Committee on Hospitals

Ze-Emanuel Hailu, Senior Counsel

Emily Balkan, Policy Analyst

Lauren Hunt, Financial Analyst

Committee on General Welfare

Aminta Kilawan, Senior Counsel

Tonya Cyrus, Senior Policy Analyst

Crystal Pond, Senior Policy Analyst

Daniel Kroop, Financial Analyst



**The Council of the City of New York**

**COMMITTEE REPORT OF THE Human SErvices Division**

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Andrea Vazquez*, Deputy Director, Human Services Division*

**COMMITTEE ON GENERAL WELFARE**

Hon. Stephen Levin*, Chair*

**COMMITTEE ON HOSPITALS**

Hon. Carlina Rivera*, Chair*

**April 10, 2019**

**Oversight: Impact of Marijuana Policies on Child Welfare**

**INTRODUCTION NO. 1161:** By Council Members Richards and Levin

**TITLE:** A Local Law to amend the administrative code of the city of New York, in relation to enhanced reporting on the child welfare system

**ADMINISTRATIVE CODE:** Amends Section 21-902 of the Administrative Code

**INTRODUCTION NO. 1426:** By Council Members Reynoso and Levin

**TITLE:** A Local Law to amend the administrative code of the city of New York, in relation to reporting on investigations initiated by the administration for children’s services resulting from drug screenings performed at facilities managed by the New York city health and hospitals corporation

**ADMINISTRATIVE CODE:** Amends Section 21-901. Adds new section 21-919 to the Administrative Code

**RESOULTION NO. 740:** By Council Members Lander, Levin, Treyger, and Rivera

**TITLE:** Resolution calling upon the New York City Administration for Children's Services to implement a policy finding that a person's mere possession or use of marijuana does not by itself create an imminent risk of harm to a child, warranting the child's removal.

**RESOULTION NO. 746:** By Council Members Rivera and Levin

**TITLE:** Resolution calling on the New York State Legislature to pass, and the Governor to sign, legislation requiring the New York State Department of Health to create clear and fair regulations for hospitals on drug testing those who are pregnant or giving birth, including informing patients of their rights before any discussion of drug use or drug testing.

1. **Introduction**

 On April 10, 2019, the Committee on General Welfare, chaired by Council Member Stephen Levin, and the Committee on Hospitals, chaired by Council Member Carlina Rivera, will hold a joint oversight hearing titled, “Oversight: Impact of Marijuana Policies on Child Welfare.” In addition, the committees will hear several pieces of legislation that will provide transparency and clarity on marijuana use among parents to avoid unnecessary child welfare investigations. Expected to testify are representatives from the Administration for Children’s Services (ACS), New York City’s Health + Hospitals (H+H), child welfare advocates, legal service providers, health care providers, drug policy advocates and other interested parties.

1. **Overview of Child Welfare System**

Reports of abuse and neglect go through the Statewide Central Register of Child Abuse and Maltreatment (SCR) hotline, maintained by the New York State Office of Children and Family Services.[[1]](#footnote-1) SCR staff relay information from the calls to the appropriate local child protective services for investigation, which is ACS in New York City. Fifteen percent of the 34,642 allegations that were referred to ACS between July and September of 2018 were for substance abuse.[[2]](#footnote-2) This category includes parental and child drug use.

Certain professionals such as doctors, nurses, teachers, police officers, and child care center workers are mandated by New York State law to report suspected child abuse and neglect to SCR.[[3]](#footnote-3) Mandated reporters must immediately make a report or cause a report to be made (e.g. ensuring that a supervisor makes the report), when in their professional role they are presented with reasonable cause to suspect abuse or neglect. “Reasonable cause” means that based on their observations of the evidence, professional training and experience they believe that the parent or legal guardian has harmed or placed a child in danger of being harmed.[[4]](#footnote-4)

In regards to substance use, current state law states that a “neglected child” means a child “whose physical, mental or emotional condition has been impaired or is in imminent danger of becoming impaired” due to a parent or guardian’s failure to provide minimum care, including “misusing a drug or drugs.”[[5]](#footnote-5)

