeal.org/black-families-matter-how-the-child-welfare-system-punishes-poor-families-of-color-33ad20e2882e/>;

resulting in arrest, one government actor's actions and enforcement policies can trigger the case for removal from a family. Racial disparities are not isolated to the child welfare system; this is only one of many systems in which people of color are disproportionately represented. The effects of this disproportionate representation are often amplified by the lack of coordinated support for involved individuals.

Strong Starts responds to the unique needs of children during their most receptive and formative stage of development. This means that children are not further harmed by systems-imposed adversities such as separation from parents or other disruptions of children's attachments to important people in their lives. The program's model addresses intergenerational system involvement through a consistent, collaborative, and clinical approach. This is accomplished by:

- clinically evaluating the complex problems faced by parents who become involved in the child welfare system;
- recommending clinical and family support services that are targeted to specific problems that brought the family to the attention of the system;
- integrating modern, evidence-based interventions that strengthen parenting and repair parent-child relational problems that result from exposure to trauma, systemic oppression, parents' mental health and substance use disorders and family violence, in order to avoid any recurrence of maltreatment.

Perhaps most importantly, Strong Starts convenes monthly conferences between parents, attorneys, case workers and clinical service providers so that parents have a voice in determining and deciding what their family needs to recover from the crises in which they find themselves. This contrasts with the current standard in typical proceedings of inconsistent durations of adjournments between convenings of all parties. Critically, Strong Starts clinicians help families' court teams understand inter-generational histories of trauma and systemic oppression that are characteristic in these families, and the pain and despair that often underlies uncooperative or otherwise confusing parental responses to child welfare system practitioners and demands.

The child welfare system can be a port of entry to services and supports that strengthen families, and reduces the systemic involvement of multiple generations of individuals largely of color. Instead, it too often makes unrealistic demands on strained parents, relies on interventions of questionable efficacy, and then punishes parents for non-compliance or negative reactions to these demands and to their ongoing scrutiny. Strong Starts models a strength-based approach to parents, assures that families are connected to high quality and evidence-backed interventions, and works tenaciously to ensure that these services are actually received and that parents find them to be meaningful and helpful.

Strong Starts focuses on children during their first three years so that their development can maintain, or be quickly restored to, a healthy trajectory, and to prevent the multiple problems that compound over time when addressed too late. When we invest strongly in infants and very young children, and support the attachment relationships that promote growth and change in both children and parents, we bring protection to that child, to their siblings, and even to the children who will ultimately be born to the child we are currently serving. There is a return on investment at this stage of development that is very unique in the lifespan. With over 10,000 infants and toddlers

currently on the dockets of the NYC Family Courts, this is a responsibility, and an opportunity, that needs to be taken seriously. Strong Starts is a systems-change and community engagement approach that rallies the resources of a range of high quality community based services, and coordinates the involvement of multiple city agencies including the Early Intervention Program, the Department of Health and Mental Hygiene, the Department of Corrections, and the Department of Homeless Services, in both case-based and systems-wide considerations, and brings ongoing training and consultation to judges, attorneys and case workers in topics related to early development, infant mental health and effective interventions for infants and families. Preliminary findings of an ongoing program evaluation indicate that Strong Starts has educated child welfare staff about the importance of children's early relationships to their healthy development.

It is also important to note that Strong Starts has continued to serve families, many of whom have been disproportionately impacted by the pandemic, and in the context of a very disrupted court system. Strong Starts Coordinators have remained in close contact with families, have maintained the interdisciplinary and cross-systems conferences with, and for, families via virtual conference technologies, and have ensured that families remain connected to their services and are able to engage with them. They have brought COVID-19 related relief to families via clinical support and through the provision of, or arrangement for, families' concrete needs such as shelter and housing, food, diapers, and more. Reports to judges by Strong Starts staff have resulted in the scheduling of court conferences that may not have otherwise transpired, which have moved cases along to resolution, and have resulted in the return of children and to family reunification in a significant number of cases.

In closing, Strong Starts recognizes that parents have a unique commitment to their children, and that break-downs in the provision of safe and nurturing parenting often reflect the effects of parents' own childhood adversities, intergenerational trauma and structural inequalities. Strong Starts understands that much of this is repairable with intensive and focused effort. Strong Starts works to maintain child and family stability and to create a system in which parents can reach out when they need help without fear of punishment. Strong Starts is a means to increased access and equity for families, and a way to mitigate racial disparities in the child welfare system.

The Center for Court Innovation thanks the City Council for its longstanding partnership and stands ready to continue implementing its programming toward the goal of reducing disparities in the child welfare system.



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**General Welfare Committee on Racial Disparity in Child Welfare
Oral Testimony of Tehra Coles
Center for Family Representation**

October 28, 2020

Good afternoon, my name is Tehra Coles and I'm a litigation supervisor at the Center for Family Representation.

CFR represents 3000 parents in Queens and Manhattan each year and every single year, at least 90% of our clients are Black, Brown, and People of Color.¹ They are all poor, many face housing insecurity, lack access to proper medical care and, when they first become involved in the system, are unfamiliar with how the family regulation system works.² Each parent's case began with an investigation by the City. There have been many times in my career where my client and I were the only Black people in the courtroom.

We also know that the separation of children from their parents or even the threat of it are among the most potentially consequential, dramatic and harmful acts the government can take. This authority should bring with it the protections that provide the necessary counter-weight to that power. This is especially true in a system that by all accounts over-scrutinizes, investigates, and separates families of color.

When families with means are investigated, they have access to information, by virtue of their privilege, and the ability to obtain support that people who are poor do not. People of means usually have ready access to an attorney, at a minimum. We occasionally get a call from those privileged parents, who are often white--- and they know that they can and should seek legal advice before engaging with one of the most powerful government institutions in our city.

¹ The Center for Family Representation is the county-wide indigent defense provider in Queens and New York counties for abuse and neglect cases. In 2016, with support from the City Council, we began our Home For Good practice. Home for Good is made up of several practice areas: Immigration, Housing and Public Benefits, Re-entry prevention, and Adult criminal defense. In 2020 we began representing youth in juvenile delinquency proceedings also in Queens and Manhattan.

² The scholar Dorothy Roberts explains why the "child welfare system" is more aptly called the family regulation system because it's a system that works to control and punish Black and Brown families. See "Abolishing the Police Also Means Abolishing Family Regulation" Dorothy Roberts. The Imprint. June 16, 2020 at: <https://imprintnews.org/child-welfare-2/abolishing-policing-also-means-abolishing-family-regulation/44480>

Most parents that we eventually represent did not know their rights when they were being investigated-- and the City isn't required to tell them. This can have far-reaching and traumatic consequences-- especially when children are unnecessarily removed.

Information is power and sharing of information connotes respect. Those in power often withhold information as a weapon of control often under the guise of looking out for the greater good. Currently ACS is opposed to giving parents that information. The impact of this is that parents are kept in the dark about their rights when being investigated by the City.

