



TESTIMONY OF:

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**Presented before
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Committee on General Welfare
Oversight Hearing on
Preventive Services at the Administration for Children's Services**

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My name is Kaela Economos and I am a Social Work Supervisor in the Family Defense Practice at Brooklyn Defender Services (BDS). BDS is a public defender organization that provides inter-disciplinary, holistic, client-centered representation in the areas of criminal, family, and immigration defense, as well as civil legal services, for tens of thousands of clients every year. The BDS Family Defense practice represents almost 2,000 respondents in child welfare cases every year and has helped thousands of children remain safely at home with their families or leave foster care and safely reunite with their families. Our attorneys, social workers and parent advocates are in the field every day interacting directly with the Administration for Children's Services and foster care agency workers.

We thank the New York City Council Committee on General Welfare and, in particular, Chair Stephen Levin, for the opportunity to testify today. I will address both the

quality and effectiveness of preventive services available to low income communities in New York City and offer BDS's support for Resolution 1322 and Introductions 1062 and 1374, along with our reactions and recommendations to the bills.

Background

BDS's family defense practice regularly interfaces with preventive service programs in three situations: (1) when ACS files a neglect petition against a parent whose family is already receiving voluntary preventive services because the agency believes that those services are not adequately addressing safety concerns in the home; (2) when preventive services are required by the Family Court in the context of neglect cases in order to keep children home with their families instead of being removed; and (3) when preventive services are required by the Family Court in order for children to return home to their families.

BDS strongly supports funding preventive services robustly for the intended purpose of these programs, which is to prevent the need for children to be placed in foster care and to reduce the time children spend in care. In large measure, preventive service programs have been effective in helping to reduce the foster care population which has been reduced from almost 40,000 in 1999 to fewer than 10,000 children in foster care in New York City today.¹ Keeping families together or reuniting families with services in place instead of placing children in foster care prevents the harm and trauma of removing children from their families and the harm and poor outcomes that children in foster care

¹ Center for New York City Affairs, The New School, *Watching the Numbers: A Six-Year Statistical Survey Monitoring New York City's Child Welfare System* (November 2016), available at https://static1.squarespace.com/static/53ee4f0be4b015b9c3690d84/t/5849a22f725e254385d753eb/1481220657883/FINAL_Watching+the+Numbers_2016.pdf.

face.² This also conserves limited social services resources and reduces the burden to taxpayers.

The goal of preventive services is to connect families with services and benefits so that ACS involvement is unnecessary to keep children safe. Ideally, preventive services would give agencies the ability to connect with the community in meaningful ways so that families could turn to them before ACS becomes involved in a crisis. If families could identify preventive services as a supportive option in their communities when they are having problems, much of ACS involvement could be avoided. Instead, ACS mandates preventive services after problems are identified which becomes another intrusive and invasive system in our clients' lives which breeds suspicion and undermines the potential for meaningful and beneficial relationships.

Preventive services are most successful when they remain voluntary and are community based. The most effective preventive agencies are ones that have deep roots in the neighborhood they serve and have an established track record with the community.

² In our testimony submitted to this Committee in October, we noted that although most foster parents are well intentioned and provide a safe environment, there is overwhelming evidence of the negative outcomes of foster care placements. Children placed in foster care are more likely to experience psychopathology than children who are not in foster care, with children in foster care being between 2.7 and 4.5 times more likely to be prescribed psychotropic medication than children not in foster care, according to one study. Studies have found that rates of safety are actually worse for children in foster care than for those in family preservation programs. For example, one study shows that children are actually twice as likely to die of abuse in foster care. New York State ranks the third worst for rates of substantiated or indicated reports of maltreatment of children in foster care. Even these statistics are likely underestimations, as “abuse or neglect by foster parents is not investigated because agencies tolerate behavior from foster parents which would be unacceptable by birth parents.” Children who are on the margin of placement tend to have better outcomes when they remain at home as opposed to being placed in out-of-home care. In one study, a researcher looked at case records for more than 15,000 children, segregating the in-between cases where a real problem existed in the home, but the decision to remove could go either way. Despite the fact that the children who remained home did not get extraordinary help, on measure after measure the children left in their own homes fared better than comparably maltreated children placed in foster care. All of this evidence demonstrates that keeping children together with their parents, even within homes that are not ideal, is usually preferable to foster care placement. *See* Testimony of Brooklyn Defender Service and The Bronx Defenders before the NYC Council Committee on General Welfare October 31, 2016, pp. 5-6 (internal citations omitted).

This results in communities and neighbors trusting them, which enables families to seek and receive help before anything rises to ACS involvement or mandated services. For example, our Mandarin-speaking families report the greatest satisfaction in cases involving Mandarin-speaking preventive service workers and organizations. When our clients feel like the preventive service agency understands them and their community, and is working with them, and not against them, our clients are more successful in achieving goals for their families.