As previously mentioned, once the SCR believes a report of abuse or neglect warrants an investigation, the SCR will direct ACS to begin a child protective investigation. ACS is required to investigate all reports received to ensure the safety and well-being of every child listed on the report.[[6]](#footnote-6) A Child Protective Specialist (CPS) will make an unannounced visit to the child’s home within 24 – 48 hours of the report.[[7]](#footnote-7) The CPS must see and speak to all children living in the home or with other caretakers, as well as all children/youth that are present in the home during the investigation. The CPS will also check to make sure the home is free of hazards, has adequate food, safe sleeping arrangements, etc. The CPS may also go to the child’s school, talk to family members and other people who may know the child, like a neighbor, building superintendent, teacher, doctor, nurse, the New York Police Department, etc. Within 60 days or fewer, the CPS determines whether or not the report is “indicated,” meaning the CPS found enough evidence to support the claim that a child has been abused or neglected, or “unfounded”.[[8]](#footnote-8) If a case is unfounded or indicated but determined to be a low-risk case, the family can be referred to voluntary preventive services.[[9]](#footnote-9) Higher risk indicated cases can lead to ACS filing a petition in family court, which can result in court-mandated services or removal of the child from the home.[[10]](#footnote-10)

Further, if the CPS did not find enough evidence to support the claim that a child has been abused or neglected, parents receive a letter from the SCR that the report was unfounded.[[11]](#footnote-11) However, even an unfounded report stays in the SCR for 10 years.[[12]](#footnote-12) All reports made to the SCR are kept on record until the youngest child in the family at the time of the investigation turns 28 years old.[[13]](#footnote-13) According to child welfare and parent advocates, ACS investigations target low-income families, especially women who are Black and Latina and those with a history of domestic violence, who may be disproportionately impacted by the SCR report for at least 28 years. Maintaining an SCR record until the youngest child turns 28 years old limits employment opportunities that may cause families to remain in poverty and putting them at risk of ongoing child welfare involvement.

1. **The Impact of Marijuana Use During Pregnancy**

*Prevalence of Marijuana Use During Pregnancy*

The number of women using marijuana during pregnancy has increased in recent years.[[14]](#footnote-14) According to an extensive study based in California, from 2009 through 2016, the adjusted prevalence of prenatal marijuana use among pregnant enrollees in Kaiser Permanente Northern California, based on self-reporting or toxicology, increased from 4.2 percent to 7.1 percent.[[15]](#footnote-15) Individuals below the age of 25 experienced higher usage rates, with 22 percent of pregnant women younger than 18 years old and 19 percent of pregnant women aged 18 to 24 years old screened positive for marijuana use in 2016.[[16]](#footnote-16) Usage was higher based on toxicology than self-report each year.[[17]](#footnote-17)

The increased use of marijuana among pregnant individuals may be linked to the surge of marijuana legalization in the United States.[[18]](#footnote-18) As of November 2018, 32 states have legalized the use of medicinal marijuana, and 10 states and Washington, D.C. have legalized marijuana for recreational use.[[19]](#footnote-19) Marijuana is now easier to obtain legally, and may in some cases be marketed as having the ability to assist with pregnancy-related symptoms.[[20]](#footnote-20) A 2018 study based in Colorado found that, of 400 dispensaries contacted, 70 percent recommended the use of marijuana products to treat nausea in the first trimester, including a majority of dispensaries with medical licenses.[[21]](#footnote-21) While 81.5 percent of dispensaries recommended discussion with a health care provider, only 31.8 percent made the recommendation unprompted.[[22]](#footnote-22)

*Potential Health Consequences*

 Despite an increase in use, research on the effects of marijuana during pregnancy is still in its infancy, and the current consensus is that no amount of marijuana use has been shown to be safe during pregnancy. Many medical professionals advise avoiding marijuana during pregnancy, and the research currently available has for the most part reported potentially negative impacts on children who were exposed to marijuana in the womb.[[23]](#footnote-23) According to the American College of Obstetricians and Gynecologists, doctors should advise their patients who are pregnant or looking to become pregnant to stop all marijuana use immediately, and to use other remedies to address any pregnancy-related or other medical symptoms.[[24]](#footnote-24)

Doctors fear the impact tetrahydrocannabinol (THC) can have on a developing fetus. In animals, THC crossed the placenta and produced fetal plasma levels that were approximately 10 percent of maternal levels after acute exposure, and significantly higher fetal concentrations were observed after repetitive exposures.[[25]](#footnote-25) It has been pointed out that many studies about marijuana use are dated, and thus may not accurately measure the amount of THC that can effect a developing fetus, since THC levels have increased in marijuana over time.[[26]](#footnote-26)

