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and

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On behalf of Brooklyn Defender Services (BDS), we would like to thank the Assembly's Standing Committee on Children and Families and the Task Force on Women's Issues for holding today's important hearing on the State's child welfare and Family Court systems.

BDS provides multi-disciplinary and client-centered criminal defense, family defense, immigration, civil legal services, social work support and advocacy in nearly 30,000 cases involving Brooklyn residents every year. Our Family Defense Practice ("FDP") is the primary provider of legal representation for parents in child abuse and neglect cases in Brooklyn. In twelve years of service, FDP has represented over 12,000 parents and caretakers in Brooklyn Family Court and has helped almost 30,000 children remain safely at home or leave foster care and reunite with their families. We currently represent over 2,350 parents and caretakers. Our community office is located in the East New York neighborhood of Brooklyn which has one of the highest rates of child welfare investigations in New York City.

Like the criminal legal system, race and poverty are defining characteristics of the child welfare system. Poor communities and communities of color are disproportionately impacted by the child welfare system. In New York State, Black children make up 40% of the children in foster care yet make up only 15% of the children in the state, whereas white children make up 25% of the children in foster care and 48% of the children across the state.¹ Black children also historically stay in foster care much longer than children of other races.²

The vast majority of the people we represent are people of color living in poverty, often raising their children in homeless shelters or public housing, and in highly-policed neighborhoods, making them vulnerable to government surveillance. Similar to the ways in which the possession or use of marijuana may be used as a pretext to “stop-and-frisk” a person based on their race or the neighborhood they live in, suspected or actual marijuana use can be used as a pretext for child welfare involvement, government supervision of a family, and even the removal of children from their home.³ Families living in homeless shelters, under incredible economic stress, are living under the fear that one argument between parents or one moment of impatience with a child may lead to a knock on their door from a child welfare worker. School attendance interrupted by homelessness or an angry landlord seeking to evict a family illegally can result in a call to the child welfare authorities and begin an investigation into a family.

For families of color subject to child welfare investigations, the risk of separation is far greater than for white families. In NYC, Black and Latinx children are 13 times more likely than a white child to be placed in foster care.⁴ Outside of NYC, Black and Latinx children are five times more likely to be placed in foster care as compared to white children.⁵ For parents struggling with mental health issues, cognitive delays or addiction, the system is often punitive rather than rehabilitative. While our clients often face challenges that impact their ability to keep their families together, in our experience the vast majority of families suffer more trauma from being separated than from staying together with supports in place.

There are a multitude of studies that detail the long-term effects to children who are separated from a parent.⁶ In the wake of the outrage about the federal government’s mandatory detention and family separation policy at the border, many observers rightly noted that this policy had ample precedent in the laws and practices of our child welfare legal system. Family separation often occurs without considering how the removal will harm the children. Though purportedly intended to protect children from abuse or mistreatment, removals often cause more harm and trauma. When children are separated from a parent for a long period of time they remain on high alert, and their bodies endure prolonged and severe toxic stress as a result which interrupts the brain’s development in reason, learning and emotional development.⁷

¹ <https://ocfs.ny.gov/main/reports/maps/counties/New%20York%20State.pdf>, page 7.

² <https://www.gao.gov/new.items/d07816.pdf>, page 4.

³ Burrell, Michelle. “Child Welfare Needs to Have It’s ‘Stop-And-Frisk Moment.’ *The New School Center for New York City Affairs*. <http://www.centernyc.org/child-welfare-needs-to-have-its>. June 27, 2018.

⁴ https://ocfs.ny.gov/main/bcm/DMR_Section%20Seven%20of%20Grant%20RFP_2015.pdf, page 7.

⁵ *See id.*

⁶ <https://www.pbs.org/newshour/health/how-the-toxic-stress-of-family-separation-can-harm-a-child>

⁷ *See id.*

In New York State, the average length of stay in foster care is 290 days.⁸ Families impacted by the child welfare system suffer long term effects that last generations, increasing a young person's risk of incarceration, mental illness and homelessness.⁹ Some research suggests that up to 40% of mothers with children in foster care were in foster care themselves at one point.¹⁰

It is urgent that we interrupt the child welfare system's intergenerational impact on New York's most vulnerable families and communities. This public hearing offers a critical opportunity to shine a light on New York's child welfare system, as we work together to support, strengthen, and keep families together.

