



TESTIMONY OF:

Brooklyn Defender Services, The Bronx Defenders, Center for Family Representation, Neighborhood Defender Service of Harlem

Presented Before

The New York City Council Committee on General Welfare

Oversight Hearing on the Screening Process and Eligibility Requirements for Foster Parents

October 13, 2022

This testimony is submitted jointly by Brooklyn Defender Services (BDS), the Bronx Defenders (BxD), Center for Family Representation (CFR), and Neighborhood Defender Service of Harlem (NDS). Our offices are the primary providers of mandated legal representation to indigent parents in Article 10 cases filed in family court in each of our boroughs (collectively the “family defense providers”). Together, we have created a model of interdisciplinary representation for parents charged with abuse or neglect and at risk of losing their children to the foster system. Our model connects clients with attorneys, social workers, and parent advocates to provide comprehensive representation and advocacy both in and out of court. We thank the Committee on General Welfare for the opportunity to testify about the family regulation system¹ and its impact on the families we serve.

When Poverty is Treated as Neglect

¹Commonly referred to as the “child welfare system” or the “child protection system,” defenders and parent advocates have followed the leadership of directly impacted people and adopted “family regulation system” language to reflect the system’s prioritization of and roots in surveillance and control over genuine assistance to families living in poverty, who struggle to access quality health and mental health treatment, basic necessities, and appropriate education and services for children with disabilities. For more information about this language shift see, Dorothy Roberts, *Abolishing Policing Also Means Abolishing Family Regulation*, The Imprint (June 16, 2020 5:26 a.m.), <https://imprintnews.org/child-welfare-2/abolishing-policing-also-means-abolishing-family-regulation/44480>.

Our office represents parents at every stage of an Administration for Children's Services (ACS) case: during an initial investigation before a family court case is filed; in Article 10 cases when ACS has filed a petition against a parent or caretaker alleging neglect or abuse; at termination of parental rights proceedings and in administrative proceedings to clear a parent's record to help them expand employment opportunities to support their families. From the onset of an investigation, to the threat or actuality of family separation, and the prolonged surveillance of a court proceeding, a report to ACS is traumatic and destabilizing for parents and children. At each stage of the case, our clients often have family or friends who are sources of support and can be resources for their children.

The overwhelming majority of parents we represent face allegations of child neglect that mistakes poverty and a lack of resources as maltreatment.² Too often a report to ACS is used to address issues caused by our city's failure to help meet families' basic needs, like clean and safe housing, accessible and culturally competent mental health care, or quality special education services. Most of the parents we represent are people of color living in poverty, raising their children in homeless shelters or public housing, and in highly policed neighborhoods, making them vulnerable to government surveillance, including ACS. Families 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 an ACS worker. School attendance interrupted by homelessness, or an angry landlord seeking to evict a family illegally can result in a call to the State's Central Registry of Child Abuse and Maltreatment (SCR) and begin an ACS investigation.

Instead of relying on community-based resources, such as food pantries, support groups, or helping families access government benefits, social workers, teachers and case workers report families to ACS. Once ACS is involved in a family's life, the risk of family separation increases exponentially. Recent research has shown that 44% of Black children in New York City are investigated and approximately 6% are placed into the foster system, and that 43% of Latinx/Hispanic/Latino/a/é children in New York City experience an investigation.³ In 2019, over 216,000 New York children were subjected to child welfare investigations.⁴ The vast majority of investigations clear the accused parent of wrongdoing; in nearly 70% of

² Jerry Milner and David Kelly, *It's Time to Stop Confusing Poverty with Neglect*, The Imprint, January 17, 2020, Available at <https://imprintnews.org/child-welfare-2/time-for-child-welfare-system-to-stop-confusing-poverty-with-neglect/40222>

³ Kinya Franklin & Sara Werner, 'A Call to Action': New Research Finds Extremely High Rates of Investigations of Black, Brown and Native Families, *Rise Magazine* (Nov. 3, 2021), <https://www.risemagazine.org/2021/11/a-call-to-action-research> (citing Frank Edwards, Sara Wakefield, Kieran Healy, Christopher Wildeman, "Contact with Child Protective Services is pervasive but unequally distributed by race and ethnicity in large US counties," *Proceedings of the National Academy of Sciences* 118 (Jul 2021)).

