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Center for Family Representation
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Center for Family Representation (CFR) is grateful for the opportunity to submit testimony to the Assembly Standing Committee on Children and Families. We thank Chairman Hevesi and the Committee for providing the opportunity to focus on this important issue and discuss the harms and destruction of the family regulation system¹ on New York’s Black and Latine communities. We hope the Committee and the Assembly will focus its current and future work on providing more support to impacted communities and ensuring that they are aware of their rights during an investigation and provide the supports and resources they need to avoid involvement in the family regulation system.

In particular, and for the reasons below, we ask the Assembly to take the following steps:

1. Pass and draft legislation creating more opportunities statewide for **“Early Defense”** services for families, providing representation for parents during an investigation
2. Work to pass the **Family Miranda Bill (S5484A)**;
3. Work to pass the **Confidential Reporting Bill**;
4. Work to pass the **Informed Consent Bill (A4285/S4821)**

Overview of CFR

CFR is the county-wide assigned indigent defense provider for parents who are facing ACS prosecutions in Family Court Act (FCA) Article 10 proceedings in Queens and New York counties. We intake new cases every day, and since our founding in 2002, we have represented more than 12,000 parents with more than 25,000 children. We represent parents on their original ACS case and on any related cases like custody, guardianship, visitation and termination of parental rights cases. Our goals are always to prevent a foster placement, or when one is unavoidable, to shorten the time children spend away from their family and to prevent re-entry into placement after reunification.

CFR employs an interdisciplinary model of representation, marrying in court litigation to out of court advocacy: every parent is assigned an attorney and a social work staff member beginning at intake, which is generally the first day a parent is summoned to court, and these teams are supported by paralegals, supervisors, and parent advocates, who are parents who have direct experience being prosecuted by the family regulation system. We estimate that we have saved taxpayers \$50 million in

¹ Throughout this testimony, CFR will refer to “child protective services” workers as “family regulation” workers and the “child welfare” system as the “family regulation” system to recognize that the system “is designed to regulate and punish Black and other marginalized people.” Dorothy Roberts, Abolishing Policing also Means Abolishing Family Regulation, *IMPRINT* (June 16, 2020, 5:26 AM) [hereinafter Roberts, Abolishing], <https://imprintnews.org/child-welfare-2/abolishing-policing-also-means-abolishing-family-regulation/44480> [<https://perma.cc/3VAJ-H8WP>].

reduced foster care costs since our founding. In 2015, the New York State Bar Association gave CFR its Award for Promoting Standards of Excellence in Mandated Representation, noting that CFR “exemplifies and defines the highest professional practice standards, is a recognized innovator in parent representation and is a tireless advocate for legislative and policy reform.” The federal Administration for Children, Youth and Families specifically cited CFR in the addendum to its January 2017 Memorandum on High Quality Legal Representation, issued to all fifty states.

To address collateral issues that often undermine family stability, CFR launched its Home for Good Initiative in 2015 to expand its work to provide families with additional holistic assistance in immigration, housing and public benefits, as well as criminal matters. In 2019, CFR created its Community Advocacy Project to prevent family separation and court prosecutions by representing parents during an ACS investigation and to increase employment opportunities by representing parents in hearings to amend their records in the State Central Register of Child Abuse and Maltreatment (SCR). In 2019, CFR also expanded the scope of its work by launching its Juvenile Justice Practice, representing young people in Manhattan and Queens criminal and family courts, with the goal of avoiding youth incarceration.

A System of Surveillance and Punishment that must be reformed

The family regulation system disproportionately harms Black and Latine communities, but more than that, we must acknowledge that it was built to do so. Over 90% of CFR’s clients are people of color, which is consistent with other data examining the family regulation system. 90% of children named in investigations, placed in foster care, and engaged in preventive services in New York City are Black and Latine, even though they make up only 60% of the total population of children. But simply noting the disproportionate representation of children of color fails to acknowledge and address the structural racism inherent in the family regulation system, a system designed to punish “bad” parents and “save children from harm.” In reality, the vast majority of indicated cases of maltreatment are for poverty related neglect and the system itself delivers more trauma and harm to children than their parents ever could. However, poverty too does not account for the disproportionate representation of Black and Latine families in the family regulation system. In examining New York City districts with similar child poverty rates, districts with larger Black and Latine populations had higher rates of investigation.² Mandated reporters, who are required to report suspected child maltreatment, are embedded in poor Black and Latine communities and effectively draw families under the surveillance and control of the family regulation system. Instead of empowering social service workers, shelter workers, mental health providers, and educators to support families and assist them in finding the material resources they need, they are encouraged, and sometimes required, to report parents to the family regulation system for investigation and prosecution.

² Angela Butel, The New Sch.: Ctr. for N.Y.C. Affs., Child Welfare Investigations in New York City Neighborhoods, 1 (2019), <https://static1.squarespace.com/static/53ee4f0be4b015b9c3690d84/t/5d12746c3cdaa000017dfc2a/1561490541660/DataBrief.pdf> [<https://perma.cc/YK7B-4KHB>].