Innovative Legislation -- A Path to Change

We applaud the legislature for passing two critically important child welfare bills this year that, if signed by Governor Cuomo, would be a significant step towards making this system fairer to all New Yorkers.

The SCR Reform Bill, A.8060-A (Jaffee)/S.6427-A (Montgomery), will make it easier for disadvantaged New York parents to financially support their children by making critical improvements to New York's State Central Register (SCR) of Child Abuse and Maltreatment. This legislation raises the standard for a report to be indicated from "some credible evidence" to a "preponderance of evidence" and allows caregivers accused of neglect to have their SCR records sealed in 8 or 10 years instead of 28 years so that they can seek employment.

The second bill, Preserving Family Bonds, S.4203A (Savino)/A.2199A (Joyner), will ensure all New York children adopted out of foster care have the right to continue contact with their families of origin, when it is in their best interest. November is National Adoption Month and the Governor has an opportunity to send a powerful message to New Yorkers and to our foster children that their families and family histories matter.

Now is the time for Governor Cuomo to sign both bills into law and put New York in the vanguard of a growing movement towards open adoptions and preserving family relationships.

2019 was an important year for progressive child welfare reform, yet much work remains to correct the underlying causes that have created a system disproportionality impacting the lives of poor families and families of color. Key to reforming the system is ensuring that parents and caregivers subject to investigations have greater access to legal information and assistance and a better understanding of their rights before a case is filed against them. Many of these reforms were detailed in the State's Commission on Parental Legal Representation's Interim Report that was issued in February of this year, which included ensuring timely access to counsel and added financial investment by the State to ensure effective representation of parents in child welfare

⁸https://www.health.ny.gov/health_care/medicaid/program/medicaid_health_homes/webinars/docs/2016/hhsc_webinar_6_1_2016.pdf

⁹ <https://jlc.org/news/what-foster-care-prison-pipeline>

¹⁰ <http://www.risemagazine.org/parents-facing-child-welfare/>

proceedings.¹¹ BDS would like to be a partner in moving these reforms forward and strongly urges the New York State legislature to adopt these recommendations to ensure fairness in New York’s child welfare system.

Early Access to Legal Assistance During Child Welfare Investigations Prevents Unnecessary Court Involvement and Removals

Having access to legal assistance at the beginning of a child welfare investigation can ensure that parents and caretakers understand the process, can result in speedier referrals to important supportive services and help avoid family court filings or unnecessary removals of children.

In February 2019, after conducting an extensive investigation and hearing from many child welfare and Family Court stakeholders, the New York State Commission on Parent Representation issued a report to Chief Judge Janet DiFiore which recommended that parents be “timely provided with relevant information about the right to counsel, and that parents be granted access to counsel during a child protective agency investigation and sufficiently in advance of the first court appearance.”¹² The federal Administration for Children and Families has come out in support of early assignment of counsel: “[t]here is a growing body of empirical also research linking early appointment of counsel (at or prior to a party’s initial appearance in court) and effective legal representation in child welfare proceedings to improved case planning, expedited permanency and cost savings to state government.”¹³ Child welfare and legal experts agree: early access to counsel leads to better outcomes for children.

However, most parents who are investigated by Child Protective Services do not have access to counsel. In Brooklyn, we often see petitions filed in situations where earlier access to counsel could have resolved the underlying issues and prevented the Article 10 petition from being filed. Thanks to generous funding from the New York City Council, BDS has been able to provide advice and representation to a limited number of parents and caretakers before a Family Court case is filed against them. Through legal advice, advocacy with the child welfare agency, and service referrals, we have had great success in resolving many of these child welfare cases in ways that prevent family court involvement and/or prevent the unnecessary removal of children from their homes.

Parents should have the opportunity to speak to an attorney about the legal implications of their actions so they can make the best decisions for themselves and their families. The role of a law office during the investigative stage of a case involves far more than legal advice – it also means connecting families to supportive services, identifying family resources for added support and to care for children should separation from a parent be necessary, preventing Family Court filings, and avoiding unnecessary removals of children.

