



David A. Hansell, Commissioner
Testimony to the New York City Council
Committee on General Welfare
October 31, 2019

Child Welfare Bills:
Int. 1715, 1716, 1717, 1718, 1719, 1727, 1728, 1729, 1736- 2019
Resos. 736-2019 and 1036-2019

Good afternoon Chair Levin and members of the Committee on General Welfare. I am David Hansell, the Commissioner of the New York City Administration for Children's Services (ACS). With me today are William Fletcher, Deputy Commissioner for the Division of Child Protection (DCP), Sandra Davidson, Assistant Commissioner in DCP, and Stephanie Gendell, Acting Deputy Commissioner for the Division of External Affairs.

We at ACS appreciate the Committee and the Progressive Caucus focusing on the children, youth and families who come to the attention of the child welfare system. ACS takes very seriously our obligations to assess child safety and provide families with the supports and services they need so that children can be safe in their homes whenever possible. At the same time, we recognize and respect parents' rights, as well as their bonds with and love for their children. We also know that deep-rooted structural racism exists in our country, and that the child welfare system has historically had a disproportionate impact on low-income families and communities of color.

Since I joined ACS as Commissioner, we have faced these issues directly by: focusing on the safety of the children who come to our attention; providing high-quality community-based services to families in need; elevating the voices of family and community to inform and improve our work; and continuing to shape New York City's child welfare system as a progressive national model that addresses historical disproportionalities. We are proud of the progress we have made, but there is much more to do, and we appreciate the Council's focus on these important issues.

The bills that are the subject of this hearing reflect a set of core principles to which ACS is committed:

- Parents should be fully-informed about the child protective investigative process, at all stages;
- We should provide the supports to families that enable parents and caregivers to address challenges that affect children's well-being, and we should do so while keeping families together whenever safely possible;
- We must confront head-on the history of racial disproportionality in the child welfare system, and ensure that we are treating all families equally; and
- We must listen to the perspectives of parents and others with lived experience in the child welfare system, to inform our efforts to improve our work.

I would like to explain what we are doing in each of these areas, before turning to the specific bills under consideration.

Keeping Children Safe and Well Cared for at Home

ACS's Child Protective Specialists (CPS) are the first responders for keeping children safe and supporting families, 24 hours a day, 7 days a week. When a concerned citizen or mandated reporter is worried about a child's safety, he or she calls the New York Statewide Central Register of Child Abuse and Maltreatment (more commonly known as the child abuse hotline or SCR). Whenever the State accepts a report of alleged abuse or maltreatment regarding a New York City child, ACS is legally

required by statute to conduct an investigation and assess the safety of the child. This past year, ACS investigated approximately 55,000 reports of abuse or neglect involving over 90,000 children.

ACS understands that when a child protective worker comes to a family's home, after there has been a report alleging possible abuse or neglect, it can be a stressful event for parents, caregivers and children. Our staff are highly trained to engage with families from a strengths-based perspective and using trauma-informed techniques such as motivational interviewing. Core values of respect, empathy, and genuineness are reinforced with CPS throughout their training and in daily practice. All of this helps us assess safety, lessen the stress of the child protective investigation, and partner with parents and families to best connect them, as needed, with services and supports.

New York State Social Services Law requires that "after seeing to the safety of the child or children," ACS notify the subject of the report and other persons named in the report in writing of the existence of the report and their rights during and after the investigation. In addition to verbally explaining to parents why they are at the home and need to see the children, child protective staff give parents the State Office of Children and Family Services (OCFS) produced form, called the "Notice of Existence" and the ACS "Parent's Guide" to a child protective investigation. The State-required Notice of Existence includes information about the investigation process, information on how to appeal at the end of the investigation, how to request a copy of the case record, and the contact information for the caseworker and supervisor. In response to ACS's request,

the State made this form available in multiple languages, including NYC's 10 designated languages.

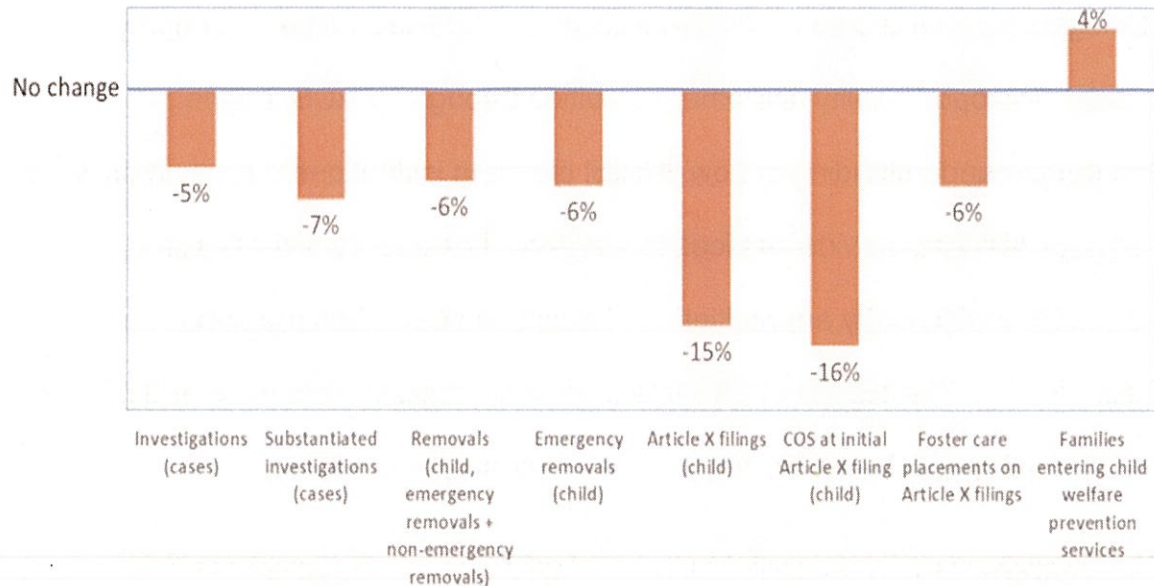
The ACS Parent's Guide, which is written in plain language, explains the child protective process to parents and caregivers, gives information about prevention services, explains the definitions of abuse and neglect, includes ACS caseworker contact information, and provides information on how to appeal if the report is indicated. The Parent's Guide also informs parents about the ACS Office of Advocacy, which is a resource for parents, children, and others impacted by the child welfare system. As recommended by the Foster Care Task Force, ACS worked with providers, parents and advocates to revise the guide to make it more user-friendly. We are so thankful to the parents and advocates whose feedback has been incorporated into the newly updated Parent's Guide that we are including with our testimony today.

In approximately 63% of the cases we investigate, ACS finds no credible evidence of abuse or neglect. In those instances, we "unfound" the case and take no further action, although we may offer the family voluntary services. In the vast majority of investigations where we do identify safety concerns, we address them by connecting parents to services that can keep children safe at home. In most cases, ACS works with our community-based prevention service providers to deliver trauma-informed services like substance abuse counseling, domestic violence intervention, and mental health services so families can remain safely together.

ACS's robust, nationally-recognized continuum of prevention services served almost 20,000 families with more than 45,000 children in FY 2019. As a result of the unprecedented investment in prevention services, we have seen a dramatic reduction in the number of children in foster care in New York City to historically low levels—currently about 8,300. This is a momentous shift from 25 years ago when there were nearly 50,000 children in foster care in New York City, and from even just 10 years ago, when there were almost 16,000 children in foster care. Through the new set of prevention programs we will implement next year, we will establish uniform access to every prevention model in every community citywide. Providers will be required to engage families, incorporate their feedback, and offer meaningful opportunities for their voices to shape the services they receive.

The data show that our efforts to transform NYC child welfare are working. As you can see in the chart below, from FY2018 to FY2019, reports to the SCR, the ACS indication rate, the number of children removed, court filings, new court ordered supervision cases, and foster care entries all decreased, while the number of children receiving prevention services increased. In other words, we are identifying safety concerns, and initiating court action and child removals in fewer cases, while engaging more families in prevention services – trends we hope and expect will continue in future years.

Key FY 2018 - 2019 Trends



Equity

Over the past 30 years, numerous studies have highlighted racial and ethnic disparities in the child welfare systems throughout the country, and have generally shown that children of color are more likely to be reported, investigated, substantiated, and placed in care, and that they stay longer in care and are less likely to be reunified with their families.¹ As data from the national Adoption and Foster Care Analysis and

¹ See, e.g., Child Welfare Information Gateway. (2016). *Racial disproportionality and disparity in child welfare*. Washington, DC: U.S. Department of Health and Human Services, Children's Bureau; and Chapin Hall Center for Children at the University of Chicago. *Understanding Racial and Ethnic Disparity in Child Welfare and Juvenile Justice*. Chapin Hall Center for Children, 2008. Chicago: Chapin Hall Center for Children at the University of Chicago.

Reporting System (AFCARS) reports show, racial and ethnic disparities in the child welfare system—at each stage—is a national issue.

Throughout my tenure as ACS Commissioner, it has been a central priority to address racial disproportionality and other inequities throughout ACS, and to provide staff with a deeper understanding of how implicit bias and institutional racism impact the way we engage with and provide services to families. The truth is: the causes of disproportionality and inequity are multiple and deeply rooted within the history and fabric of our country. The child welfare system does not exist in a vacuum, and it is connected to larger political, social, historical, and economic structures.

We recognize that fundamental to the work of ACS is to help address the systemic inequities that affect our work and the families we serve. It is crucial for us to build trust, engagement, and relationships in order to make a meaningful impact on disparities – infusing this across everything we do. While I am pleased to say that ACS is at the forefront nationally in tackling this issue head-on, we have a great deal of work to do.

We are addressing disproportionality through a comprehensive set of both internal and external activities. Internally, we have created institutional structures to focus our attention on these issues, developed implicit bias training programs for all of our staff, and developed and begun implementing an Equity Action Plan – a Plan that will allow us to measure our progress. Externally, we are investing in community-based strategies in historically marginalized neighborhoods to reduce child welfare

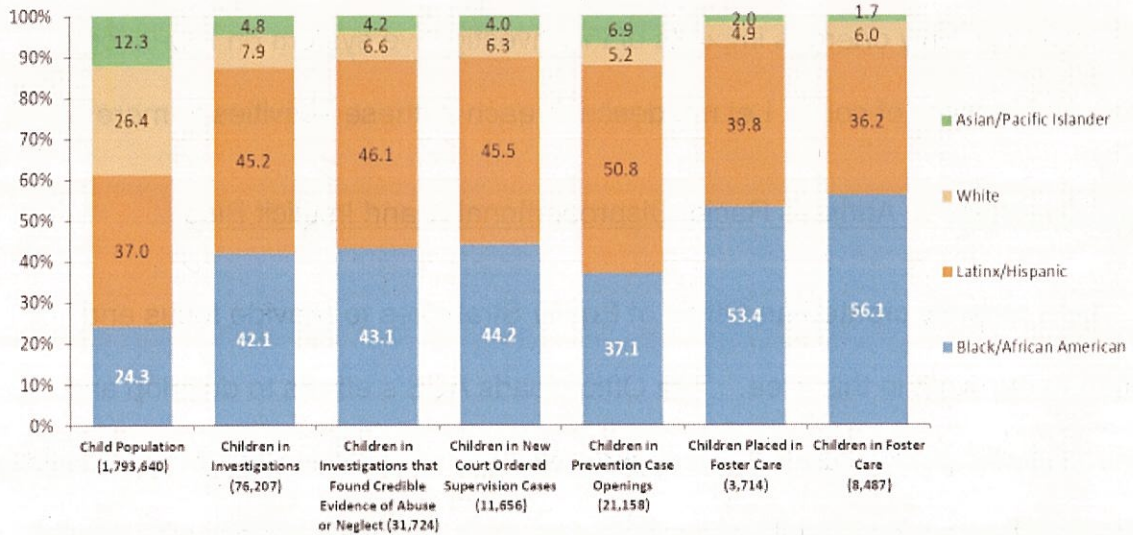
involvement, addressing concerns about implicit (or explicit) bias in the reporting of possible maltreatment by mandated reporters, and supporting legislative reforms to reduce unnecessarily onerous impacts of the investigative system on low-income families and families of color. Let me describe each of these activities in more detail.

Internal Strategies to Address Racial Disproportionality and Implicit Bias

ACS recently created an Office of Equity Strategies to provide focus and direction to our work in this area. The Office leads ACS's efforts to develop and advance specific policies and practices that reduce disparities in outcomes for children and families that are the result of bias based on race, ethnicity, gender and gender expression, and/or sexual orientation.

Our data confirm that much like the national data, racial disproportionality exists in New York City's child welfare system. This begins with the racial composition of children and families that are reported to the SCR and ACS is then obligated to investigate, and continues through case indication, foster care placement, and length of stay in foster care. At all stages, there are disparities for children of color, particularly Black/African American children and families. This does not mean that decisions made by mandated reporters, caseworkers and others are incorrect on individual cases. However, it does mean that more broadly, Black families experience child welfare differently from White, Hispanic and Asian families.

Race/Ethnicity and Path through the Child Welfare System, CY 2018



Note: Missing values and other race are excluded from percent calculations.
Data sources: Connections, CCRS, PROMIS and U.S. Census Bureau, 2012-2016 American Community Survey

As required by Local Law 174 of 2017, ACS developed an Equity Action Plan as part of our commitment to confront and address inequities identified in our Equity Assessment. The Mayor’s Office released the Equity Action Plans just last month, but ACS has many concrete actions already underway. For example, we have begun to take a deeper look into SCR reports in several pilot communities so that we can better understand the drivers, as a first step towards developing partnerships with key stakeholders and mandated reporters.

The ACS Workforce Institute developed its “Understanding and Undoing Implicit Bias” learning program to help staff identify the connection between institutional racism,

structural inequity, and implicit bias, and to begin to surface and address implicit bias in decision-making and in conversations with co-workers. All child protective staff learn about implicit bias as part of the core training they take when they begin their jobs. All direct service employees and supervisors at ACS have been required to take a new full-day, instructor-led program on implicit bias. ACS also launched a new e-learn course that is mandatory for all ACS employees to complete—including me. Child welfare agencies from other parts of the state and country have been reaching out to us to learn more about our implicit bias trainings so that they can bring them to their jurisdictions.

ACS's Racial Equity and Cultural Competence Committee (RECCC) includes a diverse representation of ACS staff, external stakeholders, and professionals who are committed to promoting racial equity throughout the child welfare, juvenile justice and early care systems. Among other things, the Committee informs policies, training, hiring practices, and program practice guidelines where needed to ensure continuity and sustainability in promoting fairness in process, and equitable outcomes for children, families, and staff.

Strategies to Address Racial Disproportionality and Implicit Bias Beyond ACS

We are also focusing on external factors that drive disproportionality in child welfare involvement. Our Division of Child and Family Well-Being (CFWB), created in 2017, is dedicated to making our communities stronger. We believe that a key approach to address disproportionality is through primary prevention, a strategy to

invest in marginalized communities to prevent child welfare involvement in the first place.

Some of the core components of our community-focused investment work include our Community Partnership Programs in 11 high-need neighborhoods across the City, as well as our three Family Enrichment Centers (FECs), which are open-door, walk-in facilities, with no connection to other child welfare services. A major tenet of this work is a two-generation/whole family engagement approach, which recognizes the need to work together in the areas of education, economic security, social capital, and health to improve family well-being across generations. The Community Partnership Programs and FECs are designed to promote family strength and stability by building community connections and by helping families meet concrete needs.

All programming in the FECs is community-led and designed with input from the community and parent leaders. Each FEC offers “Parent Cafes,” where participants share personal experience and knowledge to identify ways to promote protective factors. Parents are engaged to lead the Parent Cafes, and program ideas arise from these discussions. Programs have included financial empowerment classes, mommy & me, stress release activities, family game nights, and more.

Our primary prevention work also includes strong efforts to inform parents about important ways to keep children safe. We’ve provided information on safe storage of potentially dangerous medications, reducing fire hazards in homes, “Look Before You Lock” to ensure that infants aren’t left alone in cars, and of course safe sleep for

newborns and infants to help prevent accidental, sleep-related infant deaths in New York City. Today marks the end of "Safe Sleep Awareness Month." This past year, the state passed a law banning crib bumper pads, which are dangerous because they increase the risk of suffocation. To help publicize the new law, explain the danger of crib bumper pads, and remind New Yorkers about safe sleep, ACS organized a crib bumper safe sleep "swap" for parents to exchange crib bumpers for wearable blankets to safely keep babies warm.

While there is much that we can do at ACS and in New York City to both strengthen the child welfare system and address disparities, there are also state budget, legislative and policy barriers, making it critical for NYC to have a voice in Albany. This past year, many of our colleagues worked together to put forward a proposal to reform the SCR system to heighten the indication standard from "some credible evidence" to "a fair preponderance of the evidence," which is more consistent with national practice; to reduce the length of time an individual with an indicated case remains on the register for employment screening; and to expand due process rights for those seeking to overturn or expunge an indicated case. ACS was pleased to see the passage of a bill aimed at bringing more fairness and equity to the child welfare system, and reducing the collateral consequences of having an indicated SCR case, and we hope it will be signed into law.

ACS will also be working at the state level to have training on implicit bias added to the mandated reporter training, which is provided by the State. We believe that it is imperative for the thousands of school personnel, medical personnel, law enforcement

professionals, social workers and others who are mandated reporters to be aware of how implicit biases can impact decisions about reporting suspected abuse or neglect, so that reports to the SCR are objective and result in help for children when truly needed.

With internal strategies such as implicit bias training, affirming policies, and specific efforts to ensure that our services are culturally appropriate, along with external strategies such as primary prevention and impacting state law, we are taking important steps to address the systemic issues that contribute to disproportionality.

Listening to, Elevating, and Incorporating Family Voice

ACS has a tremendous responsibility to serve children, parents and the public. For our efforts to be successful, we must build relationships with communities so that we can provide the right services to the right families at the right time—to both prevent tragedies and ensure families have what they need long before there is a crisis. The only way for us to do this is to listen to, elevate, and incorporate the voices of parents, caregivers and children, including those who currently or previously experienced a child protective investigation, participated in prevention services, served as foster parents, or were in our foster care system.

ACS has long understood and valued the role parent advocates can play early on in our cases when parents coming to the attention of our system understandably have many questions and concerns. To provide support for parents during the Initial Child Safety Conference where families and the ACS child protective team meet to develop a

child safety plan, ACS contracts with two community-based organizations to provide parent advocates. Parent advocates can draw on their extensive personal and professional experiences to support, counsel and guide parents.

This past spring, we achieved a new milestone with the addition of a new staff position at ACS, Parent Engagement Specialist, to increase the crucial work of empowering and engaging parents with lived experience in the design, development and implementation of ACS policies and programming. Sabra Jackson, a highly experienced parent advocate with lived experience, who previously worked at the Child Welfare Organizing Project (CWOP) and the Center for Family Representation (CFR), has served in this role since April. She has brought her wealth of experience and invaluable perspective to the agency, including through spearheading a new Commissioner's Parent Advisory Council.

While we at ACS want to hear directly from parents and children, we also meet regularly with advocates and lawyers for children and parents, so that we can hear their concerns, suggestions and feedback. We greatly value the role our colleagues play in bringing their expertise and experience on the ground to our attention. We regularly engage in collaborative problem-solving together and believe strongly that these joint efforts benefit the children and families we collectively serve.

The interdisciplinary team approach used in New York City, with parent advocates working side by side with lawyers and social workers at the parent legal organizations, was recently evaluated and shown to decrease foster care length of stay.

We are strongly encouraging other child welfare programs to adopt NYC's model of multidisciplinary parent and child representation, especially with new federal funding now available for that purpose. For example, I was part of a NYC delegation with representatives of the Family Court and the Center for Family Representation that provided guidance to child welfare leadership in Oakland, California on our representation model.

City Council Legislation

The large package of bills that we are here to discuss today certainly shows that the City Council shares our vision of ACS as the progressive child- and family-serving agency that we strive every day to be. I will comment briefly on each of the bills, and we look forward to working with you on them in more depth.

- **Int. 1717-2019: Demographic Reporting and Plan to Address Disparities**

Int. 1717 would amend the administrative code of the City of New York to require ACS to produce an annual report of demographic information, including race/ethnicity, gender and income level for each step in the child welfare system by parent and by child, and then to create a plan to address the disparities.

As previously discussed today, ACS has conducted a thorough data analysis and created an Equity Action Plan. We look forward to meeting with the bill sponsors to discuss our current Plan and ACS's actions to address disparities in our system.

- Int.1716-2019 and Int. 1727-2019: Emergency Removal Data

Int. 1716 and Int. 1727 would both amend the Local Law 20 of 2006 child welfare indicators report to add a section on emergency removal data. Whenever possible, ACS seeks a court order prior to removing children from their families. As discussed more fully at last November's hearing focused on child protective removals, if the CPS worker, in consultation with his or her supervisor, manager and Deputy Director, believes that a child is at imminent and emergency risk of serious harm and there is not enough time to seek a court order in advance, the law authorizes CPS to conduct an emergency removal. This most often happens on weekends and at night, when the court is closed, and when there is no immediate intervention available to keep the children safe.

ACS looks forward to discussing the two proposed data reports on emergency removals with the City Council.

- Int. 1719-2019: Reporting on youth in foster care

Int. 1719 would amend the Local Law 20 of 2006 report to add a new section for ACS to report on the length of time between a child and parent's first contact after a child enters foster care, and to report on the number of foster youth placed into care in their home borough.

"Family time" is a key priority for ACS, and enhancing family time is an important recommendation from the Foster Care Task Force. We know that regular parent/child visits and contact can help minimize trauma and speed reunification. Given the

importance of having the first parent/child visit within two days of foster care placement, which is our policy, I directed my team to take a deep look into barriers that may inhibit this, so that we can address them. Through this analysis, it became clear that ACS is trying to accomplish many things in that initial two-day period: parent/child visit; parent to parent meeting with the foster parent and parent; transition meeting between child protection staff and foster care agency staff; and likely also a court appearance. Aside from mandatory court appearances, the parent/child visit is our top priority to meet within the two-day deadline. We are in the process of issuing revised guidance to ACS and agency staff that prioritizes the visit and should better ensure children see their parents within two days of removal. We also recognized the need for ACS and agency staff to implement more standardized data entry practices within the State Connections system, so that ACS can track the first visit in a way that can be aggregated for monitoring purposes.

As for borough-based placement, it is important to keep in mind that when children come into foster care there are a number of considerations when determining the best placement. While we want to place children in their home boroughs, our first priority is to place children with either a family member or someone else the child knows well, when they are available and willing. This preference for kinship placement, which research shows produces better outcomes for children and youth, is a key factor that often impacts whether or not a young person is placed in their home borough. ACS has focused on increasing placements with family members, and this past year, 40% of children and youth entering foster care were placed with kinship caregivers.

We look forward to discussing this bill further with the sponsors.

- Int. 1728-2019: Provision of Counsel at the First Point of Contact

Int. 1728 would direct ACS, subject to appropriation, to contract for legal services for parents and caretakers immediately after the initial point of contact. The bill defines legal services to be brief assistance or full legal representation.

As the Council is aware, New York City has a nationally recognized model of multidisciplinary parent advocacy and legal representation, one which we hope will be widely replicated with new federal funding. The institutional legal programs provide attorney and social worker teams, along with access to parent advocates, for all cases as soon as legal action in Family Court is initiated. ACS and NYC have long supported their work, and they are funded through the Mayor's Office of Criminal Justice (MOCJ).

We strongly believe that parents and children should have legal representation once legal proceedings begin, to ensure that their rights are protected and that the decisions of the Family Court are fully informed by all perspectives. We have a number of questions and concerns about the provision of legal counsel to parents and caretakers at the first point of contact by ACS. We are concerned that this approach conflates investigative and legal processes in a way that could unnecessarily increase burdens on families; that it would expand litigation and Family Court involvement dramatically; and that it would require enormous financial and personnel resources to implement.

The goals of our initial investigation are to understand what may or may not have happened to a child, and to connect families to the services they need, and those steps

are dependent on our ability to engage parents and caretakers in a social work interaction. Invoking legal representation at this stage could undermine our ability to accomplish these steps. We also believe that it could violate the Social Services Law confidentiality provisions if ACS was to inform a lawyer, not yet representing a parent, of the name and/or address of a family about whom an SCR report was received.

In situations of imminent danger to children, the involvement of an attorney at the beginning of an investigation, who might feel obligated to minimize their client's risk and liability by advising a parent not to allow ACS into the home or to see the child, could create serious safety issues by slowing down the investigative process. It would also likely increase court filings, as ACS would be required to seek a court order to fulfill our legal obligations to assess child safety. The unintended consequence of this could be additional trauma for the children, because NYPD accompanies ACS when entry orders are needed. These additional court filings and adversarial processes will likely impact thousands of cases that currently never need legal intervention, as the majority of investigations are unfounded, and only a fraction of indicated investigations result in a court petition.

ACS conducts approximately 55,000 investigations each year, 7 days a week, 24 hours a day. If each parent or caretaker in the home, ACS, and the children were all to have a lawyer, each interaction could turn into a legal proceeding rather than social service engagement. It would create an explosive workload for attorneys and would consume enormous financial resources.

ACS appreciates the need for parents to understand their legal rights and the investigatory process. ACS also has an obligation to assess child safety, and children have a right to be free from abuse or maltreatment. We look forward to discussing ways to achieve all of these important goals with the bill sponsors.

- Int 1715-2019: Provision of Counsel at Fair Hearings Following an Indicated Report

Int. 1715-2019 would require ACS to establish a program to provide parents and persons legally responsible with access to legal services at fair hearings following an indicated report in an ACS investigation.

ACS appreciates the desire for parents to have legal representation at fair hearings, which in this instance are a legal proceeding for a state hearing officer to determine whether ACS's determination to indicate a case shall stand or be overturned. Given the volume of legal services this bill would entail, we believe it would be very expensive to implement, and we welcome further discussion with the bill sponsor.

- Int. 1729-2019, Int. 1736-2019 and Int. 1718-2019: Bills to Require ACS to Provide Information to Parents and Caretakers

ACS agrees that parents and caretakers should have information at the earliest stage about the child protection investigative process, as well as their rights during an investigation, after a case has been indicated, and the resources available to them, all in a language that they understand.

I discussed earlier how ACS child protective staff are extensively trained on communications with parents, at the initial point of contact. At that time, ACS gives

parents the state-required Notice of Existence form and an ACS-produced “Parent’s Guide,” which was recently revised to incorporate suggestions from parents and other advocates. Both the form and the guide are available in the 10 most common NYC languages. The Parent’s Guide also gives the parent information about our Office of Advocacy. When a case is indicated or unfounded, families receive a letter from State OCFS, which explains the case outcome and provides information on how to appeal or seek expungement.

ACS looks forward to discussing these bills, along with the information and documents already provided to families, with the bill sponsors.

Conclusion

We know that any child protective investigation can be an intrusive process. While we have a legal mandate to assess and protect child safety, we are mindful that government authority to take protective actions, up to removing children from their parents in the most serious cases, is an enormous responsibility. Balancing these two key matters—government intervention in families and protecting vulnerable children from harm—is both the challenge and the core of the work of child welfare. And we do all of this within a system that we know disparately impacts different communities, particularly communities of color.

I have talked today about the innovative ways that ACS is meeting this challenge, and we welcome the Council’s partnership in this effort. We believe that raising the indication standard from “some credible evidence” to “a fair preponderance of the evidence” will help to better calibrate this balance. Within ACS, we continue to enhance

training, supervision, monitoring, oversight and assessment tools, so that our child protective staff are equipped to make the best decisions possible when working with children and their families. Finally, with implicit bias training, affirming policies, and specific efforts to ensure that our services are culturally appropriate, we are working to reduce disproportionality and to build a 21st century child welfare system that better supports and strengthens all families.

Testimony of Susan Chin of District Council 37 on behalf of Anthony Wells, President of
SSEU Local 371, DC37
Before the New York City Council Committee on General Welfare
On Proposed Introduction No. 1728-2019
October 31, 2019

Chairperson Levin, Members of this Committee, and Council Members, thank you for giving me the opportunity to provide my testimony on Intro Number 1728. My name is Susan Chin and I am the Assistant Director of District Council 37.

I am here on behalf of Anthony Wells, President of Local 371, DC37's second largest local with a membership of 20,000 which includes close to 3,000 workers that would be affected by Intro Number 1728.

Our workers are on the frontlines every day, actively going to places where our vulnerable children are and ensuring all children in this city are safe, healthy, and given all the opportunities that they deserve. These workers embody the true spirit of public service-- fighting for those who cannot fight for themselves. In spite of challenges both big and small, our workers transcend these difficulties and protect our children in vulnerable conditions when their caretakers fail to do so.

~~We~~ We applaud this Council's efforts to improve rights and services for all New Yorkers including universal legal representation in housing courts and expansion of immigrant services to strengthening healthcare and improving city services.

To be abundantly clear, we do not oppose the principle behind expanding legal representation. We celebrate the intent of this body's proactive measures to bolster and create additional protections for those who are in need. In fact, as a Union, we hold representation as a sacred right and our workers exercise this right every day.

However, we are concerned with the unintended consequences of this bill that may negatively impact the welfare of children. We are also seeking clarification on the language of this bill.

There is a comprehensive set of existing protocols including a document outlining the rights of caretaker—including the right to legal representation—that are physically given by our workers. Is this bill achieving something different or is it simply codifying the existing protocols?

Is the bill's intent to have an attorney accompany our caseworkers during any and all possible contacts with caretakers? Or does our worker inform the caretaker and wait for an attorney to arrive?

Time and identifying exigent circumstances are critical in ensuring the safety of our children. If there is a wait for an attorney, are we expecting our workers to wait and delay any action or are we expecting our workers to go to another location and face similar delays? Given the workload with critical safety concerns of our children, we are troubled by the prospect of delayed cases and investigations when children's lives are at stake. There are many existing Federal, State, and local laws that mandate actions based on visits and investigations and this bill may run afoul with the existing laws.

We are also troubled by the possibility of caretakers hiding behind the request for legal representation to delay or hide circumstances that may lead to our workers taking immediate action.

Another unintended consequence of this bill may occur long after the investigatory stages. If a case goes to a court hearing and the initially assigned attorney is called to testify on the conditions of a child or home, is the attorney expected to break attorney-client privilege and possibly incriminate the caretaker? Certain conditions of a child or home may be in active criminal neglect so per attorney ethics and duties, aren't they obligated to report an active crime or the possibility of crimes that may be committed in the future?

I want to reiterate the Union's commitment to working with this body to ensure that rights are properly exercised without negatively impacting the safety of our children.

Thank you for allowing me to submit my testimony and I am happy to take any questions that this Committee and Council Members may have.



CITIZENS' COMMITTEE for CHILDREN
OF NEW YORK INC

Testimony of

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

Presented to the
New York City Council
Committee on General Welfare

Oversight Hearing: Administration for Children's Services

October 31, 2019

Good afternoon. My name is Meryleen Mena and I am the Policy and Budget Analyst at Citizens' Committee for Children of New York, Inc. (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.

