



**The New York City Council,
Committees on General Welfare and Hospitals
April 10, 2019**

“Oversight – Impact of Marijuana Policies on Child Welfare”

**Testimony by
David A. Hansell, Commissioner
New York City Administration for Children's Services**

Good afternoon Chair Levin, Chair Rivera, and members of the Committees on General Welfare and Hospitals. I am David Hansell, Commissioner of the New York City Administration for Children's Services. With me today is Natalie Marks, Associate Commissioner of Quality Assurance for the Division of Child Protection. We are pleased to join you today to share more about the work ACS is currently doing to protect child safety and promote family well-being, particularly in cases where there have been allegations and/or concerns about substance misuse, including marijuana, as well as the work ahead as we prepare for the possible legalization of marijuana. We are also joined by Dr. Mabelle Allen, Senior Vice President and Chief Medical Officer of NYC Health + Hospitals, who is here to answer any questions about Health + Hospitals' policies and practices.

ACS's core mission is to protect and promote the safety and well-being of New York City's children and families. I think we all acknowledge the reality that there are children who experience devastating and tragic neglect while in the care of adults who abuse drugs or alcohol, and it is ACS's responsibility to discern when that danger exists and take action to forestall it. However, in all of our cases, including those with substance misuse allegations, we assess child safety on a case by case basis, looking at actual or potential harm to a child and, if it exists, the parent's capacity to safely care for the child. Current state and city policy (and child welfare best practice) is that the parent's use of a substance – legal or illegal – is not in and of itself a basis for a finding of neglect, much less a child's removal or other court action. As we anticipate the decriminalization of marijuana, these principles must guide our response, and as I will explain, we continually review our practices to ensure that they are consistent with these principles as they are embodied in our policies.

The characterization of marijuana as an illegal substance is under wide review as lawmakers in Albany continue to discuss possible legalization in New York State. Mayor de Blasio has endorsed the decriminalization of marijuana and has already taken steps to prepare the City for this eventuality. In addition to changes in the City's marijuana enforcement policies that have been instituted by this Administration, Mayor de Blasio formed the Mayor's Task Force on Cannabis Legalization (Task Force) last summer, which has worked to develop goals, identify challenges and make recommendations to guide the City's preparation for legalization should a law change occur.

Along with other city agencies, ACS has been an active member of the Task Force, and in December 2018, the Task Force released a report with legislative, regulatory, and policy recommendations to help guide the State's discussion on marijuana legalization, and to identify the goals and challenges that should guide the City's preparations for potential legalization. One of these recommendations is directly related to ACS's work and clearly states that parental rights should not be impaired on the basis of cannabis use or cultivation unless it is endangering a child, a principle with which we concur and which is central to our current policies and practices.

ACS's Work to Promote Safety and Well-being in Cases with Substance Misuse

Allegations

Let me briefly describe the reporting and investigation framework for our work. When a person suspects that a child is being abused or maltreated, they may make a report to the New York Statewide Central Register of Child Abuse and Maltreatment (SCR), which is administered by our state oversight agency, the Office of Children and Family Services (OCFS). If the State accepts the report, the report is sent to the county

(ACS for the 5 boroughs) to investigate. ACS has no discretion as to whether to conduct the investigation if the State accepts the report. ACS then has up to 60 days to conduct an investigation. Each year on average, ACS conducts about 60,000 investigations involving about 90,000 children. Approximately 20-25% of those investigations include allegations of substance misuse, usually together with other allegations.

ACS's goal during any child protective investigation is to assess child safety. All families and children are different, and our staff is charged with making highly individualized, nuanced assessments based on risks and strengths, and to then take appropriate actions to ensure child safety. By both state and local policy, neither a positive drug test of a parent nor a positive toxicology of a newborn baby, is in itself a basis for a determination that evidence of abuse or neglect exists. When investigating allegations of substance misuse, including misuse of marijuana, child protection staff must evaluate whether the parent's/caregiver's substance misuse has created a condition where the child's physical, mental, or emotional condition is negatively impacted or is in imminent danger of becoming negatively impacted, and must assess whether the parent's ability to care for and safeguard the child in the home is impacted by their substance misuse.

