Testimony of the Article 10 Family Defense Organizations in New York City: Bronx Defenders, Brooklyn Defender Services, Center for Family Representation, and Neighborhood Defender Service of Harlem
Presented Before
The New York State Assembly Standing Committee on Children & Families

Hearing Date: October 9, 2024

Subject: Statewide Central Register of Child Abuse and Maltreatment

This testimony is submitted jointly by the Bronx Defenders (BxD), Brooklyn Defender Services (BDS), Center for Family Representation (CFR) and the Neighborhood Defender Service of Harlem (NDS) (collectively the "family defense organizations"). Our offices are the primary providers of mandated legal representation to low-income parents in Article 10 cases filed in family court in New York City. Together, we have created a model of interdisciplinary representation for parents charged with neglect or abuse and at risk of family separation. Our model, which provides comprehensive representation to low- and no-income parents through teams of attorneys, social workers and parent advocates, is nationally recognized as the most effective model of representation of its kind.[1] Together, we have prevented thousands of children from needlessly entering and languishing in the foster system and have reduced the foster system census in New York City by almost 50%.[2] This translates to nearly $40 million in annual savings in foster system expenditures for New York City,[3] and the preservation of family bonds that are priceless to our clients, their children, and society at large. We thank the Assembly Standing Committee on Children & Families for the opportunity to submit testimony about the Statewide Central Register (SCR) and the reporting of child abuse and maltreatment in New York State, as the SCR is the primary gatekeeper between our clients' family integrity and state intrusion into their lives.

The family defense organizations have followed the leadership of directly-impacted people and chosen to use the term "family policing system" to describe what has traditionally been called

[1] *See* Commission on Parental Legal Representation, Interim Report to Chief Judge DiFiore 27-28 (February 2019)*; see also* Martin Guggenheim & Susan Jacobs, *A New National Movement in Parent Representation*, 47 CLEARINGHOUSE REV. 44, 45 (2013), available at https://cfrny.org/wp-content/uploads/2021/03/A-New-National-Movement-in-Parent-Representation-Clearinghouse-Review.pdf.
[2] Commission on Parental Legal Representation, Interim Report to Chief Judge DiFiore (February 2019).
[3] *Id*. at 21.

the "child welfare system" or the "child protection system," to reflect the system's prioritization of and roots in surveillance, punishment, and control rather than genuine assistance to and support of families living in poverty.[4] The primary goals of our representation are to provide high quality legal representation to parents in high stakes family policing investigations and family court cases and to ameliorate the underlying issues that drive families into this system, such as lack of access to quality health and mental health treatment, and basic necessities, and appropriate education and services for children with disabilities. We also aim to reduce the harm of the consequences of system involvement, such as criminal charges, housing and income loss, education issues and inability to adjust immigration status. Collectively we represent over 12,000 parents and caregivers each year. Since 2007, when New York City first contracted with institutional providers to represent parents, we have represented more than 40,000 parents in family court, touching the lives of more than 80,000 children, the vast majority of whom are Black and Latine and live in the most marginalized, poor communities in New York City.

Since 2019, we have also provided two more critical services to low-income parents in addition to our legal representation in family court. We provide support, guidance, and legal counsel – or "early defense" – to parents during an investigation by the Administration for Children's Services (ACS), with the primary goal of preventing family separation and family court filings. Additionally, we provide legal representation in administrative proceedings to help parents clear or modify their SCR records that result from reports made to the SCR and investigated by ACS, thereby preserving and expanding their employment opportunities.

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 mandated reporters, community members, and anonymous sources. The families we work with are traumatized by these reports and investigations and are more often than not left worse off even when a case was closed without family court involvement or family separation. Tens of thousands of families experience the harm and destruction of so-called "child protective" investigations each year. We cannot continue relying on a system that harms children and their families.

Careful consideration of the role of the Office of Children and Family Services (OCFS) and the SCR in New York State's family policing system have led us to this conclusion: while SCR reform may be necessary and impactful, it cannot be the only effort of the New York State legislature in reducing the harm experienced by thousands of New York families every year. This legislature is well aware of the recommendations that we make and that impacted families have been making for years. New York State must pass legislation that narrows the front door into this system, limits how family policing investigations can be used as a tool of harassment, ensures that families can make informed decisions about their medical care, and are informed of their rights before, during, and after investigations.

