



**Testimony of the Article 10 family defense organizations in New York City:  
Bronx Defenders, Brooklyn Defender Services, Center for Family Representation, and  
Neighborhood Defender Service of Harlem**

**Presented Before**

**The New York State Assembly Standing Committee on Children & Families**

**Hearing Date: October 18, 2022**

**Subject: The State of Primary Prevention Services in New York State**

This testimony is submitted jointly by the Bronx Defenders (BxD), Brooklyn Defender Services (BDS), Center for Family Representation (CFR) and the Neighborhood Defender Service of Harlem (NDS) (collectively the “family defense organizations”). Our offices are the primary providers of mandated legal representation to indigent parents in New York City in Article 10 cases filed in family court in each of our boroughs. Together, we have created a model of interdisciplinary representation for parents charged with neglect or abuse and at risk of family separation. Our model, which provides comprehensive representation to low- and no-income parents through teams of attorneys, social workers and parent advocates, is nationally recognized as the most effective model of representation of its kind.<sup>1</sup> Together, we have prevented thousands of children from needlessly entering and languishing in the foster system and have reduced the foster system census in New York City by almost 50%.<sup>2</sup> This translates to nearly \$40 million in annual savings in foster system expenditures for New York City,<sup>3</sup> and the preservation of family bonds that are priceless to our clients, their children, and society at large. We thank the Assembly Standing Committee on Children & Families for the opportunity to submit written testimony about the state of primary prevention in New York State, the need for primary prevention to focus on delivering resources directly to communities, the critical prevention services our organizations provide to New York City, and the need to ensure that these services are fully funded throughout New York State.

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<sup>1</sup> See Commission on Parental Legal Representation, Interim Report to Chief Judge DiFiore 27-28 (February 2019); see also Martin Guggenheim & Susan Jacobs, *A New National Movement in Parent Representation*, 47 CLEARINGHOUSE REV. 44, 45 (2013), available at <https://cfrny.org/wp-content/uploads/2021/03/A-New-National-Movement-in-Parent-Representation-Clearinghouse-Review.pdf>.

<sup>2</sup> Commission on Parental Legal Representation, Interim Report to Chief Judge DiFiore (February 2019).

<sup>3</sup> *Id.* at 21.

The family defense organizations have followed the leadership of directly-impacted people and chosen to use the terms “family regulation system” or “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.<sup>4</sup> The primary goal of our representation is to provide high quality legal representation to parents in high stakes family regulation investigations and family court cases and 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. Collectively we represent over 12,000 parents and caregivers each year. Since 2007 when New York City first contracted with institutional providers to represent parents, we have represented more than 40,000 parents in family court, touching the lives of more than 80,000 children, the vast majority of whom are Black and Brown and live in the most marginalized, low-income communities in New York City.

Since 2019, we have also provided two critical additional services to low-income parents. We provide support, guidance, and legal counsel to parents during an investigation by the Administration for Children’s Services (ACS), with the primary goal of preventing family separation and unnecessary family court filings, what we refer to as “timely defense.” Additionally, we provide legal representation in administrative proceedings to help parents clear or modify their Statewide Central Register (SCR) records that result after ACS investigations, thereby preserving and expanding their employment opportunities.

We recommend:

1. New York State invest in and guarantee timely access to quality legal representation for parents as a critical component of any primary prevention plan.
2. New York State invest in family defense and fully fund Article 10 contracts.
3. Primary prevention programs and services be delivered directly to families through community-based organizations, not through the agencies responsible for investigations and prosecutions.
4. New York State invest in programs that alleviate poverty and provide supportive, evidence-based services, including mental health services, outside of the family regulation systems.

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<sup>4</sup> See, Dorothy Roberts, *Abolishing Policing Also Means Abolishing Family Regulation*, The Imprint (June 16, 2020), <https://imprintnews.org/child-welfare-2/abolishing-policing-also-means-abolishing-family-regulation/44480>.