Preventive service programs can and should be delivered more effectively to help families provide safe and stable homes for their children and to reduce the number of children who enter foster care. In our experience, monitoring requirements placed upon preventive services agencies; formulaic service planning that does not take into account the complex needs of at risk families; and delays in assigning preventive services to families in need all have contributed to reducing the effectiveness and availability of preventive service programs. BDS testified extensively on these points during the preliminary budget hearing before this Committee in March 2015 and offered specific recommendations for ameliorating each of these concerns. A copy of our testimony is available online at <http://bds.org/wp-content/uploads/3.17.15-NYC-Council-Committee-on-General-Welfare-Testimony.pdf>.

My testimony today revisits some of these issues with new case examples. Suffice to say that the issues we reported on in 2015 have not yet been resolved. Indeed, ACS' reaction to the recent tragic death of Zymere Perkins has been to remove even more children from their homes. These are *the highest numbers of filings and removals* that we have seen in all of our nine years of representing indigent parents in Family Court.

Delays in Assigning Preventive Services to Families in Need

As we noted in our March 2015 testimony, the lag between preventive services need identification and service provision often spans months. In some cases, this gap between identification and provision results in ACS seeking to remove children from their families unnecessarily. For example, in one case alleging inadequate housing conditions and leaving an 11-year old alone with younger children, ACS made a removal application where there had been a prior agreement to arrange preventive services that were not put in place in a timely manner. Because the delays in arranging preventive services are well-known in Family Court, judges are often reluctant to return children to their families, regardless of whether there is a plan that preventive services will quickly respond to the families' service needs, leading to children staying in foster care for longer than necessary. Since only ACS is authorized to make the referral in cases where the judge mandates preventive services (non-voluntary cases), often our clients have no way to access services until ACS puts them in contact with the preventive services agencies.

In July 2015 ACS removed three-month-old twins from the care of their father, a BDS client, without a court order and placed them at the ACS Children's Center. The reason ACS gave for the removal was that our client had left the babies in the care of their mother who was not supposed to be alone with the children. The Family Court held a hearing at which the ACS worker testified that she had requested preventive services for the family months earlier but they had yet to be assigned to an agency. She admitted that our client had requested assistance with housing and childcare which she never provided. He was forced to enter the shelter system with his children, and the shelter rules prohibited him from leaving the children with anyone other than their mother while he went to work in

the evenings. The hearing lasted six days, during which time the babies remained at the Children's Center. At the conclusion of the hearing, the Family Court denied ACS' application to remove the babies and returned them to their father's care.

More than a year later, we see that our clients still suffer significant delays in receiving necessary preventive services. In late October BDS picked up a case involving a client whose children were released to her with court-ordered supervision. ACS spoke about providing the family with preventive services and our client kept following up with CPS as to status of the preventive services and whether or not ACS sent in a request, but ACS had not done so. At this point, our client decided to get the ball rolling and enrolled one of her sons to receive counseling due to behavior issues and her other son to get an appointment for early intervention, all on her own. Our client returned to court in December and her attorney informed the court about the delay in the preventive services. ACS stated that they only put in the request for services at the end of November, a full month after the first court date. Upon hearing this, the CPS supervisor reported that the family would be transferred to a Family Support Unit (FSU) worker. FSU workers are similar to preventive services workers, but in-house for ACS. FSU workers are often assigned to families after the CPS investigation where there is no foster care involvement but there is still court-ordered supervision of the family.

Recommendation: Preventive workers should be immediately assigned in all cases where families indicate they are willing to participate in preventive services. Worker performance should be assessed on the time between identification of family needs and the provision of services.

Overuse of Preventive Services Causes Backlogs

One major concern is that we often see ACS ask judges in Family Court to mandate preventive services, often without an articulable reason as to why the family needs services or how these specific services can benefit the family when ACS is already supervising the home and/or the parent is receiving other services such as counseling. When ACS asks for unnecessary services, this clogs up the pipeline and makes it even more difficult for families who do want and would benefit from specific services to get the help that they want and need.

As any social service provider will tell you, and social science research confirms, that people are best served when they are able to receive voluntary services narrowly tailored to their needs.³ Anything beyond this scope often results in worse outcomes for the intended recipient, and greater costs for the system as a whole.

***Recommendation:** In Family Court, ACS should be required to articulate a reason for preventive services if they are requesting them with the goal of limiting the number of families who receive preventive services to only those who really need them.*

Concern about the newly required Preventive Service Termination Meetings

We are concerned that the newly required Preventive Service Termination meetings that are outlined in ACS's draft Integrated Family Team Conference Protocol that was

³ See, e.g., National Quality Improvement Center, DIFFERENTIAL RESPONSE IN CHILD PROTECTIVE SERVICES: A LEGAL ANALYSIS (Sept. 2009), available at <http://www.ucdenver.edu/academics/colleges/medicalschoo/departments/pediatrics/subs/can/DR/qicdr/General%20Resources/General%20Resources/docs/differential-response-in.pdf>.

issued on October 24, 2016 will have unintended negative consequences for families seeking preventive services whether voluntary or mandated. Not only do these new conferences increase the number of meetings the family must attend, they may result in unnecessary delays in the provision of preventive services, especially for homeless families or families with unstable housing.