Marijuana use has been linked to adverse pregnancy-related outcomes.[[27]](#footnote-27) There is no human research connecting marijuana use to the chance of miscarriage, although research has shown that pregnant people who use marijuana have a 2.3 times greater risk of stillbirth.[[28]](#footnote-28) Marijuana use may also impact the child’s development.[[29]](#footnote-29) If a pregnant person smokes marijuana, the smoke can contain many of the same respiratory disease-causing and carcinogenic toxins as tobacco smoke, and the concentration of such chemicals can be higher in marijuana smoke.[[30]](#footnote-30) Pregnant people using marijuana at least weekly during pregnancy were significantly more likely to give birth to a newborn weighing less than 2,500g (approximately 5.5 pounds).[[31]](#footnote-31) Studies note that children who were exposed to marijuana in utero had lower scores on tests of visual problem solving, visual-motor coordination, and visual analysis than those who were not exposed, and prenatal marijuana exposure has been associated with decreased attention span, early marijuana use, and behavioral problems.[[32]](#footnote-32)

Ultimately, it is hard to determine the true impact marijuana has on pregnancy for numerous reasons. Oftentimes marijuana use is compounded with other drug use and/or tobacco use, which can impact the fetus.[[33]](#footnote-33) In fact, one study from 2016 concluded that marijuana use during pregnancy is not an independent risk factor for adverse neonatal outcomes after adjusting for confounding factors, including tobacco.[[34]](#footnote-34) Poverty and its related socioeconomic conditions, such as malnutrition, can impact a child in ways that may seem similar to prenatal marijuana exposure.[[35]](#footnote-35)

Furthermore, studies examining marijuana use and pregnancy tend to be several years old and conducted on smaller groups, and therefore may not be able to accurately detect correlations between marijuana use and pregnancy outcomes.[[36]](#footnote-36) To further complicate matters, many studies are based on self-reports from participants, which can lead to flawed data collection.[[37]](#footnote-37) Finally, the fact that marijuana is still considered a Schedule 1 substance (a category which also includes heroine) continues to be a barrier to completing large-scale, evidence-based research around marijuana use and pregnancy.[[38]](#footnote-38)

1. **Hospital Policies on Substance Use Among Parents**

*Hospital Policies*

 According to a *Rolling Stone* article from November 2018, H+H released a corporate policy in 2014 that outlines criteria for “screening and testing at-risk pregnant women and newborns for alcohol abuse and exposure to other drugs during pregnancy.” These criteria included a list of “risk indicators” to consider.[[39]](#footnote-39) Risk indicators include minimal or no prenatal care, a history of substance abuse or treatment within the previous three months, placental abruption and severe mood swings.[[40]](#footnote-40) H+H’s policy is not public, and information about its enforcement is not publicly accessible.

*Who Receives Drug Tests in Hospital Settings*

Race, class, and other factors play a hand in hospital drug testing and reporting.[[41]](#footnote-41) One study from 2007 used “data from the clinical information system of a 1000-bed urban medical center to examine rates and results of testing for illicit drugs among women admitted with pregnancy-related diagnoses during the years 2002 and 2003 and among the infants born to these women.”[[42]](#footnote-42) The study makes note of research demonstrating the existence of racial disparities in infant referrals to and action by child welfare agencies, as well as findings that women who are Black are more likely to be tested for illicit substances during prenatal care and at delivery.[[43]](#footnote-43)

Of 8,487 cases of women who have had live births, 3 percent, or 244 mother-newborn pairs, were tested for illicit drug use. Women who are Black and their newborns were 1.5 times more likely to be tested than non-Black women.[[44]](#footnote-44) Despite Black women receiving testing more frequently, the study found equivalent positive test rates among Black and non-Black women.[[45]](#footnote-45) In addition to race, the study identified various factors that were correlated with high rates of testing. Testing was significantly associated with “Black maternal race, single or widowed marital status, lower educational status, unemployment, public or absent health insurance, and living in a neighborhood in the poorest quartile” as well as older age.[[46]](#footnote-46) Clinical variables, including more than one hospitalization during the pregnancy, maternal HIV infection, and low birth weight, and obstetrical diagnoses, including placenta previa, abrupted placenta, third-trimester bleeding, and eclampsia, were also associated with drug testing.[[47]](#footnote-47) Finally, absent prenatal laboratory results were also associated with drug testing.[[48]](#footnote-48)

