



**ASSEMBLY STANDING COMMITTEE ON CHILDREN AND FAMILIES  
ASSEMBLY STANDING COMMITTEE ON FOSTER CARE**

**PUBLIC HEARING ON THE CHILD WELFARE SYSTEM AND THE MANDATORY  
REPORTING OF CHILD ABUSE OR MALTREATMENT IN NEW YORK STATE  
SEPTEMBER 27, 2023**

**WRITTEN TESTIMONY OF NEW YORK CITY BAR ASSOCIATION  
CHILDREN AND THE LAW COMMITTEE  
COUNCIL ON CHILDREN**

The New York City Bar Association thanks the Assembly Standing Committee on Children and Families and the Assembly Subcommittee on Foster Care for holding a hearing on the Child Welfare System and the Mandatory Reporting of Child Abuse or Maltreatment in New York State.

The Children and the Law Committee, which includes among its members Family Court jurists, attorneys for children, attorneys for parents, and attorneys for the Administration for Children's 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 the City Bar committees dealing with children, education, family, Family Court, juvenile justice, and the needs of lesbian, gay, bisexual and transgender youth. Also sitting on the Council are representatives of the child welfare, juvenile justice and foster care communities, including attorneys representing parents and children.

We respectfully submit our committees' memoranda, in support of the Anti-Harassment in Reporting Bill (A.2479/S.902) and the Family Miranda Bill (A.1980/S.901), for inclusion in the hearing record.

The Anti-Harassment in Reporting Bill would require all reporters to the State Central Register to identify themselves, with the reporter's identifying information provided only to the investigating child protective specialists. This bill seeks to deter false and malicious reporting and, if passed, would improve our system for reporting and investigating child maltreatment as well as represent an important step toward reducing the disparate impact of the child welfare system on Black, Brown and Indigenous families. Additionally, providing the reporter's identifying information, to the child protective workers, would allow the workers to investigate the reports more thoroughly thereby leading to a decrease in false reports of child maltreatment made for the purpose of harassment, and an increase in child welfare resources for children in need.

**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 Family Miranda Bill would ensure that child protective investigators inform parents and caretakers, who are under investigation, of certain rights and information at the beginning of a child protective contact. Ensuring that parents and guardians know their rights during the child protective investigation 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, Brown and Indigenous families, affected by child protective investigations, are not coerced into permitting harmful, destabilizing and unnecessary intrusions into their children's lives.

The City Bar strongly supports both bills, and we urge their passage.

Respectfully submitted,

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NEW YORK  
CITY BAR

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

**A.2479  
S.902**

**M. of A. Hevesi  
Sen. Brisport**

AN ACT to amend the social services law, in relation to the administration of the statewide central register of child abuse and maltreatment

**THIS BILL IS APPROVED**

The Children and the Law Committee and the Council on Children of the New York City Bar Association (City Bar) strongly supports A.2479 / S.902, which aims to dissuade individuals from making false or malicious State Central Registry reports. 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's 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.

Under current state law, anyone may call the child maltreatment hotline, for any reason, and *anonymously* lodge a report of abuse or neglect. Because members of the public (who are not mandated reporters) are not required to provide any identifying information, this results in many false and malicious reports of child maltreatment. The Anti-Harassment in Reporting Bill (also known as the Confidential Reporting Bill) would benefit children and families by ending the anonymous reporting of alleged child maltreatment. The Bill would require all reporters to identify themselves - with the identifying information provided only to the investigating child protective specialists - thereby deterring false and malicious reporting. This would lead to a decrease in the severe harm and trauma that false reports of child maltreatment cause children and families.

**About the Association**

*The mission of the New York City Bar Association, which was founded in 1870 and has approximately 24,000 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.*

## I. REASONS FOR SUPPORT

### a. The Majority of Calls to Child Abuse Hotlines Result in No Findings of Child Maltreatment, and Many are Made for the Purpose of Harassment

In 2019, Child Protective Services investigated over 160,000 reports received through the New York State Central Registry (“SCR”) Hotline.<sup>1</sup> While many callers are well intentioned, a significant percentage of callers make false reports, for the purpose of harassment. A major reason there are so many false and malicious reports is that under current state law, anyone may call the child maltreatment hotline, make a report of suspected abuse or neglect, and do so without identifying themselves.