## I. Provide Legal Representation to Parents During a Family Regulation Investigation

Timely representation of parents during family regulation investigations stabilizes families and prevents court involvement and family separation. It has been recognized nationally as an effective form of primary prevention. In 2018, the federal Children’s Bureau released guidance that recognized that “[h]igh quality legal representation for parents prior to and after contact with the child welfare system is also a critical component of a robust prevention continuum.”<sup>5</sup> The report named the Detroit Center for Family Advocacy, which provided pre-petition representation to parents<sup>6</sup> as an example “of programs that support families through primary prevention.”<sup>7</sup> None of the 110 children served over the course of the Center’s three-year pilot entered the foster system.<sup>8</sup> Based on its own investigation, and understanding the Children’s Bureau’s recommendation, the Commission on Parental Legal Representation’s 2019 Interim Report to Chief Judge DiFiore, recommended that parents be given access to counsel during a family regulation investigation.<sup>9</sup>

Giving parents representation when it matters – before they appear in court - is consistent with principles of equal protection and due process; can prevent unnecessary and prolonged separation of children from their parents; and can mitigate the disruption and trauma that accompanies State intervention into the family. Timely access to counsel may also help reduce the disproportionate percentage of children of color in New York’s foster care system.<sup>10</sup>

The federal Children’s Bureau addressed the importance of timely representation again in 2021, when they clarified that revised 2019 policies made Title IV-E funds available for high quality legal representation to parents, including where there is no court involvement.<sup>11</sup> According to the Children’s Bureau, “[e]valuations demonstrate that legal advocacy in times of family vulnerability can help stabilize families and reduce the need for more formal child welfare system involvement, including foster care.”<sup>12</sup>

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<sup>5</sup> *Reshaping Child Welfare to Focus on Strengthening Families Through Primary Prevention of Child Maltreatment and Unnecessary Parent-Child Separation*, at 5, ACYF-CB-IM-18-05, Children’s Bureau, ACF, US DHHS (Nov. 16, 2018), <https://www.acf.hhs.gov/sites/default/files/documents/cb/im1805.pdf>.

<sup>6</sup> *Id.*, at 19.

<sup>7</sup> *Id.*, at 9.

<sup>8</sup> *Id.*, at 19.

<sup>9</sup> Commission on Parental Legal Representation, *Interim Report to Chief Judge Defiore*, 16 (February 2019), <http://ww2.nycourts.gov/doc/15446>

<sup>10</sup> *Id.*, at 16.

<sup>11</sup> *Utilizing Title IV-E Funding to Support High Quality Legal Representation for Children and Youth who are in Foster Care, Candidates for Foster Care and their Parents and to Promote Child and Family Well-being*, ACYF-CB-IM-21-06, Children’s Bureau, ACF, US DHHS, 10 (January 14, 2021), <https://www.acf.hhs.gov/cb/policy-guidance/im-21-06>.

<sup>12</sup> *Id.*, at 11.

In 2021, the New York State Office of Indigent Legal Services recognized the importance of timely defense when it issued *Standards for Determining Financial Eligibility for Assigned Counsel*, which called for the presumptive eligibility for counsel for parents experiencing a child protective investigation.<sup>13</sup> Following the promulgation of those *Standards*, the Office of Court Administration issued a request for public comment on a new Section 205.19 of the Uniform Rules of the Family Court, which would allow counsel to be provided during a family regulation investigation.<sup>14</sup> The Rule was adopted and is in effect as of September 28, 2022.<sup>15</sup>

While the assignment of counsel during an investigation is now permitted until the Uniform Court Rules, in current practice, parents in New York State with family regulation involvement who cannot afford to hire counsel are not provided assigned attorneys until the local family regulation agency files an abuse or neglect case against them in family court. Before a case is filed in court, however, critical decisions are made that have grave consequences for how cases proceed, including whether the family will be diverted to prevention programs and services, whether the case will be filed in court, and, most significantly, whether children will be separated from their parents and, if so, who will care for them. Without access to counsel during this critically important investigative stage of an Article 10 case, parents are forced to meet with family regulation workers, make critical decisions impacting the integrity of their family, discuss the allegations against them, and navigate the state's intervention in their family without any formal support. In contrast, ACS has access to legal representation throughout their investigation. The result is catastrophic for the families targeted by the family regulation system—families that are invariably low-income and predominantly Black and Brown. Too many cases are filed unnecessarily and too many children are unnecessarily traumatically separated from their parents.

Since 2019, the family defense organizations have been providing timely representation to parents in New York City. Collectively, we have **prevented a filing in family court 75-80% of the time and over 90% of the children involved in investigations where we represented their parents remained with their families and never entered the foster system.** Parents contact our offices directly at a very vulnerable time for their family. We are able to explain their rights and offer support throughout the investigation by ACS. Parents' ability to consult with a social worker, attorney, and parent advocate that understands the system and who will listen and connect them to resources they have specifically identified is essential.

