



Testimony of
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Before the
New York City Council
Committee on Public Safety
Committee on General Welfare
Committee on Oversight and Investigations

Joint Oversight Hearing: Operational Challenges in Family Court

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My name is Lauren Wolfinger and I am an attorney at New York County Defender Services in the Juvenile Defense Unit. I represent children aged 13 to 17 who are first charged as adults under the Raise the Age Statutes, and if these matters are removed to Family Court as delinquency matters, I continue to represent children there as well.

Representing teens in this context, I often encounter ACS workers and workers from their contracted foster care agencies. Children in foster care are at an increased risk of coming into contact with either the criminal court system or the delinquency court system. Unfortunately, it is not at all rare for children in ACS care to come into contact with the criminal legal system.

A foster child's need for support as they navigate the criminal side of court systems begins immediately after arrest. If you were not aware, children as young as 13 under our current laws can end up in adult night arraignment settings based on the nature of their charges. These vulnerable youth need their ACS workers and Agency workers to appear at their arraignments. When a child is in the care of ACS or a Foster Care Agency, that is the entity that must appear to allow a child to be released. Criminal court judges are understandably hesitant to release a child late at night without an adult present, so when workers do not come to court for children remanded

to their care, there is no real alternative but remand to secure detention. Failure to appear by a worker should never be a reason for a child to be held on remand status when they otherwise would have been released.

Additionally, ACS or an assigned foster care agency will often send a transporting worker to arraignments or with a youth to their subsequent court dates. Transporting workers often have no knowledge of the child's background, history, or care plan. This worker may not be able to answer questions a judge might have about any potential service plans or placement plans. A worker's ability to explain what supports a youth might have to ensure their next appearance is vital to ensuring a child stays out of detention. In that sense, ACS and Agencies are negatively impacting efforts to keep kids out of detention when they send poorly informed representatives to court for children in their care.

ACS and Agencies must find better ways to use their resources and programming to support children with criminal court and delinquency contacts. Children first charged as adults have limited ways to get their cases removed to family court, where frankly, all of them belong. However, under our current laws, children are, in many ways, tasked with making their own best cases for removal on consent from the ADA's office. They do this primarily by participating in services and programming. Children cannot be expected to do this alone. They need better, proactive planning from ACS and Agencies who can already provide things like individual therapy, tutoring and school support, or referrals to mentoring programs. They need consistent encouragement from their foster parents or congregate care settings to participate in the same. They need ACS and Agencies to provide dedicated services geared towards youths who have become court involved.

ACS and Agencies are the proper entities to provide these services. Children engaging in programming through ACS and their welfare cases can continue to do so without interruption if their cases are removed to family court. Currently, when children begin programs or services on the adult criminal court side, if their cases are removed, they may be disconnected from their services. Without getting into the minutiae of every program option and how each is funded and who provides each program—simply put, when a child moves across systems, sometimes that results in loss of access. This can be avoided if the services are provided by the welfare agencies outside of the criminal justice process. Children who do not experience service interruption when their cases are transferred to family court have a much better chance of earning better settlement offers or getting better disposition recommendations.

Finally, ACS and Agencies must plan proactively for foster care or group home placement for children remanded to detention. Too often, once ACS or an Agency has failed to attend court dates and a child has ended up in detention, ACS and Agencies see no urgency in finding foster homes, group home settings, or RTCs for children who are still legally remanded to their care. This is unacceptable. Judges reviewing detention settings for children in family court consider whether a child has access to a less restrictive setting where they can be successful. ACS and Agencies are the gatekeepers of that access.

In sum, ACS and Agency workers need to come to court dates for children. Every court date. The workers who appear need to be more than just "transporting workers," and they need to appear with substantive knowledge of the child's case and background. Workers need to participate

meaningfully in providing service options and placement alternatives even if a child is in detention. All of these asks are already part of ACS and Agency obligations. ACS and Agencies should see themselves as partners with defense counsel in achieving the least restrictive alternatives for kids. I hope they will join us in our advocacy to keep kids out of adult courts and out of harmful detention settings.

Thank you for considering this testimony. Please feel free to contact our office at policy@nycds.org if there are any questions.