The vast majority of investigated child abuse hotline calls do not result in child protective agencies taking action against the individual.<sup>2</sup> 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.<sup>3</sup>

Most people who call the state hotline to report suspected abuse or neglect are professionals who are mandated by law to report suspected cases of abuse or neglect.<sup>4</sup> These professionals, who are known as mandated reporters, are required by law to give their names and contact information. However, under current state law, when a non-professional makes a report of alleged abuse to the hotline, the caller remains anonymous. The caller is not required to provide their name or contact information and their identity is not disclosed.<sup>5</sup>

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<sup>1</sup> 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). (Unless otherwise indicated, all websites last visited May 2, 2022.)

<sup>2</sup> 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 on only 27.4 per 1,000 children resulted in dispositions, despite the definition of disposition including investigations that were not substantiated for maltreatment).

<sup>3</sup> CHILD.’S BUREAU, U.S. DEP’T HEALTH & HUM. SERVS., CHILD MALTREATMENT 2019, xiv, 7, 18 (2021), <https://www.acf.hhs.gov/sites/default/files/documents/cb/cm2019.pdf>. 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.”

<sup>4</sup> *Id.* at xi (“For 2019, professionals submitted 68.6 percent of reports alleging child abuse and neglect. The term professional means that the person has contact with the alleged child maltreatment victim as part of his or her job.”).

<sup>5</sup> See *Prevent and Report Child Abuse*, N.Y. STATE OFF. CHILD. & FAM. SERVS., [https://ocfs.ny.gov/main/prevent\\_child\\_abuse.asp](https://ocfs.ny.gov/main/prevent_child_abuse.asp) (last accessed November 21, 2021) (“Calls to the hotline are anonymous; callers’ identities are protected from disclosure.”) (Webpage on file with authors.); NYC Administration for Children’s Services, *How to Make a Report* (“Anyone can make a report (and may do so anonymously), when they suspect child abuse or neglect.”), <https://www1.nyc.gov/site/acs/child-welfare/how-to-make-report.page> See also *Selapack v. Iroquois Cent. Sch. Dist.*, 794 N.Y.S.2d 547, 548 (4th Dep’t 2005) (Section

## **b. False Reports of Child Maltreatment Harm Children and Families, Particularly Families of Color**

As practitioners in New York City’s Family Courts and Supreme Courts, we know firsthand that false reports of child abuse and neglect, and the resulting investigations, cause varied and long-lasting harms to children and their families. As noted by University of Pennsylvania Professor Dorothy Roberts, the “disruptive” nature of “child maltreatment allegations and investigations, most of which are unsubstantiated[,] produce absolutely no help to families.” Child protective service agencies too often act as family regulators, “destroying [B]lack, brown and [I]ndigenous families in the name of child protection.”<sup>6</sup>

False allegations of child abuse or neglect have a particularly detrimental impact on families of color, who have a history of overrepresentation and disparate treatment within family court and child protective service systems.<sup>7</sup> Families of color are more likely to be reported to and investigated by child protective services,<sup>8</sup> and have higher rates of family separation and foster care placement once involved with the child protective system.<sup>9</sup> According to former New York City Administration for Children’s Services Commissioner David Hansell, in 2019, 41.4% of reports to the SCR involved children in families who identified as Black and/or African American, and 45.4% of reports involved children from Latinx/Hispanic families, although those children comprise, respectively, about 23% and 36% of the NYC child population.<sup>10</sup> Conversely, white

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422 of N.Y. Social Services Law does not allow “for the disclosure of the name of the person reporting the suspected abuse where there is an allegation that such person acted with willful misconduct or gross negligence”).

<sup>6</sup> Dorothy Roberts, Opinion, *Abolishing Policing Also Means Abolishing Family Regulation*, THE IMPRINT: YOUTH & FAM. NEWS (June 16, 2020), <https://chronicleofsocialchange.org/child-welfare-2/abolishing-policing-also-means-abolishing-family-regulation/>.