1. **Substance Use and the Child Welfare System**

As mentioned above, ACS has 60 days to determine whether a report is indicated or unfounded. At an October 2018 NYC Council Committee on General Welfare hearing, a representative from ACS stated that ACS workers make at least biweekly visits to the family’s home during the duration of the case being open[[49]](#footnote-49) and there are few cases that are closed before 60 days.[[50]](#footnote-50) This means that even if the case is unfounded in the end, the family is still subjected to two months of government intrusion and invasions of privacy.

At a November 27, 2018 General Welfare Committee hearing, ACS Commissioner David Hansell stated that, “marijuana use per-say would never be the basis for an indicated finding of abuse or neglect” but that “any substance abuse that has an impact on parenting capacity or ability to provide adequate guardianship for a child” could influence a neglect case.[[51]](#footnote-51) When asked, Commissioner Hansell acknowledged that inadequate guardianship is a vague indicator. In a situation where a child has been removed from the home, another representative from ACS at the same hearing stated that marijuana use alone, without a history demonstrating “a substantial impact upon the safety of a child, would not necessarily lead to an argument that the child has to continue to be removed.”[[52]](#footnote-52)

According to the Drug Policy Alliance, even though New York State has a fairly stringent legal definition of caregiver neglect when substance use is a factor, “there is a lack of system-wide fidelity to this legal standard of neglect.”[[53]](#footnote-53) The Drug Policy Alliance further stated, “The subjective interpretation of substance misuse by both ACS and family court is deleterious to caregivers who, on order to maintain custody of their children, must submit to conditions determined by both ACS and the judge.”[[54]](#footnote-54) The Center for Family Representation stated that, despite ACS’s testimony to the contrary, marijuana use alone is used as a basis for removing children from homes, denying an expansion of visitation rights, and refusing to allow a child to return to the home.[[55]](#footnote-55)

When asked about the impact of legalizing marijuana on child welfare policies, Commissioner Hansell stated that policies will need to be reevaluated if legalization becomes a reality and compared the situation to alcohol, which is legal “but there are cases in which use of alcohol in a way that impairs parenting capacity leads to child welfare concerns.”[[56]](#footnote-56)

According to the Drug Policy Alliance, “Neglect accusations raised at Family Court are largely a byproduct of poverty and resource scarcity compounded by benign substance use, such as marijuana use, or problematic substance use that should be addressed compassionately and through non-punitive forms of substance use disorder (SUD) treatment. Racism and classism combine to capture caregivers in cycles of surveillance and mandated unnecessary services that sever families who can’t live up to the expectations of the court. Behaviors deeply scrutinized by ACS and Family Court judges in these cases would largely go unnoticed in more affluent white communities.” [[57]](#footnote-57)

1. **Bill Analyses**

**Int. No. 1161** - A Local Law to amend the administrative code of the city of New York, in relation to enhanced reporting on the child welfare system

This bill would amend existing reporting requirements regarding the child welfare system by requiring ACS to additionally report the main allegations that led to its receipt of a report or the opening of a case for investigation of child abuse or neglect. The allegations would specifically include, but not be limited to, a parent’s or caretaker’s marijuana usage, inadequate food/clothing/shelter, or other specified allegations. The first report would be due July 31, 2019 and quarterly thereafter. The report would be published on DSS’ website in addition to the current requirement that it be submitted to the Council. The bill would take effect immediately.

**Int. No. 1426** - A Local Law to amend the administrative code of the city of New York, in relation to reporting on investigations initiated by the administration for children’s services resulting from drug screenings performed at facilities managed by the New York city health and hospitals corporation

This bill would require ACS to provide an annual report to the Mayor and to the Council with information regarding the number of patients who were referred to ACS for investigation as a result of a positive drug screening performed at a facility operated by H+H. The first report would be due the first business day after January 1, 2019. The bill would take effect immediately.

**Res. No. 740** - Resolution calling upon the New York City Administration for Children's Services to implement a policy finding that a person's mere possession or use of marijuana does not by itself create an imminent risk of harm to a child, warranting the child's removal.

