



TESTIMONY

ACS Accountability Bill Package Int. Nos. 1715, 1716, 1717, 1718, 1719, 1727, 1728, 1729, and 1736 and Res. Nos. 736 and 1066

Presented before:

New York City Council
General Welfare Committee
Stephen T. Levin, Chair

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Introduction

The Legal Aid Society, Lawyers For Children, and The Children’s Law Center appreciate the opportunity to testify before the New York City Council General Welfare Committee regarding the eleven proposed bills that aim to reform the NYC Administration for Children’s Services (“ACS”) practices. Ints. 1715, 1716, 1717, 1718, 1727, 1728, 1729, and 1736, and Res. 736 and 1066 address important issues relating to child protective investigations. We thank Councilman Stephen Levin, Chair of the General Welfare Committee, as well as the other members of the Committee, for organizing today’s hearing.

Our three organizations are the institutional providers of Attorney for Child (AFC) services in New York City. As AFCs, we wholeheartedly agree that the practices addressed by the eleven proposed bills must be reformed. Our support for such reforms stems from our clear recognition that children and families of color are disproportionately represented in the child welfare system, and our belief that many low-income parents and children do not have access to the critical information and supports that they need to protect their rights and keep their families intact during an ACS child protective investigation. However, notably absent from the bills discussed here today are equally important protections for the rights of the children who are the subject of ACS investigations and foster care placement. In light of that omission, along with our support for the bills, we make the following suggestions, which will further safeguard the rights of children and families investigated by ACS.

About Our Organizations

The Legal Aid Society

The Legal Aid Society (“LAS”), the nation’s oldest and largest not-for-profit legal services organization, is more than a law firm for clients who cannot afford to pay for counsel. LAS is an indispensable component of the legal, social and economic fabric of New York City. It is an organization that advocates for low-income individuals and families across myriad civil, criminal, and juvenile rights matters, while also fighting for legislative reform in our clients’ favor. Last year, LAS served over 300,000 households in New York City.

LAS consists of three major practices—the Civil, Criminal, Juvenile Rights practices. The Juvenile Rights Practice (“JRP”) provides comprehensive representation as attorneys for children who appear before the New York City Family Courts in abuse, neglect, juvenile delinquency, and other proceedings affecting children’s rights and welfare. Last year, LAS staff represented approximately 39,000 children in Family Court related matters as well as matters which involved education advocacy and intervention. In addition to individual representation in Family Court, JRP uses affirmative litigation and legislative and policy advocacy to address systemic issues affecting our clients.

Lawyers For Children

Founded in 1984, Lawyers For Children (“LFC”) is a not-for-profit legal corporation that represents individual children in voluntary foster care, abuse, neglect, termination of parental rights, adoption, custody and guardianship proceedings in family court, and advocates for system-wide reform to improve the lives of children in foster care. This year, LFC will represent children and youth in more than 6,000 court proceedings. Based on our experience in individual cases, LFC has also successfully participated in numerous class-action lawsuits and helped to effectuate change in City and State policies, practices and laws to promote good outcomes for all children in foster care.

The Children’s Law Center

The Children’s Law Center (“CLC”) is a 21-year-old, not-for-profit organization that has represented over 100,000 children in legal proceedings held in New York City Family Courts and the New York State Supreme Court Integrated Domestic Violence Parts. We are the first organization in New York City dedicated primarily to the representation of children in custody, guardianship and visitation matters. In addition, we represent a significant number of children who are the subject of abuse and/or neglect cases. On each case to which we are assigned, CLC strives to give the children for whom we advocate a strong and effective voice in the legal proceedings that have a critical impact on their lives.

Given our three organizations’ extensive histories representing children and families from underserved communities, and our substantial knowledge of New York City’s child protective and Family Court systems, we occupy a unique position from which to comment on the importance of the proposed legislation, and from which to suggest amendments to strengthen the proposed bills.

Availability and Dissemination of Critical Information for Parents and Children

The inception of a child protective investigation is a stressful and frightening experience for parents and children. The stress and fear are often compounded by a lack of understanding about what occurs over the course of a child protective investigation, whether compliance with ACS requests is mandatory, and where parents and children may turn for advice.¹ Some of the most

¹ ACS’s website does provide parents and people involved in ACS investigations information about “Child Abuse Investigation(s).” See A Parent’s Guide to a Child Abuse Investigation, retrieved from <https://www1.nyc.gov/site/acs/child-welfare/parents-guide-child-abuse-investigation.page>. However, there is no requirement that ACS provide this vital information directly to parents, or even make them aware that such information is available on the ACS website.

basic, fundamental rights – the rights of children and parents to remain together without undue government interference and children’s right to be free from harm – are implicated in a child protective investigation. Therefore, parents and children should be provided with information regarding their rights and responsibilities whenever ACS comes into their homes. This is particularly important because, as we know, implicit bias in the child welfare system leads to the over-surveillance of low-income communities of color. The statistics demonstrate that disproportionate representation of these communities in the child welfare system is even more stark in New York City than in the rest of the state.² Ints. 1718, 1729, and 1736, and Res.736 appropriately require ACS to provide accessible information to parents and caretakers regarding child protective investigations. Because children have equally strong interests in being free from harm and remaining with their families, we believe that ACS caseworkers should provide similar information to those children.

