



**The New York City Council,  
Committees on General Welfare and Justice System  
November 27, 2018**

***“Oversight – Removals from Parents and Caretakers in Child Welfare Cases”***

**Testimony by  
New York City Administration for Children's Services**

**David A. Hansell, Commissioner**

Good afternoon Chair Lancman, Chair Levin, and members of the Committees on the Justice System and General Welfare. I am David Hansell, 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), Alan Sputz, Deputy Commissioner for the Division of Family Court Legal Services (FCLS), and Julie Farber, Deputy Commissioner for the Division of Family Permanency Services. We are pleased to join you today to share more about the crucial mission of ACS to protect and promote the safety and well-being of New York City's children and families.

Every day- 24 hours a day, 7 days a week- Child Protective Specialists (CPS) are the first responders for children and families in crisis. CPS staff respond to calls, assess the safety of children, and offer services to support and strengthen families, throughout the five boroughs. While CPS often do not get the recognition they deserve, their decisions literally save the lives of children. I want to take this opportunity to thank the more than 1,800 CPS and their supervisors and managers for the work that they do.

Our top priority for every family we encounter is the safety of the children. When an investigation reveals circumstances that indicate imminent risk or safety concerns, CPS staff work to help families address any underlying issues that compromise safety and will also meet with ACS's Family Court Legal Services (FCLS) unit of attorneys to determine whether court intervention is necessary. I also want to thank the 251 FCLS attorneys and their supervisors and managers for the critical work they do every day presenting these cases to the Family Court.

The job of both CPS and FCLS is challenging. Together they work tirelessly toward the goal of making the right decision in every case to keep children safe, offer services and supports to enable children to remain in their homes whenever possible, and remove

children only when necessary to address imminent danger and after other possible safety interventions have been exhausted. My testimony today will provide an overview of the work done by our child protective and legal staff, as well as the reforms we have put in place to give our CPS and FCLS staff the tools and skills they need to enhance decision-making.

### **Child Protective Investigations**

I'd like to begin by giving you an overview of our investigative process. When a person suspects that a child is being abused or maltreated, he/she makes a call to the State Central Register (SCR). The SCR is administered by our state oversight agency, the Office of Children and Family Services (OCFS). Whenever OCFS accepts a report related to a New York City child, ACS is required by state law to conduct an investigation. Each year, the ACS Division of Child Protection investigates approximately 60,000 reports of suspected child abuse and neglect made to the SCR, involving nearly 80,000 New York City children. All families and children are different, and our staff is charged with making highly individualized, nuanced assessments based on risk and strengths, and to then take appropriate actions to ensure child safety.

CPS must commence a child protective investigation and attempt to contact the source of the SCR report and other people with information about the child's safety within 24 to 48 hours of receiving the SCR report.

The investigation includes reviewing the family's prior history with ACS; contacting the person who made the report; visiting the home; and interviewing the child, parents, household members, and other important people in the child's life such as teachers and neighbors. A child protective team has up to 60 days to complete the investigation and

make a determination about whether there is credible evidence to support allegations of maltreatment.

Because many family situations involve complex challenges and multiple risk factors, ACS has specialized consultants stationed in each of the 17 DCP Borough Offices to assist the child protective staff throughout the investigation. The ACS Clinical Consultation Program includes Domestic Violence Consultants, Credentialed Alcoholism and Substance Abuse Counselors (CASACs), Early Childhood and Adolescent Consultants, and Medical and Mental Health Consultants who support the work of CPS. ACS also employs Investigative Consultants, who are former law enforcement professionals trained to assist the CPS by analyzing criminal and domestic violence history, and providing crucial information to aid in safety and risk assessments and in creating safety plans to promote the safety and well-being of children that remain in the home with their families.

In the summer of 2017 we piloted a new Heightened Oversight Protocol (HOP), which we made permanent and expanded this past summer. This new protocol combines the expertise of our CPS staff with our Investigative Consultants, in the most high-risk investigations: when the SCR report involves allegations of physical or sexual abuse of a child under the age of three, or involves a child under three where that child or any siblings had been placed in foster care prior to the current investigation.

Under state law, when ACS concludes its child protective investigation, we are required to “indicate” the case if we found “some credible evidence” of maltreatment or to “unfound” it when we have not. ACS “indicates” approximately 40% of the cases we investigate. Consistent with our goals, the law requires us to keep children at home with their parents or caretakers whenever risk can be mitigated, so CPS works with the family



to provide supports and respond to service needs that are identified as a result of the investigation or requested by the family in order to address underlying issues creating the risk and to prevent the need for a removal.

To work with families to develop plans that keep children safe, ACS holds a series of Family Team Conferences, which parent advocates often attend. The Family Team Conference approach brings families to the table to discuss the safety concerns and collectively brainstorm realistic interventions that can be put into place to mitigate risk to the child. These conferences provide an opportunity for ACS and families to develop a plan that will keep children safe, which can include services, excluding someone from the home, identifying resources to assist with caring for the children, and/or court-ordered supervision, potentially avoiding the need for a removal. If there are no interventions that can assure the child's safety and imminent risk of harm to the child remains, ACS will request authority from the Family Court to remove the child from the home.

### **Addressing Child Safety and Risk with Prevention Services**

ACS promotes child safety and family stability through the City's unprecedented investment in prevention services. Over 19,000 families per year receive prevention services and supports targeted to the family's individual needs, such as substance abuse, mental health, and domestic violence, among others. Over the past 3 years, ACS has been a forerunner in launching innovative new programs and approaches to continuously improve the way we serve children and families. The overall number of child welfare prevention slots has increased from 11,994 in FY2015 to 13,596 in FY2019. In expanding our continuum of prevention services, we have made a deliberate effort to bolster services for our higher-needs families receiving court-ordered supervision or at immediate risk of

court intervention, including 960 new prevention slots specifically created for court-ordered supervision cases. Our deep commitment to supporting and strengthening families in the community through prevention services has allowed the City to reduce the number of children in foster care to a historic low of under 8,500 children—a momentous shift from the nearly 50,000 children in care 25 years ago and nearly 17,000 a decade ago. The decline in our foster care population has continued even as national foster care caseloads have increased since 2012. ACS believes strongly that children should only be placed in foster care when it is necessary and only for as long as necessary. Research shows that children have the best outcomes when they are with their families and so we at ACS work to prevent foster care placement whenever it is safe to do so and to safely reunify children as quickly as possible.

### **ACS Filings in Family Court**

Throughout every investigation, CPS are always assessing the safety and risk of the children. If CPS believes that the safety and well-being of the children would benefit from services while also remaining safely at home, the CPS worker can refer the family to non-contracted community-based services and/or an ACS prevention program. If due to heightened safety concerns, the CPS worker feels that court intervention is necessary, the CPS worker will schedule a Child Safety Conference to discuss safety interventions and plans that can be put into place to address the safety concerns identified; one such outcome could be court-ordered supervision.

If during the Child Safety Conference, the Facilitator and the Child Protective Team are not in agreement with the recommended outcome, the Deputy Director will bring the CPS team and Conference Facilitation Specialist together to make a decision on the recommendations from the Child Safety Conference. If CPS, in consultation with FCLS,

finds that the safety of the children requires ACS to monitor the safety of the home and/or for the court to order the family to participate in services, FCLS will file a petition in court and seek court-ordered supervision. If the CPS worker, with approval by his or her supervisor, manager and Deputy Director, believes that a child is at imminent risk of harm and there is not enough time to seek a court order in advance, such as on the weekends or when there is no intervention to keep the children safe prior to going to court, the law allows CPS to conduct an emergency removal. Whenever possible, ACS will seek a court order prior to removing children from their families. All removals and court-ordered supervision must be sanctioned by a Family Court judge. Of the approximately 60,000 investigations conducted each year, ACS files cases in Family Court involving fewer than 20% of the children in those investigations, and approximately 70% of the filings are for court-ordered supervision. Attorneys in the ACS Division of Family Court Legal Services (FCLS) represent ACS in child maltreatment cases, permanency hearings, certain juvenile delinquency hearings and other child welfare proceedings in the New York City Family Courts. FCLS attorneys work collaboratively with the Division of Child Protection (DCP), foster care agency case planners, and other child welfare stakeholders to further the agency's mission on behalf of children, youth and families.

To request authorization from the court to conduct a removal or court-ordered supervision, the FCLS attorney will work with CPS to file a court petition that states the abuse and/or neglect allegations and the basis for such allegations. When ACS has conducted an emergency removal before coming to court, the petition is filed on the same day of the removal or, at the latest, by the very next court day if there is not enough time to file the same day or if removal occurs outside of court hours. During the first court appearance, ACS will ask the Family Court judge to issue an order authorizing the

intervention ACS is seeking. If ACS is recommending a remand to foster care, the CPS must inform the Family Court judge of the basis for the removal, including why reasonable efforts to prevent the removal have been exhausted or could not be made under the circumstances. Each parent and all children are also represented by attorneys, who will present information on their behalf. The judge will then determine what living arrangement—such as release to a parent with court-ordered supervision, release to another appropriate relative or caregiver, or temporary placement in foster care—is safe for the child, and the court may also issue other orders to protect the child's safety.

In cases where the court sanctions a child's removal and placement into foster care, ACS's goal is to work with the parent(s) to safely reunify the family. The Family Court Act provides for a series of hearings and trials to reach judicial determinations on abuse or neglect allegations in ACS's petition, and determinations on when the children in out-of-home care can safely be returned to the parents, as well as hearings focused on the permanency plan for the child and the efforts made by ACS and our foster care agencies to provide services to reunify the child and to ensure the child's well-being. Throughout the entire court process, ACS and our contracted foster care provider agencies continually assess safety risks in the home and the necessity of the child's continued placement in foster care. ACS regularly reports to the Family Court on our work with the family to help move them towards safe reunification, including referrals for services, the family's participation in services, the quality of visits between children and their family members as authorized by the court, and any other assistance by ACS and the foster care provider to increase safety and promote well-being. When there is a question as to the necessity of continued placement, the Family Court may hold a hearing to decide whether the children

would be at imminent risk of harm if returned to the parent, and bases its decision on the testimony of caseworkers, parents and other witnesses.

### **The Child's Removal and Placement in Foster Care**

We know that children who have experienced abuse or neglect, and the further trauma of removal from their home, fare best when placed with a kinship foster care resource, whether this is a grandparent, aunt or uncle, close family friend, or other individual who is important to the child. Whenever a child needs to be removed from his or her home, ACS tries to minimize trauma by placing the child in a family-based setting known to them. We start by exploring kinship options with the parents and the children in the hopes of safely placing the child with kin whenever possible. When a kinship resource is identified, the foster care case planner works with the resource to certify their home as a foster home. If no kinship resources are identified as foster homes, ACS will seek to place the child in a non-relative foster home, or where appropriate to meet the child's needs, a residential placement setting.

Increasing placement with kin is a top strategy in the ACS Foster Care Strategic Blueprint and a recommendation in the 2018 Interagency Foster Care Task Force report that we are working tirelessly to implement. As of March 2018, ACS established 10 new kinship specialist positions to partner closely with DCP, with the dedicated function of finding and engaging kin caregivers for children entering foster care. ACS partnered with the nationally known kinship care organization A Second Chance to provide training to these staff that was delivered in June 2018. We have already seen an increase in the percentage of children placed with kin, growing from 31% to 37% this past year.

## **Trends in ACS Court Filings**

We understand that the City Council and advocates are interested in Family Court practice and trends. We have done a recent analysis of available data and want to share some of the trends related to ACS's removals and Family Court filings.

In late 2016, after the highly publicized deaths of two New York City children who died as a result of abuse, reports to the SCR increased. The total number of investigations ACS conducted in response to reports of abuse or neglect rose by more than 9% from calendar year 2015 to calendar year 2017.

As a national leader in prevention services, we know that in-home and community-based interventions can be the right choice for many families, both to minimize trauma and promote good outcomes, and so we seek court intervention only when we believe it is necessary to ensure child safety. As previously stated, to serve more families that come to our attention, we have been increasing the capacity of our preventive programs significantly. When children need to be placed in foster care, ACS works closely with our foster care provider agencies to make sure that families receive targeted services and supports to address risk factors and enable the family to reunify when safe and appropriate. As a result, the majority of children who enter foster care return home to their families. In FY 2018, 2,460 children reunified with their parents and 298 children exited care through kinship guardianship (KinGAP).

From 2015 to 2017, the number of children with court cases filed by ACS increased by more than 60%. Two of the factors driving this were an increase in the overall number of reports of suspected abuse or neglect and a sharp increase in the number of indicated investigations with domestic violence present in the home. Most of these filings sought court-ordered supervision to protect children remaining at home with their families.

In 2017, over 70% of the filings for court-ordered supervision involved an order of protection—most often because of domestic violence, but also for other reasons such as excluding the person who physically or sexually abused the child. Recognizing that violence poses a significant safety risk to children, ACS seeks court orders of protection, usually prohibiting the person causing harm from being in the home with the children, and ACS also seeks court orders to allow caseworkers to continue monitoring the families.

ACS's filings in Family Court have begun to decrease in recent months. In the first six months of calendar year 2018, the number of children with court cases filed by ACS decreased nearly 17% from the same period in 2017. As a subset of this, the number of children removed on an emergency basis dropped more than 11% in the first 6 months of 2018, compared to the same period in 2017.

### **ACS's Efforts to Strengthen our Decision-Making and Ability to Keep Children Safe**

New York City's most important asset for protecting our children is our team of over 1,800 Child Protective Specialists (CPS) who work to protect children and support families in some of the most challenging situations. Given the complex process I have just described, it is essential that we make the best possible decision about child safety in each and every investigation. To that end, ACS has made critical investments to strengthen CPS investigations, by strengthening quality assurance and oversight, keeping caseloads manageable, enhancing training, and ensuring that CPS are equipped with state-of-the-art technology. We must also constantly review our policies and practices to ensure that they support our goals of keeping children safe while supporting families and minimizing trauma.

One of the first reforms I initiated when I became ACS Commissioner was to restructure and re-launch Child-Stat, a quality improvement process in which we regularly review high-risk cases under current CPS investigation and analyze performance data from each borough office. In addition, we created a new Quality Assurance Unit to improve case practice on investigations involving high-risk families, as this new unit provides frontline child protective staff with real-time feedback on safety assessments, decision-making and service provision. As I mentioned earlier, we have enhanced case review processes by implementing a new Heightened Oversight Protocol on SCR reports involving alleged physical or sexual abuse of a child under the age of three, or where a child or siblings have been previously removed. Under this new protocol, the Investigative Consultant supervisor and a Child Protection manager or supervisor conduct a joint case review prior to initiating an investigation. Investigative Consultants remain involved in these cases and participate in further reviews in the course of the investigation to provide enhanced support in these most serious cases.

We have also taken steps to ensure that we have a highly trained workforce of CPS staff. Through our ongoing recruitment of CPS staff, we are able to maintain average caseloads under 12, consistent with best-practice standards and significantly lower than most jurisdictions throughout the country and across New York State. We now also have clinical social workers at the Child Advocacy Centers, which are located in each borough and provide a child friendly, neutral and supportive setting where professionals from multiple disciplines, including ACS CPS workers and NYPD detectives, coordinate and expedite the investigation, prosecution, and delivery of treatment services in cases of child sexual abuse and serious physical abuse.



The enhanced training curriculum for our CPS staff includes a new Safety and Risk module to assist in developing stronger safety plans for children and reinforces the importance of treating all families equally regardless of race, ethnicity, sexual orientation or other factors. To support continuity from the training academy to the field, Staff Development Coordinators and “coaches” work with supervisors and managers in our DCP borough offices to bridge the transition and reinforce the extensive up-front training program. In addition to all of the internal quality assurance and improvement tools we have in place, I also believe it is imperative for myself, ACS Deputy Commissioners and other ACS staff to regularly hear feedback from advocates and providers. Since coming to ACS, I have been meeting routinely with parents, parent advocates and lawyers, children’s advocates, and attorneys for children and youth. Their feedback about ACS policy, practice and impact on them and the families they work with is critical information that helps us to strengthen our ability to keep children safe and support families. In addition, we have significantly expanded our efforts to formally engage the voices of parents across ACS’s work. For example, we contract with parent advocacy groups to review materials and trainings, and to create resources that can help parents know and exercise their rights in the child welfare system. ACS recently expanded our contract with Rise, a nonprofit organization that trains parents to write and speak about their experiences with the child welfare system to support and guide parents, and help child welfare professionals become more responsive to the families and communities we serve. As part of this new collaboration, Rise will deliver the Building Bridges curriculum to ACS and foster care agency staff. This workshop will introduce tools, developed with parents and foster parents, that agencies can use to inform and support parents, foster parents and frontline staff in navigating these complex relationships.

Since I have come to ACS, we have also taken important steps to strengthen and support child protective workers through technology. CPS now have additional transportation options, including ZipCar and the use of ZipCar's "local motion technology," which allows CPS to find and reserve cars online so that they can respond even more quickly and safely to reports of child abuse and maltreatment. More than 1,800 frontline CPS have received upgraded technology, including smartphones, new high-speed tablets, and "Safe Measures" software which can automatically identify and flag high-risk cases that need additional review by managerial staff.

### **Closing**

Thank you for the opportunity to discuss ACS' role in child protective investigations and the Family Court, and our interventions to keep New York City's children safe. I appreciate the Council's leadership and focus on this important topic, and we look forward to discussing with you ways to strengthen the system for the benefit of all children and families. We are happy to take any questions.



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

**before the**

**New York City Council**

**IN RELATION TO**

**Parental-Child Separation in Family Court**

**by**

**MICHELLE BURRELL  
MANAGING ATTORNEY  
FAMILY DEFENSE PRACTICE**

**November 27, 2018**

## **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.

### **Trauma of Parent/Child Separation**

Over my ten years of representing parents in abuse and neglect proceedings, there has been no more traumatic a juncture in the lives of parents and children in New York City than at the point of removal of a child from their parent. Even when the removal is for a very short period of time, the lives of children and parents are never the same after being forcibly separated. Early on in my career, I recall a four-year-old being removed from her mother and father on an emergency basis because of the use of marijuana in the home. In spite of the New York City Administration for Children's Services ("ACS") pleading that she was in imminent risk of harm because of the marijuana use, the Family Court promptly returned the child. Months later I recall my client, the mother, telling me that even though her child was removed only for a night, she continuously had wetting accidents (at home and at school), didn't want to sleep in her room (which was away from her parents) and was frantic each and every time they tried to drop her off anywhere.

When earlier this year children were removed from their families at the border, and the harm of removing children from their parents gained national spotlight, it came as no surprise to me that the children and parents were traumatized by the events at the border. What was surprising, however, was the complete lack of a parallel drawn between the removals done in Family Court on a daily basis and the removals being done at the border. Family Court removals are no less traumatic and have equally enduring consequences on the psyches of children and similar to the children at the border, the children removed are largely children of color.

The American Academy of Pediatrics defines a childhood traumatic event as one that "threatens the child or someone the child depends on for love". It is commonly known amongst mental health professionals and those who diagnose and treat trauma disorders in children that because the relationship with a parent or primary caregiver is critical to a child's sense of self, safety, and trust,

any loss of a primary caregiver, whether by death or other separation, may cause children to develop posttraumatic responses. The National Child Traumatic Stress Network (“NCTSN”) explains in their guide for professionals, titled “Children with Traumatic Separation”, that “children who develop posttraumatic responses to separation from a caregiver present clinically similar to children who have childhood traumatic grief”. They go on to explain that while children whose parents have died may experience similar sadness, anger, confusion, and fear, the finality of that process allows them to grieve and heal unlike children whose parents are alive but from whom they are separated.

NCTSN also maintains that “for some children, the most traumatic aspect of the separation is exposure to frightening events, such as witnessing a parent being handcuffed...or not knowing whether the caregiver is currently safe”. For children separated by the child welfare system, this “worst event” (language NCTSN uses to describe children’s reports) may mean the terror of being woken up by a stranger in the middle of the night, seeing a parent distressed, watching law enforcement detain or handcuff their parent, being forced to leave their home with little to no explanation of what is going on, why they need to leave, or when they will return and most importantly, if they (and their parent) are safe from harm.

Trauma responses to separation may include: Intrusive thoughts, nightmares, disturbing images of the separation reenacted in play or depicted in art, avoiding reminders of what happened, such as people, places, situations, or things associated with the traumatic event, negative beliefs about oneself, others, or the event, negative changes in mood (e.g., sadness, anger, fear, guilt, shame), changes in behavior (e.g., increased anger, aggressiveness, oppositional behaviors, irritability, sleep problems, withdrawal), self-destructive thoughts, plans, or actions, difficulty with thinking, attention, or concentration problems, and or physical symptoms (e.g., stomach aches, headaches). When these symptoms manifest in foster homes, schools, courtrooms, and therapy offices, it is often misattributed as a trauma reaction to abuse or neglect when research is showing more and more than it is actually the trauma of removal and separation that causes these symptoms. In fact, new research by the National Institutes of Health shows that it is the circumstances of removal, more even than the factors associated with subsequent placement, that are correlated with negative outcomes (high delinquency rates, high teen birth rates, and lower earnings to name a few well researched ones) in children affected by the child welfare system. Furthermore, MIT researchers have recently found that children on the verge of placement tend to have better outcomes when they are allowed to stay with their families (even when their families are struggling).

ACS’s own policy and procedure states that “a child's removal from his/her family is a traumatic event” and go on to suggest some ways to mitigate that trauma from affecting children long term. This includes “immediate contact with family [and] contact with relatives or other significant parties”. Additionally, the Child and Family Services Information Portal suggests that a trauma informed child welfare system is one that “gives the child as much control over his or her life as possible, and ensures that the child has a consistent, predictable environment”. Practical applications can include providing age appropriate explanations of what is happening and why, allowing children to make decisions about what special or comforting items they take with them, the ability to ask questions and receive reassurance from their primary caregiver (even if this is the person they are being removed from), and allowing for immediate and consistent contact (whether by phone or in person) with, to echo an earlier sentiment, the person that they depend on for love.

In the daily reality that we experience as family defense attorneys in New York City, these trauma informed practices recommended by the Child and Family Services Information Portal are rarely implemented. Our clients share with us their stories of how their children are ripped from their homes late at night or taken from school without even being able to say goodbye to their parents, and we are witnesses to the trauma of in-court removals. In one instance, emergency child protective workers showed up to our client's home at 2am in the morning, woke his two children up from their sleep, and took them away without giving our client the opportunity to explain to his children what was going on, where they were going or to even pack a bag for his children with things, he knew could comfort them. Our client's children were scared, confused, and crying. When discussing the night his children were removed over two years after the fact, our client is still brought to tears. His seven-year-old daughter continues to experience symptoms of post-traumatic stress disorder. In another shockingly distressing case, another client's two-and-a-half-year-old daughter cried continuously for days and stopped talking altogether after she was taken away from her mother and father, the two people she had lived with since she was born.