[4] S*ee*, Dorothy Roberts, *Abolishing Policing Also Means Abolishing Family Regulation*, The Imprint (June 16, 2020), https://imprintnews.org/child-welfare-2/abolishing-policing-also-means-abolishing-family-regulation/44480.

We offer the following recommendations to the New York State Legislature:

- Eliminate the mandate for helping professionals to report alleged child maltreatment to ensure these professionals can build trust with families and provide the support and resources that families need. and .
- Pending the elimination of this mandate:
    - Remove all penalties and fines in the Social Services law which now may apply when a mandated reporter does not report a family.
    - Oppose all efforts to expand categories of mandated reporters.[5]
- Ensure that employees of the SCR screen out legally deficient reports and reports that are the result of repeated, duplicative, or harassing reports.
- Require that legally deficient reports are not sent to harmful "differential response" programs, such as "CARES."
- 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 reporters of suspected child abuse or maltreatment to provide their name and contact information to the SCR, prohibiting the harmful practice of anonymous reporting. In many instances, false anonymous reports are used as a form of domestic harassment or to settle personal grievances.
    - Informed Consent in Drug Testing (A109/S320), which requires health care providers to obtain specific and informed consent before drug testing 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.

I. The Harm of Current Reporting Practices to the Statewide Central Register is Substantial and Well-Documented

Last year, the New York State Assembly Standing Committee on Children and Families held a public hearing on "The Child Welfare System and the Mandatory Reporting of Child Abuse or

[5] For full explanation and support of our recommendations as they pertain to the mandate for helping professionals to report suspected child maltreatment, see our full testimony presented to this Committee linked here.

Maltreatment in New York State."[6] The Committee heard hours of testimony about the harms of mandated reporting and the family policing's vast system of surveillance and family separation. During this hearing, we provided oral and written testimony on the history and practice of mandated reporting and its devastating impact on our clients, and strongly recommended the end of this mandate.[7] As the SCR is the gateway to the family policing system and mandated reporters account for over two-thirds of reports to the SCR, we urge the Assembly to revisit the oppressive history and impact of mandated reporting laws on our clients shared during that hearing before considering changes to the SCR. We revisit our testimony in part here:

> Initially, mandatory reporting laws were purportedly intended to identify and report child abuse and maltreatment, but there is no evidence that these laws have been successful. Instead, mandatory reporting has expanded family policing into a massive surveillance system, targeted primarily at poor, Black and Latine communities. This reality is consistent with mandated reporting's history and origins. Mandated reporting is a political choice driven by racism, classism, and sexism. Since their introduction in the 1960s, mandated reporting laws have been purposefully used to transform Black, Latine, Indigenous, and poor people's everyday human experiences into allegations of child maltreatment. The burgeoning so-called "child welfare" and mandated reporting systems grew in parallel, pathologizing Black and poor parents and redefining poverty as neglect.

Although mandated reporting has not improved child wellbeing since mandatory reporting laws were first passed, the list of professionals considered to be mandated reporters has continued to expand. Those same professionals are often embedded within poor, and particularly Black and Latine, communities, thus increasing surveillance on those families.[8] Today in New York State, there are more than 48 professional titles listed as mandated reporters required to report reasonable suspicions of child abuse and neglect to the SCR. A doctor can report a parent to the SCR if they do not believe or trust a parent's explanation for their child's injury. A daycare worker can report a parent for smelling alcohol or marijuana during pick-up or drop-off, without ever having a conversation with a parent. And nearly every time a report is made, a family policing investigation commences, launching an intensive, intrusive, and often unnecessary probe into a family, including the potential for lengthy court and family policing supervision and intervention, and family separation and trauma.

New York City's own statistics on reporting to the SCR are illustrative. As of August 2024, the most recent date for which data is available, ACS had received over 40,000 SCR intake calls, on track for the approximately 60,000 received annually in 2022 and 2023.[9] The indication rate thus far in 2024 sits around 30%, also similar to the annual rates in 2022 and 2023. NYC is again on

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[6] The recording of that hearing can be accessed here: https://nystateassembly.granicus.com/GeneratedAgendaViewer.php?view_id=8&clip_id=7735.

[7] Testimony of the Article 10 Family Defense Organizations in New York City: Bronx Defenders, Brooklyn Defender Services, Center for Family Representation, and Neighborhood Defender Service of Harlem Presented Before The New York State Assembly Standing Committee on Children & Families, Sept. 27, 2023, available here.

