

TESTIMONY OF:

Nila Natarajan, Associate Director of Policy & Family Defense

BROOKLYN DEFENDER SERVICES

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Committee on Children & Youth

Oversight Hearing on the Examination of ACS's Preventative Services Programming

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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 the Administration of Children Services (ACS), its provision of preventive services and investigation of families, and other 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. 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 2,500 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.

BDS 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 system’s prioritization of and roots in surveillance, punishment, and control rather than genuine assistance to and support of families living in poverty. The primary goals of our representation are to provide high quality legal representation to parents in high stakes family policing investigations and family court cases and to ameliorate the underlying 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.

With support from the Council, BDS is able to provide support, guidance, and legal counsel – or “early defense” – to parents during an investigation by the Administration for Children’s Services (ACS), with the primary goal of preventing family separation and family court filings. Additionally, we provide legal representation in administrative proceedings to help parents clear or modify their SCR records that result from reports made to the SCR and investigated by ACS, thereby preserving and expanding their employment opportunities.

BDS works with hundreds of parents each year whose lives have been upended by the family policing system – investigations, prosecution, and family separation by ACS. The families we work with are traumatized by this intervention and are more often than not left worse off even when a case was closed without family court involvement or family separation. We must instead work to ensure all families are well-resourced and supported, and that families can access needed supports without family policing intervention. Tens of thousands of families experience the harm and destruction of so-called “child protective” investigations each year. We cannot continue relying on a system that harms children and their families.

I. The City Must Meet the Fundamental Needs of Families Without Reliance on the Family Policing System

Successful prevention of harm to children must be rooted in an investment in creating thriving and safe communities, which requires a real investment in families. We must look “upstream” and ensure that every family’s fundamental needs are met without requiring contact with the family policing system. Poverty is a driving force behind what is often reported as child maltreatment or neglect,¹ but a lack of resources or access to affordable services should not subject any child to

¹ A study of the hotline calls that lead to family policing investigations in New York City found that the rate of hotline calls in the 25 zip codes with the highest rates of child poverty was four times higher than the rate of hotline calls in zip codes with the lowest child poverty rates. There was also a high correlation between child poverty and hotline

traumatic investigation and family separation. As of September 2024, the most recent date for which data is available, ACS has received nearly 45,000 intake calls, on track for the approximately 60,000 received annually in 2022 and 2023.² Less than 30% of those calls were substantiated by investigators, also similar to annual indication rates in 2022 and 2023.³ The vast majority of these allegations conflate poverty with neglect.⁴

New York State should invest in approaches that will lead families out of poverty and reduce the need for any family policing involvement. All of the families we serve live in poverty, which is often characterized as neglect by agents of the family policing system. Not only are families living in poverty disproportionately reported for child maltreatment, but reports are more likely to be substantiated by the family policing system.⁵ Any effort to eliminate harm to children and to support families must include measures that address poverty head on. New York State should pursue universal basic income, a universal child allowance, and expansions to public benefits to effectively reduce child poverty and the risk of maltreatment.⁶

Several recent studies have confirmed that increasing income and benefits to families leads to a decrease in child maltreatment and abuse reports. One study found that a 5% increase in the number of families receiving SNAP led to a reduction between 7.6% and 14.3% of family policing system caseloads.⁷ Another study found that spending an additional \$1,000 on benefit programs per person living in poverty reduced family policing reporting by 4.3%, substantiations of reports by 4%, placements in the foster system by 2.1%, and fatalities by 7.7%.⁸

BDS has joined the newly-launched New York State Cash Alliance, a coalition of advocates, service providers, researchers, and community members, which is championing expanded support for families, scaling-up local pilots, and building a state-wide guaranteed income with public dollars, shaped by local knowledge and leadership. Investing in universal basic income, a universal

calls and investigations. NYC Family Policy Project, “Hotline Calls,” <https://familypolicynyc.org/data-brief/hotline-calls/> (last visited Dec. 11, 2024).

² NYC Children Flash Report Monthly Indicators, October 2024, <https://www.nyc.gov/assets/acs/pdf/data-analysis/flashReports/2024/10.pdf>.

³ *Id.*

⁴ Children’s Bureau, *Child Maltreatment 2022*, ACF, US DHHS (January 29, 2024), <https://www.acf.hhs.gov/sites/default/files/documents/cb/cm2022.pdf>.

⁵ Butel, *Data Brief*, at 1, 5, <http://www.centrernyc.org/s/DataBrief.pdf>.

⁶ National Academies of Sciences, Engineering, and Medicine concluded that a \$3,000 per child per year child allowance would produce the greatest reduction in child poverty, including a 50% reduction in deep poverty. National Academies of Sciences, Engineering, and Medicine, *A Roadmap to Reducing Child Poverty*, Washington, DC: The National Academies Press (2019), <https://nap.nationalacademies.org/child-poverty/highlights.html>.

⁷ Jeff Grabmeier, *Food Assistance program may help prevent child maltreatment*, Ohio State News (July 13, 2022), <https://news.osu.edu/food-assistance-program-may-help-prevent-child-maltreatment/>.