¹¹ http://ww2.nycourts.gov/sites/default/files/document/files/2019-02/PLR_Commission-Report.pdf?fbclid=IwAR2DGVUGk86o8SH4HkVij7a9uJyYHWZt7rktZ044xQlnyKH3K9HYNBwqLiw

¹² http://ww2.nycourts.gov/sites/default/files/document/files/2019-02/PLR_Commission-Report.pdf?fbclid=IwAR2DGVUGk86o8SH4HkVij7a9uJyYHWZt7rktZ044xQlnyKH3K9HYNBwqLiw, page 16.

¹³ US Dept of Health and Human Services, ACYF-CB-IM17-02, January 17, 2017 (citations omitted).

Our office is made up of interdisciplinary teams that include social workers and parent advocates. Indeed, most of the pre-petition advocacy our office engages in is carried out by social workers and parent advocates. Social workers and advocates help parents better understand the investigative process and provide guidance in navigating the child welfare system and other related systems, such as the education, temporary shelter, Medicaid, and public assistance systems; prepare parents for meetings and conferences with ACS workers; speak to ACS case workers to get a better understanding of ACS's expectations of the family; help establish eligibility for Medicaid and other benefits, such as SSI; and refer families for appropriate services to address the family's needs. Advocates also assist parents in providing necessary documentation and resolving the mistakes of fact and misunderstandings that so often results in a traumatic and unnecessary child removal.

Client Stories

In one recent case, through early advocacy and support to the client, BDS was able to avoid the removal of the children from their family and prevent a family court case from being filed. Our client Elizabeth¹⁴, who is the mother of four children, was arrested for leaving her four-year-old son at a police precinct for 20 minutes when her usual family support was unable to help. The next day, after the case was arraigned in criminal court, BDS' integrated team of attorneys, paralegals, and social workers prepared the client for her involvement with ACS and then advocated at a two-hour Child Safety Conference (CSC) to keep the case out of family court. BDS was able to explain that Elizabeth's actions were those of an overwhelmed mother who needed support and advocated for ACS to provide services for the whole family instead of removing the children. The night before the CSC, ACS asked Elizabeth to leave the kids with a family resource, which she had agreed to do. At the conference, ACS agreed that the children could return home with services in place.

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

¹⁴ All client names have been changed to protect confidentiality.

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

A recent study commissioned by Casey Family Programs compared multi-disciplinary institutional providers of parent representation to private solo practitioners and found that interdisciplinary teams reduced time in foster care by 4 months without any increased risk to children and saved \$40 million in foster system costs.¹⁵ If parents are given access to interdisciplinary advocacy even before a case is filed in court, these gains would be extended even further, and more children could safely remain with their families.

Under the Family Court Act, parents have a right to court appointed counsel if they cannot afford one once a case is filed against them and they appear in court.¹⁶ Appointing counsel at the point a case has already been filed is essential, but also misses an important opportunity in many cases to change the trajectory of the case and improve outcomes for the family. The limitations on when counsel is required is a wasted opportunity. Parent defense attorneys should be able to provide representation when a parent is subject to an investigation and the attorney's advice and assistance is critical.

Recommendation: We strongly urge the Legislature to support the recommendations in the State's Commission on Parental Legal Representation's Interim Report to Chief Judge DiFiore and to ensure that funds are allocated in the FY 2020-2021 budget that would support expanding access to representation for all indigent parents' subject to child welfare investigations.

With adequate funding, parent defense social workers would be available to accompany parents to meetings with the local child welfare agency prior to filing and immediately intervene to provide services and afford the parent the benefits of having legal assistance and the organization's resources. The involvement of social workers in child welfare case conferences results in better outcomes by increasing the parent's participation and by helping to inform a positive outcome. This facilitates the creation of service plans that better reflect the particular needs of the family, preventing unnecessary litigation and keeping children safely at home. Expanded resources would reach more parents and caretakers at-risk of family court involvement and reduce the number of cases filed in family court and the number of children removed from their homes. For clients who contest the underlying facts giving rise to the investigation, attorney

¹⁵ <https://www.casey.org/quality-parent-representation/>

¹⁶ Family Court Act §262

can help gather facts and evidence early on and prevent the traumatizing experience to the entire family by presenting the information in a clear and cogent way to the ACS investigator. Lawyers can also assure that people under investigation understand what they are required to do and what the best way of handling themselves during the process would be. This prevents injustice that is quite common, due mostly to the large caseloads of ACS workers but also because of the emphasis of filing and removal in their decision-making. Our intervention can make a big difference in the lives of families, particularly those most unfairly targeted by the child welfare system.

