



THE FAMILY MIRANDA RIGHTS ACT

S901 (BRISPORT)/A1980 (WALKER)

In New York, Child Protective Service (CPS) agents are not required to inform parents of their rights at the start of an investigation. As a result, parents are not able to make informed decisions for their families and are often coerced into complying with harmful investigations without knowledge of their rights—including the right to speak to an attorney and to deny entry into their home without a court order.

Data shows that CPS investigations can be highly stressful for children. For children, investigations often include disruptive visits to their home and school, invasive questioning by a stranger, and even strip-searches. Black, Latine, and low-income children and families have borne the brunt of this failure to inform parents of their rights. Privileged families are not targeted by this system at nearly the same rates, and are more likely to be aware of their rights and have the means to contact an attorney.

The Family Miranda Rights Act requires workers to inform 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. This bill will improve equity and transparency in CPS investigations and empower parents to make the best decisions for their families.

THE FACTS

- 1 in 2 Black children will experience a CPS investigation. Data shows that CPS investigations can be highly stressful for children.
- The vast majority of families impacted by CPS are not investigated for child abuse, but because poverty is mistaken for neglect. In New York City, 96% of CPS investigations do not reveal safety concerns.
- CPS agents routinely violate the rights of families during investigations. Despite needing a court order to enter a home, CPS agents in New York City do not obtain a court order 99.8% of the time.

Contact Carrie Bleakley (Carrie.Bleakley@ontariocountyny.gov) with questions.

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ANTI-HARRASSMENT IN REPORTING

S902 (BRISPORT)/A2479 (HEVESI)

THE PROBLEM

New York State allows anyone to make a report of child maltreatment without providing any personal information. As a result, **anonymous reports are often used to harass parents through false and malicious reporting.**

Angry exes, unscrupulous landlords, and feuding neighbors use anonymous reporting to call in false allegations against parents. Domestic violence survivors report that their abusers routinely use anonymous reporting as a harassment tool. State law requires child protective services (CPS) to conduct an extensive investigation of every allegation of child neglect or abuse, even if the report is clearly part of a pattern of harassment.

THE FACTS

- More than **10,000** New York families are forced to endure lengthy, invasive, and stressful investigations because of anonymous reports.
- Latine families are **5.5 times** more likely than white families to be reported, and Black families are **7 times** more likely than white families to be reported.
- Of parents investigated on the basis of an anonymous report in New York City, **93%** are cleared of all wrongdoing after an initial investigation. Even more are cleared after having the opportunity to challenge the accusations in court or at an administrative hearing.

THE SOLUTION

The Anti-Harassment in Reporting Act offers a simple solution to drastically reducing the number of malicious false calls. In order to deter these harmful reports, the bill requires that callers provide their name and contact information when making a report to the hotline. This information would be kept confidential, while still allowing CPS the ability to speak with the source of the report as part of their investigation.

Contact Jennifer Feinberg (jfeinberg@cfrny.org) with questions.

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THE INFORMED CONSENT ACT

S320 (SALAZAR)/A109 (ROSENTHAL)

Medical professionals routinely drug test pregnant and postpartum patients and their newborns without consent, and often without a medical reason. Drug testing without informed consent undermines maternal-fetal health and is a violation of the pregnant person's right to dignity and bodily autonomy.

In addition, positive toxicologies are reported to family regulation agencies -- which expose families to the violence of family separation and deter pregnant people from accessing essential pre- and perinatal health care.

WHAT DOES THE INFORMED CONSENT ACT DO?

- Requires all medical professionals who provide healthcare to pregnant people, new parents, and newborns to obtain:
 - (1) written and verbal informed consent before administering a drug and/or alcohol biological test;
 - (2) written and verbal informed consent before administering a verbal drug or alcohol screen to the pregnant person, new parent or newborn in a hospital setting;
 - (3) verbal informed consent before administering a verbal drug or alcohol screen to the pregnant person, new parent or newborn in a non-hospital setting
- Requires that any drug and/or alcohol test or screen only be performed if it is within the scope of the medical care being provided.
- Permits drug and/or alcohol testing without informed consent only when a physician determines an emergency exists, the person is in immediate need of medical attention, and an attempt to secure consent would result in delay of treatment which would increase the risk to the person's life or health.

PROFESSIONAL MEDICAL ASSOCIATIONS SUPPORT OUR CALLS!