<sup>7</sup> See generally DOROTHY ROBERTS, SHATTERED BONDS: THE COLOR OF CHILD WELFARE (2002) [hereinafter ROBERTS (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); Arthur Horton, Jr. & Jerry Watson, *African American Disproportionate Overrepresentation in the Illinois Welfare System*, 22 RACE, GENDER & CLASS, 65, 65, 70 (2015); 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); Dorothy E. Roberts, *The Racial Geography of Child Welfare: Toward a New Research Paradigm*, 86 CHILD WELFARE 125, 125–27 (2008); Dorothy E. Roberts, *Child Welfare’s Paradox*, 49 WM. & MARY L. REV. 881, 883 (2007). See also Louise Feld, Victoria Glock-Molloy, & Rachel Stanton, *When Litigants Cry Wolf: False Reports of Child Maltreatment in Custody Litigation and How to Address Them*, 24 N.Y.U. J. LEG. & PUB. POLICY 111 (2021).

<sup>8</sup> ROBERTS (2002), *supra* note 7 at 7; Fluke, Yuan, Hedderson, & Curtis, *supra* note 7, at 371; Horton & Watson, *supra* note 7, at 66–67 (explaining how in 2007, African American children composed 19% of Illinois population but 34% of reports to the Department of Children and Family Services, protective services, and maltreatment).

<sup>9</sup> Horton & Watson, *supra* note 7, at 66–67 (discussing how Black children represented the majority of children in foster care in 2007 and end up staying in foster care longer than their counterparts); Nicholas Kahn & Mary Eschelbach Hansen, *Measuring Racial Disparities in Foster Care Placement: A Case Study of Texas*, 76 CHILD & YOUTH SERVS. REV. 213 (2017); CHILD.’S BUREAU, FOSTER CARE STATISTICS 2018, at 1, 9–11 (2018), <https://www.childwelfare.gov/pubPDFs/foster.pdf>, CHILD.’S BUREAU, THE AFCARS REPORT 1, 2–5 (2020), <https://www.acf.hhs.gov/sites/default/files/documents/cb/afcarsreport27.pdf>.

<sup>10</sup> See DAVID A. HANSELL, NYC ADMIN. CHILD. SERVS., TESTIMONY TO THE NEW YORK CITY COUNCIL COMMITTEE ON GEN. WELFARE, 6 (Oct. 28, 2020). See also ANGELA BUTEL, DATA BRIEF: CHILD WELFARE INVESTIGATIONS AND

children comprise 26.5% of that population, but are the subject of only 8% of SCR reports accepted for investigation, and Asian/Pacific Islander children constitute 14.1% of that population but comprise only 5.3% of reports.<sup>11</sup>

**c. The Anti-Harassment in Reporting Bill Will Limit False and Malicious Reports, While Protecting Reporters' Privacy**

Some believe anonymous reporting is necessary because, without a guarantee of anonymity, individuals will hesitate to make a report, fearing it will lead to acts of retaliation and/or damage of familial, neighborly, or community relationships.<sup>12</sup> However, because identifying information will continue to remain confidential to everyone, except for the investigating child protective specialists, protection of the reporters' privacy and safety is expected.

The Anti-Harassment in Reporting Bill will help protect New Yorkers, particularly Black, brown and Indigenous families, from the trauma of unnecessary and invasive state intervention. Reporters who currently remain anonymous will have to identify themselves to the State Central Registry for Child Abuse and Maltreatment and will be subject to questioning by a child protective specialist as part of their investigation.

In addition to decreasing false and harassing reports, this Bill will help child protective investigators determine the validity and reliability of the thousands of reports they receive each year and will allow more thorough investigations and accurate determinations as to children's safety. Moreover, by decreasing the number of false reports that must be investigated, it will free valuable government resources, which may then be used to protect children who are actually victims of abuse and neglect.