[8] New York State Office of Children and Family Services Summary Guide for Mandated Reporters in New York State https://ocfs.ny.gov/publications/Pub1159/OCFS-Pub1159.pdf

[9] NYC Children Flash Report Monthly Indicators, September 2024. https://www.nyc.gov/assets/acs/pdf/data-analysis/flashReports/2024/09.pdf

track for 70% unfounded rate of the cases it investigates, subjecting tens of thousands of families to traumatic investigations unnecessarily. Mandated reporting subjects large swaths of people to surveillance but even on its own terms, identifies only a small amount of what the family policing system deems to be maltreatment.

Mandated reporters account for two thirds of the reports that come into the SCR. Loose, subjective guidance about how to identify maltreatment, coupled with severe legal penalties for failures to report, result in mandated reporters making unsupported and harmful reports on families. The vague standards enshrined in both New York and federal mandated reporting schemes invite both reflexive reliance on implicit and explicit bias and the tropes applied to and assumptions made about socially marginalized and poor communities into mandated reporters' decision-making. Every decision to make a call to the family policing system is shaped by racism, classism, ableism, sexism, and other forces of power and privilege that shape who and what the reporter deems as "normative" and "deviant." As such, distrust between targeted communities and helping professionals, sown in part by mandated reporting, has paradoxically made families less safe as parents fear the very people tasked to support them.

II. The SCR Screening Process and Protocols Lack Transparency

The SCR functions as a clearinghouse, determining whether families will be subjected to harmful, invasive, and unnecessary investigations by family policing agencies. Despite this important role, precisely how the SCR functions and how these critical determinations are made remains largely unknown to the public. Only after the Family Policy Project (FPP), a research organization focusing on NYC's family policing system, received a response to a Freedom of Information Law request did the public learn that in the data from 2018-2022, New York State screened out fewer reports than other states.[10] FPP determined that the SCR "[r]eceived calls at a lower rate than typical nationwide, but passed along reports at a higher rate, resulting in an investigation rate above the national average."[11]

As currently designed, SCR staff should screen out any report to the SCR that does not meet the legal standard for maltreatment, which is nearly identical to the legal standard for neglect under the Family Court Act. For a report to be "registered" and passed onto a local district for investigation, a caller must have "reasonable cause to suspect that a minor child has been impaired or is in danger of impairment because of the failure of a parent or person legally responsible to exercise a minimum degree of care for the minor child."[12] Calls that do not meet this legal definition must be rejected. The legal definition, when broken down into individual elements, requires SCR hotline staff to apply the same subjective analysis under the Family Court Act that Family Court Judges struggle to apply. Alarmingly, testimony from both OCFS and FPP indicate that SCR hotline staff do not have a standardized screening tool to help guide them through this task.

This committee is well aware of the harms of family policing investigations. Given that reality, OCFS must require the SCR to diligently screen out reports that do not meet the legal threshold

[10] Family Policy Project, "No Filter", available at, https://familypolicynyc.org/report/scr/
[11] *Id.*
[12] *Id.*

for investigation, otherwise it actively increases the likelihood of harm to children. Screening out reports that do not meet the legal threshold will prevent families being subjected to invasive and traumatic investigations. A more stringent screening process with a clear screening tool would also allow the SCR to screen out instances of harassing or malicious reports, including repetitious reports and reports made by non-mandated reporters that were similar to previously unsubstantiated reports.

We have found that regardless of the reason a report was made to the SCR, once investigations begin, family policing agents begin to conflate the conditions of poverty with neglect. Screening out reports that do not meet the legal definition of maltreatment would protect families from unnecessary and harmful investigations and would prevent the racism and bias that families experience during investigations while safeguarding against interpreting poverty as neglect. At the very minimum, SCR hotline staff should be required to diligently apply the legal standard that already exists using a standardized screening tool, which could be quickly created with limited or no cost. OCFS should also maximize transparency about SCR processes, including making training, screening tools, and data public, to ensure that reports that are being passed on for investigation meet the legal threshold for is a serious intervention.

III. The State Central Registry's Failure to Screen Out Legally Deficient Reports Causes Egregious Harm to the Families We Represent

The consequences of the OCFS's failure to screen out legally deficient reports harms children and families in a myriad of ways. Whether a family's involvement with the family police ends quickly after a brief investigation or proceeds to family court, each report that is not screened out creates harmful long-term consequences - from traumatic, invasive searches of bodies and homes, pulling children out of school to be interviewed, to employment consequences, and even family separation.