Thank you Chair Stephen Levin and all the members of the General Welfare Committee for holding today's oversight hearing on the Administration for Children's Services (ACS). The bills reviewed today take critical steps towards ensuring child safety and permanency. In this hearing, I will highlight what CCC views as three priorities: first, **prioritizing child safety**, second, **strengthening families** and keeping them **together when possible**, and last **system accountability and reporting** to better meet the needs of children and families.

We are here today as advocates and stakeholders first and foremost to protect the well-being of children that come into contact with the child welfare system. Last year, ACS investigated nearly 60,000 cases of child abuse and neglect¹ and served over 25,000 children and families, through community-based preventive services programs.² It's important to note that Black and Latinx children are over-represented in the foster care system, making upwards of 84.5% (of the population³ despite being 51% of the total population in New York City.⁴ In addition, Black and Latinx make up nearly 80% of investigated cases of child abuse and neglect.⁵ Moreover, over 70% of cases under ACS's purview are cases linked to economic insecurity, resulting in neglect due to unmet medical, food, shelter, education, and other basic needs.

CCC's research,⁶ suggests that the most effective child welfare system is one that prevents abuse or neglect from occurring in the first place. An effective child welfare system also prevents the need for foster care when there is risk by providing services that support families. Supporting families during a time of vulnerability prevents the trauma of removal while also strengthening a family's ability to provide a safe home for their child. To that end, CCC's advocacy has focused on ensuring that child welfare financing supports preventive services. However, when a child is

¹Keeping Track Online: The Status of New York City Children. Child Abuse and Neglect Investigations, 2018. Retrieved from: <https://data.cccnewyork.org/data/map/3/child-abuse-and-neglect-investigations#3/a/3/5/40/a> Accessed on: October 28, 2019.

² New York City Administration of Children's Services. Data and Policy page. Retrieved from: <http://www1.nyc.gov/site/acs/about/data-policy.page> Accessed on: July 29, 2019.

³Indicator Data: Citizens' Committee for Children of New York. Keeping Track Online: The Status of New York City Children. Foster Care Placements, 2013. Retrieved from: <https://data.cccnewyork.org/data/map/27/foster-care-placements#1199/12/1/1342/14/a> Accessed on October 29, 2019.

⁴ Indicator Data: Citizens' Committee for Children of New York. Keeping Track Online: The Status of New York City Children. Total Population, 2017. Retrieved from: <https://data.cccnewyork.org/data/map/97/total-population#84/17/3/129/25/a> Accessed on October 29, 2019.

⁵ Indicator Data: Citizens' Committee for Children of New York. Keeping Track Online Database: Race and Ethnicity, 2018. Accessed October 31, 2019.

⁶ Citizens' Committee for Children of New York The Wisest Investment: New York City's Preventive Service System. Retrieve from: <http://www.cccnewyork.org/wp-content/publications/CCCReport.WisestInvestment.PreventiveServices.April2010.pdf> Accessed on: October 28, 2019.

in danger, there must be a proper system in place to protect them. When CPS investigations are necessary, we must ensure that the system can respond in a manner that minimizes further trauma and harm to the child or children.

Allegations of abuse and neglect are serious and child safety is the agency's first responsibility. At the same time, parents' rights are critical and must be protected as an additional measure for child and family stability and well-being.⁷ Child protective services investigations can have long-term consequences for a parent or caregiver and their child or children. For these reasons CCC supports parents' rights to legal representation. Without question, it is imperative for families to know their rights, and in particular, the right to counsel; it is a right that families of greater means would undoubtedly exercise, and yet, we know that families who come into contact most frequently with ACS do not equitably exercise this right due to limited means.

As it relates to Int. 1728, CCC has significant concerns about the logistical feasibilities and challenges to implementation despite the positive intent of the bill. Several partners and ACS have raised concerns regarding the potential of this bill to dramatically change the nature of ACS involvement by making the investigation process more adversarial and potentially resulting in greater numbers of removals and compromised safety as well as permanency goals.

And yet, research examining the combined use of peer advocates, social workers and attorneys in interdisciplinary teams to represent parents has demonstrated positive outcomes in child welfare cases. Recent studies suggest that in child welfare cases, a parents' access to high-quality interdisciplinary teams, including legal counsel, significantly reduced the amount of time children spent in foster care, and was a strong predictor in the likelihood of families staying together, without compromising child safety.⁸ Perhaps best practices can be replicated in these efforts with greater examination. Moreover, it is our understanding that this model of family/parent representation during an investigation has been tried in New York City between 2004 and 2005 and demonstrated promising results. Recently, City Council has funded a pilot that also supports early access to legal representation. CCC urges careful review of findings and outcomes from early and current models to inform how the bill might be strengthened. Unfortunately, the bill as written has numerous challenges that must first be clarified.

As it relates to Int. 1728, we humbly ask the Committee to consider the following:

- When and by whom would counsel be assigned?
- What would be the duration of the representation?
- What protections and assurances will be put in place to ensure timely fact finding?

⁷ New Push to Provide Legal Advice to Parents Facing Abuse and Neglect Investigations by Rachel Blustain, 2019. Retrieved from: <https://citylimits.org/2019/01/08/new-push-to-provide-legal-advice-to-parents-facing-abuse-and-neglect-investigations/?all=1> Accessed on October 29, 2019.

⁸ Effects of an interdisciplinary approach to parental representation in child welfare by Gerber et al., 2019. Retrieved from: <https://www.sciencedirect.com/science/article/pii/S019074091930088X> Accessed on October 28, 2019; "Moving Beyond Lassiter: The Need for a Federal Statutory Right to Counsel for Parents in Child Welfare Cases" by Vivek S. Sankaran, 2017. Retrieved from: <https://repository.law.umich.edu/cgi/viewcontent.cgi?article=2930&context=articles> Accessed on October 29, 2019.

- Who holds these contracts? CCC strongly believes that the responsibility of counsel should sit with an independent entity outside of ACS.
- Who gets to bid for these contracts? It is imperative that there be a standard of expertise required in both child welfare and family court policy for contracts to be awarded.

Similarly, regarding Int. 1715, while CCC supports the right to representation at fair hearings, the bill as currently written is vague and would benefit from further clarification in definitions related to “brief legal assistance”. Moreover, as is the case with Int. 1728, CCC strongly recommends that any counsel services be delivered by an independent entity outside of ACS to avoid any conflict of interest.

CCC has a long history in fact-based advocacy and data-driven methods. We support policy that is grounded on data and support the use of publicly available data to inform policy. To this end, we support bills (Int. 1716, Int. 1717, and Int. 1727) that build on greater systems of accountability and reporting.

Additionally, we strongly support policy that promotes the dissemination of information to parents and caregivers, including ensuring that all verbal and written communications are accessible and address language barriers (Int. 1718., Int. 1729, Int. 1736, and Resolution 736). CCC also support efforts to inform children of their rights in language that is age-appropriate and accessible to them.

Additionally, we support Resolutions: 1057 and 1066, which focus on the expunging of records from the State Central Register (SCR) for cases that were dismissed in family court, and to reduce the length of time parents and caregivers remain on the SCR list, respectively. SCR reform is good for families and communities. New York currently has the lowest standard to substantiate an allegation of child abuse and maltreatment: only “some credible evidence.”

CCC looks forward to continued partnering with the Council to improve outcomes for families and children in the child welfare system.

Thank you for the opportunity to testify.

Respectfully,

Meryleen Mena, Ph.D.

CACF Coalition For Asian American Children+Families

New York City Council
Committee on General Welfare
Oversight Hearing
October 31st, 2019

Testimony of Tasfia Rahman,
Policy Coordinator, Coalition for Asian American Children and Families (CACF)

Good Afternoon. My name is Tasfia Rahman, and I am a Policy Coordinator at the Coalition for Asian American Children and Families (CACF). We would like to thank Chair Levin and members of the committee for holding this hearing today.

Since 1986, CACF is the nation's only pan-Asian children and families' advocacy organization and leads the fight for improved and equitable policies, systems, funding, and services to support those in need. The Asian Pacific American (APA) population comprises over 15% of New York City, over 1.3 million people. Yet, the needs of the APA community are consistently overlooked, misunderstood, and uncounted. We are constantly fighting the harmful impacts of the model minority myth, which prevents our needs from being recognized and understood. Our communities, as well as the organizations that serve the community, too often lack the resources to provide critical services to the most marginalized APAs. Working with almost 50 member organizations across the City to identify and speak out on the many common challenges our community faces, CACF is building a community too powerful to ignore.

APAs are by percentage the fastest growing community in New York City, doubling every decade since 1970 and constituting close to 14% of the population. Despite our rapid population growth and these disparities, APAs are often not connected to vital social services and seen as a lower priority for attention and resources. Consider:

- Almost a quarter of Asian Americans live in poverty in NYC.¹
- Asian Americans are heavily immigrant with 70% foreign-born.²
- Asian Americans have the highest rate of linguistic isolation of any group in the City at 42%, meaning that no one over the age of 14 in the household speaks English well.³
- Currently, about 40% of our community is eligible for and receives Medicaid.

This data, although helpful in beginning to paint accurate pictures of our community needs, is mostly aggregate and fails to shed light on the various unique struggles among specific Asian ethnic communities. Many times, we are not accurately counted and our needs remain misunderstood and unaddressed. In data collection efforts across the City, including at ACS, our communities are many times mistaken in our ethnic or language backgrounds and needs OR relegated to the category "Other". This lack of accurately collected data and information on the

¹ 2019 NYC Poverty Measure Annual Report, Office of the Mayor.

² 2013-2017 American Community Survey 5-Year Estimates.

³ U.S. Census Bureau, 2016 American Community Survey.

CACF Coalition For Asian American Children+Families

community, coupled with a lack of accessible information and entry points for APA children and families who require resources and services, is often erroneously equated to a lack of need or risk within our communities.

APA families face the following barriers in navigating the child welfare system:

- **Language:** Many APA and other immigrant families who come into contact with the child welfare system struggle with limited English proficiency (LEP). In its own language access and policy implementation plan, ACS recognized nine "priority languages" based primarily on the high frequency of requests for child welfare and child care services in these languages. Five of these "priority languages" were Asian: Chinese, Arabic, Korean, Bengali, and Urdu.⁴
- **Culture:** APA families may engage in child rearing and disciplinary practices that reflect the cultural norms of their countries of origin, but are considered potentially harmful here.
- **Lack of familiarity:** APA families are often uninformed about child welfare laws, the role of ACS, or the availability of resources for at-risk families. For undocumented families, this lack of familiarity is exacerbated by the fear that interacting with government agencies will result in punitive action or even deportation.

As a result of these barriers, Asian Pacific Americans experience great difficulty in communicating with ACS and other child welfare staff, understanding and exercising their rights, and accessing critical support services that strengthen families and improve child safety. Unfortunately for many in the APA community, including those most disenfranchised and struggling such as many in the Southeast and South Asian communities, there are still very few and limited culturally competent and language accessible preventive service options.

APAs struggle not only with a lack of culturally competent options for services, but also struggle with a cultural stigma regarding receiving government services. The recent federal proposals and mandates such as changes in Public Charge serve to alienate and punish immigrants, especially those who are undocumented. This has only increased the amount of misunderstanding and fear among our communities regarding accessing City services, and driven those who require services to remain in isolation.

As reported by many of our APA organizational members, language barriers that still exist within the child welfare system in New York City include: a mismatch in interpretation services with requested language/dialect; lack of quality interpretation and interpreter bias; delays in interpretation; and poor-quality translations of written materials. Limited access to culturally competent, linguistically accessible services in child welfare services and other settings lead to potential misunderstandings of family needs; and make navigating systems impossible for individuals struggling with Limited English Proficiency (LEP), cultural barriers and lack of knowledge or familiarity with existing systems of care. This should be considered part of the definition of high risk that draws the City's funding and attention for innovative preventive

⁴"Language Access Policy and Implementation Plan," New York City Children's Services. Available at http://www.nyc.gov/html/acs/downloads/pdf/lap_acs.pdf.

CACF Coalition For Asian American Children+Families

programming, yet our APA immigrant communities and the community organizations serving them have traditionally been left out of the dialogue in this regard.

We would like to acknowledge the recent efforts of ACS to work with CACF and invite in and understand some of our APA community needs. Our community has been invited to meet regularly with ACS leadership and we hope to see our various issues and priorities identified reflected in the agency's continued engagement.

Still, there remains much to be done and multiple families are languishing without enough data and understanding of community needs, and without appropriate preventive services. Improving language access and cultural competence within ACS is crucial to the APA communities. All services should be linguistically accessible at all access points (phone, mail, website and in-person). City agencies must go beyond simple translation and interpretation services. Sustained oversight is needed to ensure that strategic policies and investments targeted at ameliorating the cultural gap between immigrant communities and child welfare systems are implemented.

We are in support of pieces of legislation considered here today, especially the following in regards to the APA community:

Int 1716-2019, Int 1717-2019, & Int 1719-2019 should be enacted in order to ensure that the unique needs faced by the range of APA communities are assessed accurately. We recommend that any demographic data on the community collected should be disaggregated according to Local Laws 26 and 27.

Int 1718-2019 and all other legislation considered should be implemented by guaranteeing that the diverse language needs of the APA community are met in order to help parents and avoid culturally-based misunderstands between ACS and families.

Overall, we would like to emphasize the consistent need to address the cultural gap between ACS and APA families. Often in the past, many of our organizations have participated in cultural brokerage, however for there to be strong, effective systemic change, the agency needs to take more active steps, including well resourced partnerships with community organizations, to bridge this gap and addressing the barriers that our families face in the child welfare system.

Thank you for the opportunity to testify. We hope that the City Council will continue to be a champion for New York's most vulnerable children and families.



Leadership, voice and vision for child welfare in New York State

FOR THE RECORD

Council of Family and Child Caring Agencies
Testimony Presented by Lisa Gitelson, Associate Executive Director
City Council
Committee on General Welfare
October 31, 2019

Good afternoon, Chairperson Levin and all Council Members. I am Lisa Gitelson and I am the Associate Executive Director of the Council of Family and Child Caring Agencies (COFCCA). Our member agencies include over fifty not-for-profit organizations providing foster care, adoption, family preservation, and juvenile justice services in New York City and over 100 agencies providing the same services Statewide. On behalf of our member agencies, their thousands of employees, and mostly on behalf of the tens of thousands of children and families that our agencies serve, we thank you for the opportunity to testify before you today.

As the City continues its strong commitment to keeping our children and families safe while seeking the most expeditious permanency, it is imperative that the Council takes into consideration all of the impacts of the proposed resolutions and bills seeking to secure this safety for all.

Package of Proposals

COFCCA supports the bulk of the proposals and applauds the intentions and work of the Council Members who have together presented this package.

We agree with the sentiments of Chairperson Levin in his statements at the City Council Meeting, September 25, 2018, "The bills we're introducing today with my colleagues will bring greater accountability, transparency..." ACS and the Voluntary Foster Care Agencies believe in accountability and transparency in all of the work that is done to serve the families of NYC. We do want to make certain that ACS is fiscally supported to do the work that will be required to produce the data to show the accountability and transparency required by this package.

We further support the statement of Council Member Adams at the City Council meeting on September 25, 2018, "We must do everything possible to prevent unwarranted separations especially for those who are only guilty of parenting while poor or black or immigrant." Every child should be safely with their family. Every family should have a safe home. There must be racial/economic/immigrant justice for all of our families.

Int. No. 1728

Where we disagree with the package is at the intersection of social work intervention and legal representation. Initial meetings with ACS are social work interventions and the introduction of legal representation will immediately change the nature of the work and shift the focus from



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safety and permanency to litigation and adversarial positions. Introducing an attorney for one party, by its very nature, introduces the introduction of attorneys for all parties. Attorneys are not trained to advise as to safety and permanency matters, nor should they give opinions that would impact those determinations. Social work staff and those supervised by social work staff are trained in safety and permanency and are the people who should be involved in these determinations. Attorneys are trained in advocacy and litigation and should be involved to either present or defend a case presented in a courtroom.

Involving attorneys at the outset of a case will by the nature of the work, change the tenor from a social work intervention to an adversarial setting. Decisions will need to be made regarding safety without the benefit of a full social work evaluation once this happens. None of us want safety to be compromised. All of us here today agree that the safety of all of NYC's children and families is paramount.

Recommendations

COFCCA believes that ACS staff, who are well-trained in every aspect of safety, is the correct team to be at the initial contact and at contacts until and if there is a decision to file in court. Understanding the Council's concerns and possible disagreement with this position, we would recommend a further examination and discussion of the manner in which the social work interventions happen, rather than ending the social work intervention in preference for a legal one.

I would be happy to answer any questions the Council members may have.

I thank you for allowing me to submit testimony.

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**Center for Family Representation (CFR)**  
**Submitted Testimony for the Committee on General Welfare**

**Hearing Date: October 31, 2019**

CFR is grateful for the opportunity to submit testimony on the slate of bills being proposed by members of the Progressive Caucus. We thank Chairman Levin and the General Welfare Committee for their focus on these important issues.

**Overview of CFR**

The Center for Family Representation (CFR) is the assigned indigent defense provider for parents who are Respondents in abuse and neglect proceedings in Queens and Manhattan family courts. CFR was founded in 2002 to support indigent parents in raising their children safely and minimize the City's reliance on foster care. Currently, pursuant to a contract with the New York City Mayor's Office of Criminal Justice (MOCJ), CFR represents an average of 1,000 new clients each year in these proceedings, and in supplemental proceedings like custody, guardianship, visitation and termination of parental rights cases. We also provide representation on interim appeals and at least 10 final appeals a year. Since becoming a high volume provider in 2007, CFR has served over 10,000 parents with more than 20,000 children.

We also provide intensive assistance to recently reunified families in securing day care, school placement, public benefits and other services. Our goal is to prevent foster care. In those instances where foster care is unavoidable, our goal is to shorten the time children spend in care and to prevent their re-entry into care. On average 50% or more of our client's children avoid foster care altogether, and for those that do enter care, the average time they spend in care is half as long as the citywide average prior to when CFR became a high volume provider.

In each of our practice areas CFR employs an interdisciplinary model of representation, marrying in court litigation to out of court advocacy. Every parent is assigned an attorney and a social work staff member at intake, which is generally the first day a parent is summoned to court and could be after a removal of their children.<sup>1</sup>

CFR social workers ensure clients receive individually tailored services, such as drug treatment, counseling, and educational or day care services for their children, which specifically address the needs of each particular family. Many critical decisions are made outside of the court context at family team conferences, and related foster care and child protective meetings. CFR social work staff accompany parents to these conferences and meetings, to confirm that appropriate services are in place and to advocate for parents if a service plan is inappropriate. Inappropriate service plans, which often include numerous services that are unrelated to the concerns that brought a family into contact with ACS, create strains on the family that will undermine their chance of being reunified or staying together. An inflated and inappropriate service plan may interfere with visits, employment, and can be unaffordable.

CFR also employs parent advocates, who are parents that have had their children removed by ACS and were able to successfully work within the system to achieve reunification. Parent advocates provide support to parents in crisis as well as provide advocacy in securing and maintaining public benefits. Throughout the course of the case our attorneys, social workers, and parent advocates are in constant communication with attorneys for ACS, attorneys for children, caseworkers, foster care case planners, judges, and other court personnel.

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<sup>1</sup> In addition to our Family Defense practice, CFR's Home For Good practice includes the following practice areas: adult criminal court, housing and public benefits, immigration, and Re-entry Prevention.

Below we detail the concerns we have about some of the legislation being proposed, based upon this experience.<sup>2</sup>

### **Legal Services and Access Legislation** 1715, 1718, 1728, 1729, and 1736

CFR strongly agrees that there is a need for increased accountability for ACS. The Family Court Act (FCA) entrusts the government, here ACS, with a significant amount of power to inject itself into the family unit. Nearly every family that is investigated by ACS is poor, black or brown. Essentially none of these families have any knowledge of how the child protective system works or their rights during an investigation.<sup>3</sup> When a parent opens their door to ACS there may be one caseworker standing there, but that caseworker has been trained to interrogate parents, sometimes by the NYPD Police Academy.<sup>4</sup> The caseworker also has access to legal advice about how to proceed with their investigation, training with the court process and, under certain circumstances, the ability to remove a child from his or her home. While many parents with means would immediately call an attorney if a caseworker were to contact them, the families that ACS usually investigates and prosecutes do not have that ability.

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<sup>2</sup> For clarity, we have organized these bills into 3 categories: Legal Services and Access, Reporting, and Resolutions.

<sup>3</sup> In November 2018, it was announced that the city was investing \$10 million dollars in new training facilities in Queens and Harlem to aid in the training of caseworkers. According to a New York Daily News article, the curriculum included training caseworkers to know when to “get tougher”. Commissioner Hansell is quoted in the article as saying the inspiration for the “simulation centers was inspired by what caseworkers started going through at the NYPD Police Academy last year”. Thomas Tracy. 2018. ‘Exclusive: Childrens Services case managers to get real-life home visit experience in simulated settings’. *New York Daily News*. November 28, 2018. Available at: <https://www.nydailynews.com/new-york/ny-metro-acf-fun-house-training-20181124-story.html>. Accessed on: October 27, 2019.

<sup>4</sup> <https://www1.nyc.gov/assets/acs/pdf/PressReleases/2018/SimulationCentersRelease.pdf>

caseworkers are currently not required to inform parents of their rights. They do not inform parents that they have the right not to speak with them and could instead seek out the advice and counsel of an attorney. Many of our clients report that they were threatened by caseworkers that “they must” engage in these conversations or risk having their children removed. Parents are not told that, absent a court order, they do not have to allow the caseworker to interview their child or conduct a physical examination of their child. Many parents of means may feel comfortable refusing to allow a caseworker to enter their home or speak to their children. However, families who rely on public housing, the shelter system, public benefits, have immigration concerns, or have been involved in the child welfare system in the past feel compelled to allow the caseworker entrance to their home or access to their children. An added benefit of requiring caseworkers to inform parents of their rights, is that the caseworkers will become more familiar with them, though ongoing training would be necessary.

Parents may also be reluctant to agree to engage in services, for fear that the worker is not sympathetic to their family’s specific needs. Even parents who feel that they need assistance may be fearful of admitting that to a caseworker because they do not want to make their situation worse.

There is a common misconception that parents attorneys are not concerned with what is in the best interests of the child. However, our clients are often in the best position to know what is in their own children’s best interests and what services would be most helpful to their families. We know that our clients want their children safe at home, which means engaging in appropriate services or allowing a family member, friend, or certified foster parent to temporarily care for them. We can assist our clients in making these decisions.

One CFR client, Ms. D, was recently investigated by ACS following an anonymous report to the State Central Registry (SCR). She allowed the caseworker to enter and inspect her home. Ms. D was unaware of her right to deny the caseworker entry or that she could seek legal advice before speaking to her. During this visit, Ms. D was not informed of the allegations being investigated despite her asking multiple times. A few weeks later, Ms. D received a letter under her door indicating that a conference had taken place three days prior. Ms. D was unable to reach the caseworker or the caseworker's supervisor to determine whether the date was correct or the result of typo, despite making multiple calls. She lacked the resources to seek legal advice and did not know what her options were. She began to question whether ACS was actually investigating her family. Ultimately, ACS did file a petition against Ms. D and asked the Court to remove her children. CFR was assigned to represent Ms. D on the day this petition was filed. We started a hearing on the same day and were successful in keeping Ms. D's children at home. We believe that if Ms. D had been informed of her rights and able to speak with an attorney or social worker during the ACS investigation, the filing could have been avoided. ACS should be required to provide parents a written notice of their rights and parents should have access to counsel when being investigated by ACS.

In 2004 and 2005, CFR and ACS piloted a program, Project Engage, to connect CFR and families during the initial stage of a case. Project Engage was a unique partnership between CFR and ACS that supported parents in Harlem. In a small number of cases, ACS agreed to refer a parent to CFR's interdisciplinary staff at the point in an investigation when an 'elevated risk' was identified by ACS workers. ACS and CFR would meet with the parent, his or her community supports and any providers already working with a family together. The goal of the

conference was to determine if a removal would be necessary or could be avoided. The program worked - 80% of the families supported by Project Engage, were able to avoid a child protective removal or a filing in family court. However, the program, which was funded by New York State's Office of Children and Family Services, was discontinued after an unrelated child fatality led ACS to redirect its resources and efforts to protective investigation.

CFR has always engaged in some investigation stage advocacy. For instance, we work with former and current clients during pregnancies in preparation for possible ACS filings. When a client has a case pending in family court, and is expecting another child, it is common for ACS to file a new petition regarding the new baby upon its birth. If the older child is in foster care, ACS often asks that the new baby also be removed. We attempt to avoid these results by planning with the expecting client and making sure necessary services are in place prior to birth, and thus prior to a petition being considered, let alone filed.

CFR is grateful that the City Council chose to award us, and the other institutional providers, funding to do more early defense work. In addition to representing parents, we also look forward to the opportunity the funding provides to engage in more community based training and education aimed at ensuring parents know their rights during ACS investigations. When we talk about the need for parents to have access to counsel during investigations, opponents often raise concerns about the process becoming "too litigious." They even question whether it would jeopardize child safety. To be clear, there are already attorneys involved in the ACS investigation process. They are called Family Court Legal Services (FCLS) attorneys and they work for ACS.<sup>5</sup> Caseworkers are able to consult with FCLS attorneys throughout their

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<sup>5</sup> There are also FCLS attorneys based at the city's Children's Advocacy Centers (CAC) that consult with caseworkers and NYPD officers. caseworkers are able to use this assistance when conducting their investigations. Parents are often sent to CAC when there are allegations of physical or sexual abuse.



investigations. The statements parents make to caseworkers are often included in petitions or used in Court. Parents are often encouraged to share information that may not directly relate to the reason that ACS was initially called to the home to begin with.<sup>6</sup> Once the matter comes to Court it is the parent's word against the caseworker.

Part of the success of our early defense work is due to our ability to develop trusting and confidential relationships with our clients. Parents are sometimes hesitant to rely on assigned counsel. Our clients sometimes question whether we work for ACS or the court system when we are first assigned. That sentiment is rooted in stereotypes of public defenders and a general mistrust of the child welfare system. It is crucial that parent defense providers maintain their independence from ACS. Not only is such independence required ethically but it is also critical for parity between parents who are poor and those with means. A parent with means would never hire an attorney that was subject to an annual review by the agency investigating them. Low income parents should not be asked to do so either.

### **Recommendations**

1. **Int 1715** and **Int 1728** should not be passed as currently written but instead should be amended in accordance with the annexed addendum..
2. **Int 1715** and **Int 1728** should both be amended to provide that an entity other than ACS be charged with conducting an "annual review" of the organizations providing the legal representation referenced within the bill. CFR recommends that MOCJ, the same office

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<sup>6</sup> One of the main examples of this is when parents are asked about prior marijuana use. It would be helpful for ACS to also track when parents are asked about marijuana use despite it not being the reason the case was called in.

that currently handles the contracts of the institutional providers, do the same for these legal service providers.

3. **Int 1715** should be amended to remove the reference to “brief” legal assistance and “single consultation” and instead the bill should provide for legal representation from the moment a parent receives notice that an ACS investigation has begun.
4. **Int 1718** should be amended to remove reference to “office of advocacy.”
5. **Int 1718** should be amended to provide that the list of rights is to be provided by ACS at the initial point of contact with a parent or caretaker who is the subject of the investigation.
6. **Int 1718** should be amended in accordance with the annexed addendum.
7. **Int 1728** should be amended to remove reference to “covered proceeding” and instead include a definition of “first point of contact.” The definition should state that “first point of contact includes the first time a caseworker, or contractor of ACS, makes or attempts to make verbal or written contact with the subject of an investigation.”
8. **Int 1728** should be amended to remove the reference to “brief” legal assistance and “single consultation.” For the reasons referenced above, parents will need more than one consultation with an attorney or social worker to meaningfully assist with their case.
9. **Int 1718** and **Int 1736** should be combined.
10. **Int 1736** should be expanded to include additional rights that a parent must be informed of when a caseworker first makes contact with them. CFR recommends convening a working group of advocates, ACS representatives, and parents to develop the appropriate language for the list of rights to be provided to parents. Special attention should be paid

to making sure the language is easily accessible and is written at the appropriate reading level.

11. **Int 1736** should be amended to require that these rights be provided to parents at the first point of contact, in writing as opposed to orally. The caseworker should be required to read the rights to the subject if asked to do so. These rights should be provided to subjects in their preferred language in accordance with **Int 1718**.

### **Reporting Legislation**

1161, 1426, 1716, 1717, 1719 and 1727

Requiring ACS to maintain additional data will help the Council determine whether ACS is performing their function according to their own guidelines and policies around contact and communication when a child is removed. We expect that this data will help illuminate how changes to ACS policy impact emergency ACS removal practices, which in turn disproportionately impact low income people of color and lessen the instances of children experiencing the trauma of removal. This week in Queens, CFR was assigned to represent a mother of color who had recently given birth to twins, after ACS filed a neglect petition against our client and requested a remand. ACS would not consent to a release to the Non-Respondent Father of the children, also a person of color, citing his admission that he regularly smoked marijuana prior to the birth of the children. This contradicts the ACS directive released in April 2019 that establishes that marijuana use alone is not sufficient for a removal or indicating a case

of maltreatment.<sup>7</sup> Data on cases like this will assist in assessing whether these ACS policies are followed in practice and highlight crucial areas for improvement.

As an example, ACS caseworkers frequently do not follow agency guidelines surrounding scheduling visits and parent-child contact following a removal. It is not uncommon for the first visit between a child and their parent after a separation to occur days after a child has been removed. These delays often occur for simple, and avoidable, bureaucratic reasons. This delay is traumatic for children and their parents, which is why ACS guidelines prohibit it- however, because ACS does not produce data on how often these delays occur, ACS leadership does not make clear to their staff that reducing these delays is a priority.

In 2018, “3,633 children (were) removed from their parents and in those cases the city used emergency powers nearly half the time. Almost all of the children involved in these removals were non-white, reflecting a system that, by and large, only interacts with black and brown families who are poor.”<sup>8</sup> Requiring ACS to keep better data about the families they investigate and file cases against will help identify what additional measures are needed to ensure that poor families of color do not continue to be disproportionately impacted by ACS practices.

We understand the importance of data and the work that is involved in tracking it. Since our inception, CFR has been committed to rigorous data collection and analysis. We track and analyze the demographic details of each individual case and client, including gender, ethnicity, age, mental health history, domestic violence history and whether the client has been homeless

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<sup>7</sup> April 19, 2019 'DCP All Staff Bulletin: Policy and Practice on Cases Involving Marijuana Use By Parents' From Deputy Commissioner William Fletcher Division of Child Protection

<sup>8</sup> Yasmeen Khan. April 2019. 'Family Separations in Our Midst'. WNYC. April 19, 2019. Available at: <https://www.wnyc.org/story/child-removals-emergency-powers/>. Accessed: October 28, 2019

and more. This data enables us to better serve future clients by illuminating potential improvements to our practices in and out of court, and helps ensure that our clients receive the most appropriate services for their needs.

