



**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: September 27, 2023**

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

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 New York City in Article 10 cases filed in family court in each of our boroughs. 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.<sup>1</sup> 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%.<sup>2</sup> This translates to nearly \$40 million in annual savings in foster system expenditures for New York City,<sup>3</sup> 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 impact of mandatory reporting of child abuse and maltreatment in New York State, as the majority of our clients become entrenched in the family policing system as a result of a call from a mandated reporter.

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<sup>1</sup> 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://cfny.org/wp-content/uploads/2021/03/A-New-National-Movement-in-Parent-Representation-Clearinghouse-Review.pdf>.

<sup>2</sup> Commission on Parental Legal Representation, Interim Report to Chief Judge DiFiore (February 2019).

<sup>3</sup> *Id.* at 21.

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 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.<sup>4</sup> 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, 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 critical additional services to low-income parents in addition to our legal representation in family court. We provide support, guidance, and legal counsel-“early defense”-to parents during an investigation by the Administration for Children’s Services (ACS), with the primary goal of preventing family separation and unnecessary family court filings. Additionally, we provide legal representation in administrative proceedings to help parents clear or modify their Statewide Central Register of Child Abuse and Maltreatment (“SCR”) records that result from reports made to the SCR and investigated by ACS, thereby preserving and expanding their employment opportunities.

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 mandated reporters. The families we work with are traumatized by these reports and, more often than not, left worse off by the system, even when their case was closed after an investigation without family court involvement or separation. Mandated reporting does not make families safer, but feeds tens of thousands of families into a system that causes great harm and destruction each year. We cannot continue relying on a system that does not work. The majority of allegations made to the state’s SCR are due to conditions stemming from poverty. The helping professionals subject to the state’s mandated reporting laws should be able to support families and connect them with resources, rather than being forced to report them to a harmful system that doesn’t offer the support they may need.

We recommend New York State:

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<sup>4</sup> See, 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>.

- Eliminate mandated reporting and instead support solutions that have been shown to keep children safe, primarily, increasing concrete resources and support to poor, Black, and Latine families and communities.
- Remove all penalties and fines for when a mandated reporter does not 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 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 (A109B/S320), which requires health care providers to obtain specific and informed consent before drug testing and or drug screening pregnant people, new parents and their newborns. New York health care providers’ “test and report” practices, wherein pregnant people, new parents and their newborns are routinely drug tested without their informed consent and reported to the SCR, threaten the health and well-being of Black and Latine parents 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 of the United States.

## **I. History and Explanation of Mandated Reporting**

In New York State, over 148,000 reports of suspected abuse or neglect were called into the SCR in 2022,<sup>5</sup> nearly 80% of which were unfounded.<sup>6</sup> In 2022, the Administration for

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<sup>5</sup> NYS Office of Children and Family Services, Aggregate MAPS CPS Reports Received by District 1995-2022, *available at*

<https://ocfs.ny.gov/reports/maps/aggregate/2022/CPS-Reports-Received-by-District-1995-2022.xlsx>.

<sup>6</sup> NYS Office of Children and Family Services, Aggregate MAPS CPS Reports Indicated by District 1995-2022, *available at* <https://ocfs.ny.gov/reports/maps/aggregate/2022/CPS-Reports-Indicated-by-District-1995-2022.xlsx>

Children’s Services (ACS) investigated over 44,000 reports in New York City, over 70% of which were unfounded.<sup>7</sup> Nationwide, mandated reporters are responsible for 67% of all reports.<sup>8</sup> Each year, thousands of families are subject to intensive investigations and policing after a report is made. 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. Historically, Black families were excluded from the growing “child saving” movements of the mid nineteenth century and anti-poverty measures of the early twentieth century because they were believed to be irredeemable. Instead Black families were relegated to punishment and exclusion.<sup>9</sup> As Black Americans made gains in the Civil Rights Movement and were accepted into social welfare programs, the programs became more punitive, and the families using the programs shifted in the public imagination and conversation from people-in-need to moral failures.<sup>10</sup> The burgeoning so-called “child welfare” and mandated reporting systems grew in parallel, pathologizing Black and poor parents and redefining poverty as neglect.<sup>11</sup>

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<sup>7</sup> Child Welfare Indicators Annual Report CY 2022, Administration for Children’s Services, <https://www.nyc.gov/assets/acs/pdf/data-analysis/2022/CityCouncilReportCY2022.pdf>

<sup>8</sup> 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>.