The City disempowers parents and fails to show them respect by limiting and trying to control their choices during investigations. If the City were interested in empowering parents, they would explain: No. They do not have to allow their child to be stripped and physically examined by the worker that showed up on their doorstep moments before. No. They don't have to sign a blank medical release. . No. They do not have to tell them intimate details of their private lives or that Yes - anything and everything that the parent says can be used in an application to remove their child or may show up in a petition filed against them.

To be clear, the allegations that most of the petitions we see include those related to poverty but other examples include that parents co-sleep with their babies, that they smoke marijuana, or that they had a fight in the presence of their child.

If we are serious about addressing the racism in the family regulation system we could start by empowering and respecting the Black and Brown families it targets by leveling the playing field so they have the same ability to react to and engage with ACS, that privileged parents do: we should ensure they have information.

We know that the City and others have opposed giving parents this information. The arguments in opposition have been similar to what we hear from those who oppose reforms aimed at addressing racism and brutality in law enforcement: If you make this change then we cannot do our job.

The City has also claimed that requiring CPS workers to inform parents of their rights would turn an investigation into something more like a police encounter. To the extent that systemic racism is, in part, characterized by a lack of awareness on the part of those in power, this too reflects an ignorance of what we hear from parents all the time about and how ACS is viewed in their communities. For many parents, ACS is just like the police, perhaps worse because of the stakes. Many parents see ACS as threatening, unfair, and looking for a reason to take their children. The City has also said that giving this information would potentially interfere with an investigation--but that is not our experience when we can intervene early---ACS ALWAYS has the power to remove children if it believes a threat of harm to a child is imminent--access to information and legal and social work support just means a parent has support in facing a large and powerful government force.

This is why we urge the City Council to immediately pass a resolution calling on the State legislature to pass the Miranda bill currently pending in the Senate. While we wait for that legislation to pass, the Council should pass its own legislation requiring workers to inform parents of specific rights at the first point of contact with the family and information on agencies parents can access to get critical legal and social work advice. This need not mean a worker is advising a parent--it does mean that the worker would give the parent basic information.

The system cannot support and respect parents of color while also perpetuating systemic racism by refusing to give unbiased information to parents when they are being investigated. The City does not deny that it prosecutes Black and Brown people at a higher rate than any other group. But if it is not required to inform those it investigates of even their most basic rights, it further disempowers and harms Black and Brown parents and their children. Disempowerment is a hallmark of systemic racism, one that information can help to address.



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**General Welfare Committee on Racial Disparity in Child Welfare
Oral Testimony of Teyora Graves
Center for Family Representation**

October 28, 2020

Good afternoon, my name is Teyora Graves and I am Senior Parent Advocate from the Center for Family Representation or CFR.¹ I am also an impacted parent.

Over the past 11 years I have seen that not only does the system disproportionately impact Black and Brown families but once caught in the system, families are not treated with the respect they deserve. Over the past several years working as a parent advocate, I have personally seen how dehumanizing and racist this system continues to be when it comes to people who look like me.

A prime example of this is how our children are treated when they are removed from our care and sent to the Children's Center. The Children's Center is where case workers take children who have been removed pending a decision about where they will be placed - either in foster care or with a kinship resource. We have clients whose teenage children are placed in the Children's Center and then allowed to come and go as they please, without the parents being informed. We have heard reports of some children engaging in prostitution. Parents who have been accused of neglect, are not taken seriously when they raise concerns about this--rather treated as though they have forfeited the right to be outraged that their children are at this risk.

The lack of respect and the racist overtones extend into the whole system--at ACS conferences and in court. I have personally observed a parent repeatedly be asked by a case worker whether she was pregnant by the same father of her older daughter. When my client repeatedly said that her baby had the same father, the worker eventually said "wow that's a first." One CFR client was repeatedly asked whether he was sure that he was his child's father. One ACS prosecutor, we call them Family Court Legal Services attorneys or FCLS attorneys, called our client "selfish" for seeking visits with her child during the pandemic. We have seen favorable settlement offers be withheld, even for parents who have their children at home and who are in full compliance with their service plans, because, to quote one FCLS attorney, they are "young and may have more children in the future" so they want a finding of neglect to be made on the record. One CFR client was told by a caseworker, at a conference, that she was trying to "sound more white" because of how she pronounced her last name. There are more

¹ The Center for Family Representation is the county-wide indigent defense provider in Queens and New York counties for abuse and neglect cases. In 2016, with support from the City Council, we began our Home For Good practice. Home for Good is made up of several practice areas: Immigration, Housing and Public Benefits, Re-entry prevention, and Adult criminal defense. In 2020 we began representing youth in juvenile delinquency proceedings also in Queens and Manhattan.

examples like these and we know that parents and advocates from across the city have had similar experiences. These examples reflect the racism and disrespect that those caught in the family regulation system face on a daily basis.²

This is a system that presents itself as caring about children and families. In reality, it disproportionately targets Black and Brown families and then fails to treat them with respect.

For race and equity issues, it cannot be business as usual at ACS. In our experience, some problems are acknowledged by ACS leadership. However, the policies and initiatives they have launched fail to trickle down. There is no meaningful accountability mechanism for either ACS or FCLS, that parents or advocates can take advantage of, in the moment or soon thereafter.

Many parents are afraid to raise their concerns out of fear of retaliations. We have to be careful of what we raise and with whom, because we know that complaining could mean an unfavorable outcome for our clients.

We urge the City Council to create a standing commission, independent of ACS, to be tasked with the responsibility of reviewing and approving existing and proposed policies that have the goal of dismantling and addressing racist remarks and behaviors. The commission must have decision making authority and the City must commit to implementing their recommendations. The Commission must be made up of the families and youth that have been directly impacted by the system in addition to advocates and ACS representatives.

The damage the system has done and is continuing to do to Black families has gone unchecked for too long. Parents deserve a voice and choice when it comes to what happens with their families.

² Abolishing the Police Also Means Abolishing Family Regulation” Dorothy Roberts. The Imprint. June 16, 2020 at: <https://imprintnews.org/child-welfare-2/abolishing-policing-also-means-abolishing-family-regulation/44480>

City Council Testimony
Racial Disproportionality
October 28th, 2020

In New York 65% of children who enter the foster care system enter for reasons related to Neglect – 64% in the United States. 8% of children enter the foster care system for physical abuse in New York, compared to 13% in the United States.

Black children represent a larger percentage of the foster care population, than they do of the general population. Yet, ACS better known in my community as the family regulation/destruction system continues to manipulate foundations and others to financially invest in their decades long failures, with many different commissioners at helm- as they continue to “try” to get it right. The biggest problem has been and is still - separating poverty from neglect I’ve heard the commissioner say. Well Mr. Hansell if you and your army of agents can’t decipher between Poverty and Neglect-You should all be fired immediately.