We believe that if ACS were to provide data regarding the race, income, ethnicity, and gender of the families it investigates then the disparities would be even more apparent and they would similarly be able to modify their practices, in and out of court, to address the obvious racial and income disparities in their work.

Based on CFR's internal data, as of June 2019, 82% of our clients were people of color, 32% were black and 32% were latino. It is worth noting that, according to the US Census Bureau, 42% of New York City residents are white and only 24% are black and 29% are latino.<sup>9</sup> We strongly believe that meaningful change would require input by the communities that have been most impacted by ACS current practices. A group of parents, parent defense providers, FCLS attorneys, and caseworkers should work together to fully outline the current disparities and practices that created them. This group should be tasked with developing a plan to address these racial and income disparities. The plan must also provide for ongoing training for ACS caseworkers and mandated reporters on implicit bias.

### **Recommendations**

1. Each bill, to the extent that it does not already, should require anonymized data to be made available online.

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<sup>9</sup> <https://www.census.gov/quickfacts/fact/table/newyorkcitynewyork/PST120218>

2. **Int 1716** should be amended to provide a more specific definition of “emergency removal” that specifically references FCA §1024 and that the exclusion of a parent from the home would fall within the definition.
3. **Int 1719** should include a more expansive definition of contact.
4. **Int 1717** should be amended to specify that a panel of institutional providers, parents, caseworkers, FCLS attorneys, Judges, and other relevant players should convene to develop a plan to address the clear racial and income disparities.
5. **Int 1727** should be amended to direct that ACS keep data on the number of remands they request without having first conducted an emergency removal.
6. **Int 1727** should be amended to direct that ACS keep data on the number of times their applications for a remand are denied following an emergency removal.
7. **Int 1426** should be amended to direct that ACS keep data on the number of times drug tests are requested

### **Resolution Legislation**

0736, 1057, 1064, and 1066

In addition to the funding we received for early defense work, we were grateful to receive funds to work with parents to seal and amend their indicated cases on the State Central Registry (SCR). The SCR is a database and hotline maintained by New York’s Office of Children and Family Services (OCFS). Any person can call the SCR hotline and report suspected child maltreatment. Once a report is received and accepted, the local department of social services conducts an investigation and decides if the report is “unfounded” or “indicated.” If a report is

**indicated**, that means that the investigative caseworker found there was “some credible evidence” to support the initial report of child abuse or neglect. A person with an indicated report will have their name placed on the SCR for 10 years after the youngest child named in the report turns 18 -- a total of up to 28 years. In 2018, the SCR processed 199,047 Intake hotline calls; approximately 32% of these reports were indicated<sup>10</sup>. To seal a SCR record, a person can pursue a separate administrative process which can take over a year to complete. Generally, during this process OCFS is represented by attorneys but litigants are not entitled to counsel. With the assistance of the City Counsel funding, CFR looks forward to helping more parents navigate this process.

Once a person’s name is on the SCR, they will be excluded from various types of employment, such as working in a school, as a bus matron, a home health aide, or daycare provider. Most employers who provide services to children are required to complete a SCR database check as part of their hiring process. This means anyone whose name is on the SCR is unable to work in childcare settings for up to 28 years regardless of what their case was indicated for. This barrier mainly affects low-income women of color and immigrants who are disproportionately involved in the child welfare system, deepening economic hardship for these families.<sup>11</sup>

The SCR Reform Bill (A.8060A/S.6427A) passed in both houses of the NY State Legislature. The bill seeks to improve the SCR to better support families by increasing employment opportunities and reforming the SCR amend and seal process. This bill raises the

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<sup>10</sup> *Statewide Central Register (SCR) of Child Abuse and Maltreatment, Facts for 2018*, New York State Office of Children and Family Services, 2018.

<sup>11</sup> *The Collateral Consequences of State Central Registries: Child Protection and Barriers to Employment for Low-Income Women and Women of Color*, National Association of Social Workers, 2019.

standard of evidence required for indicating a case of child maltreatment from “some credible evidence” to a “preponderance of evidence.” The bill also allows for the automatic sealing of indicated reports of neglect after 8 years for most jobs and after 12 years for all jobs provided there have been no additional indicated cases. The bill ensures that SCR reports are automatically amended and sealed when a Family Court Judge dismisses the case. The bill also addresses the amend and seal process by allowing Fair Hearing judges to consider evidence of a parent’s rehabilitation whenever considering whether to seal an indicated report and allowing people to request fair hearings to amend and seal indicated reports at any time of their choosing, as opposed to the current 90-day window.

### **Recommendations**

- 1. Int 0736** should be passed. A parents bill of rights is consistent with the goal of keeping children out of foster care and the family court system, and would provide families throughout the state with early access to information regarding their rights and their ability to seek legal advice. As discussed above, CFR recommends convening a working group of advocates, ACS representatives, and parents to develop the appropriate language for the list of rights to be provided to parents.
- 2. The goals of Int 1057 and 1066** would be better accomplished by the Council passing a resolution calling on the Governor to sign A.8060A/S.6427A into law.

### **Conclusion**

We are grateful for the invaluable opportunity to share our thoughts about these important issues and to hear from other stakeholders in this area. Thank you for your



commitment to ensuring that ACS is held accountable for their policies and practices and that parents have access to the legal representation and counsel they deserve. We look forward to being a part of this ongoing conversation. If you have any questions, please do not hesitate to reach out to CFR's Litigation Supervisor of Government Affairs and Policy, Tehra Coles, Esq. at [tcoles@cfny.org](mailto:tcoles@cfny.org) or 646-734-4671.

**Center for Family Representation  
October 31, 2019**

**Addendum**

Int. No. 1715

By Council Members Adams, Chin, Gibson, Ayala, Ampy-Samuel and Lander

A Local Law to amend the administrative code of the city of New York, in relation to the provision of counsel at fair hearings following an indicated report during an ACS investigation

Be it enacted by the Council as follows:

Section 1. Chapter 9 of title 21 of the administrative code of the city of New York is amended by adding a new section 21-919 to read as follows:

§ 21-919 Legal services for parents. a. Definitions. For the purposes of this section, the following terms have the following meanings:

Brief legal assistance. The term "brief legal assistance" means individualized legal assistance provided in a single consultation by a designated organization to a covered individual in connection with a covered proceeding.

Covered individual. The term "covered individual" means a parent or other person legally responsible for the care of a child.

Covered proceeding. The term "covered proceeding" means a fair hearing following an indicated report in an ACS investigation.

Designated citywide languages. The term "designated citywide languages" has the meaning ascribed to such term in section 23-1101.

Designated organization. The term "designated organization" means a not-for-profit organization or association that has the capacity to provide legal services.

Legal services. The term "legal services" means brief legal assistance or full legal representation.

b. Provision of legal services. Subject to appropriation, ACS shall establish a program to ~~refer provide access to legal services for~~ covered individuals in covered proceedings to ~~designated organizations~~ and shall ensure that, no later than January 31, 2021, all covered individuals receive access to ~~brief legal assistance legal services~~ from a

designated organization ~~no later than immediately before a covered proceeding~~ **immediately following the commencement of a covered proceeding**

~~c. ACS shall annually review the performance of designated organizations and shall require each designated organization to identify the geographic areas for which such organization will provide legal services. For each such geographic area, ACS shall~~ maintain a list of such **designated** organizations that provide such legal services **organized by geographic area.**

d. Any legal services performed by a designated organization pursuant to this chapter shall not supplant, replace, or satisfy any obligations or responsibilities of such designated organization pursuant to any other program, agreement, or contract.

e. Nothing in this chapter or the administration or application thereof shall be construed to create a private right of action on the part of any person or entity against the city or any agency, official, or employee thereof.

§ 2. This local law takes effect immediately.

Int. No. 1718

By Council Members Chin, Levin, Ayala, Ampry-Samuel and Lander

A Local Law to amend the administrative code of the city of New York, in relation to requiring the administration for children's services to provide a multilingual disclosure form to parents or guardians during a child protective investigation

Be it enacted by the Council as follows:

Section 1. Chapter 9 of title 21 of the administrative code of the city of New York is amended by adding a new section 21-919 to read as follows:

§ 21-919 Multilingual Disclosure Form. a. Definitions. For purposes of this section, the following terms have the following meanings:

Designated citywide languages. The term "designated citywide languages" has the meaning ascribed to such term in section 23-1101.

Designated organization. The term "designated organization" means a not-for-profit organization or association that has the capacity to provide free legal services to parents or caretakers.

~~Office of advocacy. The term "office of advocacy" means the office within ACS which provides information and responds to the concerns of parents, youth, foster parents, and others affected by the child welfare system, juvenile justice system, and other ACS services.~~

b. At the initial point of contact with a parent or caretaker who is the subject of a child protective investigation~~Upon the commencement of a child protective investigation,~~ ACS shall provide to the parent or caretaker a multilingual disclosure form available in plain language in the designated citywide languages, and shall document in the case record that one has been

provided. Such form shall be posted on the ACS website and shall include, but need not be limited to, the following information:

1. The parent or caretaker is not required, unless court ordered, to permit the ACS representative to enter the residence of the parent or caretaker;

2. The parent or caretaker is entitled to be informed of the allegations being investigated.

3. The parent or caretaker is not required, unless court ordered, to speak with the ACS representative, and any statement made by the parent, caretaker or other family member may be used against the parent or caretaker in an administrative or court proceeding;

4. The parent or caretaker is entitled to seek the advice of an attorney and to have an attorney present when the parent or caretaker is questioned by an ACS representative;

5. The parent or caretaker is not required, unless court ordered, to allow an ACS representative to interview or examine a child;

6. The parent or caretaker is not required, unless court ordered, to agree to any requests made by an ACS representative, including, but not limited to, requests to sign a release of information or to take a drug or alcohol test;

7. Contact information for resources which may be available to parents and caretakers during a child protective investigation, including legal services from a designated organization.

~~1. Information regarding the rights of parents and caretakers during a child protective investigation;~~

~~2. Resources which may be available to parents and caretakers including access to legal services from a designated organization;~~

~~3. The telephone number and address of ACS' office of advocacy and information on common issues handled by the office; and~~

~~4. Any other information ACS deems appropriate.~~

§ 2. This local law takes effect 90 days after it becomes law.

By Council Members Levin, Ayala and Ampry-Samuel

A Local Law to amend the administrative code of the city of New York, in relation to the provision of counsel at the first point of contact during an ACS investigation

Be it enacted by the Council as follows:

Section 1. Chapter 9 of title 21 of the administrative code of the city of New York is amended by adding a new section 21-919 to read as follows:

§ 21-919 Legal services for parents. a. Definitions. For the purposes of this section, the following terms have the following meanings:

~~Brief~~ Legal assistance. The term "~~brief~~ legal assistance" means individualized legal assistance provided ~~in a single consultation~~ by a designated organization to a covered individual in connection ~~with a covered proceeding~~ upon the commencement of an ACS investigation or immediately thereafter.

Covered individual. The term "covered individual" means a parent or other person legally responsible for the care of a child.

~~Covered proceeding.~~ The term "~~covered proceeding~~" First point of contact is the first time a caseworker, or ACS employee or contractor, makes verbal or written contact with a covered individual for purposes of an ACS investigation ~~means ACS's first point of contact with a parent or other personal legally responsible for the care of a child during an ACS child protective~~



~~investigation following an indicated report in such investigation pursuant to section 424 of the New York state social services law.~~

Designated citywide languages. The term “designated citywide languages” has the meaning ascribed to such term in section 23-1101.

Designated organization. The term “designated organization” means a not-for-profit organization or association that has the capacity to provide free legal services.

Legal services. The term “legal services” means brief legal assistance or full legal representation.

b. Provision of legal services. Subject to appropriation, ACS shall establish a program to refer ~~provide access to legal services for~~ all covered individuals in covered proceedings to designated organizations and shall ensure that, no later than January 31, 2021, all covered individuals receive access to such legal services from a designated organization ~~no later than immediately after a covered proceeding~~ the first time ACS contacts a covered individual.

c. ~~ACS shall annually review the performance of designated organizations and shall require each designated organization to identify the geographic areas for which such organization will provide legal services. For each such geographic area, ACS shall maintain a list of such organizations that provide such legal services.~~

d. Any legal services performed by a designated organization pursuant to this chapter shall not supplant, replace, or satisfy any obligations or responsibilities of such designated organization pursuant to any other program, agreement, or contract.

e. Nothing in this chapter or the administration or application thereof shall be construed to create a private right of action on the part of any person or entity against the city or any agency, official, or employee thereof.

§ 2. This local law takes effect immediately.

Int. No. 1736

By Council Members Rivera, Chin, Ayala, Ampry-Samuel and Lander

A Local Law to amend the administrative code of the city of New York, in relation to requiring child protective specialists to orally disseminate information to parents or caretakers about their rights during initial contact at the start of an ACS investigation

Be it enacted by the Council as follows:

Section 1. Chapter 9 of title 21 of the administrative code of the city of New York is amended by adding a new section 21-919 to read as follows:

§ 21-919 Information regarding the rights of parents and guardians. a. Definitions. For purposes of this section, the term “designated organization” means a not-for-profit organization or association that has the capacity to provide free legal services to parents or caretakers.

~~“office of advocacy” means the office within ACS which provides information and responds to the concerns of parents, youth, foster parents, and others affected by the child welfare system, juvenile justice system, and other ACS services.~~

b. At the initial point of contact with a parent or caretaker who is the subject of during a child protective investigation, ACS shall orally disseminate in plain language to the parent or caretaker information regarding their rights during the investigation, and shall document in the case record that the information has been so provided. Such information shall include, but need not be limited to:

1. The parent or caretaker is not required, unless court ordered, to permit the ACS representative to enter the residence of the parent or caretaker; ~~Information regarding the right to appeal a case, request a copy of records in a case and request that such records be expunged;~~

2. The parent or caretaker is entitled to be informed of the allegations being investigated.

3. The parent or caretaker is not required, unless court ordered, to speak with the ACS representative, and any statement made by the parent, caretaker or other family member may be used against the parent or caretaker in an administrative or court proceeding;

4. The parent or caretaker is entitled to seek the advice of an attorney and to have an attorney present when the parent or caretaker is questioned by an ACS representative;

5. The parent or caretaker is not required, unless court ordered, to allow an ACS representative to interview or examine a child;

6. The parent or caretaker is not required, unless court ordered, to agree to any requests made by an ACS representative, including, but not limited to, requests to sign a release of information or to take a drug or alcohol test;

7. Contact information for resources which may be available to parents and caretakers during a child protective investigation; including legal services from a designated organization.

~~3. The telephone number of ACS' office of advocacy; and~~

~~4. Any other information ACS deems appropriate.~~

§ 2. This local law takes effect 90 days after it becomes law.



## TESTIMONY

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### **ACS Accountability Bill Package Int. Nos. 1715, 1716, 1717, 1718, 1719, 1727, 1728, 1729, and 1736 and Res. Nos. 736 and 1066**

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Presented before:

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

October 31, 2019

Presented by:

THE LEGAL AID SOCIETY  
199 Water Street  
New York NY 10038

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## **Introduction**

The Legal Aid Society, Lawyers For Children, and The Children's Law Center appreciate the opportunity to testify before the New York City Council General Welfare Committee regarding the eleven proposed bills that aim to reform the NYC Administration for Children's Services ("ACS") practices. Ints. 1715, 1716, 1717, 1718, 1727, 1728, 1729, and 1736, and Res. 736 and 1066 address important issues relating to child protective investigations. We thank Councilman Stephen Levin, Chair of the General Welfare Committee, as well as the other members of the Committee, for organizing today's hearing.

Our three organizations are the institutional providers of Attorney for Child (AFC) services in New York City. As AFCs, we wholeheartedly agree that the practices addressed by the eleven proposed bills must be reformed. Our support for such reforms stems from our clear recognition that children and families of color are disproportionately represented in the child welfare system, and our belief that many low-income parents and children do not have access to the critical information and supports that they need to protect their rights and keep their families intact during an ACS child protective investigation. However, notably absent from the bills discussed here today are equally important protections for the rights of the children who are the subject of ACS investigations and foster care placement. In light of that omission, along with our support for the bills, we make the following suggestions, which will further safeguard the rights of children and families investigated by ACS.

## **About Our Organizations**

### **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 in our clients' favor. Last year, LAS served over 300,000 households in New York City.

LAS consists of three major practices—the Civil, Criminal, Juvenile Rights practices. The Juvenile Rights Practice ("JRP") 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 39,000 children in Family Court related matters as well as matters which involved education advocacy and intervention. In addition to individual representation in Family Court, JRP uses affirmative litigation and legislative and policy advocacy to address systemic issues affecting our clients.

### Lawyers For Children

Founded in 1984, Lawyers For Children (“LFC”) 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. This year, LFC will represent children and youth in more than 6,000 court proceedings. Based on our experience in individual cases, LFC has also successfully participated in numerous class-action lawsuits and helped to effectuate change in City and State policies, practices and laws to promote good outcomes for all children in foster care.

### The Children’s Law Center

The Children’s Law Center (“CLC”) is a 21-year-old, not-for-profit organization that has represented over 100,000 children in legal proceedings held in New York City Family Courts and the New York State Supreme Court Integrated Domestic Violence Parts. We are the first organization in New York City dedicated primarily to the representation of children in custody, guardianship and visitation matters. In addition, we represent a significant number of children who are the subject of abuse and/or neglect cases. On each case to which we are assigned, CLC strives to give the children for whom we advocate a strong and effective voice in the legal proceedings that have a critical impact on their lives.

Given our three organizations’ extensive histories representing children and families from underserved communities, and our substantial knowledge of New York City’s child protective and Family Court systems, we occupy a unique position from which to comment on the importance of the proposed legislation, and from which to suggest amendments to strengthen the proposed bills.

### **Availability and Dissemination of Critical Information for Parents and Children**

The inception of a child protective investigation is a stressful and frightening experience for parents and children. The stress and fear are often compounded by a lack of understanding about what occurs over the course of a child protective investigation, whether compliance with ACS requests is mandatory, and where parents and children may turn for advice.<sup>1</sup> Some of the most

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<sup>1</sup> ACS’s website does provide parents and people involved in ACS investigations information about “Child Abuse Investigation(s).” See A Parent’s Guide to a Child Abuse Investigation, retrieved from <https://www1.nyc.gov/site/acs/child-welfare/parents-guide-child-abuse-investigation.page>. However, there is no requirement that ACS provide this vital information directly to parents, or even make them aware that such information is available on the ACS website.

basic, fundamental rights – the rights of children and parents to remain together without undue government interference and children’s right to be free from harm – are implicated in a child protective investigation. Therefore, parents and children should be provided with information regarding their rights and responsibilities whenever ACS comes into their homes. This is particularly important because, as we know, implicit bias in the child welfare system leads to the over-surveillance of low-income communities of color. 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.<sup>2</sup> Ints. 1718, 1729, and 1736, and Res.736 appropriately require ACS to provide accessible information to parents and caretakers regarding child protective investigations. Because children have equally strong interests in being free from harm and remaining with their families, we believe that ACS caseworkers should provide similar information to those children.

Importantly, some of these bills would apprise a parent or caretaker who is the subject of an ACS investigation of their rights and responsibilities *from the outset* of that investigation. For instance, Int. 1736 requires ACS, from the point of “initial contact” with a family, to orally disseminate information about a parent or caretaker’s rights during the investigation, including the parent’s right to appeal; resources that are available to parents during the investigation; phone numbers for the ACS Office of Advocacy; and “any other information ACS deems appropriate.” Similarly, Res. 736 calls upon the state legislature and the New York State Office of Children and Family Services (“OCFS”) to develop a parents’ “bill of rights,” to be provided at initial home visits in Child Protective Services investigations.

Family members who have early access to information will have a better understanding of what should occur during an investigation, of the realistic timeframes for and potential outcomes of child protective investigations. In addition to the information already specified, Int. 1736 should be amended to require the provision of additional information, such as the right of a parent or a child to refrain from speaking with an ACS investigator absent a court order, the right to consult a lawyer, and specific information about how to access legal services for both parents and children.<sup>3</sup> Res. 736 should also be amended to call for OCFS to develop, in addition to a parents’ bill of rights, a children’s bill of rights to be provided at initial investigative contacts with children. The children’s bill of rights should also be available in a minimum of two age- and developmentally-appropriate versions.

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<sup>2</sup> In the rest of the state, for example, 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, and 4.9 times more likely to be in foster care. The overrepresentation of Hispanic youth in the rest of the state is even smaller. Hispanic 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. They are only 1.4 times more likely to enter foster care, and 1.3 times more likely to be in foster care. See [https://ocfs.ny.gov/main/bcm/DMR\\_Section%20Seven%20of%20Grant%20RFP\\_2015.pdf](https://ocfs.ny.gov/main/bcm/DMR_Section%20Seven%20of%20Grant%20RFP_2015.pdf).

<sup>3</sup> It is important that children independently be provided with information regarding their rights and the investigation because ACS sometimes speaks with them at school and at hospitals without their parents present.



Int. 1718 requires that information be provided in all designated citywide languages.<sup>4</sup> In our diverse city, where residents speak countless languages and dialects, dissemination of information in the primary—or only—language that a family speaks is invaluable. Without understandable and culturally competent information, it is nearly impossible for parents to understand why they are being investigated and what they are being asked to do by ACS. The potential consequences that stem from failure to understand what is happening could be dire for child well-being and family stability. Further, ACS should avoid situations in which the children, who may be the only English speakers in a home, are forced to interpret conversations between their caretakers and ACS caseworkers. Finally, like Int. 1736 and Res. 736, Int. 1718 should be amended to require the provision of information to children as well as their parents.

In sum, these bills, viewed as a whole, will ensure parents and caretakers are more informed. However, they should be amended to require that children also receive information about their rights. All family members benefit from access to this information, which will help them to anticipate and seek assistance in navigating the stressful and potentially life-altering scenarios that they may face as an investigation runs its course.

### **Early Representation for Parents and Children**

It is well established in New York State that both parents and children have independent rights to counsel in child protective court proceedings.<sup>5</sup> However, they have no right to representation during an ACS investigation, which, as noted above, can be very difficult for parents and children to navigate, and can have serious consequences for child and family well-being. Int. 1728 would provide “access to legal services” to parents or persons legally responsible at ACS’s “first point” of contact with them, and thus aims to assist them at the earliest—and sometimes most critical—stage of a child protective case.

We agree that early access to counsel for parents is important, and can help avoid needless removals of children and/or protracted litigation. However, we are concerned that the current version of Int. 1728 does not provide an actionable plan for its implementation. It is unclear in Int. 1728 what the “first” point of contact is in an investigation that would trigger access to counsel, and whether the “brief legal assistance” that counsel would provide would establish an on-going attorney-client relationship. Further, the bill directs that “ACS shall establish a program to provide access to legal services” for the parents under investigation, and that “ACS

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<sup>4</sup> Local Law 30 of 2017 requires that covered NYC agencies provide language access services for ten designated citywide languages: Spanish, Chinese, Russian, Bengali, Haitian Creole, Korean, Arabic, French, Urdu, and Polish.

<sup>5</sup> 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.

shall annually review” the legal services organizations’ performances. Not only could this arrangement give rise to conflicts of interest, but having the same entity that is conducting the investigation be responsible for administering the program to provide access to counsel might undermine individuals’ abilities to trust their attorneys, even if those attorneys are employed by independent legal services organizations.

We are also concerned that attorneys for children are never mentioned in Int. 1728. The right of children to be represented by counsel in child welfare proceedings has been clearly established. Attorneys for children participate in all aspects of a Family Court case, and serve as the children’s voice in those proceedings. Providing children with an independent voice in the investigation stage can add perspective that may 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 don't confuse poverty with safety concerns.

It is not sufficient that the parent has access to counsel because, while children’s interests frequently align with those of their families, they may diverge, including at the outset of a child protective investigation. Even when the child’s position is aligned with the parent, providing the child with an independent advocate at ACS family conferences, for example, can help all of the parties to consider the issues involved from the child’s perspective and develop solutions to best support the family. Attorneys for children have a strong fund of knowledge in child and adolescent brain development, education, conflict resolution, and trauma. We ensure that children’s rights are protected and their input is not ignored or taken for granted, and more important, is considered.

Therefore, it is important that soon after children have contact with ACS, counsel is available to answer their questions, explain legal terms and processes, and protect their interests. To acknowledge only the importance of counsel for parents and not recognize that counsel for children, who serve children thru interdisciplinary practice and expertise, is also critically important, would be misguided. While we do not suggest in this testimony exactly when or how access to counsel should occur, we assert that a child should not remain unrepresented when both ACS and that child’s parents have counsel prior to the filing of a petition. We would welcome the opportunity to work with the Council and other stakeholders to develop a plan that would be feasible and protect the interests of both parents and children.

Access to counsel for fair hearings to challenge an indicated case is equally important as having legal representation at the first point of contact during an ACS investigation because an indicated case has a detrimental effect on employment opportunities for an extended period of time. We endorse Int. 1715’s goal of establishing a program to provide access to legal services for parents and persons legally responsible, who seek fair hearings after having indicated cases. There currently is no requirement that parents be assigned counsel at a fair hearing. While we support

this bill in principle, however, we have similar concerns about ACS administering this program and evaluating performance as we do with respect to Int. 1728, described above.

### **SCR Reform**

We applaud the City Council’s call for the State to make changes to the Statewide Central Register of Child Abuse and Maltreatment (“SCR”). Legislation to address the issues raised in Res. 1057 and Res. 1066 passed the State legislature this past session. However, the bill -- S.6427-A/A.8060-A<sup>6</sup> -- has not yet been sent to the Governor for signature. The changes put forth in S.6427-A/A.8060-A, like the resolutions that are before the City Council, would have important implications for children and families – ensuring that fewer family members are precluded from being resources for children who must be removed from their parents’ custody and that parents are not unnecessarily prevented from obtaining employment in certain fields. We believe that the proposed changes will improve the opportunities and resources available to children and families without compromising the children’s safety. For these reasons, we urge the City Council to adopt a new resolution in place of Res. 1057 and Res. 1066 urging the Governor to sign S.6427-A/A.8060-A into law.

### **Data Collection and Reporting**

Data can drive improvements in practice. While ACS already collects and publishes a substantial amount of data, the additional reporting that is required by these bills would provide greater transparency, and would help ACS work to reduce the traumatic impact of separating children from their parents and siblings, especially in low-income communities of color. We additionally propose some limited alterations to the bills, as currently drafted.

The excessive involvement of ACS in the lives of families in impoverished communities of color has a devastating impact on children and their families. Black and Latinx children enter the child welfare system in numbers far greater than their proportion of the general population. While black children represent 24.3% of the city’s youth, they make up over 55% of the population in foster care according to 2014 OCFS data.<sup>7</sup> Hispanic children in NYC are 5.6 times more likely to be placed in foster care than their white counterparts.<sup>8</sup> As a result, requiring ACS to provide comprehensive of data broken out by key categories such as race, and to develop a plan to address the disproportionality, is an important step toward improving the child welfare system.

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<sup>6</sup> The SCR Reform Bill is a bill to amend the social services law, in relation to the standard of proof for unfounded and indicated reports of abuse or maltreatment of children from a “some credible evidence” standard to a “preponderance of the evidence” standard. In addition to the standard of proof, the bill also changes the amount of time an indicated SCR report remains on a person’s record to eight (8) years after the report is indicated, in contrast to up to twenty-eight (28) years after the report is indicated.

<sup>7</sup> See [https://ocfs.ny.gov/main/bcm/DMR\\_Section%20Seven%20of%20Grant%20RFP\\_2015.pdf](https://ocfs.ny.gov/main/bcm/DMR_Section%20Seven%20of%20Grant%20RFP_2015.pdf).

<sup>8</sup> Id.

When ACS conducts an emergency removal of children from their home, the children and family are at great risk of experiencing significant trauma. Disrupting the bond between parents and children can cause damaging, at times irreversible, consequences including emotional, psychological, and even physical harm to the children.<sup>9</sup> While removal may be necessary in some cases, ACS must take all possible steps to ensure that unnecessary removals are not taking place and that, when removals are necessary, it takes all steps to minimize the trauma to the child.

Int. 1727 requires ACS to report on emergency removals, disaggregating the information based on whether the removal was subsequently approved by a judge. We support this bill as it would likely shed light on the practice of unnecessary removals, which result in profound trauma to our clients and their families.

Int. 1716 provides for reporting on emergency removals disaggregated by certain demographic data. We support this bill, and would additionally propose that the data be disaggregated by zone of the family, as defined in the NYC Administrative Code. This information could help identify where unnecessary, wrongful removals are most frequently occurring, allowing City Council and ACS to target these extremely problematic practices. We would further propose that disaggregation of data include the number of children removed and their ages, as these factors may help identify in what circumstances children and families are most at risk of unnecessary, wrongful removals.

When children are removed from their homes, prompt and regular contact with family is critical. Yet, there are countless examples of youth in foster care who deteriorate because they are completely disconnected from loved ones and the communities to which they belong. As attorneys for the child, we see how frequently children are placed into foster care far from their homes and deprived of significant, meaningful contact with their families and communities. Int.

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<sup>9</sup> See Shanta Trivedi, *The Harm of Child Removal*, 43 *New York University Review of Law & Social Change* 523, 527 (2019) (“While the accepted wisdom is that removal is the better option for a child in a potentially abusive or neglectful home, research demonstrates that this is not always true. In fact, the bond between children and their parents is extremely strong and disrupting it can be even more damaging to a child—even when her parents are imperfect.”). See also Sara Goydarzi, *Separating Families May Cause Lifelong Health Damage*, *Scientific American* (June 2018); Kimberly Howard et al., *Early Mother-Child Separation, Parenting, and Child Well-Being in Early Head Start Families*, 13 *Attachment & Human Development* 5 (2009); and Marcia McNutt, *Statement on Harmful Consequences of Separating Families at the U.S. Border*, *National Academies of Sciences Engineering Medicine* (June 20, 2018). Children who have spent time in foster care have poorer school performance and are more susceptible to homelessness, arrest, chemical dependency, and mental and physical illness compared to socioeconomically similar children who have never been removed from their homes. See <https://www1.nyc.gov/assets/opportunity/pdf/policybriefs/child-welfare-brief.pdf>; and <https://www.casey.org/nw-youth-outcomes/>

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1719 would require ACS to report on the number of children placed outside their home boroughs, and how quickly they are provided contact with their families. Gathering this information is an important first step toward addressing these problems. Int. 1719 should also require that data be disaggregated by zone, and by foster care provider agency.