Importantly, some of these bills would apprise a parent or caretaker who is the subject of an ACS investigation of their rights and responsibilities *from the outset* of that investigation. For instance, Int. 1736 requires ACS, from the point of “initial contact” with a family, to orally disseminate information about a parent or caretaker’s rights during the investigation, including the parent’s right to appeal; resources that are available to parents during the investigation; phone numbers for the ACS Office of Advocacy; and “any other information ACS deems appropriate.” Similarly, Res. 736 calls upon the state legislature and the New York State Office of Children and Family Services (“OCFS”) to develop a parents’ “bill of rights,” to be provided at initial home visits in Child Protective Services investigations.

Family members who have early access to information will have a better understanding of what should occur during an investigation, of the realistic timeframes for and potential outcomes of child protective investigations. In addition to the information already specified, Int. 1736 should be amended to require the provision of additional information, such as the right of a parent or a child to refrain from speaking with an ACS investigator absent a court order, the right to consult a lawyer, and specific information about how to access legal services for both parents and children.³ Res. 736 should also be amended to call for OCFS to develop, in addition to a parents’ bill of rights, a children’s bill of rights to be provided at initial investigative contacts with children. The children’s bill of rights should also be available in a minimum of two age- and developmentally-appropriate versions.

² In the rest of the state, for example, black children are only 2.3 times more likely to be involved in an SCR report than white children, 2.3 times more likely to be involved in an indicated report, 4.9 times more likely to be admitted to foster care, and 4.9 times more likely to be in foster care. The overrepresentation of Hispanic youth in the rest of the state is even smaller. Hispanic children are only 1.1 times more likely than white children to be involved in an SCR report, and 1.1 times more likely to be involved in an indicated report. They are only 1.4 times more likely to enter foster care, and 1.3 times more likely to be in foster care. See https://ocfs.ny.gov/main/bcm/DMR_Section%20Seven%20of%20Grant%20RFP_2015.pdf.

³ It is important that children independently be provided with information regarding their rights and the investigation because ACS sometimes speaks with them at school and at hospitals without their parents present.

Int. 1718 requires that information be provided in all designated citywide languages.⁴ In our diverse city, where residents speak countless languages and dialects, dissemination of information in the primary—or only—language that a family speaks is invaluable. Without understandable and culturally competent information, it is nearly impossible for parents to understand why they are being investigated and what they are being asked to do by ACS. The potential consequences that stem from failure to understand what is happening could be dire for child well-being and family stability. Further, ACS should avoid situations in which the children, who may be the only English speakers in a home, are forced to interpret conversations between their caretakers and ACS caseworkers. Finally, like Int. 1736 and Res. 736, Int. 1718 should be amended to require the provision of information to children as well as their parents.

In sum, these bills, viewed as a whole, will ensure parents and caretakers are more informed. However, they should be amended to require that children also receive information about their rights. All family members benefit from access to this information, which will help them to anticipate and seek assistance in navigating the stressful and potentially life-altering scenarios that they may face as an investigation runs its course.

Early Representation for Parents and Children

It is well established in New York State that both parents and children have independent rights to counsel in child protective court proceedings.⁵ However, they have no right to representation during an ACS investigation, which, as noted above, can be very difficult for parents and children to navigate, and can have serious consequences for child and family well-being. Int. 1728 would provide “access to legal services” to parents or persons legally responsible at ACS’s “first point” of contact with them, and thus aims to assist them at the earliest—and sometimes most critical—stage of a child protective case.

We agree that early access to counsel for parents is important, and can help avoid needless removals of children and/or protracted litigation. However, we are concerned that the current version of Int. 1728 does not provide an actionable plan for its implementation. It is unclear in Int. 1728 what the “first” point of contact is in an investigation that would trigger access to counsel, and whether the “brief legal assistance” that counsel would provide would establish an on-going attorney-client relationship. Further, the bill directs that “ACS shall establish a program to provide access to legal services” for the parents under investigation, and that “ACS

⁴ Local Law 30 of 2017 requires that covered NYC agencies provide language access services for ten designated citywide languages: Spanish, Chinese, Russian, Bengali, Haitian Creole, Korean, Arabic, French, Urdu, and Polish.

