



**TESTIMONY OF:**

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**Presented before**

**The New York City Council**

**Committees on Oversight and Investigations, Public Safety, and General Welfare**

**Operational Challenges in Family Court**

**April 24, 2023**

On behalf of Brooklyn Defender Services, we would like to thank the the New York City Council's Committees on General Welfare, Oversight & Investigation, and Public Safety for holding this oversight hearing on Operational Challenges in Family Court, and for looking at the ways in which family court and the Administration for Children's Services impact communities of color and low-income families.

Brooklyn Defender Services (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. The Family Defense Practice has represented parents and caregivers in family court since 2007. Today, BDS' Family Defense Practice (FDP) is the primary provider of legal representation to parents facing allegations of child abuse and neglect in Brooklyn's family court. In over 15 years of service, FDP has represented almost 15,000 parents and caretakers in family court and impacted the lives of over 30,000 children.

**I. Conditions in family court dehumanize and traumatize New York City families**

It is [well established](#) that Administration for Children's Services (ACS) investigations and any subsequent legal prosecutions primarily target Black and Brown families and families living in poverty. The families appearing in family court have been disproportionately surveilled and policed by ACS. A family's race and socioeconomic status make them vulnerable to being

targeted by reporting and ACS investigation<sup>1</sup> As it functions today, the family court does not operate as a check on the over-policing of low-income Black and Brown families or as a vigilant protector of parent or children's fundamental rights. Rather, it often operates as an extension of the surveillance experienced by communities of color at the hands of ACS, and the court process itself causes lasting trauma for the most marginalized families. Together, ACS and its attendant systems, including the foster system, so-called preventive services, and the family court are most accurately described as the family regulation, rather than the "child welfare" or "child protective" system.<sup>2</sup> Although the stated intention of New York City's family regulation system, of which the family court is an integral part, may not be to separate Black and Brown children from their families, Black and Brown families are the most likely to be prosecuted by ACS and separated by the court system. The Report of the Special Advisor on Equal Justice in the New York State Courts issued in October 2020 (the "Special Advisor's Report") confirmed much of our experiences in the family courts. Parents are routinely targeted by racism and overt discrimination by judges, court attorneys, clerks, and court officers.

Parents, caregivers, and children with involvement in the city's family court system have often experienced a lifetime of offensive and harmful interactions with racist government systems that are paralleled and compounded in encounters with the courts. We have witnessed children that ACS seeks to remove from their parents' homes being literally ripped from their parents' arms by court officers; young people who have been criminalized in schools for normal adolescent behavior being presumed guilty, labeled as gang members, and treated with overt aggression; and parents and young people being taunted with racist epithets by court officers.<sup>3</sup>

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<sup>1</sup> In the state of New York, African American children make up 16% of the general population and 48% of the foster system population. *See* New York Profile Transition-Age Youth in Foster Care. In New York City, African American children account for 27% of the children under the age of eighteen but a staggering 57.1% of the children separated from their families in the foster system. In contrast, 24% of the children in New York City are white, but white children comprise only 4% of the foster care population. Tina Lee, *Catching A Case: Inequality and Fear in New York City's Child Welfare System* 5-6 (2016). In addition to being more likely to have contact with New York City's family regulation system, families of color fare worse than white families once a case has been opened. Studies show that children of color are more likely to be separated from their families than white families, even under the same circumstances of risk. *See, e.g.,* U.S. Gov't Accountability Office, GAO-07-816, *African American Children in Foster Care: Additional HHS Assistance Needed to Help States Reduce the Proportion in Care* 8 (2007). Furthermore, the harm of separation is more likely to be exacerbated for children of color because they spend a longer time separated from their families, change placement more frequently, are less likely to receive necessary services, are less likely to ever reunify with their families, and are more likely to age out of foster care without being adopted. *See* Elisa Minoff, *Entangled Roots: The Role of Race in Policies that Separate Families*, Center for the Study of Social Policy (2018); Fluke, et al., *A Research Synthesis on Child Welfare Disproportionality* (Jan. 2011).

