



**BROOKLYN
DEFENDER
SERVICES**

**The Bronx
Defenders**

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Child Abuse Cases and the Various City Touchpoints for Families**

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field every day interacting directly with Child Protective Service and foster care agency workers.

We thank the New York City Council Committee on General Welfare and, in particular, Chair Stephen Levin, for the opportunity to testify today about the points at which child-welfare involved families interact with various City services. The Administration for Children's Services (ACS) affects the lives of thousands of children each year - most of whom are low income and African American or Latina - and it is critical that the City Council regularly review and monitor ACS and ensure that it remains accountable for its actions. At the same time, we appreciate the efforts of the many hard-working staff at ACS and recognize the enormity and complexity of their charge to protect the safety of children while at the same time make efforts to give families the help and services they need to remain together.

Recognizing the Role of Poverty in Child Welfare Cases

In setting and implementing child welfare policy, policymakers must keep in mind what stories in the media ignore: that the vast majority of child welfare cases in Family Court involve allegations of neglect, not abuse, and almost all child welfare cases are related to poverty and the stress that poverty brings to families struggling to survive.¹ While we are making a number of substantive recommendations in our testimony today, we believe that any conversation about the so-called "failures of the child welfare system" must begin and end with the understanding that the vast majority of families

¹ New York City, KEEPING TRACK ONLINE: THE STATUS OF NEW YORK CITY CHILDREN (2013), available at <http://data.cccnewyork.org/profile/location/1/city#1/new-york-city/1/1193,1194/a/a>.

would never become involved with the child welfare system but for their poverty. Most parents and caregivers become involved with child welfare because of allegations related to failing to provide adequate food, shelter, medical care or child care—reflecting conditions of poverty rather than parental failure or ill will. Studies have shown that families who are “below the poverty line are 22 times more likely to be involved in the child protection system than families with incomes slightly above it.”² In 2014, the journal *Pediatrics* published a nationwide study conducted by Cornell University that further clarified the links between poverty and child welfare.³ John Eckenrode, one of the study’s authors, found that “reducing poverty and inequality would be the single most effective way to prevent maltreatment of children.”⁴ Indeed, “poverty—not the kind or severity of child mistreatment—is the leading predictor of both placement into foster care and the amount of time that children spend” separated from their parents.⁵

Racial Disparities in the Child Welfare System

The families that populate the child protection system are also disproportionately families of color. The child welfare system remains one of the most racially segregated institutions in American and the racial disparity of children in foster care must be

² Martin Guggenheim, REPRESENTING PARENTS IN CHILD WELFARE CASES: ADVICE AND GUIDANCE FOR FAMILY DEFENDERS, ed. Martin Guggenheim & Vivek S. Sankaran, 17 (2016).

³ John Eckenrode et al, *Income Inequality and Child Maltreatment in the United States*, 133 PEDIATRICS 454 (2014), available at <http://pediatrics.aappublications.org/content/133/3/454>.

⁴ H. Roger Segelken, *Child abuse and neglect rise with income inequality*, CORNELL CHRONICLE, Feb. 11, 2014 available at <http://www.news.cornell.edu/stories/2014/02/child-abuse-and-neglect-rise-income-inequality>.

⁵ Dorothy Roberts, SHATTERED BONDS: THE COLOR OF CHILD WELFARE, 27(2003) (noting that “[p]overty—not the type or severity of maltreatment—is the single most important predictor of placement in foster care and the amount of time spent there.); Leroy H. Pelton, *The Continuing Role of Material Factors in Child Maltreatment and Placement*, 41 CHILD ABUSE & NEGLECT 30 (2014) (noting that “[c]hildren in foster care have been and continue to be placed there from predominantly impoverished families.”); Mark E. Courtney, *The Costs of Child Protection in the Context of Welfare Reform*, 8 The Future of Children 88, 95 (1998).

considered as we fashion changes to the system. For more than a decade, black children have made up the majority of children in the United States child protection system, despite making up a relatively small portion of the nation's population. A national study of child protective services by the U.S. Department of Health and Human Services reported that "[m]inority children, and in particular African American children, are more likely to be in foster care placement than receive in-home services, even when they have the same problems and characteristics as white children."⁶ While racial disproportionality exists in foster care nationally, statistics from New York City illuminate the extent to which foster care placements are concentrated in poor communities of color: "In 2008, African American children accounted for 27 percent of the children under the age of eighteen in the city but comprised a staggering 57.1 percent of the foster care population. In contrast, 24 percent of the children under age eighteen in New York City were white, but white children comprised only 4 percent of the foster care population."⁷ Data released by ACS for 2013 was nearly identical to the 2008 data.⁸

