

TESTIMONY OF:

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BROOKLYN DEFENDER SERVICES

Presented Before

The New York City Council

Committee on Children & Youth

Oversight Hearing on Evaluating New York City's Foster System

February 20, 2025

My name is Nila Natarajan, and I am the Associate Director of Policy & Family Defense at Brooklyn Defender Services. We thank the New York City Council Committee on Children & Youth for the opportunity to submit testimony about New York City's foster system, its role in preserving and strengthening family bonds and reunifying families, and opportunities for this Committee to truly support families.

Brooklyn Defender Services 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. For over 25 years, BDS has worked in and out of court, to protect and uphold the rights of individuals and to change laws and systems that perpetuate injustice and inequality. BDS represents approximately 23,000 people each year who are accused of a crime, facing loss of liberty, their home, their children, or deportation. Our staff consists of specialized attorneys, social workers, investigators, paralegals, and administrative staff who are experts in their individual fields. BDS also provides a wide range of additional services for our clients, including civil legal advocacy, assistance with educational needs of our clients or their children, housing, and benefits advocacy, as well as immigration advice and representation.

BDS' Family Defense Practice is the primary provider of representation to parents charged with abuse or neglect in Brooklyn's family court. Our multidisciplinary approach 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 2,500 parents and caretakers each year. We have represented about 16,000 parents and caretakers in Brooklyn's family court and have helped more than 30,000 children remain safely at home or leave the foster system and reunite with their families. The primary goals of our representation are to provide high quality legal representation to parents in high stakes family policing¹ investigations and family court cases and to ameliorate the underlying

¹BDS follows the leadership of directly-impacted people and has chosen to use the term "family policing system" to describe what has traditionally been called the "child welfare system" or the "child protection system," to reflect the

issues that drive families into this system, such as lack of access to quality health and mental health treatment, basic necessities, and appropriate education and services for children with disabilities. We also aim to reduce the harm of the consequences of system involvement, such as criminal charges, housing and income loss, education issues and inability to adjust immigration status.

Our Family Defense Practice’s Early Defense Team represents parents and caregivers during ACS investigations to avoid prosecution in family court and family separation. During an ACS investigation, critical decisions are made that have significant consequences that determine whether a case will proceed. These include identifying supportive resources, treatment programs, and/or services available to the family that may ameliorate risk to the children; whether a case will be filed in court; and, most significantly, whether children will be separated from their parents. We use this early representation as an opportunity to support parents and work hard to avoid family separation. When our clients and their children are separated, we work expeditiously towards reunification. However, once placed into the foster system, there are many aspects of that family court, ACS and foster systems that contribute to delays in children returning home.

To address these pervasive delays stemming from systemic inadequacies, our Preserving Family Bonds team - an interdisciplinary team within the Family Defense Practice² - specializes in representing parents who are seeking to reunify with their children who have been in the foster system for an extended period of time. The team provides additional support and advocacy to families to enhance family bonds, achieve family reunification, ensure a smooth transition to reunification, and avoid termination of parental rights.

BDS works with hundreds of families each year whose lives have been upended by the family policing system, including prosecution, painful family separation and permanent severing of family ties by the ACS and foster agencies. Even when families successfully reunify, the families we work with are traumatized by this intervention and are often left to manage the challenge of rebuilding their family bonds with little or no support. We must instead work to ensure all families are well-resourced and supported prior to any state intervention, and that should a child be removed from their family, that they are given every support available to maintain and nurture their family bonds, and to quickly reunify. Too many New York City families experience the compounded harm of being separated and then having ACS and its foster agencies undermine their family bonds at every juncture. In 2023, sixty-three percent of the children who left the foster system returned home.³ Not only should this percentage be higher, it also tells us that a significant portion of young people impacted by the family policing system are

system’s prioritization of and roots in surveillance, punishment, and control rather than genuine assistance to and support of families living in poverty.

² In an effort to improve efforts towards family reunification in the New York City foster system, this team has presented the Administration for Children’s Services (ACS) detailed recommendations addressing some of the most harmful aspects of the current system. Those recommendations are attached herein as Addendum A.