<sup>2</sup> *See* Dorothy Roberts, *Abolishing Policing Also Means Abolishing Family Regulation*, *Chronicle of Social Change* 2 (2020),

[chronicleofsocialchange.org/child-welfare-2/abolishing-policing-also-means-abolishing-family-regulation/44480](https://chronicleofsocialchange.org/child-welfare-2/abolishing-policing-also-means-abolishing-family-regulation/44480)

<sup>3</sup> Reporting from the Special Advisor on Equal Justice in the New York State Courts, <https://www.nycourts.gov/whatsnew/pdf/SpecialAdviserEqualJusticeReport.pdf>

Families are dehumanized from the moment they cross the courthouse threshold.<sup>4</sup> The people we represent—overwhelmingly low-income Black and Latine New Yorkers—are made to pass through a metal detector to access the court, while staff and attorneys—often white—are able to skip the line. Parents cannot carry snacks for toddlers or access private space to breastfeed. Court officers, attorneys, ACS staff, and judges routinely refer to parents with generic and dehumanizing terms as “birth mom” or “respondent.” Court staff and officers are routinely rude, insensitive, and impatient and have reprimand parents for expressing emotion or speaking out of turn. We have witnessed parents muted or removed from virtual appearances for speaking or during proceedings. Far too often parents suffer negative legal consequences because their natural, emotional response to a threat to their family’s integrity is interpreted as evidence of mental instability or a danger to their children.

## **II. Practices of Family Court Legal Services (FCLS) contribute to punitive and prolonged court proceedings**

Family Court Legal Services (FCLS) is the legal representative for ACS in Article 10 proceedings. Given the rehabilitative purpose of the Family Court Act, FCLS should uphold ACS’ policies and principles, strive to reduce barriers to resources and support, and avoid punishing and separating families. Instead, our experience is that FCLS’ approach to prosecuting New York City’s most marginalized families often relies on punitive litigation and unnecessary delay. This approach exacerbates the harm families experience in the family regulation system.

Families facing allegations of neglect or abuse in family court, are almost always told, if not court ordered, to complete a litany of services to address ACS’ concerns, persuade a court to reunify their family, or achieve a positive resolution of their court case. ACS has agreed that families be provided certain provisions and payment for services. For example, if a family does not qualify for health insurance and therefore must pay out-of-pocket to access recommended or court ordered services, ACS’ policies concede that it should cover these costs. However, ACS rarely covers these costs unless they are ordered to do so. And even then, they usually put up a fight. It has been our experience that even when a court orders ACS to cover the costs for a family to travel for visits, provisions like furniture or food, or childcare their attorneys routinely object to these orders even threatening to appeal the court’s orders.

Similarly, when a family has been separated by the court, ACS has clear policy that establishes that children should have visits with their parents in the least restrictive environment that ensures the safety of the child.<sup>5</sup> Rather than working with families to expand this visitation - more hours a day, in more child-friendly settings outside of an ACS or agency office, or with less restrictive

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<sup>4</sup> Report and Recommendations of the Committee on Families and the Law: Racial Justice and Child Welfare, <https://nysba.org/app/uploads/2022/03/Committee-on-Families-and-the-Law-April-2022-approved.pdf>

<sup>5</sup> Administration for Children’s Services Policy #2013/04, available at <https://www.nyc.gov/assets/acs/policies/init/2013/B.pdf>

supervision - counsel for ACS often objects to more safe visitation time between parents and children. Such an approach hinders reunification and prolongs court proceedings.