Int. 1717 would require ACS to report on the demographics of children and families involved in the child welfare system at several important points. We commend this proposed bill, but suggest that demographic information also should include disaggregation by sexual orientation, gender identity, physical disability, and intellectual disability. In addition, we propose adding the point at which a case is filed to the “steps” at which ACS is required to provide demographic information. This bill would again provide greater transparency, enhancing the City Council’s oversight, while providing information that ACS could use to identify problematic or discriminatory practices and enhance its provision of services.

### **Conclusion**

Thank you to the New York City Council for proposing the above-mentioned bills. They represent a significant step toward protecting the rights of families during child protective investigations. However, as described above, many of the bills could be strengthened by clarifying their provisions and by adding explicit protections for children. We would be happy to work with the Council to craft amendments to the Introductions and Resolutions to ensure that they are clear and afford adequate protections to both children and their parents. We are happy to answer any questions regarding this testimony.

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TESTIMONY FOR A HEARING ON:

**THE IMPACT OF THE PROPOSED LEGISLATION ON  
KINSHIP CAREGIVERS**

PRESENTED BEFORE:

NEW YORK CITY COUNSEL  
COMMITTEE ON GENERAL WELFARE

SUBMITTED BY:

ARLENE RODRIGUEZ  
SENIOR STAFF ATTORNEY  
MOBILIZATION FOR JUSTICE, INC.

MARK SCHULTE  
SENIOR STAFF ATTORNEY  
MOBILIZATION FOR JUSTICE, INC.

October 31, 2019

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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 sons or daughters. 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 a number of 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 the positive impact the legislation to be discussed today could have on our clients.

## **II. Key Recommendations**

Based on our familiarity with the child welfare system, we believe all of the proposed measures represent meaningful improvements to the child welfare system in New York City. We want to highlight the measures that would have special significance for kinship caregivers. The first are bills 1715 and 1728, both of which include provisions related to providing early legal assistance following an investigation by the Administration for Children's Services ("ACS"). The second is resolution number 1066, urging New York State to reduce the length of time caretakers, parents, or legal guardians remain on the Statewide Central Registry list. As described below, we believe these measures could have an enormous positive impact on our clients.

## **III. Support for the Proposed Measures**

Improvements to the SCR will improve placements for New York's neediest children.

Bills no. 1715 and 1728 would increase access to free legal services related to findings in the State Central Register of Child Abuse and Neglect (the "SCR"). As this committee is aware, the SCR operates separately from New York City's family courts. ACS has the power to make SCR findings against caregivers without initiating any proceedings in family court and regularly does so. Although an administrative fair hearing is available to challenge SCR findings, such hearings are granted only *after* ACS has entered the finding

in the SCR, and only upon a written request for a hearing. Additionally, under the current system, caregivers are not entitled to assigned counsel in these hearings, and free or low-cost legal services related to these hearings are scarce.

For our clients, SCR background checks are often conducted under emergency circumstances: a related child has been removed from their parents, and the state needs to “clear” the relative’s home before placing the child with them. Under such circumstances, the existence of SCR history can mean the difference between the child going to a familiar and comforting home with family members and the child entering the traditional foster care system with complete strangers. Under such circumstances, the accuracy of records in the SCR can be critical to the child’s ability to regain a sense of stability.

The SCR, however, is full of findings that would not pass muster in a contested proceeding or are not reasonably related to a potential caregiver’s ongoing ability to care for children. Worse, we regularly encounter caregivers who are unaware that an SCR finding was ever entered against them at all—because they never had to go to court, because there was no ongoing ACS intervention, or because words like “indicated” and “unfounded” were never explained to them. The standards for child maltreatment are subjective, and the legal process involves a complex mix of state bureaucracies.

The main goals of the SCR are to provide accurate information to the family court and to child-related employers about a person’s ability to care for or be around children safely. Under the current system, SCR findings are unreliable and place unexpected burdens not just on potential kinship caregivers, but on foster care case planners, family court judges, attorneys for children, and the children themselves. The provision of additional legal resources surrounding SCR findings will improve the efficacy of New York’s child welfare system and outcomes for the families it encounters.

Further, we want to highlight a common and heartbreaking legal issue we regularly encounter—one which bills 1715 and 1728 could also help address. The issue arises when ACS is alerted to safety concerns in a kinship foster home and, following an investigation, removes the child to a foster home with strangers.

It is, unfortunately, no secret that children in New York City often remain in foster care for much longer than the 15-month limit envisioned in the federal Adoption and Safe Families Act. Many of these foster homes are “kinship” foster homes, meaning that the child is with a grandparent, aunt, or another adult with a preexisting relationship with the child. Kinship foster homes are typically approved on an emergency basis at the time of a child’s removal from their parents, and the grandparent or relative remains licensed through an authorized foster care agency until the child achieves permanency through the family court process—which often takes many years. We regularly encounter kinship foster parents who have been caring for a child for the majority of the child’s life. In such circumstances, a child’s attachment to their kinship foster care “resource” can become just as strong as their attachment to a parent.



Removal from a kinship foster home can be hugely traumatic to a child. However, such removals involve a very different legal process than a removal from a parent or legal guardian. Rather than having the opportunity to challenge the removal in family court, the kinship caregiver must resort to a series of administrative hearings before a revolving set of tribunals and decision makers: first, an “independent review” at ACS in which preliminary evidence is taken about the removal and a written decision rendered; then, a subsequent fair hearing at the Office of Children and Family Services (“OCFS”) in which a separate administrative law judge makes a final determination about the reasons for the removal; and finally, a separate fair hearing at OCFS (typically scheduled months later) to review whether ACS can validly maintain a finding in the SCR related to the alleged safety concern. These hearings must all be requested separately, they are each subject to different legal standards, they involve separate sets of records and evidence, and they each have different consequences related to the caregivers’ prospects for having the subject child returned to their care. A caregiver’s statements in any of these hearings can and will be used against them in subsequent hearings, and a positive decision typically will not result in an automatic return of the child to them. Under the current system, these caregivers are not entitled to free counsel at any point in this process—which means that they are regularly expected to navigate all of this on their own.

Confusing matters further is the fact that, for any child remaining in foster care, there are simultaneously proceedings going on in Family Court. The judge in a Family Court proceeding, however, will rarely second-guess the determinations made in the aforementioned hearings. Judges are aware of the fair hearing process and rely on their integrity. Similarly, although the child will have counsel in Family Court, this attorney’s representation does not extend to the fair hearing process. The child is not considered a party to these fair hearings, which means that the child’s feelings about a removal are considered minimally within these hearings, if at all.

We regularly find that caregivers failed to request hearings central to the relief they sought, or to be heard fully on the underlying issues. With no access to counsel, caregivers struggle through the process alone. They are often provided incomplete information or no information at all. They may have a language barrier or lack the resources to even attend fair hearings. The end result is that we regularly encounter heartbroken former kinship caregivers who have no clear sense of what happened or why they cannot have their loved one placed back into their care.

For instance, we recently worked with Ms. L. At the time Ms. L came to us, she had already lost a fair hearing regarding removal of her grandchildren from her kinship foster home, due to allegedly unsanitary conditions in her home. She had conducted the hearing *pro se* and without any legal advice whatsoever, and she wanted to know if there was anything further she could do. Ms. L had been a foster child herself; as an adult, she had adopted several of her siblings out of foster care. By the time her grandchildren were unexpectedly placed into foster care with her, Ms. L’s apartment had become overcrowded, and she struggled to find larger housing while balancing full-time employment as a single parent. Although ACS had directed the children’s foster care agency to provide Ms. L with homemaking services to keep her home clean, the agency ignored her many attempts to

follow up on this. As a result, the conditions in Ms. L's apartment deteriorated, her grandchildren were removed from her home, and a finding was made against her in the SCR for child maltreatment. Notably, ACS did not at any point allege actual harm to the children. When Ms. L came to Mobilization for Justice many months later, she was not aware that she had been reported to the SCR at all, and she did not understand that an SCR hearing had to be requested separately from the foster care removal hearings. With our assistance, she ultimately succeeded in amending the SCR finding against her, but, by this point, her grandchildren were already stably in a new home—and were never returned to her care. If Ms. L had received full and accurate legal advice at the initial point of removal, Ms. L might be caring for her grandchildren today.

Former caregivers come to us after having spent months or years requesting the wrong hearings, fighting the wrong issues, and contesting matters with no legal merit. Having these caregivers consult with legal counsel at the outset could potentially help them come up with a more appropriate plan of action. This would not only result in judicial economy, but it would also greatly relieve the stress that multiple overlapping hearings and appeals can bear on affected caregivers, case planners, children, and families.

Accordingly, we strongly support measures to increase the provisions of free legal services to caregivers throughout the course of ACS investigations.

Reducing the length of time an individual is on the State Central Registry list will reduce barriers to kinship placements.

Reducing the length of time an individual is on the State Central Registry would vastly alter the lives of thousands of New Yorkers by limiting the overly punitive impact of having a case on the State Central Registry list. We support Resolution Number 1066 because it urges New York State to do so.

As indicated in the resolution, involvement in the child welfare system is directly correlated to income and race. ACS investigations disproportionately affect low-income people of color, while failing to provide any tangible benefit. To the contrary, these punitive measures often hurt and destabilize families.

Many clients come to Mobilization for Justice for assistance despite having only “unfounded” cases in their past. These clients are seeking to care for a grandchild, a niece, a nephew, or another loved one who is involved in the child welfare system. While an employer may not discover the unfounded case, ACS can and has used an “unfounded” case as a reason to deny an individual the opportunity to care for their loved one. The child may then be placed in a foster home with strangers, rather than with a loving family member. Despite an allegation being marked as “unfounded” based on a lack of credible evidence, that allegation remains on the State Central Registry list for 10 years. To maintain for 10 years records of a case that was found not to be supported by any credible evidence is unduly punitive and harmful to families. Once it has been determined that there is no credible evidence to support an allegation, that allegation should immediately be expunged from an individual's record.

For those individuals who have “indicated” cases, caring for a loved one is even more difficult. While we meet people who have a wide-range of experiences, we would like to offer one example that Mobilization for Justice sees time and time again.

A single mother encourages her teenager to go to school. The mother works long hours but makes sure her teenager leaves the house each morning, ostensibly to go to school. The teenager does not like school or decides that s/he simply does not want to attend. The mother tries to make the teenager go to school, but cannot spend each day ensuring that the teenager is in class. As a result, the teenager continues to skip school and the mother receives an indicated case against her for educational neglect—although ACS determines the issues are not so bad to merit a removal of the teenager from the home. Fast-forward ten years, and the teenager who refused to go to school is now an adult with an infant. ACS has decided to place that infant into foster care. Although the infant’s grandmother wants to care for the infant, when ACS runs her background check, they see the prior SCR case for educational neglect of a teenager and deny her. As a consequence, the infant goes into foster care with strangers.

The length of time that SCR findings stay on an individual’s record is dependent not only on the age of the subject child, but upon the age of other children in the home. If the grandmother in the above example had a younger child in her home, her indicated case would not be expunged until the youngest child in the home at the time of the investigation turned 28 years old, regardless of whether or not that specific child was even impacted by the findings.

For example, last year Ms. K came to us for help. Ms. K had cared for her infant grandson and his older siblings on and off for most of their lives in upstate New York. However, when the child’s mother attempted to move to New York City with the infant, she relapsed into drug abuse, and ACS placed the infant into the child welfare system here. Although Ms. K immediately stepped forward to have her grandson placed with her, her home was denied as a placement due to an SCR finding against a household member from 1991. Ms. K came to us a year later, when the youngest child named in the SCR investigation had finally turned 28. Unfortunately, by that time, Ms. K’s grandson had become closely bonded with his unrelated foster family. The Court determined it would be too traumatic to move him again. Because the finding had remained in the SCR for nearly the full 28 year maximum, the child ended up permanently estranged from his grandmother and siblings.

These are not isolated examples. Prospective caretakers and children in need of care are often equally impacted by the overly punitive nature of the SCR. Further, this stain on an individual’s record limits job opportunities, volunteer opportunities, and the ability to adopt a child. This mandate is antiquated and leaves no room for discretion. It places limits on families and income-earning opportunities. It creates a barrier to stability, while going beyond the reach of just protecting children.

We join in urging New York State to reduce the length of time caretakers, parents, and legal guardians remain on the Statewide Central Registry list.

#### **IV. Conclusion**

Mobilization for Justice respectfully submits the foregoing in support of bill numbers 1715 and 1728 and resolution number 1066. By providing meaningful access to counsel at the point of contact by ACS and in fair hearings, the child welfare system can be transformed. This access will drastically alter the outcomes for kinship caregivers and families generally. Ensuring that caregivers' rights are not only known, but enforced, will make for a more effective and safe system.

Additionally, reducing the length of time that unfounded and indicated cases remain in the SCR will also produce significant and lasting impact. The resolution has provided examples of multiple state models that offer less punitive timeframes for cases to remain in the SCR that work toward the goal of keeping children safe. The state must act with the primary goal of supporting children and families.

Mobilization for Justice joins today in supporting each of the proposed measures related to this hearing and in particular the measures highlighted above.



**Girls for Gender Equity Testimony on ACS Know Your Rights & Advocacy Bills  
New York City Council Committee on General Welfare**

*Delivered by Quadira Coles, Policy Manager*

October 31, 2019

Good Afternoon Chair Levin, Council Members, and staff of the New York City Council Committee on General Welfare. Thank you for taking the time to hold this hearing. My name is Quadira Coles and I am the Policy Manager at Girls for Gender Equity (GGE).

GGE is an intergenerational, advocacy and youth development organization that is committed to the physical, psychological, social, and economic development of girls and women. GGE is committed to challenging structural forces, including racism, sexism, transphobia, homophobia, and economic inequality, which constrict the freedom, full expression, and rights of transgender and cisgender girls and young women of color, and gender non-conforming youth of color.

It should not be news to you that girls in foster care experience exacerbated disadvantages and are systematically marginalized. The New York City foster care system disenfranchises Black girls, they are more likely to be removed from their familial environments due to issues of neglect, that are often problems arising from poverty. Interlocking systems of oppression manifested in housing discrimination, educational inequities, incarceration, and policing result in Black and Latinx families being disproportionately targeted by child welfare agencies. We understand that the overwhelming surveillance and city supervision of Black children, together with pervasive stereotypes about criminality and maternal irresponsibility, sustain the harmful collaboration between the policing and child welfare systems.<sup>1</sup> In this way, city systems function to punish Black families and communities, and subsequently blame them for their own marginalization.

GGE therefore pushes for systemic reform addressing the inherent issues of racism and sexism within these government service organizations and their policies. GGE firmly believes that every effort should be made to keep girls in their most desired environment and prioritizing their voices throughout the process. GGE works everyday to secure the protection and respect of girls of color and GNC youth, particularly Black girls.

The child welfare system is riddled with inequities, specifically impacting girls of color. There is unsettling data about the general child welfare system that posits a need for rigorous oversight and management of ACS. For instance, according to national data:

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<sup>1</sup> Roberts, D. (2012). Prison, Foster Care, and the Systemic Punishment of Black Mothers. *UCLA Law Review*, 59: 1474-1500.

- Black girls makeup 22.9% of girls in foster care.<sup>2</sup>
- 35.6% of girls who move to at least 10 different residential centers are Black.<sup>3</sup>
- School suspension rates differed among those in foster care and students who are not: 25% of girls in foster care were suspended compared to the 10% of girls not in foster care.<sup>4</sup>
- About 30-40% of children in foster care qualify for specialized educational services but only about 16% receive them.<sup>5</sup>

**It is not unlikely that trends in New York City mirror these national statistics. GGE strongly recommends that the Council require ACS to report out data about the racial and gender breakdown of people impacted by ACS investigations, interventions and removals.**

According to ACS's September Flash Report, allegations of neglect made up 65% of all reported allegations.<sup>6</sup> While the behavior which constitutes abuse is in the law, the neglect clause is incredibly vague, resulting in ACS conflating poverty with neglect. Many of these neglect removals can be attributed to poverty: inability to afford childcare, parents juggling schedules of multiple jobs and school drop-off, unreasonably high rents, and the expense of food.

While in foster care, girls experience high rates of abuse and sexual violence and are more likely to ultimately become involved in the juvenile justice system.<sup>7</sup> Girls in foster care have their education disrupted due to missing early childhood educational opportunities, changing schools, stricter discipline and pushout than their peers not in foster care, and not receiving IEPs when needed.<sup>8</sup>

ACS is finally taking steps to address some of the gender-specific disparities that disproportionately experienced by girls of color in foster care. GGE has been asked to offer the city's first-ever gender-responsive diversion program for young women and girls in the juvenile justice system as an alternative to placement for young people assigned to juvenile detention, and/or otherwise referred by ACS. GGE will partner with STEPS to End Family Violence to offer a new approach to services for girls as part of a three-year demonstration project. We will develop a dedicated program for our young people rooted in social justice education, organizing, and advocacy, alongside STEPS to End Family Violence who will provide comprehensive wraparound services - including court support. This program aims to serve 48 girls every year. Thanks to the additional fiscal support of the City Council through the Alternatives to Incarceration Initiative, GGE will be able to provide the full scope of services that we know are necessary for girls to not only participate, but thrive in our program.

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<sup>2</sup> National Women's Law Center. (2017). "Stopping School Pushout for: Girls in Foster Care" Accessed: <https://nwlrc.org/resources/stopping-school-pushout-for-girls-in-foster-care/>.

<sup>3</sup> *Ibid.*

<sup>4</sup> *Ibid.*

<sup>5</sup> *Ibid.*

<sup>6</sup> NYC Administration for Children's Services. (September 2019). Flash Report: monthly indicator. Accessed: <https://www1.nyc.gov/assets/acs/pdf/data-analysis/flashReports/2019/09.pdf>.

<sup>7</sup> Human Rights Project for Girls, Georgetown Law Center on Poverty and Inequality, Ms. Foundation for Women. (2015). The Sexual Abuse to Prison Pipeline: The Girls Story. Accessed: [https://rights4girls.org/wp-content/uploads/r4g/2015/02/2015\\_COP\\_sexual-abuse\\_layout\\_web-1.pdf](https://rights4girls.org/wp-content/uploads/r4g/2015/02/2015_COP_sexual-abuse_layout_web-1.pdf)

<sup>8</sup> National Women's Law Center. (2017). *See note at 6.*

Today, this Committee is putting forward a bill package that GGE generally supports, with suggestions of small, yet important changes:

- GGE supports efforts to bring greater transparency to disparities at each step in the child welfare system, and we urge the Council to ensure these are public-facing, machine readable, and easily accessible reports.
- With regard to Intro 1717-2019, we ask that the responsibility to address racial and income disparities in the child welfare system not fall exclusively under the purview of ACS.
- In reference to the Parents' Bill of Rights (Int 1736-2019, Res 736-2019), it is crucial to ensure language access and availability and visibility of these resources. ACS must commit to providing parents, families, and impacted young people greater access to information clarifying their rights. We encourage the adoption of a more aggressive media campaign from ACS to demonstrate good faith efforts in ensuring families know their rights.

We thank the New York City Council for the opportunity to share our work and for your commitment to addressing these important issues.



**TESTIMONY OF THE NEIGHBORHOOD DEFENDER SERVICE OF  
HARLEM**

**before the**

**New York City Council**

**IN RELATION TO**

**ACS ADVOCACY BILLS TO INCREASE ACCOUNTABILITY, LEGAL COUNSEL, & CIVIL  
RIGHTS IN THE CHILD WELFARE SYSTEM**

**by**

**MICHELLE BURRELL  
MANAGING ATTORNEY  
FAMILY DEFENSE PRACTICE**

**October 31, 2019**



## **Testimony of Michelle Burrell**

### **Introduction**

I am Michelle Burrell, the Managing Attorney of the Family Defense Practice at the Neighborhood Defender Service of Harlem (NDS). NDS is a community-based defender office that provides high-quality legal services to residents of Northern Manhattan and a social justice leader. In 1990, NDS created a new model for a community-based, collaborative, client-centered approach to representing clients that has led to improvement of defense services throughout New York State and the rest of the country. Since 1990, NDS has grown from a pilot project of the Vera Institute of Justice into an independent, full-service legal and social service provider. We remain committed to a broad approach that addresses the social justice issues affecting our clients, their families and their communities.

In 2014, NDS re-introduced the Family Defense Practice. The Family Defense Practice exclusively represents parents from Northern Manhattan in abuse and neglect proceedings in Family Court. NDS' community-based, collaborative, client-centered model has served our clients well in Family Court. NDS should serve as a model office as New York State seeks to improve parental representation across the State. To date, NDS' Family Defense Practice has represented over 1600 parents from Northern Manhattan.

### **The ACS Accountability Proposed Laws**

The package of proposed laws regarding ACS accountability, with regard to its data collection and its ability to provide access to advocacy at the early stages of an investigation and beyond, would go a long way to ensure that the parents affected by the child welfare system in New York City are treated with fairness and have a clear understanding that the government intervention they are being subjected to could potentially result in the removal of their children. For that reason, we strongly support the proposed laws and resolutions, but acknowledge that there are necessary changes to be made to the proposed laws that will make the language reflect the realities of what parents need and deserve when faced with an ACS investigation.

### **ACS Should Be Required to Keep Better Data**

In attempting to grasp the full impact that ACS intervention has on families in New York City, there are many more key data points that need to be collected and publicly disseminated to ensure transparency. The missing data points need to be done at every stage - from investigation to removal to the filing of a court case to reporting on the outcomes of children who have gone through the foster care system. Particularly before a case is filed, there needs to be data compiled as to how many children are being removed from their parents prior to court intervention, only to be returned by a judge at the first court date because of an erroneous decision to remove. This is information that has not been provided by ACS that would provide a lot of insight into unnecessary traumas being inflicted on families. Where our office has been

notified of conferences held at ACS to determine whether removal is necessary, our advocates and social workers have been able to attend these conferences, assist with avoiding unnecessary removals and in cases where a removal was the only alternative, were able to advocate for family members and friends to take the children so as to ameliorate the trauma of removal. The reality is, however, that our office is not routinely notified of these conferences and parents often attend them alone without knowledge of their rights or an understanding of the options available to them.

In addition, there is no data on how many reports get called in against parents that are then marked as “indicated”, leaving a stain on a parent’s record and affecting any subsequent involvement with child welfare officials. In New York State, the State Central Register (SCR), commonly known as “the hotline,” receives calls of alleged child abuse or neglect. Each and every call that is received by the hotline is documented, and any report that the hotline operator “reasonably believes” might constitute actual child abuse or neglect will be referred to Child Protective Specialists (CPS) for investigation.

At the end of the sixty-day investigation, CPS must either “indicate” the report, if they believe there is “some credible evidence” of abuse or neglect, or “unfound” the report. Indicated reports remain accessible in the SCR, and available for employers to see. The ramifications of an indicated SCR report could range from barriers to employment to preventing an individual from becoming a foster or adoptive parent in the future.

When we have challenged these “indicated” reports at the State Central Registry for our clients, our challenges have resulted in many administrative determinations that these cases be amended and sealed. All parents deserve adequate representation so that they can adequately defend themselves in this bureaucratic system and we need more information as to how many people currently have indicated cases, the demographics of those given indicated reports and more resources to challenge these determinations so that family members will not be barred from caring for children when they are removed and so that these determinations do not follow parents, creating a stigma of insufficient parenting where what they were really struggling with was poverty.

For that reason, the proposed laws that require ACS to track data points and provide early legal assistance to all parents by an independent organization, would be extremely informative and necessary to begin to understand the effects of ACS intervention in the lives of families in New York City.

### **Parents Must Be Advised of Their Rights at the Outset of Any Investigation.**

In the criminal context, it is, at this point, taken for granted that defendants must be warned of their right to remain silent and their right to counsel before they are questioned while in police custody – *Miranda* warnings are so common that many of us have them committed to memory. In the child welfare context, the stakes are just as high, if not higher, than in the criminal context: the initiation of an investigation into a family can quickly escalate into the destruction of that family. Therefore, it is appropriate and necessary for all parents to be told their rights at the beginning of the caseworker's investigation, in the same manner that a police officer is required to advise a person being arrested and deprived of their liberty interest.

This is appropriate and necessary because of the number and nature of rights being infringed upon once a child protective worker begins an investigation: once a report is accepted to the State Central Register, ACS dispatches a Child Protective Specialist to the family's home, to open doors and look under beds, look in fridges and cabinets, to question parents, to ask that the children be examined without their clothes, to question children without their parents, and potentially use all of that information to bring charges against a parent in court.

Parents are rarely, if ever, told that they do not have to cooperate with this investigation – that they do not have to allow the CPS into their home, that they do not have to allow their children to be undressed and examined by strangers, that they do not have to allow their children to be pulled out of school, or that they have the right to counsel in these cases. Indeed, our clients are often told the opposite: they are encouraged by caseworkers to cooperate, and to be forthcoming and honest, under the guise that if they just explain what happened, they can avoid future interference. This compounds the inherently coercive dynamic already present, where parents generally want to cooperate because they are nervous about what will happen to their children and are not aware of how their cooperation can affect them legally in the future.

A parent's initial cooperation with an investigation, and misunderstanding of the nature of ACS's investigation, can have devastating effects, feeding into to an ever-growing investigation and laundry list of complaints against a parent. For instance, we have one case where the SCR received a false report from a single father's vindictive former partner that he was sending his 5-year-old son, who was on the autism spectrum and nonverbal, to school in soiled clothing. There was absolutely no evidence to support that allegation – and indeed, the school itself refuted that account – but in the course of “cooperating” with the investigation, the client allowed ACS into his home, and soon was facing down allegations that the single-room shelter unit where he and his very high energy son lived was “too cluttered.” And when questioned about his mental health and substance use, the client volunteered that he had received treatment for depression and anxiety after his son's mother left and that he used marijuana to treat his anxiety. That, too, was flagged as a concern. Ultimately, a case was filed against him, alleging nothing regarding his son's hygiene but instead alleging that he had neglected his child by virtue of his mental health diagnoses, his substance use, and the state of his home. The case ultimately

was dismissed after an adjournment in contemplation of dismissal – but it took more than a year to get to that point.

If this client had been warned initially that any statements he made might be used against him and that he was not legally obligated to allow the Child Protective Specialist into his home, he may have asserted those rights and prevented the investigation from spiraling into other areas and prevented the case from needlessly dragging on.

To safeguard against families being unnecessarily disrupted by experiences like this, parents should be advised of their rights at the onset of any investigation. During the first visit to a parent's home, the Child Protective Specialist should explain orally – and leave written notice, plain language and in the parent's preferred language – that:

- The parent is not required to permit the Child Protective Specialist to enter their home;
- The parent is not required to speak to the Child Protective Specialist;
- The parent is entitled to know the exact allegations that caused the investigation to begin;
- The parent is entitled to seek the representation of counsel at any time, and will be assigned counsel if a case is filed against her or him in family court;
- The parent is not required to allow their child to speak to the Child Protective Specialist;
- Any statement made by the parent or the child or any other individual may be used against the parent in a court proceeding;
- The parent is not required to sign any document presented to them, including release for sensitive health information, and may review the document with an attorney before reviewing the document.
- The parent does not have to
- If a parent elects not to cooperate with the investigation, the agency has the option of going to court to ask a judge for orders permitting the agency to enter the family's home or to meet with the children.

There will forever be a power imbalance between ACS and the parents it is investigating. Ensuring that parents are fully informed of their rights at the outset of an investigation would serve as a check on ACS's power, and would normalize a parent's understanding of their rights and allow them to grasp the gravity of the investigation and the potential implications, so that they can make informed choices about how to interact with ACS.

Finally, a requirement that parents be informed of their rights before proceeding with an investigation both centers the conversation on the parent's civil rights, and makes clear that the caseworker is not an uninterested third party sent solely to help families but rather a government worker sent to investigate the family and make determinations about the safety of children. This is necessary for the reframing of the state's intervention into families. Instituting a form of *Miranda* rights would bring us a step closer to upholding the notion that the right to rear one's child is a fundamental right.

## **Parents Must Be Afforded Access to Independent Legal Counsel at the Outset of Any Investigation.**

Of course, it is not enough for parents to be informed of their rights – they must also have meaningful access to independent legal assistance in order to make sure that they fully understand their rights, to ensure that those rights are actually protected, and to allow parents to seek out advice on how to proceed in the early, high-stakes phase of the investigation. Considering ACS’s outsized policing of poor parents and poor communities, it is also not enough to merely inform parents that they have the right to consult with counsel during an investigation – parents must be provided counsel, free of charge, from the outset of the investigation, to ensure that all parents, and not just those with financial means, have the resources to protect their families throughout the pendency of their child welfare cases.

Currently, under state law, parents and persons alleged to be legally responsible for the children who are the subjects of a case are entitled to the appointment of counsel once a neglect or abuse petition is initiated against them in family court. N.Y. Family Court Act § 261. But while representation once the case reaches court is vital, it is not sufficient, given the path of ACS investigations. As soon as a report is called in and an investigation is initiated, the stakes become precipitously high: during a Child Protective Specialist’s very first visit to the home, she will likely ask to question the parents and the child and to examine the home and conduct a full-body examination of the child, and she may request that the parents sign releases for their own physical and mental health providers and their children’s providers, complete drug screens, or agree to attend a planning conference at the ACS field office. Parents’ responses to each and every one of these questions can have grave consequences. For instance, a parent who refuses to allow the Child Protective Specialist to undress their child and examine their full body may be viewed as “noncompliant” and/or trying to hide something, whereas a parent who agrees to go for a drug screen and then tests positive for alcohol may then be treated as an alcoholic.

Even at this very early stage, then, parents should be able to consult with a lawyer who can advise them of their rights, answer their questions, and talk through the possible consequences of exercising those rights. For instance, a lawyer could advise parents that a refusal to allow ACS into the home may lead to ACS seeking an access order in court, but also that the drug tests results even of an initial screen may be used against the parent in a later court proceeding.

If the investigation continues past that initial visit, the stakes grow higher still. Before removing a child or filing a case in court, ACS typically holds a child safety conference. At that conference, life-altering decisions are made: whether or not to file a case; whether or not to ask for a child to be removed from his parents’ care or to stay home with services; whether to recommend placement with a family member or strangers; and what services to recommend for the parent. Parents are expected to attend the conference, along with the Child Protective Specialist, their supervisor, and an allegedly neutral facilitator. Parents are given the option of having a parent advocate present – but the advocates available at the ACS office are themselves employed by ACS, leaving parents isolated and without allies or advocates at one of the most important meetings of their lives.

Neighborhood Defender Service has a long history in the criminal context as well as the family court context of doing pre-arrest or pre-court case advocacy. As part of that advocacy, we can begin to represent parents prior to their cases being filed in court, if they go through our community intake process. In these cases, attorneys can advise parents on their rights before cases are filed in court and parent advocates and social workers can attend child safety conferences with them. From this work, we see clearly the difference it can make to have early legal representation.

