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Presented Before

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Oversight Hearing on Maternal Health, Mortality, and Morbidity

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My name is Nila Natarajan and I am a Supervising Attorney and Policy Counsel in the Family Defense Practice at Brooklyn Defender Services (BDS). I am also a member of the New York City Maternal Mortality and Morbidity Review Committee. We thank the Committees on Health & Hospitals and Chairs Schulman and Narcisse for the opportunity to address the Council about maternal health, mortality, and morbidity.

BDS is a public defense office whose mission is to provide outstanding representation and advocacy free of cost to people facing loss of freedom, family separation and other serious legal harms by the government. BDS provides comprehensive public defense services to approximately 25,000 people each year. We are the primary defense provider for parents and caretakers in Brooklyn who are facing ACS investigations or child neglect and abuse cases in family court. We use a multidisciplinary approach that offers our clients access to social workers, advocates and civil and immigration attorneys who work to minimize any collateral impact of our clients' court cases. Our Family Defense Practice represents about 2,300 parents and caretakers each year. We have represented over 14,000 parents and caretakers in Brooklyn Family Court and have helped more than 30,000 children remain safely at home or leave foster care and reunite with their families.

Inequities and discrimination in family regulation system

Given our extensive experience working with parents and caretakers, we are keenly aware of the ways in which inequities in the City's provision of maternal, perinatal, and prenatal healthcare render Black and Latine parents and families vulnerable to the surveillance and punishment of the family regulation system, also known as the child welfare system.[1] Like the criminal legal system, race and poverty are

[1] Many, including scholar Professor Dorothy Roberts, have come to refer to the so-called "child welfare" system as the family regulation system, given the harms historically and currently perpetuated by the system. See e.g., Dorothy Roberts, Abolishing Policing Also Means Abolishing Family Regulation, The Imprint (June 16, 2020), https://imprintnews.org/child-welfare-2/abolishing-policing-alsomeans-abolishing-family-regulation/44480.

defining characteristics of the family regulation system. Most of the people we represent are people of color living in poverty, raising their children in homeless shelters or public housing, utilizing public benefits and healthcare, and living in highly policed and under-resourced neighborhoods, making them vulnerable to government surveillance. Poor communities and communities of color are disproportionately impacted by the state's family regulation system. In New York, 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.[2] Black children also fare far worse in the foster care system and have much longer stays in care.[3]

This Council's commitment to improving maternal health outcomes must be rooted in an understanding of the intersections of maternal and perinatal health and the family regulation system, and how these systems perpetuate harm against Black and Latine parents and families. We encourage the Council to engage in robust dialogues with impacted parents, families, and their providers and to enact bold solutions that ensure healthcare that is non-discriminatory, culturally responsive, respectful, supportive, and patient-informed.

Medical care and family surveillance

Critical for the consideration of this Council is a primary way that pregnant people and new parents come to the attention of family regulation authorities: covert drug testing of pregnant people and infants. Frequently, particularly among low-income Black and Latine women, prenatal and postpartum care providers test birthing parents and their new infants without notice or their consent. In our practice, we have rarely—if ever—see a recorded rationale for drug testing nor indication that the test was deemed medically necessary in medical records.[4] Nevertheless, our city's hospitals routinely conduct these covert drug tests and report positive toxicology results to the Office of Children and Family Services' (OCFS) Statewide Central Register of Child Abuse and Maltreatment (SCR). This routine practice, sometimes termed "test and report," much like the policing practice of "stop and frisk," exposes families to harmful unnecessary government intervention, and in some cases, traumatic family separation.[5]

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[2] New york State Office of Children and Family Services, 2021 Monitoring and Analysis Profiles With Selected Trend Data: 2017-2021, Published 2022, https://ocfs.ny.gov/main/reports/maps/counties/New%20York%20State.pdf, page 7.

[3] United States Accountability Office, African American Children in Foster Care: Additional HHS Assistance Needed to Help States Reduce the Proportion in Care, July 2007, Available online https://www.gao.gov/new.items/d07816.pdf.

[4] Of note, the American College of Obstetricians and Gynecologists (ACOG) opposes non-consensual drug testing and responding to drug use during pregnancy with punitive measures such as criminal prosecution or the threat of child removal. That criminalization and punishment for substance use disorder during pregnancy are ineffective as behavioral deterrents and harmful to the health of the pregnant person and their infant. Even though leading medical organizations agree that a positive drug test should not be construed as child abuse or neglect, biologic testing of pregnant people and newborns for the presence of licit and illicit substances, and reporting parents to authorities based on test results, is often an institutional policy put in place with the intention of promoting public health., See https://www.acog.org/clinical-information/policy-and-position-statements/statements-of-policy/2020/opposition-criminalization-of-individuals-pregnancy-and-postpartum-period.

[5] Movement for Family Power, et al., Family Separation in the Medical Setting: The Need for Informed Consent, Nov. 2019, https://static1.squarespace.com/static/5be5ed0fd274cb7c8a5d0cba/t/5e6ac6f3ea60e51301d4ee47/15840 56 066082/Policy+Brief+2020.pdf.

Infants born to Black mothers are more likely than those born to white mothers to be screened for illicit drugs, regardless of whether they met hospital guidelines for screening.[6] Studies of the practice have demonstrated lower rates of positive screens for drugs among Black birth parents than their peers.[7] Despite similar or equal rates of illegal drug use during pregnancy, Black pregnant people are ten times more likely to be reported to family regulation agencies for prenatal drug use. This is true even though Black and Latine pregnant people use illicit substances at virtually the same rate as white pregnant people, and white pregnant people use cigarettes and alcohol at greater rates than Black and Latine people during the prenatal period.