Family Preservation Should Remain the Priority because Children do Better Overall Remaining with their Families than when they are Placed in Foster Care

Singling out horrific cases and focusing on increased surveillance of families rarely results in the kind of thoughtful reforms that keep children safe and families strong. A response to Zymere Perkin's tragic death that relies upon increased reporting,

⁶ Dorothy Roberts, *Child Welfare and Civil Rights*, 2013 U. Ill. L. Rev. 171, 172-73 (2003) (quoting ADMIN. FOR CHILDREN & FAMILIES, U.S. DEPT. OF HEALTH AND HUMAN SERVS., CHILD MALTREATMENT 1992: REPORTS FROM THE STATES TO THE NATIONAL CHILD ABUSE AND NEGLECT DATA SYSTEM, Executive Summary, Finding 4, at 3 (2000)).

⁷ Tina Lee, *CATCHING A CASE: INEQUALITY AND FEAR IN NEW YORK CITY'S CHILD WELFARE SYSTEM*, 5-6 (New Jersey: Rutgers University Press, 2016).

⁸ See Roxana Saberi & Lisa Semel, *In NY, black families more likely to be split by the foster care system*, AL-JAZEERA AMERICA, June 25, 2015, available at <http://america.aljazeera.com/articles/2015/6/25/new-york-foster-care-system-racial-disparity.html> (citing ACS data).

investigations and removals of children from their homes will further reinforce the vulnerability of the families in the system and contribute to the system's racial disparity. This approach will also lead to the abandonment of the government's legal and moral obligation to ensure that children are not wrongfully removed from their families and communities; it will be at the expense of opportunities to make the deeper, more systemic changes that will save and improve the lives of the majority of New York City's children.

Although most foster parents are well intentioned and provide a safe environment, there is overwhelming evidence of the negative outcomes of foster care placements. As the VERA Institute of Justice noted, "research shows that entry into foster care raises the risk of long-term adverse effects on children compared to socioeconomically similar children who are not removed, including poor school performance, homelessness, arrest, chemical dependency, and mental and physical illness."⁹ In the words of Molly McGrath Tierney, Director of the Baltimore City Department of Social Services: "Awful things happen to children in foster care. Short-term, their outcomes for important things like health and education are abysmal and long-term, it just gets worse. Kids that grew up in foster care [are] overwhelmingly destined for the penitentiary."¹⁰

Children placed in foster care are more likely to experience psychopathology than children who are not in foster care, with children in foster care being between 2.7 and 4.5 times more likely to be prescribed psychotropic medication than children not in foster care,

⁹ 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>.

¹⁰ *Rethinking Foster Care: Molly McGrath Tierney* at TEDxBaltimore 2014, available at <http://tedxtalks.ted.com/video/Rethinking-Foster-Care-Molly-Mc>.

according to one study.¹¹ Studies have found that rates of safety are actually worse for children in foster care than for those in family preservation programs. For example, one study shows that children are actually twice as likely to die of abuse in foster care.¹² New York State ranks the third worst for rates of substantiated or indicated reports of maltreatment of children in foster care. Even these statistics are likely underestimations, as “abuse or neglect by foster parents is not investigated because agencies tolerate behavior from foster parents which would be unacceptable by birth parents.”¹³

Child-protection-involved children tend to leave foster care with more problems than when they entered care. Children exiting foster care have significantly more behavioral problems when compared with their own pre-placement measures of adaptation. Former foster children experience additional negative life outcomes, including higher teen birth rates and lower career earnings.¹⁴ Former foster children are also disproportionately likely to experience homelessness compared to the general population.¹⁵

¹¹ Children in foster care in Florida, Massachusetts, Michigan, Oregon, and Texas were prescribed psychotropic medications 2.7 to 4.5 times more often than children who were not in foster care. U.S. GOV'T ACCOUNTABILITY OFF., GAO-12-8201, FOSTER CHILDREN HHS GUIDANCE COULD HELP STATES IMPROVE OVERSIGHT OF PSYCHOTROPIC PRESCRIPTIONS 8 (2011).

¹² Richard Wexler, *Take the Child and Run: Tales From the Age of ASFA*, 36 NEW ENGLAND L. REV. 129, 137 (2002).

¹³ Compl. at 59-60, *Eliza W. v. City of N.Y.*, No. 1:15-CV-05273-LTS-HBP, available at http://pubadvocate.nyc.gov/sites/advocate.nyc.gov/files/amended_complaint_12.28.2015.pdf (“Based on the most recent federal data available, New York State ranks 46th out of 48 states and territories for instances of substantiated or indicated maltreatment of children while in foster care. Put simply, children in New York are more likely to be harmed while under the state’s protection than children in virtually every other state.”)