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<sup>13</sup> New York State Office of Indigent Legal Services, *Standards for Determining Financial Eligibility for Assigned Counsel* (February 16, 2021), <https://www.ils.ny.gov/files/Eligibility%20Standards%20Final%20021621.pdf>.

<sup>14</sup> New York State Office of Court Administration, *Request for Public Comment on Adopting a New Section 205.19 of the Uniform Rules of the Family Court to Develop Uniform Standards of Eligibility for Assigned Counsel The Would Apply in All Family Court Proceedings* (June 3, 2022), <https://www.nycourts.gov/LegacyPDFS/rules/comments/pdf/Family-court-rule-June-3.pdf>.

<sup>15</sup> *Administrative Order of the Chief Judge of the Courts* (September 28, 2022), <https://www.nycourts.gov/LegacyPDFS/rules/comments/orders/AO220.pdf>.

The success of timely representation is based on our ability to partner with parents as trusted advocates and identify and address each families' particular needs. Parents facing a family regulation investigation report considerable mistrust of investigators<sup>16</sup> because they feel threatened by family separation and family court involvement from the initial knock on the door. Timely defense teams at our organizations, can truly partner with parents to identify the specific concerns the parent has and refer the family to resources and services that would most assist the family and avoid the need for family regulation involvement. Our teams are able to push back against unnecessary and formulaic service referrals from ACS and instead focus on supporting each families' individual needs. Our offices also have attorneys to assist parents with housing, public benefits, immigration, and criminal matters, which are often the cause of family instability that leads to family regulation involvement.

Families should not have to enter this traumatic and punishment-oriented system to access supportive resources for their families. While we believe that families should not be targeted by the family regulation system - when parents do face an investigation, family separation, and prosecution in family court - robust and timely access to confidential legal support reduces the likelihood of family separation and even court involvement and ensures more individualized and impactful service planning.

Our timely representation teams are able to utilize our knowledge and community connections to ensure that the parents we serve are successfully connected to available resources and able to avoid formal and long term family regulation involvement. We urge this Committee to think of our programs as a model statewide and to guarantee timely access to representation for parents as a critical element of primary prevention. Our impactful work in timely representation saves money and more importantly, prevents unnecessary separation of families.

## **II. Family Defense: Invest in Keeping Families Together**

New York has long recognized a parent's right to counsel in Article 10 proceedings. In a pioneering 1972 decision, *Matter of Ella B.*, 30 N.Y.2d 352, the New York Court of Appeals recognized the equal protection and due process right to indigent parents to assigned counsel in child neglect and abuse cases. Three years later, sections 261, 262, and 1120 of the Family Court Act codified a broad parental right to counsel. Additionally, numerous provisions throughout Article 10 of the Family Court Act address implementation of the parental right to counsel in these proceedings.

Despite decades of public hearings and reports describing the crisis in family court representation and the need for an investment in legally mandated representations, New York has failed to make a meaningful investment in families facing separation under Article 10 of the Family Court Act.

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<sup>16</sup> Kelly Fong, *Concealment and Constraint: Child Protective Services Fears and Poor Mothers' Institutional Engagement*, *Social Forces*, Vol. 97, Issue 4, p. 1785-1810 (June 2019), <https://academic.oup.com/sf/article-abstract/97/4/1785/5113162?redirectedFrom=fulltext>

These families are facing the removal of their children, often because they are living in deep poverty or facing obstacles to accessing needed supportive services. Family defense attorneys can make the difference by protecting the legal rights of parents and their families while also providing social work assistance to help address service and support needs for the whole family that allow families to remain together rather than relegating children to the foster system.

As early as 2000, New York City's Public Advocate issued a report outlining the crisis in the representation of birth parents in Article 10 proceedings highlighting the harm to children as well as parents.<sup>17</sup> Later that same year, the Appellate Division First Department's Committee on Representation of the Poor held public hearings and invited experts to examine the quality of government-funded legal representation of the poor and issued a report in 2001 which concluded, among other findings, that low-income parents did not have sufficient legal representation. Although New York City changed its model of parental representation to include interdisciplinary defense practices, there has never been sufficient financial investment to assure all low-income parents receive the robust interdisciplinary legal representation needed to keep their families together. Even with these changes, New York City providers are still operating at less than 50% of the funding needed to meet standards and provide appropriate representation for clients. In other parts of New York State, the situation is even more dire, where some counties are providing only a tiny percentage of what is required.