Not only are black children removed at disproportionately higher rates - they remain in care longer.

The honest answer for the disproportionality is we are still seen as slaves in this country. The 13th Amendment clause was for us, BLACK PEOPLE. After the Emancipation we were locked up for nonsense reasons to continue free labor. That slave mentality has grown into mass incarceration and foster care – where they destroy children and support failed outcomes by doing all of the things we know will create hardships for the very children they claim to protect.

1. The first thing a child needs besides their parents love is STABILITY.
2. The first thing removed when they enter the foster care system is STABILITY.
3. Children change homes regularly – and every time they change homes their 5 senses are interrupted and go to orange alert – They see different items and colors at their forced new location – children smell different scents at the location (cleaning products, lotions, seasonings used) – Their taste – the seasonings, the way food cooked and prepared- They hear different back ground noises, music, television shows, the sound of the authoritative figures voice, their touch-what they feel – the sheets are of different materials, the couch, chair, - their toothbrush at home was soft bristles – now its medium – In addition - the rules of the house change - this is a continuum.
4. The child is the one needing protection so they say, but the case manager who rarely visits the foster residence spends time with the hired adult that the systems dares to call a foster “parent.” when he or she does visit – discussing and dissecting what’s wrong with the child- when the only thing wrong is a stranger who in many cases could give less than a fuck about the child is being paid to support systemic injustices and pitfalls of separating black children for the wrong reasons, reasons that are related to poverty.
5. Children are put on medication for poor behavior (because no one knows why they are misbehaving) Really??

6. The hired adult's aren't happy with ACS either they tolerate their bullshit for the check.

The bottom line is New York's average of removing children for reasons related to neglect – poverty framed as neglect is neck and neck with the National average of removals related to neglect. But the Commissioner and his agents are still confused.

Children who experience the family destruction system are usually destroyed mentally and emotionally, it doesn't take Einstein to tell you this is wrong and being done purposefully.

The failure these children are set up for is designed to lead them to mental institutions and incarceration – making ACS the prerequisite - the first stop before incarceration.

The Family Regulation/Destruction system is designed to separate families generationally for federal incentives. Commissioner Hansell is doing his part to bring in the federal dollars into NY so that they can be distributed for high priced services that does nothing to improve the homes or family life where the children originates from.

To stop disproportionality, we have to rid our society of the false narratives, surveillance, and poverty! We can begin by providing financial resources to families instead of paying hired adults. We can also begin to utilize mandated reporters to support instead of report especially since mandated reporters are often in a position to know the family and understand their needs that relate to poverty, but they forced to report instead. No one is happy with this system except those who are benefiting from it on the backs of the children they take under the guise of protecting when the only thing they protect these children from is SUCCESS.



The New York City Council
Committee on General Welfare

Oversight – Racial Disparities in the Child Welfare System

October 28, 2020

Testimony of
Dr. Jeremy C. Kohomban
President and CEO

I am Dr. Jeremy Kohomban, the President and CEO at The Children's Village and President of Harlem Dowling, two organizations founded in New York City in the early 1800's.

Racial disparities in child welfare are a data supported fact. We often see Black children separated from their families faster, they penetrate the system to higher levels of care faster, they stay longer, and among those children ageing out at 18 or 21, Black children exit with the worst outcomes.

The facts are clear, if you are born to a poor family of color and forced live in one of our [intentionally and deeply segregated communities with poorly resourced and failing schools, you are a targeted](#) for family separation.

There are times when children must be separated from family, but it does not need to happen as often as it does.

Thanks to the leadership of Commissioner David Hansel we are taking bold steps to reverse decades of practice. However, the power of implicit bias, the very real problems caused by racial segregation and the fear among front line staff of making the wrong decision will continue to needlessly separate families of color.

While we wait for the political will to create a racially integrated and more equitable city, here are three actions that can reduce the racial disparities.

1. **Continue to invest in prevention services.**
2. **Invest in Family Enrichment Centers.** Our segregated communities need safe and beautiful spaces staffed by locally credible and skilled staff. Our three Family Enrichment Centers are doing that. We need many more.
3. **Create a residential program that provides the entire family the opportunity to participate in substance abuse treatment.** About 30% of the families touched by child welfare report at least one parent dealing with substance abuse. Among middle-class and wealthy families, parent substance abuse does not usually lead to family separation because they have financial resources and people in their lives to help protect children. However, among poor and socially isolated families, parent substance abuse is a very real risk because drugs can compromise the natural instinct parents have to protect their children. Sometimes the desire for the drug is so strong that young children are left alone while the parent seeks out the drug. At other times, the desire for the drug causes parents to invite people into their home they would typically never open the door to. Both actions place children at risk. The bottom-line, substance abuse is a disease that can be treated. Evidence supports the efficacy of family inclusion in substance abuse treatment. Children who watch their parents fight the disease can be powerful supporters of the treatment process. And, being part of the treatment process allows children to build their own resilience. Recent Federal funding through the Family First Prevention Services Act provides us the opportunity to develop this essential capacity in New York.

What children need most is the love and belonging of family. Needless separation is destructive.



TESTIMONY OF:

**Brian Jones
Senior Attorney, Family Defense Practice**

BROOKLYN DEFENDER SERVICES

Presented before

**The New York City Council
General Welfare Committee**

October 28, 2020

My name is Brian Jones and I am a Senior Attorney with the Family Defense Practice at Brooklyn Defender Services (BDS). On behalf of BDS, I would like to thank the New York City Council's General Welfare Committee for holding today's important hearing on racial disparities in the child welfare system. We appreciate the opportunity to speak about the inequities in this system which targets and surveilles mostly Black families and other communities of color in New York City. We need to shift public opinion about the racial inequities in the child welfare system, as we have started to do with the criminal legal system. Public hearings like this one today offer a critical opportunity to shine a light on the laws and policies that have perpetuated this punitive system for far too long.

BDS is the primary defense provider for those arrested in Brooklyn and for parents and caretakers in Brooklyn who are facing ACS investigations or child neglect and abuse cases in family court. We represent over 30,000 people each year in criminal, immigration, family, and civil matters. We use a multidisciplinary approach that offers our clients access to social workers, advocates and civil and immigration attorneys who work to minimize any collateral impact of our clients' court cases. Our Family Defense Practice represents about 4,000 parents each year. We have represented over 13,000 parents and caretakers in Brooklyn Family Court and have helped more than 20,000 children remain safely at home or leave foster care and reunite with their families.

New York City's Family Regulation System Targets Black Families and other Communities of Color

This is a unique moment where a world-wide public health pandemic has laid bare the profound inequities in our City and country that have deepened the disparities in healthcare, employment,

and housing and made marginalized communities more vulnerable to systems-involvement¹. As a nation we are also experiencing a long over-due public reckoning of systemic racism and police violence. This is an opportunity for our City to explore the systems, including ACS, that have historically targeted communities of color and to make bold policy changes that hold these systems accountable and ensure that families receive the support and resources, not surveillance, that are needed to keep families together and to thrive.