To assist child protective staff in cases involving substance use or misuse, ACS utilizes Credentialed Alcoholism and Substance Abuse Counselors (CASACs) as part of our Clinical Consultation Team. CASACs are certified substance misuse experts who are available to all CPS to provide support and technical assistance when child protective staff are assessing safety and risk in cases involving substance misuse allegations.

The child protection team works with the family to provide supports and respond to service needs that are identified as a result of the investigation. In the vast majority of cases in which ACS identifies an actual or potential risk to children, we work to keep

children at home with their parents or caretakers by engaging the family in prevention services. Where substance misuse is a safety concern, staff may make a referral for voluntary prevention services and/or treatment for substance misuse.

ACS's full continuum of prevention services is available to families where there is substance misuse impacting child safety. We work to best match a family's needs to the right type of service, which could be General Prevention services, Family Treatment and Rehabilitation services (FT/R), Special Medical services, or one of our Evidence-Based Models of prevention services.

Depending on the severity of the substance misuse concern and other service needs, the prevention services provider may work in partnership with a substance abuse treatment program to address the parent/caregiver's substance misuse and mitigate risk to the children in the home. In higher-risk cases where the primary safety concern is the parent or caregiver's substance misuse or mental health disorder, CPS may refer the family for FT/R. FT/R programs offer clinical diagnostic teams comprised of licensed therapists, CASACs, case planners, psychologist consultants, psychiatric consultants and other providers who work with families to develop treatment plans to address risk factors and bolster child safety.

More recently, we have begun to identify supports we can offer to families and communities independent of child welfare involvement, and with the goal of preventing such involvement altogether. Our Division of Child and Family Well-Being is developing a set of services, community-level interventions, and public education activities that can build on parents' strengths and protective capacities. Let me provide one relevant example. As you probably know, approximately 50 infants in New York City die every year because of unsafe sleep practices. Most often, that involves bed-sharing by parents and an infant,

and tragically, that often occurs when a parent is under the influence of alcohol or drugs. To help parents avoid this risk, just last month, we completed our citywide roll-out, in partnership with Health & Hospitals, to distribute our Safe Sleep Kit to maternity patients at the City's 11 H+H facilities. The Kits contain educational materials designed to be taken home by parents to share with family members and others who help take care of the new baby, and will reinforce the Safe Sleep information hospital staff are required by law to provide to maternity patients at the time of discharge. The Kits include a Safe Sleep Brochure, a Safe Sleep DVD, a wearable blanket (sleep sack), crib netting, an infant onesie, and a board book, "Sleep Baby Safe and Snug." This is an example of our focus on identifying services and supports that can assist parents in caring for their children and keeping them safe.

In summary, ACS's current policy requires our child protective staff to assess the impact a parent's substance misuse may be having on a child, regardless of whether the substance is alcohol, marijuana, prescribed drugs, or illicit opioids. Our goal, and our practice, is to intervene with drug treatment or prevention services to keep children safe at home whenever that is possible.

Mayor's Task Force on Cannabis Legalization Recommendations Directly Related to ACS and our Work with Families

While the legal context for marijuana may shift at the state level, ACS is committed to continuing our work with our sister city agencies to ensure that our policies and practices evolve congruently with any future changes in the law. As a member of the Task Force, ACS helped to develop and shape Section 2, Recommendation #14 of the December 2018 Report, which is that "Parental Rights Should Not be Impaired on the

Basis of Cannabis Use or Cultivation Unless Endangering the Child.” ACS strongly endorses this recommendation, which includes the following components:

1. Child custody or visitation should not be denied on the basis of cannabis use or cultivation unless it places a child in danger: Our top priority for every family we encounter is the safety of the children, and this recommendation aligns with the agency’s commitment to family preservation and child safety, and is also consistent with our current foster care policies.

