

**Center for Family Representation (CFR)
Oral Testimony of Jennifer Feinberg
Presented Before
The New York State Assembly Standing Committee on Children & Families**

Hearing Date: September 27, 2023

**Subject: The Child Welfare System and the Mandatory Reporting of Child Abuse and
Maltreatment in New York State**

My name is Jennifer Feinberg and I am the Litigation Supervisor for Policy and Government Affairs at the Center for Family Representation (CFR). Thank you Chair Hevesi and the Committee for holding this hearing and considering how mandatory reporting effects, and in actuality, harms families, primarily the Black and Latine families who make up 90% of those impacted by the family policing system in New York City. We, and other advocates and impacted communities, refer to the so-called “child welfare system” as the family policing system because it functions to surveil, punish, and control the families ensnared within it.

CFR is the county-wide indigent defense provider for parents prosecuted for neglect and abuse by ACS in Queens and Manhattan, and a conflict provider in the Bronx. CFR, Brooklyn Defenders, Bronx Defenders, and Neighborhood Defender Service of Harlem employ an interdisciplinary model of family defense, assigning the parents we represent teams of attorneys and social workers. Our teams are supported by Parent Advocates, parents who have been investigated and prosecuted by the family policing system. Our offices also provide early defense services to parents experiencing ACS investigations - providing support, guidance, and legal counsel to parents during these high stakes encounters with family policing agents - as well as advocacy to amend and seal parents’ State Central Register (SCR) records to ensure greater employment opportunities for our clients. Through these services, our organizations work with thousands of parents each year whose lives have been upended by the family policing system as a result of reports made by mandatory reporters.

The system of mandatory reporting in New York State requires certain professionals to make a report to the SCR when they have a reasonable suspicion of child abuse and neglect. While mandatory reporting laws initially focused on mandating physicians to report suspicions of child maltreatment, they have ballooned to include 48 categories of professionals in New York. Medical and mental health professionals, educators, daycare providers, social workers, police, shelter staff, and HRA employees are all required to make reports when they have a suspicion of child maltreatment, and will face penalties for failing to do so. This extensive network of professionals is deeply embedded in poor, Black and Latine communities, leading to the vast

over-reporting of poor, Black and Latine families. Racial biases play a significant role in who is reported.¹ Even ACS has recognized “the dramatic racial and ethnic disparities in the reports” they receive.²

Mandatory reporting is the entry point for the majority of families who are investigated and prosecuted by the family policing system. In 2021, over 141,700 reports were made to the SCR.³ Mandated Reporters make approximately 70% of those reports.⁴ Representing families, we see the trauma caused by these reports. The families we work with consistently report being left worse off by the system, even when an investigation is unfounded and there is no family court involvement or parent-child separation.

In addition to driving thousands of families into the family policing system, mandatory reporting prevents families from seeking and finding support in their own communities. These laws mobilize the same professionals who are in the best position to provide aid to families, to instead report them when there is the smallest concern, even when they doubt the validity of their own “suspicion.” One social worker at CFR reported that in a prior position as a preventive service case planner, she was asked to call in cases against families when she knew the child was not actually in danger. Because of mandated reporting laws, she felt she was protecting the foster agency, not actually protecting any child from harm.

Black and Latine parents report being hesitant to access medical, mental health, or substance use treatment, or seek other material support, for fear that they will get an ACS case. Ysmerlyn Murshed, a CFR Social Work Supervisor reported being too afraid to deliver her daughters in a hospital because she feared being seen as “hysterical” while in labor. The fear attached even prior to delivering her first child, and continues every time she drops her child off at daycare or attends a medical appointment. She says, “I live and plan around my fear of the system.”

¹ A 2019 study found that when controlling for poverty, New York City neighborhoods with higher percentages of Black and Latine residents had higher rates of investigation. Angela Butel, “Data Brief: Child Welfare Investigations in New York City Neighborhoods, Center for N.Y. City Affairs (2019), <https://static1.squarespace.com/static/53ee4f0be4b015b9c3690d84/t/5d12746c3cdaa000017dfc2a/1561490541660/DataBrief.pdf>

² Commissioner David Hansell, NYC Children, Testimony to the New York City Council Committee on General Welfare (Oct. 28, 2020), 5, available at <https://www.nyc.gov/assets/acs/pdf/testimony/2020/GWCommitteeHearing.pdf>.

³ U.S. Department of Health and Human Services, Administration of Children, Youth, and Families Children’s Bureau, *Child Maltreatment 2021* (Feb. 9, 2023), available at <https://www.acf.hhs.gov/sites/default/files/documents/cb/cm2021.pdf>.

⁴ *Id.*

There is no evidence that this vast system of mandatory reporting works. Reporting does not make families safer, but rather feeds tens of thousands of families into a system that causes great harm and destruction each year, while causing other families not to seek the help they need.

New York State should eliminate mandatory reporting and instead support solutions that strengthen families and have been shown to keep families safer. Concrete resources and support has been shown to make families safer and substantially reduce the number of reports of child maltreatment.

We also recommend the New York State Assembly:

- Remove all penalties and fines when a mandated reporter fails to report a family.
- Oppose all efforts to expand categories of mandated reporters.
- Support efforts to repeal the Child Abuse Prevention and Treatment Act (CAPTA) which incentivizes maintaining this harmful system of mandated reporting and investigation.
- Stop accepting the negligible funding from the Federal government received under CAPTA which would relieve New York State from the obligation of complying with the legislation's reporting requirements.
- Pass legislation that will reduce false and harmful reporting and protect families' rights once they are reported. Such legislation includes:
 - Anti-Harassment in Reporting Act (A2479/S902), which requires non-mandated reporters of suspected child abuse or maltreatment to provide their name and contact information confidentially to the SCR, thereby prohibiting the harmful practice of anonymous reporting, which is often used to make false and malicious reports against former partners or to air personal grievances.
 - Informed Consent in Drug Testing (A109/S320), which requires health care providers to obtain specific and informed consent before drug testing or screening new parents and newborns. New York health care providers' "test and report" practices, wherein pregnant people are routinely drug tested without their informed consent and reported to the SCR, threaten the health and well-being of Black and Latine people and their newborns, exposing families to the violence of family separation and deterring pregnant people from accessing essential pre- and perinatal health care.
 - Family Miranda Act (A1980/S901), which requires workers to advise parents and caretakers of their rights at the start of an investigation. This legislation does not create new rights; it simply ensures that parents are aware of the rights already guaranteed by New York State law and the Constitution.

For questions, please contact Jennifer Feinberg at jfeinberg@cfnry.org.