New York Parents Need to Know Their Rights When Being Investigated by Child Welfare Authorities

Given the serious nature of child welfare investigations, which could ultimately result in a parents' loss of the care and custody of their own children, it is essential that parents and caretakers are aware of their rights so they can make informed decisions about their family.

In our practice, we regularly come into contact with parents who have been dealing with ACS for weeks or months without the benefit of counsel or information about their rights. They are subjected to drug and alcohol testing without informed consent; their mental health and medical providers are contacted without informed consent; and their children are interviewed at all hours of the day and night—including while they are at school—without their parents' permission.¹⁷

New York City is currently considering a Parent's Bill of Rights. BDS and parent advocates across the City are working with the Council to ensure this bill addresses the needs of families facing child welfare investigations, especially the City's most marginalized parents and that the bill enumerate the specific rights that parents have during these invasive and legally significant investigations. BDS believes that child protective workers should be required to provide parents with notice of their rights upon initial contact with a family both orally and in writing. A strong Parent's Bill of Rights would enumerate specific rights that parents have during these investigations, including: 1) that parents are entitled to seek the advice or representation of counsel; 2) that parents have the right to not allow the child welfare or investigative worker into their home without a warrant; 3) that parents have the right to refuse to submit to drug or alcohol screenings; and 4) that parents have the right to not sign releases for information or medical records. It is important that these rights are provided to parents and caretakers in their first language and should be in *plain* language that takes into account the need for parents of all backgrounds to be able to read and understand the information being provided to them. Connecticut's legislature enacted a comprehensive parent's bill of rights statute that could serve as a model to help New York parents understand and protect their rights when it comes to their children.¹⁸

We would welcome an opportunity to partner with the Legislature to ensure New York State has a similar protection for parents and caretakers subject to child welfare investigations, regardless of income, county or neighborhood.

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

¹⁸ C.G.S.A. § 17a-103d

End Marijuana Prohibition's Punitive Role in Child Welfare Investigations

There is broad popular support for marijuana legalization. Across the country, a large majority (64%) support full legalization of marijuana.¹⁹ A recent Emerson College poll showed two to one support for legalization among New York State residents.²⁰ Yet more than 800,000 people have been arrested for low-level marijuana possession over the past 20 years. The vast majority were people of color, despite government surveys showing equal or greater use by white people.²¹ For low income parents and parents of color, marijuana use can result in a child welfare investigation, a Family Court case, the removal of a child or delayed reunification with a child in foster care.

We applaud ACS issuing an all staff bulletin in April 2019 clarifying for staff that state and city policy is that marijuana use by a parent is not in and of itself a basis for indicating a report or filing a neglect case. However, in our experience, the child welfare system requests total abstinence from marijuana from the majority of parents, regardless of whether that use is recreational or whether there exists any evidence that a parents' use directly impacts their ability to safely care for their children. This is out of step with the requirements of the Family Court Act, which allows for a finding of neglect only where there is proof of *misuse* of drugs, *and* where that *misuse* is directly impacting their ability to provide adequate care or meet children's basic needs [emphasis added].

The treatment of marijuana use in child welfare-involved families often demonstrates a conflation of use and misuse. Our clients who admit marijuana use or test positive for marijuana even once are usually referred to participate in rigorous drug treatment programs and/or continue to submit to random requests for drug testing indefinitely. These referrals have a coercive effect before a case has been filed, when the specter of a possible court case or child removal looms. We also see this effect after a case has been filed, when completion of treatment can be a prerequisite to expanded visitation, reunification, and/or ending state surveillance over a family.

Directing users of marijuana to drug treatment programs regardless of the degree and nature of use both misdirects scarce substance use treatment resources and the limited time and resources of our clients. Drug treatment programs have demanding and cumbersome schedules: Depending on the treatment center, parents may be expected to go to treatment several times per week, for several hours each day. Participating in these treatment programs limits our clients' ability to seek and maintain employment, to pursue an education, and to spend needed time with their children.