Without a transparent processes and screening tool, the SCR as it operates today leaves New York parents and caretakers vulnerable to the consequences of a frivolous or malicious report at any moment. Regardless of the nature of the allegations, that investigation could include caseworkers knocking on the door at any time of the night and demanding to enter a family's home, interrogations and even invasive searches of children by a stranger, and embarrassing and intrusive interviews of relatives and neighbors. Regardless of the outcome of the investigation, the lack of rigorous screening before reports are referred by the SCR to local family policing agencies subjects countless New Yorkers to investigations triggered by malicious and fabricated reports, including reports made by ex-partners or family members seeking ammunition in contested custody battles and by landlords creating a pretext to evict tenants. For example, in the last few months, our offices worked with a client who has been the subject of repeated harassing reports by her landlord, who wants to illegally evict her and her children from their voucher-subsidized apartment. ACS knows that these allegations are false, in part because they have met with the landlord and the family's preventive service providers to discuss the reports, and yet each time a call is made, ACS investigates again. Screening out a case like this, where similar repeated unfounded allegations have occurred before and where the family is already receiving comprehensive services would spare this family from navigating yet another invasive

and terrifying family policing investigation. That absence of safeguards violates basic principles of due process and invites abuse.

The legal standard for indicating a case for maltreatment and making a finding of neglect in family court is identical.[13] Yet, the vast majority of indicated reports do not result in any court involvement or intervention: of the 41,329 SCR intakes completed by ACS between January and August 2024 and only 4,851 led to Article 10 abuse or neglect findings in the NYC Family Courts.[14] Based on these numbers, as well as our experience working with families during and subsequent to investigation, there are instances when the CPS team sends reports to their legal team to request court intervention, when their legal team reviews those exact same allegations and facts, and they determine that there is insufficient evidence of neglect or abuse. This highlights one of the basic perversities of the SCR – the consequences to New Yorkers of an indicated report are fundamentally legal and implicate basic due process interests. But the determination itself is made by non-lawyers without meaningful review. When lawyers actually look at the facts of an indicated investigation and they decide that there is not a basis to allege a violation of the law, then a retroactive re-examination of the SCR screening process and investigation itself should be triggered. But in fact, New York law allows the indicated case to remain on the record, divorced from any connection to legally-recognized child maltreatment, but with drastic consequences all the same.

Beyond the well-documented trauma of enduring a family policing investigation, being the subject of even an unfounded case can have negative consequences, as those reports are still available to child protective agencies as well as the police.[15] Consider the experience of one of our offices' clients against whom ACS used unfounded cases in court. In that case, out-of-town family members repeatedly called the SCR and falsely reported that they observed our client drinking alcohol while caring for her child. That report led to a full investigation which was unfounded. That should have been the end of it. However, ACS later used the facts from that investigation in court against her, relying on previous unfounded allegations as if they were true, and demanding that she engage in services based on those unfounded allegations. The same happened to a different client as recently as three weeks ago, when ACS sought to enter evidence in an emergency hearing about a past unfounded investigation against another client without disclosing to the Court and counsel that the investigation had been unfounded. These real examples reveal that even when a family policing agency clears a parent of accusations levied against them, the mere fact that somebody has been reported to the SCR can be used against them. Immediate change to the way that reports are made to the SCR and in how the SCR screens reports is necessary to protect New York families.

A. Failure to screen out legally deficient reports puts a parent's job or future employability at risk and limits the ability to act as a kinship resource.

Parents who have indicated reports in the SCR may seek administrative review, even where the state did not prosecute the family in court. OCFS often fails to provide parents and caretakers

[13] *See* N.Y. Soc. Serv. Law § 422 and Fam Ct. Act. § 1012.
[14] Administration for Children's Services, *NYC Children Flash Report Monthly Indicators September 2024* at nyc.gov/assets/acs/pdf/data-analysis/flashReports/2024/09/.pdf.
[15] N.Y. Soc. Serv. Law § 422(5)(a)(v)

with notices of indication. Thus, many New Yorkers have no idea that they have an indicated report on the SCR and were not told of their right to appeal. Even if they do learn of their right to appeal, because these families were never in court and assigned legal representation, many parents are left to navigate the SCR appeal process without attorneys, leaving them in an unjustly vulnerable position: they may bear the consequences of an indicated case without the benefit of legal representation. Our offices are able to represent some of these parents, and many of the people that we represent have unsuccessfully sought representation from several organizations before reaching one of our offices; there certainly are many more parents and caretakers with indicated cases that they would like to clear from their record who never have access to a lawyer who can assist them in doing so.