Like the criminal legal system, race and poverty are defining characteristics of the family regulation system, commonly referred to as the child welfare system. Despite making up only 23% of New York City's child population, Black children represent over 52% of foster care placements.² Of NYC children with indicated reports in the State Central Registry, 42% are Black, 40% are Latinx, and 6% are white,³ although overall 32% of New Yorkers are Latinx and 27% are white. Black children also fare far worse in the foster care system and have much longer stays in care⁴.

Most of the people we represent are people of color living in poverty, raising their children in homeless shelters or public housing, and in highly policed neighborhoods, making them vulnerable to government surveillance, including ACS. Families living in homeless shelters, under incredible economic stress, are living under the fear that one argument between parents or one moment of impatience with a child may lead to a knock on their door from a child welfare worker. School attendance interrupted by homelessness or lack of internet access, or an angry landlord seeking to evict a family illegally can result in a call to the State's Central Registry of Child Abuse and Maltreatment (SCR) and begin an investigation into a family⁵.

While nearly 60% of calls made to the SCR in NYC are unfounded,⁶ the risk of ACS involvement and the removal of a child is far greater for families of color. In NYC, Black and Latinx children are 13 times more likely than white children to be placed in foster care⁷. For parents struggling with mental health conditions, cognitive delays or addiction, the system is often perceived as a punitive one rather than a restorative and supportive one. While our clients usually have many needs that impact their ability to keep their families together, in our experience many of these families suffer more trauma from being separated than from staying together with supports in place.

Far too many parents have cases called in against them because that is often the fastest route to services and resources for families. In many cases, the issues that brought a family to the attention of ACS is poverty. Far too often the response of mandated reporters is to call ACS instead of helping families access resources, such as stable housing, food, and adequate childcare. Families

¹ Villarosa, Linda (April 29, 2020) "A Terrible Price: The Deadly Racial Disparities of Covid-19 in America"; New York Times; Mays, Jeffrey C. Andy Newman. (2020 April 8). "Virus is Twice as Deadly for Black and Latino People Than Whites in N.Y.C." New York Times.

² New York City Administration of Children's Services Community Snapshots, (2010, 2011, 2013); retrieved from: http://www.nyc.gov/html/acs/html/statistics/statistics_links.shtml.

³

<https://ocfs.ny.gov/main/recc/Exec%20Staff%20DMC%20presentation%20child%20welfare%20color%20070911.pdf>

⁴ <https://www.gao.gov/new.items/d07816.pdf>, page 4.

⁵ <https://www.nydailynews.com/new-york/ny-homeless-mother-nyc-truancy-school-doe-shelter-wifi-remote-learning-20201026-jl55pntulfejbfwt3etgxyfsm-story.html>

⁶ <https://www1.nyc.gov/assets/acs/pdf/data-analysis/flashReports/2020/09.pdf>

⁷ https://ocfs.ny.gov/main/bcm/DMR_Section%20Seven%20of%20Grant%20RFP_2015.pdf, page 7.

are pulled into a system of services that pathologizes their economic status and further exacerbates the concept of the “deserving and undeserving poor.” There are two types of preventive services in New York City, services that only ACS can offer and services that families can access through community-based organizations. The vast majority of resources are only available through ACS with very limited services available through community-based organizations.

The Racial Disparities and Harm ACS Causes Families of Color are Perpetuated by the NYC Family Court

About half of the families who ACS indicates a case against are brought into family court. When litigants enter Family Court, they are first greeted by metal detectors and then armed court officers. The mostly white professionals who enter the same courthouse walk to the right and bypass the metal detectors. Litigants, who in New York City are mostly people of color, must wait in a line that snakes through the lobby only to be asked to remove their belts, empty their pockets and have their personal belongings searched and then they must walk through a metal detector. This happens to children and adults alike.

The only court staff available to answer questions about where one files an application for an order of protection, child support or the nearest bathroom, are armed court officers. The presence of armed court officers in Family Court contributes to the perception that family court is another institution which polices and controls communities of color. Court officers often escalate rather than de-escalate the invariably tense situations that arise in a very adversarial and confrontational system. Food and drinks are not allowed, despite the regular presence of children in the courthouse and the long wait most litigants must endure. Parents who are nursing have nowhere private near the courtrooms where they can breastfeed their children. Under the pretext of maintaining order and protecting children, armed court officers respond to parents who are emotional or angry as though they pose threats to the safety of the courthouse. Judges similarly view a parent’s anger and frustration with a system many perceive as unjust as threats to their children’s safety, perpetuating the trauma that parents and children alike experience in family Court.

When family court was open physically, the role of armed court officers also extended to directly removing children from their parents. When court officers are notified that a removal may occur, they usually separate children from their parents often before a court has even ruled on the government’s removal application, prioritizing “keeping order” over the emotional needs of children and parents. Judges and court officers will regularly ask for additional officers to enter a courtroom after a judge has determined that a child is to be removed from their parent’s custody, even in cases where there has been no evidence that the parent would not respect the court’s order. In one egregious example, a BDS client was breastfeeding her newborn in the courthouse and multiple armed officers removed the baby from her breast. In another example, a teenage child was removed from his mother’s custody in the courtroom by ten armed court officers and taken into the corrections section of the courthouse because he was upset by the judge’s decision. The use of armed officers to remove children exacerbates the trauma of removal to families and contributes to the feeling that family court is another system that polices and controls communities of color. Like the calls to remove armed officers from schools, we strongly urge the Council to support efforts to remove armed officers from family courts.

Our clients experience of family court in NYC has been described by judges, attorneys and advocates across the State. This month, the New York State Special Advisor on Equal Justice in

New York State Courts issued a report on the state of New York's court system, shedding light on this "second-class system of justice for people of color in New York State"⁸. The Special Advisor heard directly from family court judges who reported that the high volume of cases in court make it more likely that a judge will rely on implicit bias in decision making and force judges to rush when making decision about when to remove a child from their home.⁹

COVID and NYC's Family Regulation System

The communities targeted by the family regulation system prior to the COVID-19 pandemic are the very communities hit hardest by this crisis. Communities of color in NYC are struggling to manage job losses, housing instability, few permanent housing opportunities, limited access to remote education, and the loss of family members to the pandemic. The pandemic has only made these communities at greater risk of involvement with the family regulation system. COVID has affected contact between parents and children in foster care, access to education for ACS-involved children, has caused an unprecedented delay in family court cases and impacted access to vital services and resources that parents and children need.

For those with open ACS investigations or child neglect or abuse cases in family court, COVID-19 has had a significant impact on their families and cases. In March, when New York State issued a stay-at-home order, many of the programs serving families at risk of ACS involvement and serving families with open investigations and cases paused most in-person programming. Programming continued online leaving many parents without services or limited access to services.