³ “Foster Care Five Year Plan Progress Report,” Administration for Children’s Services at 3, *available at* <https://www.nyc.gov/assets/acs/pdf/data-analysis/2023/progress-report-fy23.pdf>

also deeply in need of stability and support in their family bonds and parental care. We must honor family bonds by ensuring children have every opportunity to spend time with their parents, and requiring parents have every opportunity to stay deeply engaged with their children.

I. New York City’s Foster System Must Align with the Requirements of the Law and Commit to Maintaining and Nurturing Family Bonds, and Supporting Reunification

In New York State, once a child is removed from their family and placed in the foster system, the state must first and foremost diligently plan with the family for that child to return home.⁴ The law requires that those efforts move beyond simplistic referrals to generic services – it requires that the state proactively “encourage and strengthen the parental relationship.”⁵ Moreover, the governing law in New York State “overwhelmingly reflects the preeminence of the biological family.”⁶ Taken together, New York State law is clear that the foster system’s governing imperative – from the moment a child is separated from their family – is to work to preserve and strengthen family bonds and to nurture a parent’s ability to parent their child through separation, in order for that family to reunify quickly. It is also clear – based on decades of research and the lived experience of the thousands of families that we have worked with – that honoring and protecting these family bonds is best for children.⁷ The trauma of family separation can be mitigated by consistent and abundant family time, and children can thrive when their parents can continue to play an active role in their care and when this role is supported by the foster agency and foster resource – all of which allow families to reunify and begin to heal expeditiously.

In sharp contrast to the requirements of the law and the consensus of experts – our experience working in and outside family court alongside parents fighting to reunify with their children and bearing witness to the foster system’s treatment of these families, reveals a very different system, one that is committed to practices and values that undermine family bonds and reunification. The families we work with encounter a system that functions to build-up the parenting capacity of foster resources to the detriment of parents – pitting caretakers against each other; providing families minimal opportunity to spend time together and surveilling rather than support this family time; not informing parents a child’s medical, educational and emotional

⁴ Soc. Serv. Law § 384-b(1)(a)(iii).

⁵ N.Y. Comp. Codes R. & Regs. Tit. 18 § 430.12; *See Matter of Sheila G.*, 61 N.Y.2d 368, 381 (1984); *See also* Soc. Serv. Law § 384-b(7)(f) (defining ‘diligent efforts’ as “reasonable attempts by an authorized agency to assist, develop and encourage a meaningful relationship between the parent and child,” including but not limited to working with the parent “in developing a plan for appropriate services,” arranging visits between the parent and child, and providing “services and other assistance to the parent[. . .] so that problems preventing the discharge of the child from care may be resolved or ameliorated”)

⁶ *D.L. v. S.B.*, 39 N.Y.3d 81, 89 (2022) (internal quotations omitted) (*citing Matter of Jamie J.*, 30 N.Y.3d 275, 284 (2017); *Nicholson v. Scoppetta*, 3 N.Y.3d 357, 374 (2004); *Matter of Michael B.*, 80 N.Y.2d 299, 313 (1992)).

⁷ “Foster Care as a Support to Families,” U.S. Dept. of Health and Human Services, April 29, 2020.

needs; diminishing any existing family bond and undermining a family's attempts to reunify. New York City's foster system as it stands now is not structured to ensure that children quickly leave the system and return home, and is instead structured to prolong family separation and keep children in the foster system, which leads to the permanent severance of family bonds via termination of family rights and adoption.

Aligning New York City's foster system with the law and best practice not only requires fundamental changes in policy and practice – as the federal Children's Bureau has acknowledged, it also requires a fundamental shift in values.⁸ From foster agency administration, to case planners, and parent advocates, the foster system must shift from a system rooted in separation, judgment, and indifference, to one committed to nurturing family bonds and family reunification.

II. The Foster System Must Work with Foster Resources to Support Children and Families and Actively Ensure a Positive Rapport Between Foster Resources and Parents

Imagine your child, precious and loved, only one week old, taken from your arms by a stranger surrounded by police officers. Imagine not knowing where he may be taken, whose home he will enter, the hands that will hold, swaddle, and feed him; whether they will know he has an intolerance to a certain formula, that he already smiles when you tickle his chin; that his siblings love him. Imagine meeting him again for the first time days later, at a foster agency office far from your home. You are hastily told he is doing well, sleeping and eating regularly; and that you can say hello to the person who now cares for him when he cries at night, but you cannot know where they live or have their contact information. You know they may want to care for your baby forever. You do not know their character, family, or history. You do not know their intentions or temperament. You do not know if they have children of their own and how those children have fared.