This resolution calls upon ACS to implement a policy finding that a person's mere possession or use of marijuana does not by itself create an imminent risk of harm to a child, warranting the child's removal. The resolution details evidence of racial disparities in marijuana enforcement in New York, noting there are reasons to be particularly cautious in pursuing civil child neglect cases based merely on the possession or use of marijuana by parents.

**Res. No. 746** - Resolution calling on the New York State Legislature to pass, and the Governor to sign, legislation requiring the New York State Department of Health to create clear and fair regulations for hospitals on drug testing those who are pregnant or giving birth, including informing patients of their rights before any discussion of drug use or drug testing.

This resolution calls upon on the New York State Legislature to pass, and the Governor to sign, legislation requiring the New York State Department of Health to create clear and fair regulations for hospitals on drug testing those who are pregnant or giving birth. Such legislation should include informing patients of their rights before any discussion of drug use or drug testing. It is unclear how hospitals determine that testing is necessary and such testing appears to disproportionally impact low-income women and women who are Black and Latina.

1. **Conclusion**

During the hearing, the Committees will discuss the impact of marijuana policies on child welfare, specifically H+H and ACS practices and their impact on pregnant people and families. The committees will hear several pieces of legislation that will provide transparency and clarity on marijuana use among parents to avoid unnecessary child welfare investigations which disproportionately impacts Black and Latinx communities. It is critical to discuss the impact of marijuana on child welfare as the State and City considers legalization of recreational marijuana.

Int. No. 1161

By Council Members Richards and Levin

A Local Law to amend the administrative code of the city of New York, in relation to enhanced reporting on the child welfare system

Be it enacted by the Council as follows:

Section 1. Section 21-902 of the administrative code of the city of New York as added by local law 20 of 2006 is amended to read as follows:

Section 21-902. Quarterly Reports Regarding Child Welfare System. a. Definitions. For the purposes of this section, the following terms have the following meanings:

Allegation. The term “allegation” means an accusation of any of the following: educational neglect, lack of medical care, inadequate food/clothing/shelter, inadequate guardianship, lack of supervision, malnutrition, failure to thrive, emotional neglect, inappropriate isolation/restraint, welling/discoloration/sprains, abandonment, child’s marijuana use, child’s drug use other than marijuana, child’s alcohol use, parent’s marijuana misuse, parent’s alcohol misuse, parent’s drug misuse other than marijuana, inappropriate custodial conduct, burns, scalding, choking/twisting/shaking, excessive corporal punishment, DOA/fatality, fractures, internal injuries, lacerations/bruises/welts, poisoning/noxious substances and sexual abuse, or other.

Indicated. The term “indicated” means an investigative finding that there is sufficient proof of the abuse or neglect of a child.

Preventive services. The term “preventive services” means supportive and rehabilitative services provided, in accordance with title four of the social services law, to children and their families for the purposes of: averting an impairment or disruption of a family which will or could result in the placement of a child in foster care; enabling a child who has been placed in foster care to return to his family at an earlier time than would otherwise be possible; or reducing the likelihood that a child who has been discharged from foster care would return to such care.

Unfounded. The term “unfounded” means an investigative finding that there is insufficient proof of the abuse or neglect of a child.

b. Beginning no later than July 31, [2006]2019 and no later than the last day of the month following each calendar quarter thereafter, ACS will furnish to the speaker of the city council and post on its website a report regarding New York City’s child welfare system that includes, at a minimum, [the following] information[:] regarding the number, case load, and experience of child protective services staff; the dispositions by type, zone and allegation of reports, cases and investigations; and family reunification data as follows:

1. Information regarding [C]child protective services staff[. The following information regarding child protective services shall be included in the quarterly report], disaggregated by zone:

[a.](a) number of case workers employed and number of vacancies in case work staff at the end of the reporting period;

-[b.](b) experience of case workers, broken down by years of experience in New York City's child welfare system as follows: 1-3 years of experience; 3-5 years of experience; 5-7 years of experience; 7-9 years of experience; 9 or more years of experience;

[c.](c) average caseload of case workers;

[d.](d) number of case workers with a caseload of more than 15 cases;

[e.](e) number of level one supervisors;

[f.](f) experience of level one supervisors, broken down by years of experience in New York City's child welfare system as follows: number with 1-5 years of experience; 5-10 years of experience; 10-15 years of experience; 15-20 years of experience; 20 or more years of experience;