Perhaps one of the most difficult parts of our job as family defense attorneys is talking to our clients, often clients we have just met that day, about having their children taken from them in court. Sometimes, parents are told to bring their children with them to court on the day that a neglect or abuse petition is being filed against them. During that first appearance in court, the Judge may decide that the children cannot safely remain in the parent's care and may order that the children be taken from their parents and be placed with a different caretaker. In the best-case scenario of this terrible situation, that alternate caretaker can be a relative or family friend who is also present in court and can ease the transition for the child and the parent. This best-case scenario, however, is rarely the reality. Instead, when children are taken away from their parents in court, children are often taken to a place called the Children's Center while they wait to be placed in a foster home or with a relative. During these in court removals, we often have to plead with the attorneys and caseworkers for the Administration for Children's Services to allow our clients an opportunity to explain to their children what is going on, to reassure their children that everything is going to be ok, to give their children a kiss and a hug goodbye and tell their children that they will see them soon.

On one occasion, a father who had been a client of NDS for over a year had a new case filed against him in family court, and the Judge ordered that his autistic daughter, whom he had cared for since birth, be removed from his care. Our client broke down sobbing while trying to say goodbye and reassure his daughter that she would be ok. His daughter did not understand what was happening or where she was going. She tried to break free from the caseworker who was taking her away and had to be physically restrained so that she did not run through the doors separating her from her father and back into his arms.

On another occasion, a new client showed up to court around 4pm with both of her children on the day that ACS filed a neglect petition against her. The Judge had already heard the case without the mother present and had issued an order that her children be removed from her care. Even though Manhattan Family Court is open until 4:30pm, and the Judge did not have any other cases to hear that afternoon, she refused to re-call the case on the record so that the mother could be assigned an attorney and argue against the order removing her children from her care. This client's eight-year-old son and five-year-old daughter cried inconsolably as the caseworker walked them away from

their mother who continued to reassure her children that they would be safe and well cared for and that she would see them the next day.

Perhaps unfortunately, our court office is located across the hallway from ACS's transportation room, which is where children who have been removed from their parents wait before they are transported to either the Children's Center, a foster home, or the home of a relative. We can often hear the anguished cries of children who have been separated from their parents and forced to wait in a windowless room with strangers before they are told where they will spend the night.

As family defense attorneys, we have a powerful tool to try to prevent family separation and to quickly reunify parents with their children. Family Court Act Section 1027 permits parents to request an immediate hearing when ACS asks that the court issue an order removing a parents' children from their care. The hearing is to begin immediately and be scheduled day-to-day on an emergency basis. At these hearings, the burden is on ACS to demonstrate that there would be imminent risk to the child's health or safety if the children remained with their parents. The court is also required to undertake a balancing test to determine whether the risk of harm to the child of remaining in their parent's care is outweighed by the harm that the removal itself would cause to the child and whether there are any orders, such as orders of protection or orders for services, that the court can issue to ameliorate the risk of harm to the child. Unfortunately, Family Court does not always treat these hearings like emergencies as the statute intended and hearings are not scheduled day-to-day on an emergency basis because of the congestion of cases coming through the courts. Children and parents are forced to wait in limbo for weeks, and sometimes months for the hearing to conclude and the court to determine whether a family can be reunited and children can return home.

In one instance, ACS filed a neglect petition against a mother and father in March of 2018 and asked that the parents' three daughters be taken from them and placed in the care of a maternal relative because of concerns that one of the parents may have used excessive physical discipline with the children even though all three children repeatedly denied being hit by their parents. NDS was assigned to represent the children's mother, who was also pregnant with her fourth child at the time. After hearing arguments from all of the attorneys, the Judge denied ACS's request to separate these three young girls from their parents. ACS then asked for a hearing pursuant to section 1027 of the Family Court Act to establish through testimony and documentary evidence that the girls would be in imminent risk of harm if they remained home with their parents. This hearing, which began over eight months ago, has not yet concluded. Though our client's children have remained safely in her care, the stress of this eight-month hearing and the continuous threat that her daughters will be taken from her has taken a significant toll on the family. Our client's pregnancy was deemed high risk, but she still has had to travel to court for these appearances. Our client also had to return to court, days after giving birth to her fourth child, to argue that this new baby should also stay home with her.

Parent advocates and social workers also play a very important role in supporting our clients when their children are removed from their care and in advocating for family reunification. Parent advocates and social workers can attend conferences with our clients where decisions are made about whether ACS will ask for children to be removed from their parents or for children to remain home. Parent advocates and social workers can highlight our client's strengths as parents and their

bonds with their children and can advocate for creative safety planning to address any potential risk that ACS may believe exists to our client's children. They can support our clients through difficult court appearances. They can refer our clients to high quality, meaningful services and maintain contact with those service providers in order to ensure they are meeting our clients' needs and to obtain detailed reports from those service providers describing our client's engagement and progress in treatment.

In one case, our existing client was pregnant with her sixth baby. Her older five children were in foster care and petitions to terminate her parental rights for her older children had already been filed in court. Our client, however, never missed a visit with her older children, was participating actively and meaningfully in all of the services that ACS recommended she participate in, and was doing very well. After giving birth, our client attended a conference with a parent advocate from our office to discuss the plan for her new baby. With the support and advocacy of the parent advocate, our client was able to advocate for herself with the ACS caseworker and her supervisor that her new baby could safely remain in her care. As a result, our client and her new baby did not have to experience the trauma of separation just days after her new child's birth and are safely home together today.

### Disproportionate Effects on People of Color

It is important to understand that these traumatic removals are not being experienced by a broad even swath of New York City children. There is a disproportionate amount of Black and Brown children who are the subject of child protective proceedings and who are removed from their parents. Just walk in the door of any Family Court building in New York City on any day, and you will see that the disparity is shocking. It must be said that in the same way the criminal legal system has been known to separate Black and Brown men from their families, the child welfare system is the cause for the separation of Black and Brown women from their families. Though the players involved in the system know of this devastating disparity, because it is readily apparent in day to day practice, there is a concerning lack of formal data surrounding the demographics of families in New York City who are the subject of investigations and the corresponding outcomes for children once removed and placed in foster care.

We cannot know the full extent of racial disproportionality in which children are subjected to the trauma of unnecessary family separation unless ACS reports this data fully. It is a fact that the reports of suspected child maltreatment that ACS receives are themselves disproportionately focused on families of color -- in 2010, for example, black children represented 28 percent of all children in New York City, but 38.7 percent of children about whom ACS received reports of suspected maltreatment. However, the disproportionality in which families are brought to ACS's attention are only part of the story. Also in 2010, black children constituted progressively higher percentages of the children who entered foster care in New York City (46.6 percent) and remained in foster care in 2010 (53.8 percent). What this tells us is that racial disproportionality affects not just which families are reported to ACS, but also which children are removed from their families, and how long those families are separated.

The above data comes from the state agency that oversees ACS, and is not publicly reported every year. New York City law does require ACS to report monthly and annual data points to the Council and the public; however, those data points are organized by neighborhood, not demographic



information. The data about neighborhoods can hint at racial disparities, but cannot outright confirm them. It also cannot tell us about racial disparities and how families experience New York City's child welfare system at each stage: investigation, family separation, and working toward reunification.

A model exists at the federal level for collecting data about racial disproportionality at each point of contact with ACS. The national Juvenile Justice and Delinquency Prevention Act (JJDP Act) requires each state to report data about multiple points of juvenile justice contact -- arrest, diversion vs. detention, confinement, disposition, probation, and so on. States are further required to report the race of each young person who comes into contact with the system, providing a clear picture of minority representation at each procedural stage of a case. This level of reporting should also exist within the child welfare system so as to fully appreciate the ways in which race impacts the decision to remove children, the decision to return them and the outcomes for children who are not returned.

#### Lack of Adequate Data

In attempting to grasp the full impact that removals have on the families that are being separating in New York City, there are many more key data points that need to be collected and publicly disseminated to ensure transparency around the realities of children in New York being removed from their parents. The missing data points need to be done at every stage - from investigation to removal to the filing of a court case. 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. Since hotline calls can be made anonymously there is an increased lack of transparency around the process and an increased chance that a false report might go forward to the next stage of the proceeding.

Once the case is referred to a CPS investigator, the investigator then has sixty days to determine whether or not there is "some credible evidence" of abuse or neglect. In my practice, I can recall instances where the people I represent were brought to the attention of child welfare caseworkers because of allegations of things like marijuana use, without a showing of harm to children or vague

allegations of a dirty or deplorable home. This is amazingly subjective as depending on the time of entry into a home, the cleanliness of any home can be questionable.

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. Regardless of whether the report is indicated, at any point during the investigation, if CPS believes that there is imminent risk to a child’s emotional or physical health or safety, they have emergency powers of removal to take a child into protective custody even without the approval of a Court. These removals can be done at any time of the day, and there is unfettered discretion with the caseworkers as to whether they are appropriate when the removals are done outside of court hours. When parents are uncooperative, police are used to assist with the removal, even when there hasn’t been a court order. Just imagine the traumatic effect of a police officer and caseworker entering your home to remove your children. One of my clients once reported that her child peed his pants as police entered the building and continued to wet the bed well into his pre-teen years as a result. The force with which the separation occurred was devastating for him.

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. We need more information as to how many people currently have indicated, 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.

### Recommendations

#### *1. Require ACS to report data on racial disproportionality at every stage in family separation process*

New York City can and should require ACS to collect and report equivalent data on racial disproportionality at each significant decision point in the child welfare system:

- Which reports of suspected child maltreatment are ‘indicated’ for some form of maltreatment;
- Which children are removed from their homes under an ACS protocol designated for emergencies -- i.e. without the prior approval of a family court judge;
- In which cases ACS seeks court approval of a removal;
- Which children remain at home with ACS supervision during the pendency of the ACS case;
- Amount of time children spend in out-of-home care, both in non-kinship foster care and in kinship placements;
- How many changes in placement children experience during a case; and
- What the final ‘permanency’ is in a case -- reunification, custody to a relative, adoption, etc.

2. *Expand the work of legal and social work teams providing pre-court support and advocacy to families in contact with ACS*

Each organization that provides legal representation to parents in family court cases also gets involved in any new ACS investigations that arise during the life of a case -- for example, if a new baby is born, or if another family member becomes the subject of an investigation. The parent's legal and social work team will seamlessly work to counsel and support their client through the process of the new investigation.

When a parent has the support and counsel of an advocate, she is inarguably better equipped to navigate ACS involvement. She has a partner with an ethical duty to make sure she understands her choices and guide her through critical decisions, impacting everything from medical confidentiality to custody of her child. The city can ensure that all parents -- not just those with preexisting court cases -- have access to the dedicated and professional supports that exist for families in this city.



Juvenile Rights Special Litigation and Law  
Reform Unit  
199 Water Street, 3rd Floor  
New York, NY 10038  
T (212) 577-3300  
[www.legal-aid.org](http://www.legal-aid.org)

Blaine (Fin) V. Fogg  
*President*

Dawne A. Mitchell  
*Attorney-in-Charge*  
Juvenile Rights Practice

Lisa Freeman  
*Director*  
Juvenile Rights Special Litigation and  
Law Reform Unit  
T (212) 577-7982  
[lafreeman@legal-aid.org](mailto:lafreeman@legal-aid.org)

## TESTIMONY

The New York City Council  
Committee on General Welfare  
Stephen T. Levin, Chair  
Committee on Justice System  
Rory Lancman, Chair

### Parent-Child Separation in Family Court

The Legal Aid Society  
Juvenile Rights Practice  
199 Water Street  
New York, NY 10038

Prepared by:  
Dawne Mitchell, Attorney-in-Charge  
Lisa Freeman, Director of Special Litigation and Law Reform  
Jayne Cooper, Staff Attorney, The Legal Aid Society  
Theresa Moser, Staff Attorney, The Legal Aid Society

The Legal Aid Society submits this testimony to the Committee on General Welfare to share our perspective on the impact of parent-child separation in Family Court. We strongly believe that families should remain together whenever possible and that New York City can do more to ensure that children are separated from their parents only when necessary.

The Legal Aid Society is the nation's largest and oldest provider of legal services to low income families and individuals. The Society operates three major legal practices – Civil, Criminal and Juvenile Rights – providing comprehensive legal services throughout New York City. The Legal Aid Society's Juvenile Rights Practice provides legal representation to children who appear before the New York City Family Courts in all five boroughs, in abuse, neglect, juvenile delinquency, and other proceedings affecting children's rights and welfare. Last year, our staff represented some 34,000 children. Our perspective comes from daily contact with children and their families, and frequent interactions with the courts, social service providers, and State and City agencies whose practices impact our clients and their families. In addition to representing many thousands of children each year in trial and appellate courts, The Legal Aid Society pursues impact litigation and other law reform initiatives on behalf of our clients.

It is apparent and, indeed, indisputable that decisions regarding the removal of children from their families must be made with the utmost care and caution. Both social science research and our professional experience establish that, in general, children fare far better with their families.<sup>1</sup> Separating children from their parents, even short-term, can have a detrimental effect on children's health and development.<sup>2</sup> Social science research and our professional experience similarly establish that, in general, children who are removed from parents do better when placed with relatives than when put into foster care with strangers.<sup>3</sup> Placing a child with kin eases the trauma of family separation, minimizes the need for children to adjust to entirely new environments, and reduces the likelihood that a child will develop behavioral and psychological disorders.<sup>4</sup> The challenge the child welfare system must address is determining when children

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<sup>1</sup> See, e.g., American Psychological Assn, Parents and Caregivers are Essential to Children's Healthy Development, available at <http://www.apa.org/pi/families/resources/parents-caregivers.aspx>.

<sup>2</sup> See, e.g., Sankaran, Vivek, Church, Christopher, "Easy Come, Easy Go: The Plight of Children Who Spend Less than 30 Days in Foster Care," 19 U. Pa. J. L. Soc. Change 207 (2017).

<sup>3</sup> Downes, et al., Impact of Kinship Care on Behavioral Well-being for Children in Out-of-Home Care, Arch Pediatr Adolesc Med. 2008;162(6):550-556. Published online June 2, 2008.

<sup>4</sup> The Annie E. Casey Foundation, "Stepping Up for Kids: what government and communities should do to support kinship families," policy report, KIDS COUNT.

are in imminent danger such that they cannot remain with their parents, and how to effectively ensure services are provided to minimize the term of separation.

### **Who: Racial Inequities in Child Welfare**

The child welfare system can only truly be understood through the lens of our society's history of systemic racism, which originated in slavery. The government's impulse to remove children from the homes of racially disenfranchised and impoverished families for the purported benefit of the children has been with us for decades.<sup>5</sup> Due to this history, we must be ever vigilant that in New York City, where economic inequality is likely unparalleled, the government does not confuse poverty with dangerous parenting.

The disproportionate impact of the child welfare system on families of color in NYC is glaring. Black 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.<sup>6</sup> Black children in NYC are 6.2 times as likely to be reported to the State Central Registry (SCR) as white children, 7.8 times as likely to have the report indicated,<sup>7</sup> 12.8 times as likely to be admitted into foster care, and 13.3 times as likely to be in foster care, according to 2014 OCFS data.<sup>8</sup> Hispanic children in NYC are likewise more likely to be involved in the child welfare system when compared to their white counterparts; Hispanic youth in NYC are 5.4 times as likely to be involved in an indicated case, 5.6 times as likely to be admitted into foster care, and 5.4 times as likely to be in foster care.<sup>9</sup>

The vast majority of children entering foster care in New York City and New York State come from the same few neighborhoods, specifically communities facing significant problems of poverty, inadequate services to meet the high needs of their residents, low performing schools, higher than average prevalence of health and mental health issues, and substandard housing

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<sup>5</sup> See Bernstein, Nina, "The Lost Children of Wilder: The Epic Struggle to Change Foster Care," Pantheon Books, 2001. For a summary of this history, see also Jenny Pokempner and Jennifer Rodriguez's article in *Teen Vogue*, "Foster Care in the United States: A Timeline," published May, 31, 2018 and available at <https://www.teenvogue.com/story/foster-care-in-the-united-states-a-timeline>.

<sup>6</sup> [https://ocfs.ny.gov/main/bcm/DMR\\_Section%20Seven%20of%20Grant%20RFP\\_2015](https://ocfs.ny.gov/main/bcm/DMR_Section%20Seven%20of%20Grant%20RFP_2015).

<sup>7</sup> ACS investigates reports of suspected child abuse and neglect made to the SCR involving NYC families. If ACS finds credible evidence of abuse or neglect, ACS deems the report indicated and it is retained in the SCR.

<sup>8</sup> Ibid.

<sup>9</sup> Ibid.

stock.<sup>10</sup> As the federal Administration for Children and Families has recognized, racial bias and discrimination exhibited by individuals such as reporters of suspected child abuse and neglect and child welfare investigators, combined with a lack of resources for families of color and families in impoverished communities contribute to disparate minority representation in the child welfare system nationwide.<sup>11</sup> Oftentimes, those living in poverty have more contact with government agencies and so-called welfare services; the higher visibility of these families can result in their being referred to the child welfare system at a higher rate. At the same time, however, essential services are often lacking in predominately Hispanic, African-American and Native American communities across the country. The lack of supportive services for families in these communities compounds the likelihood of being referred to the child welfare system, as early access to such services may prevent the need for state intervention in family life.<sup>12</sup>

Any examination of child-parent separation in Family Court must be rooted in an understanding of the racial inequities that exist in the child welfare system and involve those directly impacted. Here in New York City, through coordinated efforts (of ACS, foster care agencies, child and parent representation providers, such as The Legal Aid Society, and other stakeholders) aimed at actively reducing disproportionality in child welfare, we are seeing positive shifts in behavior and policy. Awareness of these inequities led, in part, to The Legal Aid Society's decision to adopt our model of direct representation of children in Family Court, to ensure that the voices of the children in whose interest actions are being taken are actually heard. Over the last decade, ACS has made dramatic improvements in the child welfare system, significantly increasing supports to families through preventive services to reduce the risk of harm to children and often successfully keep families together. NYC also established institutional providers to represent parents to ensure that their rights are being adequately protected. As a result, the number of children placed in foster care has decreased enormously. Still, there is significant room for improvement.

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<sup>10</sup><https://ocfs.ny.gov/main/cfsr/data/outcomes/CFSR-Round-3-Wave-4-Outcomes-Packet-20180109.pdf>;  
<https://www1.nyc.gov/assets/acs/pdf/data-analysis/2017/CityCouncilReport2017Annual.pdf>;  
<https://www1.nyc.gov/assets/acs/pdf/data-analysis/2018/AbuseNeglectInvestByCommDistrictYrs2014To2017.pdf>  
<sup>11</sup> [https://www.childwelfare.gov/pubPDFs/racial\\_disproportionality.pdf](https://www.childwelfare.gov/pubPDFs/racial_disproportionality.pdf)  
<sup>12</sup> Ibid.

### **What: Parent-Child Separation and the Trauma it Causes**

When considering parent-child separation in Family Court, we must recognize that this encompasses both the initial separation of the child from the parent and also the ongoing separation after a child is placed into the foster care system. Each often results in further separations for the child involved - sibling separation, separation from extended family members, separation from neighborhood and community, separation from school, social and recreational activities, among others. As child welfare practitioners have known and social science research has shown for decades, and as has been reinforced on the national stage by the family separations occurring at the border, the forcible separation of children from their parents can cause irreparable harm and bring lifelong consequences to the health and wellbeing of both the children and their parents.<sup>13</sup> The data, both nationally and in NYC, is grim with regard to the impact foster care has on children. 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.<sup>14</sup> For children of color, the potential harm is even more stark.<sup>15</sup> Undeniably, some children still require removal from their families in order to ensure their safety, but it must be acknowledged that foster care itself and the continuing separation of a child from their parent also involves a significant risk of harm.

### **ACS's Role in Parent-Child Separation and Oversight of Foster Care**

The consequences suffered by children from parent-child separation, even those short in duration, are one reason why ACS should be required to publicly report the total number of children in NYC separated from a parent. As reported by The New School's Center for New York City Affairs, ACS excludes from its data relating to the number of children removed from parents on an emergency basis without court order all those who were returned to their parents either prior to court involvement or pursuant to court order upon an initial court hearing.<sup>16</sup> As

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<sup>13</sup> See Supra, notes 1 and 2.

<sup>14</sup> <https://www1.nyc.gov/assets/opportunity/pdf/policybriefs/child-welfare-brief.pdf>; <https://www.casey.org/nw-youth-outcomes/>

<sup>15</sup> See Elissa Minoff, "Entangled Roots: The Role of Race in Policies that Separate Families," *Center for the Study of Social Policy*, 2018.

<sup>16</sup> Abigail Kramer, "Child Welfare Surge Continues: Family Court Cases, Emergency Child Removals Remain Up," *Center for New York City Affairs*, July 2018,



such, the public is unaware of the full scope of parent-child separation and its impact upon NYC families. ACS should be utilizing this data to determine whether particular staff are responsible for a disproportionate number of unnecessary removals, and target training and supervision when necessary. Making this data publicly available would also serve to increase transparency and offer the City Council potentially important information for its oversight duties.

The NYC Department of Investigation's recent report on ACS systemic accountability reviews of the safety of children in foster care,<sup>17</sup> while misguidedly focused on a small fraction of cases, pointed to problematic flaws in ACS's system of oversight of its foster care agencies as a whole. The inadequacy of ACS's oversight is particularly egregious since NYC relies on more than twenty-five different non-profit agencies to provide foster care services, with gross differences among them in resources and management ability. A child's likelihood of placement with kin, likelihood of reunifying with parents, and experience in foster care should not rely on his or her luck in assignment to a foster care agency. As recommended in the DOI's report, ACS must strengthen its oversight to ensure that each agency is meeting its contractual obligations and adequately protecting the safety of children in its care. ACS has been loath to discipline non-compliant agencies or terminate contracts because, even with the many fewer children in foster care, it is chronically short of viable foster homes for children in its care. However, by strengthening its oversight of these agencies and its quality assurance measures, ACS will be able to provide needed technical assistance and enforce compliance with improvement measures or terminate contracts if necessary. This will ultimately benefit children and parents in the child welfare system, and work to re-unite children with parents more quickly.

### **Current Strains on NYC's Children Welfare System**

The death of any child is an unmitigated tragedy, as everyone involved in the child welfare system would agree. After a child dies due to abuse or neglect of a parent, a prompt review to uncover possible failures of our child welfare system is certainly necessary. At the same time, due to the very human concern of the ACS child protective workers on the frontline,

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<https://static1.squarespace.com/static/53ee4f0be4b015b9c3690d84/t/5b50c5c38a922d3211b6606d/1532020164221/Child+Welfare+Surge+Continues.pdf>

<sup>17</sup> New York City Department of Investigation, "Review of ACS' Systemic Safety Accountability Mechanisms for Foster Care Providers," October 2018, [https://www1.nyc.gov/assets/doi/reports/pdf/2018/Oct/ACS\\_Rpt\\_Release\\_Final\\_10122018.pdf](https://www1.nyc.gov/assets/doi/reports/pdf/2018/Oct/ACS_Rpt_Release_Final_10122018.pdf).

there is unsurprisingly an uptick in removals of children from their parents and an increase in requests for supervised, rather than unsupervised, visitation following such a tragedy that may not be warranted in every case. In NYC, following the death of Zymere Perkins in October 2016, between October 2016 and May 2018 there was a 28% increase in the number of emergency removals conducted by ACS over the same 20 month time span preceding.<sup>18</sup> During the same time, the number of child welfare filings jumped by 54 percent over a corresponding time frame starting in 2014.<sup>19</sup> While these have not generally resulted in a significant increase of placements into foster care, they do put a significant strain on ACS and many other social service agencies who provide resources to court-involved families. This strain, in turn, creates backlogs within the courts, waitlists for services necessary for reunification, and much higher caseloads for ACS and foster care workers. Our staff has felt this increase acutely and has seen the impact it has on the children we represent – the delays in court hearings, unmet needs due to lack of services, challenges finding appropriate placements. These strains ultimately and inevitably increase the lengths of stay in foster care and the separation of the children from their parents. ACS must take steps to counteract this tendency to swing the pendulum towards excessive removals and supervision and ensure that the balancing of harm from separation is done regardless of the political climate. At the same time, when there are increases in removals and filings, ACS must work to ensure caseworker caseloads remain at a level that enables them to adequately perform their duties. It must also ensure adequate services are available to assist families working toward reunification.