In one recent case this summer, we were retained through community intake to represent a young mother who had just given birth to her first child, a healthy baby boy born with no medical complications at all. She admitted at the hospital that she had used marijuana while pregnant, and the hospital called ACS. Once our client and her son were medically cleared for discharge, the assigned CPS told our client that she could not take her baby boy home from the hospital with her and indicated that he would be going to court and asking for the child to be taken from his mother's care. An NDS social worker called the CPS and read to him the marijuana bulletin that Commissioner Hansell issued this spring, and the CPS initially relented and agreed that the infant could be released home with his mother. However, the following day, the hospital still would not release the baby - and while ACS asserted that the hospital had placed a "social hold" on the baby, general counsel for the hospital asserted that ACS had instructed them not to release the baby. Our client, who had herself been discharged but who was breastfeeding her child, was forced to spend the day in the hospital waiting room, permitted in to her child's room to breastfeed only in the presence of security guards.

While our client passed the day under this humiliating and needless supervision, lawyers from NDS working furiously, contacting the head of Family Court Legal Services in Manhattan as well as the general counsel of the hospital to determine the basis of the child's hold, and filing emergency papers in family court demanding that the child be released immediately to his mother's care. Only after the general counsel of the hospital confirmed that the hospital had not placed any sort of social hold - and NDS relayed that information to ACS's counsel - did ACS relent and agree to the baby's release. In the end, ACS never filed any case against our client at all. But had she not had access to counsel, she was likely facing down not just a family court case but a traumatic and needless separation from her newborn son.

Though dramatic, this case is not anomalous. We have countless examples of times where our advocates have, for instance, attended child safety conferences with clients and convinced ACS staff to either not file a case at all or to agree to at least recommend that the child be released home during the pendency of the case.

Likewise, we meet a huge number of clients in court who tell us that if they had just had adequate information earlier, the path of their case would have been much different. For instance, clients sometimes indicate at the child safety conference that they do not believe they are in need of services for their family - and by the time they arrive in court, that answer has been twisted into a report that the client is *refusing* services and thus their child must be removed. After speaking with counsel and better understanding the stakes of the situation, many clients then agree to do services, whether or not they truly believe they need the services in question. In another case, a Spanish-speaking client was asked at the ACS office to sign papers agreeing to a voluntary placement in foster care for her teenage child. She stated she wanted to review the papers with a lawyer prior to signing anything, so ACS filed a case against her in family court. After speaking with counsel, she confirmed that she was in fact in agreement with a voluntary placement, but by that point, the neglect case had already been filed, and it took an additional six months for ACS to withdraw the neglect case and accept the voluntary placement that it itself had initially proposed.

Ensuring early representation for parents not only protects the best interests of the parent and the child alike, but also leads to a more efficient and more equitable system. From the first point of contact, all parents should be provided not only notice of their right to legal counsel, but also access to counsel. Wealthy parents have the ability to retain counsel as soon as they learn of an investigation; poorer parents should be afforded the same. The City should contract with organizations to provide pre-filing legal assistance to families - and the information for the contracted organizations should be provided to parents along with the notice of the parents' rights, at the first point of contact during the organization.

The proposed bills represent important next steps, with two important caveats. First, parents should not have to wait until the case against them is indicated to receive access to counsel, as ACS has 60 days after receiving the report to make that determination, and a huge number of life-altering decisions can be made within those initial 60 days. Second, this proposed expansion cannot be overseen by ACS itself. There is an inherent conflict of interest in ACS overseeing the provision of counsel to parents, their adversaries in any eventual court proceedings. Further, parents are not likely - with good reason - to make use of or to trust lawyers who operate under the purview of ACS. Any counsel provided to represent parents must not only have the appearance of being fully independent but must in fact *be* fully independent, to ensure that poor parents, just like parents with means, are afforded adequate counsel to protect their rights and their families upon the initiation of an investigation.

## Recommendations:

1. Any notice of a parents' rights should be given in writing, in plain language, as well as orally, and that the written notice be available in the 11 approved City languages.
2. The notice of a parents' rights should include, at a minimum, the following rights:
  - The parent is not required to permit the Child Protective Specialist to enter their home;
  - The parent is not required to speak to the Child Protective Specialist;
  - The parent is entitled to know the exact allegations that caused the investigation to begin;
  - The parent is entitled to seek the representation of counsel at any time, and will be assigned counsel if a case is filed against her or him in family court;
  - The parent is not required to allow their child to speak to the Child Protective Specialist;
  - Any statement made by the parent or the child or any other individual may be used against the parent in a court proceeding;
  - The parent is not required to sign any document presented to them, including release for sensitive health information, and may review the document with an attorney before reviewing the document.
3. Any program to provide counsel to parents during the investigation phase should be administered by an independent third party, and *not* the Administration for Children's Services, to ensure the independence of counsel and to reduce the possibility for mistrust of counsel by parents. We suggest that the Mayor's Office of Criminal Justice oversee this program, as they do the provision of counsel to parents in family court proceedings.
4. Access to counsel should be provided upon the initiation of an investigation, rather than at the time that a report against a parent is marked as indicated, as cases may be determined to be indicated well after the time that the family has begun to experience serious consequences as a result of an investigation.



**The Bronx  
Defenders**

**Redefining  
public  
defense**

**New York City Council  
Committee on General Welfare  
October 31, 2019**

**Written Testimony of The Bronx Defenders By  
Emma S. Ketteringham, Managing Director, Family Defense Practice  
Jessica Prince, Policy Counsel, Family Defense Practice**

Thank you for the opportunity to testify in support of New York City Council’s Child Welfare Package. The stakes could not be higher for our clients - parents living in the borough with the highest concentration of child protection involvement in the city. In many ways, depriving a parent of the right to raise his or her own child is “more grievous” than a prison sentence; some have even called the termination of parental rights the “civil death penalty.”<sup>1</sup> Yet, every day, we see far too many parents in New York City facing the unimaginable loss of their children without the benefit of legal counsel; children facing the trauma of being removed from their homes unnecessarily; and child protection services operating without the transparency necessary to ensure that decisions about family separation are made fairly and equitably. Although the intention of the child protection system might not be to dissolve low income families of color, the families who are most surveilled and most often dismantled are poor and overwhelmingly and disproportionately Black and Latinx.

We are encouraged that the City Council is calling for greater accountability by the child protection system and seeking to rectify some of its most harmful inequities. Our experience as practitioners shows that access to quality representation at every stage of a child protection proceeding—from the moment when the Administration for Children’s Services (ACS) initiates an investigation to a parent’s hearing to have their name removed from the State Central Registry when an investigation is indicated—improves outcomes. In short, quality representation prevents unnecessary family separations in low-income communities of color and mitigates the very real economic harm that results from system involvement. These bills are a step toward the transparency necessary to more fully understand the harms of the

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<sup>1</sup> E.G., Stephanie N. Gwillim, *The Death Penalty of Civil Cases: The Need for Individualized Assessment and Judicial Education When Terminating Parental Rights of Mentally Ill Individuals*, 29 St. Louis U Pub L Rev 341 (2009) (citing *In re K.A.W.*, 133 S.W.3d 1, 12 (Sup. Ct. Mo. 2004); see also *In re Smith*, 77 Ohio App. 3d 1, 16 (1991) (A termination of parental rights is the family law equivalent of the death penalty in a criminal case. The parties to such an action must be afforded every procedural and substantive protection the law allows.”)

system to New York City's most vulnerable families and fulfill the need of low-income parents for access to counsel at every stage of the process.

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 was created in 2005 and represents parents in child protection and all of the related family court proceedings that arise out of an abuse or neglect case, including custody, visitation, family offenses, and termination of parental rights. Since New York City first funded institutional parent representation in 2007, we have represented more than 13,000 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 75 attorneys, social workers, and parent advocates represents 1,500 new parents each year through assignment by the Family Court and over 300 additional parents during child welfare investigations. Our experience makes clear how critical it is for parents to be made aware of their rights, have access to counsel at every step of the proceeding, and for us to ensure that all parents, no matter their race or income, are treated fairly by a system that is intended to serve, not harm, vulnerable families.

**I. BxD Supports the City Council Bills Requiring the Administration for Children's Services to Inform Parents of Their Rights Including During a Child Protection Investigation, Including the Right to Be Represented by an Attorney, and to Provide Information about Obtaining an Attorney. (Int. Nos. 1736, 736, 1718, 1728, 1715, 1729)**

Taken together this group of bills, with some modifications, are a significant step forward to ensuring that all parents, regardless of their income, are advised of their rights

during a child welfare investigation and are given access to an attorney. We have represented thousands of parents. We meet the vast majority of our clients when they first appear in family court and we are assigned. This is after parents have already been in contact with city agencies for weeks, or even months and sometimes years. They have already been interviewed by caseworkers, and often detectives, had their home inspected, and have been asked by child welfare officials to make their children available for physical observation, interviews, and sometimes medical evaluations. Parents are also often asked to submit to evaluations and drug screens themselves. Parents are forced to navigate investigations alone and often traumatic family separation, that could have been avoided, has occurred by the time we meet them in court.

Our clients have told us that ACS does not tell them that they have rights during the investigation. Nor are they told that they have the right to request that ACS obtain a court order before they enter their home or speak to their children. On the contrary, they are told, in no uncertain terms, that they must allow ACS into their homes and to speak to their children alone, even without judicial authorization. Our clients have been asked to sign releases, often blank releases, essentially assigning away their right to privacy regarding deeply personal medical and treatment information. To be sure, there are emergency situations where ACS might have to take intrusive action. The law allows for that in narrow emergencies. But our experience shows that there are far more situations where ACS could obtain a court order and parents, if they knew their rights, could demand that they do so. But the normal course of action by ACS is to pressure a parent to participate. It is therefore critical that a process be in place to notify people of their rights when confronted with an ACS investigation and to put them in contact with organizations that can provide legal representation. Without this being a requirement, the rights of parents against government intrusion have no meaning.

It is equally critical that parents have access to legal representation at the end of an investigation that does not result in a family court filing. Many investigations are “indicated” (meaning ACS found some credible evidence of maltreatment), but are not serious enough to warrant court intervention. Under the current system, even if a parent is not brought to court, they will be listed on the State Central Registry of Child Abuse and Neglect (“SCR”), which limits their employment options for up to 28 years. Currently, if parents are not brought to court but listed on the SCR, they have no access to legal representation to clear their names from the SCR.

- a. BxD Supports the City Council Bills Requiring ACS to Provide Parents with Warnings about Rights at the Start of an ACS Investigation (Int. No. 1736; Int. No. 1718; Res. No. 736)

While people face a possible loss of their liberty in a criminal case, parents under ACS investigation face the horrific possibility of losing their children. Integral to an arrest and the start of any criminal case is the reading of Miranda Rights. These warnings have become so ubiquitous that any person living in the United States could likely recite the warnings on command. Communication of these rights signals to individuals and to government officials that these rights are important, taken seriously, and that there are expectations for how the government interacts with its citizens before it interferes with fundamental rights.

The law is clear that ACS cannot enter homes and interview children without a court order or their parents' permission. Yet in child protection cases where a parent's fundamental right in the care and custody of their children is at stake, ACS does not communicate basic rights to parents and often tells parents that if they fail to cooperate with ACS demands, regardless of whether they have a court order, their children will be taken. Parents are often manipulated and coerced into complying with ACS's demands. They receive no explanation of their rights during an investigation, are rarely informed of the allegations against them and are not told of their right to speak to an attorney. Every parent should be made aware that ACS cannot enter a person's home, look in every room, and demand that their children be forced to speak to a stranger alone without permission or a court order. And every parent should be told that they have the right to consult an attorney.

Children will not be made less safe if parents are made aware of their rights. ACS has emergency powers to remove a child in imminent danger without prior court review and a family must allow ACS to enter their home and speak to their children when they have obtained a court order to do so. These mechanisms for ACS to conduct investigations under lawful authority or intervene on behalf of a child in danger before a case has been filed in court include ways to conduct an investigation<sup>2</sup>, conduct emergency removals,<sup>3</sup> obtain various types of specific orders,<sup>4</sup> or even to seek orders of protection *ex parte*.<sup>5</sup> Furthermore, the manipulation and draconian approaches taken by ACS to enter family homes leads parents, and often their children who witness their parents' rights being violated and their parents being

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<sup>2</sup> Family Court Act § 1034 provides that the family court “may order the child protective service of the appropriate social services district to conduct a child protective investigation as described by the social services law and report its findings to the court.”

<sup>3</sup> Family Court Act § 1022 provides that “[t]he family court may enter an order directing the temporary removal of a child from the place where he or she is residing before the filing of a petition under” Article 10 of the Family Court Act.”

<sup>4</sup> Family Court Act § 1023 provides that the family court can make various orders including, but not limited to, orders of temporary removal, orders for the provision of services, and temporary orders of protection pursuant to Family Court Act § 1029.

<sup>5</sup> Family Court Act § 1029 provides that the family court, upon the application of any person who may commence a proceeding under Article 10 of the Family Court Act, “for good cause shown, may issue a temporary order of protection, before or after the filing of such petition.”

disrespected, to distrust the very child welfare officials who will be working with the family over the course of a case. Requiring ACS to clearly communicate to a parent their rights and their right to consult an attorney will result in earlier engagement by parents and ACS's delivery of services will not be undermined by an abuse of authority.

BxD supports City Council **Int. No. 1736** and **Int. No 1718**, preferably combined into one bill and with several modifications described below. Additionally, BxD urges the City Council to pass **Res. No. 736** to use its influence to encourage the New York State Legislature to pass legislation codifying a Parent's Bill of Rights which mirrors the language we are suggesting for **Int. No. 1736**. It is critical that ACS be required to inform parents of their rights in plain language, orally and in writing, and in the designated city wide languages. This information should be given to parents or caretakers upon first contact with a caseworker who is investigating the family. Additionally, ACS should provide parents with the contact information for legal service providers who can advise them about their rights and responsibilities when it comes to an ACS case. These warnings should make parents aware that absent a warrant or entry order for the family court, they have the right to refuse ACS entry into their home and are not required to allow ACS to speak with their children or examine their bodies. These rights are central to our understanding of privacy in any other context and should still exist for families, even if allegations have been made.

At a minimum, these rights should include:

- The right to know the allegations that have been made against you.
- The right to not let ACS staff into your home absent a court order.
- The right to remain silent and to know that anything you say can be used against you.
- The right to seek legal representation during an ACS investigation.
- The right of a parent to decide, absent a court order, whether their child will be interviewed or examined.
- The right, absent a court order, to decline ACS requests, including requests to sign releases or take drug tests.

b. **BXD Supports City Council Int. No. 1728. Requiring ACS to Ensure Parents Have Access to Independent Counsel at All Stages of ACS Involvement**

BxD strongly supports **Int. No. 1728**, which would ensure that parents, regardless of income, have access to an attorney during a child welfare investigation with a major and important qualification that is discussed below. This bill recognizes the government intrusion that takes place during an ACS investigation and the critical decisions that are made before a

case is filed and a parent is assigned an attorney, including often unnecessary family separation. This bill positions all parents, regardless of economic ability, to be advised and represented by counsel when they are being investigated and are at risk of losing their children.

While we support the impetus for the bill and firmly believe that all parents and caretakers should have the benefit of counsel in all stages of a child welfare investigation, the bill must guarantee that representation of parents remains completely independent of ACS. In the criminal legal system, it has long been understood that the independence and autonomy of defense counsel is a prerequisite for effective representation of people facing criminal charges. The same principle holds true in the child welfare system. Parents and caretakers facing investigation by the government and potential loss of their children need and deserve counsel that is not in any way beholden to the agency prosecuting the investigation. Put simply, ACS, the agency that oversees the prosecution of child protection cases, must have no direct or indirect supervision over the legal representation of parents who are the subject of an investigation.

The benefits of a parent having access to an attorney to represent them during a child protection investigation cannot be overstated. It is our experience that ACS's decision to remove children or seek court involvement is often due to a parent's misguided refusal to cooperate; a breakdown in communication between the parent and the investigating caseworker; a misunderstanding or mistake of fact on the part of the caseworker, or a condition in a parent's life that could be addressed with access to monetary or effective social support. When an attorney is available to represent a parent during an investigation, a parent can be fully advised of their rights and responsibilities during the investigation and the consequences of their decisions. The process can be fully explained and the parent's rights in the care and custody of their children protected. Parents are *more*, not less likely to participate meaningfully in case planning and to provide information critical to ACS's investigation, identify their strengths and resources, and address the issues that brought their children to the attention of the child protective system. In the event that a family separation or safety plan<sup>6</sup> is ultimately necessary, advocates can help a parent identify family members who can care for the children, avoiding the trauma of a removal. Having legal assistance during this process does not make children less safe or make it more difficult for caseworkers to do their jobs. On the contrary, children are best cared for when their parents are fully informed about their legal rights, responsibilities, and options.

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<sup>6</sup> A safety plan is an arrangement made by ACS and the family to keep children at home safely. This can include an order of protection, another relative moving into the family home, a parent's participation in services, or services being placed in the home.

The benefits to case outcomes are also clear. All of the institutional providers of parent representation in New York City provide as much preventive advocacy during a child protection investigation as they can despite it not being funded. At BxD, we provide early representation to families in the Bronx with funding from the City Council Right to Family initiative that began this year. Our experience doing early representation with private funding during fiscal year 2018 demonstrates the astounding positive impact on families when parents have access to attorneys and advocates during an investigation. Of the parents we represented during an investigation, 62% were never charged with abuse or neglect in court. Only 11% of families we represented during the investigation experienced foster care placement. Representation of parents during child welfare investigations reduces the harm of family separation. Furthermore, court filings can often be avoided altogether, saving valuable court resources and time for the cases that actually require them.

Having lawyers available to represent parents during child protection investigations is important in the interest of equity. The experience of navigating child welfare investigation without representation and advocacy is a problem unique to poor communities. In more privileged families, where parents have the resources to hire a lawyer, a parent is not forced to participate in an ACS investigation without legal representation. **Int. No. 1728** is thus an important step towards equalizing the experience of parents with the child protection system, regardless of background or economic status. This bill positions all parents, regardless of economic ability, to be advised and assisted by counsel and to seek the assistance in navigating the child welfare system.

c. **BxD Supports Int. No. 1715 and Int. No. 1729, Giving Parents Access to Counsel for SCR Fair Hearings.**

BxD strongly supports **Int. No. 1715** and **Int. No. 1729** which will ensure that parents have information about the SCR and access to representation in hearings to clear their names. This complicated process involves an administrative review and, if denied, an evidentiary hearing, in order to have the record of neglect or abuse amended and sealed. If a parent is unable to seal their record, their name remains on the State Central Registry, severely limiting their employment options and ability to support their family, for up to 28 years.

These bills are all the more critical because of the racial inequities involved. Data from the Office of Children and Family Services demonstrates that people of color are disproportionately excluded from the wide range of jobs that require an SCR clearance because Black and brown children make up a substantially higher percentage of the children whose

parents are listed on the SCR.<sup>7</sup> This bill would ensure that all parents have access to legal representation and is a step toward addressing the economic injustice that disproportionately harms families of color in the city.

At BxD, with money from the City Council’s Right to Family Initiative, we are able to provide some representation to parents who seek to amend and seal their SCR record. We have seen first hand that when a parent has an attorney, they are often able to prevail and have access to economic opportunities to support their families. It is critical that parents have access to counsel and the opportunity to clear their name and provided meaningful support to their families.

## **II. BxD Supports City Council Bills Enhancing Transparency of the Child Welfare System**

BxD supports the City Council’s initiative to hold ACS accountable for its practices and to better understand which communities are experiencing the harm. In order to truly understand how families become involved with the child welfare system, it is crucial that data be gathered about how the system functions. This includes data about how and why cases are reported, what takes place during an investigation, and which people in our community are bearing the burden of these invasive inquiries through government surveillance and family separation.

- a. City Council Int. No. 1716 and Int. No. 1727, Requiring Reporting on Emergency Removals. Will Enhance Transparency and Oversight of the Most Extreme Exercise of State Power over the Family.

An emergency removal of a child from his family is the most extreme action ACS can take and one of the most traumatic events a child or his parents can experience. Emergency removals often happen abruptly, without the opportunity for a parent to reassure a child that where they are going is safe or to know where their child is going and when they will see them again. Greater transparency about when ACS conducts emergency removals (taking a child out of a home before the case has been heard by a family court judge) is necessary to better understand how the harm of unnecessary emergency removals is distributed across communities and address existing disparities.

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<sup>7</sup> Racial and Ethnic Disparities in the Child Welfare System: New York City Compared to Rest of State ( Black children in comprise 42% of children with indicated reports on the SCR compared to 42% of children in New York City overall).



Under the Family Court Act, an emergency removal is justified only if the danger to a child is so immediate that there is no time to apply for an *ex parte* order from the court prior to a removal and after all other possible safety interventions have been exhausted.<sup>8</sup> In our experience, emergency removals are conducted far too often before measures that would keep a child safe in his own home have been exhausted and in situations where the circumstances do not justify emergency intervention at all. Many times, once a parent is assigned an attorney at the first court date, the removal is reversed by a judge or upon agreement between the parent's attorney and Family Court Legal Services (FCLS). Children in the poorest neighborhoods are disproportionately subjected this needless trauma. For example, according to data provided by New York City Family Court, the number of emergency removals in the Bronx is twice as high as in any other borough.<sup>9</sup>

Although ACS reports generally on the number of judge-approved emergency removals it conducts each year,<sup>10</sup> ACS does not report the total number of children who are subjected to emergency removal; the race, ethnicity, income, and zip code of the families involved; or how many removals are not ultimately approved by a judge. Little is known about the circumstances that lead to removals; how removal practices might vary across the city; whether there truly was no time to seek court approval; what efforts were made, if any, to keep the child safe in his home; or whether the removal was approved or reversed once the case was filed in court.

BxD supports City Council **Int. No. 1716** and **Int. No. 1727**, which together would require ACS to report more specifically on its emergency removal practices. These bills would require ACS to provide quarterly reports detailing the total number of children subjected to

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<sup>8</sup> Part 2 of article 10 of the Family Court Act sets forth three ways in which a child may be separated from their family in response to an allegation of child maltreatment and pending the outcome of a child protection case: (1) a preliminary order of the court *after* a petition for neglect or abuse is filed under FCA 1027; (2) a preliminary order of the court *before* a petition is filed; and (3) emergency removal of a child from their parent without a court order and before a petition for neglect or abuse is filed in family court. The statute creates a continuum of consent and urgency and mandates a hierarchy of required review before a child is separated from his or her family. Under the first scenario, a child is not removed immediately upon investigation of a report of suspected maltreatment. Rather, ACS files a petition alleging the neglect or abuse of the child and seeks a hearing under FCA 1027 for the removal of the child from the home. At this hearing, the parent appears and is represented by counsel. If ACS determines there is not enough time to file a petition, the next step is not an emergency removal, but the second scenario: an *ex parte* removal by court order under FCA 1022. In order for an *ex parte* removal to be justified the parent must be absent or have refused to consent to the removal, and the parent must have been informed of ACS's intent to remove the child. In addition, there must be insufficient time to file a petition and hold a preliminary hearing. The purpose of these sections is to avoid a premature unnecessary removal of a child from his home by establishing procedures for early judicial oversight and determination.

<sup>9</sup> Data provided by the Office of Court Administration. (2017) Table 10: Family Court Disposition of Original Abuse (NA) & Neglect (NN) Petitions: Temporary Removal of Children From Home 2017. Retrieved from: <http://ww2.nycourts.gov/sites/default/files/document/files/2018-06/Family-Court-statistics2017.pdf>

<sup>10</sup> See ACS Monthly Flash Report, available at <https://www1.nyc.gov/site/acs/about/flashindicators.page>.

emergency removal, as well as the race and ethnicity of these children and their caregivers. In addition, ACS would be required to report on families' household income; single-parent households; and where the family resides. We suggest that this data be further disaggregated by community district and zip code. We recommend the following data points be included in the bills:

- the substance of the allegations that resulted in ACS's to attempt to separate families,
- if the allegation is for drug or alcohol abuse, specifics about the substance alleged
- the number of Child Safety Conferences (CSC) conducted, the location of the CSC, and the recommendations regarding family separation that result;
- the number of times ACS exercised its emergency removal power, under what circumstances, and the reasons why seeking court review was not possible,
- the number of times ACS sought a court order to remove a child and the outcome,
- the time it took for ACS to file a petition after removing a child pursuant to its emergency power,
- the number of times ACS removes a child during the pendency of a family separation hearing,
- the number of family separations where children did not go to a family resource; and
- how soon (in hours and days) after a family separation did a family visit occur.

These additions will better inform the City Council regarding the disproportionate use and or abuse of the emergency removal power in low income Black and brown communities, as well as about what information is used to determine when to effectuate an emergency removal, and how often they are reversed by the court when reviewed.

b. City Council Int. No. 1161, Int. No. 1717 and Int. No. 1719 Are Necessary to More Fully Understand and Address the Disparities in the System.

BxD supports City Council **Int. No. 1161, Int. No. 1717, and Int. No. 1719** which will require ACS to report on the demographics of the families involved at each stage of the child protection proceeding. The bills will also require ACS to implement a plan to address racial, ethnic, and income disparities in the system, and the length of time that it takes families to get in touch with their children if they have been removed and placed in foster care, or transferred to another borough.

Children of color are profoundly and disproportionately vulnerable to the negative consequences of family separation. In New York State, Black children make up 16% of the general population, but 48% of the foster care population.<sup>11</sup> In New York City, Black children account for 22.7% of children under the age of eighteen, but a staggering 52.8% of children separated from their families in foster care. In contrast, 25.5% of the children in New York City are white, but white children comprise only 5.5% of the foster care population.<sup>12</sup>

In addition to being more likely to have contact with New York City's child welfare system, families of color fare worse than white families once a case has been opened. Studies show that children of color are more likely to be separated from their families than white families, even under similar circumstances.<sup>13</sup> Moreover, the harm of separation is more likely to be exacerbated for children of color because they spend more time separated from their families, change placement 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 foster care without being adopted.<sup>14</sup> Although the intention of New York City's child protection system may not be to separate children of color from their families, children of color are the most likely to suffer the consequences.

City Council **Int. No. 1717**, **Int. No. 1719** and **Int. No. 1161**, together, require enhanced reporting by ACS about its process of investigation and the demographics of the families involved with the system. Specifically, the bills would require reporting about the number of caseworkers employed by ACS, their level of experience, caseloads, and numbers of supervisors, disaggregated by role. Additionally, they would require reporting on the number of investigations ACS conducts. In addition to identifying ACS practices, the bills seek to gather demographic information about the parents and children involved at the different stages of child welfare involvement. Furthermore, the bills would require ACS to report information about annually about the number of children in foster care, and how long it takes parents a family members to contact their children if they have been removed and placed in foster care or transferred to another home, and whether or not this placement is within their borough. Gathering this information is essential to highlight racial, ethnic, and income disparities that are prevalent in the child welfare system.

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<sup>11</sup> 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).

<sup>12</sup> New York State Office of Children and Family Services, 2018 Monitoring and Analysis Profiles With Selected Trend Data: 2014-2018, at 7 (2018); 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> .

<sup>13</sup> 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).

<sup>14</sup> 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).

BxD supports these bills but encourages the City Council to push for more information. It is important that data include the aggregate number for each type of investigation, and where investigation involves drug use, this data should be further broken down by substance, regardless of whether the substance is legal or illegal. Further, the information should reflect aggregate numbers of: (a) cases marked substantiated versus cases marked unfounded; (b) cases where non-court mandated services were offered to the family, including preventive services; (c) cases filed in court; (d) cases where the children were emergency removed. Finally, any reports should include the length of time in hours or days a child spent in the Children's Center prior to placement in a foster home or with a relative, and the length of time in hours or days it took for the family of a foster care youth to be in direct contact with that youth after such youth was taken into ACS custody or transferred between placements, provided as an average number and disaggregated by borough.

c. BxD Supports Int. No. 1426 Calling for Greater Transparency in HHC Hospital Drug Testing Practices.

We see a number of child welfare investigations begin after a hospital reports a pregnant person, postpartum person or their newborn to the State Central Register<sup>15</sup> ("SCR") because that person and or their newborn tested positive for an illegal drug at birth. Although a positive toxicology test alone does not in and of itself suggest that an infant is harmed or is at risk of harm, often newborns who test positive for an illegal drug are held at the hospital and separated from their mothers during the critical time of maternal-infant bonding due to a report made to the SCR.<sup>16</sup> It is unknown how many women are drug tested by medical facilities in the Bronx, how many tested positive for what drug, or how many or what proportion of the women who tested positive were reported to child welfare authorities.

In our experience, hospitals do not always obtain a woman's consent, let alone informed consent, for a test and often do not even notify the woman that the test is being performed on her or her newborn. When tested, no medical explanation or reason is given or recorded in the medical record for why the test is necessary and no medical treatment is offered to or performed on the woman or newborn if the test is positive for cannabis. Drug testing in this manner is inconsistent with the most recent written policy of the Health and Hospital

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<sup>15</sup> The SCR receives telephone calls alleging child abuse or maltreatment within New York State. Thereafter, SCR staff relay information from the calls to the local Child Protective System for investigation.

<sup>16</sup> New York law does not require reporting to the State SCR a positive drug test of a mother or newborn at birth. Still, nearly 27,000 new reports are added to the SCR each year, many of those related to drug use and positive tests at birth. In 2017 in the Bronx, 462 mothers were investigated for drug use while pregnant as a result of calls to the SCR, and almost 70% of these mothers had investigations indicated against them."Advanced copy of research report on the NYC child welfare system's response to allegations of drug use by parents, to be published by the NYU School of Law Family Defense Clinic and Movement for Family Power, XXXX 2019.

Corporation (HHC).<sup>17</sup> HHC's policy does not require prenatal or postpartum toxicology testing; instead it identifies ten risk indicators that may be considered in determining whether to test.<sup>18</sup> The policy also provides that:

The medical provider must inform the mother if a toxicology test is necessary and obtain her verbal consent. The provider at the same time should explain to the mother how the results of the toxicology test will be used for her medical care and that of her unborn or newborn child. All toxicology test results must be shared with the patient. If the mother refuses to give verbal consent for testing, this refusal will be documented in her medical record. The medical provider will not conduct testing without the mother's consent. **Note: A positive toxicology test result is not an indication to report to the State Central Registry of Child Abuse and Maltreatment unless there is a concern regarding the safety of other children in the home.**<sup>19</sup>

Our experience is that these directives and guidelines are consistently ignored. To our knowledge, hospitals have different guidelines for when to test and there is little to no oversight by HHC to ensure that testing is not done in a manner that contravenes their policy, done solely for investigative reasons, and in a manner that protects against racial disparities in who is tested and who is reported.

Extraordinary race disparities exist in who is subjected to drug testing and who is reported to child welfare officials. 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.<sup>20</sup> We know now that the sensationalization of the crack epidemic in the main-stream media was highly prejudicial and presented often

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<sup>17</sup> Operating Procedure memo. HHC Operating Procedure 180-8: Corporate Policy for Urine Toxicology Testing in the Pregnant Woman during the Antepartum Period, Labor and Delivery and Postpartum.

<sup>18</sup> *Id.* at 2.

