

TESTIMONY OF:

EMMA S. KETTERINGHAM, MANAGING ATTORNEY

***THE BRONX DEFENDERS
FAMILY DEFENSE PRACTICE***

&

LAUREN SHAPIRO, ATTORNEY-IN-CHARGE

***BROOKLYN DEFENDER SERVICES
FAMILY DEFENSE PRACTICE***

**Public Hearings on the Executive Budget
Before the Joint Fiscal Committees of the Senate and Assembly
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Who we are:

The Bronx Defenders (“BXD”) and Brooklyn Defenders Services (“BDS”) provide innovative, holistic, and client-centered criminal defense, family defense, immigration, civil legal services, social work support and advocacy to indigent people. BXD offers comprehensive legal representation to over 30,000 Bronx residents yearly while BDS serves 45,000 low-income Brooklyn residents each year. Our organizations are funded by New York City to represent parents and caregivers in child welfare cases in the Bronx and Brooklyn Family Courts; together, our family defense practices currently represent over 3,500 parents and caregivers of almost 9,000 children. Now in our seventh year, we have served over 11,000 parents and touched the lives of nearly 25,000 children. Our more than 50 attorneys appear in family court every day and are intimately familiar with Family Court operations.

We submit this testimony in support of the judiciary’s request for increased funds, including twenty more Family Court Judges. As explained below, families are caught in legal limbo and children languish in foster care because there are not enough judges to hear the cases in a timely and meaningful manner. Further exacerbating delays in Family Court is the 2011 policy, instituted as a result of diminishing resources, closing Family Court parts at 4:30 p.m. This limited access to the courts is particularly harmful to families seeking emergency hearings to determine whether children should be placed in foster care or remain in their homes and in fact finding hearings to determine whether abuse or neglect has occurred.

I. EMERGENCY HEARINGS TO DETERMINE WHETHER A CHILD MUST BE REMOVED FROM HIS/HER HOME AND PLACED IN FOSTER CARE OR WHETHER A CHILD SHOULD BE RETURNED HOME ARE NOT HELD WITHIN THE STATUTORY TIME FRAME WHICH RESULTS IN HARM TO CHILDREN AND FAMILIES

When the state seeks to remove children from their parents, the Court has an obligation under the Family Court Act to hold an emergency hearing in order to identify (1) whether the child would be in such imminent risk that removal is justified; (2) whether that risk can be mitigated by reasonable efforts to avoid removal; and (3) whether that risk is outweighed by the harm of removal. See Nicholson v. Scopetta, 3 N.Y.3d 357 (2004). These hearings ensure judicial oversight of well-intentioned but misguided removals that may harm children more than help. The statute requires that such hearings be held either within one day of the request for removal by the state and on “successive court days” until a decision is made (Family Court Act section 1027) or within three days of a parent’s

request and “shall not be adjourned” (Family Court Act section 1028). In practice, emergency hearings are routinely not held within one or three days of a removal. Those that do commence within the statutory timeframes are often adjourned for short segments of time that stretch over days, weeks, or even months, before they are completed. These delays can feel like a lifetime to young children. Children often remain in care unnecessarily only to be later returned to their families after a hearing is finally concluded. Following are examples of the impact such delays have on the families we represent:

- 1) *In 2013, BDS represented a new client in an emergency hearing regarding her newborn who was placed in stranger foster care. The hearing started on January 31, continued on February 4, 5, and 6 and the newborn was returned on February 11.*
- 2) *BXD represented a mother whose son is severely autistic. He was removed from her care and she asked for a hearing for his return. The hearing began on August 29, 2012, continued on multiple dates (approximately 15). The court issued its decision on March 20, 2013, and gradually transitioned the child home by May 3, 2013. During the time it took to complete the hearing, the child was placed in several different foster homes forcing the child to adapt to different homes – a particularly difficult challenge for a child with autism.*
- 3) *On October 23, 2012, four children, aged two through 15, were removed from their mother. The hearing for their return commenced on November 9, continued on November 26 and 29 and the four children were finally returned home just before Christmas on December 18.*
- 4) *In 2012, BDS represented a father in an emergency hearing where five children under the age of twelve had been in five different non-kinship foster homes in different groupings over 9 months and an 8 month old in kinship foster care since birth. During their time in foster care, some of the older children developed bed-wetting problems; one child developed encopresis (involuntary defecation); and one was hit by a car while in the care of foster parents. The hearing started on September 24, continued on September 27, October 1, 3, 17, 18, 23, 24 and November 15 and 16. All six children were returned to their father on November 16.*
- 5) *On July 31, 2012, a 1028 hearing commenced in Brooklyn Family Court. After eight court appearances, on November 27, 2012, before the hearing was even completed, an agreement was reached to return the child to her mother.*

