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**Testimony of the New York Civil Liberties Union  
to  
The New York City Council Committees on General Welfare,  
Oversight and Investigations, and Public Safety  
regarding  
Operational Challenges in Family Court**

**April 25, 2023**

The New York Civil Liberties Union (NYCLU) respectfully submits the following testimony with respect to the New York City Council Committees on General Welfare, Oversight and Operations, and Public Safety hearing regarding operational challenges in family court.

**I. Introduction**

The NYCLU, an affiliate of the American Civil Liberties Union (ACLU), 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 right to privacy and personal autonomy, including in the realm of family life.

New York City's family court system – which hears a wide range of matters, from custody disputes to juvenile delinquency proceedings to child neglect petitions – has a direct and significant impact on the lives of New Yorkers. Family courts exert a tremendous amount of power over the most intimate aspects of people's lives, issuing decisions on whether children will be removed from their parents' care and whether youth accused of offenses will be detained. As the Council examines operational issues within the family court system, it must not lose sight of the people and families whose lives hang in the balance of the court's decisions. To that end, the Council must address not only bureaucratic issues and reforms, but also the broken systems of family regulation and policing that funnel parents and children into family court, further burdening the system and exposing families to lasting trauma.

While many types of cases are adjudicated in family court, our testimony focuses on matters involving allegations of neglect made against parents by the New York City

Administration for Children’s Services (ACS) – part of what many rightly refer to as the family regulation or family policing system. Each year, thousands of parents are subjected to investigations for alleged child maltreatment, often stemming from conditions of poverty beyond their control. ACS investigations can take several different paths, but many will lead to formal neglect petitions being filed in family court. Once a neglect petition is filed, even the most minor cases can take more than a year to resolve. Not only does this unjustifiably entangle families in protracted legal proceedings, but also it further burdens the family court system with cases that are best resolved through collaborative support, not inside a courtroom.

Rather than offering such assistance to struggling families, ACS operates as a punitive system, often subjecting families to intrusive surveillance, removing children from their homes, and responding to poverty-related challenges by accusing parents of neglect in family court. Our testimony today highlights recommendations that would help de-escalate ACS investigations by empowering parents to exercise their due process rights at the earliest stages of their case. By supporting parents’ ability to effectively advocate for their families, the Council can help prevent the need for court interventions.

## **II. Parents must have access to counsel before they appear in family court.**

For parents who find themselves targeted by allegations of neglect, the initial stages of an ACS investigation are highly intimidating. Parents are often asked to consent to entry into their home, answer intrusive personal questions, sign unnecessary medical releases, and make statements against their interest and the best interest of their families. Under New York law, parents who are the subject of a neglect petition are entitled to an appointed attorney when they first appear in family court.<sup>1</sup> Yet by the time a case lands in court, many parents will have already made decisions without counsel that limit their ability to fairly adjudicate their case.

To ensure the promise of due process and adequately protect parents’ due process rights, parents must have access to interdisciplinary legal representation at all stages of a proceeding, particularly in those critical early moments when they are most vulnerable. Granting parents access to an attorney before the filing of a petition can lead to more informed decision-making by parents that may facilitate solutions other than court involvement, reducing the burden on the family court system.

Notably, in its 2019 interim report, the State Commission on Parental Representation named early access to counsel as its top recommendation.<sup>2</sup> The Council has previously considered legislation to create a pilot program to expand legal representation during the

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<sup>1</sup> Matter of Ella B., 30 NY2d 352 (1972); N.Y. Family Court Act §§ 261, 262, 1120.

<sup>2</sup> Commission on Parental Legal Representation, Interim Report to Chief Judge DiFiore, at 16-23 (Feb. 2019), [http://ww2.nycourts.gov/sites/default/files/document/files/2019-02/PLR\\_Commission-Report.pdf](http://ww2.nycourts.gov/sites/default/files/document/files/2019-02/PLR_Commission-Report.pdf).

pre-filing period,<sup>3</sup> and several family defense offices in New York City have begun to offer early representation with the help of city funding.<sup>4</sup> Since these offices began to provide early representation to parents in 2019, they have prevented the filing of a case in family court 75-80% of the time and prevented over 90% of the children involved in investigations where they represented their parents from entering the foster system.<sup>5</sup> We urge the Council to consider anew ways to ensure that all parents who are the subject of ACS investigations can access an attorney at the first point of ACS contact.

### **III. Parents must be told their rights at the outset of an ACS investigation.**

In addition to being able to consult with an attorney, it is critical that parents who are subject to ACS investigations understand their rights so that they may advocate for themselves. Despite the intrusive and consequential nature of an ACS investigation, caseworkers are under no obligation to inform parents that they do not have to answer questions, do not have to allow access to their homes, and have the right to contact an attorney. Indeed, caseworkers are in some ways incentivized to not tell parents about their rights in order to elicit information.

This places parents in a precarious position and increases the likelihood that they will make decisions contrary to their and their family's best interests. It also reinforces the adversarial nature of the family regulation system by exploiting parents' lack of awareness of their rights. This further undermines any potential for constructive collaboration between parents and caseworkers that could help them resolve family issues without resorting to family court.

Advocates have long called on state and local lawmakers to enact "family Miranda" laws that would require caseworkers to inform parents of their basic rights during an investigation at their first stage of contact with a family, similar to the warnings delivered by police officers to suspects in the criminal legal context. Even ACS' own staff have expressed support for a requirement that parents be informed of their rights.<sup>6</sup> There are currently two bills before the Council – Intros. 865-2022 and 294-2022 – that, with

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<sup>3</sup> NYC City Council Intro. 1728-2019, <https://legistar.council.nyc.gov/LegislationDetail.aspx?ID=4146304&GUID=1D2664EA-C1F9-4DCE-A0A6-0362B0CC67FE&Options=&Search=>.

<sup>4</sup> See Bronx Defenders, Press Release: Family Advocacy Initiative Funding, June 18, 2019, <https://www.bronxdefenders.org/press-release-family-advocacy-initiative-funding/>.

<sup>5</sup> Brooklyn Defenders, Bronx Defenders, Center for Family Representation, and Neighborhood Defender Service of Harlem, *Testimony of the Article 10 family defense organizations in New York City Regarding The State of Primary Prevention Services in New York State*, Hearing before The New York State Assembly Standing Committee on Children and Families, Oct. 18, 2022, <https://cfny.org/wp-content/uploads/2022/11/Joint-Family-Defense-Primary-Prevention-Testimony-10.18.22.pdf>.

<sup>6</sup> Andy Newman, *Is N.Y.'s Child Welfare System Racist? Some of Its Own Workers Say Yes.*, New York Times, Nov. 22, 2022, <https://www.nytimes.com/2022/11/22/nyregion/nyc-acs-racism-abuse-neglect.html>.

necessary amendments, would create such a mandate within the city. The Council must work with advocates to ensure these bills match their intention and quickly enact them into law.

#### **IV. Conclusion.**

The family court system in New York City holds immense, if sometimes overlooked, power over the lives of the New Yorkers who find themselves entangled within it. This is particularly true in the area of family regulation, where family court judges make orders each day that determine whether children will remain in their homes or be removed to foster care. As the City Council examines operational issues in family court, it must also scrutinize the systems that lead people into court in the first instance and enact necessary reforms to reduce unnecessary entanglement with the legal system, and with it, government disruption of the most personal aspects of people's lives.