<sup>19</sup> *Id.* at 3.

<sup>20</sup> 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).

inaccurate information about the effects of in-utero drug exposure.<sup>21</sup> This racist narrative, went largely unchallenged for decades, however, and today's child protection system continues to reflect and reinforce that racist, unsupported narrative.<sup>22</sup>

Similar to stop and frisk practices, the “test and report” practices of hospitals and child welfare authorities reveals extreme racial disparities. Despite similar or greater rates of drug use among white women, Black women are ten times more likely to be reported to child welfare for a positive drug test.<sup>23</sup> 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.”<sup>24</sup> A 2010 study of a hospital in Rochester demonstrated that despite race-blind testing guidelines, the hospital tested and reported greater numbers of women of color regardless of whether they met guidelines.<sup>25</sup> Other hospitals in other cities across the nation had similar results.<sup>26</sup> This evidence, as well as what we have seen over the past decade in the Bronx, suggests that great racial disparities exist in who is tested and who is reported as child abusers.

It is unknown how many women have been drug tested by New York City hospitals or how hospital guidelines are administered. This is why we support **Int. No. 1426**, which calls upon ACS to report on investigations initiated by health facilities and include information about the subjects of the reports, including the ethnicity and race of the subject of the report. We suggest that it be expanded to all health facilities rather than just those facilities managed by HHC and that it be amended to require ACS to report on the race and ethnicity of each patient, as well as whether the infant was separated from his or her mother by the hospital or

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<sup>21</sup> 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>.

<sup>22</sup> See Dorothy Roberts, *Unshackling Black Motherhood*, 95 Mich. L.R. 938 (1997); Gómez, *supra* note 16; Morgan & Zimmer, *supra* note 16.

<sup>23</sup> The Guttmacher Report on Public Policy, State Responses to Substance Abuse Among Pregnant Women, (December 2000, Vol. 3, No. 6)

<sup>24</sup> Terplan, Cannabis and pregnancy: Maternal child health implications during a period of drug policy liberations, 104 Preventative Medicine 46, Abstract (2017) <https://www.nydailynews.com/new-york/weed-dozen-city-maternity-wards-regularly-test-new-mothers-marijuana-drugs-article-1.1227292#ixzz31hXS2sUE>

<sup>25</sup> 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.

<sup>26</sup> 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>

by ACS as a result of a positive drug test. Ultimately, a comprehensive approach to this pervasive issue will require legislation at the state level and the collection of information is critical to this effort.

**III. BxD Supports State Central Registry (SCR) Reform and Urges the City Council to Use Its Influence to Ensure the SCR Bill (S6427A/A8060) Becomes Law (Res. No. 1057, Res. No. 1066)**

BxD urges the City Council to use its influence to encourage Governor to sign the SCR Bill (S6427A/A8060) into law. This bill was passed the Senate and Assembly and is awaiting signature from Governor Cuomo. Placement on the SCR, impacts thousands of New Yorkers each year. In fact, nearly 27,000 new reports are added to the SCR each year.

Indicated cases disproportionately affect low income families of color creating economic instability and furthering income inequality along racial lines. According to data from the Office of Children and Family Services (OCFS) in 2016, black children are the subjects of indicated reports at 2.69 times the rate of white children, and Latinx children are the subjects of reports at 1.58 times the rate of white children<sup>30</sup>. In contrast, only 6% of parents with indicated cases are white, while 42% of indicated reports are about Black, and 40% are Latinx.<sup>27</sup> OCFS concluded that for all of New York State that “[B]lack children make up a substantially higher percentage of the child welfare population at each stage in the process than their share of the general population of children,” including being reported to the SCR<sup>31</sup>.

Currently a parent’s name can remain on the SCR for up to 28 years. This intrusive, systemic tool of surveillance keeps thousands of New Yorkers in a cycle of poverty, unable to work and support their families. If signed into law, this new law will reform the SCR in a number of positive ways. It will change the legal standard available to parents in administrative hearings from the lowest legal standard of some credible evidence, to a preponderance of the evidence, which is the same standard used when the cases are prosecuted in the family courts. It will allow parents to submit proof of rehabilitation to be considered by the judge when making a decision in their case. Further, this bill will also reduce the number of years a person’s name remains on the registry. Specifically, parent’s record will be available to employers, in most cases, for 8 years and for certain categories of employers (daycare, headstart, and early intervention), for 12 years, a significant decrease from the current 28 year

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<sup>27</sup> Strengthen Families by Alleviating Collateral Consequences of Reports to the State Central Register, PLAN (May 2018).

<sup>30</sup> Black Disparity Rate: Unique Children in SCR Reports CY (2016)

<sup>31</sup> Racial and Ethnic Disparities in the Child Welfare System: New York City Compared to Rest of State (Outside of NYC) 2009 Compared to 2010 and Comparison of Selected Counties (July, 2011)

mandate. Finally, the bill also provides for automatic sealing in cases where a Family Court Judge has dismissed the case following a fact finding hearing or upon successful completion of an agreed upon adjournment in contemplation of dismissal (“ACD”) or a suspended judgement.

Through our representation of clients, we see that so many child protective cases stem from issues of poverty such as lack of food, clothing, and shelter, or kids missing school. These situations should not sentence parents and their children to decades of poverty, generational foster care, and continued family disintegration. We believe that the SCR bill, awaiting the Governor’s signature, is an important first step in shrinking the damaging effect the SCR has on marginalized and over-policed communities of color.

## **Conclusion**

The child welfare system in New York City can and should be designed to keep children safe and families intact. This priority is furthered by legal representation and informed decision making at every stage of a proceeding from the investigation to SCR name clearing. Furthermore, only by truly understanding the complexities of the child welfare system and how the harms of the system are distributed can we start to address its inequities. We support the city council’s child welfare package as a step toward realizing these goals.





**TESTIMONY OF:**

**Lauren Shapiro  
Director, Family Defense Practice  
BROOKLYN DEFENDER SERVICES**

**Presented before**

**The New York City Council's Committees on  
General Welfare  
Hearing on Accountability and Transparency at the  
NYC Administration for Children's Services**

**October 31, 2019**

**Introduction**

My name is Lauren Shapiro and I am the director of the Family Defense Practice at Brooklyn Defender Services (BDS). Thank you to the New York City Council Committee on General Welfare for the opportunity to testify on the need for accountability and transparency from NYC's Administration for Children's Services (ACS) and to comment on a package of legislation that seeks to address that need.

BDS provides multi-disciplinary and client-centered criminal defense, family defense, immigration, civil legal services, social work support and advocacy in nearly 30,000 cases involving Brooklyn residents every year. Our Family Defense Practice ("FDP") is the primary provider of legal representation for parents in child abuse and neglect cases in Brooklyn. In twelve years of service, FDP has represented over 12,000 parents and caretakers in Brooklyn Family Court and has helped more than 20,000 children remain safely at home or leave foster care and reunite with their families. We currently represent over 2,300 parents and caretakers. Our Community Office is located in the East New York neighborhood of Brooklyn which has one of the highest rates of child welfare involvement in the City.

Over 90 percent of our clients face allegations of child neglect, stemming from poverty-related matters, such as poor housing conditions, lack of adequate child care or children not attending school. Other cases, such as those in which domestic violence or excessive corporal punishment

is alleged, are complicated by poverty and access to stable and long-term supportive services. A large number of our clients struggle with mental health and/or substance use issues or are facing other challenges to parenting, such as intellectual or physical disabilities. Many of our clients are or were in foster care themselves. The families we serve are some of the most vulnerable in this city. They are immigrants, the working poor, single parents, and families struggling with homelessness or insecure housing that impacts their ability to find and maintain work and ensure that their children have reliable access to good education and supportive services.

### **The City's Child Welfare System Disproportionately Targets Black Families and Low-Income Families**

We thank the Progressive Caucus and General Welfare Committee of the City Council for the package of progressive bills that have been introduced to address the profoundly disproportionate rates of child welfare involvement within communities of color in New York City and the resolutions that call on our state legislature and Governor to do the same. Despite making up only 23% of New York City's population under 18, Black children represent 53% of foster care placements.<sup>1</sup> According to a New School data brief on child welfare investigations and New York City neighborhoods, of the 60,000 allegations investigated by ACS in 2017, the ten community districts with the highest concentration of child poverty had investigation rates four times higher, on average, than the ten community districts with the lowest child poverty.<sup>2</sup> Among districts with similar poverty rates, those with higher concentrations of Black and Latinx residents had higher rates of investigation.<sup>3</sup> Housing instability and homelessness is one of the strongest predictors for child welfare involvement. About 25% of families in city shelters have an open ACS case.<sup>4</sup>

Racial inequity in child welfare involvement is the result of structural racism that is embedded in our historical, political, cultural, social, and economic systems and institutions. Understanding the intersections of race, racism, nationality, and poverty is critical to challenging the inequities in the child welfare system.

### **New Yorkers Need Transparency from ACS**

In order to make progress toward the goal of eliminating disparities in our city's child welfare system, widespread, reliable, and consistent data is needed 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.

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<sup>1</sup> <https://ocfs.ny.gov/main/reports/maps/counties/New%20York%20City.pdf>

<sup>2</sup> Butel, Angela Data Brief: Child Welfare Investigations and New York City Neighborhoods. Available at: <http://www.centernyc.org/data-brief-child-welfare-investigations>

<sup>3</sup> *Ibid.*

<sup>4</sup> [https://static1.squarespace.com/static/53ee4f0be4b015b9c3690d84/t/5914bdd92994ca8427bac01b/1494531564473/AdriftinNYC\\_Final\\_11May.pdf](https://static1.squarespace.com/static/53ee4f0be4b015b9c3690d84/t/5914bdd92994ca8427bac01b/1494531564473/AdriftinNYC_Final_11May.pdf)

For these reasons, we support the six bills, Intro. Nos. 1426, 1161, 1716, 1717, 1719, and 1727, currently before the City Council, that will help ensure more accurate and transparent reporting by ACS.

**Intro. 1426 - A Local Law to amend the administrative code of the city of New York, in relation to reporting on investigations initiated by the Administration for Children's Services resulting from drug screenings performed at facilities managed by the New York City Health and Hospitals Corporation**

Many of the people we represent utilize public and private hospitals that predominately serve low-income patients for prenatal care, labor, and delivery. It is common for our clients and their newborns to be drug-tested at birth, often without their knowledge, without their informed consent, or even despite their explicit refusal. Our understanding is that the Health + Hospitals' (H+H) policy requires verbal consent to drug testing during or after labor, but many people who have been tested at a hospital report that they were not asked permission for the hospital to test themselves or their babies. Drug testing without informed consent is often applied selectively, disproportionately impacting poor women and women of color using government-funded health care,<sup>5</sup> and is out of step with professional standards.<sup>6</sup>

BDS supports Intro. 1426. However, because many of our clients and others impacted by ACS involvement seek prenatal treatment and give birth at private hospitals, we urge the Council to require ACS to also report on investigations resulting from drug screenings performed at private hospitals in addition to public hospitals. Without this information, this amendment would only allow us to see a portion of the impact of hospital drug screenings. We also urge the Council to require reporting regarding the specific hospital that conducted the test, as well as the specific drug testing method used by the hospital, including whether there was any follow-up or confirmation drug testing completed.

**Int. No. 1161- Enhanced Reporting on the Child Welfare System**

BDS supports this bill and also urges the Council to require reporting that disaggregates substance abuse allegations into the specific drug misuse alleged, and that race be a required reporting category as well as ethnicity.

**Int. No. 1716 - A Local Law to amend the administrative code of the city of New York, in relation to reporting demographic information for emergency removals by the administration for children's services**

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<sup>5</sup> Open Society Foundations. "Expecting Better: Improving Health Care and Rights for Women Who Use Drugs." <https://www.opensocietyfoundations.org/sites/default/files/expecting-better-improving-health-and-rights-for-pregnant-women-who-use-drugs-20181016.pdf> (2018), at 8, citing Amnesty International "Criminalizing Pregnancy: Policing Pregnant Women Who Are Using drugs in the USA." <https://www.amnesty.org/download/Documents/AMR5162032017ENGLISH.pdf> (2017), at 40.

<sup>6</sup> The American Congress of Obstetricians and Gynecologists (ACOG). "Toolkit on State Legislation: Pregnant Women and Prescription Drug Abuse, Dependence and Addiction." <https://www.acog.org/-/media/Departments/Government-Relations-and-Outreach/NASToolkit.pdf?dmc=1&ts=20190226T1940529955> ("ACOG policy states that urine drug tests should only be used with the patient's consent and to confirm suspected or reported drug use, including for women who present at hospitals for labor and delivery.")

BDS supports this bill. We propose amending the bill to further clarify the definition of an “emergency removal” from a parent or caretaker so that it more closely tracks the statutory definition and to include cases in which a parent or caretaker is excluded from the child’s home. We also recommend amending Intro 1716 to ensure that the demographic information collected includes the family’s place of residence, source of income, housing type, and primary language.

**Int. No. 1717-A Local Law to amend the administrative code of the city of New York, in relation to information regarding demographic information of parents and children at each step in child welfare system and a plan to address racial and income disparities**

BDS supports this bill with amendments. We propose amending this bill to ensure that the demographic information collected also includes a family’s source of income, housing type, place of residence, and primary language. We also suggest amending the definition of the steps of each stage of a child welfare case to more closely track the language of the Family Court Act. This bill calls for ACS to develop a plan to address racial and income disparities within the child welfare system. It is critical that this plan is not developed solely by ACS, but has input from a broad range of stakeholders, including people directly impacted by the child welfare system.

**Int. No. 1719 and Int. No. 1727 - Increased Transparency in Emergency Removals**

Emergency removals of children from their families should be conducted only in the most serious cases and increased data and information about emergency removals is necessary to ensure ACS accountability on emergency removals.

**Harm of Emergency Removals**

The decision to remove children from their parents is a grave one. Removal causes lifelong trauma to children and can often have lasting negative consequences, including psychological problems into adulthood.<sup>7</sup> The New York State legislature has declared that it is in children’s best interest to live with their parents “because the child’s need for a normal family life will *usually best be met in the home of its birth parent.*”<sup>8</sup> The Social Services Law further says that “the state’s first obligation is to help the family with services to prevent its break-up or to reunite it if the child has already left the home.”<sup>9</sup> The research also bears out that children belong with their parents whenever possible and that placement in foster care results in worse outcomes for children.<sup>10</sup> In our experience, the optimal outcome for children is remaining with their families whenever it can be safely achieved. Nothing less is required by the law. The foster care system is

<sup>7</sup> American Academy of Pediatrics, AAP Statement Opposing Separation of Children and Parents at the Border (July 2018), <https://www.aap.org/en-us/about-the-aap/aap-press-room/Pages/StatementOpposingSeparationofChildrenandParents.aspx> (explaining that “highly stressful experiences, like family separation, can cause irreparable harm, disrupting a child’s brain architecture and affecting his or her short- and long-term health”)

<sup>8</sup> See N.Y. Soc. Serv. Law § 384-b(1)(a)(ii).

<sup>9</sup> N.Y. Soc. Serv. Law § 384-b(1)(a)(iii).

<sup>10</sup> See, e.g. Reva I. Allen, Alex Westerfelt, Irving Piliavin, & Thomas Porky McDonald, ASSESSING THE LONG TERM EFFECTS OF FOSTER CARE: A RESEARCH SYNTHESIS (Child Welfare League of America, 1997), cited in Allon Yaroni, Ryan Shanahan, Randi Rosenblum, & Timothy Ross, *Innovations in NC Health and Human Services Policy: Child Welfare Policy*, VERA INSTITUTE OF JUSTICE POLICY BRIEFS, Jan. 2014, available at <http://www.nyc.gov/html/ceo/downloads/pdf/policybriefs/child-welfare-brief.pdf>.

not a substitute for families. Children in foster care are likely to be moved multiple times; do not have the same opportunity for bonding with adults; and are more likely to be arrested as they get older.<sup>11</sup> Foster care should not be seen as anything but a temporary stop on the way to family reunification, except in very limited circumstances.

BDS continues to see children being removed unnecessarily as these two recent cases demonstrate:

Gina\* has two children, Jonathan, age 11 and Sienna, age 8. Sienna is profoundly disabled due to Fragile X syndrome. ACS alleges that Gina's husband, the children's father, committed acts of domestic violence against her. During business hours, ACS visited the home and spoke with both parents and the children. Gina's husband refused to allow ACS to speak with her alone. ACS asked Gina, in her husband's presence, to leave with her children and go to PATH, and she refused. ACS then notified the police and her husband was arrested. Even though his arrest removed any immediate danger of domestic violence, ACS nevertheless removed the children from Gina's care without a court order and brought them to the Children's Center, where they remained for the next two days. The next day, ACS filed a petition against both parents alleging that Gina's husband perpetrated domestic violence against her and that she failed to protect the children from witnessing that violence, and sought a remand order for both children. Gina opposed the removal and the case was scheduled for a 1027 hearing the following day. At the 1027 hearing, ACS agreed to release the children to Gina's care.

ACS filed a neglect petition against our client Crystal\* regarding the three children she and her wife, Katherine, were raising together. Crystal was married to Katherine when one of the children was born, making her the legal parent. The three children were released to Crystal and Katherine's care. One Friday, about a year later, ACS held a Child Safety Conference without notifying counsel and decided to remove all three children. ACS conducted the removal during court hours without seeking a removal order from the Family Court. The basis for the removal was that several days earlier, Katherine left the children in Crystal's care for a day without telling her where she was going. There was no allegation that Crystal was unable to care for the children or that they were harmed in her care, and by the time of the child safety conference and removal Katherine was back in the home and had been for three days. After the weekend, ACS filed an order to show cause seeking a removal order which was immediately denied and the children were returned to their parents. The case was adjourned in contemplation or dismissal, and ultimately dismissed six weeks later.

### **Need for Data and More Information**

Although the law requires that before removing children, the harm of removal should be balanced against the risk of harm to the children of remaining in the home, it is clear that ACS workers and their supervisors are not adequately considering the harm of removal when deciding whether to separate children from their families. In April 2019, at the request of advocates, ACS updated its Child Safety Alert #33 policy to emphasize the factors that ACS workers should

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<sup>11</sup> Joseph J. Doyle, *Child Protection and Child Outcomes: Measuring the Effects of Foster Care*, 97 AM. ECON. REV. 1583, 1584 (2007) [hereinafter "Doyle 2007"].

consider before removing a child from their home. Given the continued high rate of emergency removals documented on ACS's flash reports<sup>12</sup>, ACS should be required to show what training ACS is providing on the policy and what that training looks like. Additionally, to better identify which children are being removed from their homes and the impact that separation from their parents and families may have, the City needs better data on these cases as the data on the flash reports is inadequate to get a full picture.

Intro. Nos. 1719 and 1727 seek to do just that by requiring ACS to report regularly on the number of cases where ACS removed a child before coming to court, how often Family Court judges agree with ACS's emergency removal decisions, and how long it takes for a child to be provided with contact and visits with their parents or caretakers once removed from their home. BDS supports both bills and offers the following recommendations:

Int. No. 1719 should also clarify that the information sought from ACS must include the time frames for both telephone calls between a parent and children immediately after a removal of a child or transfer to a new foster care placement, and in-person visits between a parent and a child who was removed from a parent or moved to a new foster care placement.

Int. No. 1727 should require detailed reporting about cases involving emergency removals and how often a Family Court judge approved ACS's decision to remove a child or parent from the home. We also recommend amending the language of the bill to closer track the language of the Family Court Act.

### **New York City Parents and Caregivers Urgently Need to Know Their Rights When ACS is Investigating their Families**

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.<sup>13</sup>

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 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. Connecticut's legislature paved the way for informing parents of their rights in 2011 by enacting a comprehensive parent's bill of rights statute<sup>14</sup> that could serve as a model to help New York parents understand and protect their rights when it comes to their children.

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<sup>12</sup> The most recent ACS flash report shows that from the period August 2018 to August 2019 emergency removals occurred in as much as 59% of the cases in some months: <https://www1.nyc.gov/assets/acs/pdf/data-analysis/flashReports/2019/09.pdf>

<sup>13</sup> Rise, *Surveillance Isn't Safety- How over-reporting and CPS Monitoring Stress Families and Weaken Communities* (Sept. 17 2019).

<sup>14</sup> C.G.S.A. § 17a-103d

With Intros. 1736, 1718, and Reso. 736, we thank the Council for acknowledging the urgent need for a “Bill of Rights” or Miranda-style warning for New York City’s parents and caregivers who are facing child welfare investigations. Intro. No. 1736 seeks to ensure that all New Yorkers, regardless of income or neighborhood, understand their rights during an ACS investigation so all parents can make informed decisions for their family.

While BDS strongly supports the principle behind Intro. No. 1736, the bill should be strengthened to ensure that New York City’s parents and caretakers are provided with actual and adequate notice of their rights during an investigation. Since ACS would be charged with providing the notice of rights upon initial contact with a family, the proposed bill should require that all communication to parents and caretakers about their rights during a child protective investigation be provided both orally and in writing during an initial face-to-face meeting with ACS. Safeguards must be built in to ensure that the information is in fact provided to all parents at that time. We further suggest that the bill enumerate the specific rights every parent and caretaker has during an ACS investigation, including that they are entitled to seek the advice or representation of counsel, that they have the right to not allow ACS into their home without a warrant, 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 records. 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.

New York City’s parent “Bill of Rights” could serve as a model for the state. BDS supports Reso. 736, which calls on the state legislature and Governor to create similar protection for all parents across the state. Like Intro. No. 1736, Res. 736 should be amended to call on the New York State Legislature and the Governor to sign a state law that would amend the Social Services Law to require all state child protective agencies to provide parents and caretakers with comprehensive information, orally and in writing, about their rights during a child protective investigation. The rights of parents and caretakers should be enumerated in the state bill, similarly to the proposed changes to Intro No. 1736, and should be provided in plain language and given to parents and caretakers during the initial face-to-face meeting between a parent or caretaker and the local child welfare agency conducting the investigation.

### **Early Defense Resources Prevent Unnecessary Child Welfare Involvement and Removals**

Having access to legal assistance before a child welfare investigation ends up in court helps prevent unnecessary removals of children from their families and avoids unnecessary Family Court litigation by giving parents who are under investigation by ACS access to expert legal advice and social work services before ACS seeks to remove children or files a child protective petition in Family Court. For these reasons, we support Intro. No. 1728, which would make legal assistance available to parents and caretakers at the very early stages of a child welfare investigation.

With funding from the City Council, BDS currently provides advice and representation to a limited number of parents and caretakers before a Family Court case is filed against them. We represent parents who have criminal cases filed against them, former clients, and parents who

seek our assistance at our community office in East New York. Through legal advice, advocacy with ACS, and service referrals, we are often able to resolve ACS cases in ways that prevent family court involvement and/ or prevent the unnecessary removal of children from their homes.

In one recent case, through early advocacy with ACS and support to the client, BDS was able to avoid the removal of the children from the family and prevent a family court case from being filed. Our client Elizabeth\*, who is the mother of four children, was arrested for leaving her four-year-old son at a police precinct for 20 minutes when her usual family support was unable to help. The next day, after the case was arraigned in criminal court, BDS' integrated team of attorneys, paralegals, and social workers prepared the client for her involvement with ACS and then advocated at a two-and-a-half hour Child Safety Conference (CSC) to keep the case out of family court. BDS was able to explain that Elizabeth's actions were those of an overwhelmed mother who needed support and advocated for ACS to provide services for the whole family instead of removing the children. The night before the CSC, ACS asked Elizabeth to leave the kids with a family resource, which she had agreed to do. At the conference, ACS agreed that the children could return home with services in place.

Through advocacy before a petition is filed, BDS is also able to prevent family separation and where one of the parents would otherwise be excluded from the home. For example, BDS advocated for a mother, Sarah, after her and her partner's baby was born with withdrawal symptoms resulting from Sarah's use of Suboxone to treat her addiction to opioids. Sarah did not have access to a prescription and was using Suboxone without one because she knew it was safer than continuing her opioid use. ACS saw Sarah's use of Suboxone to treat her addiction as a continuation of her drug-seeking behavior, instead of understanding that it was her way of trying to get help for her addiction. The agency wanted her excluded from the home but a BDS social worker attended the Child Safety Conference and explained that Sarah was focused on her recovery and had the support of her partner, the baby's father. BDS advocated for this family to stay together and helped ACS see that Sarah was already working on her recovery, and just needed to be connected to the right services. Through BDS's advocacy, the family avoided a neglect case and Sarah was able to stay with her baby and get the drug treatment services she needed to continue her recovery.

In another case, BDS provided early representation to Xavier, a father who was a very involved co-parent. The allegations were a single, first-time incident of domestic violence against his wife. Xavier had been excluded from his home by Criminal Court, which could have had extreme consequences since he was employed as a super and was required to live in the building. If Xavier were to lose his job, his family would lose the apartment, and they would be rendered homeless. BDS advised the client of his rights explain the benefits of being open to engaging in services, and advocate at the Child Safety Conference to avoid a filing in family court, as long as Xavier promised to engage in services that would help him and his family. BDS also persuaded the ADA to modify the criminal order of protection so that Xavier could return home and his employment was not jeopardized. As the result of our advocacy, Xavier's family of five remained in safe and stable housing, and he engaged in services that were fruitful for him.



Legal service organizations providing parental representation should be funded on a continuing basis to provide representation to parents as soon as a child welfare investigation begins. The need for such representation was made clear by the Commission on Parental Legal Representation convened by Chief Judge DiFiore. The Commission examined the current state of parent representation in New York State and proposed that parents be granted access to counsel “during a child protective agency investigation and sufficiently in advance of the first court appearance” as its top recommendation to address the lapses in good quality parental representation.<sup>15</sup> Additionally, a study commissioned by Casey Family Programs and released last year compared multi-disciplinary institutional providers of parent representation to private solo practitioners and found that interdisciplinary teams reduced time in foster care by 4 months without any increased risk to children and saved the state \$40 million in foster system costs. These gains can be extended further, and more children can safely remain with their families, if parents are given access to interdisciplinary advocacy even before a case is filed in court.

With adequate funding, legal programs could operate a hotline for parents who are the subject of an ACS investigation and parents could receive legal advice and, where appropriate, social work advocacy. Parent defense social workers would be available to accompany parents to meetings with ACS prior to filing and immediately intervene to provide services and afford the parent the benefits of having legal assistance and the organization’s resources. Often the involvement of social workers in ACS case conferences results in better outcomes by increasing the parent’s participation and by helping to inform a positive outcome. This facilitates the creation of service plans that better reflect the particular needs of the family, preventing unnecessary litigation and keeping children safely at home. Expanded resources would reach more parents and caretakers at-risk of family court involvement and reduce the number of cases filed in family court and the number of children removed from their home.

We applaud the Council for introducing this important bill which recognizes the importance of parents having access to counsel at the initial point of ACS contact. At the same time, it is important for the City Council to fund this important work and ensure that parents are given every opportunity to keep their children safely at home with them.

**Recommendation:**

Intro. No. 1728 currently calls for ACS to be the entity charged with establishing a legal services program for parents and caretakers that provides counsel at the first point of contact during an investigation and for ACS to review such programs annually. We believe this proposed structure creates a direct conflict of interest and will potentially create mistrust and confusion for parents and caretakers seeking legal assistance in a child welfare investigation. We strongly encourage the City Council to consider another entity to establish and monitor city-wide early defense programs.

**New York’s State Central Registry Needs Reform to Ensure Fairness and Equity**

Central registries of child abuse and maltreatment were created in part to screen those who are entrusted with the care of children. However, New York’s registry has become a sprawling database that predominately impacts low-income communities of color who are

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<sup>15</sup> Interim Report to Chief Judge DiFiore, Commission on Parental Legal Representation (February 2019)

disproportionately subjected to child welfare investigations and indicated reports. The result is that the registry limits the economic stability and wellbeing of generations of families in New York. In 2018 alone, the state ordered investigations into 166,000 complaints of child abuse or neglect and ended up including 47,541 cases in the database.<sup>16</sup> Hundreds of thousands more already had these records, which significantly block employment opportunities, including for many jobs that are particularly important to single mothers seeking entry-level employment, such as home health aide positions.

We support Councilmember Levin's Intro. No. 1715 that would establish legal services programs to provide counsel to parents and caretakers with indicated records in the state's registry. Currently, there is no right to counsel in these administrative matters. If enacted, this bill would increase the legal assistance available to parents and caretakers across this city who may have limited employment opportunities as a result of being on the registry.

**Recommendations:**

As in Intro. No. 1728, ACS should not be the entity charged with establishing a legal services program for parents and caretakers and reviewing its performance. This would be a direct conflict of interest. Another entity, such as MOCJ, should be responsible for overseeing any such program.

We also believe this bill should make clear that parents and caretakers with indicated cases in the State Central Registry (SCR) of Child Abuse and Maltreatment have access to legal representation at both a state administrative fair hearing following an indicated report with the SCR and/or a denial of an administrative review.

**Resolutions 1057 and 1066 - Resolution Calling upon the New York State Legislature to pass, and the Governor to sign legislation to automatically expunge the records of individuals whose child abuse or neglect case was dismissed in family court from the Statewide Central Registry of Child Abuse and Maltreatment and Resolution urging New York State to reduce the length of time caretakers, parents or legal guardians remain on the Statewide Central Registry list.**

BDS strongly supports these resolutions. There is pending legislation, A8060-A (Jaffee)/S6427-A (Montgomery), that passed the legislature this year by wide margins and is now awaiting the Governor's signature. We propose amending these two resolutions to explicitly call on the Governor to sign this bill that raises the standard for a report to be indicated from "some credible evidence" to a "preponderance of evidence" and makes it easier for caregivers accused of neglect to come off of the SCR sooner by reducing the amount of time a caregiver's name appears in the registry, allowing caregivers to demonstrate evidence of rehabilitation when seeking to seal their records, and automatically sealing records in the SCR when a parent's case is dismissed in Family Court.

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<sup>16</sup> <https://www.nytimes.com/2019/02/25/nyregion/ny-child-abuse-database.html>

Our office has represented a limited number of parents and caretakers in amending their record with the SCR. We prioritized this work even when there was no funding for it because without a successful challenge to a parent's record with the SCR, families must live with the consequences of an ACS investigation or court case for up to 28 years, regardless of the seriousness of the underlying indicated case and regardless of whether the case is related to the individual's ability to safely perform their job. To illustrate the travesty of our state's current system, we would like to share the story of our client Rebecca\*:

Rebecca is a single mother and sole provider for her family. In 2015, ACS opened an investigation against her, alleging that her 7-year old son had been acting aggressively toward her newborn son for several months. She pursued a natural, holistic course of treatment for her older child's behavioral issues, which ACS alleged put her newborn at risk. Our office represented Rebecca in her Family Court case and her case was dismissed by a Family Court judge in early 2016. Unfortunately, as a result of her Family Court case, she lost her paraprofessional job.