Family Court judges are the ultimate arbiters of which children are allowed to remain with their families after ACS conducts an emergency removal or when ACS seeks court approval to remove them. As attorneys for the children, we conduct our own independent investigations regarding risk, particularly for young clients for whom we are the decision makers. We also provide a voice to all children regarding the harm they suffer upon separation. Hearings pursuant to Family Court Act sections 1027 and 1028 are the mechanism for courts to revisit ACS's determination that a child must be removed from his or her parents. These proceedings are intended as an immediate judicial check on this life-changing decision by ACS. However, since the increase in filings and demands placed upon the NYC Family Courts since October 2016,

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<sup>18</sup> See Supra note 16.

<sup>19</sup> Ibid.

these proceedings have been routinely drawn out over weeks, if not months, due to excessive judicial caseloads. As a result, some families suffer extended undue separation, causing needless trauma to the children and parents. This avoidable harm is inexcusable. Efforts by ACS to reduce the number of unnecessary filings as well as additional Family Court judges would mitigate this harm.

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The decision whether to remove a child from his or her parent is incredibly challenging. Parent-child separation, whether necessary or not, involves trauma to the child. As such, NYC must continue its efforts to ensure that children are taken from their families only when they cannot remain with them safely, and that families who are separated by foster care are adequately supported so that they can reunify whenever possible. We thank you once again for this opportunity to address this essential topic.

November 27<sup>th</sup>, 2018



## **The Committee on General Welfare Hearing Subject: Parent-Child Separation in Family Court**

### **Testimony of the Drug Policy Alliance**

The Drug Policy Alliance appreciates the opportunity to submit testimony to the Committee on General Welfare. The Drug Policy Alliance is the nation's leading organization working to advance policies and attitudes to best reduce the harms of both drug use and drug prohibition and to promote the sovereignty of individuals over their minds and bodies.

As advocates, the crux of DPA's work is centered on illuminating and eliminating the harms of the war on drugs. Historically, any amount of drug use was considered to be deviant or criminal, leaving individuals vulnerable to a range of punishments. The ethos of criminalizing substance use and people who use drugs has influenced the policies and practices of most service-oriented administrative systems in New York – which are overwhelmingly punitive towards people who use drugs, and doubly harmful to those who are Black or Latinx. No place is this more evident than in New York's Administrative for Children Service and Family Court system.

ACS and New York's Family Court System negatively impact caregivers and children under the guise of providing services that promote family stability. The potential for administrative and judicial overreach is hypothetically mitigated by NYS's fairly stringent legal definition of caregiver neglect when substance use is a factor— a caregiver can only be deemed negligent when there is repetitive substance misuse that results in loss of control and there is evidence that demonstrates that the child's physical, mental and emotional condition has been impaired or is in imminent danger.<sup>i</sup> This definition of neglect is intended to protect caregivers from judicial caprice in family court, however there is a lack of systemwide fidelity to this legal standard of neglect. The subjective interpretation of substance misuse by both ACS and family courts is deleterious to caregivers who, in order to maintain custody of their children, must submit to conditions determined by both ACS and the judge. Further, the conditions by which caregivers are accused of neglect are often decontextualized – meaning mitigating factors like poverty and homelessness aren't considered by ACS or the judicial system. Attorneys providing legal support to parents within family court proceedings routinely highlight the ways in which race and poverty determine who comes into contact with ACS and family courts and the determinations made by the system. Neglect accusations raised in family court are largely a by-product of poverty and resource scarcity compounded by benign substance use, such as marijuana use, or problematic substance use that should be addressed compassionately and through non-punitive forms of substance use disorder (SUD) treatment.

Racism and classism combine to capture caregivers in cycles of surveillance and mandated unnecessary services that sever families who can't live up to the expectations of the court. Behaviors deeply scrutinized by ACS and family court judges in these cases would largely go unnoticed in more

affluent, white communities. While the entire child welfare system should be critiqued and reformed to address racial bias, ineffective and punitive services, and the surveillance of caregivers, this hearing is focused on one facet of a problematic system - New York's Family court.

Tragic and high-profile incidences involving the death of children whose caregivers were under the supervision of ACS has led to a surge in the number of ACS investigations with a corresponding increase in the number of cases brought to family court - a court system that is marked by dysfunction and inefficiencies.<sup>ii</sup> A report on Family Court reform produced by the Center of New York City Affairs highlighted the judicial gridlock in family court - data supplied to them by family court revealed that child protective judges carry average pending caseloads ranging from 409 in the Bronx and 520 in Staten Island. Hearings are characterized by frequent delays and repetitive fact-finding impositions. Criticism of the Family Court systems inefficiencies have led to calls for reform, however the most recent data on the time it takes for a case to move from dispositions to fact-finding show that most cases take from 3 months up to 2 years.<sup>iii</sup> During this time period, caregivers are still subject to court-ordered supervision and must comply with announced and unannounced visits from ACS or the child can be removed from the caregiver and remanded to kinship care or foster care, which is destabilizing for both the caregiver and the child if they are placed in out-of-home care.

Focusing on the inefficiencies of the court, which are dire, can distract from the systemic problems and the overall credulity of therapeutic jurisprudence in family matters that involve more nuanced thinking. This is especially true when a caregiver is suspected of substance use. For instance, despite Department of Justice guidance on family court and the use of medication for the treatment of opioid dependency, in some cases caregivers are ordered to stop participating in medication-assisted treatment for substance use disorder (MAT; such as methadone or buprenorphine) in order to regain custody of their children.<sup>iv</sup> Not only is this a violation of the Americans with Disabilities Act and a complete disregard for effective treatment modalities, abrupt cessation of MAT can lead to fatal overdose if the caregiver resumes opioid use. Although some drug courts have a statute that forbids judges from requiring cessation of MAT, caregivers in family court are not legally protected from spurious court decisions. Family court judges have been given the latitude to make medical and treatment decisions for those who have few options and little power to pushback. At worst, this can lead to health risk such as premature labor and miscarriages; at minimum, judicial intervention can force caregivers into treatment settings that are unnecessary and can negatively interfere with other areas of their life, such as employment responsibilities.

Family court judges and ACS caseworkers generally embrace an abstinence-only view of substance use, believing that caregivers are not able to meet the basic care, protection and supervision needs of their children when using substances. This is a limited understanding of the spectrum of substance use. Caregivers can and do use substances - increasingly there are a number of articles about the benefits of using marijuana and parenting, including in the New York Times. However, the moms featured in these articles are overwhelmingly white and wealthy - the kind of parents who don't fall under the watch of ACS. Non-problematic use of substances in and of itself is not a detriment to parenting - however, in the absence of economic resources that afford a caregiver the space to use responsibly, the impact of substance use is viewed more severely by family court.

## **Recommendations for New York City's Family Court:**

- Caregivers who experience problematic substance should receive harm reduction services that recognize the spectrum of substance use and offer supportive services that reduce negative consequences for both the caregiver and the child. Preventative services for substance use disorder should go beyond mandated treatment and include services such as child care, supportive housing that operates from a housing first model, and employment services.
- Parents navigating family court should be afforded legal representation throughout the hearing process. This is a vital resource and can be strengthened through the provision of non-court affiliated parent advocates. Defender service groups such as Bronx Defenders connect caregivers with advocates who assist and support parents who have open family court cases and are at risk of having their children removed. All parents should have access to this valuable support.
- Family court judges should not have the authority to make medical decisions from the bench. As judges without medical training, they should not dictate where a person attends treatment and should not impose treatment requirements from the bench. Under no instance should judges dictate that a caregiver end treatment using medication therapies, nor should they bar caregivers from entering treatment settings that provide MAT.
- Relapse should not result in the removal of children. People who use drugs experience can and sometimes relapse; this event can either be a temporary event or a return to persistent drug use. In family court, if the caregiver resumes or fails to fully abstain from all substance use the judge can separate the child from the parent. There are no rules regarding what is considered persisted drug use and most family court judges demand complete abstinence, regardless of the nature of the use in question. Caregivers who return to problematic substance use should have their treatment modality reassessed to determine if they are in the appropriate treatment environment. Further, judges should consider the circumstances and the severity of the relapse before making any decision that would interfere with the parent or child and evaluate the impact on the child vis a vis the statute requiring there to be demonstrable harm in order for a separation to proceed.

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<sup>i</sup> NYS Law Sections (§§) 371 – 392.

<sup>ii</sup> Kramer, Abigail. "Child Welfare Surge Continues: Family Court Cases, Emergency Child Removals Remain Up." Center for New York City Affairs (2018). Accessed from: [https://gallery.mailchimp.com/a6170fa466dd7c8eed0aab6be/files/54aee3f1-f6a7-4c65-b830-4f0ca4be8ac7/Child\\_Welfare\\_Surge\\_Continues.pdf](https://gallery.mailchimp.com/a6170fa466dd7c8eed0aab6be/files/54aee3f1-f6a7-4c65-b830-4f0ca4be8ac7/Child_Welfare_Surge_Continues.pdf).

<sup>iii</sup> "Dispositions of Original Abuse (NA) & Neglect (NN) Petitions: Days from Date Petition Filed to Fact-Finding." New York Courts. (2017) [[Give link]]

<sup>iv</sup> "Department of Justice Opioid Initiative Addresses Discriminatory Barriers to MAT - Legal Action Center." Legal Action Center, 13 Feb. 2018. Accessed from: <https://lac.org/justice-dept-opioid-initiative-barriers-to-mat/>.



## New York University

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School of Law  
Faculty of Law

Clinical Law Center  
245 Sullivan Street  
New York, NY 10012-1301  
Telephone: (212) 998-6460  
email: [martin.guggenheim@nyu.edu](mailto:martin.guggenheim@nyu.edu)

Professor Martin Guggenheim  
Fiorello LaGuardia Professor of Clinical Law  
Co-Director, Family Defense Clinic

New York City Council  
Justice System Joint Committee Hearing  
Oversight - Parent-Child Separation in Family Court

November 27, 2018

Chairs Lancman and Levin and  
Members of the General Welfare and Justice System Committees:

I am pleased to provide testimony at this hearing on Parent-Child Separation in Family Court. I consider the topic – the government’s power to remove children from families with the possibility of the permanent destruction of the parent-child ties -- to be the most important civil rights issue the fewest people know. Undoubtedly, the title of this Hearing was borrowed from the sad headlines over the past year throughout the United States which focused on the purposeful harm the United States government was inflicting on undocumented children and parents residing in the United States. And the comparison is appropriate, with one important caveat: What the United States government did to immigrant families involved the deliberate infliction of harm on children and families. What local governments do to children and families in the child welfare system is unintentionally inflict significant harm.

Lest you think that the unintentional infliction of harm by government officials is less serious, it is helpful to be reminded that Supreme Court Justice Louis Brandeis famously warned nearly 100 years ago “Experience should teach us to be most on our guard to protect liberty when the government's purposes are beneficent. . . . The greatest dangers to liberty lurk in insidious encroachment by men of zeal, well-meaning but without understanding.”<sup>1</sup>

Since 1997, when Congress radically changed the rules for foster care by enacting the Adoption and Safe Families Act by encouraging states to terminate the rights of parents whose children have been in foster care for at least one year,<sup>2</sup> this country has embarked on a course of destroying family ties between foster children and their families of origin at an unprecedented world rate. Sadly, this practice has created the highest number of legal orphans in the world-children who are legally unrelated to their parents but never become anyone’s child. In the past decade alone, the United States has produced more than 100,000 legal orphans.<sup>3</sup>

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<sup>1</sup> *Olmstead v. United States*, 277 U.S. 438, 479 (1928) (Brandeis, J., dissenting).

<sup>2</sup> ADOPTION AND SAFE FAMILIES ACT OF 1997, P.L. 105-89, 111 Stat. 2115 (1997).

<sup>3</sup> See Cynthia Godsoe, *Parsing Childhood*, 17 LEWIS & CLARK REV. 113, 115 & n.9 (2013); Josh Gupta-Kagan, FILLING THE DUE PROCESS DON'T HOLE: ABUSE AND NEGLECT CASES BETWEEN DISPOSITION AND PERMANENCY, 10 CONN. PUB. INTEREST L.J. 13, 57 (2010).



It is, of course, sometimes necessary to resort to placing children in foster care. But, as the New York Court of Appeals in 2004 explained, placing children in foster care is itself a dangerous course, which can have devastating consequences to children's well-being.<sup>4</sup> Even when parents have made some serious mistakes in the raising of their children, foster care placement frequently does more harm than good. "Those placed in foster care," Joseph Doyle has found, "are far more likely than other children to commit crimes, drop out of school, join welfare, experience substance abuse problems, or enter the homeless population."<sup>5</sup> One recent study found that by age twenty-four, nearly sixty percent of former foster males had been convicted of a crime, and by age 26, almost 75 percent of the young men had been incarcerated. Eighty-two percent had been arrested.<sup>6</sup>

\* \* \*

The story of New York City's efforts in the child welfare field is long and complicated. I wish in these remarks to emphasize only one aspect of it. Between 1962, when the modern child welfare system began in New York, and 2006, New York's child welfare system operated with astonishingly few checks and balances. The executive branch, through local child protection agencies, including New York City's, was permitted to act largely unchecked by judicial oversight. This was the consequence, above all else, of the failure of New York officials to provide parents with meaningful legal representation.

In the late 1990s, a neutral team of evaluators studied the New York City Family Court system after New York City's child welfare system became subject to public scrutiny because of a settlement in *Marisol A. v. Giuliani*.<sup>7</sup> The settlement established a Special Child Welfare Advisory Panel, whose responsibility was to study Family Court practice. The Panel (Chaired by John Mattingly who went on to become the Commissioner of ACS after the Panel committed its mission) issued the most critical and steel-eyed assessment of family court practice ever published.

Though the pace seems fast and the atmosphere hurried, actual resolution of cases in the family courts proceeds very slowly. The courts are characterized by crowded dockets, long adjournments, and not enough attorneys to represent parents and children. With rare exceptions, hearings lack sufficient docket time for a true examination of the issues. A family that becomes the subject of an abuse or neglect proceeding in these courts can expect to return to court repeatedly and to remain involved in litigation for many months, and sometimes for years. A single fact-finding or dispositional hearing may require four to six separate dates and extend over six months or more. It is not uncommon for children to be in care for a full year, at which point an ASFA permanency hearing is required, without having had a disposition of the original protective proceeding.<sup>8</sup>

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<sup>4</sup> *Nicholson v. Scopetta*, 3 N.Y.3d 357, 379 (Courts "must balance that risk against the harm removal might bring, and it must determine factually which course is in the child's best interests").

<sup>5</sup> See Joseph J. Doyle, Jr., *Child Protection and Child Outcomes: Measuring the Effects of Foster Care*, 97 AM. ECON. REV. 1583, 1583-84, 1607 (2007).

<sup>6</sup> Jennifer L. Hook & Mark E. Courtney, *Employment of Former Foster Youth as Young Adults: Evidence from the Midwest Study* 9 (Chapin Hall at the University of Chicago, 2010), available at [www.chapinhall.org/sites/default/files/publications/Midwest\\_IB3\\_Employment.pdf](http://www.chapinhall.org/sites/default/files/publications/Midwest_IB3_Employment.pdf).

<sup>7</sup> *Marisol A. by Forbes v. Giuliani*, 929 F.Supp. 662, 669 (S.D.N.Y. 1996), *aff'd sub nom. Marisol A. v. Giuliani*, 126 F.3d 372 (2d Cir. 1997).

<sup>8</sup> N.Y. SPECIAL CHILD WELFARE ADVISORY PANEL, ADVISORY REPORT ON FRONT LINE AND SUPERVISORY



The Panel captured what constituted acceptable practice in New York: “Some caseworkers appear in court late; some are unprepared to testify; and some do not appear at all, without providing prior notice.”<sup>9</sup> When workers do appear, they too frequently “are unable to provide essential information because they have just been assigned the case and have not yet familiarized themselves with it.”<sup>10</sup> Even when workers have been on the case for several months, there is a significant communication problem within the system. In the Report’s words, “[b]asic information is not transmitted from one contract agency to another when a child is transferred; as a result, a worker may appear in front of a judge not even knowing why the child was originally placed in care.”<sup>11</sup> The Panel observed the ignoring of court orders as a routine failing of child welfare in New York City. Even worse, the Panel concluded that “neither the courts nor [the agency] appears to have a system for tracking this or for holding anyone responsible.”<sup>12</sup>

It also noticed something even more disturbing about how the court functioned: the judges revealed themselves to be complicit in maintaining a court system that fails to do its job properly. The judges acknowledged to the Panel that the prosecuting agency commonly “lacks adequate preparation or fails to present a solid evidentiary case of abuse or neglect.”<sup>13</sup> Even so, the judges explained that they were unwilling to “hold ACS accountable by refusing to grant their petitions in these cases,” because of their fear of “making a mistake and having a child die.”<sup>14</sup> The Panel condemned New York City’s Family Court as a court system which “comes frighteningly close to abdicating the Court’s basic responsibility to protect the rights of children and families.”<sup>15</sup>

Much has changed since then (although some would suggest that too much of what the Panel saw remains). I am here to celebrate one important change since the early 2000s in New York City. Starting in 2007, New York City dramatically changed the parent representation system by offering contracts to multi-disciplinary, public interest law offices which employ lawyers, social workers, parent advocates and investigators and whose professionals have expertise in a wide range of legal matters including housing, public benefits, mental health, criminal justice, among others. The four offices that do this work today – Bronx Defenders, Brooklyn Defenders, Center for Family Representation and Neighborhood Defender Services – represent the vast majority of parents whom are respondents in child welfare cases.

If New York City is the nation’s leader in at least one aspect of child welfare, it is surely in the field of providing legal representation for parents. The holistic, multi-disciplinary approach employed by these offices has done more than any other single thing to contribute to the sharp reduction of children entering foster care since the end of the 1990s, the reduced time children spend in foster care, and the smaller number of termination of parental rights orders entered in New York as compared with the rest of the country on a per capita basis.

We are well-known throughout the country as offering the best, most advanced, and most successful legal representation to parents anywhere. We commonly train other offices around the country. When we convene our national conference of family defenders, the New York contingent is

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PRACTICE 44-45 (Mar. 9, 2000).

<sup>9</sup> *Id.* at 45

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> *Id.* at 48.

<sup>15</sup> *Id.*

disproportionately represented, presenting at workshops teaching other lawyers and social workers what we've learned in New York about how to provide parents with the kind of representation most likely to keep children safely at home.

These offices fight every day in court to prevent children's placement into foster care. Although precise data are difficult to come by, we know that we win often and are able to avoid the needless trauma children and their families suffer when children are separated from their families. Fewer children are separated needlessly from their families today in New York City than at any time since the modern child welfare system was created.

How these offices have been so successful is a story for another day. But among the things these offices do routinely is appeal court orders when trial judges ignore the law, and, perhaps even more importantly, meet regularly with high-level personnel at the Administration for Children's Services to discuss perceived failings in the system which ACS can fix. David Hansell is the latest in a line of Commissioners of ACS, dating back to John Mattingly, who has warmly embraced these meetings on the understanding that the family defenders have stories to tell about where practices can break down that high-level administrators might otherwise not hear or see. These defenders have, in effect, become the eyes and ears for ACS of where, from the community's perspective, ACS is not doing well enough.

Others testifying today will undoubtedly mention things not going well enough in child welfare in New York City which the City Council should consider addressing. Mine is a different message. I simply ask you to come to understand that the best source to look to when considering what's wrong with child welfare and what might be done to improve it, is the community of family defenders who operate these four offices. They are not only great lawyers, social workers, and parent advocates who know how to negotiate the difficult waters of agency meetings and Family Court hearings, they are professionals committed to serving the needs of the community which is the subjects of child welfare investigations and interventions and are the voice of the people who need to be heard clearly and loudly when it comes to addressing aspects of the system that can be improved.

My ask is a simple one: look to these family defender offices to partner with you in improving child welfare practice in New York City. And, if they happen to come to you to seek grants or financial support for innovative projects they would like to undertake but cannot without new sources of funds, please consider those requests carefully and know they are made by the professionals most committed to ensuring that child welfare in New York City works in a manner best calculated to preserve the dignity and respect of the community it serves.

Thank you for the opportunity to offer these remarks.

Respectfully yours,

*Martin Guggenheim*

Martin Guggenheim

**Testimony of Paola Jordan, Co-Director, Metropolitan Parent Center of Sinergia, Inc. to Oversight Hearing of Committee on General Welfare of New York City Council (T2018-3128) on November 27, 2018**

Sinergia, Inc., is a community-based organization which has been providing advocacy, housing and support services to culturally and linguistically diverse individuals with disabilities and their families in New York City for more than four decades. Sinergia's "We Are Parents Too" (WAPT) program was created in 1988 to support parents with intellectual disabilities to preserve and strengthen their relationships with their children and develop their parenting skills. Many parents who participate in the program have been referred by child protective services or the Family Court. Some have children who have been removed and placed in foster care. Some are living with their children or are expecting, but are at risk of becoming the subject of a child protective investigation or Article 10 filing. Some are single parents, while others participate as a couple. Some are maintaining a relationship with children who are expected to remain in the custody of another parent or a relative, while others are planning to regain custody. Some are or have been homeless, and many need to secure stable, adequate housing.

The harm and trauma that is suffered by parents with developmental disabilities and their children from separation by the child welfare system is neither greater nor less than that suffered by families not headed by a parent with a disability. Nevertheless, it's worth highlighting parents with disabilities because of the heightened risk of prolonged separation, often without any demonstration of necessity because of anxiety or bias triggered by the parent's disability.

The need for appropriate services specifically designed to accommodate parents with intellectual disabilities is well-documented. In a landmark study in 2012, the National Council on Disability noted that, "[P]arents with intellectual disabilities are overrepresented in the child welfare system and, once involved, face high rates of TPR" and that this high rate of removal reflects greater discrimination and lack of appropriate services for parents with intellectual disabilities and their children."

There is a long and shameful history of prejudice, going back to the dark days of forced sterilization and institutionalization explicitly intended to prevent procreation. All too often, the assumption that people with intellectual disabilities cannot be effective parents (even with support) lingers among people in the child welfare and disability services fields, and We Are Parents Too includes both individual and system-change advocacy. There is a dire need for training for CPS, FCLS and other participants in the system. Anecdotal reports for parent advocates attending child safety conferences indicate that information provided by CPS shows difficulty differentiating between disability categories, specifically psychiatric diagnoses and diagnoses of developmental disabilities. Parent advocates, moreover, have neither the time nor the preparation to develop a reliable picture of the parents' history and needs. This has an impact not only on decisions made at the conferences, but on subsequent efforts to link families to services and supports.