<sup>9</sup> Mid-Nineteenth Century, Progressive Era “child saving” and Orphan Train movement, was born out of middle-class Protestant reformers’ concern with the “the behavior of the ‘dangerous classes’” (i.e. urban poor catholic immigrant communities), who were thought to be “criminal, vicious, indolent, and intemperate.” See Tina Lee, *Catching a Case: Inequality and Fear in New York City’s Child Welfare System 19* (2016). Black families were never contemplated as children worthy of “saving,” because they Black people were regulated, exploited and controlled first by slavery, and then, following slavery’s abolition, black codes and convict leasing. With the introduction of anti-poverty programs like the Aid to Dependent Children Program (ACD), born out of states’ “mother’s pension” programs, Black families were again excluded. See Miriam Mack, *The White Supremacy Hydra: How the Family First Prevention Services Act Reifies Pathology Control, and Punishment in the Family Regulation System*, 11 *Colum. J. Race & L.* 767, 771-3 (2021); and see Alan Detlaff, *Confronting the Racist Legacy of the American Child Welfare System: The Case for Abolition* 118-122, (2023). With respect to the Twentieth Century anti-poverty programs, states used (and the federal government sanctioned) carefully crafted aid eligibility requirements to systematically shut out virtually all Black families from government anti-poverty projects like ACD. See Detlaff at 148-70; and see Mack at 771-2.

<sup>10</sup> See Dorothy Roberts, *Shattered Bonds: The Color of Child Welfare* 174-180 (2002); Khiara Bridges, *The Poverty of Privacy Rights* 51-64 (2017).

<sup>11</sup> See Detlaff, *supra* note 9 at 162-77.

In particular, the discourse around mandated reporting dates back to the 1960s with the publication of “The Battered Child Syndrome.”<sup>12</sup> The article first identified child abuse as a medical syndrome and chastized the medical community for failing to respond to cases of alleged physical child abuse inflicted by parents.<sup>13</sup> What is more, the paper attributed harm to children almost exclusively in the “individual pathology among parents, rather than any societal factors.”<sup>14</sup> Though later discredited, “The Battered Child Syndrome” “brought the issue of severe physical harm of children into the public consciousness,” and the explosion of media coverage and public alarm that ensued created the conditions for legislatures and policymakers to swiftly implement federal laws purportedly aimed at detecting and curbing the child abuse “epidemic” hiding in plain sight.<sup>15</sup> Specifically, a few years after that report was published, the Children’s Bureau of the United States Department of Health, Education, and Welfare issued model reporting statutes for states to adopt. Most states developed and enacted laws mandating the identification and reporting of child abuse and neglect, many even prior to a federal mandate.<sup>16</sup>

As mandated reporting expanded in scope and across the United States, scholars, researchers, and social workers warned that mandated reporting was infected with prejudice and racism.<sup>17</sup> And rightfully so, given the larger social context in which mandated reporting laws proliferated. As noted above, simultaneous with their growth was the fierce backlash to Black Americans’ Civil Rights Movement gains. Of particular importance to the growth of mandated reporting is the way that Black motherhood was pathologized in the highly influential report, *The Negro Family: The Case for National Action*, better known as the Moynihan Report.<sup>18</sup> Published in 1965, this report identified the rise of Black families led by Black mothers as cause of the ‘deterioration of the Negro family,’ and consequently, the decline of the Black community generally.<sup>19</sup> Moreover, the report’s author, Daniel Patrick Moynihan, Assistant Secretary of Labor to President Lyndon B. Johnson, argued that “The steady expansion of this welfare program [AFDC], as of public assistance programs in general, can be taken as a measure of the steady disintegration of the Negro family structure over the past generation in the United States.”<sup>20</sup> Backgrounded by racial animus, vigilante and state-backed violence in response to the Civil

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<sup>12</sup> Kempe et al., ‘The Battered Child Syndrome,’ *Child Abuse and Neglect*, 9 (1985): 143, originally published in *Journal of the American Medical Association*, 181 (1962): 17–24

<sup>13</sup> *Id.*

<sup>14</sup> *Id.* at 174-5.

<sup>15</sup> *Id.* Importantly, Detlaff notes that beyond calling for mandated reporting, “Kemp hypothesizes that for every child discovered with battered-child syndrome, there are ‘hundreds’ more falling through cracks undetected furthering the urgency of a systematic mechanism for reporting and ‘protection.’” *Id.* at 177.

<sup>16</sup> Eli Newberger, M.D. The Helping Hand Strikes Again - Unintended Consequences of Child Abuse Reporting. *Journal of Clinical Child Psychology*, Vol. 12, No. 3, Winter 1983.

<https://www.elinewberger.com/the-helping-hand-strikes-again-unintended-consequences-of-child-abuse-reporting/>

<sup>17</sup> *Id.* at 162-77

<sup>18</sup> See Detlaff, *supra* note 9 at 183.

<sup>19</sup> *Id.* at 183-4.

<sup>20</sup> *Id.* at 185, quoting Daniel Patrick Moynihan, *The Negro Family: The Case for National Action* (Office of Policy Planning and Research United States Department of Labor, Mar. 1965), <https://www.dol.gov/general/aboutdol/history/webid-moynihan>.