You will see your cherished baby once or twice a week for a few hours. And hope he remembers you. He spends his days with this other person you wave to in passing during your visits. You are told they are forming a bond with your child. Your child cannot tell you how he feels. You ask about his medical care and daily routine. You receive brief answers. You learn his caretaker is engaging in play therapy with him to increase their bond, and receiving childcare assistance so that they can return to work. He is joining his caretaker on a trip to visit their family. He has met his siblings only once in the two months since he has been born. You are working with every fiber of your being to stay connected to him and complete the myriad tasks you must in order to have him return to your care. His distance from you, a weight you bear alone. You hope he will return to your care one day; you do not know when.

This is a painful reality that hundreds of New York City parents experience each year when their children are taken from their care and placed in our foster system. As it stands, New

⁸ *Id.* at 2.

York City's foster system often works to keep foster resources⁹ and parents separate and to actively build a foster resources bond with a child while a parent has minimal meaningful engagement with their child. Not only does this dynamic affirmatively undermine family bonds, it also fails to harness the potential to work with foster resources as support for reunification. In fact, foster resources have a vital role in supporting and nurturing family bonds to ensure that children remain connected to their families and parents have an active role in their child's care.¹⁰

When a foster resource approaches their role with generosity and care, and commits to reunification, children reap the benefits of the collaborative relationship between foster resource and parent:

After Ms. P's children were removed from a foster home where the foster resource refused to accommodate any kind of visit expansion, they were placed in a new home with a resource who was willing to be a visit resource and host visits in her home. Being able to see the environment in which her children were living was a great comfort for Ms. P, and over time she got to know and trust the foster resource. Ms. P worked to establish unsupervised weekend overnights with her kids, and because of the relationship that they have formed, she now relies on the foster resource as a child care resource. Rather than being afraid to go to the foster resource to ask for help, she uses her as a true support.

The foster resource for Ms. V's daughter invited Ms. V into her home to participate in her daughter's Early Intervention services. This opportunity allowed Ms. V to be directly involved in her daughter's vital services and to feel included in her child's care from the very moment they were separated. Instead of trying to catch-up on her daughter's needs when she returned home, Ms. V was fully informed and ready to meet her daughter's needs. Ms. V's daughter is now home on a trial basis and the family is well-positioned to successfully exit the foster system.

For both these families, a foster resource that fully integrated a parent into their child's life allowed for stability and healing around their initial separation and during the period of time they were apart, and laid a foundation for expeditious and long term reunification. Conversely, much like in the context of a custody context between parents, it may be destabilizing for a child when there is conflict between significant caregiving figures. As such, it is vital that foster agencies create structures to create and maintain healthy relationships between parents and foster resources.

⁹ In respecting the primacy of parents and affirming the support that a foster "parent" may provide to a child and parent, we choose to refer to what may commonly be referred to as "foster parents" as foster resources or foster caregivers. *See id.* at FN1.

¹⁰ *See id.* at 5 and 6-11.

In order for our foster system to meet this potential for each and every family brought into the system New York City must ensure that foster resources are recruited and trained to support parents and nurture family bonds, that foster agency staff – including parent advocates – are required to mediate and encourage strong relationships between foster resources and parents, and that foster agencies are monitored and held accountable for the speed and rate of family reunification.

III. The Foster System Must Ensure that Family Time Between Children and Their Families Occurs Frequently, Regularly, and in the Least Restrictive Setting

Family time – or visitation – is foundational to addressing the trauma of family separation, preserving and nurturing family bonds, allowing for parents to continue to parent their children, and working towards family reunification. Research shows that children participating in frequent and regular time with their parents following a separation exhibit more positive outcomes than children who have less family time.¹¹ These positive outcomes include: stronger attachments to their parents, improved child well-being, lower levels of depression, and better adjustment.¹² Consistent contact between a parent and their child is also strongly associated with reunification and rehabilitation of the family bond.¹³

In 2013, ACS established what is a robust and meaningful family time policy that builds upon the law and requires that family time occur in the least restrictive manner.¹⁴ This policy highlights the need to create a family time plan that allows for unsupervised visitation when there are no specific and articulable safety concerns, emphasizes the need for families to spend time together in a natural setting, and provides guidance on how to assess and expand family time plans to move a family towards a reunification.