ACS agrees that court orders and resolutions should limit collateral consequences for parents and families, focus on the best outcomes for children, and allow for rehabilitation for parents. Instead, we have experienced FCLS demanding full stay away orders of protection against parents - which may have harmful consequences in immigration proceedings - when a simple order requiring the parent to leave a family's home would effectuate ACS' goals. We have witnessed FCLS requiring a parent to voluntarily accept a finding of neglect - akin to a no-contest guilty plea - before agreeing for a child to return to their home. This approach is counter to the best interests of a child; if ACS agrees that a child is safe to return home, then requiring any sort of punitive settlement puts a parents' unrelated legal choices before the needs of the child, punishes a family for exercising their right to contest allegations at trial, and coerces a parent into an unfavorable settlement and delays children leaving the foster system. By pursuing legal "wins" rather than considering the best interests of children and families, FCLS creates unnecessary instability and barriers to reunification for families.

Article 10 proceedings require FCLS to provide information to the court and counsel regarding the current status of a child's placement in the foster system, the nature of visits between a parent and their child, children's wellbeing, such as schooling and medical care, and the status of services for both children and parents. By law and through discovery demands, ACS is required to provide a range of discovery which forms the basis of the evidence against the parent, such as ACS records, hospital records, shelter records, police records, and educational records. Without the provision of timely and complete discovery from ACS to counsel for parents, families cannot fully be apprised of their legal options and will be unprepared for trials and other hearings. Lack of discovery also makes it impossible for a parent to determine whether they should accept a settlement of the case against them. FCLS often provides discovery at the last minute - days or even hours before a trial or hearing is scheduled to begin. Parents are then forced to make uninformed and rushed legal decisions about whether to pursue a trial, seek an emergency hearing, or to accept a settlement without crucial evidence in their case, or to request adjournments - further delaying family reunification and prolonging court proceedings.

ACS and foster agencies have a responsibility to regularly provide information to the court and counsel regarding the case, the family, visits, and services, which is relied on by the court to make decisions about families, including how much time they can spend together and if they should be reunified. These reports are often not provided at all, or are routinely provided on the day of a court appearance, with little time for counsel to review the reports and discuss with their clients. The delay in turning over these reports result in further delays. Similarly, parents are frequently provided last-minute settlement offers, often minutes before a trial is scheduled to begin. This leaves parents to make vital decisions for their families as they are walking into the

courtroom - deciding between exercising their legal rights, resolving traumatic legal proceedings, and reunifying their families.

In our experience, FCLS practices are not consistent with ACS' stated policy or goals, disempower families, prolong court proceedings and family separation, and undermine the Family Court Act's stated goals of rehabilitation and pursuing the best interests of children.

### **III. NYC's interdisciplinary parental defense model shortens foster placements and saves resources**

In order to meaningfully work with and defend parents and families, BDS and other providers around the city have created a robust interdisciplinary model of defense that empowers families to make the best decisions for themselves; avoids some of the most traumatizing harms of investigations; avoids court proceedings entirely; keeps families together; and if separated, returns child home faster.

This model of legal representation, which New York City has been invested in, works. Our success in reducing the length of time children languish in the foster system by empowering their parents for their return is well documented. The largest study of parental representation in family court, conducted by Casey Family Programs and New York University School of Law, found that holistic, interdisciplinary representation and services by our offices reduced children's time in the foster system by nearly four months and saved New York City \$40 million in foster care expenditures per year. The study found that these outcomes were achieved without any difference in safety to children.<sup>6</sup>

BDS provides comprehensive legal and social work services, and our multidisciplinary teams ensure the best outcomes for the parents we represent and their families. Our social workers work closely with parents to listen and understand what they may be seeking assistance with and to offer them support in obtaining those resources. Together, we identify needed resources and supports for families, and make connections to these supports. Our advocates connect families to community-based programs like substance use treatment, mental health treatment, and parenting support for families with special needs. We also assist families to access tangible resources such as assisting a family in signing-up for public benefits and health insurance, navigating the complex web of public housing systems, obtaining food at food pantries and accessing other supplies for children. We accompany clients to meetings with ACS, foster agencies, and service providers to ensure parents' lived experience and expertise is centered, that any barriers to resources are addressed, and court orders are followed.

