

February 11, 2021

Hon. Andrew Cuomo
Governor of New York State
NYS State Capitol Building
Albany, NY 12224

Hon. Andrea Stewart-Cousins
Democratic Leader, New York State Senate
188 State Street LOB - Room 907
Albany, NY 12247

Hon. Carl Heastie
Speaker, New York State Assembly
New York State Capitol Room 349
Albany, NY 12247

Dear Governor Cuomo, Senate Majority Leader Stewart-Cousins, and Assembly Speaker Heastie:

As New York's family defense organizations, we write to share our legislative priorities for 2021, which seek to shrink the state's foster system while offering families and communities the support and resources they need to raise the next generation of New Yorkers. Together, our offices represent thousands of parents and caregivers in child neglect and abuse proceedings in New York family courts every year. Much like the criminal legal system, the family regulation system¹ has been profoundly shaped by structural racism and operates by surveilling and punishing low-income families and communities of color. The system reinforces racial and economic inequality by treating poverty as child neglect, unnecessarily separating families and shifting resources to the foster system rather than providing the support and resources to the families it is meant to serve. As renowned scholar Dorothy Roberts told us over twenty years ago:

If an outsider looked at the American child welfare system, she would likely conclude that this is not a system designed to promote the welfare of America's children. Rather, it is a system designed to regulate, monitor, and punish poor families,

¹ Many, including scholar Professor Dorothy Roberts, have come to refer to the so-called "child welfare" system as the "family regulation" system, given the harms historically and currently perpetuated by the system. See e.g., Dorothy Roberts, "Abolishing Policing Also Means Abolishing Family Regulation", The Imprint (June 16, 2020), found at: <https://imprintnews.org/child-welfare-2/abolishing-policing-also-means-abolishing-family-regulation/44480>.

*especially poor Black families.*²

The same is true today. Black and Latinx children are profoundly and disproportionately vulnerable to surveillance, family separation, and the negative consequences of the foster system. But despite the glaring inequities, this system is too often left out of the mainstream conversation about race.³

The Trump Administration’s policy of separating children from their families at the border rightfully sparked immediate public outcry. At the same time, however, the unimaginable loss and trauma of family separation at the hands of the family regulation system here in New York is met with silence.⁴ The stakes could not be higher for our clients. The harms of even short periods of family separation are well-documented.⁵ Depriving a parent of the right to raise his or her own child has devastating consequences, and some have even called the termination of parental rights the “civil death penalty.”⁶ For our clients, government surveillance starts as early as pregnancy and extends to controlling how New Yorkers are able to raise their children — oftentimes with little understanding of the rights that are being violated through this surveillance.

We strongly support the following legislation, which would significantly reduce the harms of the family regulation system, and urge you to pass and sign these bills as soon as possible

Prohibit Non-Consensual Drug and Alcohol Testing and Screening of Pregnant and Perinatal⁷ People and Newborns - S07955 (Montgomery) / A05478-A (Rosenthal) (Active in the 2019-2020 Legislative Session)

² Dorothy E. Roberts, *Poverty, Race, and New Directions in Child Welfare Policy*, 1 WASH. U. J. L. & POL’Y 63, 64 (1999), https://openscholarship.wustl.edu/law_journal_law_policy/vol1/iss1/7

³ Tehra Coles, Zainab Akbar, Emma Ketteringham, and Lauren Shapiro, *The Sad Omission of Child Welfare from Mainstream Discussion on Race*, August 6, 2020.

<https://imprintnews.org/opinion/sad-omission-child-welfare-mainstream-discussion-race/46315>

⁴ Michele Cortese and Tehra Coles, *Poor and at risk of losing their kids: Moms and dads under ACS investigation deserve more legal help*, December 14, 2019 (Many parents across New York face the threat of these unimaginable consequences alone — without the assistance of an attorney).

<https://www.nydailynews.com/opinion/ny-oped-poor-and-at-high-risk-of-family-separation-20191214-666f5zyjyb7bextlauufdiewy-story.html>

⁵ See, e.g., American Academy of Pediatrics, Statement Opposing Separation of Children and Parents at the Border (May 8, 2018), <https://www.aap.org/enus/about-the-aap/aap-press-room/Pages/StatementOpposingSeparationofChildrenandParents.aspx> (explaining that “highly stressful experiences, like family separation, can cause irreparable harm, disrupting a child’s brain architecture and affecting his or her short- and long-term health. This type of prolonged exposure to serious stress—known as toxic stress—can carry lifelong consequences for children.”); Vivek Sankaran, *Out of State and Out of Luck*, 25 Yale L. & Pol’y Rev.

⁶ E.G., Stephanie N. Gwillim, *The Death Penalty of Civil Cases: The Need for Individualized Assessment and Judicial Education When Terminating Parental Rights of Mentally Ill Individuals*, 29 St. Louis U Pub L Rev 341 (2009) (citing *In re K.A.W.*, 133 S.W.3d 1, 12 (Sup. Ct. Mo. 2004); see also *In re Smith*, 77 Ohio App. 3d 1, 16 (1991) (A termination of parental rights is the family law equivalent of the death penalty in a criminal case. The parties to such an action must be afforded every procedural and substantive protection the law allows.”)

⁷ “Perinatal” relates to the time, usually a matter of weeks, immediately before and after birth.

