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New York Child Welfare Workers Illegally Separated Newborn From His Mother Over Cannabis Allegations, Lawsuit Alleges

BY ANNIE SCIACCA



Illustration by Christine Ongjoco

When New York legalized cannabis in 2021, the state codified what had already been policy within its largest child welfare agency: a parent's use of cannabis would not be the sole basis for taking their child into foster care — there had to be other concerns indicating harm or imminent risk. The law was passed in part to protect people of color, who have been disproportionately criminalized for smoking marijuana, and, far more often than whites, hauled into family court for failing to protect children.

But in a case filed this week in U.S. District Court in Manhattan, attorneys for Chanetto Rivers say she was separated from her newborn for the first week of his life, solely on the basis of a non-consensual drug test at the hospital where he was born. The action was taken not because the agency was trying to protect the newborn, the suit alleges, but simply “because Ms. Rivers is Black.” The case was first reported by [The New York Times](#).



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The nonprofit legal advocacy group Bronx Defenders and the Arnold & Palmer private firm allege in court papers that New York City's Administration for Children's Services (ACS) violated state law and its own policy when it removed the infant, identified as TW, from his mother.

“While ACS is tasked with protecting New York State's interest in the welfare of children, ACS has long known — through the State's own data — that Black families, like Ms. Rivers and TW, face separation and surveillance by ACS at much higher levels than white families.”

A spokesperson for the agency, Stephanie Gendell, told The Times she could not comment on individual cases. But she said that the city's child protection workers do not remove children from their parents based solely on cannabis use. In a statement, she said that when the agency investigates allegations of parental misuse of drugs or alcohol, its policy is to “assess the impact any misuse has or may imminently have on child safety.”

According to [the suit](#) filed Wednesday, the Bronx hospital where Rivers gave birth in August 2021 — the BronxCare Health System — tested her and her baby for drugs without consent

Cannabis had already been legal in the state for months when the hospital reported the positive test to the [Statewide Central Register of Child Abuse and Maltreatment](#), triggering an ACS investigation.

The BronxCare Health System did not respond to requests for comment by publication time.

“A POSITIVE TOXICOLOGY DOESN’T SAY WHAT KIND OF PARENT YOU ARE, IT DOESN’T SAY HOW MUCH YOU LOVE YOUR CHILD.”

— MIRIAM MACK, ATTORNEY WITH BRONX DEFENDERS

The city agency then instructed the hospital not to release the infant to his mother. Two days later, the agency told Rivers it was filing a case in family court based on parental neglect and moving the baby into foster care. The lawsuit alleges those actions constitute a violation of state law that requires that a child must be returned to a parent, or receive court review, within one day of a removal.

Rivers’ “forced separation from TW was particularly traumatic and damaging because he was a newborn, so Ms. Rivers and TW missed crucial moments of bonding, feeding, and skin-to-skin contact,” the lawsuit states.

It also alleges the city child welfare agency never explained a connection between the alleged marijuana use and Rivers’ ability — or inability — to care for her child. Her lawyers say the case is rare in that the mother’s marijuana use, at a family barbecue hours before arriving at the hospital, appears to be the only reason her newborn was taken into foster care. The agency never claimed that the baby was harmed by the marijuana exposure, the lawsuit states.

People of color and families struggling with poverty are [disproportionately impacted](#) by family separation due to substance use, according to information reviewed by New York City’s Commission on Human Rights. And Black mothers have been the most likely to be tested for cannabis use, arrested and reported to child welfare systems.

The Bronx Defenders legal aid firm, the advocacy group JMacForFamilies, the NY Drug Policy Alliance and the Movement For Family Power have long [advocated](#) for justice in these cases.

Parent defenders say mothers must provide “meaningful consent” before they are tested for drugs in clinics and hospitals statewide and that non-consensual drug testing violates women’s reproductive rights. The practice also exacerbates the “womb-to-foster-care pipeline,” advocates say, leading to unnecessary and harmful family separations in marginalized communities.

“A positive toxicology doesn’t say what kind of parent you are, it doesn’t say how much you love your child,” attorney Miriam Mack of Bronx Defenders told The Imprint last year. “All it says is that there’s the presence of a drug metabolite in your system.”

A [recent study](#) analyzing the medical records of nearly 38,000 patients who gave birth at a large Pennsylvania health care system found that hospitals are more likely to drug test Black mothers than white mothers after giving birth, even though Black women were less likely than white women to test positive.

Yet the impact of prenatal cannabis exposure remains unclear to some experts.

In a [presentation](#) to the National Council of Juvenile and Family Court Judges in 2020, a University of Colorado professor who studies the issue, Kathryn Wells, noted that prenatal exposure to cannabis has been linked to childhood attention issues or academic problems. “There is no known safe amount of marijuana during pregnancy,” Wells said, but acknowledged in the presentation that there are limited studies and it’s unclear what the long-term impact is on infant health or development.

Advocates insist that unnecessarily separating babies from their moms is arguably a far greater threat to their well-being, and they urge a less punitive, more public health-focused approach. New York advocates [want to end](#) the practice of hospitals making child maltreatment reports to the state child maltreatment registry based on toxicology tests — particularly those that are conducted without mothers’ consent or knowledge. [Legislative proposals](#) that would have required pregnant and postpartum mothers to provide “meaningful consent” before they are tested for drugs in clinics and hospitals in New York died in committee last year.

A RECENT STUDY FOUND THAT HOSPITALS ARE MORE LIKELY TO DRUG TEST BLACK MOTHERS THAN WHITE MOTHERS AFTER GIVING BIRTH, EVEN THOUGH BLACK WOMEN WERE LESS LIKELY THAN WHITE WOMEN TO TEST POSITIVE.

According to her lawsuit, Rivers had a prior case involving the child welfare system: In 2016, she lost custody of her two other children for alleged drug and alcohol use, as well as for allegations that she failed to obtain medical care for one of her children. However, her lawyers argue she had been cleared by the city's child welfare agency to reunite with those children by the time she gave birth in 2021. They maintain that the previous cases should have no bearing on her newborn.

Two judges agreed.

Days after her infant was taken, a family court judge said he found it “troubling” that the Administration for Children’s Services “runs to Court” seeking a child be removed for a mother’s marijuana use, the lawsuit noted. When the case was continued, a second judge ordered the baby returned to Rivers.

Even then, the lawsuit states, “ACS continued to subject Ms. Rivers to needless court proceedings and a litany of conditions that interfered with her parenting of TW for months.” It noted that the agency required her to take drug tests, attend parenting and anger management classes and endure unannounced visits from city child protection workers.

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Those workers, court documents state, “embraced the racial biases that define the agency

and anguish and deprived her of precious time with her newborn baby that she can never get back.”

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