With the physical courts closed to the public, parents who are brought to court by ACS have struggled to access the virtual courts and their court-appointed attorneys. Our office worked with the other city-wide family defense offices to address this issue early in the pandemic by creating a flyer with our contact information for ACS to provide all parents under investigation and before they come to court. It has been our experience that most parents are not given our contact information during the investigation and only moments before a case is filed in court. With earlier and better communication about accessing advocates, parents would be better able to plan to appear in court and know what to expect at a virtual court appearance.

Tragically, COVID has also interrupted visitation for so many families with ACS involvement. At the beginning of the pandemic, there was a lot of confusion about how parents and children could safely visit with each other. Far too many families went without visits and many families were forced to visit by telephone or video only. Many parents and children did not have regular access to devices or internet that make video visits possible and many parents were pressured to forgo in-person visits to preserve foster care placements for their children. Eight months into the pandemic, many in-person visitation between parents and children has resumed and, yet far too many families continue to only have virtual visits. We have observed that there is no uniformity in visitation policies across foster care agencies, resulting in some parents who were ordered to have two or three agency visits with their children in a week limited to one visit. Even today, parent's in-person visiting with their children continues to be extremely curtailed as a result of COVID-19.

⁸ <https://www.nycourts.gov/whatsnew/pdf/SpecialAdviserEqualJusticeReport.pdf>.

⁹ *Id.* at 56.

COVID-19 also caused family courts in New York City to shutdown physically in March. Since then, the City's family courts have prioritized hearing new case filings where ACS is seeking a removal of children from their families or exclusion of a parent from the home. Despite the prioritization of these emergency applications, hearings for the return of children to their parents are taking days or weeks to complete due to inadequate virtual courtroom time. Very few trials have been held, extending the time that families are living under ACS supervision without a finding of wrongdoing. Many parents with criminal orders of protection have been prevented from seeing their children because they have not able to access family court to seek a visitation order since March. Some judges have begun to hold conferences in pending cases or agreed to settle cases where all parties agree; however, most families have experienced a significant delay in their court case because judges are not scheduling new trials until next year. While the City takes credit for the decrease in the number of children in foster care, court cases remained chronically high long before the pandemic. We are very concerned about how this overburdened system will further delay reunification between children and their parents and how the courts will be able to resolve matters timely. Before the pandemic, cases dragged on for months, and very often years, while families waited for service plans to be created, referrals to be made, and hearings and trials to be heard and determined. All these harms to the communities of color involved in the family court system have been exacerbated by the unprecedented delays caused by this pandemic.

Bold, Progressive Legislation is Needed to Address the Inequities in the City's Child Welfare System

Last year, City Council and the Progressive Caucus introduced a package of bills that seek to address the profoundly disproportionate rates of ACS involvement within communities of color in New York City. We applaud City Council for this effort and hope to see these bills passed this year in order to hold this system accountable and to ensure fewer children enter the system by relying on systems of community-based support.

NYC Needs to Maintain and Publicly Distribute Accurate Data About the Racial Disparities Among Families Impacted by ACS

Many of the bills introduced last year with the intention of holding ACS accountable to the communities it serves and the City at large address the need for widespread, reliable, and consistent data about the racial and economic makeup of the families directly impacted by ACS. Unless this information is collected, documented and made available to communities and advocates, affected communities will not be able to accurately assess the effectiveness and bias of the child welfare system. This information is needed to identify the nature and extent of the disparities within the system, to identify areas and policies for improvement, and to monitor progress.

Early Access to Legal Assistance During ACS Investigations

Having access to legal assistance at the beginning of a child welfare investigation can ensure that parents and caretakers understand the process, can result in speedier referrals to important supportive services and help avoid family court filings or the removal of children. Thanks to the generous support of City Council, many parents in New York City have been able to access the support of legal advocates at the early stages of an ACS investigation and the results of this representation show that outcomes are better when parents have support early on.

Last year, City Council introduced a critical bill that would address the imbalance of power and bias in ACS investigations. When ACS investigates a family after a call is made to the SCR, ACS will often begin their investigation by visiting the family's home and speaking with the subject parent or caretaker. Parents we work with have long described these investigations as frightening and overwhelming. Families already living under close surveillance by police, shelter and hospital staff, are subjected to middle-of-the-night visits, body searches of their children, and invasive questioning about their family, relationship history and are often asked to sign documents waiving privacy rights out of fear of losing their children.

There is widespread agreement that families facing child welfare investigations benefit from early representation. In February 2018, after conducting an extensive investigation and hearing from many child welfare and Family Court stakeholders, the New York State Commission on Parent Representation issued a report to Chief Judge Janet DiFiore which recommended that parents be "timely provided with relevant information about the right to counsel, and that parents be granted access to counsel during a child protective agency investigation and sufficiently in advance of the first court appearance."¹⁰ Even the federal Administration for Children and Families has come out in support of early assignment of counsel: "[t]here is a growing body of empirical research linking early appointment of counsel (at or prior to a party's initial appearance in court) and effective legal representation in child welfare proceedings to improved case planning, expedited permanency and cost savings to state government."¹¹

With funding from the Council, BDS has been able to assist over 600 parents and caretakers from July 2019 to June 2020 during an ACS investigation. We represent parents who have criminal cases filed against them, former clients, and parents who seek our assistance at our community office. Through legal advice, advocacy with the child welfare agency, and service referrals, we are often able to resolve these cases in ways that prevent family court involvement and/ or prevent the unnecessary removal of children from their homes.

Our goal is to avoid court filings for parents and their families, whenever possible. Cases involving common family problems such as drug or alcohol use or mental health issues should be resolved outside of court, as they generally are for families who enjoy racial and economic privilege and who live in neighborhoods with little family regulation system presence. Families are not served adequately by being pulled into a court system plagued with inequities and chronic delays.

To prevent cases from reaching family court or resulting in the removal of a child from his/her home, our advocates connect with parents during one of the most frightening moments for their family. Parents describe feeling scared and confused and often pressured to say yes to anything asked of them in order to prevent the removal of their children. With our help, parents better understand what an ACS investigation looks like, who the players are that they are speaking with and what risks are involved. In our experience, parents are often very willing to engage with ACS once they understand the process and their rights during these investigations.

Family defense social workers accompany parents to meetings with the local child welfare agency when ACS is considering whether to file a family court case and immediately intervene to help

¹⁰ http://ww2.nycourts.gov/sites/default/files/document/files/2019-02/PLR_Commission-Report.pdf?fbclid=IwAR2DGVUGk86o8SH4HkViJ7a9uJyYHWZt7rktZ044xQlnyKH3K9HYNBwqLiw, page 16.

¹¹ US Dept of Health and Human Services, ACYF-CB-IM17-02, January 17, 2017 (citations omitted).

parents obtain benefits and find needed services. The involvement of social workers who bring their experience and knowledge to ACS child safety conferences results in better outcomes by increasing parents' participation and by facilitating the creation of service plans that better reflect the particular needs of the family.