While family separation is a traumatic experience for children of any age, newborns are especially vulnerable to the effects of separation from their families. Even though New York hospitals are not required to drug test pregnant people and their newborns or report a positive drug test to Child Protective Services (CPS), healthcare providers routinely test without informed consent and report to CPS even when it is not medically indicated. “Test and report” practices disproportionately target low-income Black and Latinx pregnant people and their newborns and make pregnant people fearful of accessing prenatal care, which is critical to positive maternal/fetal outcomes. “Test and report” also exposes new parents and their newborns to the risk of family separation. This legislation would require health care providers to obtain written and verbal informed consent before drug testing new parents and newborns, and would require that a drug test be given only if it falls within the scope of medical care being provided to the pregnant person, perinatal person, or newborn.

Require Caseworkers Investigating Child Maltreatment to Notify Parents and Caretakers of Their Rights - S07553-A (Montgomery) / A09841 (Wright) (Active in the 2019-2020 Legislative Session)

Everyday, parents and caretakers across New York are investigated by CPS workers and are threatened with the potential removal of their children without being advised of their fundamental constitutional and statutory rights. The failure to advise parents of their rights results in confusion, distress and panic, and often leads to unnecessary, traumatic removals of children and court intervention. This legislation does not create new rights; it simply recognizes that parents deserve to be told what rights they have during investigations. The goal of the system — happy and healthy children living at home safely with their families — is best achieved when parents are fully informed of their rights and responsibilities. This legislation requires workers to advise parents of the allegations made against them, that any statements they make will be used against them, and that they have the right to contact an attorney.

Require Non-Mandated Callers Making Reports of Suspected Child Maltreatment to Provide Their Name and Contact Information - S05572 (Montgomery) (2019-2020 Legislative Session)

New York’s statewide child abuse and neglect hotline currently allows non-mandated callers to make confidential or anonymous reports. S05572 would eliminate New York’s anonymous reporting system by requiring that all non-mandated reporters provide their name and contact information, which will remain confidential and only be made available to the investigating agency. Anonymous reporting encourages abuse of the reporting system, leading to harassment and wasted investigation resources. Malicious false reports have become commonplace, hurting families and wasting system resources. The problems presented by malicious reporting have been especially acute for domestic violence victims, families of color, and low-income families. Domestic violence advocates in particular have voiced concern that the current system allows perpetrators of domestic violence to harass ex-partners through anonymous false reports against

them. Anonymous reporting also impedes legitimate child maltreatment investigations, because investigators have no way to verify an anonymous reporter's identity, contact them to gather additional information, or assess their credibility. This legislation offers a simple solution: require that every caller provide their name and contact information when making a report to the hotline. This will allow investigations to proceed and sensitive information to be kept confidential, both from the general public and from the person accused of abuse or neglect.

Give Judges in Article 10 Matters the Discretion to Grant Adjournments in Contemplation of Dismissal (ACDs) - S06214 (Montgomery) / A11022 (Weinstein) (Active in the 2019-2020 Legislative Session)

This legislation gives family court judges another option for resolving cases after entering a neglect finding. After a neglect petition is filed, many parents and caretakers take substantial steps to address the safety issues that led to the family court case by engaging in services, including preventive services, drug treatment and mental health counseling, and cooperating with agency supervision. Under this proposed bill, family court judges will be able to consider and grant an ACD for those families for whom an ultimate finding of neglect would be more harmful than helpful, in cases in which the circumstances in the home have improved since the filing of the petition. Increasing the dispositional options available will allow judges to address the specific circumstances of each family and craft orders that meet individualized needs and ensure the best short- and long-term outcomes for parents and children.

Allow Post-termination Contact Between Children and Their Birth Parents or Siblings in Termination of Parental Rights Proceedings When in the Best Interest of the Child - S04203 (Savino) / A02199 (Joyner) (previously passed by the Legislature and vetoed by the Governor in 2019)

Research shows that children benefit from strong, healthy family bonds. Under current law, family court judges are not allowed to protect the rights of children to contact or visit their parents and siblings after parental rights have been terminated, even when the court deems it in the best interest of the children. The Preserving Family Bonds Act gives judges the authority to allow children to maintain contact or visit their parents or siblings after parental rights have been terminated, in a manner that is safe and appropriate, when it is in the best interest of the children to stay connected with their families.

Conclusion

We urge the Legislature to pass and the Governor to sign these bills that will protect New York families from unnecessary separation and the irreparable harm of involvement with the family regulation system. If you have any questions about any of these bills, please do not hesitate to contact the undersigned organizations.

Signed:

Assigned Counsel Program Erie County Bar Association
The Bronx Defenders
Brooklyn Defender Services
Center for Family Representation
Chemung County Public Advocate's Office
Chief Defenders Association of New York
Darryl Bloom Cattaraugus County Public Defender
Genesee County Public Defender Office
Legal Aid Society of Nassau County
The Legal Aid Society of Westchester County
Livingston County Public Defender
Monroe County Conflict Defender's Office
Monroe County Public Defender's Office
Neighborhood Defender Service of Harlem
New York State Defenders Association, Inc.
NYU Law Family Defense Clinic
Ontario County Office of the Conflict Defender
Ulster County Public Defender's Office