[g.](g) number of level two supervisors;

[h.](h) experience of level two supervisors, broken down by years of experience in New York City's child welfare system as follows: number with 1-5 years of experience; 5-10 years of experience; 10-15 years of experience; 15-20 years of experience; 20 or more years of experience;

[i.](i) number of child protective managers;

[j.](j) experience of child protective managers, broken down by years of experience in New York City's child welfare system as follows: number with 1-5 years of experience; 5-10 years of experience; 10-15 years of experience; 15-20 years of experience; 20 or more years of experience;

2. Information on reports, cases and investigations, disaggregated by zone:

[k.]-a. number of reports of suspected child abuse or neglect referred to the zone for investigation, disaggregated by the type of case and allegation;

[l.]b. number of reports of suspected child abuse or neglect referred to the zone for investigation that were indicated during the reporting period, disaggregated by the type of case and allegation and whether the case was referred to preventive services, court mandated services, foster care placement or closed;

[m.]c. number of unfounded cases, disaggregated by allegation and whether or not the case was referred to preventive services;

[n.]d. number of investigations that resulted in closure without referral to preventive services, disaggregated by the type of case, allegation and whether the case was indicated or unfounded and the reason for closure;

[o.]e. number of reports of suspected child abuse or neglect referred to the zone that involved a family with respect to which ACS had received at least one prior report of suspected abuse or neglect within the past 24 months, disaggregated by the type of case and allegation;

[p.]f. number of reports of suspected child abuse or neglect referred to the zone that involved a family that had at least one child previously in the foster care system, disaggregated by the type of case and allegation;

[q.]g. number of reports of suspected child abuse or neglect referred to protective services for which protective services conducted a [72-hour] case conference, disaggregated by the type of case and allegation;

[r. number of reports of suspected child abuse or neglect referred to protective services for which an elevated risk conference was held, disaggregated by the type of case;]

[s.]h. number of IRT investigations commenced disaggregated by the type of case and allegation; and

[t.]i. number of entry orders sought and number of entry orders obtained disaggregated by the type of case and allegation.

[2.]3. Information regarding [F]family [R]reunification data[. The following information regarding family reunification shall be provided in the quarterly report]:

a. number of families reunited from foster care during the reporting period, disaggregated by zone, allegation, and by length of stay in foster care in six month intervals;

b. of all families reunited during the reporting period, the number of families receiving aftercare services, disaggregated by zone, allegation and by the type of services being received; and

c. number of children who entered foster care during the reporting period who had been in the custody of the child welfare system within the thirty-six months immediately preceding the reporting period, disaggregated by zone and allegation.

[3.]4. ACS may use preliminary data to prepare the report required by this [chapter]section to be delivered no later than July 31, [2006]2019 and may include an acknowledgement that any preliminary data used in the report is non-final and subject to change.

5. The department shall compile one to three allegations per case, report, or other individual reporting component required by this subdivision provided that the department has determined a reported allegation is a predominant factor in such case, report, or other individual reporting component.

c. Confidentiality. No information that is otherwise required to be reported pursuant to this section shall be reported in a manner that would violate any applicable provision of federal, state or local law relating to the privacy of information respecting families or children receiving preventive services or that would interfere with law enforcement investigations or otherwise conflict with the interests of law enforcement.

§ 2. This local law takes effect immediately.

PLS

LS #s 7010 and 7479

10/2/18

Int. No. 1426

By Council Members Reynoso and Levin

A Local Law to amend the administrative code of the city of New York, in relation to reporting on investigations initiated by the administration for children’s services resulting from drug screenings performed at facilities managed by the New York city health and hospitals corporation

Be it enacted by the Council as follows:

Section 1. Section 21-901 of the administrative code of the city of New York, as amended by local law number 44 for the year 2013, is amended by adding new definitions of “drug,” “drug  test,” “patient,” “positive test result” and “referred to ACS” in alphabetical order to read as follows:

“Drug” means any substance defined as a controlled substance in section thirty-three hundred six of the public health law.

“Drug test” means a test that examines a person's blood or urine for evidence of drugs.

“Patient” means any person currently or previously under the care of a facility operated by the New York city health and hospitals corporation and who underwent a drug test at such facility.

“Positive test result” means a drug test result that shows evidence that a drug is present in a patient’s blood or urine.