¹⁴ Joseph J. Doyle, *Child Protection and Child Outcomes: Measuring the Effects of Foster Care*, 97 AM. ECON. REV. 1583, 1584 (2007) [hereinafter “Doyle 2007”].

¹⁵ See Patrick J. Fowler et al., *Pathways to and From Homelessness and Associated Psychosocial Outcomes Among Adolescents Leaving the Foster Care System*, 99 AM. J. OF PUB. HEALTH 1453 (2009).

Children who are on the margin of placement tend to have better outcomes when they remain at home as opposed to being placed in out-of-home care. In one study, a researcher looked at case records for more than 15,000 children, segregating the in-between cases where a real problem existed in the home, but the decision to remove could go either way.¹⁶ Despite the fact that the children who remained home did not get extraordinary help, on measure after measure the children left in their own homes fared better than comparably maltreated children placed in foster care. All of this evidence demonstrates that keeping children together with their parents, even within homes that are not ideal, is usually preferable to foster care placement.¹⁷

The adverse consequences of removal can be reduced by placing children who have been removed from their homes with relatives rather than in foster care with strangers. Children fostered by relatives—known as “kinship care”—have fewer behavioral problems than their foster care counterparts.¹⁸ They also demonstrate better development and better mental health functioning than children in non-kinship foster care.¹⁹ Additionally, children cared for by relatives experience fewer disruptions and a better quality of life while in care: they have fewer placement moves, are more likely to remain in their own school, and are more likely to report liking their placement and wanting it to become permanent.²⁰ However, most foster children are not placed with relatives; ACS reports that

¹⁶ See Doyle 2008, *supra* note 14.

¹⁷ *Id.* at 766-67.

¹⁸ David Rubin et al., *The Impact of Kinship Care on Behavioral Well-being for Children in Out-of-Home Care*, 162 ARCHIVES OF PEDIATRICS AND ADOLESCENT MED. 550, 552-53 (2008).

¹⁹ Marc Winokur et al., *Kinship care for the safety, permanency, and well-being of children removed from the home for maltreatment*, CAMPBELL SYSTEMATIC REVIEWS 4 (2009).

²⁰ Winokur, *supra* note 19.

only a third of children in foster care in New York City are placed in kinship care.²¹ An approach that does not recognize how critical one's family and home life are to healthy human development, even when troubled or full of challenges and adversity, harms rather than improves the welfare of children and families.

ACS Should Continue Policies to Reduce the Foster Care Census

ACS has worked diligently and successfully to reduce the number of children in foster care in all five boroughs over the past ten years. Since 2007, when the institutional providers for parent representation in New York City were created, the foster care census has been reduced from over 17,000 to under 9,000 children as of October 2016. We must continue in this direction, and not roll back any gains. Notably, there has been no evidence or indication of an increased occurrence in child abuse as the foster care census has dropped. This progress has been possible through the increased availability of preventive services to families in need of support, earlier identification of such families, and greater accountability within the Family Court Systems to ensuring that appropriate service plans are put in place. These trends must be applauded and not rolled back in response to Zymere Perkin's tragic death.

Today, we would like to address specific areas of concern that we hope to bring to the Council's attention. We commend the Committee for bringing together so many city agencies to discuss the various ways that they work together to serve families with child welfare involvement. Strong leadership from the Council, along with a willingness to dive deep and not propose quick fixes that run the risk of harming children even more, will be

²¹ *Flash: October 2016*, NYC ADMIN. FOR CHILDREN'S SERVS., available at <http://www1.nyc.gov/assets/acs/pdf/data-analysis/2016/Flashindicators.pdf>.

the key to ensuring that Zymere Perkin's death does not lead to unnecessary and harmful interventions for thousands of other families and children.

The City Must Not Implement Policies That Will Exacerbate the Vulnerability of Families

Since Zymere's death last month, we have already seen a dramatic and frightening impact on our practices and the lives of child-welfare involved families in New York City. In the last few weeks, the number of emergency and court removals of children has increased, the filings of neglect cases have nearly doubled, and even important decisions about visitation and reunification of families are being affected by the current climate of fear to the detriment of many children. We have received phone calls from fearful parents who have been investigated in the middle of the night and had their children roused from deep sleep and questioned based on non-emergency concerns.