Nearly two decades later, the 2019 *Interim Report to Chief Judge DiFiore* describes the crisis in New York's parental legal representation and made six initial recommendations, including timely access to counsel, state funding for parental representation, and the need to reduce caseloads among family defense attorneys.<sup>18</sup> In June 2021, the Office of Indigent Legal Services (ILS), responsible for overseeing the quality of parent representation in New York State, released *Caseload Standards for Parents' Attorneys in New York State Family Court Mandated Representation Cases* to determine appropriate maximum caseload standards.<sup>19</sup> Current caseloads across the state are much higher than these recommendations and a vast influx of funding is needed to ensure that these standards are met.

By failing to adequately invest in parent representation, the State is also losing an opportunity to save money while helping families stay together. A 2019 study of the Bronx Defenders (BxD), Brooklyn Defender Services (BDS) and Center for Family Representation (CFR) found that interdisciplinary teams representing parents at risk of losing their children, made up of attorneys, social workers and parent advocates, reduced time children spent in the foster system by 4

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<sup>17</sup> Mark Green, *Justice Denied: The Crisis in Legal Representation of Birth Parents in Child Welfare Proceedings* (2000).

<sup>18</sup> Commission on Parental Legal Representation, *Interim Report to Chief Judge Defiore* (February 2019), <http://ww2.nycourts.gov/doc/15446>.

<sup>19</sup> Office of Indigent Legal Services, *Caseload Standards for Parents' Attorneys in New York State Family Court Mandated Representation Cases* (June 4, 2021), <https://www.ils.ny.gov/files/Caseload%20Standards%20Parents%20Attorneys%20NYS%20Family%20Court.pdf>.

months without any increased risk.<sup>20</sup> The study calculated the cost savings in New York City alone at \$40 million per year.<sup>21</sup>

Now that ILS has issued caseload standards for parental representation, it is time for New York to meet its obligation and invest money to ensure each of its counties are able to ensure family representation providers are able to meet those standards.

### **III. Meet the Fundamental Needs of Families Without Reliance on the Family Regulation System**

A successful primary prevention continuum must look “upstream” and ensure that every family’s fundamental needs are met without any contact with the family regulation system. Poverty is a driving force behind what is often reported as child maltreatment or neglect,<sup>22</sup> but a lack of resources or access to affordable services should not subject any child to traumatic family separation. In 2020, there were more than 134,000 reports of neglect and abuse statewide, but less than 30% were substantiated by investigators.<sup>23</sup> The vast majority of these allegations are for poverty related neglect<sup>24</sup> and can best be avoided by providing the same resources and services to low and no-income families that would be readily available to any family with means.

System impacted parents at our organizations, as well as at other organizations we partner with, are emphatic that the provision of primary prevention must be separate from the family regulation 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 regulation involvement and do not feel safe accessing services through the family regulation system. Parents reported being traumatized entering ACS buildings in order to request primary prevention services, including child care. The stress of engaging with the family regulation

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<sup>20</sup> Lucas A. Gerber, Yuk C. Pang, Timothy Ross, et. al., *Effects of an Interdisciplinary approach to parental representation in child welfare*, Children and Youth Services Review 102, 42-55 (2019); See also Martin Guggenheim & Susan Jacobs, *A New National Movement in Parent Representation*, 47 CLEARINGHOUSE REV. 44, 45 (2013), available at <https://cfrny.org/wp-content/uploads/2021/03/A-New-National-Movement-in-Parent-Representation-Clearinghouse-Review.pdf>.

<sup>21</sup> Gerber, Pang, Ross, et. al., *Effects of an Interdisciplinary approach*, at 53.

<sup>22</sup> A study of family regulation investigations in New York City found that the rate of investigation in the 10 community districts with the highest rates of child poverty was four times higher than the rate of investigation in those with the lowest child poverty rates. There was also a correlation between child poverty rate and the rate at which investigators found some credible evidence of maltreatment. Angela Butel, *Data Brief: Child Welfare Investigations and New York City Neighborhoods*, Center for New York City Affairs, 1 (June 2019), <http://www.centrernyc.org/s/DataBrief.pdf>.

<sup>23</sup> See, Washcarina Martinez Alonzo, *How Overreporting Child Neglect Hurts Families*, Daily News (October 17, 2021), <https://www.nydailynews.com/opinion/ny-oped-how-child-neglect-claims-hurt-families-20211017-fcid6qa5sjbivmnme731fhv7oy-story.html>.