“Referred to ACS” means that a patient’s information was shared with ACS by a facility managed by the New York city health and hospitals corporation due to a positive test result on a drug test.

§ 2. Chapter 9 of title 21 of the administrative code of the city of New York is amended by adding a new section 21-919 to read as follows:

§ 21-919 Positive drug test result screening report. a. Beginning no later than the first business day after January 1, 2019 and on the first business day after January 1 of each calendar year thereafter, ACS shall provide to the council and the mayor a report regarding the number, type and outcomes of investigations initiated by ACS during the prior calendar year as a result of positive test results from drug tests performed at facilities managed by the New York city health and hospitals corporation.

b. Such report shall be disaggregated by facility and include, at a minimum, the following information for each patient referred to ACS because of a positive test result:

1.                     The age, income range, gender and ethnicity of each patient;

2.                     The date the drug test was performed;

3.                     The date the patient was referred to ACS;

4.                     The drug or drugs identified in the drug test;

5.                     The number of investigations initiated as a result of referrals to ACS;

6.                     The type of investigation or investigations initiated;

7.                     The findings and outcome of the investigation or investigations; and

8.                     The number of referrals reported to the New York city police department or another

law enforcement agency.

§ 3. This local law takes effect immediately.

DR/GZ

LS #7633

8/10/18 4:00 PM

Res. No. 740

Resolution calling upon the New York City Administration for Children’s Services to implement a policy finding that a person’s mere possession or use of marijuana does not by itself create an imminent risk of harm to a child, warranting the child’s removal.

By Council Members Lander, Levin, Treyger and Rivera

Whereas, According to a July 2010 report by the Drug Policy Alliance, “Pot as Pretext: Marijuana, Race and The New Disorder in New York City Street Policing,” marijuana arrests doubled from the mid-1990s to a peak of more than 50,000 arrests in 2010; and

Whereas, At its peak, according to the Drug Policy Alliance, marijuana arrests constituted the most frequent type of arrest in New York City at a cost to taxpayers of up to $75 million a year and an incalculable socio-economic cost for those arrested; and

Whereas, According to a 2013 report by the American Civil Liberties Union (ACLU), “The War on Marijuana in Black and White,” despite comparable use of marijuana among Blacks and Whites, a comprehensive analysis of national, state and county arrest data for the period 2001 to 2010 exposed significant across-the-board racial disparities in the implementation of marijuana enforcement; and

Whereas, The ACLU Report found that Blacks were 4.5 times more likely than Whites to be arrested for marijuana possession in New York State, 9.7 times more likely than Whites to be arrested in Brooklyn and 9.4 times more likely than Whites to be arrested in Manhattan; and

                     Whereas, According to a 2015 report by the New York City Police Department, “Broken Windows and Quality-of-Life Policing in New York City,” the NYPD issued a September 2011 memorandum reiterating state guidance that those found in possession of small amounts of marijuana should be issued court summonses rather than be arrested; and

Whereas, In November 2014, according to the NYPD report, Mayor de Blasio and then-Police Commissioner Bratton issued another order outlining the NYPD’s approach to marijuana possession whereby individuals found in possession of less than 25 grams of marijuana would be issued court summonses instead of be arrested; and

Whereas, According to the NYPD report, marijuana arrests declined substantially by more than 25,000 arrests, a nearly 50 percent decline between their peak in 2010 and 2014; and

Whereas, According to an October 2014 report by the Drug Policy Alliance, “Race, Class & Marijuana Arrests in Mayor DeBlasio’s Two New Yorks”, despite decreases in overall arrests, 86% of the people arrested for marijuana possession in New York City were Black and Latino, compared to 10% for Whites and 4% for others; and

Whereas, According to an August 17, 2011 *New York Times* article, “No Cause for Marijuana Case, but Enough for Child Neglect” (“the *New York Times*article”), hundreds of New Yorkers who were caught by police with small amounts of marijuana, or who simply admitted using it, were involved in civil child neglect cases, even though they did not face criminal charges; and

Whereas, Additionally according to the *New York Times* article, some of these parents lost custody of their children; and

Whereas, The *New York Times* article stated that the child welfare system was an alternate system of justice for these parents when compared to the criminal court system; and

Whereas, Lawyers interviewed for the *New York Times* article said they had more than a dozen cases on their dockets involving parents who had never faced neglect allegations but whose children were placed in foster care because of marijuana allegations; and