⁴ Williams, Sarah Catharine, "State Level Data for Understanding Child Welfare in the United States," *Child Trends* (October 28, 2020), available at <https://www.childtrends.org/publications/state-level-data-for-understanding-child-welfare-in-the-united-states>

its investigations, CPS finds no credible evidence of child maltreatment.⁵ This number is dropping due to changes in the law that created a more equitable standard for indication.⁶

The Importance of Early Defense Representation and Family Miranda Rights

For these reasons, our Early Defense practice is a crucial resource to *prevent* family separation. Our attorneys, social workers, and advocates work with parents at the onset of an investigation to ensure that parents and caretakers understand their rights, have help navigating the process of an investigation and Court filing, and to provide speedier referrals to supportive services that families believe could be beneficial and that help avoid family court filings. Thanks to the generous support of the City Council, many parents in New York City have been able to access the support of legal advocates at the early stages of an ACS investigation. Eighty percent of the families we work with during an initial investigation are able to remain together and avoid Court proceedings altogether. This representation has led to less family separation and fewer Court filings.

There is widespread agreement that families facing child welfare investigations benefit from early representation. In February 2018, after conducting an extensive investigation and hearing from many child welfare and Family Court stakeholders, the New York State Commission on Parent Representation issued a report to Chief Judge Janet DiFiore which recommended that parents be “timely provided with relevant information about the right to counsel, and that parents be granted access to counsel during a child protective agency investigation and sufficiently in advance of the first court appearance.”⁷ Even the federal Administration for Children and Families has come out in support of early assignment of counsel: “[t]here is a growing body of empirical research linking early appointment of counsel (at or prior to a party’s initial appearance in court) and effective legal representation in child welfare proceedings to improved case planning, expedited permanency and cost savings to state government.”⁸ Most recently, the Office of Court Administration issued a rule that “counsel shall be provided at the first court appearance or immediately following the request for counsel, whichever is earlier.” Family Court Rule 205.19 (a).

City Council has introduced a critical bill that would address the imbalance of power and bias in ACS investigations by ensuring parents are aware of their rights - including the right to counsel - at the onset of the investigation. When ACS investigates a family after a call is made to the SCR, ACS will often begin their investigation by visiting the family’s home and speaking with the subject parent or caretaker. Parents we work with have long described these investigations as frightening and overwhelming. Families already living under close surveillance by police, shelter, and hospital staff, are subjected to middle-of-the-night visits,

⁵ U.S. Department of Health & Human Services, Administration for Children and Families, Administration on Children, Youth and Families, Children’s Bureau. (2020). Child Maltreatment 2018. Available at <https://www.acf.hhs.gov/cb/research-data-technology/statistics-research/child-maltreatment>.

⁶ <https://www1.nyc.gov/assets/acs/pdf/data-analysis/flashReports/2022/09.pdf>

⁷ http://ww2.nycourts.gov/sites/default/files/document/files/2019-02/PLR_CommissionReport.pdf?fbclid=IwAR2DGVUGk86o8SH4HkViJ7a9uJyYHWZt7rktZo44xQlNyKH3K9HYNBwqLiw, page 16.

⁸ US Dept of Health and Human Services, ACYF-CB-IM17-02, January 17, 2017 (citations omitted).

body searches of their children, and invasive questioning about their family, and are often asked to sign documents waiving privacy rights out of fear of losing their children.⁹

We are well-aware that empowering parents with knowledge better protects children. Providing parents knowledge of their full legal rights serves to educate parents in order to make the best decisions for their children.