2. No child should be the subject of a child neglect or abuse investigation or proceeding based solely on a parent’s alleged use of cannabis: Anyone who suspects that a child is being abused or maltreated can call the State Central Register (SCR) to make a report. The State decides whether to accept the report. As I said earlier, if the State accepts the report of a New York City child, ACS has no discretion as to whether to investigate the report-- we are required by law to do so. The State should not accept and refer for investigation reports that do not contain allegations of risk to a child, such as reports based solely on a parent’s alleged use of cannabis. We have been in conversations with the state Office of Children and Family Services (OCFS) and are verifying that the SCR does not accept substance use-related reports, nor refer cases to ACS to investigate, when there is no allegation of impact on child safety.

3) Cannabis use or cultivation should not generate a presumption of child neglect or endangerment: The focus of our investigations is on determining whether parents’ actions have an impact on child safety or create a risk to children, and the use of cannabis in and of itself does not equate with risk of harm.

4) A positive cannabis test in and of itself should not equate automatically to a compelling measure of maltreatment in the context of child welfare: Our current policies and procedures require ACS to base safety and risk assessments on the *impact* substance misuse may have on child safety. A positive cannabis test in itself should never be considered maltreatment.

5) Cannabis should be defined as equivalent to a “drug” in the Family Court Act in order to remain within the ambit of substances that can lead to investigation or supervision of parents if a child is endangered by parental use, even if the cannabis use is not criminalized at the state level. In effect, cannabis use should be treated the same as alcohol use in the context of child custody: As previously stated, ACS’ concern is not cannabis use itself, but the *impact* it could have on child safety, and that is the focus of our investigations. We will maintain that focus regardless of the criminality status of cannabis.

This Task Force Recommendation is consistent with ACS policy. In all areas of our work, we are constantly striving to ensure that our case practice is universally consistent with our policies. Similarly here, with regard to parents use or misuse of marijuana, we take active steps to ensure that our practice is aligned with all applicable policies. To do this, we use our robust quality assurance and oversight mechanisms to reinforce appropriate practice, including ChildStat, supervisory case reviews, Provider Agency Monitoring System case audits, and annual Collaborative Quality Improvement plans for our providers.

We recognize that the history of the criminal enforcement of marijuana laws has not fallen equally on all communities. The fact that marijuana is illegal – and that people of color and poor people have been disproportionately affected by enforcement – is a reality we cannot ignore. It is critical that we not allow bias or historical precedent to affect our decision-making, and we as an agency have committed to a number of steps to address and further equity across all of our work. This includes recently-launched, mandatory implicit bias training for all ACS staff, the creation of an Office of Equity Strategies, and a new equity assessment that will help us implement strategies that identify and forestall potential racial and other inequities in each of our program areas.

City Council Proposed Legislation

I will now turn to the bills under consideration by the City Council today. I believe we share the same goals and spirit as the Council in the areas embodied in the bills. As currently written, we have concerns about the bills' operational challenges, including the availability of some of the data that ACS would be required to report. As always, we are happy to work with the City Council to address these concerns.

Intro 1161

ACS appreciates the City Council's interest in better understanding the allegations ACS investigates. ACS currently provides quarterly child welfare reports to the City Council pursuant to Local Law 20 of 2006. This bill would amend this law to require ACS to disaggregate our current child welfare quarterly report by the numerous, specific allegation types listed in the bill.

ACS is required to use the state system of record, Connections, to track child welfare cases. Due to limitations of the Connections system, we do not currently have the technical capacity to aggregate allegation data regarding use of marijuana (or any specific drug). The State launched new upgrades to Connections in mid-January 2019, which will eventually allow us to develop some new reporting functionality. While there has not yet been training on the new fields, the State released some preliminary guidance at the end of March regarding the use of the new fields, which include dropdowns for child protective staff to select specific substances parents or caretakers are found to be using or misusing. According to the guidance, however, the state does not intend the new functionality to track the specific drug(s) in child welfare allegations, which is what the City Council legislation is seeking ACS to report on.