Instead of relying on surveillance and removals and making the approach to working with the city's poorest families more punitive, the City should be employing a strategy that encourages families to seek and get the help that they need to take care of their children. When ACS reacts as they are now out of fear, seeking more removals and pitting case workers against parents in court proceedings, it has the effect of discouraging parents from seeking the help that they need. For example, in Brooklyn last week, ACS received a call from a mother who stated she was overwhelmed, and was asking for help. Instead of providing her with assistance, they removed her son, separated the family for three days, and came to court to seek approval to place her son with strangers in foster care. Cases like this show parents that, when they need help, they cannot count on the city's administration to provide it to them. It instead encourages them to isolate and avoid

seeking assistance and the help they need to address any risk to their children. This only worsens outcomes for children.

Recommendations

1. Continue And Expand ACS's Commitment To Preventive Services

BXD and BDS strongly support increased funding for preventive services to avoid the need for children to be placed in foster care and to reduce the time children spend in care. In large measure, preventive service programs helped reduce the foster care population from almost 40,000 in 1999 to under 10,000 in New York City today. Keeping families together and children in their homes and communities with services in place, instead of placing children in foster care, prevents the harm and trauma of removing children from their families while saving tax-payer money. We also believe that preventive service programs can and should be delivered more effectively to help families provide safe and stable homes for their children and to reduce the number of children who enter foster care.

For more information and specific recommendations about ACS's provision of preventive services, please see BDS's testimony before this committee on March 17, 2015. A copy is available online at: <http://bds.org/testimony-before-new-york-city-council-on-ac-dhs-preliminary-fy2016-budget/>.

2. ACS Should Transition To A System Where Child Protective Workers Are Required To Have Social Work Degrees

Child protective workers who conduct initial investigations must make vital assessments about the complex issues many families face, such as domestic violence, mental illness, and substance abuse. ACS child protective workers rarely have the

credentials of a social work degree and are not adequately trained to make such determinations. They also may lack the expertise and time to help parents navigate complex bureaucracies, such as public assistance, housing, the shelter system, childcare assistance, Medicaid and the Department of Education. This lack of expertise can result in misguided decision-making and improper advice given to families, which jeopardizes family stability. Front-line staff must have adequate training and preparation to be able to truly help families.

Since the late 1980s studies have found that workers with either a BSW or MSW degree in social work have better outcomes than child protective workers in the same jobs who hold non-social work degrees.²² They received higher performance ratings from supervisors, especially in complex cases; were more effective in permanency planning; remained in the employ of agencies longer; felt safer making home visits alone; and spent less time on paperwork than their non-social work degreed counterparts.²³ Social workers have specific skills and knowledge in working with individuals, families, groups, organizations and communities that grounds the social worker in a much broader understanding of client needs.

²² See *Testimony from the National Association of Social Workers, Washington Chapter before the Committee on Human Services and Corrections* (2013), available at <http://nasw-wa.org/wp-content/uploads/2013/06/Testimony-SB-5163-CPS-Workers-2013.pdf>.

²³ *Testimony from the National Association of Social Workers, Washington Chapter, supra* note 24 (citing Surjit Singh Dhooper, David D. Royse, & L.C. Wolfe *Does Social Work Make A Difference?*, 35 SOCIAL WORK 57-61 (1990); Booz, Allen, & Hamilton, *The Maryland social work services job analysis and personnel qualifications study. Report prepared for the Department of Human Resources, State of Maryland*, (1987); U.S. General Accounting Office, *Child Welfare: HHS could play a greater role in helping child welfare agencies recruit and retain staff* (2003)).

Recommendation: Our experiences in the Bronx and Brooklyn are in line with national research and lead us to believe that ACS should prioritize hiring trained, credentialed social workers for child protective positions.

3. The Housing Crisis In New York City Must Be Addressed And ACS Should Help Homeless Families And Families Living In Unsafe Housing Conditions.

Over a third of our clients live in unsafe housing, family shelters, doubled up, and/or are moving from place to place. Addressing the affordable housing crisis is critical to addressing homelessness and its attendant risks to children.²⁴ The data and research on the experiences of homeless children shows that homelessness creates risks to the physical and emotional well-being and educational success of children. For example, children experiencing homelessness have an increased risk of illness compared to children who are not homeless, they suffer disproportionately from food insecurity, as they are twice as likely to go hungry as non-homeless children, and, being homeless has also been demonstrated to be harmful to children's emotional well-being. Homelessness also causes traumatic disruptions in the lives of children and increases children's vulnerability to mental illness.