For parents of children in foster care, these services – geared toward the needs of parents with intellectual disabilities – are clearly within the menu of services mandated by the social service law and regulations. The Americans with Disabilities Act also requires that public services – including the child welfare system – make accommodations for people with disabilities, and this

includes appropriate supports for parents with developmental disabilities. Moreover, from a pragmatic standpoint, appropriate supports can be expected to minimize unnecessary removals and facilitate more timely reunifications.

Such supports should include high-quality preventive services and parenting classes available to families headed by non-disabled parents, but with reasonable accommodation to meet the differentiated learning and communication needs of individuals with intellectual and developmental disabilities, and advocacy to help parents access the state and Medicaid funded services they are entitled to, but which they often have difficulty accessing if they are seeking to establish or maintain a household with their children. No parent should have to choose between services and supports for which they are eligible and being able to parent their children. Instead, we should guarantee fair access to those supports and services, and use them to support their parenting goals in the same manner as we support their goals for independent living, employment, and community integration.

In addition to parents with developmental disabilities, Sinergia frequently assists in cases where children with intellectual and developmental disabilities have been placed in foster care, ostensibly because their parents are not able to adequately address their needs. What is frequently found, however, is that the system which has assumed responsibility for them is not able to address their disability-related needs either, and that those needs are aggravated by the trauma of separation and the circumstances of foster care placement. All families, regardless of class or race, need support in learning to navigate service systems and address disability needs. As we know, low-income parents of color facing the same challenges have a disproportionate risk of being drawn into the child welfare system. We believe that increased support for and access to parent training, peer-to-peer support and other resources typically extended to middle class parents would be equally successful with these parents, and that investment in such support would be both fairer, cheaper and more effective than placement in foster care.



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

**Council of Family and Child Caring Agencies**  
**Testimony Presented by Lisa Gitelson, Associate Executive Director**  
**City Council Hearing on Oversight-Parent Child Separation in Family Court**  
**Committee on Justice System/Committee on General Welfare**  
**November 27, 2018**

Good afternoon, Chairpersons Lancman and Levin, 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 engages in this important conversation about parent/child separation, it is vital that the Council know of the work being done by the social service agencies partnering with, and supporting the needs of, these families. To this end the agencies provide strong preventive work aimed at keeping children safe in their homes, which has resulted in the lowest foster care census in decades, and meaningful foster care when safety requires the removal of children.

Preventive Work

There are over fifty agencies doing preventive work in NYC. This is the frontline work where every effort is made to keep families together.

The preventive agencies provide services to address safety concerns prior to the need for placement. Preventive workers conduct ongoing safety checks, deliver emergency services, strengthen and stabilize families, make referrals to risk-reduction services and manage monitoring requirements. These vital protective services reduce trauma to families and children and strengthen families, often negating the need for foster care placements.

We know of no other state or community in the nation that invests in preventive programs to the extent that New York City does. We are certain that New York City's continued reduction in foster care placements is due in large part to the extensive network of preventive services the City has supported.



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

### Foster Care

If ACS, with the approval of a judge in Family Court, makes a determination that it is necessary for the safety of a child to enter into care, the primary goal of the agency providing care, is to safely return the child as soon as is possible.

While the foster care agencies vary slightly, all engage in work to make certain that the change needs of the family are met as expeditiously as is possible, that there is ongoing and regular family time for the child/ren and parent/s and that the child or children are safe and have all needs met while in care.

Upon assignment of a child to a foster care agency, several steps are taken:

- a. The family is meets with a team at the agency to begin the process of engagement and assessment. The rare exception to this is when the family is unavailable or choses not to engage in this initial meeting.
- b. A plan is developed in partnership with the family, for the safe return of the child. For some agencies a family agreement is created. All necessary referrals to support the safety plan are made.
- c. Family time plan is initiated.
- d. Documentation is shared with the family. This includes, a child's bill of rights and depending on the agency, a welcome packet for the family.
- e. All necessary consents are obtained.
- f. A clothing assessment is completed and needed clothing is purchased.
- g. Medical and mental health intakes are completed for the child. Appropriate referrals based on these intakes are made.
- h. If appropriate an Early Intervention/CPSE referral is made.
- i. A comprehensive evaluation of the child is completed - the CANS, Child and Adolescent Needs and Strengths. This is a nationally used tool for the purposed of supporting children's services staff to make decisions regarding the needs of a child and to support service planning.
- j. A genogram and/or kinship assessment is completed to identify family members available to the child either as a home or as a visiting resource.





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- k. Tribal affiliation and possible resources are assessed.
- l. If deemed appropriate, a domestic violence screening is completed and appropriate next steps, if any, are put into place.
- m. If deemed appropriate, a sex trafficking screening is completed and appropriate next steps, if any, are put into place.
- n. A psychosocial assessment is completed.
- o. Home visits are scheduled with the parent/s.
- p. Birth certificate if needed, is requested.
- q. Putative father registry check is requested.
- r. Diligent search for parents, if needed, is initiated.

In short, every effort will be made to support the most expeditious, safe return of the child to their family.

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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Contact Information:

Lisa Gitelson, Associate Executive Director  
Council of Family and Child Caring Agencies  
254 West 31st Street, Fifth Floor, New York, NY 10001  
Phone: (212) 929-2626 / Fax: (212) 929-0870  
lgitelson@cofcca.org



Testimony of Ronald E. Richter to the New York City Council  
Committees on the Justice System and General Welfare  
Oversight – Parent-Child Separation in Family Court  
November 26, 2018

Good afternoon, Chairs Lancman and Levin of the Committees on the Justice System and General Welfare. Thank you and the other City Council members for the opportunity to testify at today's oversight hearing on Parent-Child Separation in Family Court. Decisions concerning whether to interfere with the parent-child relationship, including whether to separate a parent and child present important, sensitive, and complex issues that must consider the needs of the individual child, their parent, the child's immediate safety and the family's integrity. These factors are usually intertwined.

My name is Ronald E. Richter and I am the Chief Executive Officer of JCCA. JCCA has nearly 200 years of experience in providing an array of services to at-risk children and families, including residential and foster home, preventive, mental health, educational and vocational services.

I also have a unique perspective on the focus of today's hearing. For almost three decades, I have worked on behalf of the city's most vulnerable children and families as the ACS Commissioner, as a Family Court Judge, and as a lawyer and leader at the Legal Aid Society's Juvenile Rights Practice. I am experienced working on the complexities involved when families are suspected of providing less than adequate supervision to their children.

JCCA believes that children belong with their families, whenever possible. We believe that preventive services can help to avoid out-of-home placement, we promote family connections for young people in care, and I want to emphasize the new opportunities provided by the creation of Child and Family Treatment and Support Services. I hope this information will be useful to the Council as well as provide context for today's discussion.

JCCA is a pioneer in providing preventive services, having developed one of the first preventive programs in NYC in 1979. The agency now offers an array of services, including general prevention, Family Treatment Rehabilitation focusing on addressing substance abuse, and three evidence-based models, Child Parent Psychotherapy for families with children between 0-5 years of age, Brief Strategic Family Therapy, and Functional Family Therapy. These time-limited, evidence-based programs are delivered in the client's home. They are designed to identify challenges families face, provide hope for the possibility of change, and engage the family to



make progress toward the necessary changes. The family is the focus of the effort as it is considered the most important context for our youth. Our experience has shown us that:

- Families respond positively to the time-limited nature of evidence-based models
- There has been better collaboration between ACS and JCCA around high-risk families served by the models
- Families are able to achieve the goals they identify at the start of treatment

When children are placed in foster care, JCCA's practice reflects the growing awareness and recognition of the importance of lasting connections in a child's life. Our family-centered, strengths-based approach is rooted in the fundamental value of recognizing inherent family strengths and building on them in order to empower and stabilize families. Our involvement in the *ACS Home Away from Home* initiative has enabled us to embrace kinship care as an important way to preserve a child's existing relationships.

JCCA's partnership with families is well-illustrated in the agency's commitment to peer models that utilize credible messengers to work with youth and families. JCCA is one of two agencies delivering Parent Advocate Services to families attending the Initial Safety Conference in Brooklyn and Queens. The early intervention and support of these families can, in many cases, help to prevent extended child welfare involvement. Additionally, we are participating in a pilot project with Rise, an organization whose mission is to amplify and strengthen parent voice in planning for their children and decrease the time in out-of-home care.

While JCCA is a leader in the delivery of preventive services and our practice incorporates the above-mentioned strategies to keep children and their families attached and engaged in the case of out-of-home placement, we are also fully committed to delivering early support and intervention to children and families in their homes and communities in order to prevent crises and placements in care. In light of this goal, I want to bring your attention to the unprecedented opportunity to intervene in the lives of vulnerable children and families with the dramatic expansion of behavioral health services to children on Medicaid.

New York State is rolling out the implementation of Child and Family Treatment and Support Services (CFTSS). What distinguishes these services is that they are more inclusive, with a lower threshold of medical necessity, and can be delivered earlier, without child welfare involvement. As a preventive strategy to help children and families avoid ER visits and hospitalizations, the services will also be able to address the challenges that can lead to out-of-home foster care placements for struggling families. The first three services will be available on 1/1/2019. They will include the ability to provide assessments, therapy and referrals in the home and community, assistance with study habits, coping skills, hygiene, and socialization and help to develop social and independent living skills and stabilization after a crisis. Providing this extraordinary level of access to behavioral care will reduce Emergency Department usage and

hospital admissions, increase treatment and medication compliance, improve academic engagement, and decrease child welfare involvement.

I would like to urge the City Council to assist in ensuring that vulnerable NYC residents obtain the services they need. Some suggestions include:

- The development of a citywide communications strategy to inform eligible families about these services
- Creating partnerships with community-based organizations to provide in-house services where there are large numbers of eligible children and families, such as schools, NYCHA, and homeless shelters
- Ensuring that staff who serve constituents in member offices and city agencies are knowledgeable about services, so NYC can develop a multi-door entry to the system of care
- Expanding the Council's Medicaid Redesign Transition Initiative to help additional organizations ensure the successful implementation of these new services

I believe strongly that these services will provide a significant new source of support to struggling families. Using the expertise and commitment of agencies like JCCA, CFTS Services will strengthen families, enhance their well-being, and help all New Yorkers live up to their potential. I hope the city will recognize the options for the most vulnerable and provide the necessary supports for a successful rollout. I offer the support of JCCA's Family Wellness program in this endeavor.

Thank you.

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For additional information, please reach out to Harriet Lessel, Director of Government Contracts and Advocacy, at 212-558-9918 or [lesselh@jccany.org](mailto:lesselh@jccany.org).



Building Strong Families Together

# FAMILY WELLNESS Program

**FREE FOR FAMILIES  
WITH MEDICAID!**

**JCCA's Family Wellness program provides flexible, individualized support for Medicaid-eligible young people with chronic conditions and/or behavioral health challenges.**

Delivered at home or in the community, JCCA's Family Wellness services stabilize and strengthen vulnerable families. Outcomes include **reduced ER usage & hospital admissions, increased medication compliance, better academic engagement, and decreased child welfare involvement.** JCCA Service Providers work in partnership with clients, caregivers, and colleagues to ensure that families receive the support and resources they need to stay healthy—and thrive.

## CONTACT

Deneisha Johnson  
Outreach/Intake Coordinator  
johnsonde@jccany.org | 914 364 3172

## Care Management

A **Health Home** Care Manager works with clients to create a plan of care addressing their physical, mental health, and social service needs. In addition to coordinating Family Wellness support services, the Care Manager communicates with the client's medical and behavioral providers and can help them access community resources and social services.

## Assessment & Counseling

The **Other Licensed Provider (OLP)** assesses & refers the client to other support services, and can provide psychotherapy, treatment planning, and crisis intervention as required by medical need.

## Independence & Daily Living Skills

**Psychosocial Rehabilitation (PSR)** improves autonomy, building social and daily living skills in order to minimize future professional intervention.

## Stability & Functional Improvement

**Community Psychiatric Support & Treatment (CPST)** comprises six components to address and prevent crises, build resilience, and develop strengths-based strategies to maintain stability at home.

## Caregiver Support & Psychoeducation

The **Family Peer Support** worker, who has lived experience caring for young people with special needs, promotes parenting skills, self-efficacy, and resilience for caregivers navigating the systems that impact their child's well-being. *(Service begins July 2019)*

## Mentoring & Coaching

A **Youth Peer Support** worker is 21-30 years old and has lived experience similar to the challenges faced by young adults with special needs. They provide coaching and support to develop self-advocacy and empowerment during the critical transition to adulthood. *(Service begins January 2020)*

**JCCA**  
Repair the world  
child by child



Testimony of Joyce McMillan, Family Coordinator of Sinergia, Inc, to Oversight  
Hearing of Committee on General Welfare of New York City Council (T2018-  
3128) on November 27th, 2018 – Parent-Child Separation in Family Court

Good afternoon, my name is Joyce McMillan, I am the Family Coordinator at Sinergia Inc. Thank you for inviting me to testify today.

When I think of families being separated by child welfare - I think of the irreversible harm done to the child and the family. Most often children are removed unnecessarily as workers work with the mantra ‘when in doubt pull them out,’ referring to the children. Doubt is not a standard for removal but has become the accepted status quo. The ACS mantra does not speak to the “Protection” of a child although they rave it does.

ACS actively recruits children into foster care without regard to the trauma, possible delays in milestones, emotional torment, shattered bonds and the damaging of a child’s ability to form relationships. They recruit by using media irresponsibly - creating a type of subdued hysteria in the general public without

any balance in their messaging. Just a city filled with people judging parents because their style of parenting looks different than theirs. Different does not equate to wrong.

In the true fashion of being one-sided and irresponsible, on Tuesday November 20th Commissioner Hansell held a media release at the 125th Street location in Harlem. The framing was neglectful and completely irresponsible. The media release read as follows:

DURING HOLIDAY SEASON & WITH KIDS OUT OF SCHOOL, ACS DOUBLES DOWN ON CHILD SAFETY BY LAUNCHING DIGITAL CAMPAIGN TO EDUCATE NEW YORKERS ON HOW TO CALL IN SUSPECTED CASES OF ABUSE OR NEGLECT. No where does it talk about what abuse or neglect may look like. The campaign further stated:

New York City Administration for Children's Services (ACS)  
Commissioner David A. Hansell  
today announces a new public awareness campaign  
that will be seen more than 10 million times in New Yorker's social media feeds.

The digital

campaign will educate adults and teens on how to call in suspected cases of abuse and neglect. It does not talk about warning signs, implicit biases, responsible reporting, not using the number as a weapon etc. The campaign further reads:

It will run through Thanksgiving and December

since many adults, like extended family members, neighbors

and friends, may come in contact with children during holiday festivities. School

personnel make up a

quarter of all allegations of child abuse and neglect in New York City; with kids out of school during the holidays,

Commissioner Hansell said that New Yorkers should speak up if they suspect that a child is unsafe. - I held a focus group and showed the campaign to many people and they all interrupted it the same. We (ACS) determined while school is out we can't let the number of false cases being reported drop. We have to create a campaign to engage and courage everyone including angry teenagers to call in reports – as we have given them nothing other can call if you suspect which is o vague and irresponsible and leave lots of room for anonymous reporting by, an ex, a family member who pissed them off or anyone who they may have a an ax to grind against the parent.

Commissioner Hansell - charge yourself with neglect. This media campaign is neglectful and irresponsible. You mentioned the ads will be on snapchat as well as in other social media outlets - do you know that snapchat has 186 million users and the average age of snapchat users is 19? Teenagers have one of the highest removal rates – you claim they don't know how to parent but now you look to them to judge parenting. You and your team thought this was a good idea? well it's not a good idea. Shame on you! It's simply hazardous and irresponsible.

If we can all agree there are no perfect people then we must be able to agree there are no perfect parents. And if there is no perfect parent - why does ACS use their resources to punish, surveillance and separate families of color disproportionately.

We have to hold ACS Accountable to actually protect families by working to keep families intact. We have to hold ACS accountable to changing their culture of “when in doubt pull them out” attitude - which is a fancy way of saying I don't

want to do real social work, so instead I will do what is easy and just cover my ass and ignore the needs of a family

ACS is sending a clear message that family preservation is not a top priority cause if it were they would spend less time being trained by police and start being trained by social workers. Every new training and training sight mimics policing all while continuously claiming to “Protect” children with outcome that prove the extreme opposite. When has the police protected communities of color? ACS gets their training from the police then they want us to believe their surveillance is support, poverty is neglect, and kidnapping our children is protection. The schools in communities of color may not be up to par, and they may not have the expensive computer equipment schools in other districts have, but trust me we are not stupid. We know when we are be negatively impacted and targeted.

We have to reimagine foster care and hold ACS and the family court system responsible.

I imagine families having the opportunity to dispute an ACS workers claims in court. I imagine due process. I imagine those who claim to support and protect



actually doing so by engaging families and threatening each family's needs individually and not as blanket services where all the "Professionals" have case loads and not families as clients.

Shame on Judges for not taking the time to see through the things I hear and have heard in court that just do not make any sense. Judges stop ignoring the lies you catch ACS telling and moving along with the case in a business as usual fashion.

Business is changing be a part of a system that respects family preservation by not allowing ACS to tell you anything and having you accept it. Judges should have balance but in family court the scale is tipped and families are weighed down with stress, fear, anxiety, frustration etc. all because there is a team of case managers, lawyers, judges and others that don't respect the history of colored people in America and who do not Challenge themselves to do better.

I can't create change this system alone. I need each of you to understand and respect our family history is important to us and to the future of this country.

**STOP THE GENERATIONAL TRAUMA** - Be a part of the solution – not part of the cya and status quo committees that operate without accountability to family preservation.

**The Bronx  
Defenders**

**Redefining  
public  
defense**

**New York City Council  
Justice System Committee  
New York City Council, General Welfare  
Hearing on Family Separation in New York City  
November 27, 2018**

**Written Testimony of The Bronx Defenders,  
By Emma Ketteringham**

The Bronx Defenders ("BxD") has provided innovative, holistic, and client-centered criminal defense, family defense, immigration representation, civil legal services, social work support, and other advocacy to indigent people in the Bronx for more than 20 years. Our staff of close to 400 represents nearly 28,000 people every year and reaches thousands more through community outreach. The primary goal of our model is to address the underlying issues that drive people into the various legal systems and to mitigate the devastating impact of that involvement, such as deportation, eviction, the loss of employment and public benefits, or family separation and dissolution. Our team-based structure is designed to provide people seamless access to multiple advocates and services to meet their legal and related needs.

Our Family Defense Practice has been in place since 2005 and represents parents in child protection and all of the related Family Court proceedings that arise out of an abuse or neglect case. Since New York City first funded institutional parent representation in 2007, we have represented more than 11,000 parents in the Bronx and helped thousands of children either safely remain at home or safely reunite with their families. Our multidisciplinary staff of more than 50 attorneys, social workers, and parent advocates intakes 1,000 to 1,500 new parents each year. During fiscal year 2018, we were assigned to represent 1,585 parents with approximately 3,500 children.

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Last Spring, our nation witnessed the forced separation of 2,500 children from their parents on the US-Mexico border. In addition to seeing and hearing the brutal

inhumanity, we also heard from many experts who explained the traumatic impact of the forcible separation of a child from his or her parent and the life-long physical and biological consequences. Dr. Charles Nelson, professor of pediatrics at Harvard Medical School warned that when children are forcibly separated from their parents...

"their heart rate goes up. Their body releases a flood of stress hormones such as cortisol and adrenaline. Those stress hormones can start killing off dendrites — the little branches in brain cells that transmit messages. In time, the stress can start killing off neurons and — especially in young children — wreaking dramatic and long-term damage, both psychologically and to the physical structure of the brain. "The effect is catastrophic. . . . There's so much research on this that if people paid attention at all to the science, they would never do this."<sup>1</sup>

The American Pediatric Association issued a formal statement opposing family separation on the border announcing:

"Separating children from their parents contradicts everything we stand for as pediatricians - protecting and promoting children's health. In fact, 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. This type of prolonged exposure to serious stress - known as toxic stress - can carry lifelong consequences for children."<sup>2</sup>

The harm was described as irreparable, causing children toxic stress, permanent emotional damage and long-lasting difficulty with learning, mood regulation, and the ability to make emotional and relational attachments. The systematic family separation of these children from their parents was the shocking culmination of a number of policy decisions by different administrations aimed at Mexicans, Central Americans, and other Latinx immigrants.

In New York City, government officials do not intentionally inflict harm on children and their families to serve a political purpose. Rather, the child welfare system

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<sup>1</sup>Wan, W. (2018, June 18). What Separation from Parents does to Children: The Effect is Catastrophic. Retrieved from: [https://www.washingtonpost.com/national/health-science/what-separation-from-parents-does-to-children-the-effect-is-catastrophic/2018/06/18/c00c30ec-732c-11e8-805c-4b67019fcfe4\\_story.html?noredirect=on&utm\\_term=.81ec56a153df](https://www.washingtonpost.com/national/health-science/what-separation-from-parents-does-to-children-the-effect-is-catastrophic/2018/06/18/c00c30ec-732c-11e8-805c-4b67019fcfe4_story.html?noredirect=on&utm_term=.81ec56a153df)

<sup>2</sup>American Academy of Pediatrics. (2018). AAP Statement Opposing Separation of Children and Parents at the Border. Retrieved from: <https://www.aap.org/en-us/about-the-aap/aap-press-room/Pages/StatementOpposingSeparationofChildrenandParents.aspx>

deliberately removes children from their homes over concerns for their safety and well being. The devastating consequences of family separation to a child, however, are the same no matter the reason. The New York Court of Appeals has recognized that foster care should be a last resort holding that “a child may be forcibly removed from his family only when that child is at imminent risk of serious harm”.<sup>3</sup> Children often experience the physical separation from their families as rejection or loss and do not understand why it has occurred. Placement in foster care and subsequent placement changes affect children’s ability to build healthy attachments.<sup>4</sup> It is well known that children exiting foster care face a host of negative life circumstances and outcomes.<sup>5</sup> One recent study found that by age twenty-four, nearly sixty percent of former male foster children had been convicted of a crime, and by age 26, almost 75 percent of the young men had been incarcerated. Eighty-two percent had been arrested.<sup>6</sup> Surveys have found that nearly one third of homeless youth and well over half of victims of child trafficking had experience in foster care.<sup>7</sup> Even for children who are on the margin of placement, they are more likely to have better outcomes when they remain home with their families as opposed to in out of home care.<sup>8</sup> In light of the law and the documented harm to children of family separation, it is the City of New York’s legal and moral imperative to ensure that proper safeguards are in place so that children are not separated from their families unnecessarily and that families have adequate legal representation and social work advocacy.

### *Mechanism of Family Separation*

To understand the work that lies ahead to ensure a fair and just child welfare system, it is important to first understand the mechanism by which families are separated. Every case begins with a phone call to the state central register reporting

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<sup>3</sup> *Nicholson v. Scopetta*, 3 N.Y.3d 357, 379 (Courts “must balance that risk against the harm removal might bring, and it must determine factually which course is in the child’s best interests”).

