

**Testimony of the New York Civil Liberties Union
before
The New York City Council Committee on General Welfare
regarding
the Preliminary Budget for Fiscal Year 2023**

March 9, 2022

The NYCLU, the New York state affiliate of the American Civil Liberties Union, is a not-for-profit, non-partisan organization with eight offices throughout New York State and more than 180,000 members and supporters. The NYCLU's mission is to promote and protect the fundamental rights, principles, and values embodied in the constitutions of New York and the U.S. This includes the constitutional guarantee of equal protection under the laws and the rights to privacy and personal autonomy, including in the realm of family life. We respectfully submit the following testimony with respect to the New York City Council Committee on General Welfare hearing regarding the preliminary budget for fiscal year 2023.

Introduction

The NYCLU has long viewed state intervention in the family as a civil liberties issue, and it has been involved in matters relating to the child welfare system for nearly fifty years. In the 1970s, the NYCLU brought litigation against New York City that led to a settlement spurring significant changes to the foster system and services provided to children in state custody.¹ The NYCLU also appeared as amicus curiae in the landmark Court of Appeals case *Nicholson v. Scoppetta*, defending the parental rights of mothers who are domestic violence survivors in the context of child protective cases.² In 2017, the NYCLU supported an amicus letter from the ACLU Disability Rights Project and several other organizations urging the Court of Appeals to underscore that the same standard for neglect applies to respondents with mental illness as to

¹ See ACLU, *ACLU History: Child Welfare Institutions*, <https://www.aclu.org/other/aclu-history-child-welfareinstitutions>.

² NYCLU, *Nicholson v. Williams*, <https://www.nyclu.org/en/cases/nicholson-v-williams-defending-parental-rightsmothers-who-are-domestic-violence-victims>.



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other parents. And in 2020, the NYCLU supported legislation to reduce the time parents remain listed on the State Central Registry, which can prevent them from obtaining employment, becoming foster parents, or regaining custody of their children.³

The NYCLU continues to work in coalition with impacted parents and direct service providers to advance reforms on the city and state level, including the ACS Accountability Act, portions of which the City Council passed last year. We welcome the opportunity to testify today.



Like the criminal legal system, the family regulation system is built to surveil and punish, rather than rehabilitate or support.

The child welfare system is more aptly described as a system of family regulation, given its intrusive and punitive character. In many ways, it mirrors the criminal policing system: both are mechanisms by which the state exerts coercive control over low-income Black and Brown populations.⁴ Both drain precious resources from marginalized communities, diverting them into jails and prisons in the criminal context and into foster homes in the family context.⁵ And both increase impacted individuals' risk for negative life outcomes like homelessness and future incarceration.

Parents and children in communities disproportionately targeted by the family regulation system know these costs all too well. In October of last year, parents testified to the State Assembly Committee on Children and Families about the trauma they experience at the hands of ACS.⁶ Many who testified were involved with the foster system as children and

³ *New Law Reforming NY State Central Registry Will Provide Justice and Relief to Families*, JMac For Families (Nov. 25, 2020), <https://www.jmacforfamilies.com/blog/new-law-reforming-ny-state-central-registry-will-provide-justice-and-relief-to-families>.

⁴ Stephanie Clifford and Jessica Silver-Greenberg, *Foster Care as Punishment: The New Reality of 'Jane Crow'*, New York Times (July 21, 2017), <https://www.nytimes.com/2017/07/21/nyregion/foster-care-nyc-jane-crow.html>.

⁵ See eg. Judy L. Thomas and Laura Bauer, *As U.S. Spends Billions on Foster Care, Families are Pulled Apart and Forgotten*, Kansas City Star (Feb. 25, 2020), <https://www.kansascity.com/news/special-reports/article238243099.html>.

⁶ See Public Testimony, *Hearing on Family Involvement in the Child Welfare System*, New York State Assembly Committee on Children and Families (Oct. 21, 2021), https://nystateassembly.granicus.com/MediaPlayer.php?view_id=8&clip_id=6408.



now live in fear of “catching a case” as parents. They emphasized that throughout its intergenerational presence in their families’ lives, ACS had exacerbated their challenges, not provided solutions. Accordingly, parents view ACS as a threat, rather than a lifeline, making it ill-suited to provide families with the material support they need to thrive.

The vast majority of family separations arise not from abuse, but from alleged neglect, which largely results from circumstances related to poverty. For example, inadequate nutrition, unstable housing, or lack of child care could all give rise to neglect findings. Accordingly, families living below the poverty line are 22 times more likely to be involved in the family regulation system.⁷

Despite targeting low-income families, ACS is ill-equipped to provide the constructive material support they actually need. For instance, parents investigated for neglect stemming from issues such as poor nutrition, lack of supervision, or unstable housing would likely benefit from support in the form of cash assistance to purchase groceries, free child care, or affordable housing. However, ACS’ primary support offerings to parents are ineffective and burdensome services such as parenting classes or anger management training, which are rarely tailored to a parent’s circumstances and fail to meet families’ immediate needs.

