



**NEW YORK
CITY BAR**

**REPORT ON LEGISLATION BY THE
CHILDREN AND THE LAW COMMITTEE AND
THE COUNCIL ON CHILDREN**

**A.1980
S.901**

**M. of A. Walker
Sen. Brisport**

AN ACT to amend the social services law, in relation to requiring child protective services to orally disclose certain information to parents and caretakers who are the subject of a child protective services investigation.

THESE BILLS ARE APPROVED

The Children and the Law Committee and Council on Children of the New York City Bar Association (City Bar) strongly support A.1980 / S.901, which was introduced in the New York State Legislature by Senator Brisport and Assemblymember Walker. The Children and the Law Committee, which includes among its members judges of the Family Court, attorneys for children, attorneys for parents, and attorneys for the Administration for Children Services and its contracted agencies, addresses legal issues that impact the quality of life for children and families. The Council on Children is comprised of representatives of all the City Bar committees dealing with children, education, family, family court, juvenile justice, and the needs of lesbian, gay, bisexual and transgender youth, and includes among its members representatives of the child welfare, juvenile justice and foster care communities, including attorneys representing parents and children.

The proposed legislation requires child protective investigators to inform parents and caretakers of certain rights and information at the beginning of a child protective investigation. Such rights include that unless court ordered, the parent is not required to permit the child protective investigator to enter their residence; that the parent is entitled to be informed of the allegations against them; that the parent is not required to speak to the child protective investigator, and any statements made to the investigator may be used against the parent in an administrative or court proceeding, and that the parent is not required to permit the investigator to interview the child or children. The legislation also requires a child protective investigator to inform the parent of their right to seek the advice of an attorney and have that attorney present when the parent is interviewed by the child protective investigator. Finally, the proposed legislation requires the child protective investigator to provide said rights and information in the parents' preferred language.

About the Association

The mission of the New York City Bar Association, which was founded in 1870 and has over 23,000 members, is to equip and mobilize a diverse legal profession to practice with excellence, promote reform of the law, and uphold the rule of law and access to justice in support of a fair society and the public interest in our community, our nation, and throughout the world.

The legislation will ensure that investigators retain all existing legal authority to protect children, while providing parents the information they need to protect their families from unwarranted intrusion. This plain language “Parental Bill of Rights” legislation does not create any new rights, but ensures that parents under government investigation know their rights before giving authorities access to their children, homes, and medical information, rather than being coerced, pressured, or misled into doing so.¹

I. REASONS FOR SUPPORT

a. **The Disproportionately Black and Latinx Families Subjected to Child Protective Investigations Are Not Advised of Their Existing Rights in Child Protective Investigations.**

Every year, the New York State Central Registry Hotline receives over 160,000 reports of child abuse or neglect.² The vast majority of investigated child abuse hotline calls do not result in child protective agencies taking action.³ The National Child Abuse and Neglect Data System (NCANDS) estimated that, in 2019, although approximately 4.4 million allegations of child abuse or neglect were reported to child protective service agencies nationwide, only about 656,000 investigations resulted in findings of child maltreatment.⁴

Parents who are being investigated by child protective services in New York State are rarely informed of the allegations against them and are not told of their right to speak to an attorney. New York law is clear that, absent a true emergency, child protective investigators cannot enter a home and interview children without either a court order or a parent’s permission.⁵ Investigators, however, rarely communicate even these basic rights to parents. Instead, child protective investigators routinely tell parents that they must cooperate with the agency’s demands immediately.

¹ “It is well-settled law that parents are under no legal obligation to cooperate with a child protective agency’s investigation of them.” *In re Smith Child.*, 26 Misc. 3d 826, 833, 891 (Fam. Ct., Kings Cty. 2009) (citing *Matter of Vulon*, 56 Misc 2d 19 (Fam. Ct., Bronx Cty. 1968)).

² CHILD.’S BUREAU, U.S. DEP’T HEALTH & HUM. SERVS., CHILD MALTREATMENT 2019, 12 (2021), <https://www.acf.hhs.gov/sites/default/files/documents/cb/cm2019.pdf>. (New York State reported that in 2019, they received 163, 917 “Total Referrals”, with a “Referral” defined as an allegation of abuse or neglect received by a CPS agency. New York State does not collect data about calls not registered as reports). (All websites last visited April 20, 2023).

³ See Dale Margolin Cecka, *Abolish Anonymous Reporting to Child Abuse Hotlines*, 64 CATH. U. L. REV. 51, 64 (2014) (citing NIS-4 statistic that nationally, reports regarding only 27.4 per 1,000 children resulted in dispositions, despite the definition of disposition including investigations that were not substantiated for maltreatment).