In practice, ACS files neglect petitions against families living in unsuitable housing. Rather than assist families in securing safer living conditions or addressing housing concerns directly, ACS workers frequently suggest that families leave homes deemed to be in poor condition (including NYCHA apartments) to go into the shelter system. While this

²⁴ Data has shown that median household income has not kept up with median rent in New York City. This is particularly true in some of the City's struggling neighborhoods. For example, in University Heights in the Bronx, median monthly rent increased 14.3% from 2005 to 2014, while median income decreased 12%. *See, e.g.,* New York City Rent Guidelines Board, *2016 Income and Affordability Study*, April 17, 2016, available at http://www.nycrgb.org/downloads/research/pdf_reports/ia16.pdf.

suggestion meets many of ACS' short-term goals for ensuring a safe environment for children, it creates an added burden on the already-overburdened NYC shelter system, and there are long-term negative consequences for family stability: the shelter system no longer provides permanent housing options to families; living in many of the family shelters in New York is harmful to children and families; and such a move often disrupts children's education, as children still are often forced to change schools or travel long distances to get to school. Rather than address the problem of family homelessness, the system offers a family further displacement in a city shelter or foster care. Lack of adequate housing also makes it difficult for clients to comply with mandated services, causing children to be placed in foster care and/or delaying family reunification when children are already in foster care.

a. ACS should advocate with DHS regarding shelter eligibility issues

BDS wrote extensively on this issue for the March 17, 2015 hearing. Please see specific policy recommendations and client stories on areas for improved coordination between ACS and DHS in our testimony available here: <http://bds.org/testimony-before-new-york-city-council-on-acs-dhs-preliminary-fy2016-budget/>.

b. Housing Subsidies

ACS offers a housing subsidy for certain families, but it is currently available only in a very few cases, and is woefully inadequate to meet the realistic needs of the families we all serve. The state-funded housing subsidy of \$300 per month for families with active foster care or preventive cases is not enough to enable families to actually find affordable apartments in New York City. City Council recently recognized the need for increased

housing subsidies in passing Resolution 1073-2016, a resolution calling upon the New York State Legislature to pass, and the Governor to sign legislation that would increase the amount of housing subsidy from \$300 to \$600 per month, and extend the age eligibility from 21 to 24 for youth who have aged out of foster care.

In our experience, preventive services workers and even ACS workers are generally unaware that the subsidy exists, and those who are aware of it explain that it is not a useful tool for keeping children out of foster care. Even workers who are aware of the existence of the housing subsidy are often unaware that it can be used to provide families with lump sum payments for rental arrears, repairs, and other one-time expenses to help a family obtain or preserve stable housing. As a result, preventive workers often advise families to enter the shelter system — an intervention that is far more costly and harmful to family stability — instead of assisting them in preserving stable permanent housing. Ultimately, the state could save money by helping people pay rent, rather than paying \$3,000 per month for a child in foster care and even higher sums for family stays in emergency shelters, yet they continue to pursue a punitive approach to poverty.

Recommendations: ACS should join forces with the City Council in lobbying the State for an increase in this subsidy to meet families' needs or should supplement it with City funding. In the interim, ACS should better train its employees about the benefits of the subsidy.

4. Identify High-Quality Services For Parents And Caregivers With Developmental Disabilities And Mental Illness

Another critical area that the City should be looking at is providing and improving services to parents and caregivers with Intellectual or Developmental Disabilities and

mental health issues. We are concerned about the number of clients we see where the only allegation against them in an Article 10 case is their cognitive delays or mental illness; these cases represent a failure of the system. The National Council on Disability reports that removal rates where parents have a psychiatric disability have been found to be as high as 70 percent to 80 percent; and where the parent has an intellectual disability, 40 percent to 80 percent nationwide.²⁵ Many parents struggling with these issues end up in the child welfare system because there are little to no resources available to assess and appropriately evaluate parenting capacity, and no resources to support parents to keep their children in the home.

ACS should not be filing neglect cases against these families but should instead be working with the appropriate City and State agencies to ensure that they get the ongoing support and services that they need. Very often the families have received inadequate and insufficient evaluations. Although these families can function independently with ongoing supportive services, the services that child protection currently offers these families, such as short-term preventive services, are inadequate and inappropriate to meet these families' needs. In a letter dated January 29, 2015, the U.S. Department of Justice (DOJ) found that the Massachusetts Department of Children and Families (DCF) had violated the Americans with Disabilities Act and Section 504 of the Rehabilitation Act of 1973 by denying a mother with developmental disabilities opportunities to benefit from support and services to achieve reunification. Among other issues, the DOJ found that DCF failed to provide appropriate policies and training for social workers to understand their obligation to

²⁵ National Council on Disability, *Rocking the Cradle: Ensuring the Rights of Parents with Disabilities and Their Children* (2012), available at http://www.ncd.gov/sites/default/files/Documents/NCD_Parenting_508_0.pdf.

ensure the civil rights of parents with disabilities.²⁶ New York City's child welfare system faces many of the same deficiencies.