Perversely, these services can further destabilize families when they require parents to take time out of their already busy days to travel to in-person sessions, forcing them to jeopardize employment and spend money on transportation and child care. As a result, families experience ACS “support” as an additional stressor that puts them under a microscope and threatens them with separation. Additional public spending on such programs would be more effective if it were invested directly in communities where they need it most.

Furthermore, families are fearful of ACS. Funneling supports through the same system that regulates and separates them discourages them from seeking help. According to a recent study by Harvard Ph.D. candidate Kelley Fong, low-income mothers tend to conceal their

⁷ Martin Guggenheim, *General Overview of Child Protection Laws in the United States*, in REPRESENTING PARENTS IN CHILD WELFARE CASES: ADVICE AND GUIDANCE FOR FAMILY DEFENDERS 1, 17 (Martin Guggenheim & Vivek S. Sankaran eds., 2015).

hardships and avoid seeking institutional assistance as a result of their fear of CPS.⁸ Even Office of Children and Family Services Commissioner Sheila Poole acknowledged in 2019 that parents “are fearful of asking for help, because there are perceptions the system is going to come down heavy on them.”⁹ And ACS Commissioner Jess Dannhauser recognized at a March 2021 panel that “families... experience the support as surveillance...” and “no matter our intention, the experience is what matters.”¹⁰ Filtering funds or any kind of support through a system that families experience as policing is a counter-productive approach to providing them with the resources they need.



The NYCLU supports policy changes that would reduce unnecessary surveillance by ACS while providing communities with needed resources.

In low-income Black and Brown communities, the family regulation system is exhaustingly imposing, and fear of ACS looms large. Rather than increase ACS’s budget, the Council should shift resources to community-based supports that families can use to meet basic needs. Additionally, the Council should move to reduce ACS disruption of families, which can cause further destabilization and lasting harm.

This includes Intro. 1718 and Intro. 1736, which would require ACS agents to provide parents with their rights in a child protective investigation at the first point of contact. In the criminal context, police are required to read people in custody their right to remain silent and have an attorney represent them. But ACS caseworkers have no equivalent mandate to inform parents of their existing rights in a child protective investigation, and as a result, many parents are unaware of

⁸ Kelley Fong, *Concealment and Constraint: Child Protective Services Fears and Poor Mothers’ Institutional Engagement*, *Social Forces*, vol. 97, issue 4, 1785, 1810 (2020), <https://doi.org/10.1093/sf/soy093>.

⁹ Michael Fitzgerald, *More Services or Better Legal Support for Accused Parents? New York Officials and Advocates Divided on What’s Best*, *The Imprint* (Nov. 2019), <https://imprintnews.org/child-welfare-2/new-york-lawyers-families-child-neglect-programs-versus-legal-support/39390>.

¹⁰ Michael Fitzgerald, *New York City Child Welfare Chief Calls For Changes to Mandated Reporting System*, *The Imprint* (March 2021), <https://imprintnews.org/child-welfare-2/child-welfare-chief-calls-for-changes-to-mandated-reporting-system/52710>.



what they can choose to say or agree to when confronted by ACS, and of their right to consult with an attorney. By empowering parents with knowledge of their existing rights, Intros. 1718 and 1736 will allow them to make informed decisions at particularly vulnerable moments in an investigation to help maintain their family's stability.

The NYCLU additionally urges the Council to pass Intro. 1426, which would require ACS to report on investigations stemming from a positive drug test at a New York City public hospital.

Anecdotally, we understand that many ACS reports originate with health care providers based on a positive toxicology screen, often performed during delivery and without the patient's consent, some of which are ultimately revealed to be false positives. As a consequence, parents may be barred from breastfeeding or separated from their infants altogether. State guidance emphasizes that a positive drug test alone is not a sufficient basis to report a parent for neglect or abuse.¹¹ Intro. 1426 would be a step towards better understanding the full scope of this problem and ensuring that health care providers operate in accordance with state guidance and medical best practices.

Conclusion

Like other forms of policing, the family regulation system meets struggling families with surveillance and punishment and engenders fear in heavily impacted communities. It is designed to investigate and separate families and is therefore ill-suited to simultaneously provide the basic resources that are fundamental to family well-being.

As the City Council seeks to invest in families through its FY23 budget, the NYCLU urges it to fund community access to healthy food, affordable housing, child care, health care, and other supports that alleviate burdens on families, not in the systems that tear them apart. It should further adopt measures to protect families from unwarranted and harmful ACS intrusion, allowing them to maintain their peace and integrity.

¹¹ N.Y. Dep't of Health, *CAPTA CARA Dear Colleague (Provider) Letter*, Nov. 23, 2021, https://health.ny.gov/prevention/captacara/docs/dear_provider_letter.pdf.