Devastatingly, the families we work with are often provided family time plans that require strictly monitored visitation, a few times a week, for a few hours, in the unfamiliar and unnatural setting of a foster agency. Families must then spend months in this routine before an agency considers expanding this family time, and even then, that expansion is slow, incremental, and unrelated to any real safety concern. Foster agencies rarely if ever proactively expand family time, and fail to consider plans that allow parents to continue to engage parents in their children’s daily routines or important milestones. Maintaining family bonds in this restricted and highly surveilled environment is a nearly herculean effort.

Undoubtedly, maintaining “agency supervised” visitation is appealing to case planners as this is a controlled environment where the agency believes it can ensure the safety of the children. Physical safety may very well be a valid priority for family time in some cases. However, in practice, this notion of “safety” becomes the one and only priority. In our experience, agencies often devote all of their resources to ensuring one idea of “safety,” and in the process ignore the real long-term health of the relationship between parents and children.

¹¹ “Family Time and Visitation for Children and Youth in Out-of-Home Care,” U.S. Dept. of Health and Human Services, February 5, 2020 at 4, *citing* “Complex Trauma,” Nat’l Child Traumatic Stress Network, <https://www.nctsn.org/what-is-child-trauma/traumatypes/complex-trauma>.

¹² *Id.*

¹³ *Id.*

¹⁴ Administration for Children’s Services Policy #2013/02, available at http://www1.nyc.gov/assets/acs/pdf/policy_library_search/2013/C.pdf

Expanding family time to outside the agency office, as the ACS policy contemplates, provides parents the opportunities to bolster their parental decision-making and autonomy. It may be as simple as taking a child to a playground and learning how they interact with other children and enjoy releasing their energy. It may include picking up and dropping off a child at school to check in on how they are doing in class. Or it may be regularly attending doctor's appointments, and bringing a child to family events. These are necessary and meaningful components of parenting. With this lens, a child's daily routine and special occasions become an opportunity for a parent to parent their child, and an opportunity for families to bond. When agencies move family times outside of agencies, they are multiplying these opportunities without compromising safety.

When foster agencies work with families to create ample family time, and focus on a child's wellbeing rather than on unjustified concerns around "safety," families are able to reunify more quickly:

Ms. G's daughter was placed with a foster resource in another borough far from home, which required an hour and twenty minutes of travel each way for Ms. G to pick her daughter for daytime visits. As the weather worsened this winter, and travel became even more difficult, the agency asked the foster resource, who had a car, to meet at a halfway point so that travel was less burdensome on the child. When the agency saw that the foster resource was unwilling to accommodate, rather than letting things stand, the agency proactively assessed that there were no present safety concerns and pushed to expand visits quickly. After several overnight visits between Ms. G and her daughter, the foster agency supported the return of the child back to her mother.

ACS must support foster agencies in creating and implementing robust family time plans that allow children and parents to spend ample time together in natural settings, that includes parents in daily parenting tasks, and that nurtures strong family bonds, and then evaluate the efficiency of agencies based on the implementation of these plans.

IV. Parents Must Be Given Every Opportunity to Fully Engage in Their Children's Educational, Mental Health and Medical Needs

In our experience working alongside parents seeking to reunify with their children, remaining fully engaged in their child's educational, mental health, and medical needs is integral to timely and stable reunification. A parent's knowledge of these needs, ability to fully direct this care, to work directly with their child's providers, and to engage in any needed services or treatment is more than a parent's right, it is also a vital part of parenting and maintaining and preserving family bonds. Given the particularly severe trauma and destabilization of family separation, children in the foster system often require supportive services and promoting full engagement with these supports allows parents to remain connected to their children and to understand their experience through separation and reunification. And similar to creating meaningful family time plans, parental engagement in children's needs allows foster resources and parents to work collaboratively to care for a child through challenging transitions.