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<sup>6</sup> <https://www.sciencedirect.com/science/article/pii/S019074091930088X>

At the same time, our attorneys are working on a parent's legal case, appearing in court to litigate complex trials and hearings; providing in-depth legal counsel to parents; negotiating with counsel for ACS; and filing motions to address a complex variety of issues, such as the frequency of family visits, reunifying families, and addressing the failures of ACS and foster agencies to fulfill their obligations to families. Our attorneys and advocates are often stepping in to support families when ACS, foster agencies and their counsel place unneeded and punitive barriers between children, their parents, and the resources and supports they need.

Our work with parents is highlighted in our representation of Ms. R. ACS removed Ms. R's son from her care due to concerns about instability in her mental health. Ms. R was committed to stabilizing her mental health and reunifying with her son. Rather than build a rapport with Ms. R, make a holistic assessment of her needs based on conversations with her, and connect her to services and resources - ACS and the agency made minimal referrals to generic services that did not meet the specific needs of our client. In contrast, our office worked closely and tirelessly with Ms. R - getting to know her and her family, earning her trust, and working with her through the challenges of advocating with her mental health treatment team to find the best course of treatment to meet her needs. Vitally, when it became clear Ms. R's underlying need was safe housing that accommodated her physical and medical disabilities, our office helped her apply for supportive housing. With stable housing and mental health support, Ms. R grew as a parent and made tremendous strides towards reunifying with her son.

New York City's interdisciplinary parental defense model ensures that parents are empowered to make the best decisions,- with the support of counsel and social work support - for their families during an investigation and legal proceedings. This model centers families in family court proceedings and ensures their needs are met in and outside of court.

#### **IV. Families have better outcomes when parents know their rights**

Families and parents have a statutory and constitutional right to counsel in Article 10 proceedings. It is vital they have access to advice throughout the course of an ACS investigation. Even where allegations of maltreatment are meritless, ACS investigations subject families to invasive, stressful, and traumatic treatment. Similar to the ways in which the criminal legal system was exposed for using pretext to “stop-and-frisk” a person based on their race or the neighborhood they live in, an initial investigation can lead to further invasive involvement by the family regulation system, including surveillance of a family, and even the removal of children from their home.<sup>7</sup> This type of pretextual surveillance and punishment within the family regulation system may apply to a range of behaviors or indicators of poverty that are stigmatized

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<sup>7</sup> Burrell, Michelle. “Child Welfare Needs to Have It’s ‘Stop-And-Frisk Moment.’ *The New School Center for New York City Affairs*. <http://www.centrernyc.org/child-welfare-needs-to-have-its>. June 27, 2018.

and “othered.”<sup>8</sup> Families living in homeless shelters or 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 authorities and begin an investigation into a family. The trauma of these investigations is amplified because parents do not know of their rights during this process and are unable to make informed decisions. When parents receive advocacy and support at the outset of an investigation, and are informed of their rights, families are less likely to face prosecution in family court, experience the harm of separation and have better outcomes.

Funded by City Council, the **Right to Family Advocacy Project** provides low-income parents access to legal representation early in ACS investigations, to ensure legal support, understanding and the resources needed to navigate these frightening and high stakes investigations. Our office, along with The Bronx Defenders, Center for Family Representation and Neighborhood Defender Services of Harlem, offer parents and caregivers advice about their rights and options, and the consequences of decisions during an investigation; assistance and advocacy in communications and meetings with ACS and help identifying the challenges that brought their children to the attention of ACS and assistance in accessing services, resources, and benefits to meet family needs. This early representation helps ease some of the fear and confusion that these investigations create for families and also allows parents to make informed decisions that protects their families from some of the most traumatic parts of an investigation, keeps their families together, and avoids further legal prosecution.

The Council must continue to invest in programs that inform parents of their rights, and pass legislation including [Int. 294-2022](#) (Ung) and [Int.1736-2019](#) (Rivera) which will require ACS investigators to inform parents of their rights during an investigation.