<sup>4</sup> For a summary of this research see Sankaran, Vivek and Christopher Church, *Easy Come, Easy Go: The Plight of Children Who Spend Less Than Thirty Days in Foster Care*, Penn Law, 2017.

<sup>5</sup> See generally Catherine R. Lawrence *et al.*, *The Impact of Foster Care on Development*, 18 *Dev. & Psychopathology* 57 (2006); K. Chase Tovall & Mary Dozier, *Infants in Foster Care: An Attachment Theory Perspective* 2 *Adoption Q.* 55 (1998); U.S. Gov’t Accountability Office, *GAI-12-270T, Foster Children: HHS Guidance Could Help States Improve Oversight of Psychotropic Prescriptions* 7 (2011); Patrick J. Fowler *et al.*, *Pathways to and From Homelessness and Associated Psychosocial Outcomes Among Adolescents Leave the Foster Care System*, 99 *Am. J. Pub. Health* 1453 (2009).

<sup>6</sup> Jennifer L. Hook & Mark E. Courtney, *Employment of Former Foster Youth as Young Adults: Evidence from the Midwest Study* 9 (Chapin Hall at the University of Chicago, 2010), available at [www.chapinhall.org/sites/default/files/publications/Midwest\\_IB3\\_Employment.pdf](http://www.chapinhall.org/sites/default/files/publications/Midwest_IB3_Employment.pdf).

<sup>7</sup> “Missed Opportunities: Youth Homelessness in America,” Chapin Hall and Voices of Youth Count, November 2017.

<sup>8</sup> Joseph J. Doyle, Jr., *Child Protection and Child Outcomes: Measuring the Effects of Foster Care*, 97 *Am. Econ. Rev.* 1583, 1584 (2007).

suspected child maltreatment. If the call is accepted, it is transmitted to the local child protection agency which, in New York City, is the Administration for Children Services (ACS). ACS makes contact with the family and the child within 24 hours of the report and commences an investigation. ACS has 60 days to investigate before determining whether the investigation is substantiated or unsubstantiated. During the investigation parents are questioned, documentation is requested, and children might be referred for a medical examination. ACS might refer the family for preventative services and offer the family an array of resources to address the issues the family is facing. Investigations can last days, weeks or months with repeated interviews, home visits, and conferences with the family to assess the risk in the home and even safety plan to mitigate the risk in the home. Parents are often asked to cooperate with ACS, attend conferences, and agree to participate in various services. Services offered to the family might include therapy, substance abuse treatment, parenting classes, or in-home preventive services.

ACS might decide to file a case in court to obtain court supervision of the family, but not seek to separate the children from their family. Or ACS might decide that the children are at serious risk of harm in the home and seek to separate the children from the family while the case is pending. Parents who cannot afford a private attorney are not given access to legal advice during the investigation and are often unaware of their rights and responsibilities or the consequences of the decisions they make during the investigation.

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. Finally, in the third scenario, section 1024 of the Family Court Act provides for the emergency removal of a child without a court order. An emergency removal is justified only if danger to the child is so immediate that there is no time to apply for an *ex parte* order. 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.

Under New York law, family separation should occur only when remaining in a parent's home presents an imminent danger to the child's life or health and would be contrary to the child's best interest. "A court must do more than identify the existence of a risk of serious harm. Rather, a court must weigh, in the factual setting before it, whether the imminent risk to the child can be mitigated by reasonable efforts to avoid removal. It must balance that risk against the harm removal might bring, and it must determine factually which course is in the child's best interests." See *Nicholson v. Scopetta*, 3 N.Y.3d 357, 378 (N.Y. 2004). Additionally, the court must specifically consider whether imminent risk to the child might be eliminated by other means such as court orders or services.

When a court temporarily separates children from their families pending trial in abuse and neglect cases, parents may request the return of their children under Section 1028 of the Family Court Act. Because of the harm of family separation, there are strict timelines under which these hearings must commence. Once a parent requests a 1028 hearing, the law requires that "such hearing shall be held within three court days" and may not be adjourned "except upon good cause shown." N.Y. Fam Ct Act 1028. Likewise, a hearing under Family Court Act Section 1027 must commence the next day after the filing of the petition and continue on successive court dates. See N.Y. Fam. Ct. Act 1027. The purpose of these provisions is to ensure that determinations to separate a family are reviewed expeditiously.

Family separation does not just occur at the start of a family court case. Families can be separated by ACS at any point in time throughout the pendency of a family court case. It is our experience that families who are under court supervision live in constant fear of the looming threat of losing their children to foster care.

## *Trauma*

The manner by which family separation occurs in the child welfare system goes against everything we know about minimizing the trauma of separating a child from their parent. Removals are traumatic, hasty, and often require a caseworker or police officer to physically separate a child from their parent. Outside of court, many removals occur when parents and children do not expect them, in the middle of the night, and with police present. Parents are rarely given the opportunity to prepare and reassure their children, organize and pack their belongings, and say goodbye. Instead, they describe the look of terror on their children's faces as they are taken out of their beds by a stranger.

Caseworkers sometimes use the element of surprise or ruse to remove children hastily. Parents describe being told to go down the hall to gather their child's belongings only to return and find their child already taken. Parents have been whisked into a separate room at ACS or at PATH, while their kids are taken out of the building.<sup>9</sup> In other instances, a parent may wait in court all day for a judge to hear an application by ACS for removal; if the papers are not filed timely, however, they leave court knowing they may face an emergency removal at any time that night.

Even family separations that occur in court are conducted hastily without sensitivity to the emotions involved or the needs of the children. Parents often leave the courtroom to find their child no longer on the bench outside, but being led away by a stranger. Some parents are instructed to check their children into the daycare in the courthouse, and are not allowed to say goodbye or explain what is happening if the court orders their placement in foster care. Some are forced to hand their newborns over to ACS caseworkers to be delivered to strangers, even when loving family members ready to care for them are sitting nearby. Parents are given little information about where their children are being taken, how they will be cared for, and often days pass before they see or hear from them again. The way that family separation routinely occurs in New York City contributes to the harm of family separation on children and families.

Since New York City first contracted with institutional providers to represent parents in 2007, the foster care census has been reduced by almost over 50% (from over 17,000 to under 9,000 children) and there has been no evidence or indication of an increased occurrence in child abuse. This progress is a result of the Administration for

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<sup>9</sup> Similar methods of removal were used by ICE agents on the US-Mexico border. See CBS News 60 Minutes Investigation, *The Chaos Behind Donald Trump's Policy of Family Separation on the Border* (aired Nov. 25, 2018) (parents described being told their children were being taken to a doctor for a brief appointment and never returning).

Children's Services' stronger commitment to prevention and to keeping families together. The reduction in our city's foster care population is also the result of stronger institutional representation for parents provided by New York City during this same period. This robust representation often results in the reversal of unnecessary family separations and holds the agency more accountable than ever before.<sup>10</sup> Although things are better, there is a lot more that needs to be done.

## *Poverty*

It is a widespread misconception that children are separated from their families in the child welfare system because their parents have abused or abandoned them. Poverty is actually the leading predictor of child welfare involvement and studies show that families who are "below the poverty line are twenty-two times more likely to be involved in the child protection system than families with incomes slightly above it."<sup>11</sup> Allegations of neglect which include a parent's failure to provide adequate food, shelter or medical care compose the majority of child welfare cases in New York City despite salacious media stories that single out isolated stories of child abuse. High poverty rates mean these families are less likely to have access to necessary resources such as stable housing, counseling, and childcare services without which they may be determined neglectful by the child welfare system.<sup>12</sup> Research shows that 30% of America's foster children could be safely in their own homes if their parents had safe, affordable housing,<sup>13</sup> and yet another shows housing to be more important than substance abuse in determining whether children remain with their families. Nearly half of families (47%) whose children are removed from their homes have trouble paying for basic necessities.<sup>14</sup> Although the vast majority of poor families never come to the

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<sup>10</sup> Recognizing the critical role strong parent's defense organizations play in strengthening families and preventing family separation, the Children's Bureau recently issued a memorandum and described quality parent's counsel as an important partner in preventing family separation through the child welfare system. See "Reshaping child welfare in the United States to focus on strengthening families through primary prevention of child maltreatment and unnecessary parent-child separation", Dep't of Health and Human Svcs, Admin. for Children and Families (November 2018).

<sup>11</sup> Martin Guggenheim, *General Overview of Child Protection Laws in the United States*, in REPRESENTING PARENTS IN CHILD WELFARE CASES: ADVICE AND GUIDANCE FOR FAMILY DEFENDERS 1, 17 (Martin Guggenheim & Vivek S. Sankaran eds., 2015)

<sup>12</sup> 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).

<sup>13</sup> Deborah S. Harburger & Ruth Anne White, *Reunifying Families, Cutting Costs: Housing\_Child Welfare Partnerships for Permanency Supportive Housing*, 83 Child Welfare 493 (2004)

<sup>14</sup> National Survey of Child and Adolescent Well-being (2005, April). CPS Sample Component Wave 1 Data Analysis Report  
[http://www.acf.hhs.gov/programs/opre/abuse\\_neglect/sscaw/reports/cps\\_sample\\_report\\_revised\\_090105.pdf](http://www.acf.hhs.gov/programs/opre/abuse_neglect/sscaw/reports/cps_sample_report_revised_090105.pdf).



attention of child protection authorities, poverty is still the best predictor of family separation by the child welfare system.

This plays out in the Bronx with devastating consequences for the borough's children. The Bronx has the highest rates of eviction, unemployment, and public benefits enrollment in the City. According to the 2014 American Community Survey, 43.3 percent of children under 18 live below the poverty line. Community District 1, encompassing much of the South Bronx where our office is located, has a median income of just \$16,800 per year, with 60 percent of residents receiving some kind of public assistance. According to data provided by the Office of Court Administration, in 2017 1,191 Bronx children were separated from their families; Bronx children represent over 30% of the children separated from their families in New York City.<sup>15</sup> Because of their relative poverty, Bronx children are particularly vulnerable to family separation and its short term distress and long lasting negative consequences.

### *Race*

The extent to which children of color are disproportionately vulnerable to the negative consequences of family separation is profound. In the state of New York, African American children make up 16% of New York's general population and 48% of New York's foster care population.<sup>16</sup> In New York City, African American children accounted for 27 percent of the children under the age of eighteen in the city but a staggering 57.1 percent of the children separated from their families in foster care. In contrast, 24 percent of the children in New York City were white, but white children comprised only four percent of the foster care population.<sup>17</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 the same circumstances of risk.<sup>18</sup> Furthermore, the harm of separation is more likely to be exacerbated for children of color because they spend longer time separated from their families, change placement more frequently, are less likely to receive necessary services, less likely to ever reunify with their families, and they are more likely to age out

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<sup>15</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>16</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>17</sup> Tina Lee, *Catching A Case: Inequality and Fear in New York City's Child Welfare System*, at 5-6 (2016).

<sup>18</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).

of foster care without being adopted.<sup>19</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.

Given that poverty is the main driver of a family's child welfare involvement and family separation, that the system is plagued by deep historical racial disproportionality, the negative impact of family separation on children in the short and long term, and the inhumane ways that families are separated on a daily basis, we can and must do better. We must do nothing less than ensure that there exist adequate safeguards against unnecessary traumatic family separation, so that it is a system we would trust to investigate our own families.

**I. Require greater reporting and transparency by ACS regarding family separation.**

In order to prevent unnecessary family separation by the child welfare system in New York City, we must better understand exactly how ACS operates when it separates children from their parents. Transparency should be required of the following data points including, but not limited to:

(a) the circumstances and allegations that led ACS to attempt to separate families,

(b) the number of CSC's conducted and the recommendations regarding family separation that result;

(c) the number of times ACS exercised its emergency removal power, under what circumstances, and the reasons why seeking court review was not possible,

(d) the number of times ACS sought a court order to remove a child and the outcome,

(e) the time it took for ACS to file a petition after removing a child pursuant to its emergency power,

(f) the number of times ACS removes a child even during the pendency of a family separation hearing,

(g) the number of family separations conducted because ACS failed to approve a family resource in a timely manner, and

(h) how soon after a family separation did a family visit occur.

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<sup>19</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).

The city currently maintains data on the number of children placed in foster care. It is unclear, however, what these numbers show. For example, does this number include the number of children separated from their families on an emergency basis pursuant to FCA 1024, but who the court did not order placed when ACS filed their case in court? Does this number include the number of children separated from their families by order of the court but returned home after the court conducted a hearing pursuant to FCA 1027 or FCA 1028? Without this information ACS lacks a method of determining what family separation was justified and what was unnecessary trauma to the city's most vulnerable children and families.

For example, according to 2017 data reported by the Office of Court Administration (OCA), 406 Bronx children were removed from their homes on an emergency basis pursuant to FCA 1024 without a court first reviewing that decision.<sup>20</sup> This number is twice as many children separated from their families for a purported emergency than in any other borough. We do not know whether ACS was justified in removing these children without first seeking court review as the law requires. Nor do we know the factual basis or circumstances surrounding the removal and whether they were true emergencies. We do not know whether these children ultimately were separated from their families by the court upon review of ACS's decision or whether they were returned after having been traumatically and needlessly separated. Without this information, we miss the opportunity to learn what safeguards are necessary to avoid the family separations that are made in error and why Bronx children are particularly vulnerable to this method of separation. We also miss the opportunity to identify the services and supports for Bronx families that might be lacking. We cannot begin to solve the problem if we can't properly diagnose it.

The data currently maintained by ACS also does not tell us how many applications ACS makes to the court for children to be separated from their families, the basis of those applications, and whether they are denied and for what reasons. This information is critical to understanding ACS's culture regarding family separation, the safeguards it has in place against unnecessary separations, the relationship between ACS and the community, whether ACS makes decisions consistently or in response to political pressure, and the role of a strong parent defense bar in reducing unnecessary family separation in New York City. ACS has repeatedly claimed that the foster care

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<sup>20</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>

population has decreased because ACS has prioritized family prevention over family separation and their culture has changed. Such claims cannot be analyzed if we don't know how often ACS requests the court to separate a family and fails, or when children who are removed by the agency are quickly returned after the court conducts a hearing.

In order to truly understand the breadth of family separation, consider how we can safeguard against it happening unnecessarily, and provide families with the services and supports that they need in order to avoid it, we must fully understand its scope. We recommend that the City Council amend existing ACS reporting requirements to include detailed information about each time they separate or seek to separate a child from their family. This information will enable the Council to determine what supports, services and safeguards can prevent unnecessary removals even in families where some risk exists.

**II. The City Council should reduce unnecessary family separation in New York City by funding legal representation and social work advocacy for parents during child welfare investigations and at child safety conferences where decisions to separate families are made.**

Representation and advocacy during a child protection investigation, before a case is filed and before a child is separated from his or her parents, is not funded in New York City. Contracts for parent representation only pay for an attorney to be assigned when the case is filed in court which is days, weeks, and sometimes months after ACS opens an investigation into a family. Parents routinely participate in the investigation alone and unadvised and by the time a parent meets an attorney at the first court appearance, ACS may have already removed the children or may have determined to seek a court order to separate the family. In our experience, the agency's decision to remove children from their homes is often due to a parent's uninformed refusal of an offered service, a breakdown in communication between the parent and the caseworker, a misunderstanding, a mistake of fact, or a condition in the parent's life that could be addressed with legal and social service assistance. All of these situations could be avoided if the parent had access to a legal representation and social work advocacy during the investigation while the critical decisions about family separation are made.

Erica<sup>21</sup> is a mother of two who recently began divorce proceedings from her husband to keep her children safe. When her children's father witnessed a fight between Erica and her husband, he called the police and Erica was arrested. ACS exercised their emergency removal powers and separated Erica's children from her.

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<sup>21</sup> Names and identifying details have been changed to protect our client's confidentiality

Erica's children remained separated from their mother at the children's center over the weekend. As soon as Erica was released, Erica reached out for legal assistance with ACS and, as a result, a lawyer from BxD was able to counsel Erica about her rights, responsibilities, and options. Erica chose to cooperate with ACS and attend the child safety conference conducted by ACS before going to court. A BxD parent advocate attended the Child Safety Conference with Erica and helped Erica explain to ACS the history and circumstances of her relationship with her husband and her plans to divorce him. With this context, ACS learned that Erica was not a danger to her children; rather, she was a survivor of domestic violence taking affirmative steps to end the relationship and protect her children. Erica asked for assistance in seeing an order excluding her husband from her home, and ACS agreed that it was in the children's best interest to return them to their mother's care.

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. At The Bronx Defenders, we provide early representation to families in the Bronx with a small amount of private seed money. Our data evidence demonstrates the astounding impact on families. During FY 2018, we advised 378 parents during ACS investigations. Of those parents, 239 (63%) were never charged with abuse or neglect in court. For another four parents, the investigations are ongoing but ACS has not filed a case of abuse or neglect as of the date of this testimony. Of the 135 cases (36%) filed in family court, unnecessary family separation was prevented and families often remained together. In 102 of the 135 cases, the children remained home with one of their parents, and in 17 cases arrangements were made so that children could live with family members. In only 16 of the 378 cases -- four percent -- were children separated from their parents and placed in foster care with caretakers they did not know. Representation of parents during child welfare investigations prevents and reduces the harm of family separation.

Likewise, our Healthy Mothers, Healthy Babies program provides targeted support, planning, and advocacy to our pregnant clients who have children in foster care and are vulnerable to having their newborn separated from them at birth. When a baby is born to a family with older siblings in foster care, no matter the reason for the older children being in care, the parent is investigated and ACS determines whether the newborn can remain safely at home. During FY 2018, our HMHB team worked with 210 pregnant and postpartum women, 81 of whom gave birth during the fiscal year. With support prior to and during the inevitable ACS investigation at birth, of the 81 newborns, 58 (72%) remained with their mothers and 17 (20%) were placed with family members. Only six babies (eight percent) born to mothers working with HMHB during their

pregnancy and the child protection investigation were placed in foster care with strangers.

Providing parents with legal representation and social work support and advocacy during an investigation helps engage parents early in the process, address barriers to necessary services, provide missing information, correct mistakes and smooth over misunderstandings all to avoid needless traumatic family separation of NY City children. Without institutional support and funding for this work, we will not be able to continue our preventive advocacy work which will not only have a negative impact on the families we serve, but on the system as a whole. Funding lawyers and advocates to represent parents during the investigation is a common sense solution that will prevent unnecessary traumatic family separation.

### **III. City Council should ensure that city hospitals are not unnecessarily separating newborns from their families.**

While family separation is a traumatic experience for children of any age, newborns are especially vulnerable to the effects of separation from their families, whose caregivers serve as an extension of their own regulatory systems.<sup>22</sup> Yet, city hospitals in New York City are separating babies from their mothers based on unjustified and unlawful "social holds." A social hold is when a hospital holds a baby in the hospital while discharging his mother home without court order. As discussed above, ACS can exercise its emergency removal power and remove a child without court order, but must go to court within 24 hours of that removal so that the court can review that decision. When hospitals conduct social holds they are bypassing the statute's requirement that the decision to separate a child from their family be reviewed by a court.

Michael's<sup>23</sup> newborn baby was placed on a social hold by the hospital because the social worker learned that ACS was supervising the family. Though Michael informed the hospital that his two older children were home and the legal case had resulted in an ACD (Adjournment in Contemplation of Dismissal), the hospital discharged the mother home and held the baby in the hospital overnight. ACS had not exercised its emergency removal powers. Nor had a court issued an order removing the baby from his family's care. The hospital held the baby because they could not reach the ACS worker to clarify that the newborn could be released to his parents. Neither parent was permitted to remain with the newborn in the hospital overnight and

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<sup>22</sup> Beatrice Beebe et al., A Systems View of Mother-Infant Face-to Face Communication, 52 Dev. Psychol. 556 (2016).

<sup>23</sup> Names and identifying details have been changed to protect our client's confidentiality

the newborn was denied critical bonding with his parents. Only when the hospital social worker was able to reach ACS was Michael's baby released to his parents.

The Council should work with the Hospitals and Health Corporation (HHC) to require that hospitals report the number of infants that they place on social holds, the circumstances surrounding these decisions, the length of time children are held by the hospital, and whether the infants are ultimately separated from their families or discharged home. Depending on the results of the report, training for hospital staff on their legal responsibilities when they separate a child from their parent should be implemented. To avoid unnecessary separations, the Council should further require ACS to develop a system by which hospitals can immediately reach child protective decision makers when they require information or permission from the agency to release a newborn to a parent's care.

**IV. The City Council should use its power and influence to ensure that the family courts in New York City have adequate judges, court parts, and hours to accommodate family separation hearings.**

When ACS or a family court temporarily separates children from their families pending trial in abuse and neglect cases, the law provides the parent due process. The statutory scheme in New York ensures that parents can challenge the decision in a timely manner. Once a parent requests a 1028 hearing, the law requires that "such hearing shall be held within three court days" and may not be adjourned "except upon good cause shown." N.Y. Fam Ct Act 1028. Likewise, a hearing under Family Court Section 1027 must commence the next day after the filing of the petition and continue on successive court dates. See N.Y. Fam. Ct. Act 1027. Even were it not a moral obligation to ensure that the decision to separate a family be made thoughtfully and expeditiously, it is a legal one.

As a result of policies and practices in the Family Court and a lack of resources and time, however, parents of children who have been separated from them frequently have family separation hearings that do not comport with the requirements of due process and last far beyond the prescribed time periods. In our experience, 1027 hearings are often not started within 24 hours of the child's removal because there are not enough court hours in the day to accommodate all of the necessary hearings. Hearings often last for days, even weeks, and are heard in just ten minute increments. All the while, children languish separated from their families often to be returned at the hearing's conclusion. Even when the court does not grant ACS's application to separate a child from their family and issues a no status ruling during the pendency of the

hearing, ACS removes the child anyway, citing its emergency powers. Such removals are an abuse of the agency's emergency powers. All the while families remain separated. Since the death of Zymere Perkins, we have seen an increase in the number of ACS applications to separate a child from his or her parent, either through an order of protection or a removal to foster care. This has contributed to the significant delay in due process.

In the summer of 2017, The Bronx Defenders conducted a review of a sampling of 1028 hearings in our clients' cases. We found common problems among the hearings that we reviewed, including the following:

- Hearings took between one and six months, with many taking three or more months.
- Hearings took between ten and twenty-four court appearances to conclude.
- Hearing appearances were only rarely scheduled on consecutive days.
- Hearing appearances were often more than a week apart.
- Hearing appearances were usually scheduled in thirty-minute increments.
- It was common for less than half of the allotted time to be used for testimony.
- It was common to spend five or more minutes on scheduling the next appearance.
- Counsel for the parents did not waive time and often objected to delay.

In each of the hearings examined in the study, the presiding judge found that our client did not present an imminent risk to the child and ordered the reunification of the family. Between the time of removal and the time of reunification, parents and children in these cases suffered precise harms in addition to the trauma inherent in family separation that expedited proceedings under Section 1028 were designed to avoid, including, by way of example: A six-year-old child placed in stranger foster care who cried often for her mother and who began expressing suicidal thoughts; a parent being separated from her four-month-old baby until that baby was almost eight months old; and a child being beaten by residents in the facility where he had been temporarily placed following his removal from his mother.