Before performing any test on a pregnant individual or newborn, including screening for the presence of illicit substances, informed consent should be obtained from the pregnant person or parent. This consent should include the medical need for the test, information regarding the right to refusal and the possibility of associated consequences for refusal, and discussion of the possible outcome of positive test results. In addition, obstetrician–gynecologists or other obstetric care practitioners should consider patient self-reporting as an alternative, which has been demonstrated repeatedly to be reliable in conditions where there is no motivation to lie, and in clinical settings where there are no negative consequences attached to truthful reporting.[8] Similarly, in a recent position statement, the National Perinatal Association warned that treating perinatal drug use in pregnancy "as a deficiency in parenting that warrants child welfare intervention" has many risks, including the consequence of "pregnant and parenting people avoiding prenatal and obstetric care and putting the health of themselves and their infants at increased risk." As they put it, the "threats of discrimination,[9] incarceration, loss of parental rights, and loss of personal autonomy are powerful deterrents to seeking appropriate prenatal care."[10] Although testing of pregnant people and newborns for the presences of licit and illicit substances in theory is intended to promote public health, these medical expert perspectives make clear the existence of the attendant risks of such testing.

Efforts to protect children from harm have expanded the surveillance responsibilities of actors who come into contact with families, such as health care workers and social workers, and perversely and needlessly exposed the most under-resourced and vulnerable families to separation and the disruption of maternal-infant bonding. The expansion of reporting obligations into the realm of reproductive

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[6] Amy Norton, Black Babies more often screened for drug exposure, *Reuters Health*, May 18, 2010, Available online at https://www.reuters.com/article/us-drug-exposure/black-babies-more-often-screened-for-drug-exposure-idUSTRE64H4LF20100518.

[7] Marc A. Ellsworth, BS, Timothy P. Stevens, MD, MPH, and Carl T. D'Angio, MD, Infant Race Affects Application of Clinical Guidelines When Screening for Drugs of Abuse in Newborns, Pediatrics, (May 17, 2010).

[8] Am. Coll. of Obstetricians and Gynecologists, Statement of Policy, Opposition to Criminalization of Individuals During and the Postpartum Period (Dec. 2020), at https://www.acog.org/clinical-information/policy-and-position-statements/statements-of-policy/2020/oppositi on-criminalization-of-individuals-pregnancy-and-postpartum-period (internal citations omitted).

[9] Nat'l Perinatal Ass'n, Position Statement, Perinatal Substance Use (2017).

[10] Id.; see also Shelly Gehshan, Southern Reg'l Project on Infant Mortality, A Step Toward Recovery: Improving Access to Substance Abuse Treatment for Pregnant and Parenting Women ii, 5 (1993); Steven J. Ondersma et al., Prenatal Drug Exposure and Social Policy: The Search for an Appropriate Response, 5 Child Maltreatment 93, 99 (2000) ("[B]ringing high levels of coercion to bear on parents increases the likelihood that contact with outside agencies and hospitals will be avoided by pregnant mothers.").

health care makes seeking care a precarious endeavor by traumatically interrupting access to health care. When pregnant people and new parents are reported to family regulation authorities their relationship with medical providers are damaged, and in some cases severed, and future engagement with providers precipitously drops. Distrust of medical providers may have a chilling effect for pregnant people, creating barriers to prenatal, maternal, and postpartum care.[11] Accessing reproductive health care, without fear of family regulation system involvement and family separation, is a reproductive justice issue.

A report made to the family regulation authorities leads to an invasive state investigation of a parent's most personal details and family life, often beginning with calls and visits to a birthing parent's bedside right after giving birth, and continuing with visits to a family's home, the homes of other family members, and interrogations of neighbors, teachers, and children. Such an investigation can then lead to court involvement where–even absent a removal of a child–a family will be subjected to unannounced home visits and all-pervasive surveillance for months, if not years. When a patient cannot be honest with their health care provider, they cannot receive the care and support they or their families need.

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Considering the legal ramifications of a positive toxicology or assessment, it is imperative that patients be made aware of the health benefits as well as the legal consequences of submitting to a drug test and be empowered to make informed decisions about their medical care. To this end, we strongly support Int.1426-2019 which would require prior written informed consent by a pregnant or perinatal person for drug testing of themselves or their child. We are hopeful that this Council will reintroduce this critical legislation, first introduced by Brooklyn Borough President Reynoso during his tenure at the Council. We welcome the opportunity to work with the Council to strengthen this draft legislation.

Conclusion

We are grateful to the City Council for highlighting concerns about maternal mortality, especially for Black and Latine pregnant people. We see every day how low income Black and Latine parents are treated by the medical system and other helping professionals. We urge the City Council to consider the ways the family regulation system further harms low-income parents and children in the city. We welcome the opportunity to work with you on ensuring all pregnant and parenting people in our city receive quality care.

If you have any questions, please feel free to contact me at nnatarajan@bds.org.

[11] Jamila Perritt, M.D., M.P.H., #WhiteCoatsForBlackLives — Addressing Physicians' Complicity in Criminalizing Communities, England J. of Medicine (Nov. 5, https://www.nejm.org/doi/full/10.1056/NEJMp2023305?query=recirc_inIssue_bottom_article. 2020)