In New York City, each day of the week, one courtroom in each borough is responsible for processing all of the new cases filed by the City’s Administration for Children’s Services (ACS) that day (intake part); in many of these cases ACS is seeking court permission to remove children from their homes. Early court closings mean that cases filed by ACS after 3:00 p.m. are not heard by the Court even when they are available to do so. In addition, there are cases filed before 3:00 p.m. that the Court has no time to hear before 4:30 p.m. when the court closes. As a result, children are

unnecessarily removed from their families without a hearing only to be later returned to their families after a hearing is held.

- 1) *Ms. W. and her disabled husband have seven children, ranging in age from 18 months to 15 years old. Four of the children have special needs, including mental health and learning issues. They live in a City shelter and ACS filed a neglect petition against the parents alleging that the home was dirty and the children were covered in bed bug bites. The petition was filed shortly after 3 o'clock on a Friday afternoon and the court could not hear Ms. W's case because it was filed late. After spending the day in Court waiting, the family went to the Department of Homeless Services' intake center, PATH, to try to get transferred to safer living conditions but PATH refused to move them from their existing placement. At 2 a.m. on Saturday, the seven W. children were removed from their parents and placed with several different non-kin caretakers. On Monday morning, the court assigned BDS to represent Ms. W. and we started an emergency 1027 hearing. After ACS presented its case, the Judge ordered the children to be immediately returned to their parents' care.*
- 2) *Ms. B has five children who were removed by ACS on December 3, 2013, and placed in non-kinship foster homes. ACS filed the petition the next day but after 3:00 so the Court could not hear the case. On December 5, ACS was not ready to proceed on the case until 4:15 p.m. which was too late for the Court to hear and decide a 1027 hearing regarding the placement of the children. The hearing was held the next day in the afternoon and the Judge returned the children at the close of ACS's case, pending the outcome of the case. The case was adjourned to December 9 when all parties agreed to return the children to the parents. The children spent two nights in the care of strangers without seeing their parents because the Court could not conduct a hearing in a timely manner as required by law.*
- 3) *On October 10, 2013, Ms. H brought her 6-year-old son and 4-year-old daughter to Bronx Family Court as requested by ACS. At 4:30 p.m. the court closed for the day, but ACS had filed no petition and requested no court oversight. Nevertheless, ACS removed Ms. H's two children from her in the courthouse and the children were placed with strangers overnight. ACS again failed to file a petition by 4:30 pm the following day, Friday. Ms. H's son and daughter then spent the long Columbus Day weekend in stranger foster care, without any contact with their mother. On Tuesday, October 15, 2013, ACS filed a petition and Ms. H requested an emergency hearing. That hearing commenced on October 17th and continued on October 29th and 31st. On October 31st, after being away from their parents for the first time in their lives, Ms. H's two children returned home, where they remain today.*

We have also had cases adjourned because of the time in the day the petition is filed even though there are critical determinations that need to be made.

- 1) *A BDS client was separated from her children pursuant to a Criminal Court order of protection that was subject to modification by a Family Court Judge. Although ACS filed the petition at 3:20 pm and was seeking to modify the Criminal Court order so that the children could be released to their mother immediately, the court could not hear the case because of time constraints and the children remained separated from their mother unnecessarily.*
- 2) *In another case filed on a Monday afternoon, a mother requested an emergency hearing for the return of her son, who had been removed before the weekend. But because the petition was filed in*

the afternoon, the judge concluded that there was no time that day for an emergency hearing. The following day, when the parties appeared in court for a hearing, ACS consented to return our client's son to her care.

II. FACT-FINDING HEARINGS TO DETERMINE WHETHER ABUSE OR NEGLECT EVEN OCCURRED STRETCH FOR MONTHS AND YEARS

Although section 1049 of the Family Court Act requires that hearings involving abuse or where children are in foster care be heard expeditiously, fact finding hearings to determine whether the initial allegations of abuse or neglect are true can take over a year and sometime two years to resolve. Meanwhile, children remain in foster care at great cost to the city and state. Hearings are usually scheduled to begin six months after a petition is filed, but rather than continuing day to day, trials are often adjourned for one or two hours at a time, with months in between appearances, requiring the parents involved to take off work and sometimes lose pay or miss essential appointments. If the trial is not completed on each adjourn date, the case may be adjourned again for six months, often in the middle of a witness's testimony.