ACS published a Parents' Guide¹⁵ as well as Policy and Procedure Guidance¹⁶ which emphasize that parents retain the right to make decisions about their children's "medical and mental health care and education." However, this is not what families experience in practice. Instead, foster agencies often work solely with foster resources to evaluate a child's needs, select providers, take them to appointments, and assess the impact of any treatment. Parents are then often brought into this process at the very last minute and pressured to consent to these services and treatment with little to no information. Parents are often then maligned as "difficult" or working against a child's needs when they do not quickly and readily agree to these interventions. This pressured and uncollaborative process only works to undermine a parent's care of their child, and the relationship between a parent and foster resource. We must often advocate in court, through motion practice, and during out-of-court conferences, for parents to be invited to join doctor appointments, attend school meetings and conferences, and to participate in other conversations important for parenting successfully.

ACS must require foster agencies to regularly meet with parents, children, and foster resources to assess a child's needs, progress, and treatment, and to then actively involve and allow parents to direct this care, including providing parents direct access to providers and frequent updates on treatment. It must be standard practice for agencies to make clear to all parties that parents have a right to access information about their child, and the authority to make decisions regarding their child's educational, medical, and mental health.

V. Keeping Children In Their Communities and with Family Supports Must be Prioritized

The benefits of placing children with their relatives, kin, and communities are well-known and well-documented. So much so that prioritizing children with family and community is codified in the law.¹⁷ Children and parents benefit when children stay within family networks, particularly when kinship resources actively nurture family bonds. Existing ACS policy provides that case workers and agencies must explore kinship resources that the family identifies when a family is separated. It is vital that foster agencies continue this assessment throughout a family separation, and proactively seek out those resources and support their relationship to children and families. Often, once children are placed with a stranger foster resource, the agency stops all efforts to continue to assess whether kinship resources are available to care for a child, or to act as a resource to allow for more family time. Foster agencies

¹⁵ See Parents' Guide at 22, available at https://www.nyc.gov/assets/acs/pdf/parent_handbook.pdf

¹⁶ See 2014 Policy & Procedure: Medical Consents for Children in Foster Care, available at <https://www.nyc.gov/assets/acs/pdf/guidebook/MedicalConsentPolicy91614.pdf>.

¹⁷ F.C.A. § 1017.

should make frequent assessments for familial support which can grow the network of support for a child and their parents, and then hasten family reunification.

Similarly, when a family does not have kinship resources available to care for a child, it is vital to keep a child close to their parents and in their communities. As family reunification is the ultimate goal for a child, staying close to home, school, and community networks allows ample opportunities for a child to maintain stability. Foster agencies must place children close to their homes and parents to allow for decreased travel time to and from the foster agency for family time, and for more frequent family time at agencies.

We must ensure all families are well-resourced and supported to protect from any state intervention and family separation. In order to care for children who are removed from their families, we must make an intentional shift in values and practice to ensure family bonds are honored and nurtured, and that children are brought back home quickly.

BDS is grateful to the Committee on Children and Youth for hosting this hearing and for its consideration of our comments. We look forward to further discussing this issue with you. If you have any additional questions, please contact Nila Natarajan at nnatarajan@bds.org.

ADDENDUM A

Recommendations for Improving Reunification for Families Separated by the Foster System

Recommendations as presented May 22, 2023, and updated with stakeholder feedback.

I. Addressing kinship placement delays that undermine permanency

Recommendations:

1. Update written policies directing agencies to explore kinship resources as placement resources, visit resources and significant familial connections throughout the pendency of the case, not just at the initial placement of the child, but also as family circumstances change and parents identify relatives as viable resources or relatives present themselves as such.
2. Update written policies establishing a preference for nonkinship placement in or near the community where reunification is expected to occur where no kin is available.
3. Issue a written policy addressing steps to be taken when the agency is unable to place the child in or near the community where reunification is expected to occur, including:
 - a. referring the case back to ACS to determine if there is a different agency available that has a more conducive placement;
 - b. holding a meeting with the parent to obtain the parent's input regarding the proposed placement, including whether the parent believes it would be better for the child to remain in the Children's Center for 30 days while the agency continues to look for closer placements, rather than be moved to the proposed placement, and documenting any concerns or objections;
 - c. providing a written report containing information about the reason why ACS and/or the agency is unable to facilitate a closer placement; and
 - d. prior to or immediately after moving the child, establishing written plans for how the distance as an added barrier to reunification will be addressed (e.g., through visitation in or near the community where reunification is expected to occur, supplemental electronic communication, agency funds for reasonable transportation and communication devices, etc.).