⁵ N.Y. Fam. Ct. Act § 262(a) provides that respondents in child protective proceedings have a right to counsel. Family Court Act § 249(a) provides that independent counsel must be provided to represent children in child protective proceedings. For the same reasons that the state legislature has determined that it is valuable for children to be assigned counsel like other parties in child welfare court proceedings, the City Council should place value on providing children with access to counsel during the preliminary stages of child welfare involvement, just like other parties.

shall annually review” the legal services organizations’ performances. Not only could this arrangement give rise to conflicts of interest, but having the same entity that is conducting the investigation be responsible for administering the program to provide access to counsel might undermine individuals’ abilities to trust their attorneys, even if those attorneys are employed by independent legal services organizations.

We are also concerned that attorneys for children are never mentioned in Int. 1728. The right of children to be represented by counsel in child welfare proceedings has been clearly established. Attorneys for children participate in all aspects of a Family Court case, and serve as the children’s voice in those proceedings. Providing children with an independent voice in the investigation stage can add perspective that may help ensure the safety of the children, identify resources to assist the family, and provide important information that might not otherwise be elicited. Involving attorneys for children at the earliest point of contact may also serve to mitigate bias and ensure outcomes don't confuse poverty with safety concerns.

It is not sufficient that the parent has access to counsel because, while children’s interests frequently align with those of their families, they may diverge, including at the outset of a child protective investigation. Even when the child’s position is aligned with the parent, providing the child with an independent advocate at ACS family conferences, for example, can help all of the parties to consider the issues involved from the child’s perspective and develop solutions to best support the family. Attorneys for children have a strong fund of knowledge in child and adolescent brain development, education, conflict resolution, and trauma. We ensure that children’s rights are protected and their input is not ignored or taken for granted, and more important, is considered.

Therefore, it is important that soon after children have contact with ACS, counsel is available to answer their questions, explain legal terms and processes, and protect their interests. To acknowledge only the importance of counsel for parents and not recognize that counsel for children, who serve children thru interdisciplinary practice and expertise, is also critically important, would be misguided. While we do not suggest in this testimony exactly when or how access to counsel should occur, we assert that a child should not remain unrepresented when both ACS and that child’s parents have counsel prior to the filing of a petition. We would welcome the opportunity to work with the Council and other stakeholders to develop a plan that would be feasible and protect the interests of both parents and children.

Access to counsel for fair hearings to challenge an indicated case is equally important as having legal representation at the first point of contact during an ACS investigation because an indicated case has a detrimental effect on employment opportunities for an extended period of time. We endorse Int. 1715’s goal of establishing a program to provide access to legal services for parents and persons legally responsible, who seek fair hearings after having indicated cases. There currently is no requirement that parents be assigned counsel at a fair hearing. While we support

this bill in principle, however, we have similar concerns about ACS administering this program and evaluating performance as we do with respect to Int. 1728, described above.

SCR Reform

We applaud the City Council’s call for the State to make changes to the Statewide Central Register of Child Abuse and Maltreatment (“SCR”). Legislation to address the issues raised in Res. 1057 and Res. 1066 passed the State legislature this past session. However, the bill -- S.6427-A/A.8060-A⁶ -- has not yet been sent to the Governor for signature. The changes put forth in S.6427-A/A.8060-A, like the resolutions that are before the City Council, would have important implications for children and families – ensuring that fewer family members are precluded from being resources for children who must be removed from their parents’ custody and that parents are not unnecessarily prevented from obtaining employment in certain fields. We believe that the proposed changes will improve the opportunities and resources available to children and families without compromising the children’s safety. For these reasons, we urge the City Council to adopt a new resolution in place of Res. 1057 and Res. 1066 urging the Governor to sign S.6427-A/A.8060-A into law.

Data Collection and Reporting

Data can drive improvements in practice. While ACS already collects and publishes a substantial amount of data, the additional reporting that is required by these bills would provide greater transparency, and would help ACS work to reduce the traumatic impact of separating children from their parents and siblings, especially in low-income communities of color. We additionally propose some limited alterations to the bills, as currently drafted.

The excessive involvement of ACS in the lives of families in impoverished communities of color has a devastating impact on children and their families. Black and Latinx children enter the child welfare system in numbers far greater than their proportion of the general population. While black children represent 24.3% of the city’s youth, they make up over 55% of the population in foster care according to 2014 OCFS data.⁷ Hispanic children in NYC are 5.6 times more likely to be placed in foster care than their white counterparts.⁸ As a result, requiring ACS to provide comprehensive of data broken out by key categories such as race, and to develop a plan to address the disproportionality, is an important step toward improving the child welfare system.