New York City Family Miranda Rights

Given the serious nature of child welfare investigations, the fact that these investigations invade families' privacy and may infringe on their right to family integrity, resulting in the parents' loss of the care and custody of their own children, parents and caretakers must be aware of their rights during a child welfare investigation so that they can make informed decisions about their family. Last year, City Council introduced two bills that would ensure parents investigated by ACS would be provided with oral and written notice of their rights during an ACS investigation. Connecticut and Florida¹² are two states which require that parents are given information about their rights during a child protective investigation. Connecticut's legislature paved the way for informing parents of their rights in 2011 by enacting a comprehensive parent's bill of rights statute¹³ that could serve as a model to help New York parents understand and protect their rights when it comes to their children.

In our practice, we regularly come in to contact with parents who have been dealing with ACS for weeks or months without the benefit of counsel or information about their rights. They are subjected to drug and alcohol testing without informed consent; their mental health and medical providers are contacted without informed consent; and their children are interviewed at all hours of the day and night—including while they are at school—without their parents' permission.¹⁴

A NYC Family Miranda Rights bill would help ensure that all New Yorkers, regardless of income, county or neighborhood, understand their rights during an ACS investigation so all parents can make informed decisions for their family.

A strong bill would require that investigative child welfare workers be charged with providing the notice of rights upon initial contact with a family both orally and in writing. Safeguards must be built into any bill to ensure that the information is in fact provided to all parents at the first point of contact with ACS. We also believe the law itself must enumerate the specific rights every parent and caretaker have during a child welfare investigation, including that they are entitled to seek the advice or representation of counsel, that they have the right to not allow the child welfare or investigative worker into their home without a court order, that they have the right to refuse to submit to drug or alcohol screenings, and that they have the right to not sign releases for information or medical records¹⁵. Importantly, this notice must be provided to parents and caretakers in their first language and should be in *plain* language that takes into account the need for parents of all educational backgrounds and intellectual abilities to be able to read and understand the information being provided to them.

¹² Fla. Stat. Ann. § 39.301(5)(a)

¹³ C.G.S.A. § 17a-103d.

¹⁴ Rise, *Surveillance Isn't Safety- How over-reporting and CPS Monitoring Stress Families and Weaken Communities* (Sept. 17 2019).

¹⁵ <https://portal.ct.gov/-/media/DCF/Brochures/PRTKEnglish-2019.pdf?la=en>.

BDS is grateful to New York City Council's General Welfare Committee for hosting this important hearing and shining a spotlight on the racial disparities within ACS. Thank you for your time and consideration of our comments. We look forward to further discussing these and other issues that impact the people and communities we serve. If you have any additional questions, please contact Anya Mukarji-Connolly, Associate Director of Policy, at amukarjiconnolly@bds.org or 347-592-2535.



**Testimony from Ronald E. Richter, CEO, JCCA
New York City Council Committee on General Welfare**

Racial Disparities in the Child Welfare System • October 28, 2020

Good afternoon. Thank you, Committee Chair Levin, for calling this hearing and allowing me to testify on behalf of the children and families in New York City impacted by racial disparities in the child welfare system.

My name is Ronald E. Richter. I have been honored to have once served as New York City's ACS Commissioner and twice as a judge in the City's Family Court.

Today, I am the Chief Executive Officer of JCCA, a voluntary child and family services agency that has been working with New York's most disadvantaged and at-risk children and families since 1822. Back in the 19th and first half of the 20th centuries, the disadvantaged children we served were Jewish immigrants fleeing pogroms and poverty in Europe. Now, a majority of our clients are Black and brown. It is a fact that Black and brown families have been set up to fail in our nation through systemic and institutional racism and resulting inequities. The child welfare system is no exception to this rule.

Increasing resource equity can improve just outcomes for families involved in child welfare, especially families at risk of neglect. An instructive example of this came during the first months of the COVID-19 pandemic, in which our preventive programs at JCCA experienced a remarkable increase in engagement with families. This might at first seem counterintuitive given the challenges of social distancing and virtual services. However, we at JCCA benefitted from tremendous generosity from our Trustees, funders, and donors. Because of the funds we raised during the early days of the pandemic, we were able to provide

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unprecedented financial and material emergency assistance to families. This support engendered genuine trust among our clients, relieving stress for caregivers and, in turn, improving engagement in therapeutic options. By bringing families relief in the face of unemployment, illness, and isolation, relationships with our clients evolved. No longer seen as threatening, we at JCCA are supporting the capacity of the families we serve to survive together. If we could provide this concrete support generally, we would be able to stabilize and empower caregivers far more effectively.

Unfortunately, this kind of support is unsustainable for us, as an agency. And, as a society, because we fail to address the root causes of poverty, trauma, and illness, families are turned over to ACS and Family Court.

An October 2020 study of racial bias in New York courts, commissioned by NYS Chief Judge Janet DiFiore, highlights Family Court as perhaps the worst offender in denying a fair and equitable forum to litigants of color. Judges in the underfunded Family Court have unacceptably high caseloads that they must adjudicate quickly; they may have only minutes to gather facts necessary to issue a decision whether to remove a child or keep a family together. This typically doesn't allow the judge to consider their decision thoughtfully. New York City case workers, responsible for presenting the facts supporting applications to Family Court judges, have similarly high case loads and time pressures that make them vulnerable to relying on their own unconscious assumptions.

Despite our best intentions, we all have implicit bias, where our prior lifetime of experiences and influences on our subconscious color our interpretation of the world around us. Every second, the human brain receives millions of tiny bits of information. Studies show that we can really only process 40 bits per second, and our brains make assumptions to fill in the gaps. 99.9% of the information we receive is processed at the unconscious level. Without continuously testing our own assumptions and ensuring that we have all the pertinent facts at our disposal, our unconscious bias informs our perspective. For child welfare investigators and family court judges, whose decisions can have life or death consequences, this bias results in demonstrable and regrettable disparities in outcomes for the families involved.

I remember a vivid example of these disparities in action. It was a busy day in intake in 2010 or 2011, when I was a judge in Queens Family Court, and my first case concerned a white family. A

young white woman, who lived with her own mother in a middle-class neighborhood in Queens, had delivered a baby girl addicted to drugs. She had been charged with neglect, and ACS asked the court to release the baby to her grandmother, on two conditions: one, that the mother enter drug treatment, and two, that an order be granted that the mother could not have any contact with her baby while under the influence of drugs. It was the investigator's opinion that the baby would be safe and cared for in this home provided the family met the conditions.