II. Involving parents in children’s educational/medical/developmental needs while in foster care

Recommendations:

1. Parents should be regularly provided with information and updates about their child as part of routine case-planning meetings and other face-to-face encounters:

a. ACS should develop a written policy, with community input, requiring agencies to make clear to all parties, from the beginning of placement, that parents have a right to access information about their child, and the authority to make decisions regarding their child’s educational, medical, and mental health.

b. The policy should require agencies to provide contact information for and direct access to relevant educational, medical and mental health professionals working with the children.

c. The policy should make clear that agency case workers and foster parents should regularly communicate information to parents regarding upcoming appointments, events and milestones, as well as timely updates of any significant changes in the children’s lives. The policy should require that agencies provide parents with a list of any upcoming appointments or events at the start of each month unless their presence is prohibited by court order.

d. The policy should require agency case workers and foster parents to develop plans to encourage and maximize parents’ contact with their children and presence in their daily lives, including through technology (e.g., bedtime stories and virtual contact) and by making such technology accessible to parents.

e. The policy should require that agency case workers must proactively promote direct, positive, substantive and reciprocal communication between the parent and foster parent regarding the child in care.

f. The policy should state that parents should be informed that they have a right to request a meeting with the agency at any time; it should be standard practice for parents to be provided with the contact information for their case planner’s supervisor in the event that they do not feel their concerns are being addressed timely.

2. ACS should develop an informed consent policy, with community input, that permits parents to retain final decision-making authority whenever possible, and which is consistent across medical and psychiatric decision-making. The policy should identify procedures for obtaining and documenting informed consent for medical and psychiatric decisions, next steps when informed parental consent has not been obtained, and process for authorization and override requests for children in foster care. The policy should include a requirement that parents be given an opportunity to consult with medical and psychiatric providers and seek a second opinion, absent an emergency such that an attempt to secure consent would result in a delay in treatment which would significantly increase the risk to the child's life or health. The policy should also include a requirement that agencies seek a court order to override a lack of informed parental consent, absent an emergency such that an attempt to secure consent would result in a delay in treatment which would significantly increase the risk to the child's life or health.
3. Court reports should also detail what steps the agency has taken to invite parents to participate and be included in decision-making about their children.

III. Supporting children returning home on trial discharge and remaining home through final discharge

1. ACS should create and implement a standardized trial discharge checklist for agency caseworkers to use before the trial discharge starts, reviewed at the trial discharge conference, and completed within two weeks of children coming home (checklist would address logistics such as transfer of Medicaid, daycare vouchers, school busing, etc.). Completion of this checklist is the responsibility of the assigned agency case worker and failure to complete it prior to the commencement of the trial discharge is not a justifiable reason to delay reunification.
2. ACS should standardize the disbursement of trial discharge grants across agencies (the amount of the grant and how soon parents can expect to receive it).
3. ACS should prioritize daycare vouchers and stipends for immediate needs at the start of trial discharge to supplement the trial discharge grant and should, before the start of a trial discharge, make arrangements for such vouchers and stipends to be provided.
4. ACS should develop a written policy obligating agencies to proactively hold conferences during a trial discharge to address any concerns before "failing" or otherwise disrupting the trial discharge and to pursue any services or supports available to support the trial discharge.

5. ACS should develop a written policy obligating agencies to notify their attorney and come to court to request a removal if sought before failing or disrupting a trial discharge, absent an imminent risk to the child's safety that cannot wait for court intervention.

6. ACS should develop a written policy obligating agencies to minimize harm to children during and after the removal where a trial discharge must be failed or disrupted (e.g., allowing parents time to pack, facilitating communication between parents and children and parents and foster parents as soon as practicable).