<sup>24</sup> Children’s Bureau, *Child Maltreatment 2020*, ACF, US DHHS (January 19, 2022), <https://www.acf.hhs.gov/sites/default/files/documents/cb/cm2020.pdf>.

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 primary prevention services in community based organizations completely independent of the family regulation system is the most effective way to meet the needs of New York families and prevent exposure to the family regulation system.

### **A. Invest in primary prevention programs designed to bring families out of poverty**

New York State should invest in primary prevention approaches that will lead families out of poverty and reduce the need for any family regulation involvement. 100% 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 regulation system.<sup>25</sup> Any primary prevention plan must include measures that address poverty head on. New York State should pursue universal basic income, a universal child allowance, and expansions to Public Assistance and SNAP benefits to effectively reduce child poverty and the risk of maltreatment.<sup>26</sup>

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 CPS and foster system caseloads.<sup>27</sup> Another study found that spending an additional \$1,000 on benefit programs per person living in poverty reduced family regulation reporting by 4.3%, substantiations of reports by 4%, placements in the foster system by 2.1%, and fatalities by 7.7%.<sup>28</sup>

Survivors of domestic violence, who are often policed by the family regulation system, would particularly benefit from these policies. About 20% of the Center for Family Representation's clients identify as survivors of domestic violence and even more are under court and family regulation system supervision as "non-respondents" in a family court case. Many survivors of domestic violence struggle to leave their abusive partners due to a lack of financial autonomy.

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<sup>25</sup> Butel, *Data Brief*, at 1, 5, <http://www.centernyc.org/s/DataBrief.pdf>.

<sup>26</sup> 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>.

<sup>27</sup> 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/>.

<sup>28</sup> 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>.



Providing universal income and/or expanded benefits would allow survivors to leave abusive relationships and better protect their families, thereby avoiding contact with the family regulation system.

Investing in universal basic income, a universal child allowance, and/or expansions to Public Assistance and SNAP benefits not only helps families, but it saves State money as it is far less costly than family regulation involvement and the foster system. Expanding on income and benefits would allow parents to better meet their families' basic needs without interference and surveillance. Supporting low and no-income families with basic income and benefits would reduce family regulation intervention and unnecessary and traumatic family separation.

### **B. Provide all families access to safe and affordable housing**

Effective primary prevention requires the provision of safe and affordable housing to all New York families. New York is currently experiencing a housing crisis,<sup>29</sup> with a shortage of affordable housing<sup>30</sup> and an overly taxed shelter system.<sup>31</sup> According to recent data, 104,000 students in New York City were homeless during the last school year, a number that grew despite a lower overall enrollment.<sup>32</sup> The number of students residing in temporary housing was 3% higher than the prior year.<sup>33</sup>

This crisis in housing puts more children at risk of involvement with the family regulation system as many families are reported to the system when they are experiencing a housing crisis. About 35% of the Center for Family Representation's clients are homeless, with many living in the shelter system, where increased surveillance from mandated reporters makes it more likely that families will be reported for maltreatment. In New York City, the current housing subsidy of \$300 per month offered by ACS as a preventive service offers far too little to be effective in securing housing in New York City.<sup>34</sup> Additionally, rampant discrimination against tenants with

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<sup>29</sup> In New York City, "the number of homes that rent at less than \$1,500 is shrinking." Mihir Zaveri, *Why It's So Hard to Find an Affordable Apartment in New York*, The New York Times (August 1, 2022), <https://www.nytimes.com/2022/08/01/nyregion/nyc-affordable-apartment-rent.html>.

<sup>30</sup> "Between 2017 and 2021, the city lost roughly 96,000 apartments renting below \$1,500." The vacancy rate for those apartments was under 1 percent. Janaki Chadha, *New York tried to make apartments affordable. The opposite happened*, Politico (July 16, 2022), <https://www.politico.com/news/2022/07/16/new-york-housing-crunch-00045575>.

<sup>31</sup> Mayor Adams declared a state of emergency due to the influx of migrants and the overwhelmed shelter system. Andy Newman and Emma G. Fitzsimmons, *New York Faces Record Homelessness as Mayor Declares Migrant Emergency*, The New York Times (October 7, 2022), <https://www.nytimes.com/2022/10/07/nyregion/eric-adams-migrant-crisis-response.html>.