Underserved communities of color have long been over-policed in the war on drugs. Similarly, in the child welfare system, marijuana prohibition and the insistence on total abstinence results in

¹⁹ Justin McCarthy, Record-High Support for Legalizing Marijuana Use, U.S. GALLUP NEWS, Oct. 25, 2017, <http://news.gallup.com/poll/221018/record-high-support-legalizing-marijuana.aspx>

²⁰ Marijuana Policy Project of New York & Drug Policy Alliance, New Poll Shows 2 to 1 Support for Legal Marijuana Use in New York State (2017), <http://www.drugpolicy.org/press-release/2017/11/new-poll-shows-2-1-support-legal-marijuana-use-new-york-state>.

²¹ Melissa Moore, Lawmakers Must Legalize Marijuana in New York to Support Racial and Economic Justice, N.Y. DAILY NEWS, Nov. 27, 2017 at <http://www.nydailynews.com/opinion/lawmakers-legalize-marijuana-new-york-support-justice-article-1.3661162>

the systemic separation of poor families and families of color; this stands in stark contrast to the apparent absence of any legal action or drug treatment requirements imposed upon the white male author of an op-ed in *The New York Times* proclaiming the benefits of illegal marijuana use in parenting.²²

Parents who come into contact with the child welfare system are frequently asked to submit to drug tests during the investigative stage of a case. For low-income women of color, many are subjected to drug screenings in public and private hospitals, often without their knowledge or consent. Racial disparities have been well-documented at many points in the health care delivery system, and we know that mothers of color and poor mothers are more likely to be drug-tested in childbirth than white mothers, more likely to be reported to child welfare agencies, and more likely to be investigated by the state.²³ Positive drug tests often lead to further invasive investigation, the filing of a family court case, and possibly the removal of children. Our office continues to represent clients who face neglect allegations and the removal of their children due to their marijuana use during, before and even after pregnancy.

Many of the people we represent utilize public and private hospitals that predominantly serve low-income patients for prenatal care, labor, and delivery. It is common for our clients and their newborns to be drug-tested at birth, often without their knowledge, without their informed consent, or even despite their explicit refusal. NYC Health + Hospitals' (H+H) policy requires verbal consent to drug testing during or after labor, but many people who have been tested at a hospital report that they were never asked permission for the hospital to test themselves or their babies. Drug testing without informed consent is often applied selectively, disproportionately impacting poor women and women of color using government-funded health care,²⁴ and is out of step with professional standards.²⁵ This is particularly disturbing because in our experience hospitals are not using confirmatory testing or the most reliable testing,²⁶ and there are no drug testing guidelines or requirements for hospitals, as there are in other contexts.

Given the dearth of scientific evidence proving that a person's use of marijuana during

²² Mark Wolfe, *Pot for Parents*, N.Y. TIMES, Sept. 7, 2012 at <http://www.nytimes.com/2012/09/08/opinion/how-pot-helps-parenting.html>.

²³ Chasnoff, Ij, Hj Landress, and Me Barrett. "The Prevalence of Illicit-drug or Alcohol Use During Pregnancy and Discrepancies in Mandatory Reporting in Pinellas County, Florida." *International Journal of Gynecology & Obstetrics* 33, no. 4 (1990): 389. doi:10.1016/0020-7292(90)90575-6.

²⁴ Open Society Foundations. "Expecting Better: Improving Health Care and Rights for Women Who Use Drugs." <https://www.opensocietyfoundations.org/sites/default/files/expecting-better-improving-health-and-rights-for-pregnant-women-who-use-drugs-20181016.pdf> (2018), at 8, citing Amnesty International "Criminalizing Pregnancy: Policing Pregnant Women Who Are Using drugs in the USA." <https://www.amnesty.org/download/Documents/AMR5162032017ENGLISH.pdf> (2017), at 40.