The effects of an indicated report can be disastrous for families, limiting employment opportunities and impacting networks of support. Parents who have an indicated finding of neglect on their record face employment consequences for eight years following that finding.[16] A 2018 FOIL request revealed that there are thousands of employers with access to the SCR. These types of employers, who hire people to work with children and vulnerable adults, often provide the kind of employment that our clients are seeking, where they can receive reasonable pay and assist their communities. Furthermore, ACS and foster agencies access this registry to determine if a relative or friend is eligible to temporarily care for a child who has been removed from their parents by ACS and the family court. If a person appears on the registry, they often are deemed by ACS, foster agencies ineligible to care temporarily for the children of friends and family. In this way, the family policing system compounds the impact reports that were falsely indicated but should have been screened out at the earliest stage.

The fact that parents and caretakers are overwhelmingly successful when they actually seek to challenge those indicated reports[17] illustrates that the SCR does not actually screen out cases that do not meet the legal threshold. Instead, it wastes millions of dollars in unnecessary, traumatic investigations that irreparably damage the lives of those investigated. Then, for those who are able to challenge that indicated report, more resources are wasted in adjudicating challenges to reports that should never have been investigated or indicated in the first place.

B. Failure to screen out legally deficient reports compounds the harms of overreporting by mandated reporters.

As public defenders, we most often meet parents when family police prosecute them and their children before the family court, nearly always with an application to the court to take children away from their parents. It is at this stage in the process, when ACS and the Court are seeking to take a child away from their family, that we generally see an Oral Report Transmittal ("ORT"), which is the document in which OCFS attempts to capture the information provided by a caller to the SCR. We routinely see legal deficiencies in these documents that are ignored in family court filings and lead to devastating consequences.

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[16] *See* S.S.L. 424.

[17] Based on our own record keeping and reporting, our offices estimate that when we challenge indicated reports held in the SCR, parents are successful about 73-98% of the time.

One common example of this failure occurs when a person gives birth at a hospital, they and their newborn child are drug tested without their consent, the parent tests positive for substances, and the hospital makes a report based solely on this test to the SCR. Consider the following example from a client one of our offices represented:

An ORT stated that a hospital social worker called in a report to the SCR on Ms. J, stating she had tested positive for marijuana and cocaine, that she shared with the hospital that she had used these substances, and that Ms. J did not have the financial means to care for her newborn. The legal definition of neglect under the Family Court Act, which the SCR is required to consider when screening in reports, does not equate a positive drug test with neglect.

Additionally, Ms. J's candid statement that she did not have financial means can only be found neglectful if Ms. J had financial means but denied them to her child, or she was offered financial assistance but refused that assistance.[18] Her honest statements to the hospital, if anything, demonstrate a request for support. Instead, she was reported by the hospital, and the SCR failed to apply an adequate legal analysis that would reject the report.

Screening of reports like the one the hospital made about Ms. J's are incredibly common and the legal standard is not correctly applied. Not only do reports based solely on prenatal substance use inappropriately criminalize behaviors by a parent before their child is born, but ACS and the New York State Department of Health, and the American College of Obstetricians and Gynecologists have each stated that a positive drug test or disclosure of substance use at birth should not result in a call to the SCR.[19] Other studies show that punitive responses to substance use undermine maternal-fetal health.[20] Additionally, studies show that we have no definitive answers to what happens when someone uses substances during the prenatal stage, and there is no way to determine whether harm to a fetus can be associated directly with substance use.[21] Even though substances are used at the same rate across races, Black pregnant people are routinely tested and reported to family policing agencies more often than white pregnant people.[22] Disclosures of substance use by birthing folks are made honestly, and with the hope that they will receive support that improves the health of themselves and their fetus.[23] The appropriate response to a birthing person struggling with substance use is care, not policing. And the appropriate response for any newborn child who has been exposed to substances in utero, is

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[18] *See* F.C.A. 1012(f)(i)(A).

[19] *See* Department of Health, *NYS CAPTA CARA Information & Resources*, *available at* https://health.ny.gov/prevention/captacara/index.htm; *See* American College of Obstetricians and Gynecologists Committee on Health Care for Underserved Women, Committee Opinion 473, Substance Abuse Reporting and Pregnancy: The Role of the Obstetrician-Gynecologist (2011, reaffirmed 2014).