We recognize that the false reporting of child abuse and neglect is a complex issue, and that the current system is far from infallible. Therefore, this Bill, on its own, will not eliminate false reports of child maltreatment. Thus, we encourage the legislature, and New York State's Child Protective Agencies, to also consider other measures aimed at preventing false reports, as

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NEW YORK CITY NEIGHBORHOODS 1–5 (2019), <https://static1.squarespace.com/static/53ee4f0be4b015b9c3690d84/t/5d12746c3cdaa000017dfc2a/1561490541660/DataBrief.pdf> (Ms. Butel found that “when controlling for child poverty rate,” neighborhoods “with more Black and Latino residents tended to have higher rates of investigation.” Racial bias in child welfare investigations and systemic factors, such as higher rates of poverty and greater state and institutional intervention among families of color, are acknowledged to be contributing factors to the disproportionate representation of families of color involved in the child welfare system. Ms. Butel reported that while there was a statistically significant relationship between higher rates of child poverty and higher rates of indicated cases, there was no statistically significant relationship between higher concentrations of Black and Latino residents and higher rates of indicated cases. Thus, despite higher rates of child welfare investigations in Black and Latino neighborhoods, a neighborhood's concentration of Black and Latino residents was not correlated with higher rates of cases in which ACS found some credible evidence of abuse or neglect.)

<sup>11</sup> *Id.* (HANSELL, *supra* note 10, at 5).

<sup>12</sup> *See, e.g.,* Darryl H. v. Coler, 801 F.2d 893 (7th Cir. 1986); E.Z. v. Coler, 603 F. Supp. 1546, 1560 (N.D. Ill. 1985) *aff'd sub nom* Darryl H. v. Coler, 801 F.2d 893 (7th Cir. 1986); Michael R. Beeman, *Investigating Child Abuse: The Fourth Amendment and Investigatory Home Visits*, 89 COLUM. L. REV. 1034, 1063 (1989); Margaret H. Meriwether, *Child Abuse Reporting Laws: Time for a Change*, 20 FAM. L.Q. 141, 164 (1986).

well as reporting mechanisms that support individuals who need to make legitimate reports of child maltreatment but fear retaliation. However, we strongly support the Anti-Harassment in Reporting Bill, as it represents an essential step towards reducing false reports to the SCR and, consequently, rectifying the harmful outcomes associated with such reports.

## **II. CONCLUSION**

It is critically important that the legislature pass the Anti-Harassment in Reporting Bill. If passed, this bill would improve our system for reporting and investigating child maltreatment, and would represent an important step toward reducing the disparate impact of the child welfare system on Black, brown and Indigenous families. By adding a requirement that members of the public identify themselves to the State Central Registry when making an official report of child abuse or neglect, this bill would allow child protective workers to investigate these reports more thoroughly, lead to a decrease in false reports of child maltreatment that are made for the purpose of harassment, and increase child welfare resources for children in need, thus promoting the welfare of children and families, particularly low income and minority children and families.

For these reasons, the City Bar supports the bill and urges its passage.

Children and the Law Committee  
Amy Hozer-Weber, Co-Chair  
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**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**

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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.<sup>1</sup>

## 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.<sup>2</sup> The vast majority of investigated child abuse hotline calls do not result in child protective agencies taking action.<sup>3</sup> 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.<sup>4</sup>

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.<sup>5</sup> 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.

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<sup>1</sup> “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)).

<sup>2</sup> 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).

<sup>3</sup> 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).

<sup>4</sup> 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.”

<sup>5</sup> 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.<sup>6</sup> Black families in particular are significantly more likely to be reported and investigated than are families of any other race.<sup>7</sup> 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.<sup>8</sup>

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

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

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<sup>6</sup> 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).

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

<sup>8</sup> 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>.

<sup>9</sup> 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.<sup>10</sup> 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.<sup>11</sup> 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.<sup>12</sup> 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.<sup>13</sup> Children may also be frightened because they do not know how the investigation will affect them.<sup>14</sup>

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

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<sup>10</sup> 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).

<sup>11</sup> 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>.

<sup>12</sup> *Id.*

<sup>13</sup> 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>.

<sup>14</sup> *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.<sup>15</sup> 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.<sup>16</sup> 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;<sup>17</sup> 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;<sup>18</sup> 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

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<sup>15</sup> N.Y. Family Court Act §§ 1034; 1029.

<sup>16</sup> N.Y. Family Court Act § 1024.

<sup>17</sup> N.Y. Family Court Act § 1034.

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