My next case involved a virtually identical scenario. A first-time mother, addicted to the same drugs, who lived with her own mother in Queens. The two differences? The family was Black, and they lived in public housing just south of the courthouse in Jamaica. In this case, ACS sought a removal of the baby to foster care. The day was moving quickly, and I still had several cases left to hear. No overtime is approved in Family Court. But I paused. I had just heard this case. What was I missing? Why were they asking for a different outcome? I inquired to be sure I didn't miss that the mother had a prior neglect history or a child in care that she hadn't planned for. Perhaps the grandmother was not deemed appropriate and I didn't hear the worker say so. But no, same facts as the middle-class white woman. I declined to order a removal, and released the baby to her grandmother with the same conditions as before. I learned a lot that day, about systemic racism and about myself. Would I have been as attentive if I didn't have a case-by-case comparison in front of me so clearly?

There are ways to improve the objectivity of our decisions in order to reduce unconscious biases, and, for New York City's child welfare system, they are within reach.

The most obvious recommendation is, of course, implicit bias training. While this may be complicated by the new restrictions placed on government contractors by Executive Order 13950, it is more critical than ever. By a recent measure, we are investigating somewhere between 35-40% of the black families that live in the certain Bronx neighborhoods.

We also need to ask ourselves whether we are leveraging the most advanced social science as we decide who should be investigated and who should be subjected to a removal or to ACS supervision.

One tool at our disposal already exists within Connections, the citywide child welfare database. RAP, which stands for Risk Assessment Profile, is a standardized measure in Connections which must be completed at specific intervals during a CPS investigation. The RAP produces a score that classifies whether the case is low risk, moderate risk, high risk, or very high risk. The RAP “score” may be compared to the action that the agency plans to take—supplementing human social work with an evidence-based assessment. The RAP may also be used to test the agency’s action after it has been taken, an approach we took between 2011 and 2013. By drawing managers’ attention to the RAP, we significantly reduced the number of removals for children who were in care two weeks or less. If ACS were to report the RAP/actual outcome discrepancy in real time, across the system, we could ostensibly increase equity for families in New York City.

Nationally, the conversation in child welfare is centered around the use of predictive analytics, which have advanced considerably since I was at ACS. I understand that ACS is carefully weighing the best way to leverage predictive analytics. I would recommend that the Council work with ACS to identify how predictive analytics are being contemplated to determine the measures/metrics that may be generated using predictive analytics/risk modeling to net more objective assessments of risk to children, eliminating human bias more systematically.

There is a lot of work left to do to improve equity for families of color. In this moment, when COVID has exacerbated poverty, isolation, and stress for families across the country, it is more important than ever that we do everything we can to avoid embroiling families in the child welfare system unless absolutely necessary. Thank you for taking this time to address the systemic and institutional barriers to the stability and success of children and families in New York City.



TESTIMONY OF LAWYERS FOR CHILDREN

To the New York City Council Committee on General Welfare

“Oversight: Racial Disparities in the Child Welfare System”

October 28, 2020

Submitted by:

Karen J. Freedman, Executive Director
kfreedman@lawyersforchildren.org

Betsy Kramer, Director of Policy & Special Litigation
bkramer@lawyersforchildren.org

Thank you, Chair Levin and the General Welfare Committee for holding this hearing and providing us with the opportunity to testify.

Founded in 1984, Lawyers For Children is a not-for-profit legal corporation that represents individual children in voluntary foster care, abuse, neglect, termination of parental rights, adoption, custody and guardianship proceedings in family court, and advocates for system-wide reform to improve the lives of children in foster care. On average, we represent children and youth in more than 6,000 court proceedings each year. Based on our experience in individual cases, we have also successfully participated in numerous class-action lawsuits and helped to effectuate change in City and State policies and practices to promote positive outcomes for all children in foster care.

We are pleased that the Council continues to focus on the critical issue of racial disparities within the child welfare system. As attorneys and social workers who directly represent children involved in that system, we share your commitment to tackling this issue, and believe that it can be done while keeping children safe from harm.

In order to answer the question of how to alleviate the insidious overrepresentation of children of color in the child welfare system, we must look at the front door to that system, as well as what happens to children and families after they have stepped inside.

Narrowing the Front Door:

Reducing Bias Influence in Mandated SCR Reports

We join the City and our colleagues in recognizing the work done during the last several years to safely reduce the number of children in foster care -- from over 50,000 children in care in the 1990's to under 8,000 today. Over the last ten years, the number of children in care has decreased by 50%. That decline reflects a recognition of the harmful impact that even a short stay in foster care can have on a child, as well as the positive impact of the successful implementation of increased community-based family support.

While the number of children in foster care has declined dramatically during the last several years, the number of Black and Latinx children brought to the front door of the child welfare system through reports to the Statewide Central Register of Child Abuse and Maltreatment (SCR) has remained essentially unchanged. In 2009, ACS investigated 55,303 reports made to the SCR.¹ In 2019, the number of investigated cases rose slightly to 57,000.² Notably, 77% of the children who were the subject of

¹ ACS Child Welfare Indicators Annual Report 2009, Available at https://www1.nyc.gov/assets/acs/pdf/data-analysis/City_Council_Report_2009_Annual.pdf

² Citizens' Committee for Children, Keeping Track Online, The Status of New York City Children, Child Welfare, 2020 available here: https://www.cccnewyork.org/wp-content/uploads/2020/03/2020-CCC-Keeping-Track_forweb.pdf

those reports were Black and Latinx although those children made up only 58% of the City's population.

A discussion about racial disproportionality in child welfare must include all aspects of child welfare involvement – not just foster care placements -- because the impact of a child protection investigation, regardless of its necessity, can be traumatic for children and have far reaching consequences. Once a report is received, caseworkers may be dispatched to interview children in the middle of the night. Children may be pulled out of their classrooms in front of their peers for questioning. They may be subject to physical exams, and temporarily removed from their families. All of these actions, even if the report is ultimately “unfounded” can have a lasting, negative impact on a young child.

Black and Latinx children are overrepresented in calls to the SCR, in part, because reporters of suspected maltreatment fall victim to the same biases affecting people working within the system. Research shows that although Black children are far more likely to be reported for suspected abuse and neglect than white children, they are, in fact, no more likely to actually have been maltreated children.³

A majority of SCR reports are made by “mandated reporters” -- teachers, doctors, social services workers, and others who are required, by law, to report suspected maltreatment. Of the 16,907 reports received by the SCR for investigation in 2018, 11,894 were made by mandated reporters.⁴ Mandated reporters play an important role in protecting children who are victims of maltreatment. However, according to national data from the U.S. Department of Health & Human Services, close to 7 out of 10 reports made by mandated reporters are unsubstantiated.⁵

In this respect, the problem of racial disproportionality does not fall solely on ACS. The vast majority of SCR reports are made by employees of City agencies, including the Department of Education, the NYC Health and Hospitals Corporation, the Department of Homeless Services, and the Human Resources Administration. As such, those agencies play a significant role in the overrepresentation of children of color in the child welfare system. In order to reduce that overrepresentation, action must be taken to ensure that decisions about whether to call in a report of suspected maltreatment are not influenced by racial bias. It has been said that a White child who appears at a hospital with a broken arm goes home with a cast and a lollipop, but a Black child who appears at a hospital with a broken arm goes home with a cast, a lollipop and a CPS investigation. In order to change this narrative, mandated reporters must be trained in