⁸ Henry T. Puls, Matthew Hall, PhD, James D. Anderst, MD, MSCI, et. al., *State Spending on Public Benefit Programs and Child Maltreatment, Pediatrics* (2021) 148 (5) (November 1, 2021), <https://publications.aap.org/pediatrics/article/148/5/e2021050685/181348/State-Spending-on-Public-Benefit-Programs-and?autologincheck=redirected?nfToken=00000000-0000-0000-0000-000000000000>.

child allowance, and/or expansions to public benefits help families, and it saves the city money as it is far less costly than family policing involvement and the foster system. Expanding on income and benefits would allow parents to better meet their families' basic needs without interference and surveillance, and the lasting trauma of system involvement.

II. Provision of Preventive Services via the Family Policing System Undermines Access and Impact of Services and Must be Administered Outside ACS

Families accessing preventive services may access them at three main points in the family policing structure. First, a family may be referred to and accept a referral to preventive services during the course of an ACS investigation. This engagement may be deemed “voluntary” as there will not have been any court intervention requiring a family’s acceptance of the service referral. However, families report that this experience is often coercive as a family may feel it must engage with ACS’ recommendations in order for an investigation to be closed, to avoid prosecution, and to keep their family together. Second, a family may access preventive services during the course of an Article 10 proceeding in family court when a child remains home. In these instances, the court may or may not have ordered the family to engage in preventive services as a condition of keeping the family together. Lastly, families may access preventive services when a child has been removed and placed in the foster system, and is returning home.

Based on our experience working with families who are attempting to access services themselves, without ACS intervention, preventive agencies may suggest that services are available to families directly. However, the process of accessing these services in the community is entirely opaque. Instead, families are often told that they must have an open ACS case in order to access preventive services. Practically, this requires that a family to be reported to the State Central Registry (SCR), investigated by ACS, and then referred by ACS to a preventive service, in order for a family to receive supportive services. In 2022, approximately 91% of referrals to preventive service programs derive from ACS itself.⁹ By acting as a gatekeeper to these services, supports are inextricably linked to ACS and the family policing system at large. This problematic relationship between preventive services and ACS is only amplified as ACS is the oversight agency for all preventive services, and as many contracted preventive service providers also house foster agencies – agencies that have deep associations with family policing and harmful family separation.

⁹New York City Independent Budget Office, *Working to Keep New York City Kids Safe & Out of Foster Care: An Examination of Changes to the Child Welfare System’s Prevention Programs* (February 2022), https://ibo.nyc.ny.us/iboreports/working-to-keep-new-york-city-kids-safe-and-out-of-foster-care-an-examination-of-changes-to-the-child-welfare-systems-prevention-programs-fb-february-2022.pdf?utm_source=First+Read+Newsletters&utm_campaign=b9baf38320-NYN+First+Read_020822&utm_medium=email&utm_term=0_252d27c7d1-b9baf38320-34747848&mc_cid=b9baf38320&mc_eid=bb6f8f84ea

ACS continues to invest in Family Enrichment Centers (FEC) as a method to provide resources and services to families in physical spaces that are embedded in neighborhoods and communities. What ACS fails to address is the massive investment in these FECs is an investment in precisely the organizations that also run foster agencies, and that all are staffed by mandated reporters under ACS' purview.

Given the well-founded mistrust of ACS, the provision of these resources must be separate from the family policing system to be accessible and effective at supporting impacted communities, who are largely Black and Brown. In New York City, 90% of families investigated for maltreatment were Black and Brown, even though they comprised only 60% of the child population. Communities that are disproportionately represented are all too familiar with the threat of family policing involvement and do not feel safe accessing services through the family policing system. Parents reported being traumatized entering ACS buildings in order to request services, including child care. The stress of engaging with the family policing structure, a system that investigates, polices, and prosecutes parents, prevents some parents from seeking the help and support that is necessary to stabilize their families. Providing supports in community-based organizations completely independent of the family policing system is the most effective way to meet the needs of New York families and prevent entrenchment the family policing system.

III. Preventive Services Operate as Surveillance Rather Than Support

Preventive services fall into two categories, general services and specialized services. Many of the families we work with during the course of an ACS investigation and family court proceeding are referred to general preventive services. Even when our clients are working with our office's well-trained and well-informed social workers and advocates, who interface directly with ACS and a preventive service agency, it is often unclear what if any actual service or resource that the agency is providing. Instead, the assigned preventive service caseworker often functions as yet another caseworker who is intruding into and surveilling a family's home, without providing any concrete assistance. Functionally, the preventive service being offered is surveillance and the threat of another call to the SCR. In these instances, when a family asks for specific assistance – from therapeutic supports and diapers, to advocacy with a child's school to subway fare – the preventive service caseworker is either unable or unwilling to assist, or must refer the family to yet another agency. Our advocates are often left explaining to a parent that the preventive service is just another "home visit" that the family must endure.