"Confidentiality and trust are at the core of the patient-practitioner relationship. Policies and practices that criminalize individuals during pregnancy and the postpartum period create fear of punishment that compromises this relationship and prevents many pregnant people from seeking vital health services ... Before performing any test on the pregnant individual or neonate, including screening for the presence of illicit substances, informed consent should be obtained from the pregnant person or parent." -**The American College of Obstetricians and Gynecologists, Statement of Policy**
(Dec. 2020)

Contact Miriam Mack (miriamm@bronxdefenders.org) with questions.

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The Preserving Family Bonds Act

S6720 (Brisport) / A10603 (Joyner)



What is the Preserving Family Bonds Act?

Despite its glaring racial inequities, the foster system is often left out of conversations about systemic racism. The system disproportionately impacts Black, Latine, and low-income families.

- **1 in 2** Black children will experience an investigation.
- **1 in 10** Black children will be separated from their parents.
- In New York, Black children make up **44%** of the foster system population but only **15%** of the general child population.

Many children experience immeasurable trauma when their families are subject to an investigation, and when they are forcibly separated from their parents and placed in the foster system. For many children in the system, the right to regular visits with their parents – many of whom are fighting to bring their children home – is a vital source of love, stability, and healing. Yet, when parental rights are terminated, children may be abruptly denied the right to stay in contact with their parents.

The Preserving Family Bonds Act (PFB) aims to give judges discretion to order continued contact between children and their families of origin after termination of parental rights when – and only when – such contact is in the children's best interests. This law will allow New York family courts to better address the realities of impacted families and better meet the unique needs of individual children while they navigate this discriminatory system.

How does this legislation address prior concerns?

Over the years, this bill has been modified to address the concerns raised by elected officials and stakeholders. Today, the bill has broad support from impacted young people and birth parents, attorneys for children, parent defenders, and other advocates.

1) PFB allows for agreement.

- This bill includes a provision making it clear that an order of post-termination visitation and/or contact can be entered when the parties all consent. Nothing in this legislation prohibits or discourages agreement and orders on consent.

2) PFB places an increased burden on the party seeking an order of post-termination visitation and/or contact.

- In addition to establishing that the order sought would be in the child's best interests, the applicant must also establish that the party opposing the order does not have a reasonable basis for their failure to consent.

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- This latter requirement is based on caselaw interpreting section 72 of the Domestic Relations Law, which allows a court to order visitation between a grandparent and their grandchild over the objection of the child's parent and which was held to be constitutional by the Court of Appeals in *People ex rel. Sibley on Behalf of Sheppard v. Sheppard*, 54 N.Y.2d 320 (1981).

3) PFB allows for reasonable exceptions.

- The consent of children fourteen years or older is required for a Court to make any order regarding post-termination contact. In cases involving severe or repeated abuse, post-termination contact cannot be ordered unless the Court has determined that the parent seeking such contact was not the perpetrator of the abuse.

4) PFB does not lead to increased litigation nor delay permanency.

- Once a determination against post-termination contact is made during the existing dispositional hearing (or when a dispositional would be held), the legislation does not allow for this application to be made again.
- The legislation includes an updated modification provision that requires the party seeking to modify the post-termination contact order to establish (1) a substantial change in circumstances justifying such a modification; (2) that the modification is in the child's best interests; and (3) that any party opposing such a modification does not have a reasonable basis for their failure to consent. This latter requirement is also based on the caselaw regarding D.R.L. § 72, which was held to be constitutional by the Court of Appeals.
- This legislation also specifies that an appeal from any order regarding the application for post-termination visitation and/or contact shall not provide a basis for delaying finalization of a child's adoption.

The Preserving Family Bonds Act is...

A children's bill. Studies show that children in the system, including those who are ultimately adopted, fare better when they are able to stay in contact with their parents. This bill recognizes that a child's best interests should always be at the heart of the decision to preserve family bonds.

A racial justice bill. Black and Latine families bear the brunt of flawed and traumatic outcomes in Family Court. This bill allows children to preserve their family bonds as they navigate this discriminatory system.

A family bill. There is no one-size-fits-all solution for families. Each and every family possesses a unique set of needs. This bill allows for this reality to be reflected in judges' decisions.

An autonomy bill. The threat of permanently losing contact with their children associated with going to trial coerces many parents into giving up their rights. This bill enables parents to make decisions based on what is best for their children while still preserving family bonds.

Visit PreservingFamilyBonds.org or contact Nila Natarajan (nnatarajan@bds.org) with questions.

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