[20] *See* Emilie Bruzelius et. al., *Punitive legal responses to prenatal drug use in the United States: A survey of state policies and systematic review of their public health impacts*, International Journal of Drug Policy (April 2024), *available at* https://www.sciencedirect.com/science/article/abs/pii/S0955395924000653.

[21] David Lewis, *We Were Wrong About "Crack Babies": Are We Repeating Our Mistake With "Meth Babies"?*, Medscape General Medicine (October 2008).

[22] *See e.g.*, Barry M. Lester et al., Review, *Substance Use During Pregnancy: Time for Policy to Catch Up with Research*, Harm Reduction J., Apr. 20, 2004, at 33; National Drug Policy Alliance, Race and the Drug War Factsheet; *And* s*ee* The Guttmacher Report on Public Policy, *State Responses to Substance Abuse Among Pregnant Women*, (December 2000, Vol. 3, No. 6).

[23] *See* Sarah Ostfeld-Jones and Andrea Asnes, *Yale New Haven Children's Hospital Experience Developing and Instituting an Objective Protocol for Newborn Toxicology Testing: Collaboration for Health Equity*, Yale School of Medicine (January 2019), *available at* https://portal.ct.gov/-/media/dmhas/adpc/presentations/adpc-presentation-newborn-toxicology-testing-6723.pdf

skin to skin contact with their parent.[24] A pregnant person receiving material care and support could make a positive, life-altering difference for both parent and baby. A transparent SCR screening process and stringent screening tool would allow for these common reports to be screened out, to avoid the harms of investigation, and for families to instead receive the care they need.

V. Differential Response Programs Like CARES Do Not Absolve OCFS from Screening Out Legally Deficient Reports and Often Replicate Harm Found Elsewhere in the Family Policing System

As the legislature considers action to ensure that the SCR screens out legally deficient reports, we want to caution that families who are the subject of those reports should not then be surveilled by differential response programs. Differential response programs have been lauded as a way to provide a "child protective response" without subjecting a family to an investigation. However, many families experience New York City's differential response program, called "CARES," as invasive, terrifying, and harmful as traditional family policing investigations. CARES surveillance has even less stringent regulations than a family policing "investigation" and often has the same consequences.

A parent that one of our early defense teams recently advised has been the subject of repeated harassing and easily disproved calls made by a former neighbor. Prior investigations based on these reports have been unfounded. The most recent of these calls alleged that Ms. C's older child had not been to school for an entire year, which could have been screened out based on the identical nature of the reports and the frequency of the past unfounded reports. Despite that, the report was passed along for investigation to ACS, who could have immediately confirmed that the report was false.

However, ACS still ensnared this family in CARES surveillance and the CARES worker repeatedly called Ms. C and her husband, and insisted on searching their home. During that search they told Ms. C that the CARES program was voluntary but that if she did not consent to CARES, it could "turn into an investigation at any time." They demanded that Ms. C share the name and location of her younger child's daycare and told Ms. C to fill out an 8-page survey which asked questions about her health, support system, and "how she deals with stressful situations." Terrified that an open family policing investigation would impact her employment, Ms. C tried to determine how she could comply with CARES without sharing so much private information about her family. The CARES worker grew frustrated and left. A few days later, the CARES worker called Ms. C's husband over and over every 6 hours throughout the day but when he didn't return her calls, their family heard nothing else except that the case had been "reassigned." Weeks later, Ms. C received a letter in the mail, the CARES case had apparently been converted back into an investigation. It was "unfounded."

[24] *See* Ronald R. Abrahams, et. Al*., An Evaluation of Rooming-in Among Substance-exposed Newborns in British Columbia,* Journal of Obstetrics and Gynecology Canada (September 2010); *and see* Matthew R. Grossman et. al., *An Initiative to Improve the Quality of Care of Infants With Neonatal Abstinence Syndrome*, Pediatrics (June 2021).

Referral to CARES surveillance has grown dramatically since it began in 2021, increasing from 4,000 cases in that year and is on track for 12,000 cases in 2024.[25] ACS has publicly cited a drop in overall investigations, suggesting that the program creates less harm and more equity in ACS' investigative practices. Yet at the same time, CARES surveillance has grown.[26] While differential response programs may not result in an indicated case with the SCR, the coercion, fear, and uncertainty that families experience when navigating CARES and other forms of family policing surveillance is the same. The only way to achieve less harm is to end unnecessary contact with family policing agencies, not to claim that contact is benign and call it another name.