²⁵ The American Congress of Obstetricians and Gynecologists (ACOG). "Toolkit on State Legislation: Pregnant Women and Prescription Drug Abuse, Dependence and Addiction." <https://www.acog.org/-/media/Departments/Government-Relations-and-Outreach/NASToolkit.pdf?dmc=1&ts=20190226T1940529955> ("ACOG policy states that urine drug tests should *only* be used with the patient's consent and to confirm suspected or reported drug use, including for women who present at **hospitals for labor and delivery.**")

²⁶ ACOG. "Even with consent, urine testing should not be relied upon as the sole or valid indication of drug use. Positive urine screens must be followed with a definitive drug assay... Routine urine drug testing is not highly sensitive for many prescription drugs and results in false positive and negative results that are misleading and potentially devastating for the patient, including accusations of child abuse and neglect."

pregnancy is harmful to a child,²⁷ particularly when that child has not also tested positive for marijuana, the choice to test a person for marijuana during labor is in and of itself unnecessarily invasive and may only lead to worse outcomes for the family. As far as we know, there is no standard of care that is different for a newborn who tests positive for marijuana, and a mother's positive test for marijuana does not provide any useful information about a new parent's current ability to care for a newborn.²⁸ On the contrary, the heightened scrutiny and separation of infants from their mothers after birth that occurs when a mother or child tests positive for marijuana at birth have clear negative consequences to neonatal development.²⁹ Evidence also shows that routinely testing pregnant mothers and newborns is bad public health policy. It may cause women to avoid seeking prenatal care or other treatment because of a fear that their newborns will be removed. As such, there is no clear medical or child protective justification for testing birthing parents for marijuana.

Recommendations: The New York State Legislature must pass the Marijuana Regulation and Taxation Act (MRTA) next session. The MRTA would protect parents from being ensnared in the criminal legal system for personal marijuana possession, erase many of the re-entry barriers that inhibit employment, education, and personal growth for people who have already been criminalized, and redirect scarce public funds toward public health and education resources that strengthen families. Furthermore, as the Drug Policy Alliance has written, the bill would help “[p]revent unnecessary denial of custody, visitation, or parenting time by requiring clear and convincing evidence of unreasonable danger to the safety of a child that is not solely based on the presence – or non-pertinent details – of a parent’s marijuana use.”

Ultimately, we believe a culture shift to end the stigmatization and knee-jerk condemnation of parents of color who use marijuana or other drugs is needed, and we hope that change could be engendered, in part, by legalization.

New York State must stand up against the disproportionately enforced and harmful prohibition policies of its child welfare and hospital systems. We call on the State legislature to increase the transparency and accountability of our child welfare and hospital systems in their investigation and reporting of marijuana-related cases and to be a leader in efforts to increase protections for patients by requiring informed, written consent for drug testing.

BDS strongly supports reform that would require the Department of Health to amend the law to require that all hospitals, both public and private to: obtain *informed written consent* before drug testing a patient and their newborn; use only scientifically sound confirmed drug testing; offer regular, mandatory, comprehensive, and evidence-based training for staff on the effects of parental marijuana use on children; and ensure that patients giving birth and their newborns not be tested for marijuana because there is no medical or public health reason to justify such a test.

²⁷ Connor, et al. “Maternal marijuana use during pregnancy is not an independent risk factor for adverse neonatal outcomes after adjusting for confounding factors.” *Obstet Gynecol.* 2016 Oct;128(4):713-23. doi: 10.1097/AOG.0000000000001649. Available at <https://www.ncbi.nlm.nih.gov/pubmed/27607879>.

²⁸ ACOG. “Urine drug tests are not a substitute for verbal, interactive questioning and screening of patients about their drug and alcohol use...Testing does not provide valid or reliable information about harm or risk of harm to children.”

²⁹ Open Society Foundations, at 15.

A.5478 (Rosenthal), which would prohibit drug testing of pregnant women unless the woman consents or the testing is necessary for a medical emergency, is an important step towards protecting the rights of pregnant and parenting patients and their families. We believe this bill would benefit from additional language that requires all informed consent to be provided orally and in writing and require the health care provider to share in writing the medical reason/s a drug test is being recommended or where consent is not required, written notice of the medical emergency requiring the screening. All patients should be provided with written notice that the health care provider is a mandated reporter under Social Services Law §413 and that the reporter may be required by law to share the test results with the SCR.

BDS is grateful to the Assembly Standing Committee on Children and Families and the Task Force on Women's Issues for hosting this critical hearing and shining a spotlight on these issues within New York's child welfare system. Thank you for your time and consideration of our comments. We look forward to further discussing these and other issues that impact people we represent.

If you have any additional questions, please contact Anya Mukarji-Connolly at amukarji-connolly@bds.org or FDP Director, Lauren Shapiro at lshapiro@bds.org or (347) 592-2500.