³ Hyunil Kim and Brett Drake, “Child maltreatment risks as a function of poverty and race/ethnicity in the USA,” *International Journal of Epidemiology*, Vol. 47(3), 780-787 (June 2018), available here:

<https://academic.oup.com/ije/article/47/3/780/4829682> (highlighting that at similar poverty levels, White child maltreatment rates based on official reports trended higher than Black child maltreatment rates)

⁴ See ACS Flash Report, January 2020 at 27, Figure 1: SCR Intakes by Reporter Group, October 2018 – December 2018 and October 2019 – December 2019, available at:

<https://www1.nyc.gov/assets/acs/pdf/data-analysis/flashReports/2020/01.pdf>

⁵ U.S. Department of Health and Human Services, Administration for Children and Families, Administration on Children, Youth and Families, Children's Bureau. (2010). Child Maltreatment 2008 at 8. Available at: http://www.acf.hhs.gov/programs/cb/stats_research/index.htm#can.

racial equity, perception, and implicit bias to ensure that decisions about whether to call in a report are based solely on objective factors of risk.

Offering Alternatives to Support Children & Families

ACS has made tremendous progress expanding primary prevention and preventive services, increasing the use of community-based services and supports to assist families outside of the foster care system. Other City agencies responsible for providing services to children must also recognize the role they play in funneling Black children into the child welfare system, and the ways in which they can assist families without making a report to the SCR. We are not the first to say that poverty is the biggest driver of reports to the SCR, and that a lack of resources is the biggest threat to the health and safety of children who become entangled in the child welfare system. Now it is time to engage all of the other City agencies to train their mandated reporters to consider whether a referral to a food bank, a day care provider, a mental health service, an afterschool program or any other community-based support could eliminate the perceived risk and do away with the need to make a call to the SCR. This is the only way to begin to transition from the role of mandated reporters to mandated supporters.

Improving Child Welfare Interventions

Providing Support for ACS's Newly Expanded (and renamed) CARES Program

Even after a report is made to the SCR, there is an opportunity to provide assistance without involving the family in a child welfare case. Just last week, in announcing that ACS was expanding and renaming the Family Assessment Response program, ACS Commissioner David A. Hansell said, "Often times, families reported to the New York State child abuse hotline are simply in need of a helping hand — whether that's food, clothing, or extra support." The newly christened "CARES" program recognizes that poverty, oppression and racial inequity are often factors that lead to reports to the SCR, and significantly reduces the number of children who enter foster care or are brought into court proceedings.

Without launching a traditional investigation, the CARES program engages families in supportive services that enhance their ability to care for their children. Specially trained child protective staff members partner with the family to identify their needs, make decisions about how best to address those needs, and connect to appropriate services.

For many years, the success of the PINS diversion program has proven that assessing a family's needs and providing services that are designed to meet those needs can go far toward ensuring children's safety and improving family stability, while dramatically reducing court involvement and the number of children placed out of their homes. It is a model that can and should be adopted for child welfare cases.

Implementing "Blind Case" Removals

In addition to being the subject of a disproportionate number of reports to the SCR, Black children are further over-represented in the number who are removed from their families and placed in foster care. Less than a quarter (22%) of New York City children are Black, but more than half of the children in ACS custody (54%) are Black.⁶ To reduce this disparity, steps must be taken to address the ways in which racial bias impacts removal decisions. One way to do this would be to adopt a “blind removal” strategy. In “blind removal” case reviews, identifying information such as the child’s racial identity, name and neighborhood are removed from the case file before a committee of child welfare professionals assesses the need for removal. The assessment focuses on what has occurred, relevant case history, family capacity and strength. In 2010, 55.5 percent of the removals made in Nassau County were of black children. By 2015, after using blind removals, that figure dropped to 29 percent.⁷ The experience of Nassau County is a stark reminder of the tremendous role played by bias in removal decisions and the consequent over-representation of children of color in the foster care system.

Strengthening Standards for Child Welfare Frontline Workers

Decisions about whether to indicate cases and whether to remove children from their homes should be made only by workers who are well-trained to make decisions based on articulated risk factors. Lawyers For Children has previously testified regarding the importance of enhancing the qualifications, training and recruitment of Child Protection Specialists, but our position bears repeating here. The critical assessments made by CPS workers require an understanding of safety and risk, childhood development, trauma, and the complex challenges that families experience. These assessments require highly trained professionals who are most able to ascertain key facts, effectively interview children and families, use engagement techniques and synthesize all of the relevant information. For these reasons, we support efforts by the City to increase salaries and qualifications for child protection staff, and to enhance training and support opportunities for advanced degrees and credentials.

Recommendations to the City Council

We urge the City Council to:

1. Data & Reporting:

⁶ Citizens’ Committee for Children, Keeping Track Online, The Status of New York City Children, Child Welfare, 2020 available here: https://www.cccnewyork.org/wp-content/uploads/2020/03/2020-CCC-Keeping-Track_forweb.pdf

⁷ See Jessica Pryce, “The Case for Race-Blind Foster Care Removal Decisions,” *Imprint News*, January 13, 2020, available here: <https://imprintnews.org/opinion/the-case-for-race-blind-foster-care-removal-decisions/39898>; see also Jessica A. Pryce, et. al., “Race Equity: Nassau and Onodaga County Report,” December 2016, available here: <https://www.nassaucountyny.gov/DocumentCenter/View/18095/FINAL-OCFS-Report-Race-Equity-2016?bidId=>

- a. Require ACS to provide data on the number of substantiated and unsubstantiated reports made by mandated reporters disaggregated by the report source, the child's race, and community district.
 - b. Require ACS to report on its efforts to reduce racial disparities and collaborate with mandated reporters to reduce unnecessary calls and promote alternatives.
2. Require City agencies, including the Department of Education, Health and Hospitals Corporation, and Department of Homeless Services, to implement training for mandated reporters in racial equity, perception and implicit bias with respect to child welfare matters.
3. Provide support for ACS to implement innovative programs designed to reduce racial disparities in removal decisions.
4. Provide support for ACS to strengthen qualifications for frontline ACS child protection workers.

Conclusion

Dismantling racial disparities within the child welfare system requires taking a close look at the system's front door. For too long, this door has been thrown wide open, unnecessarily drawing in Black and Brown children and their families. It is now time to close that door to all but those who truly need the assistance of the child welfare system, preserving precious resources for children who are truly at risk of harm and preserving stability and providing community-based supports for children who are not. We urge the City Council to take steps to encourage the City's child-serving professionals outside of ACS to help open the door to community-based support and resources available to families in need.

We look forward to continuing our work with the Council to identify solutions and reduce racial disparities in the child welfare system.