Our client Ruth's case is a recent example of how a lack of sufficient court resources results in unnecessary family separation. Ruth's baby was released to her care on the condition that she remain in a mother-child residential treatment program. When she left the program following harassment by another resident, she immediately contacted BxD and notified ACS that she had left and went to her grandmother's home. Her grandmother had previously been Ruth's own foster parent when Ruth was in foster care herself and the grandmother's home had been cleared as a safe place for the baby. Although ACS never notified the Family Court of the change in Ruth's



circumstances, BxD filed a motion to appear before the Court the next day, seeking permission for Ruth and her baby to reside with her grandmother. Ruth, her grandmother, the baby, and a number of extended family members appeared in Court for a previously scheduled conference and to support the request for Ruth and the baby to stay with her grandmother. ACS opposed this relief, citing the grandmother's expunged family court case, decades old domestic incident reports between the grandmother and the grandmother's husband, the grandfather, and a possible old unspecified conviction of the grandfather's from over a decade ago. The Court was unable to hear the case that day because there were too many other cases on the calendar and the court has a mandatory cut off time of 4:30 PM. All cases that are not heard, even those that involve family separation, are bumped to the next day. Off the record, however, the Court strongly encouraged ACS to settle the matter and avoid needless family separation by telling the parties that if he could call the case, the baby would likely be released to the grandmother, despite ACS's objections. The Court urged ACS to consider this arrangement for the night in order to avoid unnecessary trauma to the child. Instead, ACS removed the newborn from Ruth in that moment in Court and placed the baby at the ACS Children's Center in downtown Manhattan. The next day when the case was heard, the baby was placed with Ruth's grandmother in the Bronx. The separation of the child from his family could have been avoided if the Court had adequate time and resources to handle the volume of cases.

Our review of family separation hearings reveals that many judges diligently attempt to complete hearings within the statutory timeframe, but their attempts are frustrated by structural problems within the operation of the family court. These problems include too few judges, court parts, and a lack of evening and weekend hours for emergencies. As a result families are separated needlessly.

**V. The City Council should use all of its power to influence the Mayor's Office of Criminal Justice (MOCJ) to fund civil housing and benefits advocates in the contracts for parent representation.**

An extensive body of research shows that family separation can be avoided or shortened if parents have access to advocates to help them obtain or maintain suitable housing, food, income and other public benefits. As discussed above, housing and income instability and their related stress on a family are often the root cause of child welfare involvement and traumatic family separation. The child welfare system is not designed or equipped to address the roots of the problems of families in the system. The services and supports that it offers seek to address individual failings through therapeutic interventions, rather than the concrete needs like housing, food, and income

that all families need to be healthy and thrive. Indeed, the housing subsidy available to child welfare involved families is a mere \$300 dollars a month which hardly makes a dent in family rent in New York City. Additionally, family separation often results in a family's loss of housing and income further destabilizing a family making it harder for parents to fulfill requirements for their children to be returned. Legal teams that include civil legal services to address collateral legal issues (such as housing, public benefits, domestic violence, paternity, child support, immigration, and work issues) that leave families vulnerable are key components of a coordinated primary prevention approach that avoids unnecessary family separation.

Our client Anna's story is an example of how issues with housing can threaten family stability and prolong family separation and how access to a civil legal advocate can counter that threat. Anna is the mother of three children and her eldest child was separated from his family and placed in foster care due to allegations that Anna failed to meet his health needs. Anna had made progress in securing necessary home-based services so that her son could come home when a dispute with her landlord threatened her progress. After Anna complained about conditions and unaddressed repairs in her apartment, her landlord called the police and ACS to report her and get her evicted. Anna was able to secure a BxD housing attorney who succeeded in preventing an eviction long enough for her to identify an alternative housing option located in the Bronx near all of the services she had accessed for her son. Ultimately, Anna and her children, with the help of her civil advocate were able to obtain a NYCHA apartment and reunite with her son.

Despite their effectiveness in preventing unnecessary traumatic family separation, there is presently no funding for housing or public benefits advocates in the parent representation contracts. When faced with no food in a family's cupboards, ACS caseworkers are often at a loss as to what they can do. Public benefits advocates can get to the root of the issue with a family's income, represent the parent in a fair hearing, and ensure that a parent receives benefits sufficient to care for their children. We urge the city council to use its leverage to influence MOCJ to adequately fund this critical piece of parent representation.

## **Conclusion**

The child welfare system in New York City can and should be designed to keep children safe and protect them from the considerable harm that comes from needlessly separating them from their families. These must be treated as equal, rather than competing priorities. Only by truly understanding family separation and how it is

conducted in New York City can we begin to understand the work necessary to establish safeguards and re-orient the agency and its culture to one that seeks to keep families together and avoid the trauma and harm of family separation whenever possible. In addition, we need to recognize robust family defense has greatly contributed to the reduction in the foster care census over the last decade and we need to expand and build on that model by providing parents with access to multi-disciplinary teams during child protection investigations and access to civil advocates to assist with housing, income, and benefits. Finally we must tackle the incredible delay experienced by litigants in our city's family courts and prioritize timely access to justice when a family is at risk of being separated.



**TESTIMONY OF:**

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

**Presented before**

**The New York City Council's Committees on  
Justice System and General Welfare  
Oversight Hearing on Removals  
from Parents and Caretakers In Child Welfare Cases.**

**November 27, 2018**

**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 Committees on the Justice System and General Welfare for this important opportunity to submit testimony about the harmful impact that the surge in the Administration for Children's Services' child welfare filings over the past two years has had on Brooklyn children and families and how this increase in filings has made it even more difficult to obtain access to family court for the cases that need judicial intervention.

BDS is a full-service public defender office in Brooklyn, representing approximately 35,000 low-income New Yorkers each year who are arrested, charged with abuse or neglect of their children or face deportation. Our Family Defense Practice ("FDP") was founded in 2007 when New York City first began funding institutional providers to represent parents in child welfare proceedings.<sup>1</sup> In our eleven years of service to the Brooklyn community, FDP has represented over 11,000 parents 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 are the primary provider of

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<sup>1</sup> These are also called Article 10 proceedings after the article of the Family Court Act which governs abuse and neglect proceedings.

representation for parents in Article 10 cases in Brooklyn Family Court and currently represent over 2,700 parents.

Over 90 percent of our clients are charged with allegations of neglect, rather than abuse. Most of these neglect cases are poverty-related, such as poor housing conditions, lack of adequate day 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. A large number of our clients struggle with mental health and/or substance abuse 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.

There are also profoundly disproportionate rates of child welfare involvement within communities of color. Despite making up only 23% of New York City's child population, Black children represent over 52% of foster care placements.<sup>2</sup> Racial inequity 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, immigration status, and poverty is critical to challenging inequity in the child welfare system. We acknowledge that ACS is working to address the systemic issues that lead to disproportionality by creating a new office to address racial equity after having a committee on this issue,<sup>3</sup> we see the harmful impact of disproportionality every day and believe this work should be done on an urgent basis.

**Recommendation:** We encourage City Council to work with ACS to require more reporting on the families involved in this system, which will help illuminate these disproportionate rates of involvement among communities of color, and will help ACS, advocates and community members to work to find better solutions that will ensure that our child protective system accurately represents and serves the needs of the City's children and families.

While our clients often have many needs that impact their ability to keep their families together, in our experience, the vast majority of families suffer much more trauma from being separated from each other than from staying together with supports in place. Social science research and recent statements from national medical and psychological organizations such as the American Academy of Pediatrics bear out the high cost of separating children from their parents.<sup>4</sup>

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

<sup>3</sup> New York City Administration of Children's Services, Racial Equity & Cultural Competence Committee. available at <https://www1.nyc.gov/site/acs/about/racial-equity-cultural-competence.page>

<sup>4</sup> See, e.g., 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-pressroom/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"); Dr. Dana L. Sinopoli & Stephen Soldz, Petition from Mental Health Professionals: Stop Border Separation of Children from Parents!, <https://childsworldamerica.org/stop-border-separation/stop-border-separation-text-preview/> (last visited June 19, 2018) (signed by 9,325 mental health professionals as of 6/19/18) ("To pretend that separated children do not grow up with the shrapnel of this traumatic experience embedded in their minds is to disregard everything we know about child development, the brain, and trauma."); Harold S. Koplewicz, Separating Families and Creating Trauma, Child Mind Institute (June 2018), <https://childmind.org/blog/25095/> ("Every age is affected differently. In infants, toddlers and preschoolers, forced separation is almost worse than physical harm. Their major

As we explain in detail in this testimony, the increase in child welfare filings has led to an increase in removals of children from their families, many of which are unnecessary. These removals have, in turn, increased the number of emergency hearings at which a judge must decide whether a child should be placed in foster care. These hearings are taking place over days and sometimes months and are contributing to extensive delays in resolving the underlying issue of whether abuse or neglect has even occurred. All of these factors have placed an enormous burden on the court system which has led to long delays and decreased access to justice for families that require judicial intervention.

### **Increase in Abuse and Neglect Filings in Brooklyn over the last two years**

Since the tragic death of Zymere Perkins in September 2016, child welfare filings in Brooklyn have gone up by 45% from an average of 142 cases per month to an average of 206 cases per month. Although the data may show that the number of children in long-term foster care has not increased overall, it is clear that the number of children initially removed from their parents or threatened with removals has vastly increased. To the extent that the numbers of children in foster care has not increased it is only because attorneys from Brooklyn Defender Services are actively litigating emergency hearings early on in cases – often preventing a foster care placement or ensuring the children’s immediate return after they were removed without court order. In Brooklyn, the number of emergency hearings we are litigating has increased by 90% since October 2016. Our office is now litigating about 40 emergency hearings each month to keep children home or have them returned from foster care, resulting in hundreds of children never entering foster care or returning home very quickly. From July 2017 through October 2018, we litigated emergency hearings involving more than 600 children, and won or favorably resolved 66% of them reuniting families or keeping them together. Although many of the hearings we litigate result in children going or staying home, when children have already been removed or are under the stress of possibly being removed from their families, the removal itself is traumatic and affects a child’s sense of security and attachment to their parents.

The increase in filings, without an increase in judicial resources, has negatively impacted the functioning of Kings County Family Court. In 2015, New York City Family Courts received nine additional judges, the first increase in the number of judges in over 20 years. Around the same time, Brooklyn Family Court was restructured in an attempt to expedite Article 10 cases which then had the longest time to disposition in the City. Four trial parts were designated to expedite emergency hearings and fact-finding trials where the underlying allegations of abuse or neglect are litigated to ensure a quicker resolution for families. Shortly after this, we saw a sharp increase in filings which led to a huge backlog of cases. This fall, Kings County also lost two Family Court Judges in the child protective parts, and we have not been advised whether or when these judges will be replaced. With the loss of judges and an increase in cases, the trial part system was dismantled and all judges are struggling with managing emergency hearings.

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developmental task — attachment to caregivers — is interrupted. This attachment bond functions as a blueprint for all future relationships and their primary coping strategy. Removing a parent removes a very young person’s only method for regulating emotion and learning to respond to the world. These children are left confused and afraid, setting the stage for the chronic and repeated misfiring of their fear response.”)

## **Harm of Separating Children from their Families**

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>5</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>6</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>7</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>8</sup> In our experience, the optimal outcome for children is remaining with their families whenever it can be safely achieved, even when their parents are less than perfect. Nothing less is required by the law. The foster care system is 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; are more likely to be arrested as they get older; and more likely to have children at a younger age.<sup>9</sup> Foster care should not be seen as anything but a temporary stop on the way to family reunification, except in very limited circumstances.

Although the Court of Appeals in *Nicholson vs. Scopetta* made clear that courts must balance the harm of removal against the risk of harm to the children of remaining in the home, it is clear that ACS workers and their supervisors are not considering the harm of removal when they are deciding whether to separate children from their families. In an effort to address this problem, beginning in August 2016, we have worked with ACS to revise two Safety Alerts which discuss how the "harm of removal" should be considered in child welfare decision-making and how to minimize the trauma of removal. It took many months for ACS to sign off on these policies, and we have yet to hear back from the Office of Children and Family Services about approval of the safety alerts.

Under federal and state law, ACS is required to seek an order from a Family Court Judge before removing a child. However, the law permits ACS to remove children without a court order in an emergency situation when the danger to a child is so serious and so immediate that there is no time to go to court.<sup>10</sup> In those cases, ACS must go to court on the next court day and seek a court

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<sup>5</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>6</sup> See N.Y. Soc. Serv. Law § 384-b(1)(a)(ii).

<sup>7</sup> N.Y. Soc. Serv. Law § 384-b(1)(a)(iii).

<sup>8</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>.

<sup>9</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"].

<sup>10</sup> Family Court Act Section 1024

order continuing the removal, or return the child.<sup>11</sup> Family Court Judges grant some of ACS' removal applications, but they also frequently deny these applications, finding that removal is unnecessary because the risk to the child is not imminent or can be mitigated with court orders or by providing the family with services, and/or finding that any risk of danger is outweighed by the severity of the harm that the removal would cause the children.

**Recommendation:** Given the highly traumatic nature of parent-child separation, unnecessary removals should be avoided whenever possible. Child Protective Service workers and their supervisors require greater training about the nature of the harm of removal and on the steps they can take to avoid removals while ensuring a child's safety. ACS should promulgate the proposed safety alerts and conduct massive training on them.

### **Unnecessary Removals due to Lack of Access to Court Oversight**

*Even in cases in which ACS does file a petition asking a Judge for an order to remove a child, Family Court Judges often refuse to hold immediate hearings, increasing the chances of an unnecessary removal.*

For example, we had a case in which ACS filed a petition alleging that our client's children had been missing school and that her home was dirty, and asked the Court to remove the children. Our client, a working single mother of eight, opposed the removal and asked the court to hold a hearing before removing her children, but the court refused. Instead the Judge issued an order temporarily removing the children and placing them in foster care pending the outcome of the hearing, which it scheduled for two days later. ACS removed our client's children pursuant to the order and brought them to the Children's Center, where they stayed until 3:00 a.m., at which time they were moved to their aunt's home. The next day, the children were not brought to school. When we appeared in court for the hearing two days after the removal, ACS agreed to return the children to their mother.

*It is common for Family Court Judges to refuse to decide an application for removal, instead scheduling the case for a hearing the next day and telling the parties that "ACS has its emergency removal powers."*

This practice, which we believe is unlawful, is harmful to children because it increases the likelihood that ACS will make a decision to remove unnecessarily that will then be reversed by a Judge. Additionally, it deprives children and parents of the opportunity to present evidence to the court to demonstrate that the children can remain safely at home, particularly where court orders might help to ensure the children's safety. It also deprives the family of the opportunity to present evidence of the irrevocable harm that removal will cause the children until after that harm has already been done. Telling ACS to make the decision in the first instance without the benefit of judicial oversight frustrates the purpose of that oversight, allowing more erroneous and harmful removals to be conducted, only to be reversed later.

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<sup>11</sup> Family Court Act Section 1026



### **Unnecessary Removals due to ACS Misuse of “Emergency Removal Powers”**

Since 2010, we have been working with ACS to reduce the number of unnecessary removals city-wide, focusing on cases in which ACS removes a child first and then comes to court later, only to have a Judge decide that the child can safely remain with the parent. Although ACS developed a new policy in response to our concerns in 2011<sup>12</sup> and the number of emergency removals went down after issuance of the policy and training, we still see many cases in which the trauma of removal could have been avoided if ACS had come to court to seek permission to remove the child instead of using its “emergency removal powers.”

- 1) One client of ours had her five children, ages 3-15, removed from her care twice without a court order, only to be returned to her care once the removal application came before a Family Court Judge. The first time, two of the younger children were found leaving the family’s shelter alone. Our client returned to the shelter immediately and explained that she had left her children in the care of their 15-year-old sister while she went to work. ACS nevertheless removed all of the children from her care and placed them in the Children’s Center, where they spent the next two nights. On the following day, the case was scheduled for a hearing to approve or deny ACS’ removal application. Instead of going forward with the hearing, ACS agreed to return the children to their mother. Two months later, ACS came to the shelter in the evening and found the children home alone. Our client returned from running errands shortly after the ACS worker arrived and explained that she has arranged for a babysitter but that person had apparently left. The ACS worker initially left the children in our client’s care, but returned at 2:15 a.m. and removed them. The following day a Family Court Judge ordered the children returned to their mother once again.
- 2) ACS removed our client’s nine-year-old son for the first time in November 2017 when our client and her husband were arrested. Our client was released immediately, but ACS refused to return the child to her. He was kept in the Children’s Center for four days. When the parties appeared for a hearing on the removal, ACS agreed to return him to his mother. Then, in July 2018, ACS received a report that the child had been injured by his stepfather. ACS visited the home to investigate twice in the two days after the report, but did not remove the child. Three days after the report was received, ACS removed the child without a court order based on the injury that had occurred three days earlier. ACS sought a court order the day after the removal; the case was scheduled for a hearing on the following day; and on the day of the hearing, ACS agreed to return the child to his mother.
- 3) ACS removed two children, ages one and five, from their parents because their father called ACS and said he could no longer care for them and their mother (our client) was not home. Instead of contacting the mother, or her counsel, or filing a petition in court, ACS removed the children without a court order and took them to the

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<sup>12</sup> ACS Policy # 2011/01: Conducting Emergency Removals (2/23/11)

Children's Center. ACS filed a petition the following day. Our client appeared in court and asked for the children to be released to her care. ACS refused and the case was scheduled for a hearing the following week. When the parties appeared for the hearing, ACS agreed to release the children to our client. The children had been in the Children's Center for a week.

- 4) We represent a young mother who is currently in foster care herself and resides with her son in a mother-child program. On July 19, 2018, our client and her son were outside playing when her son ran into the street. Our client ran after him, but before she could get to him, he bumped into the back of a car. He was brought to the hospital where he was evaluated and released without marks, bruising, or pain. On Monday, July 23, 2018, a nurse at the mother-child program reported the incident to the ACS caseworker and additionally alleged that our client slapped her son the day before. ACS removed the child without a court order and brought him to the Children's Center. When ACS did seek a court-ordered removal, our client requested a hearing, and on July 31, 2018, she was granted an extended overnight visit. The visit was delayed because ACS had already placed the child in non-kinship foster care in violation of the court's orders. On August 2, 2018, the hearing concluded and the court returned the child to his mother, finding no legal basis for the weeklong removal.

Unnecessary removals frequently occur when a parent with older children in foster care has a new baby, or what are referred to as "Safety Alert 14" cases. "Safety Alert 14" is an ACS directive that requires foster care agencies to report a case to the State Central Registry when a parent who has children in foster care gives birth to a new child. Although Safety Alert 14 requires agencies to do pre-birth planning which could avoid unnecessary removals of newborns, in practice, it is difficult to get the agencies to schedule these planning conferences. In addition, even when they do have these conferences, there is no mechanism to involve ACS before the birth of the child, which results in decisions about newborns unnecessarily being treated as emergencies by ACS. This then results in many newborns remaining in the hospital after they are otherwise ready for discharge, thereby separating the mother from her newborn even when ACS ultimately agrees the newborn can be released.

- 1) Our client had her two-day-old infant removed from her care without a court order solely because she had several older children who were the subject of ACS cases: two of those children were in her care under ACS supervision, and two were in kinship foster care and had unsupervised visits with her. Our client had planned to breastfeed her baby but was unable to do so due to the removal. The following day, ACS filed a petition in court and agreed to return the baby to our client.
- 2) Our client had her newborn baby removed from her care without a court order solely because she has an older child in foster care. Although ACS knew she was pregnant and the foster care agency case worker in her older child's case had no safety concerns about her caring for the newborn baby, ACS told the hospital not to release the baby to her. ACS nevertheless did not file a petition or seek a removal order until three days after the baby was born. Our client requested a hearing and at the

conclusion of ACS' evidence, the Family Court Judge ordered her infant daughter released to her care. As a result of ACS' decision to remove the newborn baby without a court order, she was unnecessarily kept in the hospital, away from her mother, for a week, unable to nurse.

- 3) Another client's two-day-old baby was held in the hospital at the direction of ACS when she was discharged after giving birth because she had an older daughter in foster care. The foster care agency in charge of her daughter's case had known about her pregnancy yet failed to hold a planning conference to consider releasing the baby to her even though she was permitted unsupervised visits with her older daughter. Although the baby was medically ready for discharge on Friday, the hospital was instructed by ACS not to discharge him to his mother until the following Monday, when ACS finally decided not to seek a removal and he was released to his mother's care.

### **Unnecessary Requests for Remands and Delays in Litigating Emergency Hearings**

Since 2016, when filings started to escalate, ACS has increasingly asked the Family Court to remand children into foster care without carefully assessing whether a removal is really necessary.

In one case, ACS filed a petition and asked for a removal on a day when our client had told ACS she was unable to come to court because she did not have carfare. ACS asked the Judge to remove our client's two children because they claimed that she had been smoking marijuana with her four-year-old son. The Judge granted the removal based on this information and adjourned the case for two days. Instead of removing the children, ACS told our client to bring the children to court two days later. The case was in front of a different Judge that day, and although our client and the children begged the Judge not to remove them, the new Judge said they had to be removed because it was already ordered by a different Judge and she could not reverse the decision without first holding a hearing. The earliest the court would hold the hearing was the following week. On the day of the scheduled hearing, ACS agreed to release the children back to their mother, after the children had spent four days separated from their mother during which time they had only one agency and one resource supervised visit. After the children were returned, we discovered that ACS had already determined long before filing the petition that the allegation that our client had smoked marijuana with her son was unfounded. The family court ultimately dismissed all of the allegations that formed the basis for the children's removal based on ACS's own records of their investigation prior to the filing of the petition. ACS agreed to the dismissal of the remaining allegation, that our client herself used drugs, after she repeatedly tested negative for all illicit substances.

ACS also frequently seeks to remove children in cases where there are unexplored options for keeping the family together – often where the parent has expressed a willingness to engage in

services that could permit the children to remain home safely or the family has not yet had a meaningful opportunity to do so. In many of these cases, there is very little social work being done by ACS at the start of the case and very little problem-solving. ACS does not appear to be thinking about orders that can be put in place to eliminate risk and is using the filing of a court case as an opportunity to force compliance. On a daily basis, we are starting hearings, litigating them from week-to-week or day-to-day, and then either winning these cases or settling them with agreements to release the children after a safety plan has been developed. Starting hearings where settlement is possible is a waste of judicial, ACS, and attorney resources. Moreover, these short-term foster care stays are clearly harming children by disrupting their sense of security and normalcy.

The increase in requests for remands has led to a dramatic increase in the number of emergency hearings. As a result of this increase in emergency hearings, ACS case workers are spending more time coming to court to participate in emergency hearings. This results in their having less time to investigate cases and to work with the other families to whom they are assigned. For non-emergency appearances, such as conferences or permanency hearings, we encounter the repeated and persistent problem of no report prepared for the court and no case worker with actual knowledge of the case appearing in court. A regular consequence of case workers being overburdened by their large caseload is that they send coworkers to cover for them who do not know anything about the family or their services. In that situation, the case is often adjourned, further wasting court resources and prolonging resolution of the case.