Recommendation: Where a parent presents to ACS with a possible intellectual disability or mental illness, ACS should assess whether the parent is receiving or eligible to receive any supportive services related to the perceived disability, coordinate the referral and evaluation process for the parent to receive appropriate services, and provide transitional services to the parent until those disability-related services are put in place. The process of applying for state assistance through OPWDD can be difficult to navigate, and ACS should be familiar with this application process and assist parents with establishing their eligibility. ACS staff should be trained in reasonable accommodations that people with intellectual disabilities may need, such as more time allotted for case conferences and casework contacts, more specific assistance with traveling to appointments and time management, and specific services and classes that are tailored to the needs parents in this population. ACS staff should also be trained in how to approach and talk to parents with a perceived disability, so as not to alienate parents. In one of our cases where our client has a developmental delay, the case worker approached her in a very threatening manner, telling her that she was going to take her child. This caused our client to be fearful and flee, resulting in worse outcomes for the family. Had the worker approached her with sensitivity and offering assistance, the outcome likely would have been different.

²⁶ Joint Letter from U.S. Dep't of Justice: Civil Rights Division and the U.S. Dep't of Health and Human Services: Office for Civil Rights, *Investigation of the Massachusetts Department of Children and Families by the United States Departments of Justice and Health and Human Services Pursuant to the Americans with Disabilities Act and the Rehabilitation Act (DJ No. 204-36-216 and HHS No. 14-182176)*, Jan. 29, 2015, available at https://www.ada.gov/ma_docf_lof.pdf.

5. The City Should Provide Funding For Parents And Caregivers To Have Legal Representation At Child Safety Conferences

As court-based advocates, we often meet our clients after they have already been in contact with city agencies for months, or even years. They have often already been interviewed by case workers and detectives, evaluated by mental health professionals, and given numerous directions to show up at conferences, meetings, or other events, with little understanding of the context or consequences. In our experience, once these families enter the court system and parents are assigned attorneys, we are often able to smooth out misunderstandings, provide our clients with advice on how to better navigate systems, and connect them to services tailored to their needs. By the time a family is coming to Court, however, it is often too late to avert the placement of a child into foster care or the separation of families. If parents were provided with independent advice and counsel earlier in the process, it could help to avert some of these family separations, and likely would avert many filings, thereby saving court time and resources and ensuring that cases that needed to come before judges moved more quickly and received more attention.

Child Safety Conferences (CSC's) are an important mechanism used by ACS during a child welfare investigation to determine child safety when ACS is considering filing a petition in court. At the conference, which is supposed to include the family, a safety plan is developed, including recommendations for services, and a determination is made as to whether a case will be filed in court and whether foster care placement will be recommended. In some cases children have already been removed or children are removed at the conference. At the CSC, a parent or caregiver is often in the middle of a crisis, terrified that she will lose her children, and unaware of her rights and responsibilities

during a child welfare investigation. Too often a critical opportunity to engage a family and conduct an appropriate needs' assessment is lost and the relationship between a parent and the agency breaks down.

CSCs would be more successful and traumatic removals of children would be avoided, if parents were advised of their rights and responsibilities by a parent advocate or social worker who is associated with an attorney at this early stage. Presently, no legal organization is contracted to provide parents with representation at CSCs and before a case is filed in court. Parents are assigned a lawyer only once an abuse or neglect case is filed in Family Court. Parents receive legal counsel only after the CSC and often after their children have been placed in foster care. Once an attorney is assigned, an appropriate safety plan can be developed allowing the children to remain safely at home. Institutional providers also have success averting removals at CSC's where children are under Court-Ordered Supervision. We believe the success we have achieved can be replicated with pre-petition advocacy.

Although not funded by the City, family defense providers have been able to provide some families with a small amount of pre-petition advocacy with good results for families. The Center for Family Representation (CFR) achieved positive outcomes for families when it provided representation to parents and caregivers in CSCs (then called PDMs) through Project Engage and their work is discussed in their testimony submitted today. In addition, through its Healthy Mothers, Healthy Babies program funded by a small grant, as well as its hotline and community intake services, BXD has provided pre-petition advocacy to parents and caregivers during a child welfare investigation and at a CSC. The results show the promise of this approach. In FY 2015, BXD provided targeted social worker support and

advocacy to 197 pregnant mothers who had older children in foster care. Fifty of those women gave birth to babies who were at great risk of joining their siblings in foster care. Once they were born, a CSC was convened and an advocate from BXD attended. BXD collaborated with the foster care agency overseeing the older children and ensured that all of the women enrolled in HMHB were referred to prenatal care and evidence-based services including mother-child dyadic therapy, and substance abuse or mental health services if necessary. BXD also provided assistance with housing and public assistance to further stabilize the lives of the expectant mothers. Of the 50 births to the women engaged with HMHB, 66% were never removed from their mother's care, 20% were removed but placed with their father or another relative identified by HMHB, and only 7% were placed in non-kinship care. These results demonstrate that pre-petition advocacy saves families from the trauma of separation and reduces legal costs and foster care placements.