VI. Correcting Failures in SCR Screen Out Protocols is One Necessary Step to Address the Harms of Family Policing

This committee, perhaps more than any other, knows that no action against this insidious system is worth implementing if it will allow the system itself to grow and further entrench families within it. We have presented to this committee recommendations that explicitly and intentionally shrink the family policing system and its authority over families. OCFS and ACS have many tools at their disposal to reduce the reach of the system, yet they do not use them. It is vital that, rather than providing additional resources to these agencies, the legislature firstensure that the applicable legal standard is used to screen out reports.

Even once simple, cost-effective, and significant screening tools are put into place, additional changes are needed to keep families safe. The harms waiting for families on the other side of a screened in report remain immense and continue to and land largely on low-income Black and Brown communities. During this hearing, some argued that the system's existing racism, surveillance, and separation is justified if it "saves" even one child from abuse and neglect. This notion is incredibly dangerous because it demands that the actual safety of the thousands of families subjected to unnecessary, traumatic and intrusive investigations be sacrificed for the theoretical safety of a single imagined child.

The idea deflects any responsibility to address systemic harms, and exposes the racist foundational assumptions supporting a system proven to create long-standing individual, family, and community harm. It also ignores that the current system compounds the trauma of investigation and family separation by subjecting them to the instability and harms of the foster system. Over a third of foster youth experience more than two placements each year, meaning their living arrangements change at least three times a year.[27] Every time a child changes placements means potential changing of schools, leaving friends and teachers, and having to start over in new social settings. Children who never reunify with their families of origin experience a large range of negative outcomes. Youth aging out of foster care on their own do so without the support of a stable, loving family. Not surprisingly, these youth and young adults are more likely to experience behavioral, mental and physical health issues, housing problems and homelessness,

[25] Administration for Children's Services, *NYC Children Flash Report Monthly Indicators August 2024* at https://www.nyc.gov/assets/acs/pdf/data-analysis/flashReports/2024/08.pdf.
[26] Administration for Children's Services, Jess Danhauser, *Fiscal 2024 Mayor's Management Report*, p 223, https://www.nyc.gov/assets/operations/downloads/pdf/mmr2023/acs.pdf.
[27] Annie E. Casey Foundation, *Child Welfare and Foster Care Statistics*, The Annie E. Casey Foundation (July 2024).

employment and academic difficulties, early parenthood, incarceration and other potentially lifelong adversities.[28]

IV. The Legislature Must Pass Crucial Legislation That Will Reduce the Number of Families Needlessly Harmed by Current SCR Practices and Procedures

Our current system was created from a history of surveillance and stigma, rather than of support, and is rooted in broad systems of bias, fear and punishment. From this history, we are now bearing witness to the massive reach of our reporting and investigation systems – including systems of mandated reporting, the allowance of harassing reports, and the broad acceptance of these reports for investigation. We are at an important moment where families impacted by the harms of these systems, along with a broad array of other advocates and experts, have named key legislation that can make vital change to reduce these harms. As such, this committee has within its grasp the ability to swiftly reduce the disparate and harmful impact of reporting and investigation, to empower families who are targeted and surveilled, and to create real and long-lasting change.

Any efforts to change the SCR's process for screening out calls must be accompanied by ending mandated reporting. Without both efforts simultaneously, the SCR will be overwhelmed by the necessary requirement to make more substantive assessments of reports without any reduction in unnecessary calls. We urge this Committee to avoid taking any action that would invest resources into reforming the SCR without also dramatically shrinking or ending mandated reporting. Ending mandated reporting will do more to ensure that reports to the SCR are only made when the reporter has a genuine concern about a child's safety, rather than because they fear for criminal liability or their own job security.

Rather than further investing in mandates that limit frontline workers to a policing role that harms families, our state's resources would be better used by directly supporting families and professionals, while simultaneously reducing circumstances that may lead to reporting and investigation. As advocates and attorneys who have worked with thousands of families facing investigation and family separation due to mandated reporting, we know that the vast majority of reports and subsequent filings involve allegations of neglect, not abuse, and that often at the root of this alleged neglect is lack of access to basic needs. In fact, research has shown that even a one dollar increase in the minimum wage results in a nearly ten percent decrease in reports of neglect.[29]

Ending the current mandate to report will allow helping professionals to focus on providing support to families, as opposed to making harmful reports, and would create opportunities to better train and support professionals in their efforts to assist families. Ending mandated reporting would not prevent the ability to report instances of suspected child abuse or maltreatment and would instead simply remove the mandate that contributes to a culture of fear

[28] *Id.*.