Courts hold emergency removal hearings under either section 1027 or 1028 of the Family Court Act. Under 1027, where no remand order has been entered, parents can challenge ACS's request for a remand and the court must start a hearing by the next day and then continue the hearing day to day as necessary. Under section 1028 of the Family Court Act, when a parent requests the return of their child after a removal order has been entered, the court must commence that emergency hearing within three days of the request unless good cause can be shown why it should be delayed, and once commenced, it shall not be adjourned. In practice, courts are struggling to fit in all of the emergency hearings being requested and as a result, they are often being held for 15-30 minutes at a time and being adjourned for weeks, or even months. These are some examples:

- 1) A client's two young children had been in kinship foster care with their grandfather for several months, during which time our client completed the parenting class that ACS recommended and had become fully engaged in counseling services. When the client learned that her father would no longer be able to care for her children due to a medical issue, the client requested that her children be returned to her pursuant to section 1028. While the first hearing date was scheduled within the statutorily required three days, the hearing did not conclude for four months. Although the testimony at the hearing came from only two witnesses, that testimony was spread out over the course of 13 appearances between June and October 2018 with one adjournment lasting 56 days. At the conclusion of the hearing, the family court returned the children to our client, but during the four months that it took to complete the hearing the children were required to live in foster care with strangers.

- 2) In another case filed in May 2018, we requested a 1028 hearing on June 6th. After 20 court appearances, we prevailed on the case after ACS finished presenting their evidence on November 15<sup>th</sup> – more than five months after the hearing was requested.
- 3) Our client's five children (ages 2-10) were removed from her care when she was nine months pregnant with her sixth child. As soon as her daughter was born, just two weeks later, ACS removed her as well. We litigated an emergency hearing for the return of all six children over the course of nearly six weeks. Initially, the children had been split into groups of three and placed with family members. However, throughout the course of the hearing, the three oldest children were again removed from family and placed in non-kinship foster care with a family that spoke only Spanish, even though the children did not speak Spanish. They were then removed from that home and separated into two different non-kinship foster homes until the hearing ended. After eleven court appearances, the Judge agreed to release all of the children to our client's care.
- 4) In another case filed in October 2017, our client's two-month-old baby was removed from her care for almost a month. The Judge agreed to return our client's baby to her after 6 court appearances and he has remained safely with his mother since that time.
- 5) Our client's ten-year-old and two-year-old sons were removed following her arrest. We ultimately prevailed on the 1028 that spanned across seven court appearances over seven weeks. The hearing consisted of two witnesses for ACS and one witness for us (our client). The Judge was unavailable for three weeks in the middle of those seven weeks, further delaying the hearing. The children, who had never been separated from one another, were split into two different kinship foster homes. Although they were kinship, the two foster parents did not live near each other, and it wasn't until the judge awarded unsupervised time (about halfway through the hearing) that the children had meaningful sibling visitation. Additionally, the eight-year-old had been attending school across the street from his home before his removal. ACS never ensured that he received bussing from his foster home, despite their legal obligation to do so (and a court order by the Judge to do so). For one month, he commuted over an hour to school and regularly missed the daily school breakfast.

### **Increased Backlog in Brooklyn Family Court Resulting in Long Delays in Resolving Cases.**

With the increase in filings and emergency hearings, judges' calendars are backlogged and fact finding trials are being adjourned for months at a time, even when parents and children are separated from each other. Parents come to court repeatedly despite delays in their case, compromising their employment, delaying visits with their children who they are separated from, and often causing them to miss mandated service requirements. These are some examples of delays:

- 1) In a case filed in December 2016, the child was removed from our client. The fact finding trial commenced in October 2017 and was adjourned six times after that. The

most recent adjournment was due to the court hearing an emergency hearing on an unrelated case. This month, the child was released to both parents. However, the case remains open and the trial is now adjourned to January 2019 - two and a half years after the case was filed.

- 2) In a case filed in October 2016, the trial was originally scheduled for September 2017 but was delayed because the court was unavailable. The case was adjourned to December 2017 when it was again adjourned due to the court's unavailability. The trial commenced in May 2018 for 30 minutes. The matter was adjourned to a second date in May 2018 for an hour. After an hour of testimony, the hearing was adjourned to June 2018. On the June date, the court informed all counsel that it was unavailable and adjourned to November 2018. Again, the court was not available on this date and the trial was adjourned a fifth time to December 2018, over two years from when it was initially filed.
- 3) In a case filed in April 2017, the trial commenced that November for one hour. Then, the trial was adjourned for three months to February 2018. In February 2018, the court did not have the trial time available and the trial was adjourned a second time to June 2018. In June, the trial continued for one hour and was adjourned a third time to February 2019, 15 months after the start of the trial.

Another reason that fact findings are being delayed is that attorneys for ACS are struggling with too many cases and do not turn over discovery on time. These are some examples:

- 1) In a case filed on September 20, 2017, the trial was scheduled a year later on September 20, 2018. However, it could not go forward on that date because ACS had not provided the discovery. The trial was rescheduled for February 2019, but ACS then missed the new discovery deadline of October 23, as well as a follow-up deadline of November 9. At this time, critical discovery has still not been provided and the February 2019 trial date appears to be in jeopardy. The subject child in this case, who has special needs, remains in non-kinship foster care even though the child's lawyer believes the allegations are in error and supports the child going home.
- 2) In a case filed on December 5, 2017, the trial was scheduled for October 2018, but could not proceed because ACS had not provided discovery despite numerous requests. The trial has been rescheduled for February 2019, but ACS has already missed the new discovery deadline meant to get the case on track. ACS finally provided discovery earlier this month on November 9, 2018, approximately eleven months after the filing.
- 3) In a case filed on May 24, 2017, the trial was scheduled for over a year later on November 7, 2018. Despite several requests, discovery was not provided until the very day of trial. Given the delays, the judge insisted that the trial go forward. The trial started and was then adjourned to March 4, 2019 for continued proceedings.

- 4) In a case filed on December 14, 2017, the October 2018 trial had to be adjourned because ACS had not provided discovery. ACS provided the records the day after the missed trial date. The case is now adjourned to January 30, 2019.

### **Unnecessary Court Filings**

Although filing a court case can be instrumental in staving off a later removal, there are many filings that bring people into court when court intervention is not necessary and workers are using precious resources that could be better spent elsewhere. For example, we see many cases involving allegations of one-time use of excessive corporal punishment or one-time domestic violence cases (sometimes outside the presence of children) without a sufficient assessment of risk to the children and without a sufficient assessment of what services are needed for the family. In some cases, we see filings against non-parents (persons deemed “Persons Legally Responsible” for a child) where there is no longer a relationship with the parent and no contact with the children. We are also seeing more cases where marijuana use is the only allegation. In many of these cases, the family is not being given a chance to first cooperate with preventive services and ACS is not working with the family to find services prior to filing. Many of these cases are also resulting in requests for remands or exclusions without ACS making efforts to keep the family together.

**Recommendation: ACS should end its punitive response to marijuana.** ACS should examine its approach to cases involving allegations of drug use and develop policies and practices to ensure that ACS intervenes and files a Family Court case only where there is actual evidence that a parent’s drug use is harming or poses a risk of harm to the children and referrals for costly, time consuming treatment programs are made only when unnecessary. Children should not remain in foster care solely on the basis of positive tests for marijuana where there is no evidence that the parent was under the influence in the presence of the children. ACS should train workers on the nature of addiction and about harm reduction programs that use a public health approach, identify drug treatment programs that provide services in the home or outside work hours and permit families to continue to reside together so that a parent does not have to choose treatment over his or her family and children are not unnecessarily placed or remain in foster care because a parent needs treatment.

Our experience is that referrals for services are very delayed prior to filing and after filing of the petition, especially where children are released to parents or relatives and ACS is monitoring the family. This also causes frequent adjournments in court and clogs the court system. We are seeing many cases in which ACS files a petition and seeks court ordered supervision but then provides the family with no services for months. ACS’ inaction in these cases suggests that they are not truly concerned about an imminent danger to the children, which begs the question as to why court and ACS resources are being used in the first place.

### **Article 10 Pre-Petition Advocacy Prevents Removals**

Pre-petition access to counsel 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 an Article 10 petition in Family Court.

**Recommendation:** We strongly urge the City Council to fund this important work and ensure that parents are aware of their rights during an investigation and are given every opportunity to keep their children safely at home with them.

BDS currently engages in pre-petition advocacy on a limited basis on behalf of current clients of BDS or people who come to our community office. Through legal advice and informal advocacy, we are often able to resolve ACS cases in ways that prevent unnecessary removals without court involvement.

In one recent case, the family originally came to ACS's attention because of abuse allegations which turned out to be unfounded. However, in the course of the investigation ACS discovered that the child had many school absences and began investigating the mother for educational neglect. The mother reached out to our office, and we assigned a social worker to advocate for her. The social worker discovered that the child had significant special needs and his mother had been transferring him between different schools hoping to find a school that could meet his needs. After BDS helped her obtain a placement for the child in a special education school, the child's attendance improved and the case was resolved without an Article 10 petition ever being filed.

Through our criminal practice, BDS has also been able to engage non-custodial parents in cases in which they would not otherwise have taken part in court proceedings, thus expanding the family resources available and improving outcomes for children and families. For example, our Mandarin-speaking staff has worked with numerous immigrant families in which a parent works out-of-state for long periods of time. Between the geographic distance and the language barrier, ACS is often unable to communicate with these parents or provide notice of a pending case. In many of these cases, our staff has successfully reached out to these parents and explained the court process allowing them to make informed choices about how to participate in Article 10 proceedings regarding their children.

Most parents involved in an ACS investigation are unlikely to have access to counsel or an advocate/social worker to assist them. We often see petitions filed in situations in which earlier access to counsel could have resolved the underlying issues and prevented the Article 10 petition from being filed entirely.

For example, BDS currently represents a young mother in a case alleging educational neglect and lack of stable housing. The family was homeless and had been bounced between various shelters all over New York City for most of the school year. The Department of Homeless Services repeatedly found the family ineligible for shelter on the grounds that they could reside with the maternal grandmother, who herself had an ACS case when our client was a child; our client had been removed from her care due to maltreatment. Our client was scared that her own children would be unsafe living in the same home with her mother, so each time she was found ineligible for shelter she returned to the PATH intake office to reapply. The negative effects on school attendance



for families being found ineligible for shelter and bounced around the city between different placements is well documented.<sup>13</sup> Our client wanted to minimize disruption in her daughter's schooling by waiting until they finally obtained stable housing to enroll her in the local school. But that process took far longer than she anticipated. In the meantime, ACS had received a report that the nine-year-old had not been attending school, and when they tried to investigate, they were unable to make contact with the mother because she was moving around. After filing, BDS was immediately able to assist her in establishing her shelter eligibility and obtaining a stable shelter placement. She enrolled her daughter in school, and her daughter finished the school year and was promoted to the next grade. If BDS had been able to assist this mother when the ACS case was first called in, we could have helped her establish shelter eligibility so that she would have had a place to stay and enroll her daughter in school, eliminating the need for an Article 10 filing entirely.

Organizational providers of parent representation should be funded to provide pre-petition representation. We 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. Our social workers would be made available to attend conferences with parents prior to filing and immediately intervene to provide services and afford the parent the benefits of BDS'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. Expanding this advocacy to include parents who are the subject of ACS investigations would expand these benefits to more families, thus obviating the need for removals and court involvement in many of these cases.

**Thank you for your time and considering BDS' comments.** If you have any additional questions, please reach out to Lauren Shapiro at [lshapiro@bds.org](mailto:lshapiro@bds.org) or 347-592-2510.

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<sup>13</sup> See, e.g., Elizabeth A. Harris, *For New York City's Homeless Children, Getting to School Is the Hard Part*, N.Y. TIMES, Oct. 10, 2016, available at <https://www.nytimes.com/2016/10/11/nyregion/for-new-york-citys-homeless-children-getting-to-school-is-the-hard-part.html>.



40 WORTH STREET, SUITE 605  
NEW YORK, NY 10013  
MAIN NUMBER: (212) 691-0950  
FAX NUMBER: (212) 691-0951

89-14 PARSONS BLVD, 2<sup>ND</sup> FLOOR  
JAMAICA, NY 11432  
MAIN NUMBER: (212) 691-0950  
FAX NUMBER: (718) 291-4360

Testimony of Tehra Coles  
Litigation Supervisor  
Center for Family Representation

Before a hearing of the New York City Council Committees on Justice Systems and General Welfare

**November 27, 2018**

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**“Oversight- Parent Child Separation in Family Court”**

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Good afternoon and thank you to Chairperson Lancman and Chairperson Levin and the members of the Committees on Justice Systems and General Welfare for the opportunity to testify today, and for your leadership on behalf of the families of New York City.

My name is Tehra Coles and I am a Litigation Supervisor at the Center for Family Representation. CFR is the New York City countywide 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 on average 1300 new clients each year in these proceedings, and in supplemental proceedings like custody, guardianship, visitation and termination of parental rights cases. Pursuant to our contract, 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 9,235 parents with more than 18,470 children.

In recognition of the fact that parents who face a child welfare case also face multiple additional legal challenges, outside of family court, which undermines their ability to raise their children safely, and with City Council support, CFR launched *Home For Good*, a one-stop solution providing additional representation in immigration matters, criminal court and housing court. We also provide intensive assistance to recently reunified families in securing day care, school placement, public benefits and other services. Our goals are always to prevent foster care, or where foster care is unavoidable, to shorten the time children spend in care and to prevent re-entry into care. On average 50% or more of our clients 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 2007 when CFR became a high volume countywide provider. We estimate we've saved taxpayers \$37 million in foster care costs.

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 beginning at intake, which is generally the first day a parent is summoned to court and could be after a removal of their children. These teams are supported by paralegals and supervisors. We also have parent advocates on staff. CFR attorneys conduct discovery in every case, pursue frequent FCA 1027 and 1028 proceedings, file motions directed to improving services, placement and visiting, and frequently contest matters well beyond the allegations. 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. Because so 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 insure services that are appropriate are in place and to advocate for parents if a service plan is inappropriate, or will create strains on the family that will undermine their chance of being reunified (such as service requirements that interfere with visits or part-time employment). Parent advocates are part of CFR's social work staff. They are parents who have each 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 staff is in constant communication with attorneys for ACS, caseworkers, foster care case planners, judges, and other court personnel.

In the wake of the tragic death of Zymere Perkins in September 2016, we have seen a dramatic increase in abuse and neglect filings in both Queens and Manhattan. Between October 2017 and September 2018, we saw a 40% increase in abuse and neglect filings in Manhattan and a 62% increase in Queens as compared to that same time period from October 2015-September 2016. As a result of the increased filings, we are engaging in more contested emergency hearings on the first day a family appears in court or in the several days and weeks immediately following the first day. The purpose of these hearings is for ACS to prove, and the Court to decide, whether the child would be at imminent risk of harm should the child be allowed to remain his or her parent's care. Even if the Court decides that there would be imminent risk the analysis continues because It must also determine whether any

orders could be put in place to mitigate said risk. While it's difficult to quantify, we are also seeing a lack of cooperation and outright opposition where we did not before when it comes to expanding visitation or returning a child home under ACS supervision.

There are multiple collateral consequences to the increase in filings. **First, it means that more children are being removed from home, in our view unnecessarily, as we outline below.** While ACS may not be removing a higher *percentage* of children, it is still removing higher numbers than it was in late 2016, and in our caseload, we continue to have approximately half of our clients' children in foster care-- so we are now addressing many more families whose children have been taken than we were in 2016. We think it is well understood that while some children must be removed, any unnecessary removal is harmful to children and potentially traumatic. For parents and children, it is, at a minimum, confusing, scary and anxiety provoking. And when a removal occurs, the high volume of cases the family court now must address means that these families wait a long time, while their case winds its way through the family court system.

We call the first day we meet a client *intake*. The parent is met by a CFR attorney and social work staff person. The team reviews the petition with the new client and discusses what, if any services, they are currently engaged in or feel would be helpful to their family. The social work staff person meets with the ACS caseworker, if the latter is present in Court, to confirm the recommended service plan. The attorney meets with the attorney for the child and attorney for ACS about what will happen when the parties appear before the Judge. It is during these conversations that the team is able to determine whether an emergency hearing will be necessary. If we learn that a removal is being discussed we often work with the client to identify any family resources they may have in case the child is not able to return home. The attorneys will also negotiate with the other players to see if a hearing can be avoided.

**Second, higher numbers of removals mean that the family court and all the practitioners in court, need to devote more resources to emergency proceedings and negotiations directed toward higher numbers of removals.** The family court did not get additional judges or resources that corresponded to the higher filings and that has meant that it is conducting more proceedings related to emergency removals that ACS completed prior to the filing of a petition, or removals that ACS is seeking to have the court approve on the day it files a petition--having to conduct or participate in more proceedings related to removals has strained the courts and all the practitioners who appear there, including CFR. When ACS files a petition against a parent, and asks the Court to place the child in foster care, or sanction an emergency removal it made prior to a filing, this triggers a statutory right to

an emergency hearing--either a parent or a child's attorney can request this. This hearing is, by law, required to start that first day a parent appears. It's called a 1027 hearing and is supposed to proceed day to day. If a parent elects not to participate in this hearing on day one, he or she can request a similar emergency hearing, called a 1028, down the line. These 1028 hearings are not required to go day to day but are expected to be commenced within 3 days of the request and completed expeditiously. The point of both a 1027 and 1028 hearing is for ACS to prove whether a child would be at imminent risk were he or she to be returned home. ACS, the parent and the child all have the right to present evidence at these hearings in support of their request. This is a very important point in a case, as very often, if a child remains in care in the beginning of a case, the child is likely to stay in foster care for quite some time, but if they return home early on, the case is likely to proceed more quickly in court--even being resolved with little litigation. This is in part due to the fact that when children are in or remain in foster care, the statutes governing family court require ongoing and multiple court proceedings. So litigation (or negotiation) at these early stages is critical to determining the trajectory of the case over the long term.

The necessary court time devoted to arraigning the cases and holding emergency hearings takes away from trials that actually determine whether a child has been abused or neglected. Judges are forced to adjourn trials out for months sometimes due to calendars clogged by these emergency hearings that take statutory preference to other litigation. There is not speedy trial statute in family court. On average, these cases last 2 years and during this time attorneys must litigate several issues including visitation, violations and various discovery issues. Any adjournment potentially prolongs an already lengthy process. Other matters are also adjourned due to attorneys being engaged in emergency hearings. These matters include dispositional hearings, which take place at the end of a trial and are used to determine whether a child returns home, how long the family will be under ACS supervision, whether a final order of protection should be issued or whether visitation should be expanded and how. They also include "permanency hearings," which are held every 6 months and used to address whether ACS is making reasonable efforts toward parent-child reunification, whether the family is engaged in the appropriate services, whether visitation should be expanded and whether the child should return home and under what conditions. These are all proceedings crucial to a family's case but, because of the Court's clogged calendars and unavailability of attorneys, are frequently adjourned.

When engaged in an emergency hearing attorneys frequently find themselves stuck in court waiting for cases to be heard, often without any sense of when the matter might actually be brought

before the judge. This means these attorneys are unable to meet with other clients, work on motions, prepare for other proceedings or even be present for their other appearances, which sometimes need to be adjourned as a result. The hearings are often not held on continuous days or only heard for a few minutes at a time. Perhaps one of the most frustrating consequences is that parents often miss work, opportunities to visit with their children or the ability to promptly engage in services because they have to be in Court every day as the hearing continues. These hearings can sometimes take months to complete.

**Third, many of the cases filed, in our view, did not need a court filing as any risk to a child could have been mitigated by connecting the parent to needed services, without court oversight.** Even in cases where ACS files a petition and consents to the child remaining at home under their supervision can take up valuable court time. In our view many of the cases, where the parent is already consenting to engaging in services or has done so, do not need to be filed. The ultimate order issued by the Court typically mirrors the service plan that ACS has already developed for the family. CFR social workers routinely assist clients in ensuring that their ACS prescribed service plan is well tailored to their family's unique needs. However, when these cases are brought to Court, parents are required to attend Court regularly to be at court conferences and other appearances. These requirements often impede the parents ability to work, be available for mandated services or other appointments and may require a client to seek out child care.

In September of this year, our Queens staff picked up a case where ACS was seeking a removal based on allegations that our client, Ms. C, used excessive corporal punishment on her 1 year old daughter. The case workers had already conducted an emergency removal and when we met our client in Court, her daughter was at the Children's Center. The client met with a CFR attorney and social worker on that first day. Together, they decided to challenge the removal request and begin a hearing that day. The hearing spanned the course of multiple days. During this time, the client was present in Court every day and her daughter remained at the Children's Center. She told ACS that she was willing to engage in services even though she denied the allegations. Still, ACS would not consent to the release.

The Court ultimately ruled that the child should be returned to our client. Ms. C was ecstatic and relieved. However, her happiness was short lived as ACS then informed us that they were not releasing the child but were instead seeking appellate relief to attempt to overturn the family's court's order directing the child go home. The child would remain in the Children's Center for yet another night.

CFR was able to send both our senior appellate attorney and the trial attorney to the appellate division to argue on the client's behalf. We were successful. Our client was finally reunited with her daughter over a week after the initial allegations were made. However, not a full 2 weeks later ACS was back in Court asking for another removal. They alleged that our client wasn't fully engaged in services despite the fact that they had not made a referral since we were last in Court. They also alleged that she had missed an unannounced visit and was not cooperating with ACS supervision. The case worker had not reached out to the CFR social worker about their concerns nor had they made any referrals since the case had last been in court. Our client was understandably upset that ACS was once again trying to remove her daughter. She shared that, since prior removal, her daughter had refused to leave her side, had trouble sleeping and was exhibiting other behavioral issues. Yet another hearing was held and, once again, the Court ordered that the child remain with our client. Needless to say, the client's trust in ACS and willingness to work with them was damaged. Further, despite ACS multiple requests for a removal, after two weeks of court involvement Ms. C's daughter was home with her with services either in place or referrals in progress. It is our view that, with social work involvement, cases like Ms. C's do not need to be brought to Court.

Another CFR client, Ms. D, a survivor of domestic violence, experienced panic attacks and was briefly hospitalized to receive treatment. ACS filed a petition against Ms. D, alleging that she failed to make a plan for someone to pick up her children when she was hospitalized.

Ms. D's children were placed in foster care in September 2016, and Ms. D requested an emergency hearing to return them home to her care in April 2017. She, in consultation with her CFR team, delayed the request because her son has significant behavioral and educational needs, and she wanted to ensure that proper supports were in place for him and that she was in a stable place with her mental health.

The hearing began on April 20, 2017, combined with a trial on the merits of the underlying petition. On several occasions, ACS' witnesses were not available and in fact it appeared that counsel for ACS directed that witnesses not appear on certain adjourn dates. In addition, Ms. D's attorney agreed to stipulate to certain facts in the petition, but ACS continued to subpoena witnesses unnecessarily. Ms. D was present at all appearances and took off from work to make herself available, even when the case was heard for only minutes or just in front of the Judge to select new dates. Ms. D's attorneys requested at least once for the Judge to provide larger chunks of time, even if it meant pushing the dates out further to lessen the number of appearance, but more time was not provided. After 14 appearances, only ACS' case was completed, the children were allowed to return home.