Passing this legislation will ensure that all New Yorkers, regardless of income or neighborhood, understand their rights during an ACS investigation. This legislation does not create new rights and does not hinder ACS’ authority to immediately intervene in an emergency – but instead ensures that all parents know their rights and are able to make the best and most-informed decisions about their families. These investigations are serious government invasions of families’ privacy and may infringe on their right to family integrity, resulting in the parents’ loss of the care and custody of their own children.

In our practice, we regularly meet with parents who have been dealing with ACS for weeks or months without the benefit of counsel or information about their rights. Without legal guidance, parents receive no explanation of their rights during an investigation, are rarely informed of the allegations against them, and are not told of their right to speak to an attorney. They are often

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<sup>8</sup><https://imprintnews.org/child-welfare-2/time-for-child-welfare-system-to-stop-confusing-poverty-with-neglect/4022>  
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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, strip-searched, and photographed at all hours of the day and night—including while they are at school—without their parents' permission.<sup>9</sup> These invasive investigative procedures – with no oversight – are unnecessary and harmful to children and their families.

New York has robust safeguards in place to ensure that ACS can conduct a thorough investigation into allegations of child maltreatment. Nothing in this legislation curtails these protections or limits the legal mechanisms available to ACS during an investigation. Under Section 1034 of the Family Court Act, child protective agencies can seek court orders to help them facilitate an investigation and protect children even before they have filed a case in court. In those rare situations where there is credible evidence to believe a child is in immediate danger, ACS has legal authority to take a child into custody without a court order.<sup>10</sup> It is notable that these legal mechanisms are rarely used. Instead, ACS routinely enters homes without meaningful consent and imposes its authority inappropriately.

Ensuring that parents have access to their rights during an investigation will allow parents to make informed decisions for their family and will make this investigation process less frightening and traumatizing for the whole family.

## **V. Investment in Family Defense**

The city's family defense representation is not currently funded adequately to meet the state's statutory and constitutional mandates. We ask that the Council work with Mayor Adams, Mayor's Office on Criminal Justice, and the state to expand funding to ensure high quality family court representation for low-income parents and caregivers. Specifically:

- We ask the city to add to the mayor's budget \$30 million to be distributed across the family defense providers (BDS, The Bronx Defenders, Center for Family Representation, and Neighborhood Defender Service of Harlem) so that we can begin to meet the caseload standards for parents' attorneys. In 2021, the Office of Indigent Legal Services promulgated [caseload standards](#) that ultimately show the city should be allocating \$80 million to this function. In FY23, \$50 million was allocated. We are asking the City Council to bring the total to \$80 million in FY24, or at minimum, that \$80 million be allocated in FY25 and a substantial step forward in FY24 with an additional \$15 million.
- Increase funding for the Right to Family Advocacy Initiative which provides support, guidance, and counsel to parents in ACS investigations, avoids family separation and court filings, and provides representation to parents in SCR hearings that allow them to

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<sup>9</sup> Rise, *Surveillance Isn't Safety- How over-reporting and CPS Monitoring Stress Families and Weaken Communities* (Sept. 17 2019).

<sup>10</sup> NY FAM CT § 1024 (Permitting the child protective agency to remove a child from their home without a court order in the event of a true emergency).



find employment. The modest increase in funding is to enable our offices to increase capacity and address the increase in program costs. BDS submitted a joint request for \$825,000, which is \$3.3 million across the four providers, to fully fund the Right to Family Advocacy Initiative.

The city is mandated with the obligation to provide adequate services for this function by law and must meet this responsibility through increased funding for family defense contracts immediately. The City Council should demand that the mayor's budget be amended to add these funds to the city budget in FY23.

Anyone facing the possibility of being separated from their children, or fighting to reunify with their families, would want - and deserves - to have well-resourced attorneys by their side; attorneys who have the time and expertise to dedicate to their clients. Families also need access to social workers and advocates who can help them navigate the vast variety of complex bureaucratic systems necessary to ensure their families have the resources they need to thrive and be safe.

If you have any questions, please contact Nila Natarajan at [nnatarajan@bds.org](mailto:nnatarajan@bds.org).