[29] Kerri M. Raissian & Lindsey Rose Bullinger, Money Matters: Does The Minimum Wage Affect Child Maltreatment Rates?, 72 Child & Youth Servs. Rev. 60, 63-66 (2016); see also Nicole L. Kovski et al., Association of State Level Earned Income Tax Credits With Rates of Reported Child Maltreatment, 2004-2017, 20 J.Child Maltreatment 1, 1 (2021).

among many helping professionals. This culture of fear rewards reporting over real support. Without this mandate, professionals working with families can offer support and assistance when a family is clearly in need of help.

We must also end our current system of anonymous reporting. The SCR is flooded with anonymous reports, many of which are intentionally false, and many of the rest are demonstrably unreliable. Of parents investigated on the basis of an anonymous report, over 93% - or more than 10,000 families - are cleared of all wrongdoing after an initial investigation, and even more are ultimately cleared when they have the opportunity to challenge the accusations in court or an administrative hearing. These investigations are nearly always traumatizing to children and have serious consequences for families.

Based on our substantial experience working with parents and families facing investigation by the ACS, we know first-hand that false reports of child abuse and neglect, and the resulting investigations, cause varied and long-lasting harms to children and their families. Anonymous reporting allows malicious callers to make false and harassing reports, repeatedly sending state agents to family homes at all times of the day and night, and manipulating our investigative systems into removing children from their classrooms for invasive and confusing interviews. 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. Families of color are more likely to be reported to and investigated by child protective services, and have higher rates of family separation and foster placement. Black families in particular are significantly more likely to be reported, investigated, given records that limit employment, and forcibly separated than are families of any other race. In New York City, for example, Black families are 5 times more likely than white families to be reported to the child abuse hotline.

This committee can help end this overreach. The Anti-Harassment in Reporting Act corrects this flawed system by ending the anonymous reporting of alleged child maltreatment, and by requiring all reporters to identify themselves *confidentially*, thereby deterring false and malicious reporting. Under a confidential reporting system, members of the public would be required to provide identifying information which would be provided to an investigator but would be kept confidential from the public and the person accused of child maltreatment.

By allowing investigators to question reporters directly, while still providing continued assurance that the reporter's information would be protected, this law would decrease the severe harm that false reports cause families, allow for more reliable investigations, and for transparency in the reporting process. This legislation will bolster current SCR practice and any subsequent investigators' ability to determine the validity and reliability of the thousands of reports they receive each year.

Along with this pivotal legislation, this committee should ensure the passing of the Informed Consent in Drug Testing Act, which requires health care providers to obtain specific and informed consent before drug testing 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. Passing this legislation would make significant progress towards reducing the harms of our current SCR system.

This committee must also ensure the passing of the Family Miranda Act, 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. Passing this legislation ensures that, even in a future where SCR screening processes are more rigorous, families are fully empowered to make the best decisions for themselves, which may mitigate the harm of the investigation.

Conclusion

We are grateful to the Assembly Standing Committee on Children and Families for its continued attention to the realities and harms of New York State's family policing system. OCFS and the SCR must be held accountable to the standard that the law has already set. Reports that do not meet the legal threshold for investigation must be screened out to avoid the inevitable harm to families that will follow. However, this Committee must not focus its energy solely on SCR reform when it has the opportunity to act to reduce harm to families at every stage of the family policing process. Ending the mandate to report and eliminating the specter of criminal and civil penalties will ensure that professionals who work closely with families and young people are applying their professional judgment rather than reporting out of fear. This would dramatically shrink the number of unnecessary investigations and fundamentally shift the relationship between families and medical, mental health, education, and social services professionals from one of suspicion and surveillance to one rooted in trust. Adopting a structured screening tool and sharing data about how reports are accepted or rejected will ensure that the SCR is applying the law and operating as a stopgap rather than a gateway. It will also require OCFS to acknowledge that SCR processes should be fully transparent and under continuous review. Shifting from anonymous reporting to confidential reporting will ensure that family policing investigations cannot be weaponized against vulnerable families. The cost of an investigation is too high and confidential reporting will maintain the same privacy and safety features that already exist. Once a report is accepted and an investigation is initiated, families must know their rights so that they can navigate investigations with minimal harm.

We urge the Assembly Standing Committee on Children and Families to return to the recommendations of our organizations and so many others calling for legislative solutions to reduce the harm of family policing.