Following reunification, CFR continued to advocate for her son to receive the educational and behavioral supports he required.

Fourth, based on our experience and the nature of many of the cases we are now seeing filed, we believe **that a significant portion of the petitions that are being filed could be avoided if there were legal and social work representation during the investigation stage.** When ACS begins an investigation, it has up to 60 days to complete it--during that period ACS may conduct an emergency removal, may refer the parent for services, or may require the parent to attend evaluations for substance abuse or counseling. But in our experience, parents mistrust ACS, often have difficulty engaging with the caseworkers they know can take their children, and often just need assistance in accessing services that are culturally competent or in their neighborhood. As well, parents know they do not have a confidential relationship with a child protective caseworker and in our experience over many years, confidentiality is often the umbrella that makes a parent feel s/he can safely disclose many of the issues compromising their parenting, whether it be domestic violence or addiction.

At CFR we understand the importance of keeping children safe. Our clients are often willing to discuss their potential shortcomings and mistakes. They, more so than anyone involved in the child protective process, have a vested interest in the wellbeing and safety of their children. We work with our clients to come up with realistic safety plans and work to develop trusting relationships so that they can be open and honest about when they are ready to have their children home. Nothing good comes from a failed reunification that results in a child be removed from his family for a second time. The relationship that we build with our clients is one that is simply not possible for a caseworker or case planner to develop with a parent given their different roles. The sooner we can start making this connection with a family involved with child protective services the better. Parents are often reluctant to speak with case workers when they first come to their door. The reality is that no matter what the caseworker's intention, they do not work for the parents and are bound by their agency's protocols and decisions made by supervisors and other agency officials that may have never met the family. While an individual case worker may visit a family regularly and even supervise a parents visits, she or he is likely unable to make decisions about whether visits should be expanded or a child should return home. Instead the case worker must consult with her supervisor as well as their legal representation before consenting to any expansion or reunification. In our experience, the supervisor rarely has any significant contact with the family or firsthand knowledge of their progress.

In 2004 and 2005, CFR and ACS piloted a program, called *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 investigating a family. 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 - of the families supported by Project Engage, in 80%, there was no child protective removal and no filing in family court. However, the program, which was funded by New York State's Office of Children and Family Services, was discontinued after a unrelated child fatality led ACS to redirect its resources and efforts to protective investigation.

CFR does engage 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 pending case 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. . We also accept calls from parents in the community with questions about their recent contact with ACS. In certain cases, we are able to accompany these parents to conferences and assist them with service planning.

Recently, we were assigned to represent a young mother, Ms. P. She was technically in foster care but as residing in her own NYCHA apartment along with her baby while attending school. ACS held a child safety conference to discuss their concerns about her parenting. The concerns included the condition of her home, an alleged six-hour delay in seeking medical attention for her daughter once she was alerted he had a fever and that she had missed a month of mental health appointments. At the end of the conference, ACS conducted an emergency removal of the baby. It took more than two days for ACS to file a petition, and for us to be assigned as her attorneys. Knowing that her daughter had already been removed for several days, our team was prepared to commence an emergency hearing that same day. However, ACS did not seek a removal. Ms. P's daughter, was released to her on consent, despite her having been removed for the past two days.

This past summer, CFR was assigned to represent Ms. Y. She resided in a single family home with her 3 children and her sister, who also had 3 children. ACS filed a petition against both sisters alleging that the children were neglected as a result of the deplorable condition of the home. ACS

asked the Court to allow them to remove Ms. Y's children but were consenting to releasing her sister's children. The caseworker alleged that Ms. Y had missed a safety meeting. However, the client was able to produce a text message from the caseworker proving that the latter had given misleading information about the time of meeting. It became apparent that ACS wanted a removal because they found Ms. Y difficult to work with. CFR used this to help advocate for Ms. Y's children to be released to her. The Court ultimately agreed with CFR and Ms. Y was able to leave with her children. The CFR social worker continues to work with Ms. Y to navigate her relationship with the ACS case workers.

### **Recommendations**

1. The council should consider providing funding for a pilot program similar to Project Engage. Parents deserve to have affordable, independent, and knowledgeable representation by attorneys and access to social workers and parent advocates while they are being investigated. These advocates would be able to attend conferences with the parent, assist with service referrals, and, because they do not work for ACS, build the relationships with parents often needed to help parents develop safety plans and engage in services. The potential for us to build trusting relationships with our clients is greater because we do not work for ACS.
2. ACS should be required to keep data on how many removal applications they make that are subsequently denied. As we understand it, this data is not kept now, but it would give the agency some idea of situations where perhaps removals were unnecessary.
3. ACS should be required to keep data on how many emergency removals are conducted and then, upon filing, children are allowed to return home "on consent," because on the first day the case is filed, services or other steps that mitigate risk are engaged and children return home after the emergency removal.
4. ACS should be required to keep data on the number of children and the average length of time a child spends at the Children's Center or in a non-kinship foster home while a 1027 hearing is ongoing in court.

### **Conclusion**

The increase in abuse and neglect filings since 2016 has resulted in hundreds more families becoming involved in the family court system. These families need and deserve legal and social work support as early in the process as possible. By providing this support not only do we believe there

would be fewer petitions filed, but it would free up the Court to handle other matters that also impact child safety and reunification.

On behalf of CFR, I want to once again thank the City Council committees on Justice Systems and General Welfare for facilitating this important discussion.



## **TESTIMONY OF LAWYERS FOR CHILDREN**

To the New York City Council Committees on General Welfare and Justice System

**“Oversight - Removals from Parents and Caretakers In Child Welfare Cases”**

November 27, 2018

**Submitted by:**

Karen J. Freedman, Executive Director

[kfreedman@lawyersforchildren.org](mailto:kfreedman@lawyersforchildren.org)

212-966-6420

[www.lawyersforchildren.org](http://www.lawyersforchildren.org)

## **Lawyers For Children - “Oversight: Parent-Child Separation in Family Court”**

Lawyers For Children (LFC) thanks the City Council Committees on General Welfare and the Justice System for providing us with the opportunity to submit testimony as part of your hearing on Child/Family Separation in Family Court.

Lawyers For Children is a not-for-profit legal corporation dedicated to protecting the rights of children in foster care and compelling system-wide child welfare reform in both New York City and New York State. Since 1984, LFC has provided free legal and social work services to children in cases involving foster care, abuse, neglect, termination of parental rights, adoption, guardianship, custody and visitation. Currently, we represent children and youth in more than 6,000 judicial proceedings in New York City’s Family Courts each year. From our experience in individual cases, we have also successfully filed numerous class-action lawsuits and advocated for policies that promote good outcomes for all children in foster care.

As attorneys and social workers who directly represent children in child welfare proceedings, we are well aware of the impact of removing children from their families. Like other advocates who represent parents and children, we share the goal that children should be removed *only* as a last resort. The vast majority of children involved in the child welfare system can be safe with their families with the right support in place. Nearly fifteen years ago, the New York Court of Appeals held that children should be removed only if absolutely necessary and only after weighing the trauma of removal against the imminent danger of staying at home.<sup>1</sup> We are proud that these efforts along with many other improvements including a focus on preventive services, have helped dramatically reduce the number of children in foster care from a high of over 50,000 in the 1990s to under 9,000 today.

Based on our experiences representing child-welfare involved children, we will discuss the importance of keeping children safely with their families whenever possible, and areas we believe should be addressed to prevent and reduce unnecessary child/family separation.

### *Impact of Removal on Children & Importance of Preventive Services*

The vast majority of children fare best with their families. As we have argued and see in practice, family separation is often devastating to vulnerable children. Young children in particular experience traumatic stress even if they are eventually reunified. That stress can disrupt the development of brain architecture and increases the risk of stress-related disorders and cognitive impairment well into the adult years.”<sup>2</sup> Furthermore, research has

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<sup>1</sup> See *Nicholson v. Scoppetta* (NY Ct. of Appeals 2004), available:

[http://www.courts.state.ny.us/Reporter/3dseries/2004/2004\\_07617.htm](http://www.courts.state.ny.us/Reporter/3dseries/2004/2004_07617.htm)

<sup>2</sup> See American Academy of Pediatrics, *Adverse Childhood Experiences and the Lifelong*

<sup>2</sup> See American Academy of Pediatrics, *Adverse Childhood Experiences and the Lifelong Consequences of Trauma* (2014), available here: <https://www.aap.org/en->

## Lawyers For Children - “Oversight: Parent-Child Separation in Family Court”

shown that children who have spent time in foster care are more likely to commit crimes, drop out of school, become dependent on public assistance, experience substance abuse problems, and enter the homeless population, as compared to their peers.<sup>3</sup> The impact of changing neighborhoods, switching schools, experiencing relationship disruption and adjusting to placement in foster care should not be underestimated.

Mindful of the harm that foster care placement can cause, federal and state laws recognize that children should only be removed if there are circumstances that seriously endanger the safety and well-being of the child. Additionally, children cannot be separated without approval from a family court judge unless there is “imminent” risk of harm. This standard is deliberately stringent. Even with a finding of “imminent risk,” New York State law requires that the court make a finding that the removal is in the best interest of the child before removal is appropriate. Finally, even when these circumstances are present, prior to removal, New York like all states require the child welfare agency to make “reasonable efforts” to preserve the family and prevent removal. Such efforts commonly come in the form of preventive services, such as substance misuse treatment, family therapy, and mental health treatment. These laws reflect the seriousness of removing children from their families and codify nationally accepted professional child welfare standards which also reinforce the importance of maintaining family unity whenever possible.

### *Supporting Highest Standards of Professionalism*

Children and families in crisis deserve the best resources available from our City, including professionalized and fully credentialed social workers. Of all responsibilities the City undertakes, there are few as serious and consequential as separating children from their families.

Like the Council, we fully appreciate the challenges that child protection staff face and the difficult responsibilities of assessing safety risks, understanding family needs and strengths, as well as evaluating the health and well-being of children they come into contact with. Decisions about child removal must only be made with highly individualized assessments by highly credentialed professionals on the frontlines.

There are numerous City and contracted workers that make life changing decisions—whether at the beginning of a case during a child protection investigation, at a child safety conference, pre-placement care at the ACS Children’s Center, or later when conferences are held to determine whether a child can return home. Child Protection Specialists (CPS) are responsible for engaging with family members and children, as well as assessing safety risks in complex cases often involving domestic violence, sex abuse, and mental health concerns.

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[us/Documents/ttb\\_aces\\_consequences.pdf](#); John Harlow, *Pediatricians Know Why Family Separation is Child Abuse*, CNN, July 10, 2018

<sup>3</sup> See Joseph J. Doyle, Jr., *Child Protection and Child Outcomes: Measuring the Effects of Foster Care*, 97 AMER. ECON. REV. 1583 (2007); see also ACS Report on Youth in Foster Care, 2017, available at: <https://www1.nyc.gov/assets/acs/pdf/data-analysis/2017/YouthInFosterCare2017.pdf>

## Lawyers For Children - “Oversight: Parent-Child Separation in Family Court”

While ACS has boasted hiring over one thousand new Child Protection Specialists (CPS), upgrading technology, and “enhancing review protocols”—all of which are important—it is incumbent upon our City to not only have a consistent stream of new staff, but the highest qualified staff on the frontline, to the fullest extent possible. We believe our City can and should do better. Studies indicate that fewer than 15% of child welfare agencies require their staff to have social work degrees and that fewer than 40% of the child welfare workforce are social workers.<sup>4</sup> Indeed, in New York City, prospective CPS and Child Protection Manager candidates are not required to have social work degrees, and do not have to have any experience working with children or families. While ACS provides training and has expanded its professional development efforts, it simply cannot compare to professional training Master Level Social Workers complete through two years of coursework and field placements. Although decisions around removal are often made by higher level Child Protection managers and supervisors, they are directly informed by the very critical assessments completed by Child Protection Specialists.

At Lawyers For Children, every child our office serves is assigned both an attorney and a licensed masters-level social worker. Through our model of affording every child with a masters-level social worker, we have helped thousands of children remain safely at home and helped engineer the safe return of thousands more from foster care to their families.

We urge the Council to work with the City to identify ways to enhance the qualifications, training and retention of child welfare staff throughout the child welfare system—from child protection, preventive services, to foster care. We urge and would support the City to identify ways to modify its civil service title to provide for higher qualifications as well as allocating additional funding that would allow for the City to attract and retain more frontline masters-level social workers. We would also support the City Council’s efforts to better understand ACS’ workforce needs, credentialing and background checks<sup>5</sup>, and how many frontline staff are licensed social workers.

### *Stopping the Intergenerational Child Welfare Involvement*

One of the most concerning aspects that we see in our practice, is the cycle of parents who have spent time in foster care, mostly young mothers, who then become re-involved in the system as respondents on neglect cases.<sup>6</sup> In fact, according to ACS, between 2006 and 2012, one third of the young mothers in foster care had their own children removed

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<sup>4</sup> See Tracy R. Whitaker, “Professional Social Workers in Child Welfare Workforce: Findings from NASW,” Journal of Family Strengths (Vol. 12, Issue 1), December 2012, available here: <https://digitalcommons.library.tmc.edu/cgi/viewcontent.cgi?referer=https://www.google.com/&httpsredir=1&article=1146&context=jfs>

<sup>5</sup> See *NY Times*, “City Investigates Hiring of Convicted Killer as Youth Counselor,” (Aug., 7, 2018), available here: <https://www.nytimes.com/2018/08/07/nyregion/murder-counselor-boy-assault.html>

<sup>6</sup> See Rise Magazine, “Where I Come Doesn’t Determine Where I Go,” <http://www.risemagazine.org/wp-content/uploads/2018/03/Rise-INSIGHTS1-Final.pdf>; see also Child Welfare Information Gateway, “Intergenerational Patterns of Child Maltreatment: What the Evidence Shows,” <https://www.childwelfare.gov/pubs/issue-briefs/intergenerational/>

## **Lawyers For Children - “Oversight: Parent-Child Separation in Family Court”**

from their custody while they were in foster care.<sup>7</sup> Data from other advocates suggest that that as many as 25-40% of mothers under 25 whose children enter foster care in New York City were themselves in foster care in childhood.<sup>8</sup>

In particular, there are three issues we would like to call attention to:

First, young mothers in foster care are often subjected to unnecessary and misguided scrutiny. In our experience, we have found that foster care agencies often use threats to call in a report of abuse or neglect to the State’s Central Register when concerns arise regarding typical teenage behavior that does not place the young parents’ children at risk of harm. This includes, most typically, curfew violations. We urge the City Council to require ACS to develop a clear protocol for addressing concerns regarding the behaviors of young parents in foster care.

Second, young parents are often discharged from foster care without appropriate supportive networks in their communities. ACS and its contract agencies should be required to connect all young parents to a range of services and supports in their communities prior to discharge from foster care. These should include, in particular, programs that will connect them to other young parents.

Third, parenting youth are often not prepared to be on their own with a baby when they leave foster care. We call on the Council to support living arrangements that better support this transition.

In addition to specialized programming and services for expectant/parenting youth, one lifeline is the Supervised Independent Living Programs (SILP), which was dismantled by the City in 2010. We ask the Council to support its reinstatement. SILP is an independent transitional living program for older youth, which helps teach young adults to live as self-sufficient adults to ease the transition from foster care to independent living. Youth live in a home-like setting with their own living space, and experience paying rent, grocery shopping, cooking and supporting themselves. Professional staff are present at the residence and guide the young people as they attempt to navigate all of the stressors of living on their own.

While we support and encourage the City’s efforts to identify foster families for older youth, SILPs provide a crucial transitional option for youth – especially expectant and parenting youth.

Over our decades of experience, we have found that SILPs offer young people structure and support to become more independent and prepared for adulthood. SILPs also provide a graduated approach to independent living, rather than an abrupt “you’re on your own” discharge that so many of our clients face every year.

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<sup>7</sup> Rise Magazine at footnote 5, see pg. 5

<sup>8</sup> *Id.*



## **Lawyers For Children - “Oversight: Parent-Child Separation in Family Court”**

Last year, ACS released a concept paper for reintroducing SILPs, which we supported. However, to our knowledge, ACS will no longer be proceeding with this program. In light of the negative outcomes for foster youth that have been reported to the City Council, young people need additional living options that effectively support their independence.

In addition to bringing back SILPS, we would ask the City Council to call upon ACS to renew its approval of placing young parents and their children in the same foster home, even when neglect charges have been filed against the parent. Previously, ACS recognized the particular importance (for both the parent and child) of young parents and their children being placed together. In order to facilitate the joint placement, while mitigating the risks to the child, ACS permitted the child to be placed in the same foster home as the young parent but under the care and control of the foster parent – rather than the parent. The Federal Government specifically allows for such placements<sup>9</sup>, which should be encouraged by ACS.

### *Ensuring Due Process for Voluntary Placements*

To ensure that children are not unnecessarily placed into foster care and to ensure that all parents fully understand their rights and responsibilities before placing their children, Lawyers For Children would like to call attention to potential due process concerns that we have noticed in our practice involving voluntary placements.

In New York, families can voluntarily place their children in foster care without a report of child abuse or neglect made to the child welfare agency. Lawyers For Children is the primary legal services provider that represents children who are voluntarily placed. In our experience, voluntary placements are a critical safety net for struggling families to obtain assistance. However, we also believe that this mechanism for entering the foster care system needs to be better monitored and adequate safeguards should be in place to prevent unnecessary entry.

In order to voluntarily place a child in care under state law, a parent or guardian must sign a “Voluntary Placement Agreement,” which transfers the care and custody of the child to the foster care system. That agreement spells out the rights and responsibilities of each of the parties to the agreement. It includes important information, including the parents’ right to consult an attorney, the parents’ right to demand the return of the child, and the right to have visits with the child.

We have been quite concerned, recently, regarding ACS practice of placing a child in foster care pursuant to a voluntary agreement prior to obtaining a signed agreement from the parent. In some cases, the agreement – which appraises the parents of their rights and obligations regarding their children – is not signed until several weeks after the child has been removed and placed into foster care. The delay in signing the agreement raises

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<sup>9</sup> See “Child Welfare Policy Manual, Q&A #3,  
[https://www.acf.hhs.gov/cwpm/public\\_html/programs/cb/laws\\_policies/laws/cwpm/policy\\_dsp\\_pf.jsp?citID=53](https://www.acf.hhs.gov/cwpm/public_html/programs/cb/laws_policies/laws/cwpm/policy_dsp_pf.jsp?citID=53)

## **Lawyers For Children - “Oversight: Parent-Child Separation in Family Court”**

serious concerns of whether parents are adequately apprised of their rights and responsibilities before a child is removed and placed in foster care.

Because the petition for judicial approval of the child’s placement is not filed until after the agreement is signed, some children are spending significantly more than a month in foster care before the court is asked to review the necessity of the removal, the appropriateness of the placement and the permanency plan for the child.

In order to address this issue, we urge the City Council to require ACS to account for each voluntary placement by reporting to the City Council annually. Such report should include information regarding the date the voluntary placement agreement was signed, as compared to the date the child was removed from the home, and the date of the subsequent filing of a petition for approval of the placement in court. We would also call on ACS to better explain and counsel parents who are considering voluntary placement by providing clearly written informational pamphlets, videos or other tools that can help ensure parents are adequately informed of their rights and responsibilities.

### **Conclusion**

We thank the City Council for its support to reduce the number of children unnecessarily placed into foster care. We are available to discuss the Council’s questions and are happy to provide additional information.

**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: ISRAEL SCHVIMMER

Address: \_\_\_\_\_

I represent: \_\_\_\_\_

Address: \_\_\_\_\_

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THE CITY OF NEW YORK**

*Appearance Card*

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☐ in favor ☒ in opposition

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

(PLEASE PRINT)

Name: Miriam Schimmer

Address: 96 Skillman St Apt 411 Brooklyn NY 11215

I represent: myself

Address: \_\_\_\_\_

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THE CITY OF NEW YORK**

*Appearance Card*

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☐ in favor ☐ in opposition

Date: 11/27/18

(PLEASE PRINT)

Name: Joyce McMillan

Address: 504 W 134th St NYC 10031

I represent: \_\_\_\_\_

Address: \_\_\_\_\_

Please complete this card and return to the Sergeant-at-Arms

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☐ in favor ☐ in opposition

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

(PLEASE PRINT)

Name: DIONNA KING

Address: Drug Policy Alliance

I represent: DPA

Address: 330 7th Ave. NY

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THE CITY OF NEW YORK**

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☐ in favor ☐ in opposition

Date: 11/27/2018

(PLEASE PRINT)

Name: Ronald E. Richter

Address: 120 Wall St NYC 1005

I represent: JCCA

Address: \_\_\_\_\_

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☐ in favor ☐ in opposition

Date: 11/27/18

(PLEASE PRINT)

Name: Lisa Gitelson

Address: \_\_\_\_\_

I represent: COFCCA - Council of Families Child Caregivers

Address: 254 W 31st NYC

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**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

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☐ in favor ☐ in opposition

Date: November 27, 2018

(PLEASE PRINT)

Name: Michelle Burrell, Neighborhood Defender Service of Harlem

Address: 317 Malcolm X Blvd

I represent: Neighborhood Defender Service of Harlem

Address: 317 Malcolm X Blvd, 10th Floor

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

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☐ in favor ☐ in opposition

Date: 11/27/18

(PLEASE PRINT)

Name: Tehra Coles

Address: 40 Worth Street, Ste. 605 NY, NY 10013

I represent: Center for Family Representation

Address: 40 Worth Street, Ste. 605 NY, NY 10013

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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: Emma Ketteringham, Managing Director

Address: Family Defense

I represent: The Bronx Defenders Practice

Address: 360 E. 161st St

**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: Nov 24 2018

(PLEASE PRINT)

Name: Martin Guggenheim

Address: nyu Law School 245 Sullivan St.

I represent: nyu 10012

Address: \_\_\_\_\_

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Appearance Card

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. \_\_\_\_\_

☐ in favor ☐ in opposition

Date: 11/27/18

(PLEASE PRINT)

Name: Lauren Shapiro

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: 11/27/18

(PLEASE PRINT)

Name: Paola Jordan

Address: 99 Hillside Ave NY, NY 10040

I represent: Sinergia Inc

Address: 2002 Lexington Ave NY, NY 10025

Please complete this card and return to the Sergeant-at-Arms



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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: 11/27/18

(PLEASE PRINT)

Name: Jayne Cooper

Address: 199 Water St. NY, NY 10038

I represent: The Legal Aid Society

Address: 199 Water St NY NY 10038

**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: Angelina Montauban

Address: 510 West 55th St. NYC 10019

I represent: Myself

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: William Fletcher, ACS Deputy Commissioner

Address: \_\_\_\_\_

I represent: \_\_\_\_\_

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: Julie Farber, ACS Deputy Commissioner

Address: \_\_\_\_\_

I represent: \_\_\_\_\_

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: Alan Spatz, ACS Deputy Commissioner

Address: \_\_\_\_\_

I represent: \_\_\_\_\_

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: Andrew White, ACS Deputy Commissioner

Address: \_\_\_\_\_

I represent: \_\_\_\_\_

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: David Hansell, ACS Commissioner

Address: 150 William St

I represent: \_\_\_\_\_

Address: \_\_\_\_\_

◆ Please complete this card and return to the Sergeant-at-Arms ◆