For example, one of the families we work with had a preventive service organization assigned and the primary need identified for the family and their three-year-old with special needs was an application to the Office for People with Developmental Disabilities (OPWDD) for supportive services. The family waited for months for the preventive agency caseworker to submit the application for these much-needed in-home services. There were several court appearances during this time at which the assigned ACS caseworker attended and the preventive service caseworker

was nowhere to be found; there was no information as to what if anything was being done to assist this family to access OPWDD services, and no concerns regarding the child's safety were reported. Rather than receiving these vital OPWDD services, this family continued to be monitored by both ACS and the preventive services caseworker, while being given no additional services. This family's experience reveals how ACS may pass-off its responsibilities to a preventive service agency, where the preventive service agency does not effectively provide any additional assistance, and instead acts as another form of unsupportive surveillance.

If a family has been court-ordered to engage with preventive services, that legal obligation is terminated when the court case is closed. Troublingly, families are often asked to sign contract-like agreements with preventive agencies, and agencies will coerce families to engage with their services beyond the course of the court case. We have witnessed many preventive agencies place demands on a family before closing a case, such as requiring additional meetings or medical paperwork for children. Agencies have even made threats of calling in new reports to the SCR if a family does not comply with a closing out procedure, forcibly extending surveillance beyond the court case. This experience is exemplar of the coercive and punishment-oriented nature of our current model of preventive services.

IV. Families Must Have Greater Access to Community-Based Specialized Support Services

Some of the families we work with request intense specialized preventive services to address mental health, medical or development conditions. Evidence-based services, including mental health services, can offer critical support to families and prevent family separation or allow for speedy family reunification. These services should be fully funded, readily available to all families in their communities, and must operate outside of the family policing system.

While the families we work with report that evidence-based services such as Multisystemic Therapy (MST-CAN), Functional Family Therapy (FFT), and Child Parent Psychology (CPP) are more impactful than general preventive services, lack of availability is a major issue. Our clients appreciate the home-based services that are focused on the specific needs of a family and the material support provided, such as access to food and extra-curricular activities for children. Mental health services, particularly for children, are similarly unavailable. Waitlists are months long at community-based mental health providers and many quality long-term mental health programs do not accept Medicaid. This lack of availability and significant delay can prolong a child's stay in the foster system by months or lead to family separation – creating long-lasting harm to a child and their family bonds.

V. CARES is an ACS Investigation by Another Name, Not a Preventive Service

ACS has publicly cited a drop in overall investigations, suggesting that the program creates less harm and more equity in ACS' investigative practices. Yet at the same time, its Collaborative Assessment, Response, Engagement and Support (CARES) program has grown dramatically since it began in 2021, increasing from 4,000 cases in that year to nearly 12,000 cases in 2024.¹⁰

Differential response programs have been lauded by ACS as a prevention mechanism to provide a "child protective response" without subjecting a family to an investigation. However, in our experience, families experience a CARES assessment as similar to, if not more invasive, terrifying, and harmful, as an ACS investigation. ACS conducts a CARES investigation when ACS has deemed that the reported allegations of maltreatment present no immediate or serious child safety concern. Yet the families we work with experience it as a traditional investigation with the same level of repeated home visits, phone calls, and invasive questioning of family members, children, neighbors and school staff, as a traditional investigation. Based on our work with families during the course of ACS investigations, should a family decline to participate in a CARES investigation, families report simply being sent back to an investigation track. As such, families rightfully experience CARES tracked investigations as coercive and involuntary. This coercion is highlighted when ACS uses practices such as bringing the police to a family's home, and pulling children out of class to speak to them at school without a parent's knowledge or consent. At the same time, when a family does accept the CARES investigation, families report the ACS case remaining open for weeks and months with no sense of when or how the invasion will end.

While CARES may not result in an indicated case with the SCR, the coercion, fear, and uncertainty that families experience when navigating CARES and other contact with ACS. The only way to achieve less harm is to end unnecessary contact with family policing agencies, not to claim that contact is benign and call it another name, and to connect families to needed community-based resources.

VI. The City Council Must Pass Legislation Requiring ACS to Provide Families Their Rights at the First Point of Contact During an ACS Investigation

We applaud this Committee's efforts to ensure parents and caretakers have access to information for legal services providers during an ACS investigation. We strongly believe that access to legal counsel through the course of an investigation provides parents with the information and transparency they need to protect their families from unlawful abuse of authority, and to limit the

¹⁰ Administration for Children's Services, *NYC Children Flash Report Monthly Indicators August 2024* at <https://www.nyc.gov/assets/acs/pdf/data-analysis/flashReports/2024/08.pdf>.

traumatic and confusing nature of an investigation. However, Introduction 9A does not provide the comprehensive intervention most needed to curb ACS' coercive investigations and to empower parents with full knowledge of their rights. By requiring that ACS provide families information for legal services providers only *after* an investigation is completed and indicated against a parent, Introduction 9A leaves families without support during the most invasive and crucial portion of a family's interaction with ACS. Moreover, providing this information falls short of providing families with the full breadth of their rights during investigation – when this information is needed the most – including that they have a right to consult an attorney, and to decline to allow ACS into their home or to speak to their child. Without the provision of these rights at the first point of contact, families are left uninformed and unprotected. Instead, we recommend that the City Council introduce and pass legislation mirroring proposed legislation before the New York State legislature that would require ACS to provide families their rights at the first point of contact, orally and in writing.

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.