The Harms of Family Separation and the Importance of Family Bonds

Once ACS files a petition against a parent and they are brought to Court, far too frequently ACS will seek, and judges will grant, a request to remove a child from their parent's custody and place that child in the foster system. The trauma caused by forced family separation is well documented. There are hundreds of studies that detail the long-term harmful effects on children when separated from a parent¹⁰. The removal of children often occurs without serious regard for family unity or well-being, and child removals, though purportedly intended to protect children from abuse or mistreatment, often do more harm than good. As told by one expert, when a young child is 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. That interrupts the brain's architecture at a critical time of development, when neural circuits — the pathways necessary to carry information to and from the brain — are forming rapidly, at a rate of more than 1 million neural connections each second¹¹ in infants and toddlers. Stress hormones block those neurons. This can lead to delayed development in reason, learning and emotional development... If continuously exposed to toxic stress over time, damage done to the child's brain cannot be changed,¹² studies have shown."¹³

Once a family is separated and while families fight to reunify, it is vital for a child to be able to be cared for by family or familiar community members. However, it is far too common for children to be placed into the home of a non-relative, and to have their family visits with their parents supervised by strangers. Nearly 60 percent of children in foster care in New York City are placed in nonkinship settings.¹⁴ There are a few reasons why so many children end up in nonkinship foster care: the process to clear a kinship visitation or placement resource takes far too long after our parents and children identify kinship resources for their family; and ACS rejects many kinship resources based on old and irrelevant indicated SCR records without conducting the legally required safety assessment. In our experience, we have seen grandparents denied the ability to care for their newborn grandchildren because of an

⁹ Eli Hager. "Police Need Warrants to Search Homes," ProPublica, October 13, 2022, <https://www.propublica.org/article/child-welfare-search-seizure-without-warrants>

¹⁰ Laura Santhanam. "How the toxic stress of family separation can harm a child," PBS News Hour, June 18, 2018, <https://www.pbs.org/newshour/health/how-the-toxic-stress-of-family-separation-can-harm-a-child>

¹¹ "What is Early Childhood Development," <https://developingchild.harvard.edu/guide/what-is-early-childhood-development-a-guide-to-the-science/#cps>

¹² The Center on the Developing Child. "How Toxic Stress Derails Healthy Development," <https://www.youtube.com/watch?v=rVwFkcOZHJw>

¹³ Bruce S. McEwen. "Protective and damaging effects of stress mediators: central role of the brain," December 2006, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3181832/>

¹⁴ NYC Mayor's Office of Administration, Mayor's Management Report, Administration for Children Services, 2022, Available at <https://www1.nyc.gov/assets/operations/downloads/pdf/mmr2022/acs.pdf>

indicated case regarding a teenager's truancy years or decades prior; and an aunt who is unable to supervise family visits for a beloved niece because she was found to have used an illicit substance twenty-years prior even though she has since abstained.

In addition to family resources being cleared to care for children full time, it is vital that ACS quickly clear these resources to be family visit supervisors. A visit between a child and their parent at home, at the park, or at the library with family and friends is a far better environment for a child than an agency office. Moreover, when a parent or child's work or school schedule does not allow for family time to take place at an agency office during business hours - and the family can only spend time together in the evenings or weekends - delays in clearing kinship resources can delay any possible contact between a parent and a child. This delay can result in weeks and months when a child is unable to see their parent.

To address these problems, which contribute to the trauma of family separation, and delayed reunification and longer stays in the foster system, we offer the following recommendations:

Recommendations

1. Reduce Family Separation, and Promote Quicker Reunification to Avoid the Need for Placing Children in Relatives' Homes

The Committee should prioritize policies and programs that support families and keep children in their homes. Families need stable and permanent housing. Parents need safe, flexible, and dignified employment that allows them to support their families, and access to quality child care that accommodates a variety of schedules and needs. Families need access to affordable health services, including mental health services, that do not have months-long waitlists, and quality educational services. Parents struggling with substance use, or mental health issues should be able to access supportive housing programs that allow families to stay together in a safe and caring environment. Currently, immense resources are poured into investigations, surveillance, court proceedings, and the foster system – all that work to punish parents and separate families. We recommend channeling these immense resources into supporting parents in their efforts to create safe and stable environments for their children.