We are currently having additional conversations with the State to see if the system can provide greater specificity with regard to maltreatment allegations, and whether it could provide the capacity in the future to capture specific drugs in those allegations. Lastly, we are also still clarifying with the State how the new data will be accessible for data reporting by ACS. We look forward to discussing this further with the Council as soon as we have more clarity.

The current quarterly child welfare report also includes a number of child welfare related statistics, some elements of which are now outdated, including items related to caseload and workload. As you know, Local Law 18 of 2018 requires ACS to conduct a workload study pertaining to our CPS staff, which is currently underway. ACS is due to issue a report on the findings of the study to the Council in September of this year, and we anticipate the information in that report will be useful in informing amendments to Local Law 20.

ACS is committed to transparent information-sharing with the Council, and we are happy to engage in further discussion about how best to update Local Law 20 to be useful and informative to the Council and other stakeholders. ACS looks forward to working with the City Council on options that could be available given ACS's data limitations related to the statewide system of record. We respectfully urge the Council to hold Intro 1161 pending further conversation with ACS and submission of the agency's workload study report in September.

Intro 1426

Intro 1426 would require ACS to report annually on the number, type and outcomes of investigations initiated by ACS as a result of positive drug screens from drug tests performed at facilities managed by NYC Health + Hospitals (H+H). The proposed bill would also require us to disaggregate this information by H+H facility and a number of other factors such as age, income, gender, ethnicity, date of drug test, different types of drugs, the number of investigations initiated by ACS, and the outcomes of those investigations.

We appreciate the Council's intent to better understand systems and processes that affect the everyday lives of New Yorkers. A core part of our agency's vision is to identify and confront the disproportionate impact the child welfare system has had on historically marginalized groups. ACS is taking important steps to address these issues through primary prevention services and equity-focused initiatives. However, this bill presents a number of operational concerns and other challenges that we look forward to discussing further with the Council.

As written, the bill does not accurately capture the process of how a family might come to the attention of ACS, which creates fundamental operational challenges in

producing such a report. The draft bill presumes H+H would be referring cases to ACS directly and ACS would determine when to do an investigation. This does not happen. Whenever a report of suspected abuse or maltreatment is made, the report goes to New York State, the State determines whether to accept the report, and then sends it to the appropriate county to investigate. By law, ACS is required to investigate any report we receive from the State—we have no discretion with regard to determining whether to conduct an investigation.

In addition, the bill would require ACS to disaggregate the data in ways that we are not technologically able to do and, in some instances, may not have the requested information at all. Additionally, we are concerned about the unintended consequences that may arise from legislation requiring the collection of personal information and public reporting of data. This reporting requirement may create a chilling effect on reporters' willingness to call the SCR, even when there is a serious child safety risk, and may also dissuade people from seeking medical attention to avoid having their personal information shared with government entities for the purpose of collecting data for a public report. Finally, we are concerned that the level of specificity in the aggregation required by the proposed bill could unintentionally impact a parent's confidentiality.

Closing

Thank you for the opportunity to discuss how the legalization of marijuana would impact child welfare. To reiterate and quote from the recommendation from the Mayor's Task Force: "Cannabis use should not generate a presumption of child neglect or endangerment. Nor should a positive test in and of itself equate automatically to a compelling measure of maltreatment in the context of child welfare." Our case specific

determinations now and in the future must focus on the safety of children and the support of families.

We also thank you for the opportunity to discuss the City Council's proposed legislation. We appreciate the Council's leadership and focus on these important topics and look forward to working with you to refine the bills so they can best serve the interests of New York City children and families, and the dedicated workforce who serve them. We are happy to take any questions.