<sup>32</sup> Troy Clossoni, *More than 104,000 New York City Students Were Homeless Last Year*, The New York Times (October 26, 2022), <https://www.nytimes.com/2022/10/26/nyregion/nyc-homeless-students.html>

<sup>33</sup> Id.

<sup>34</sup> The ACS housing subsidy offers \$300 per month for up to 3 years. <https://www1.nyc.gov/site/acs/child-welfare/housing-support.page>

federal housing vouchers makes it exceedingly difficult to find housing.<sup>35</sup> New York must focus on increasing availability of affordable housing, increase current housing subsidies, and address discrimination against people with housing vouchers as part of its primary prevention continuum to keep families stable and out of the grips of the family regulation system.

### **C. Meet the basic needs of every family**

Community and school based resources should be available to all families in need of food, clothing, diapers, and school supplies. Our clients report one of their largest concerns is simply access to material resources. For clients who depend on public assistance and SNAP benefits, their meager monthly benefits rarely cover all their costs. With frequent administrative mistakes and lags in recertification, clients are frequently in need of food and resources they cannot afford. To avoid family regulation contact, New York must ensure that parents can access basic necessities when they need them from community organizations and schools they trust. Food pantries, diapers, baby food, and clothing must be widely available and independently of the agencies that investigate and prosecute families for allegations of abuse and neglect.

Families experiencing homelessness, particularly those in shelters, should have access to daycare, food, clothing, and school supplies. Current shelter rules make it particularly difficult for families living in shelters to meet their children's basic needs. Shelters are often not centrally located, which can make it difficult for families to access food. More importantly, many shelters do not have kitchen facilities, or have only limited facilities, like microwaves, which makes preparing meals extremely challenging. Many parents in shelters also struggle with child care. Visitors are not permitted in shelters, so parents have few options when the shelter does not have a daycare option. Many parents who've been placed in shelters that could be over an hour from their community and support systems struggle to work and abide by curfew requirements that require a family to return by a certain time. Frequent curfew violations may result in families being asked to leave the shelter. The families are then often forced to return to PATH and reapply for a shelter placement. Shelters rarely address the material needs of the families who reside in them. Instead of assisting parents and providing support as well as material goods, shelters often report families to the State Central Register and expose them to the risk of family separation and further government surveillance.

New York State must address this housing crisis by creating more affordable housing and cracking down on discrimination. Shelters must also provide material resources, daycare, and

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<sup>35</sup> Only 19.4% of recipients of federal Emergency Housing Vouchers have been able to find an apartment due to lack of affordable housing, administrative hurdles, and rampant discrimination. David Brand, *NYC Issues Thousands of Federal Housing Vouchers, But Finding an Apartment Remains Tough*, City Limits (October 5, 2022), <https://citylimits.org/2022/10/05/nyc-issues-thousands-of-federal-housing-vouchers-but-finding-an-apartment-remains-tough/>.

access to healthy food and kitchen facilities for those whose only option is residing in the shelter system.

#### **D. Make safe and affordable child care universally available for all families**

All parents need child care to attend to their other parenting responsibilities. Parents may need to attend work, go grocery shopping, attend mental health or substance abuse services, or they may simply need a night off to unwind. Parents with means are able to hire a babysitter or nanny, but low or no-income families often have few options. Currently, center-based child care is unaffordable for 93% of families with young children and home-based child care is unaffordable for 80% of families.<sup>36</sup> Unless there are community supports available, some parents have no viable options. At times, parents may feel forced to leave children home alone or with a substandard caregiver because there is no other option, which often leads to family regulation involvement. Universal affordable child care is critical to narrowing the front door to the family regulation system and should be a part of New York's primary prevention scheme, but it must not be provided through the same agency that investigates and prosecutes parents.

Parents seeking assistance and child care should not be asked to go to the same agency that traumatized them with an investigation, prosecution, and family separation. That practice discourages parents from seeking support and harms families. Placing services in the same buildings that house the family regulation system makes parents afraid to access them and impacted parents can be triggered simply walking into the building. While we strongly support efforts to provide universal child care, New York State must consider providing those services through agencies other than OCFS and ACS in order for these services to be accessible to those most in need of them.