⁴ CHILD.’S BUREAU, *supra* note 2, xiv, 7, 18. The NCANDS reported that the 4.4 million referrals alleging child maltreatment included approximately 7.9 million children. *Id.* at xiv, 20. Additionally, nearly 2.85 million investigated allegations of child abuse or neglect uncovered no evidence of child maltreatment, were closed without any determinations, and/or were determined to be unsubstantiated. *Id.* at xiv, 17–18, 30. The NCANDS reported that 16.7% of children who were subjects of reports were classified as “victims” of maltreatment and the remaining 83.7% of children were “not determined to be victims or received an alternative response.”

⁵ See N.Y. Family Court Act § 1034 (requiring social services officials to seek a court order in order to compel a parent or caretaker to permit social services personnel to enter their home or interview and examine their children).

The families who are pressured to allow child protective investigators into their homes and permit these strangers to interview and examine their children, without full knowledge of their rights and without the chance to speak with an attorney, are overwhelmingly Black and Latinx families from low-income communities, who have a history of overrepresentation and disparate treatment by child protective systems.⁶ Black families in particular are significantly more likely to be reported and investigated than are families of any other race.⁷ For example, in New York City in 2019, 41.4% of investigations involved Black families and 45.4% of reports involved children from Latinx families, even though those children comprised, respectively, about 23% and 36% of the city's child population. Conversely, white children comprised 26.5% of that population but are the subject of only 8% of investigations, and Asian/Pacific Islander children constituted 14.1% of that population but comprised only 5.3% of reports.⁸

b. Failure to Inform Parents of their Rights in Child Protective Investigations Results in Unnecessary Harm to Children and Families.⁹

Families most often learn of an investigation with a knock on their door. Child protective investigators rarely tell families why they are being investigated. Instead, child protective investigators demand access to the home and the children without a warrant or court order. Parents are often led to believe, because they are not informed of their right to the contrary, that if they do not cooperate, their children will be taken from their care.

Once in the home, the child protective investigator checks every room and often searches cabinets, drawers, the refrigerator, and medicine cabinets, regardless of whether such a search is relevant to the particular allegation in the report. The child protective investigator also conducts an in-depth interview of the parent, inquiring about highly personal topics that can later form the basis for court action against the parent. These topics include diagnoses, medications, disciplinary methods used, sexual partners, family contact information, history of child protective system involvement, history of substance use including drugs and alcohol, history of domestic violence and much more. Child protective investigators routinely ask the same set of intrusive questions to all families regardless of whether they are relevant to the specific allegations in the report being investigated.

When child protective investigators arrive at a home, often in the middle of the night, they routinely tell parents they must wake up their sleeping children so that the children can be

⁶ See generally DOROTHY ROBERTS, *SHATTERED BONDS: THE COLOR OF CHILD WELFARE* (2002); John D. Fluke, Ying-Ying T. Yuan, John Hedderson & Patrick A. Curtis, *Disproportionate Representation of Race and Ethnicity in Child Maltreatment: Investigation and Victimization*, 25 *CHILD. & YOUTH SERVS. REV.* 359, 362, 372 (2003); Jeryl L. Mumpower & Gary H. McClelland, *A Signal Detection Theory Analysis of Racial and Ethnic Disproportionality in the Referral and Substantiation Processes of the U.S. Child Welfare Services System*, 9 *JUDGMENT & DECISION MAKING* 114 (2014).

⁷ N.Y. Office of Children & Family Servs., *Black Disparity Rate* (2019), <https://ocfs.ny.gov/reports/sppd/dmr/DMR-County-Comparison-2019.pdf>.

⁸ See DAVID A. HANSELL, NYC ADMIN. CHILD. SERVS., *TESTIMONY TO THE NEW YORK CITY COUNCIL COMMITTEE ON GEN. WELFARE*, 4 (Oct. 28, 2020), <https://www1.nyc.gov/assets/acs/pdf/testimony/2020/GWCommitteeHearing.pdf>.

⁹ The facts set forth in this section are based on committee members' experiences representing children and families in the Family Court system.

interviewed. They tell parents that their children must be interviewed alone, away from family members. They often instruct parents to undress their children so they can examine their bodies. Their regular practice is to demand access to all children in the home, regardless of whether all the children are the subject of the report, and to ask the same set of intrusive questions to all children regardless of whether those questions are relevant to the particular allegations in the report. Parents are not told of their right to refuse to consent to these potentially traumatizing bodily examinations and interviews on their children's behalf.