We also recommend better training and equipping those that work closely with families - medical providers, teachers, and case workers - with these resources. These providers will then be better able to connect parents and children with the resources and support they need, and avoid the unnecessary harm of a report to ACS.

2. Expedite Clearances of Kinship Resources for Placement and Resource-Supervised Visitation

We recommend that the Committee take steps to ensure that ACS expedites investigations of relatives, both for placement and for family visitation, and create timelines by which these investigations must be completed. ACS has acknowledged the importance of keeping children with family or community members, if they are separated from their parents, and the law

requires an immediate investigation of any such kinship resources.¹⁵ ACS should be required to document their efforts and provide data to support these efforts.

3. Minimize The Unnecessary Disqualification of Kinship Resources Based on Indicated cases

We recommend the Committee ensure that ACS does not misuse its discretion to approve or reject kinship resources. The law currently requires ACS to complete individualized assessments of each kinship resource, and document their investigations. The Committee should monitor the frequency with which ACS fails to clear a kinship resource; the frequency the investigation is fully documented; the reason a resource is not cleared; and the duration of each investigation so that ACS is held accountable for its actions regarding placing children with relatives.

4. Shorten Stays in the Children's Center

Finally, we recommend that this Committee require that ACS report on its efforts to prioritize family reunification as an alternative to a lengthy stay in the Children's Center. There is wide-agreement that children should never have to be placed in the Children's Center, and certainly not for an extended period of time. Once placed at the Children's Center, we have seen siblings being separated and unable to see each other; families being denied regular visits even when Court ordered; schooling and medical care being disrupted; phones taken away from children; and children being able to leave the Center unaccompanied day or night - leaving a parent to wonder where in New York City their child may be.

Rather than solely focusing on placing children languishing in the Children's Center in the foster system, ACS should make every effort to reunify the family immediately. The law requires that the harm of removal - like lengthy stays in the Children's Center - be considered in assessing whether a child should be removed or remain separated from their family.¹⁶ The law also requires that ACS make reasonable efforts towards the goal of reunification.¹⁷ ACS must consider the harm of removal caused by extended stays in the Children's Center in assessing risk to the children and do an ongoing assessment about family reunification.

Conclusion

We are grateful to the City Council for highlighting concerns about the harm the city's foster system causes families. We see everyday how low income Black and Latine parents are

¹⁵ Family Court Act Section 1017 provides that, "[i]n any proceeding under this article, when the court determines that a child must be removed from his or her home, pursuant to part two of this article, or placed, pursuant to section one thousand fifty-five of this article: (a) the court shall direct the local commissioner of social services to conduct an immediate investigation to locate any non-respondent parent of the child and any relatives of the child, including all of the child's grandparents, all relatives or suitable persons identified by any respondent parent or any non-respondent parent and any relative identified by a child over the age of five as a relative who plays or has played a significant positive role in his or her life."

¹⁶ *Nicholson v. Scopetta*, 3 N.Y.3d 357 (2004).

¹⁷ N.Y. Fam. Ct. Act § 1027; 1089.

unfairly treated by the child welfare and foster systems - which we more accurately describe as the family regulation system - and urge the City Council to consider ways to reduce the city's reliance on foster placements and invest in strengthening families so that children can remain home, in their communities and schools. We welcome the opportunity to work with you on this issue.

If you have any questions, please feel free to contact Nila Natarajan, Supervising Attorney & Policy Counsel in the Family Defense Practice at Brooklyn Defender Services, at nnatarajan@bds.org.