#### **E. Support new parents by providing free access to birth and postpartum doulas**

Doulas are “trained professionals who provide continuous physical, emotional and informational support to their client before, during and shortly after childbirth to help them achieve the healthiest, most satisfying experience possible.”<sup>37</sup> For Black and Brown pregnant people, who are rightfully more distrustful of the medical community due to systemic racism,<sup>38</sup> and more

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<sup>36</sup> Sophia Halkitis, Marija Drobnjak, Daryl Hornick-Becker, Bijan Kimiager, *NYC's Child Care Affordability Crisis: The Unaffordable Cost of Care Burdens Families and Impedes Pandemic Economic Recovery in New York City*, Citizen's Committee for Children of New York (December 2020), <https://ccnewyork.org/data-publications/nycs-child-care-affordability-crisis-the-unaffordable-cost-of-care-burdens-families-and-impedes-pandemic-economic-recovery-in-new-york-city/>.

<sup>37</sup> Dona International, <https://www.dona.org/what-is-a-doula/>.

<sup>38</sup> Linda Villarosa, *Why America's Black Mothers and Babies are in a Life-or-Death Crisis*, *The New York Times* (April 11, 2018), <https://www.nytimes.com/2018/04/11/magazine/black-mothers-babies-death-maternal-mortality.html>; Department of Health, *New York State Report on Pregnancy-Associated Deaths in 2018*, (April 13, 2022), [https://www.health.ny.gov/community/adults/women/docs/maternal\\_mortality\\_review\\_2018.pdf](https://www.health.ny.gov/community/adults/women/docs/maternal_mortality_review_2018.pdf).

likely to come into contact with the family regulation system, birth doulas can offer much needed support as they prepare for the arrival of their child. Birth doulas are able to provide education and planning prior to the pregnant person going into labor. Expecting parents and the doula will create a birthing plan which includes decisions around medical interventions that may be requested during labor, so the doula can advocate for the parent at the hospital and avoid an unnecessary call to the family regulation system. Birth doulas will also connect parents to ongoing support and resources like new parent support groups.

Postpartum doulas can also be extremely helpful to parents, particularly for those that have little support due to the generational impact of the family regulation system. Doulas make home visits after the birth of the child to support the parents in adjusting to parenting and check on the birthing person's mood postpartum. The doula will also make referrals specific to the families' needs that are unconnected to the family regulation system and will help the parents have a smoother transition to parenthood.

Supportive services, like doulas, that directly address the needs of the family without any connection to the family regulation system are essential for primary prevention.

**F. Evidence-based supportive services and mental health services should be community-based and widely available to families who need them**

Evidence-based services, including mental health services, should be readily available to all families in their communities, and must operate outside of the family regulation system. Primary prevention services are currently delivered and/or funded by the same state or local agencies that investigate, prosecute and surveil families. Families and communities impacted by this system do not view prevention services connected to the family regulation agency as safe and are less likely to access them. New York State should provide resources directly to communities to build community-based programs to meet the unique needs of the population, without the interference of the family regulation system.

While our clients report that evidence-based services (MST-CAN, FFT, CPP) are more helpful generally, lack of availability is a major issue. Our clients particularly appreciate the home-based services that are more focused on the specific needs of families and provide material support like meal cards, reimbursement for YMCA memberships, and holiday parties for families. Unfortunately, when these services are unavailable, which is often, the family regulation system will refer parents to other preventive services that function simply as surveillance and fail to meet the needs of families. Mental health services, particularly for children, are similarly unavailable. Waitlists are months long at community-based mental health providers and many quality mental health programs do not accept Medicaid.

Primary prevention should include an expansion in the availability of these services, but they must be community based and have no connection to the family regulation system.

## **Conclusion**

New York's primary prevention continuum should provide increased resources and community-based services to families and the assistance of timely quality legal representation, which can help connect families to resources and services. Ultimately, New York must focus on bringing families out of poverty to reduce the number of children who come into contact with the family regulation system.

We urge New York to:

1. Guarantee timely access to quality legal representation for parents as a critical component of any primary prevention plan.
2. Support family defense and fully fund Article 10 contracts.
3. Primary prevention programs and services should be delivered directly to families through community based organizations, not through the agencies responsible for investigations and prosecutions.
4. Invest in programs that will alleviate poverty and provide supportive, evidence-based and mental health services directly to families through community based organizations outside of the family regulation system.

If you have any questions, please feel free to contact Jennifer Feinberg, Litigation Supervisor for Policy & Government Affairs at the Center for Family Representation, at [jfeinberg@cfrny.org](mailto:jfeinberg@cfrny.org).