Parents often give up their right to a fact finding trial because they cannot continue to deal with lengthy adjournments and the stress of coming to court. Parents should not have to forego asserting their rights in a meaningful way because the court doesn't have time to hear their case. Prolonged fact-finding hearings can also delay judicial review of critical choices regarding the children's placement or visitation with their parents.

- 1) *In May 2012, ACS filed an abuse petition against a BDS client. The trial commenced in January 2013 and was completed 11 months later in November 2013. A decision was issued at the end of December 2013 (19 months after filing) dismissing the petition. The children then returned home to their mother.*
- 2) *In October 2011, a BDS client was accused of neglecting her child because she was not receiving any treatment for a mental health diagnosis that she received while in foster care. An order of protection was issued against the father of the child on behalf of both the mother and child. In January 2012, while waiting for the case to go to trial, the mother was attacked by the father in her own apartment because she refused to violate the order of protection and allow him to see the baby. The father was incarcerated as a result. The trial was supposed to begin in June 2012. Because the father's attorney did not appear, the trial was adjourned until November 2012. In November 2012, the father settled his case and the trial on the neglect charges against the mother began. The trial was again adjourned to June 2013. After a year of adjournments, ACS withdrew the neglect petition against the mother.*

- 3) *In February 2010, ACS filed an abuse petition against a BDS client after her two month-old son suffered an orbital roof fracture and had subdural hematomas. The trial was scheduled to commence in July 2010 but was adjourned until December 2010 – over five months later, and then adjourned for three additional dates in the spring of 2011. The Court issued a finding of abuse in October 2011 – almost two years after the petition was filed. The child was released to his mother shortly after the finding of abuse was entered, having missed his first two years of crucial bonding with his mother. On appeal, the finding of abuse was overturned and the petition was fully dismissed three years after it was filed. Had the family court had time to hear this case expeditiously, this child would not have had to remain in foster care unnecessarily for those crucial two years.*
- 4) *In September 2013, ACS filed an abuse petition against a BXD client whose son sustained a leg fracture that ACS alleges cannot be accidental in nature; the child is removed from their care. In January, the trial commenced, but it could not be completed in the four hours allotted, and the next dates offered by the court for continued trial were in May and June of this year. The judge stated plainly in January that she will not consider returning the children to our client and her husband until the trial is completed.*
- 5) *In November, 2011, a relatively simple neglect case was filed against a BXD client and his wife. The client, a father of four, insisted upon a full adjudication that he had done nothing wrong. His wife, by contrast, consented to an adjudication of neglect, and her dispositional hearing is being held in abeyance. In March 2012, the trial for our client commenced. It has continued for nearly two years, over eleven scheduled trial dates with 1- to 2-hour blocks of time set aside on each date. None of those blocks of time, in the end, were reserved for this hearing, with time shaved away for other emergency applications. Most of them were reduced to a length of time that allowed for just a few minutes of testimony. In two years, only three witnesses have taken the stand. The trial is scheduled to continue later this month.*
- 6) *In November 2010, a case was filed against a BXD client. Her trial began in August 2011 and continued over seven court dates – over two years later. As of today, no decision is expected until July of this year. Her three children were all placed in foster care. One came home after telling her psychiatrist that, at age nine, she had suicidal ideations caused by being away from her mother. The other two are in separate foster homes and see each other usually once per week.*

III. COURTS ARE UNABLE TO HEAR MOTIONS OR ORDERS TO SHOW CAUSE IN A TIMELY MANNER OR AT ALL AND MAKE CRITICAL DECISIONS ABOUT PARENT-CHILD CONTACT:

Parents who are working hard to reunify with their children often must file motions with the Court asking for increased visitation, unsupervised visitation, or seeking the return of their children after fact finding. These applications, crucial to moving the family along the path towards reunification, often have to wait months to be heard by a Judge. In other cases ACS seeks to suspend children's visitation with their parent altogether, but the hearing to determine whether that is truly necessary may drag on for months, with visitation suspended pending the outcome of the hearing.