⁶ The SCR Reform Bill is a bill to amend the social services law, in relation to the standard of proof for unfounded and indicated reports of abuse or maltreatment of children from a “some credible evidence” standard to a “preponderance of the evidence” standard. In addition to the standard of proof, the bill also changes the amount of time an indicated SCR report remains on a person’s record to eight (8) years after the report is indicated, in contrast to up to twenty-eight (28) years after the report is indicated.

⁷ See https://ocfs.ny.gov/main/bcm/DMR_Section%20Seven%20of%20Grant%20RFP_2015.pdf.

⁸ Id.

When ACS conducts an emergency removal of children from their home, the children and family are at great risk of experiencing significant trauma. Disrupting the bond between parents and children can cause damaging, at times irreversible, consequences including emotional, psychological, and even physical harm to the children.⁹ While removal may be necessary in some cases, ACS must take all possible steps to ensure that unnecessary removals are not taking place and that, when removals are necessary, it takes all steps to minimize the trauma to the child.

Int. 1727 requires ACS to report on emergency removals, disaggregating the information based on whether the removal was subsequently approved by a judge. We support this bill as it would likely shed light on the practice of unnecessary removals, which result in profound trauma to our clients and their families.

Int. 1716 provides for reporting on emergency removals disaggregated by certain demographic data. We support this bill, and would additionally propose that the data be disaggregated by zone of the family, as defined in the NYC Administrative Code. This information could help identify where unnecessary, wrongful removals are most frequently occurring, allowing City Council and ACS to target these extremely problematic practices. We would further propose that disaggregation of data include the number of children removed and their ages, as these factors may help identify in what circumstances children and families are most at risk of unnecessary, wrongful removals.

When children are removed from their homes, prompt and regular contact with family is critical. Yet, there are countless examples of youth in foster care who deteriorate because they are completely disconnected from loved ones and the communities to which they belong. As attorneys for the child, we see how frequently children are placed into foster care far from their homes and deprived of significant, meaningful contact with their families and communities. Int.

⁹ See Shanta Trivedi, *The Harm of Child Removal*, 43 *New York University Review of Law & Social Change* 523, 527 (2019) (“While the accepted wisdom is that removal is the better option for a child in a potentially abusive or neglectful home, research demonstrates that this is not always true. In fact, the bond between children and their parents is extremely strong and disrupting it can be even more damaging to a child—even when her parents are imperfect.”). See also Sara Goydarzi, *Separating Families May Cause Lifelong Health Damage*, *Scientific American* (June 2018); Kimberly Howard et al., *Early Mother-Child Separation, Parenting, and Child Well-Being in Early Head Start Families*, 13 *Attachment & Human Development* 5 (2009); and Marcia McNutt, *Statement on Harmful Consequences of Separating Families at the U.S. Border*, National Academies of Sciences Engineering Medicine (June 20, 2018). Children who have spent time in foster care have poorer school performance and are more susceptible to homelessness, arrest, chemical dependency, and mental and physical illness compared to socioeconomically similar children who have never been removed from their homes. See <https://www1.nyc.gov/assets/opportunity/pdf/policybriefs/child-welfare-brief.pdf>; and <https://www.casey.org/nw-youth-outcomes/>

1719 would require ACS to report on the number of children placed outside their home boroughs, and how quickly they are provided contact with their families. Gathering this information is an important first step toward addressing these problems. Int. 1719 should also require that data be disaggregated by zone, and by foster care provider agency.

Int. 1717 would require ACS to report on the demographics of children and families involved in the child welfare system at several important points. We commend this proposed bill, but suggest that demographic information also should include disaggregation by sexual orientation, gender identity, physical disability, and intellectual disability. In addition, we propose adding the point at which a case is filed to the “steps” at which ACS is required to provide demographic information. This bill would again provide greater transparency, enhancing the City Council’s oversight, while providing information that ACS could use to identify problematic or discriminatory practices and enhance its provision of services.

Conclusion

Thank you to the New York City Council for proposing the above-mentioned bills. They represent a significant step toward protecting the rights of families during child protective investigations. However, as described above, many of the bills could be strengthened by clarifying their provisions and by adding explicit protections for children. We would be happy to work with the Council to craft amendments to the Introductions and Resolutions to ensure that they are clear and afford adequate protections to both children and their parents. We are happy to answer any questions regarding this testimony.

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