In 2015, The Bronx Defenders social work staff provided pre-filing advocacy to 183 clients. BXD's advocacy helped preserve families and avoid the trauma of unnecessary family disruption for hundreds of children. Because of the information provided by advocates during child welfare investigations in 183 cases, 142 of these cases resulted in connecting families with preventive service providers, such as drug treatment, mental health services, homemakers, visiting nurses or daycare facilities, to help parents address the needs that exist. Moreover, children in 157 families were not placed in foster care.

Recommendation: The City should consider funding pre-petition advocacy in all five boroughs based on the results and lessons learned from small pilot projects conducted by CFR and BXD and the participation at CSC's of all the parent representation providers.

6. Assess And Address The Continuing Problem Of Racial Disproportionality In New York City's Child Welfare System

New York City's child welfare system is almost exclusively a system for families of color, as discussed previously. In the past nine years that our organizations have been representing parents in Article 10 cases, racial disparities have remained static. As in the criminal justice system, racially biased enforcement of the Family Court Act breeds distrust for child protective services agencies in poor neighborhoods of color. A woman named Jameelah with a child welfare case in New Jersey explains, "You'll see a Caucasian person in a supermarket and let's say their children don't have on a hat or shoes and it's cold outside. Let that happen to an African American. Before you know it they're reading your license plate and, boom, you have a social worker knocking at your door."²⁷ Our clients in Brooklyn and the Bronx express similar sentiments to our attorneys and social workers regularly. Troubling racial disparities should cause ACS to remove children from their homes with more caution, not less.

Recommendation: If ACS is truly committed to diminishing and eventually eliminating racial disparities, removals should only be on the table in the most extreme cases.

Otherwise, the communities that we serve will continue to view ACS as racially biased.

7. Do Not Implement Predictive Analytics In New York City's Child Welfare System.

Over the last year, governments and child welfare agencies across the country have begun to consider the utility of predictive analytics in the child welfare context. We strongly urge ACS and the Council not to pursue this avenue. As we have seen in the

²⁷ Sarah Gonzalez, *Black Mothers Judged Unfit at Higher Rate than White Mothers in NJ*, WNYC, May 26, 2015, available at <http://www.wnyc.org/story/black-parents-nj-lose-custody-their-kids-more-anyone-else/>.

criminal justice context, risk assessment instruments are plagued by biases that reflect the prejudices or beliefs of whoever created or scored the instrument. ProPublica looked at one of the most widely used risk-assessment programs and how it fared in Broward County, Fla.²⁸ Researchers found that the risk assessment instrument was only accurate about 61 percent of the time, and that it treated blacks and whites differently. Black defendants were twice as likely to be rated as “high risk” incorrectly, meaning they did not go on to reoffend. Meanwhile white defendants were twice as likely to be incorrectly rated as low risk and yet go on to reoffend.

Similar biases would be built into any child welfare analytics and exacerbate the severe racial disparities that exist already. We oppose any use of predictive analytics which substitutes stereotypes, bias and presumptions for the type of comprehensive case-by-case, fact specific assessments that families need and deserve, including an assessment of family strengths and progress in their lives.

Recommendation: Given the previously-discussed stark disproportionality we already see in the system, we implore ACS not to employ this untested tool and unwittingly embed racial disparity deeper into this system’s functioning.

8. Stop the Criminalization of Poverty

Every day, our criminal defense practices serve low-income New Yorkers who are arrested, prosecuted and incarcerated because of their economic condition, with clear

²⁸ Julia Angwin, Jeff Larson, Surya Mattu and Lauren Kirchner, *Machine Bias: There’s software used across the country to predict future criminals. And it’s biased against blacks*, PROPUBLICA, May 23, 2016, available at <https://www.propublica.org/article/machine-bias-risk-assessments-in-criminal-sentencing>.

adverse impacts on the ability of affected individuals to care for their children. Arrests and prosecutions for poverty-based offenses such as fare evasion separate parents from their children every day. To our knowledge, the City does not track the number. However, we do know from the Osborne Association that 105,000 children in New York State have a parent incarcerated in prison or jail, and that this separation can have devastating consequences on the children. In this way, our City's and State's criminal justice policies and priorities are in direct contravention of the City's other efforts toward preserving strong, healthy families.