Whereas, The Administration for Children’s Services does not automatically find that a child is in immediate risk of harm if a parent or caregiver possesses or consumes alcohol; and

Whereas, While sometimes parents were allowed to keep custody of their children when neglect had been found, serious repercussions can follow such a finding, such as prohibiting parents from taking jobs around children, barring individuals from being foster care parents or adopting children, and making it easier for Family Court judges to later remove children from their homes; and

Whereas, Since the *New York Times* article, there has been greater public acceptance of marijuana use across the country, which has led to the legalization of the substance for medical or recreational purposes in over 20 states; and

Whereas, On July 7, 2014, New York became the 23rd state to legalize medicinal marijuana, which act, in addition to decriminalizing the possession of small amounts of marijuana, reflects a growing national trend toward the acceptance of marijuana use; and

Whereas, Given the racial disparities in marijuana enforcement in New York that continue despite this growing trend, there are reasons to be particularly cautious in pursuing civil child neglect cases based merely on the possession of small amounts of marijuana or the admission of marijuana use by parents; now, therefore, be it

Resolved, That the Council of the City of New York calls upon the New York City Administration for Children’s Services to implement a policy finding that a person’s mere possession or use of marijuana does not by itself create an imminent risk of harm to a child, warranting the child’s removal.

LS #s 1586, 2281, 7557, 9297

PLS

2/4/19

Res. No. 746

Resolution calling on the New York State Legislature to pass, and the Governor to sign, legislation requiring the New York State Department of Health to create clear and fair regulations for hospitals on drug testing those who are pregnant or giving birth, including informing patients of their rights before any discussion of drug use or drug testing.

By Council Members Rivera and Levin

Whereas, Currently, hospitals will drug test patients who are giving birth and report those who test positive to the Statewide Central Register of Child Abuse and Maltreatment (SCR); and

Whereas, This testing leads to a child welfare investigation for marijuana use alone because the New York City Administration for Children’s Services is required to investigate all cases in NYC referred from SCR; and

Whereas, It is unclear how hospitals determine that testing is necessary and a Daily News article from 2012 found that testing varied by hospital and disproportionally impacted low-income women and women of color; and

Whereas, It is also unclear whether hospitals ensure that patients are aware of the child welfare ramifications for drug tests and disclosing drug history to their health care provider; and

Whereas, Studies show that marijuana is the most commonly used illicit drug during pregnancy, and its use is increasing; and

Whereas, Women should be encouraged to share their medical history, including drug use, with their health care provider without fear of a child welfare case being opened; and

Whereas, A review of the research has shown that maternal marijuana use during pregnancy is not an independent risk factor for adverse neonatal outcomes after adjusting for confounding factors; and

Whereas, Research on the topic is limited due to relying on self-reporting and the difficulty in conducting direct research with a Schedule I drug; and

Whereas, Current state law states that a “neglected child” means a child “whose physical, mental or emotional condition has been impaired or is in imminent danger of becoming impaired” due to a parent or guardian’s failure to provide minimum care, including “misusing a drug or drugs”; and

Whereas, Given the requirement of drug misuse - not just use - as well as evidence establishing that the child's physical, mental or emotional condition has been impaired or is in imminent danger of becoming impaired, one positive drug test arguably does not fit into the definition of neglect, as defined by State law; and

Whereas, While the medical field is continuing to research prenatal marijuana use and marijuana is being legalized across the nation, New York should address marijuana similarly to alcohol and should amend laws, regulations and policies that equate marijuana use with neglectful parenting; now, therefore, be it

Resolved, That the Council of the City of New York calls on the State Legislature to pass, and the Governor to sign, legislation requiring the New York State Department of Health to create clear and fair regulations for hospitals on drug testing those who are pregnant or giving birth, including informing patients of their rights before any discussion of drug use or drug testing.

CP

LS 9741

2/5/19

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5. New York State Family Court Act § 1012 [↑](#footnote-ref-5)
6. Administration for Children’s Services, “A Parent’s Guide to a Child Abuse Investigation,” *available at* <https://www1.nyc.gov/site/acs/child-welfare/parents-guide-child-abuse-investigation.page> [↑](#footnote-ref-6)
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21. *Id.* [↑](#footnote-ref-21)
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