Intrusive child protective investigations are traumatizing for children.¹⁰ These investigations frequently deprive children of a sense of safety and security in their homes when they witness authority figures questioning their parents' ability to keep them safe.¹¹ Children who have been taught by their parents not to talk to strangers are required to violate that rule by speaking to an investigator, without any familiar adult present, potentially endangering both their future safety and their sense of security in their parents' care by undermining their parents' efforts to protect them.¹² Being asked about potential dangers such as domestic violence and mental illness, when those issues are irrelevant to the report being investigated, can be unnecessarily frightening to children who may not be aware, or developmentally ready to process, that such dangers exist in other families. Recurring interviews may also weaken a child's self-esteem when they are repeatedly asked, often by multiple people, about negative experiences.¹³ Children may also be frightened because they do not know how the investigation will affect them.¹⁴

During an investigation, prior to any court involvement, investigators often tell parents they must submit to drug tests or mental health evaluations and sign broad releases to allow the agency to access the child and parent's medical and mental health information. Sometimes investigators insist that a parent take a child to be physically examined by a doctor affiliated with the child protective agency rather than their own pediatrician. Any information gleaned from these sources may then be used against a family in an administrative or family court proceeding.

c. Robust Safeguards Remain in Place to Ensure Allegations of Child Maltreatment Can Be Fully Investigated and to Protect Children in Immediate Danger.

New York has robust safeguards in place to ensure that child protective agencies can fully investigate allegations of child maltreatment. Nothing in the proposed legislation curtails these safeguards or limits the legal mechanisms available to agencies during an investigation. The Family Court Act permits child protective agencies to seek court orders to interview or examine

¹⁰ Nicholas M.C. Bala, Mindy Mitnick, Nico Trocmé & Claire Houston, *Sexual Abuse Allegations and Parental Separation: Smokescreen of Fire?*, 13 J. FAM. STUD. 26, 1342 (2007).

¹¹ CTR. FOR IMPROVEMENT CHILD & FAM. SERVS., PORTLAND ST. UNIV., SCH. SOC. WORK, REDUCING THE TRAUMA OF INVESTIGATION, REMOVAL, & INITIAL OUT-OF-HOME PLACEMENT IN CHILD ABUSE CASES: PROJECT INFORMATION AND DISCUSSION GUIDE, 12-13 (2009), <http://centerforchildwelfare.org/kb/TraumaInformedCare/ReducingTraumaofInvestigation.pdf>.

¹² *Id.*

¹³ CTR. FOR IMPROVEMENT CHILD & FAM. SERVS., PORTLAND ST. UNIV., SCH. SOC. WORK, WHAT IS THE POTENTIAL TRAUMA TO CHILDREN DURING THE INVESTIGATION? (2008-2009), <https://www.pdx.edu/center-child-family/sites/g/files/znldhr2421/files/2020-07/CJA-trauma-of-investigation.pdf>.

¹⁴ *Id.*

children, enter a home or obtain an order of protection against a parent even before they have filed a neglect or abuse petition in court.¹⁵ In those rare situations where there is credible evidence to believe a child is in immediate danger, agencies have the legal authority to take a child into custody without a court order.¹⁶ In many cases, however, investigators enter homes without meaningful consent and without obtaining a court order.

The proposed legislation simply requires investigators to provide parents with information about existing law, orally and in writing, in the parent’s primary language. It requires them to inform parents of the allegations against them; of their right to consult an attorney before speaking with an investigator and to have that attorney present during questioning; that they are not required to allow investigators to enter their home or interrogate or examine their children without a court order;¹⁷ that they are not required to share their family’s medical information with social services officials or to submit to a mental health evaluation or drug test without a court order;¹⁸ and that anything they say can be used against them in a court or administrative proceeding.

II. CONCLUSION

Ensuring that parents know their rights during an investigation which has the potential to have serious consequences to the children and family will allow parents to make informed decisions for their family and will make the investigation process less frightening and traumatizing for the whole family. This legislation will help ensure that the disproportionately Black and Latinx families affected by child protective investigations are not coerced into permitting harmful, destabilizing and unnecessary intrusions into their children’s lives.

For these reasons, the Children and the Law Committee and the Council on Children strongly support this bill and urge its passage.

Children and the Law Committee
Christina Rich and Rachel Stanton, Co-Chairs

Council on Children
Dawne Mitchell, Chair

Reissued May 2023*

Contact

Elizabeth Kocienda, Director of Advocacy | 212.382.4788 | ekocienda@nycbar.org
Mary Margulis-Ohnuma, Policy Counsel | 212.382.6767 | mmargulis-ohnuma@nycbar.org

**This report was first issued in April 2022 during the terms of the following committee chairs: Melissa Friedman and Rachel Stanton, Co-Chairs, Children and the Law Committee; and Dawne Mitchell, Chair, Council on Children.*

¹⁵ N.Y. Family Court Act §§ 1034; 1029.

¹⁶ N.Y. Family Court Act § 1024.

¹⁷ N.Y. Family Court Act § 1034.

¹⁸ N.Y. Family Court Act § 1038; N.Y. Mental Hygiene Law § 33.13(c).