Our clients spend countless hours in court, and, in many cases, far longer stretches in jail or prison. They suffer diminished work, education, and housing opportunities due to publicly-accessible criminal records. Many experience severe trauma, especially those who are incarcerated in New York's notoriously abusive prisons and jails, which only compounds the intergenerational cycles of trauma that are at the root of the most serious child welfare proceedings.

Recommendation: The City should track the number of parents in NYC Department of Correction facilities and work with criminal court system stakeholders like BDS and BXD to ensure that pre-trial detention and incarceration sentences are rarely used in cases involving parents or caregivers.

9. Make ACS More Accountable To The Communities It Serves

Another important way to improve the child welfare system is to make ACS more accountable to the communities it serves. Stakeholders, including parents and parent attorneys, should be directly involved whenever ACS develops and implements large scale policy changes or practice mandates, such as those that are being considered today.

Policies and changes should be made and implemented after thoughtful consideration and in collaboration with stakeholders.

Lastly, we address the recent DOI report and respond to the assessments and recommendations laid out there.

The May 2016 DOI Report

In May 2016, the NYC Department of Investigation issued a report and recommendations based on a review of three cases with ACS involvement where there was either a fatality or near fatality. The evaluation of the individual cases appears to be based on a review of records in the three cases and interviews with professionals involved. We question the validity of system-wide recommendations based on only three cases out of thousands and without talking to all of the parties involved including, in one case, BDS who represented one of the parents. In that case, which involved a child who died “under suspicious circumstances,” the report fails to mention that the child was living in a City shelter and the conditions of the shelter are likely to be blamed for the child’s death. We question why this case involving an accidental death of a child is even included in the DOI report. The report is also filled with subjective interpretations of facts which should not be the basis for systemic changes.

The report criticizes ACS for the lack of documentation and timing of supervisory reviews. While intensive supervision of CPS workers is absolutely crucial to the quality of casework practice, the focus of any evaluation should be on the substance and quality of decision-making, not on adherence to documentation and time frame rules.

We are also concerned about the recommendations suggesting taking appropriate disciplinary actions against staff. While disciplinary action for violating rules, such as

falsification of records, may be warranted in some cases, we are concerned about this reaction to tragedies (such as in the recent case of Zymere Perkins) because it scapegoats individual caseworkers for systemic problems, and encourages the overreliance on filing cases and removing children because workers and supervisors are afraid. As noted above, removals into foster care and out of the home harm children and families and should never be the go-to response to tragedy.

The report also finds that ACS failed to adequately oversee its foster care agency providers. While we understand ACS's monitoring role of foster care agencies and how important it is for ACS to ensure that agencies are complying with ACS policies and regulations and with the law, such as providing reasonable efforts for reunification and ensuring timely reunification, it is important to recognize that the case planners at the foster care agencies are the workers who are the most familiar with what is happening with a family on a day-to-day basis. As such, case planners are often in the best position to make decisions about the family. Increased monitoring of agencies should not result in more barriers to family reunification when that is in the children's best interests. We agree with ACS that DOI should not be the body that ACS reports to regarding improved oversight and appreciate the opportunity ACS has given the public recently to comment on its proposed Integrated Family Team Conference Policy. We hope that community stakeholders will be involved in ongoing implementation and review of the policy as our clients experience the impact of these policies on a day-to-day basis.

In addition, the report raises the issue of whether foster care agencies are timely filing petitions to terminate parental rights and argues that there are many children in foster care where petitions should have been filed where exceptions to filing are not

documented. Based on our experience in the field, we are confident that these cases generally do meet the required exceptions, including that the children are in kinship placements. However, it is possible that these exceptions are just not clearly documented at service plan reviews and we agree that they should be documented. Finally, the report recommends collecting and sharing additional data points with DOI. We would request that stakeholders be involved in determining the data points and that the information be shared widely.

Conclusion

Our proposals would not only strengthen the system in these key areas, ensuring that children are able to remain with their families in safe, secure and stable environments, but would also help enable the child welfare system to leverage available resources in the most cost-effective and impactful ways possible. We believe that following these suggestions will result in more stable families with access to the resources they need.

Once again, we are grateful to the Council for your attention to this important issue. Please do not hesitate to reach out to Lauren Shapiro at lshapiro@bds.org or (917) 204-2568 or Emma Ketteringham at emmak@bronxdefenders.org or (718) 508-3468 with any questions.