These delays mean that families wait months for the court to make critical decisions about service plans, visitation, and even whether a child should go home, and cause parents to miss work or important appointments unnecessarily.

- 1) *In August 2013, ACS filed a motion asking the court to suspend a mother's unsupervised visits with her son. Although there has been no finding of neglect yet, the Court granted the request on an interim basis and scheduled the matter for a hearing. The lawyer for the child is opposing ACS's request for unsupervised visits because the child wants to have unsupervised visits with his mother. The matter was adjourned for a visitation hearing on to October 1 2013, October 21, 2013, December 19, 2013, and several additional dates in February and March.*
- 2) *A BXD client had weekend overnight visits with one of her children. Those visits, the last step before family reunification, were suspended in February 2013 upon an allegation that the child had been hit by his mother during a visit. The visits were suspended during the course of the investigation. Though the investigation ultimately turned up no credible evidence supporting that allegation, for reasons still unclear, her visitation was not reinstated. In March, 2013, BXD filed a motion to reinstate the weekend visitation. A hearing on that motion began that month. It continued in April, May, July, October, and November of 2013. At each appearance not more than 30 minutes of testimony was taken, and usually none at all. At the present time, the first witness is still on the stand. That matter remains unresolved, and it will have been over a year of this child's life before the hearing is next scheduled on the Court's calendar for a continued hearing in March, 2014. During that time, his contact with his parents is in a foster agency visiting room, with simple chairs and a tiny plastic table, too small for the family to use to do the child's homework.*
- 3) *A mother was having weekend overnight visits with her son and daughter in foster care in May 2011. One weekend, her son Andrew returned to his foster home with a bruise on his face, which he and our client maintained came from his falling off a scooter in the park. Nevertheless, ACS filed a motion to suspend the weekend visits on June 15, 2011, and the referee overseeing the case suspended the weekend visits on an ex parte, interim basis, pending a full hearing. That summer, ACS's investigation of Andrew's bruise concluded that there was no evidence that our client caused the injury; by all accounts, Andrew got hurt falling off his scooter, as he'd said. But a hearing was needed to reinstate the weekend visits, but didn't start until September 23, 2011, by which point the foster caregiver for our client's daughter had moved out of state – with our client's daughter – and our client had been thoroughly brokenhearted and demoralized.*
- 4) *In mid-December 2012, BDS filed a motion seeking unsupervised visits for our client with her children including an extended Christmas visit. The motion included information about her cooperation with services, positive reports from a visit coach, and several write-ups from the family therapist. The Court denied the motion, not for any substantive reason, but because he didn't have time to hear a motion. The Court said that a hearing on the issue of expanded visitation would happen in March 2013 when the case is next scheduled for only a half hour to complete dispositional and permanency hearings. The Court said it did not have any more time for a hearing.*
- 5) *In December, 2010, ACS filed a motion seeking removal of three children from their mother's care after a finding of neglect had been entered. Over the objection of the mother and the children, and without holding an evidentiary hearing, the Family Court removed the children from their mother's*

home where they had lived their entire lives, and placed them in foster care. The Family Court ordered an “expedited” dispositional hearing to determine whether the placement was in the children’s best interests; the hearing did not conclude until June, 2011. The Judge, a different Judge from the one who had ordered the removal without a hearing, found that it was in the children’s best interests to be returned to their mother’s home. The three children were separated from each other in foster care. The oldest child immediately ran away from her placement. In March 2011, ACS agreed to let her return to her mother’s home since she refused to remain in care. The two younger children remained in foster care for six months while the “expedited dispositional hearing” was going on. While she was in foster care, the youngest child, whose school attendance had been good when she lived with her mother, refused to go to school. She got into fights with her foster family and was psychiatrically hospitalized twice, and was prescribed psychotropic medication for the first time in her life. The hospital determined that this child’s separation from her mother “contributed greatly to her mental health issues.” She was placed in a total of 3 different foster homes during the six months she was in care and had to change schools twice. The other child was placed in a group home and ran away several times while he was in care. If the Family Court had had the time to hear the evidence regarding whether removal would further the children’s best interests before or soon after removing the children, these children would have been spared the trauma of six months of unnecessary separation from their family.

Thank you for allowing us the opportunity to submit testimony and for all of your efforts on behalf of the children and families of New York State. We look forward to working with you.

Lauren Shapiro, BDS lshapiro@bds.org

Emma Ketteringham, BXD emmak@bronxdefenders.org