Despite her loss of employment, Rebecca persevered and pursued a graduate degree in education, which she completed in 2017. While applying for teaching positions, she received a letter from the New York State Office of Children and Family Services during her background check, which let her know she had the right to challenge her indicated report on her record. She reached out to our office for assistance in appealing her SCR record. Rebecca's attorneys assisted her in successfully sealing the indicated report, but the appeal process took several months and had serious consequences. While the appeal was pending, she was denied the teaching job and her teaching certifications were put on hold, despite her qualifications and despite the dismissal of her Family Court case.

While Rebecca was able to obtain legal assistance in her SCR case from her defense attorney, there is no right to counsel in these cases, and most parents are forced to navigate the system alone. We strongly urge the City Council to amend and pass Intro. 1715 to ensure all parents and caretakers in New York City have the right to legal assistance and representation in SCR matters. It is worth noting that if A8060-A/S6427-A were enacted, Rebecca's case would be sealed to employers upon the dismissal of her Family Court case, removing the need for an additional hearing and preventing the loss of the job she would have otherwise been hired for.

It's time to make New York City's child welfare system fairer and ensure that families involved with ACS understand their rights and have access to legal representation when an investigation begins to increase the chances of maintaining their family integrity. We thank the Progressive Caucus and General Welfare Committee of the City Council for leading the charge to reduce disproportionality within the city's child welfare system and for fighting to hold ACS accountable to the communities it serves.

If you have any additional questions, please reach out to the Director of Family Defense, Lauren Shapiro at [lshapiro@bds.org](mailto:lshapiro@bds.org) or 347-592-2510 or Supervising Attorney/Policy Specialist Anya Mukarji-Connolly at [amukarjiconnolly@bds.org](mailto:amukarjiconnolly@bds.org)

**Hope Lyzette Newton, Parent Advocate  
Center for Family Representation (CFR)  
Oral Testimony for the Committee on General Welfare**

**Hearing Date: October 31, 2019**

Good morning, I'd like to thank the New York City Council for for having me here today. My name is Hope Lyzette Newton. I am a Parent Advocate with the Center for Family Representation. I also serve on the Board of Directors of RISE Magazine, an organization that trains parents impacted by Child Welfare System how to write and speak about their experience and I am also a member of the Steering Committee for Voices of Women, an organization that works to improve systems women and children go to when escaping domestic violence. I am a mother of three, now young adult children, awarded sole legal custody twice while navigating multiple systems including family and criminal court.

In 2006, the murder of Nixmary Brown Gonzalez prompted reforms in child welfare. These reforms, which included how ACS approaches investigations, had a life changing impact on my family. That same year, my husband and father of my children called in a false and malicious report to the New York State Central Registry. In the midst of a heated custody proceeding, he introduced my family to both family and criminal court. It was the first of many false and malicious reports called in to try to prove that I was an unfit mother. Prior to this case, no one in my family had contact with either of these systems.

Unlike most parents investigated by ACS, I was able to hire a criminal court attorney and had family resources to help me during my family and criminal court cases. Today, I recognize that as privilege. Even though it was a significant financial burden to me and my family, I was able to pay an attorney, go home and back to work within less than 24-hours of turning myself into the authorities. That privilege did not protect me from ACS coming into my home as the

legal enforcement agency with the right to interrogate my entire household and remove my children. If ACS has the right to come into my home and remove children, I should have the right to legal counsel to guide me through the process during the investigative phase of the case. As someone who successfully cleared their name through the State Central Registry, I know it would have changed the outcome.

After my experience, I know now that the investigation is the start of this process. It lays the foundation for how a case is going to proceed. Parents are asked to engage in services that they may not need or that conflict with other obligations. They don't understand that they have the right to say no. Parents are usually in shock, frustrated, angry and annoyed during the start of a case. Having someone present during an investigation to tell you how to protect your rights could change the trajectory of the case. It's beyond difficult to think when emotions are clouding judgement which can result in decisions being made in a child removal. For parents already engaged in services addressing family challenges, having reached out to schools, doctors and law enforcement for help only to have a case called in on them; especially a false and malicious report, the emotional response to the threat of removal is high. The right to counsel at the earliest possible moment in the life of an investigation helps everyone focus on the right issues and leads to better communication about, to, and for the families.

My criminal court case was dismissed and I was offered a 6 month an Adjournment in Contemplation of Dismissal in family court. Unfortunately, for the next (9) nine years, the children's father called in several cases against me all of which resulted in new investigations. I learned from each investigation, but looking back now, I believe having legal counsel present during all the investigations would have potentially cut the time, energy and resources spent on

false and malicious reports in half. Having someone present can help identify issues earlier on in the process and address them quickly and effectively.

The work that I do now has offered me the opportunity to support families that are going through the Child Welfare System. Time and time again, the parents I work with talk about the fear that stays with them even after the ACS investigation. From the very beginning and throughout the entire investigative process, parental authority is being decimated. Parents often become paralyzed by fear when taking their child to the doctor or school because they are afraid that another case will be called in and result in their child being removed. The fear is real and it makes it difficult for them to make the most basic parenting decisions. Having someone to walk you through the investigation and be with you during the first initial meetings can help a parent feel empowered and maintain their confidence to parent their children in a positive manner.

ACS investigations have the ability to inflict harm that can shred family bonds and undermine parental authority. It often feels as though ACS takes advantage of the fact that the low income black and brown families they investigate do not know that they can refuse to answer their questions or submit to the often intrusive nature of their requests. They come to our homes asking to speak to our children outside of our presence. They want to know how much food is in our cupboards and whether they can speak to our children's pediatrician. They want us to tell them everything but don't even tell us what our rights are or sometimes even why they're there.

All parents NEED legal counsel at the very beginning of an investigation to protect their families from unnecessary trauma.

Thank you for listening.

# Rise

Testimony to the New York City Council Committee on General Welfare  
Stephen Levin, Chairperson

October 31, 2019

Founded in 2005, Rise builds the leadership of child welfare-affected parents to create a future where community is strong for families under stress and child welfare involvement is rare, just and healing. Rise has worked with more than 350 parents nationwide to write about their experiences with the child welfare system. This year, Rise has focused our work on examining the harmful impact of child welfare's culture of surveillance on families, particularly low-income families of color. We are pleased that City Council has taken on this issue, and write in support of the bills introduced by members of the progressive caucus to hold the Administration for Children's Services accountable for their disproportionate presence in our families' communities, and to provide parents with crucial legal protections during investigations.

In recent years, New York City's child welfare leadership has proudly told the story of how the system has dramatically reduced the number of children in foster care while maintaining child safety. To be sure, that is a major accomplishment.

But there is another, troubling NYC child welfare story worth telling. For low-income Black and Latino families, child protective surveillance is growing. Too often, when families are struggling, school personnel, doctors and police are quick to call a hotline instead of connecting us to resources and support.

Nationwide, child abuse and neglect reports grew more than 12% from 2013 to 2017.<sup>1</sup> Abuse scandals across the country and sensational media coverage of child fatalities in many communities put mandated reporters under pressure to report any suspicion. This heightened surveillance falls disproportionately on poor parents of color, who come into greater contact with mandated reporters.<sup>2</sup> In the Hunts Point neighborhood in the Bronx, 10 percent of families were subjected to a child protective services (CPS) investigation

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<sup>1</sup> <https://www.acf.hhs.gov/sites/default/files/cb/cm2017.pdf>

<sup>2</sup> <https://www.nytimes.com/2017/07/21/nyregion/foster-care-nyc-jane-crow.html>



in 2017 alone. So were nearly one in three families in Brownsville, Brooklyn between 2010-2014, according to the Administration for Children’s Services (ACS). Citywide, families were subjected to 5,000 more investigations in 2018 than five years ago.<sup>3</sup> 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. Almost two-thirds of investigations are “unfounded.”<sup>4</sup> Yet for families, a CPS investigation isn’t a benign event but a source of fear and stress, sometimes with terrible and long-lasting consequences.

Rise contributor Cynthia Zizola wrote about the impact of investigations on her family and life:

*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.*<sup>5</sup>

### **Strengthen the Legal Rights of Parents Facing Investigation**

Rise supports passing bills that will strengthen the legal rights of parents during a child welfare investigation. Parents should be informed of their rights immediately when they receive a knock on the door from ACS. Parents should know that they don’t have to comply with all of ACS’s requests during an investigation. Parents should have a right to legal counsel at the start of an investigation, and it is important that legal representation for parents is provided through an entity separate from and independent of ACS.

Rise contributor Samantha Ruiz wrote about the impact of an investigation and a record with the Statewide Central Registry on her family and life:

*On October 2, I received a letter from ACS. I thought, “What now?”*

*I climbed the stairs, and with my coat and purse still on, I ripped the envelope open. All I remember reading is, “Your case is not indicated,” and, “All allegations were unfounded.” I jumped up and down. I called to thank all who were supportive.*

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<sup>3</sup> Compare [https://www1.nyc.gov/assets/operations/downloads/pdf/mmr2017/2017\\_mmr.pdf](https://www1.nyc.gov/assets/operations/downloads/pdf/mmr2017/2017_mmr.pdf) to [https://www1.nyc.gov/assets/operations/downloads/pdf/pmmr2019/2019\\_pmmr.pdf](https://www1.nyc.gov/assets/operations/downloads/pdf/pmmr2019/2019_pmmr.pdf)

<sup>4</sup> <https://www1.nyc.gov/assets/acs/pdf/data-analysis/flashReports/2019/06.pdf>

<sup>5</sup> <https://chronicleofsocialchange.org/child-welfare-2/the-harmful-effects-of-over-surveillance/38441>

*Even so, the two-month investigation took a terrible toll. I fell asleep every night crying. My younger son even started biting and screaming. I think he could sense how out of control our family was, and that made him act out.*

*I couldn't look for work either, because in my field I needed to be cleared by the State Central Registry. I felt like my life had been pulled out from under me.<sup>6</sup>*

Careena Farmer, another system-affected parent and contributor to Rise, writes of the importance of clear legal rights information and legal representation early in an investigation:

*Allowing the parent to know their rights up front and having legal representation during the investigation process will prevent the parents' rights from being violated. Parents aren't aware that their rights are being violated, which is causing unnecessary removal of children.*

*Having legal representation (lawyer and parent advocate) can:*

*1) Help families receive the services they need to stay together to prevent unnecessary trauma which causes mental health problems in the parent and child. Being taken to foster care unnecessarily destroys the family's bond; and*  
*2) Will prevent ACS from using intimidation tactics like calling the police to harass and enter the family's home which violates the family's constitutional rights. We need data on emergency removals to prevent trauma. In my experience, knocks on the door have caused my children to hide in the closet and they don't even want to talk to ACS workers.*

*The family could be asking for help, but the agency will use that against them. The agency has access to the services to help the family, for example, food, clothes, furniture, homemaking services, housing, therapeutic services and also school resources for the children that will help the family thrive, which is the best for the family, instead of causing unnecessary trauma to children that they are trying to protect. I just know that passing this package of bills could change a lot for families.*

### **Reform the State Central Register and Provide a Right to Counsel in Administrative Hearings**

Rise is in favor of bills proposed to address some of the harmful impacts of processes related to the Statewide Central Registry (SCR). Rise supports the City Council bills requiring parents be provided with counsel at fair hearings following an indicated report during an ACS investigation (a legal right to counsel for Statewide Central Registry) and

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<sup>6</sup> <http://www.risemagazine.org/2016/11/out-in-front-2/>

requiring that ACS provide information to parents about their right to appeal to expunge a case record during an ACS investigation. Rise also supports City Council in calling on the Governor to sign legislation to heighten the standard of evidence applied to child protective investigations, reduce the length of time parents remain on the State Central Registry and to automatically expunge the records of parents with child abuse or neglect cases that were dismissed.

Rise's Training Director, Jeanette Vega, leads work consulting with ACS and other agencies to improve their practice with families. She sits on city and state-wide commissions next to top child welfare officials. Still, under the unjust reporting statute, she must live with the stigma of an old reality:

*Despite my accomplishments, despite my daily work on these issues, I have carried a mark on my record against me for two decades since June 1999, the shadow of an Administration for Children's Services case opened decades ago. Even though the case has long since been closed, even though my son who was involved is now 22, even though I have successfully raised him and three other children who have never been involved in the system, I continue to be haunted by that record.*

*I was accused of applying corporal punishment once. That is all. It led to an investigation, and to my placement on something called the State Child Abuse and Maltreatment Register (SCR). Because I'm on that registry, I can't get a job working with children or be a part of my children's lives at school. I am not even allowed to be a member of the Parent Association, because it would mean being around children as a chaperone for school events and trips.*

*This year, when my younger son graduated and went on his senior trip to Dorney Park, I couldn't go with him. He has autism, so I was scared to let him travel so far without me — but I didn't want to deny him the opportunity to have fun with his classmates. All I could do was keep calling the school staff to make sure he was okay.*

*In New York City, more families than ever before are being investigated by child protective services. I have seen how high rates of investigations in certain communities, like mine in the Bronx, affect mostly low-income families of color. Parents in these communities end up with limited job options because these labels exclude them from entire categories of employment. When you consider that nationally, over 70% of cases involve allegations not of abuse but of neglect, which are largely connected to poverty, you have to wonder why this system punishes poor families by limiting their opportunities.*

*Thankfully, the Legislature has passed a bill that recognizes that one mistake shouldn't haunt a parent forever. If Gov. Cuomo signs the bill, it will make the SCR process far more fair than it is now.<sup>7</sup>*

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<sup>7</sup> <https://www.nydailynews.com/opinion/ny-oped-loosen-this-vise-on-parents-20190823-jcmuvrz7hjcvtbaq7pxq2e2jmu-story.html>

## **Improve Reporting for Greater Accountability**

The issue of surveillance and its impact on our communities extends beyond investigations. At the same time as investigations have increased, the number of families under invasive court supervision has doubled, with more than 10,000 under court monitoring in 2017, up from about 5,000 in 2012. 10,000 families had to report to a judge about how they were addressing family challenges, under constant threat of removal. That increase is not justified by reductions in the number of children entering foster care. Only about 700 fewer children entered foster care last year than five years ago.

To be sure, some children face grave danger at home. However, the harm of unnecessary child welfare investigations, monitoring and removals cannot be ignored. They add stress to families already carrying the burdens of poverty and racism. And over-reporting also can make children more vulnerable. When parents see teachers and doctors as threats, they hide what they're going through, and family struggles can turn into crises. Rise also supports proposed bills requiring that ACS collect and report on critical child welfare data essential for transparency and advocacy, and that ACS plan to address racial and income disparities.

This proposed package of bills provides critical steps toward supporting families who experience child welfare investigations, which disproportionately impact low-income families and communities of color.

Attached, Rise has provided four stories written by parents affected by the child welfare system. The stories illustrate the impact of investigations on families and the imbalance of power that parents experience throughout the process with ACS. The stories also demonstrate the importance of the proposed bills and changes, particularly by highlighting the need for parents to receive information about their rights and to have access to legal representation from the initial contact by ACS.

To access the complete stories, visit the Rise website:

- My Broken Life: <http://www.risemagazine.org/2019/10/my-broken-life/>
- No Escape: <http://www.risemagazine.org/2019/09/no-escape/>
- A Punishment Worse than the Crime: <http://www.risemagazine.org/2019/10/punishment-worse-than-the-crime/>
- The System Allowed My Ex to Use Investigations as a Weapon: <http://www.risemagazine.org/2019/09/when-investigations-become-a-weapon/>

## **My Broken Life – My kids were never taken but child protective services hurt my son and me so much**

October 16, 2019 by Anonymous

My story is about how my son's school came into my life and changed it in a way that I don't know if I can ever be who I was before.

It's about how I got arrested. Lost my job. Have sleepless nights.

A part of me has been stolen.

If I had the power, I would let the system know that child protective services needs to do proper investigations. Don't label me without knowing me.

I live in the South Bronx. In my neighborhood, there are a lot of investigations. If I lived elsewhere and my son went to a different school, I think this would have never, ever happened.

### **CASE 1: "INDICATED"**

The first case against me began when I was working as a home health aide. My son was 7. One weekend in the spring, near the end of the school year, my son was playing basketball. He fell and cut his knee. Nothing to worry about.

The next week, when it was time to go to school and work, I told my son, "Go get your sweater." He stood there staring at me. I repeated myself four times. He still stood there staring. I pushed his shoulder so he could realize I was talking to him. As soon as I pushed him, he threw himself on the floor being dramatic. Since he had long pants on, I didn't see that the scab on his knee came off.

When he got to school he went to the nurse, told her his knee hurts. She asked him what happened. He said, "Mom pushed me."

At 11:15 p.m. CPS knocked on my door. My heart dropped. I had to take a deep breath. The investigator asked, "What happened?" I told him I pushed my son's shoulder but he already had a scab. The investigator was polite yet he had doubts.

I wanted the investigator to talk to the school, my daughter's day care, my children's pediatrician. I wanted him to understand what kind of mother I am, and that my son's school wasn't the best. When my son was 4, he walked out of class one day, crossed the street and came home without anyone knowing. But none of that was done. Instead, the investigator indicated my case. CPS said I would have announced and unannounced visits. I was upset.

## **BULLYING IN SCHOOL**

In the winter of the next school year, my son started getting bullied by two boys in school. They pushed my son on the stairs, cut his hair, kicked him and put out a foot so he could trip with his lunch.

Once the bullying started, my son started acting out. I was at the school all the time. The assistant principal said, "Don't worry. I'll take care of the bullying." I wanted to ask the Department of Education for a safety transfer, but the CPS worker said that it would look suspicious. So my son stayed and the bullying continued.

Around that time, CPS asked me if I wanted to voluntarily enroll in preventive services. My husband said, "All these people in our home are unnecessary." But I thought, "If they see who I am, they will know how I treat my kids." After that, CPS and preventive services both came to my house twice a month.

The preventive worker was sweet and understanding. She went to the school, met with the principal and assistant principal, the teacher, the nurse. She helped me get therapy for my son, who was crying out in his sleep about the bullying. But CPS was a different story. I wasn't being heard and, by staying in the school, my son wasn't being protected. It was a lot to deal with.

## **FALSELY ACCUSED, TAKE II**

A couple of months after the bullying started, my son went to the school nurse again. Later, when CPS investigated, they found terrible bruises all over his back.

In all the interviews with CPS, my son said that he got beat up in the bathroom by one of the two boys who were bullying him. My son said the boy slammed him in the wall, then threw him on the floor. I later learned that the mother of that boy works in the school. I think the school blamed me to protect itself.

The CPS report stated that my son also said that sometimes I hit him when he behaves badly, and that one time I hit him with a belt on his leg. In the report, ACS said that my son "admitted that the allegations were true in nature." (Because my case didn't go to trial, ACS never explained what that meant.)

Again, CPS came to my house at 11:30 p.m. I felt like I'd been stabbed when the investigator told me that both my kids needed to go to a relative's house for a few days.

## **SET UP**

The next day, I was interviewed by detectives at the Administration for Children's Services Child Advocacy Center. I arrived at 1 p.m. and left at 10:30 p.m. I was tired and scared. But the detective talked to me like she was my friend.

She asked me if I hit my kids. I said, "No. I punish them by taking their TV, phone, playtime away." I reminded her that my son told her that I didn't give him those bruises. But she asked me did I ever hit my son before.

I said that I'd spanked him on the butt when he was bothering my daughter.

She said to me, "Write an apology letter to your son for hitting him so that I can show the judge and it could look good on your behalf." The letter I wrote to my son said: "I love you dearly. Mommy is so sorry for hitting you in the past. Don't be upset with Mommy."

I thought she was trying to help me, and three days later, the judge did say that my kids could come home as long as I did anger management, took Parenting Journey, had preventive services, had court-ordered supervision, and had announced and unannounced CPS home and school visits.

But a few weeks later, I found out that the detective had used the letter I wrote to my son against me, and I was called to surrender myself for arrest. I was in a holding cell with 10 other women and one toilet from 9 a.m. until after 10 p.m.

At 10:45 the judge called my name, opened my file and found...nothing. The judge got upset. She said, "This woman has been arrested with no evidence." She gave the DA a month to get evidence. But when we went back to court a month later, all they asked for was anger management and parenting, which I was already doing. They also ordered a limited order of protection against me saying that if I hurt my children, I'd be arrested.

After that, my job was sent an alert and I lost my job. I was at a doctor's appointment with a client when my supervisor called. She said, "You're terminated. Get off the clock. Leave." I got my client in a cab and took her home. Then I left.

## **SO MUCH INJUSTICE**

Now I'm jobless. I feel worthless. I get depressed. I lost my income, my peace, my privacy.

My son used to be a loving kid. Now he doesn't trust people. He has an attitude. Recently, I went with my husband to the district and got my son a safety transfer. He's in a new school, but they say he's pushing kids and name-calling. I think it's part of his response to being bullied and not being believed.

I take him to therapy once a week. Recently we changed therapists and my son is having fewer tantrums. But still, it's hard for me to witness how he has changed.

I have changed, too. Now I see so much injustice in the world.

I just hope for my case to get closed, and for my son and our lives to be like before.

## **No Escape – The system failed me as a child but now it won't leave me alone**

September 17, 2019 by Sarah Harris

As a child I cried out for help to child protective services. But the system didn't help me when I was a child, and it hasn't helped me as a parent.

Almost as soon as my older son was born, child protective services came into my life saying my son needed protection from me, and it has remained in my life to this day. Instead of helping me, it weakened my family and left me vulnerable. Because of the system, my child lives with anger and anxiety.

### **Abandoned by ACS**

When I was a teenager, I called ACS because I was tired of fighting my mother's husband, who forcibly touched me and tried to have sex with me, and I was fed up with my mother accusing me of just wanting attention and lying.

But when ACS came, they took my mother's side that nothing was going on. I felt like I didn't matter, like my safety didn't matter, like me being a child didn't matter. I felt invalidated as a human being.

### **No Support, No Protection**

After the investigation, my mother shipped me off to Pakistan. I lived there for a year with my mother's husband's family. The values were so different. Families sat together for meals, children respected their elders. Some of it was nice.

But there were times when they hit me. And they wanted me to marry for my papers. I had no privacy to talk to my mother about what was going on. Again, I felt alone, abandoned and unprotected.

Eventually I made a friend who called the U.S. embassy. They sent a car for me and my escape began. But even after I escaped Pakistan, my mother would not do her duty. She said she could not protect me from her husband if I came home.

I ended up on the streets and in the shelter system.

### **No Time to Get Away**

That's where I met my oldest son's father. When the mental and physical abuse started, I thought abuse was the way to show love because I never had a role model of how a man should treat a woman. That is something that has haunted me until recently.

I never for a second thought he would abuse our son. But he did.



One day Adam started fussing, and his father bit him on the back three times. He said he was playing, but the bites were serious. Years later, Adam still has bruises from them.

Adam cried while his father acted nonchalant. I was upset and scared. I knew I needed to get away to keep Adam safe. But I didn't have a chance to figure out how.

### **I Lied from Fear**

Adam was a fussy infant, and the shelter isn't easy for anyone. Nosey people had already called ACS on me two or three times when they heard him crying at night. ACS would barge in with their opinions already formed.

Shortly after the biting incident, someone called again. Of course when they came, they did a body check and found the bruises. I lied and said I got Adam's skin caught in his stroller.

I lied because I was scared that ACS would remove Adam and that Adam's father would come after me. I didn't trust ACS because they didn't protect me as a child. Lying was the only way I knew to protect my son.

I could have used some coaching to understand how to be safe and tell the truth. Instead, ACS thought that I bit my son and they removed him. Adam went into care at a few months old and came home at 2.

### **ACS Won't Leave Me Alone**

Now, years later, I continue to live in constant fear of ACS. I also live with a child who has been scarred by his time in foster care.

Adam came home in December 2012. Shortly after, he was diagnosed with ADHD and ODD. He also had separation anxiety. I don't believe he would have had those issues if he hadn't spent time in foster care.

Two years later I clashed with his school because I wanted Adam to get services for ADHD but stay in his general education class. His school wanted him in a class with all special-ed kids. When I fought them, the school called in a report and the investigator tried to pin educational neglect on me. ACS took Adam and placed him in foster care for two weeks.

In court, the judge said my son should go to class for children with special needs, but he also told ACS to send Adam home.

Again, Adam came back angry and upset. He wasn't old enough to understand why we were separated, so instead of being angry at ACS he came back angry at me, and his behavior got exponentially worse.

## **My Past Is a Problem**

And my nightmare with ACS never seems to end. Recently his school called a case on me because I had Adam on the wrong ADHD medicine.

We had moved and I hadn't found Adam a new clinic, and the emergency room would not give me another refill. I had an old prescription and decided to give that to him. I was sure that if I didn't have him on any medicine the school would call me to take him home. Instead, because of the medicine, he fell asleep in school and his blood pressure dropped. The school called ACS.

In the child safety conference, ACS wanted to remove Adam *again* from my care. I was upset. I was trying my hardest to get Adam his meds. I gave ACS the numbers to the emergency room, the pharmacy and the insurance company so they could find out for themselves what happened. But they wanted to take Adam because of my past history. They said it directly: "Your history is a problem."

I was lucky this time. I had a paper trail to prove why Adam was on the wrong medicine, and what I was trying to do to fix the situation. Without that, he could have been gone all over again.

## **The Damage Is Done**

The system allowed me to get molested. Then they took my son. And no matter how hard I try, I can't get the system out of my life.

It was so hard for me when Adam was in foster care as a baby. I saw him only twice a week for two hours. I felt alone in my pain and, for a while, I spiraled out of control drinking and smoking. The foster mother was good to him from what I saw, but I hated watching him go home with her. I hated not being with him. I hated when he called her Mommy.

Now, in a lot of ways Adam is a happy kid. He loves to play, play, play. He is also very affectionate. He runs up on me a million times a day with his sweet, "I love you, Mommy."

But when he feels like he's losing my attention to his younger brother, he'll refuse to listen and be very mean to his brother. His separation anxiety also got so much worse after his second foster care placement. He needs a lot of reassurance that I love him and that I'm not going anywhere.

Sometimes I need reassurance myself.

I have bad nightmares about losing Adam or something terrible happening to him. Most times my dreams are a combination of everything bad that I've lived through.

ACS has caused my family immense suffering. ACS refused to help me at any and every point in my life that I needed help. If ACS had helped me when I needed help, a

lot of my life could have been different. My son Adam might even be a happy-go-lucky kid.

## **A Punishment Worse Than the Crime – I was charged with abuse but my kids were harmed in foster care**

October 03, 2019 by Shakira Paige

September 20th, 2018 was the worst day of my life. My kids were removed from my custody because on September 19, 2018, my boyfriend used corporal punishment on my younger son.

He did it because my son flooded our new apartment and the basement three days in a row by removing a piece from the toilet. After the third time, my boyfriend hit him with a belt, leaving red marks on his back and arm.

The next day, my son went to the school nurse. When they asked him what happened, he said he fell down the stairs, he went into a wall, he got beat up. He came up with like six different stories. Because he had so many stories, the school called me and then they called child protective services.

I felt terrified. I also felt betrayed. For a year I was asking for help for my son's behavior and nobody was willing to help.

### **MY SON WAS DIFFERENT**

From early on, I noticed that my younger son was different. He walked and talked before any of my other kids, and when we have outings, he notices things before they do. He's interesting, smart and fun. He shows love and tells people that they're beautiful. But he can also be hard-headed when he doesn't get his way, like with snacks, money, or phone. When he's in a rage, he hits, throws things and doesn't like to be touched.

At first his problems didn't seem too serious. He graduated from kindergarten and I enrolled him in a charter school in 2017.

But he had a rough first year there. For starters, they put him back in kindergarten because they said he was reading at level C instead of D.

But being held back meant he was bored. He would walk around and clean up the class, and then he would walk out and run around the school. He cut the tie of one of the deans with scissors because the dean grabbed him and he doesn't like to be grabbed. For that he got suspended for two days.

I was confused because none of my other kids acted out like he did. My other kids are 12, 9, 8 and 2. They listen. He doesn't. They respect me. He doesn't. My older kids are honor roll kids.

I thought maybe he was jealous because he was the baby before his sister was born. I thought maybe I was doing something wrong as a mother.

I tried to manage his behavior by taking away snacks, no play time, no games or phone, talking to him before bed and school. But nothing seemed to work. After that, my discipline was a pop on the butt. I never used real corporal punishment, although later ACS said that even putting my son in the corner was corporal punishment, so I guess I don't know what corporal punishment means.

Nothing I tried had any effect.

### **I KEPT ASKING FOR HELP**

I also kept asking the school to help him get an Individualized Education Plan (IEP) so he could get special services. They said he didn't need one he just needed to stay focused. They said it's just his age and he's probably bored in class 'cause he's older. I felt like they could help me better but that didn't happen.

At the end of his first year, they said to put him in the summer program to help him get into 1st grade. But when he came back in the fall, they put him in kindergarten, again!

I was frustrated with my son 'cause I knew he could do the work.

I also felt like less of a mother 'cause I had been pushing him so hard to go to first grade and he didn't make it.

And I hated the school for not giving us any real help and then making him repeat kindergarten three times.

My son was very mad. He felt like the biggest kid in class. I think him being mad at school made him act out more at home. He wanted it his way or no way at all.

He was in school about two weeks before the case got called in.

### **ALL MY KIDS TAKEN**

Because I didn't answer CPS's questions about what had happened, they assumed that I was the one who hit my son and they removed all my kids.

My children were first sent to two Children's Centers, one for four days and the next for six. After that they were sent to a house that was terrible. On the first day, the foster father immediately called EMS on my younger son for saying he would burn down the house. He told me he said it because the foster father had screamed at his little sister, and he was angry. He was hospitalized for three days.

Then my 2-year-old ended up with a rash from front to back. I saw it five days after they were put in that home, when she was brought to the agency smelling like urine and diarrhea.

My kids were removed from that home the next day because I refused to leave the agency till they moved them. Because of my complaints, the agency investigated the home, and closed it down the following day.

But in the new home, the foster mother was mean to my daughters and made them cry every day. Her son stole and got my son in trouble. They went to bed around midnight on school nights. My older son had a cell phone and he would call me, which is how I knew. One weekend the last call from my son was around 3:50 a.m.

The foster mother also left my older son in front of school at 6 a.m. by himself when the doors don't open till 7:45. Luckily my mom lived close by and got him. He was frightened and so was I.

### **'SEND US HOME'**

Those first two months were unbearable because I only got to see my children once a week. They cried every visit and during phone calls. They said again and again that they wanted to come home.

Plus, being in care only seemed to make my younger son worse. The caseworker for my older children really tried to help. But the caseworker for younger son didn't do much for him. Within days of his first hospitalization, he was hospitalized for two weeks because he was throwing things in school. Within 24 hours of being released, he went back into the hospital overnight because they cancelled the Halloween Party and my visit and he started tantruming, kicking and screaming in the foster home.

Since the first day they were removed, my godmother had said she would take my kids. I had to keep pushing my lawyer to make ACS place them there 'cause my kids were tired of being in that lady's home. They kept asking, "Why we can't be with you? We wanna go home with you."