An ACS³ investigation is a confusing, terrifying, and destabilizing process for families, even when it does not result in long term intervention or court involvement. Families first become involved with ACS when a child maltreatment report is made to the SCR. ACS is required to investigate all credible reports of child maltreatment and those investigations typically remain open for a minimum of 60 days even when there is no evidence of child maltreatment at the initial visit. During an investigation, a family regulation worker will visit the home, usually unannounced, a minimum of two times per month, but often more frequently. In addition to interviewing the parents and each child, the family regulation worker may request that the child undress so the worker can observe his/her body, inspect the home, open cabinets and the refrigerator, speak to extended family, neighbors and employers, call medical providers and the children's school, and request that a parent submit to a drug and alcohol screen. These investigations place significant stress on families, with the threat of family separation looming. The role of the family regulation worker is primarily to find evidence of neglect or abuse, not to identify needs and provide support and resources to parents. Even in cases where there is no evidence of neglect, many children express being traumatized by the investigation and continue to be fearful of being taken away from their parents. Families subject to investigation often lose their housing, livelihood, and any sense of stability they built for themselves, as a result of the surveillance and overreaching of the family regulation system. An "indicated" case of abuse or neglect can lead to extended surveillance of the family, court intervention, and in the worst case scenario, the removal of a child.

Providing Robust Early Defense: The importance of Funding Representation during an Investigation

Providing parents with an attorney and social work assistance during a family regulation investigation is critical to empowering Black and Latine parents during a family regulation investigation and protecting families from the over-surveillance of the family regulation system. Attorneys, and the social workers who work with them, can provide parents legal advice, social work assistance, and advocate for families during an investigation to prevent unnecessary family separation and court involvement. When families with means are investigated, they have access to information, by virtue of their privilege, and the ability to obtain support and an attorney that people who are poor do not. Most parents that we meet in family court did not know their rights when they were being investigated, and the City is not required to tell them. This can have far-reaching and traumatic consequences, especially when children are unnecessarily removed.

Currently, parents under investigation in New York are not eligible for court-appointed counsel until an abuse or neglect case is filed against them in Family Court. However critical decisions are made that have significant consequences for families prior to the case coming to Court, including at Child Safety Conferences convened by ACS. Decisions are made about how a case will proceed, including identifying treatment programs, services and/or benefits available to the family that may ameliorate risk to the children; whether the case will be filed in court; and, most significantly, whether children will be separated from their parents. Most parents participate in these investigations alone, without the advice of counsel or others to guide them through the process. This results in far too many family

³ CFR serves parents in New York City who are investigated by ACS. We will refer to ACS throughout our testimony, but families across New York State experience the same investigation, oversight, and prosecution from child protective services run by the Office of Children and Family Services.

separations, court filings and placements of children in stranger foster care, all of which may be avoided with access to counsel during the early stages of an investigation.

Since 2019, CFR, and the other New York City family defense providers have been able to assist some parents under investigation thanks to New York City Council funding. But that funding does not allow us to assist the thousands of families investigated by ACS each year.⁴ CFR's Community Advocacy Project has represented roughly 300 parents in Queens and Manhattan since January of 2020. CFR social workers and attorneys have been able to guide our clients through their investigations, identify appropriate resources for families, and assist our clients in speaking to family regulation workers about the needs of their families. In none of these cases has ACS suggested its investigation was hampered nor has it been. While the sample size is perhaps small, it's clear that providing the type of assistance that wealthy parents can take for granted does not hamper ACS' ability to investigate. In fact, we've prevented family separation in 70% of the cases we've handled, and avoided court intervention in 30% of cases.

Not only does CFR and the other City family defense providers currently lack the resources to assist all families, but most parents investigated by ACS do not know they have a right to speak to an attorney nor the means to access one. That is why it is so important not only to provide funding for early defense, but to make sure parents are informed of their right to seek out an attorney during an investigation.

Ensuring Families Know Their Rights: The importance of the Family Miranda bill

Families currently have rights during a family regulation investigation, but those rights are meaningless if parents are unaware of and unable to invoke them.

1. Parents have the right to know the allegations being investigated.
2. Parents are not required to release confidential health information or submit to a toxicology screening absent a court order.
3. Parents have the right to know that any statement they make can and will be used against them.
4. Parents have the right to speak to an attorney and have an attorney present during the investigation.
5. Parents have the right to refuse entry to their homes absent a court order.
6. Parents have the right not to speak to the family regulation worker.
7. Parents have the right to deny the family regulation worker permission to interview or examine a child absent a court order.
8. Parents have a right to know what resources, including legal services providers, are available to assist during the investigation.