Recently, we worked with a client who had preventive services in place for her family. The family was then transferred to a different shelter that was outside the catchment area of the assigned preventive service agency. Preventive services could not continue until the family was referred to a new provider in the new catchment areas, but a new referral could not be made until the former provider was able to close out their services with the family. Working under the new IOC conference protocol, this could not happen until there was a termination conference. There were delays in scheduling the service termination conference, including the lack of an available ACS facilitator. Instead of a seamless transition to new preventive services, the delay of the termination meeting, coupled with the long time frame for the preventive service planning conferences, resulted in several weeks of the family not getting any preventive services through no fault of their own.

Recommendation: ACS should reconsider the protocol around preventive service conferences to make service provision more seamless and to allow for a different process for families who are participating in preventive services. At a minimum, a conference should not be held if a family is terminating services due to a change in catchment area.

Concern about the Expiration Date on Mandated Preventive Services

Many of the evidence-based preventive services programs have strict time limits for how long the cases can remain open and it is very difficult to keep the cases open longer. Time limits mandating the termination of services create a revolving door in the child welfare system. Families must stop services, not because they have completed their goals but because their time is up. Inevitably they return to services because the issues that led to ACS involvement in the first place have not been resolved. The time limits also undermine the potential for meaningful relationships. Many of these families have had numerous negative interactions with the system and building trust is already difficult so these timeframes are just too short to do any long-lasting substantive work.

***Recommendation:** ACS should work with families to ensure they receive the voluntary services that they need, as long as they want and need them. However, mandated services should not be extended involuntarily to allow ACS constant intrusion in our clients' lives.*

Bills

Resolution No. 1322- Resolution calling upon the New York State Legislature and the New York State Office of Children and Family Services to develop a parents' bill of rights to be distributed at initial home visits in child protective investigations and made available online

BDS strongly supports this bill. Connecticut passed a similar bill in 2011 and the Department of Children and Families now shares the bill of rights on their brochures and materials that they give to families. The Connecticut bill already serves as a successful model for implementation in New York. We would similarly urge that the New York State legislature work with organizations like ours that represent parents in Article 10 proceedings to ensure successful rollout of the bill.

Introduction 1062 - A Local Law to amend the administrative code of the city of New York, in relation to requiring the administration for children's services to provide language classes to certain children in foster care

BDS strongly supports this bill without comments or recommendations.

Introduction 1374 - A Local Law to amend the administrative code of the city of New York, in relation to the utilization of preventive services

BDS strongly supports this bill to require reporting on the utilization of preventive services. However, we raise the following issues to the Council's attention:

- 1. We are concerned that the burden of reporting will fall on the preventive agencies to track and provide this data to ACS.*

Preventive service agencies already are understaffed and loaded up with paperwork. We raise this issue in hopes that the Council will try to work with the agencies to ensure that the new reporting bill does not further limit the agencies' ability to serve New York's most vulnerable communities.

- 2. ACS should be required to report on how many cases are voluntary vs. mandated.*

Preventive services are most successful when they remain voluntary and are community based. Data collection about voluntary versus mandated services would allow policymakers to assess which preventive programs have the most voluntary clients and whether incidences of ACS involvement are lower in those communities. We could also then assess how many clients avoid court when a preventive program is already involved or initiated early in the investigation.

- 3. ACS should also track and report on data on the length of time between (1) when the court orders services, (2) the ACS referral to assignment of an agency, and (3) actual provision of services.*

This recommendation seeks to gather data about the bureaucratic delays we discussed above.

4. *ACS should track and report on data specifically broken down by preventive service catchment areas, not just on preventive program types and slots.*

This amendment will allow policymakers to see where preventive services are most utilized, where there may be waitlists for services, where there may be under-utilization and will help policymakers to determine sensible preventive service resource allocation.

5. *ACS should report how many families are receiving each of the services listed in 18 NYCRR 423.4(d)(1).*

New York law requires that families receiving preventive services to prevent foster care placement have access to day care; homemaker services; parent training or parent aide; transportation; clinical services; respite care and services for families with HIV; emergency services, including cash or the equivalent thereto, goods and shelter; and the ACS Housing subsidy. Int. 1374 should be amended to ensure that ACS reports on how many families need each of these services and how many receive them. This data should include not simply whether a family was referred to another agency to receive these services, but also whether the services were in fact provided and if not, what advocacy was done by the preventive agency to ensure service provision.

Conclusion

New York City's progress in dramatically reducing the number of children in foster care over the past ten years has been possible through the increased availability of preventive services to families in need of support, earlier identification of such families,

and greater accountability within the Family Court Systems to ensuring that appropriate service plans are put in place. These trends must be applauded and not rolled back in response to recent child deaths. We are grateful to the Council for your attention to preventive services and for offering legislation that seeks to shed light on how these services support families in need and limit the need for removal to the foster care system. Please do not hesitate to reach out to me at keconomos@bds.org or (347) 592-2554 with any questions.