It was more than a month until my kids were placed with her. My younger son went first. A few days later, they sent my other kids there, too.

### **FIGHTING FOR MY SON**

My kids didn't like living there at all, either. But at least I was able to see them every day.

I'd get to their home at 6 a.m. and take them to school at 8 a.m. Then I'd pick up my younger son and then my other children.

I also had weekend visits. We played cards, dolls, did hair and cooked. We'd go to the park, and sometimes to the movies if I had the money. Both my sons are in football on Saturday and my daughters are in cheerleading. My oldest kids managed to remain on the honor roll through all that time.

But because of my case, I had to drop out of school, got my benefits taken and fell behind in my rent. I felt like less of a parent. Still, I did not let that stop me from fighting for my kids or moving forward with my life.

I was accepted into a training for parent advocates at Rise three days a week. When I wasn't in training, I was with my 2-year-old as much as possible. I struggled a lot saying

good-bye to her. Every day she said, "I wanna go with you." I would cry in the elevator once I left.

My younger son was also hospitalized again. He was on the psych floor from November 9 till December 17, followed by residential treatment for three weeks because he got frustrated and started cursing and throwing things in school. At the hospital he was diagnosed with ADHD and a mood disorder.

## **PICKING UP THE PIECES**

My kids were in care for more than seven months. They came home while I was writing this story. I still don't know how to explain what happened to them because they hate talking about it. I just keep trying to show them love and that no matter what I'm going to be there for them.

When my younger son came home, I found him a new school and, with help from the parenting facilitator at the foster care agency and the leader of my Parenting Journey course, I found him therapy at the Northside Center and services to help him in the community.

He's also on a lot of meds now. I hate pills but my son asks for them. I think they help him. He still has a lot of problems but in school his behavior is better, because the school he goes to now understands him better and the medication helps him.

Although he has finally gotten a lot of help, my son's behavior is still a challenge. When he has a rough day in school, he acts out when I pick him up and starts hitting.

I try hugs, kisses and snacks. Sometimes, though, he also needs limits, and that's the hardest, because now he believes CPS can always be in the picture if I say or do anything wrong. When he gets really upset and hits me, sometimes I feel like I'm in a DV relationship with him. It's very hard but I just keep working with him, talking to him, and setting limits.

## **BLAMED AND NOT HEARD**

If my son's charter school had helped me when I said I needed help, I think CPS would have never gotten involved in my life. And being unnecessarily separated harmed my children.

CPS stands for child protective services but there's no real protection 'cause they take the kids and don't seem to give a damn where they end up or about the pain it causes once they take them. Why don't they listen when the kids are fighting to stay with the "neglecter"?

Yes, my boyfriend hit my son. But ACS paid no attention to the fact that I'm the one that didn't back down and never stopped trying to get my son help no matter what. When ACS came into my life, they didn't treat me like the parent. Instead, I felt like a kid being told what to do.

I wish I had been listened to sooner. Whenever parents say they need help, everyone who works with children should understand that those parents are seeing and saying something important, and that help is needed.



## **The System Allowed My Ex to Use Investigations as a Weapon Against Me**

September 23, 2019 by Lou H.

In 2009 I aged out of foster care with my 1 ½ year old son. I had my own apartment, was in college and had a job. But I was always running late to pick up my son and my rent was always past due. Life felt overwhelming so I quit college to work. I refused to allow myself to be homeless.

I was doing my best to manage all of my responsibilities, but at 21, living in the projects scared me. I'd hear gunshots two or three times a week, so on the weekend, I didn't want to go outside. I was confined to my apartment, just me and my son.

While in care, I had support from my caseworker, CASA worker, as well as my peers. Aging out I felt afraid and alone. My loneliness made me vulnerable to the idea of wanting to be loved, and that's how I experienced my first domestic violence relationship.

### **No Place to Hide**

When the abuse started, I couldn't run or hide. I had no place to go. So I kept my mouth shut. A lot of my friends from the system have told me similar stories. Many of them have succeeded. But being so alone sets us up for trouble.

In 2015 I became pregnant in the relationship. That's when I got the courage to make a police report. After I gave birth, my newborn son's father paid me back by calling the cops on me, saying I threw our baby, who was 2 weeks old.

The day the officers came to my house, I informed them that I had done nothing wrong and that my son's father had set me up. They didn't listen. Instead they let him leave with our baby and they arrested me.

I was released that same day. But my baby was gone. For the next month, I was home alone crying. To my relief, when I went to court, the judge ordered my son's father to give the baby back to me. He also recommended preventive services.

### **Child Welfare Back in My Life**

A part of me was afraid to have child welfare back in my life watching me. Every other week the worker and I would meet and talk about how the kids and I were progressing. Every six months we would discuss my strengths and goals.

There were times when preventive services felt intrusive, like when they went to my children's doctors to make sure they were vaccinated or to my son's daycare to make sure he was developing. My case was open for three years, and at the end, when I wanted to close the case, the agency kept pushing me to keep it open. I finally had to say, "Isn't this a voluntary service?"

But because I had a worker, my son's father stopped the physical, verbal and emotional abuse. The most important thing preventive did for me was protect me when my son's father called child protection on me.

### **Prevention Vouched for Me**

In the last three years, I've had 7 calls to CPS against me, always after my son's father has come around. The first time was after I moved into a shelter due to the domestic violence and left everything behind.

After I moved from the shelter into a new apartment, I didn't have much, just a bed for me, a bed for my son and a dresser. At that time, my son's father was saying he wanted to be involved in his son's life so I allowed him to pick up his son from our home. After his visit, ACS called with a report that I had no furniture.

Luckily, my worker could vouch for me. She said my house was always clean, there were clean clothes on my kids, and they were up to date with their medical. Preventive also provided a crib for my baby, dressers for my children's clothes, and a table for the kids to eat on. It was very strange to need one part of ACS to protect me from another part of it.

### **Protecting Myself**

After that, I decided that I have to protect myself, not just from my son's father but from anyone who might make a call against me.

Once I picked up my son from daycare and noticed scratch marks on his face. The teacher insisted that she didn't know whether another child did it or if he came to daycare like that.

I was furious that she couldn't tell me what happened to my son and that she implied that he might have been hurt at home. I was scared that a child protective case might be called in on me by yet another person for something I didn't do.

### **Harassment and Stress**

After that incident, 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. That's probably not something many parents would even think of doing, but for a parent like me, it just makes sense.

Over time, I came to think that my son's teacher was simply trying to protect herself. But I realized that as a parent living with constant threats of investigations, I need to cover myself as well.

After every call made against me, my preventive worker vouched for me, and CPS was able to see that my son's father was really just trying to harass me. I'm so grateful that that's the case. Still, I wish they could've stopped the malicious reports instead of

allowing unnecessary investigations to be used as weapons to hurt me. All those CPS investigations did is add a lot more stress.

**TESTIMONY OF:**

**THE NYU SCHOOL OF LAW FAMILY DEFENSE CLINIC  
By Chris Gottlieb**

**Presented before  
New York City Council, General Welfare Committee**

**October 31, 2019**

My name is Chris Gottlieb and I am Co-Director of the New York University School of Law Family Defense Clinic. Thank you to the New York City Council for this opportunity to submit testimony about the need for greater accountability in New York City's child welfare system.

There are many important bills in the accountability package that is the subject of today's hearing. It is heartening to see the progressive critique and calls for accountability that our child welfare system has needed for so long.

Two of the pending bills in particular are critical to changing the culture of our child welfare system and to moving that system toward serving the people it is intended to serve. Passing these two bills would be a crucial step toward shifting the culture of child welfare investigations and ending some of the abuses of authority that are all-too-common in child welfare practice today.

Taken together, Bills Nos. 1718-2019 and 1736-2019, with some modifications that I will discuss in a moment, could be a significant step toward re-orienting ACS to be the helping agency it is intended to be.

These bills are so important because they will let New Yorkers know that – whatever their race or class – they and their children have constitutional rights that no government official is allowed to breach. They are entitled to be treated with dignity and respect whether or not an allegation has been made against them.

In 1966, the United States Supreme Court decided the landmark case of *Miranda vs. Arizona*, a case that changed American culture by requiring police to let people they take into custody for interrogation know their rights.

By requiring government officials to inform people of their rights at the exact moment that the danger of an abuse of authority is at its highest, Miranda warnings send a loud and clear message to both the government officials and the individuals with whom they are interacting that we take everyone's rights seriously. Of course, no one would say the *Miranda* decision solved the problems of abuse of authority by government officials or fixed all that needs to be fixed in our law enforcement system, but the decision was a critical step toward establishing the American commitment to protecting the constitutional rights of every individual. Articulating this understanding is a necessary first step toward getting the day-to-day practices of government officials where we aspire for them to be.

A right simply cannot be meaningful, it cannot matter, if people don't know they have that right.

Today, every American who has ever watched television knows what his or her rights are when questioned in custody by the police. In stark contrast, those who get the knock at their door from ACS almost never know their rights. Perhaps even more dangerous, the ACS staff doing the knocking often don't know the rights of the people in those homes or, worse, know those rights and misrepresent what they are.

Everyone knows that a warrant, i.e., a judicial order, is necessary to allow the police to enter someone's home. Why does ACS so often act as though that is not true for their staff when legally it is?

In my time representing New York families, I have spoken to countless parents who have said that an ACS worker told them they had no choice but to do exactly what that worker directed them to do. These parents were not asked may I come into your home; they were told in no uncertain terms *you have to let me in* – without judicial authorization of any kind.

To be clear: we are talking about the fundamental rights to feel safe from government intrusion in your own home and to trust that government officials cannot come between children and parents except in very specific, limited circumstances. Every New Yorker should be assured that no government official can barge into their home without a court order, go into every bedroom and bathroom, looking even in the cabinets, demand parents wake their children in the middle of the night and force them to talk to a stranger without even a parent in the room to hold their hand.

Of course, when there is a court order to do so, a family needs to allow ACS in, just as the police have a right to come in if they have judicial authorization. To get such orders, the government must convince a judge that there is a legal basis to justify requiring a person to acquiesce to a government intervention. In our system of checks and balances, it is judges who are supposed to ensure that executive branch officials do not overstep and abuse their authority. But that system of checks and balances is broken in New York's child welfare system because we allow ACS to act as though they can require people to do anything they want them to do without first securing a court order.

Demanding access to children in the middle of the night may be the most extreme intervention ACS imposes on a regular basis, but there are many others. I routinely receive calls from parents wanting to know whether – when there has been no court order for anything – they have to miss work on multiple occasions to let ACS into their home, do they have to take a drug test, or sign a HIPPA release form allowing ACS to speak to their child's therapist.

Coercive HIPPA's are an instructive example. The whole point of HIPPA law is that health information is private and a doctor or therapist cannot discuss private information with a third party unless the person

consents. Signing a HIPPA form because a government official said or implied you had to is not consent in any meaningful sense. Yet ACS routinely has parents sign multiple HIPPA's without explaining it is their choice whether to do so.

Of course, there are emergency situations in which an ACS employee, just like a police officer, might have to take intrusive action without a court order. And the law allows that. But those situations are far fewer than ACS suggests. ACS testified here just last year that close to half of the time it separates children from their families it was an "emergency" so urgent they couldn't go to court to seek prior judicial approval. That is simply not a credible claim. Strikingly, ACS acknowledged that many of those separations are not ultimately approved by the Family Court.

Often, ACS arrives at homes in the middle of the night when they could have come during the day or sought a court order while the child was at school; they demand rather than ask to come in; they take it upon themselves to decide a child should be separated from her parent without giving a judge a chance to assess whether that traumatic separation is necessary, whether the allegations have any credibility.

It must be kept in mind that the knock on the door can be triggered by anyone calling the child abuse hotline—anyone, including disgruntled neighbors and landlords, and acrimonious ex-boyfriends and girlfriends. And those calls can be made anonymously; people can claim anything and are not required even to give their name.

One need only be reminded that the ACS knock comes close to sixty thousand times each year in New York City to understand that most of these times there is no emergency situation. Most of the time, it is the knock on a door of a family doing its best to thrive in a challenging city. In a majority of these cases, ACS ultimately determines there was no credible evidence whatsoever of parental wrongdoing. Where they do find evidence, it is usually of poverty-related neglect, not child abuse. The vast majority of these cases involve concerns about inadequate housing, childcare, medical care, parental drug use, or educational issues. These are concerns that must be addressed, but they can only be effectively addressed through supportive social services, and they cannot justify the abuse of government authority. Advocates and those

in the communities directly affected are clear that ACS's persistent abuses of authority actually undermine its ability to effectively address these types of underlying issues.

Draconian approaches push parents away from the supportive services that are needed, and end up hurting the very children they are intended to help. Because, of course, when we talk about parents' rights, we are talking about children's wellbeing. Witnessing their parents' rights violated, seeing their parents disrespected, realizing their relationships with their parents are vulnerable to government abuse can be deeply traumatic to children.

This committee knows all too well that this is a trauma that we are inflicting on certain communities and not others, on certain children and not others.

No one denies the need for strong protections for children. But robust safeguards are already in place under current New York law to ensure that ACS can always take steps to protect the safety of children when justified. In those rare situations in which there is credible evidence to believe a child is in immediate danger without time to go to court, ACS has legal authority to take a child into temporary custody.<sup>1</sup> Moreover, the Family Court Act specifically allows ACS to obtain – even prior to filing a petition alleging abuse or neglect – an order to remove a child from a home, orders of protection, or orders for other forms of assistance to a child who is in danger.<sup>2</sup> It is notable how rarely ACS uses this legal mechanism to obtain a court order. Instead, they routinely enter people's homes without meaningful consent and impose authority that is not based in law.

The *Miranda* decision, of course, only directly applies to the criminal context. But the constitutional rights that are in play in ACS cases are just as fundamental. While the Supreme Court has not had the chance to decide many cases specifically involving child protective services, it has

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<sup>1</sup> Family Court Act § 1024.

<sup>2</sup> Family Court Act § 1022.



repeatedly upheld the right to family integrity and the sanctity of the homestead.<sup>3</sup>

Over and over again in recent years, we have been reminded that it is inevitably the most vulnerable, the most disenfranchised, who are at greatest risk of abuse of authority by government officials.<sup>4</sup> The way to enfranchise, the way to begin to build a culture that respects and protects rights is to talk about those rights. By requiring ACS to let people know their rights, bills 1718-2019 and 1736-2019 are a critical step in that direction.

As the Committee is aware, parents in the communities most directly affected and advocates for those families are urging that the language of these two bills be modified to ensure that New Yorkers who are investigated by ACS are informed of their most important rights. It is critical that the law specify the rights people must be informed of, rather than leaving it to ACS to decide when and whether and which rights to mention.

I strongly urge you to modify the language of these bills to include the rights every parent should know at the outset of an ACS case, which are:

1. The right to not let ACS staff into your home absent a court order.
2. The right to know the allegations against you.

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<sup>3</sup> *Kyllo v. United States*, 533 U.S. 27 (2001); *Santosky v. Kramer*, 455 U.S. 745 (1982) (“At the very core of the Fourth Amendment stands the right of [an individual] to retreat into his home and there be free from unreasonable governmental intrusion.”); *Troxel v. Granville*, 530 U.S. 57 (2000); *Wisconsin v. Yoder*, 406 U.S. 205 (1972); *Pierce v. Society of Sisters*, 268 U.S. 510 (1925); *Meyer v. Nebraska*, 262 U.S. 390 (1923).

<sup>4</sup> Mara Gay and Emma Goldberg, *When Poor People Are Beaten for Seeking Help*, N.Y. TIMES, Oct 27, 2019; PBS News Hour, *New Investigation reveals widespread police misconduct never publicly revealed, April 25, 2019*, available at [www.pbs.org/newshour/show/new-investigation-reveals-widespread-police-misconduct-never-publicly-revealed](http://www.pbs.org/newshour/show/new-investigation-reveals-widespread-police-misconduct-never-publicly-revealed); Amnesty International, *The Nightmarish Detention of U. S. Immigrants*, available at <https://www.amnestyusa.org/the-nightmarish-detention-of-us-immigrants/>; Ashley Southall, *Appalling’ Video Shows the Police Yanking 1-Year-Old From His Mother’s Arms*, N.Y. TIMES, Dec. 9, 2018.

3. The right to remain silent and to know that anything you say can be used against you.
4. The right to seek legal representation during an ACS investigation.
5. The right of a parent to decide, absent court order, whether their child will be interviewed or examined.
6. The right, absent court order, to decline ACS requests, including requests to sign releases or take drug tests.

These rights belong to all New Yorkers. If they are to be meaningful rights, government officials and the communities they interact with need to know that we have a shared commitment to them.

Thank you.

### **The NYU School of Law Family Defense Clinic**

Established in 1990, the NYU Family Defense Clinic was the first law school clinic in the country to train students to represent parents accused of child abuse and neglect and prevent the unnecessary break-up of indigent families. A pioneer of interdisciplinary representation in the field, the Family Defense Clinic teaches law and graduate-level social work students to work together to protect family integrity and help families access services that keep children safe and out of foster care. The Clinic collaborates with a wide range of stakeholders on systemic child welfare reform. Family Defense Clinic faculty have represented hundreds of children and parents whose families have been investigated by ACS.

Clinic Co-Director Martin Guggenheim is the Fiorello LaGuardia Professor of Clinical Law at NYU School of Law. He is a leading scholar on children's rights and family law. He is an active litigator and has argued leading cases on juvenile delinquency and termination of parental rights in the US Supreme Court. He is also an advisor for the American Law Institute's Restatement on Children and the Law.

Clinic Co-Director Chris Gottlieb litigates, teaches, and writes in the field of child welfare. She trains and provides technical support to family defense lawyers around the country. She serves on the New York City Bar Association Council on Children and is a founding member of the Steering Committee of the American Bar Association National Alliance for Parent Representation. She is a recipient of NYU's Dr. Martin Luther King, Jr. Faculty Award and of the New York City Bar Association Kathryn A. McDonald Award for excellence in service to the Family Court. Prior to her position at the Clinic, she was with The Legal Aid Society's Juvenile Rights Practice, where she represented hundreds of children and youth.

Testimony to the NYC Council  
Regarding Proposed Local Law Int. 1728  
October 31, 2019

Good afternoon. My name is Stephen Forrester, and I am the Director of Government Relations and Administration at The New York Society for the Prevention of Cruelty to Children. The NYSPCC was founded in 1875 as the world's first child protection agency here in Manhattan. For more than 140 years, The NYSPCC has been at the forefront of the effort to keep children safe and to support their families in raising their children to be healthy and productive adults. The NYSPCC currently provides numerous clinical and other services to children and families in NYC, including a therapeutic supervised visitation program and a trauma recovery clinic for children who have been severely sexually or physically abused. The NYSPCC also consistently lends its voice to the fight for improving protective measures for children at the public policy level, such as the recent successful campaign to enact the Child Victims Act in New York State.

Thank you for the opportunity to be heard regarding the package of legislative proposals being considered by the City Council regarding the work of the City's child protective agency, the Administration for Children's Services. While many of the proposals in the package seem worthy of consideration and enactment, The NYSPCC would like to respectfully address its concerns regarding one of the proposals in particular: Local Law Int. 1728, which would require ACS to establish a program providing an attorney to parents at the initial point of contact during a child protective investigation.

This measure presents numerous practical difficulties and risks. How will ACS coordinate arrival at the child's home simultaneously with an attorney employed by a wholly independent organization? What if the attorney arrives after the ACS investigator, and the child is in an emergency situation that needs an immediate response? Must the investigator wait for the attorney's arrival to intervene? How can ACS disclose the name and contact information of the family to the attorney

organization without violating the confidentiality provisions of the Social Services Law?

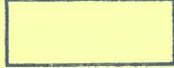
Aside from these problems, the provision would significantly increase child safety concerns that are self-evident. ACS has a primary obligation to protect the children who are named in the initial report, while secondarily supporting parents in order to help them address child safety issues. Attorneys have only a single ethical imperative, that is, to protect the interests of their client, the parent. The safety of the child is ethically not the attorneys concern at all. If the attorney advises the family not to speak to the investigator or permit entry to the child's home, the likely outcome in most cases, this will result in potentially life-threatening delay in performing the required safety assessment. Additional time and court resources will be needed in order to seek an entry order to the home so that the investigation can move forward; however, the child may be in immediate danger and any delay could pose life-threatening risk.

As an advocate for children, The NYSPCC must register its objection to this provision as far too risky to visit upon New York City's children. The significant monetary costs associated with 1728 would be far better spent in enhancing program services for families, such as housing assistance, mental health treatment, and child care. We urge the City Council to deeply ponder this provision's potential threat to the safety of NYC's children, and to decline its enactment.

Thank you again for your time and consideration.

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card



I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. \_\_\_\_\_

in favor  in opposition

Date: 10/31/19

(PLEASE PRINT)

Name: Careena Farmer

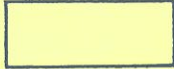
Address: 26 Madison St

I represent: BISE

Address: 10-31-19

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card



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in favor  in opposition

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

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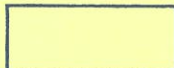
Address: \_\_\_\_\_

I represent: \_\_\_\_\_

Address: \_\_\_\_\_

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THE CITY OF NEW YORK**

Appearance Card



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in favor  in opposition

Date: 10/31/19

(PLEASE PRINT)

Name: Susan Chin

Address: 125 Barclay Street NY NY 10007

I represent: Assistant Director, Political Action Dept.

Address: DC37 (representing Anthony Wells, President, Local 371, SSEU)



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THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. \_\_\_\_\_

in favor  in opposition

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

(PLEASE PRINT)

Name: Ray Watson

Address: 312 Delancey St Apt 1E

I represent: Rise

Address: 240 West 30<sup>th</sup> St

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

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in favor  in opposition

Date: 10/31/19

(PLEASE PRINT)

Name: Alisa Meroy

Address: 20 Egan Ave

I represent: \_\_\_\_\_

Address: Staten Island NY 10312

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 1728 Res. No. \_\_\_\_\_

in favor  in opposition

Date: 10/31/19

(PLEASE PRINT)

Name: Lisa Gitekan

Address: \_\_\_\_\_

I represent: COFCCA

Address: Council of Family + Child Care Agencies

Please complete this card and return to the Sergeant-at-Arms

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

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in favor  in opposition

Date: 100/31/19

(PLEASE PRINT)

Name: Brian Hallbrook

Address: \_\_\_\_\_

I represent: Brooklyn Defender Services

Address: 177 Livingston Street, Brooklyn

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. \_\_\_\_\_

in favor  in opposition

Date: 10-31-2019

(PLEASE PRINT)

Name: Tasfia Rahman

Address: 50 Broad St

I represent: Coalition for Asian American children &

Address: Families

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. \_\_\_\_\_

in favor  in opposition

Date: 10/31/19

(PLEASE PRINT)

Name: Shomari Ward

Address: 199 Water St.

I represent: Legal Aid Society - Juvenile Rights Practice

Address: 199 Water St., New York, NY

Please complete this card and return to the Sergeant-at-Arms

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. \_\_\_\_\_  
 in favor  in opposition

Date: Oct 31, 2019

(PLEASE PRINT)

Name: Marcia Kresge ATD Fourth World

Address: 172 First Ave NY NY 10009

I represent: ATD Fourth World Movement

Address: \_\_\_\_\_

RIGHT TO  
COASTAL LEGAL  
REPRESENTATION  
DURING  
INVESTIGATION

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. \_\_\_\_\_  
 in favor  in opposition

Date: 10/31/19

(PLEASE PRINT)

Name: Hope L. Newton - parent advocate

Address: \_\_\_\_\_

I represent: Center for Family Representation

Address: 40 Worth Street NY, NY 10013

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. \_\_\_\_\_  
 in favor  in opposition

Date: 10/31/2019

(PLEASE PRINT)

Name: Ayami Hatanaka (Neighborhood Defender Service)

Address: \_\_\_\_\_

I represent: \_\_\_\_\_

Address: \_\_\_\_\_

**THE COUNCIL  
THE CITY OF NEW YORK**

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Appearance Card

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I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. \_\_\_\_\_  
 in favor  in opposition

Date: 10-31-19

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Name: Nancy Fortunato

Address: \_\_\_\_\_

I represent: Pist

Address: \_\_\_\_\_

**THE COUNCIL  
THE CITY OF NEW YORK**

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I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. \_\_\_\_\_  
 in favor  in opposition

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

(PLEASE PRINT)

Name: Zachary Ahmad

Address: 22-08 29th St., Astor, NY 1105

I represent: New York Civil Liberties Union

Address: 1 West 11th St., New York, NY

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

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I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. \_\_\_\_\_  
 in favor  in opposition

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

(PLEASE PRINT)

Name: Meryleen Mena

Address: NY, NY

I represent: Citizen's Committee for the Children  
of New York

Address: \_\_\_\_\_

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. \_\_\_\_\_  
 in favor  in opposition

Date: 10/31/19

(PLEASE PRINT)

Name: Assistant Commissioner Sandra Davidson

Address: 150 William St

I represent: NYC ACS

Address: \_\_\_\_\_

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. \_\_\_\_\_  
 in favor  in opposition

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

(PLEASE PRINT)

Name: JESSICA PRINCE

Address: 360 E. 161ST STREET

I represent: THE BRONX DEFENDERS

Address: 360 E. 161ST

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 1715/1728 Res. No. 1066  
 in favor  in opposition

Date: 10-31-19

(PLEASE PRINT)

Name: Arlene Rodriguez (Mobilization for Justice)

Address: 100 William St, NY, NY, 10038

I represent: Mass Mobilization for Justice

Address: \_\_\_\_\_

Please complete this card and return to the Sergeant-at-Arms

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. \_\_\_\_\_

in favor  in opposition

Date: 10/31/19

(PLEASE PRINT)

Name: Deputy Commissioner William Fletcher

Address: 150 William St

I represent: NYC ACS

Address: \_\_\_\_\_

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. \_\_\_\_\_

in favor  in opposition

Date: 10/31/19

(PLEASE PRINT)

Name: Associate Commissioner Stephanie Gerdel

Address: 150 William St

I represent: NYC ACS

Address: \_\_\_\_\_

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. \_\_\_\_\_

in favor  in opposition

Date: 10/31/19

(PLEASE PRINT)

Name: Commissioner David Harbell

Address: 150 William St

I represent: NYC ACS

Address: \_\_\_\_\_

THE COUNCIL  
THE CITY OF NEW YORK

Appearance Card

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. \_\_\_\_\_

in favor  in opposition

Date: 10/31/2019

(PLEASE PRINT)

Name: JULIA DAVIS

Address: 815 2nd Avenue 8th Floor NYC 10017

I represent: Children's Defense Fund - NY

Address: \_\_\_\_\_

THE COUNCIL  
THE CITY OF NEW YORK

Appearance Card

I intend to appear and speak on Int. No. 1715, 1718, 1728, 1729, 1736 Res. No. \_\_\_\_\_

in favor  in opposition

Date: 10/31/19

(PLEASE PRINT)

Name: Andrew T. Ford

Address: 25-85 48th St, Apt 12, Astoria, NY 11103

I represent: Center for Family Representation

Address: 89-14 Parsons Blvd, Fl 2, Jamaica, NY 11432

THE COUNCIL  
THE CITY OF NEW YORK

Appearance Card

I intend to appear and speak on Int. No. 1728 Res. No. \_\_\_\_\_

in favor  in opposition

Date: 10/31/19

(PLEASE PRINT)

Name: STEPHEN FORRESTER

Address: 267 55th March Lane, E. Meadow, NY 11554

I represent: The NY Society for the Prevention of Cruelty to Children

Address: 161 William St., 9th Fl, NY 10038

Please complete this card and return to the Sergeant-at-Arms

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. \_\_\_\_\_

in favor  in opposition

(ceding my time to  
Legal Aid society)

Date: 10/31/19

(PLEASE PRINT)

Name: Betsy Kramer (Lawyers For Children)

Address: 110 Lafayette St, NYC 10013

I represent: Lawyers For Children

Address: \_\_\_\_\_

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

\* I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. \_\_\_\_\_

in favor  in opposition

\*  
ceding my time to Legal Aid

Date: 10/31/19

(PLEASE PRINT)

Name: Rosalind S. (Children's Law Center)

Address: 44 Court St, Brooklyn

I represent: The Children's Law Center

Address: 44 Court St, Brooklyn

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. \_\_\_\_\_

in favor  in opposition

Date: 10/31/2019

(PLEASE PRINT)

Name: Melissa Mosse

Address: 330 7th Ave, 21st Fl

I represent: Drug Policy Alliance

Address: \_\_\_\_\_



82  
**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. \_\_\_\_\_

in favor  in opposition

Date: 10/31/19

(PLEASE PRINT)

Name: Michele Akyempong

Address: 125 Barclay Street NY NY 10007

I represent: Vice-President of Political Action

Address: Local 371, SSEU

PS  
**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. \_\_\_\_\_

in favor  in opposition

Date: 10/31/19

(PLEASE PRINT)

Name: Chris Gattuso

Address: \_\_\_\_\_

I represent: NYC Law Center

Address: 100 West 4th St

DF  
**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. \_\_\_\_\_

in favor  in opposition

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

(PLEASE PRINT)

Name: Najah Leak

Address: 70-29 Kissena Blvd

I represent: 1

Address: \_\_\_\_\_

◆ Please complete this card and return to the Sergeant-at-Arms ◆

**THE COUNCIL  
THE CITY OF NEW YORK**

**Appearance Card**

[ ]

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. \_\_\_\_\_  
 in favor     in opposition

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

**(PLEASE PRINT)**

Name: Nijah Leak

Address: 7029 Casino Blvd

I represent: unrep

Address: \_\_\_\_\_

▶ Please complete this card and return to the Sergeant-at-Arms ◀

**THE COUNCIL  
THE CITY OF NEW YORK**

**Appearance Card**

[ ]

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. \_\_\_\_\_  
 in favor     in opposition

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

**(PLEASE PRINT)**

Name: Vincent Ciccarillo

Address: \_\_\_\_\_

I represent: SSEU Local 371

Address: 1501 Broadway Suite 450 N.Y.N.Y. 10036

▶ Please complete this card and return to the Sergeant-at-Arms ◀

**THE COUNCIL  
THE CITY OF NEW YORK**

32

**Appearance Card**

[ ]

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. \_\_\_\_\_

in favor     in opposition

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

**(PLEASE PRINT)**

Name: Mashon Baines

Address: \_\_\_\_\_

I represent: CRADLE of Parent Advocate

Address: \_\_\_\_\_

▶ Please complete this card and return to the Sergeant-at-Arms ◀

**THE COUNCIL  
THE CITY OF NEW YORK**

31

**Appearance Card**

[ ]

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. \_\_\_\_\_

in favor     in opposition

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

**(PLEASE PRINT)**

Name: Quadira Coles

Address: \_\_\_\_\_

I represent: Girls for Gender Equity

Address: 25 Chapel St Brooklyn

▶ Please complete this card and return to the Sergeant-at-Arms ◀