⁴ Since 2015, ACS investigated 55,000-60,000 annual reports of child maltreatment. ACS received around 41,500 reports in 2020, a decline attributed to the Covid-19 pandemic. <https://www1.nyc.gov/assets/acs/pdf/data-analysis/abuseneglectreport15to20.pdf>. From 2016-2019, OCFS received over 160,000 annual reports of child maltreatment statewide. In 2020, OCFS received 134,406 reports. <https://ocfs.ny.gov/main/reports/maps/counties/New%20York%20State.pdf>.

These are not new rights. We are not asking the State to expand parents' rights during an investigation. We are asking the State to pass the Family Miranda Bill and ensure that parents are informed of their pre-existing rights.

Information is power. ACS and OCFS oppose sharing this information and power with Black and Latine parents. To confront the systemic racism of the family regulation system, the State must acknowledge that any opposition to providing information to Black and Latine parents is a weapon used to control them and is fundamentally racist. Any opposition keeps parents in the dark. It denies respect to these parents and families. The family regulation system takes advantage of parents who do not have the necessary information to protect their families. The State disempowers families of color. To be anti-racist requires respect. Sharing information, and by that power, shows respect to the people being investigated. Black and Latine parents should know their rights and be able to exercise them.

The New York State Assembly and Senate must take action to combat racism and provide parents with information about their rights. Just as providing attorneys to parents during a family regulation investigation has not hampered ACS in conducting its investigations, notifying parents of their rights will not disrupt ACS' ability to investigate and prosecute. Nothing in the Family Miranda Bill would prevent ACS from removing a child in the event it believes there is imminent danger to that child. But the vast majority of reports relate to neglect that stems from poverty and do not involve exigent circumstances. Parents should be fully informed of their rights and able to make important decisions for their families from a place of knowledge and empowerment.

End Harassment in Reporting: Work to pass the Confidential Reporting Bill

State law currently allows any person to call the SCR anonymously and report a suspicion of child maltreatment. Under the current law, a person who calls to report a suspicion of child maltreatment need not leave a name or contact information when they make a report. ACS must fully investigate every report of child maltreatment whether anonymous or not. This has led to a substantial number of malicious and false reports, as someone intending to harass or cause harm to a parent can subject them to countless ACS investigations by continuously calling in new reports to the SCR.

Anonymous reports are extremely unreliable. Of the thousands received each year, the overwhelming majority turn out to be unsubstantiated. For example, in 2018, New York investigated 11,750 families after receiving an anonymous report. 10,114 of those reports were marked as unfounded by investigators, as there was no credible evidence to support the allegation.

CFR's clients frequently complain of malicious reports called in anonymously, oftentimes by perpetrators of domestic violence or estranged family members or friends. Continuous investigations make it difficult to escape the family regulation system when a family is poor, Black or Latine. When families already have a court case, malicious and false reports often cause cases to remain open longer, unsupervised or overnight visits with children in foster care may be suspended unnecessarily, or children in foster care are prevented from returning home when the family and Agency had otherwise expected them to, due to the new investigation. Malicious false reporting impacts domestic violence victims, families of color, and low-income families most.

Anonymous reporting also prevents ACS from most effectively investigating the allegation, as there is no way to contact the source for an interview or to obtain further demographic information. It also prevents ACS from being able to clearly identify malicious and harassing reports. The significant

number of malicious reports also utilizes important resources that could otherwise be directed towards legitimate investigations.

The Confidential Reporting Bill would require a person who makes a report of child maltreatment to provide a name and contact information at the time of the report, while keeping that information confidential. ACS would be better able to identify malicious reports and could decide an investigation is not necessary or could close the investigation more quickly. ACS could also follow up with the source if they need additional information. Because the caller's information remains confidential, people seeking to make legitimate reports of maltreatment would not be deterred, while people attempting to use reports to harass may be.

Prevent Intrusive and Racially Disproportionate Over-reach: Work to pass the Informed Consent Bill, A4285/S4821

Across New York State, low-income Black, Latine, and Native birthing people are targeted for arbitrary and harmful drug testing by health care providers without providing any written or oral informed consent. Positive drug screens too often result in the reporting of parents to the family regulation system, even where there is no indication of child maltreatment or risk to the child. This practice expands the surveillance of the family regulation system, leading to unnecessary and harmful family separation that is detrimental to both parent and child.

The Informed Consent Bill (A4285/S4821) amends the NY Public Health Law to require medical providers to obtain written and verbal informed consent to drug test pregnant, postpartum people and newborn babies. This bill would be a significant step in combating discriminatory drug testing practices by NY hospitals.

Recommendations

1. The State should commit to guaranteeing parents an attorney and social work support during a family regulation investigation to avoid unnecessary family separation and court intervention. Early defense practices, that utilize both attorney and social work services, should be fully funded.
2. The State should pass the **Family Miranda Bill** (S5484A).
3. The State should end harassment in reporting and sign the Confidential Reporting Bill. This would reduce the number of malicious reports that clog up the family regulation system and harm families with family regulation surveillance.
4. Work to pass the **Informed Consent Bill**, A4285/S4821, requiring hospitals to obtain informed consent from birthing people prior to drug testing the birthing person or newborn.