Rights Movement, and the growing emphasis on the superiority of “white family values,” the warnings that mandated reporting was infected with racism and prejudice, and indeed the data proving it to be so,<sup>21</sup> were ignored and mandated reporting was codified into federal law in 1974 with the enactment of the Child Abuse Prevention and Treatment Act (CAPTA).<sup>22</sup>

By the end of the 1970s, nearly half of states elected to adopt broad mandatory reporting requirements, requiring many professions to report a suspicion of child abuse and neglect. Since that time, the list of professionals required to report has continued to expand. Those same professionals are often embedded within poor, and particularly Black and Latine, communities, thus increasing surveillance on those families.<sup>23</sup> For example, a doctor reports a parent to the SCR if they do not believe or trust a parent’s explanation for their child’s injury. A daycare worker reports a parent for smelling alcohol or marijuana during pick-up or drop-off, without ever having a conversation with a parent. And once 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.

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. Yet, after more than fifty years of the existence of mandated reporting laws, there is no data supporting the conclusion that mandated reporting protects children.<sup>24</sup> Instead, as predicted by scholars, researchers, and social workers early on, data show that these laws immediately resulted in the racist overreporting of poor and low-income, Black families.<sup>25</sup>

## **II. The Problem of Mandated Reporting**

Given mandated reporting’s origins and history, it should come as no surprise that New York State’s mandated reporting scheme functions as an expansive system of surveillance, control and punishment, which deputizes broad swaths of helping professionals as *de facto* agents of the family policing system. From hospitals and schools to public benefit offices and homeless shelters, Black, Latine, poor, and socially marginalized families are under constant risk of being funneled into the family policing system by the very services they rely on for support,

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<sup>21</sup> Data from 1967 and 1968—the early years of mandated reporting’s proliferation—show that “Black children and other children of color were reported for ‘child abuse’ at a rate more than three times that of White children,” and in fact that Black children accounted for almost half of all reports. See Detlaff, *supra* note 9 at 188.

<sup>22</sup> *Id.* at 162-77

<sup>23</sup> New York State Office of Children and Family Services Summary Guide for Mandated Reporters in New York State, available at <https://ocfs.ny.gov/publications/Pub1159/OCFS-Pub1159.pdf>

<sup>24</sup> Mical Raz. Calling Child Protective Services is a Form of Community Policing That Should Be Used Appropriately: Time to Engage Mandatory Reporters as to the Harmful Effects of Unnecessary Reports. *Children and Youth Services Review*. 2020, available at <https://doi.org/10.1016/j.chilyouth.2020.104817>

<sup>25</sup> Newberger, E.H., *The Helping Hand Strikes Again – Unintended Consequences of Child Abuse Reporting*, *Journal of Clinical Child Psychology*, Vol. 12, No. 3, Winter 1983, 307-311.

often for reasons that amount to little more than poverty.<sup>26</sup> Nearly fifty years of mandated reporter surveillance has failed to make children safer. On the contrary it has, as was predicted,<sup>27</sup> resulted in devastating family separation that engulfs communities, namely Black, Indigenous, Latine, and poor communities, and spans generations.

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 regulation 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 available to support them.

#### **A. Mandated Reporting is Ineffective and Driven by Harmful Incentives**

New York State law requires 48 classes of professionals to call the SCR even when the only "evidence" of child maltreatment is their own suspicion.<sup>28</sup> The law incentivises professionals to utilize a broad definition of "reasonable cause" to believe a child is maltreated, as mandated reporters are effectively immune from false reporting if done in good faith, while they can face severe criminal and civil penalties if they fail to make a report.<sup>29</sup>

This scheme, which encourages a "when in doubt, report" ethic and provides for serious consequences for those who approach reporting with caution, not only makes social service professionals fearful of not reporting, but also focuses them on policing rather than supporting families by connecting them to true community-based, non-punitive support. For example, Alexandra Keysselitz explains with respect to her experience as a preventive service case planner for a NYC foster agency:

"I was asked to call in cases against my clients when there was no need (the child was not in danger or even with the parent) and I felt the mandated reporter law was the reason. I

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<sup>26</sup>Nationally, 76% of all reports allege neglect, which is often confused as poverty. See U.S. Department of Health and Human Services, Administration of Children, Youth, and Families Children's Bureau, *Child Maltreatment 2021* (Feb. 2023), available at <https://www.acf.hhs.gov/sites/default/files/documents/cb/cm2021.pdf>.

<sup>27</sup>See Detlaff, *supra* note 9 at 176-9.

<sup>28</sup>New York State Office of Children and Family Services, *Summary Guide for Mandated Reporters in New York State* *supra* note 23.

<sup>29</sup>*Id.*

was asked to call in cases to protect the [foster agency] rather than an actual threat of harm to a child.”

Ultimately, harmful incentives, in part, drive an enormous dragnet in the city, state, and nation that undermines child and family safety. In 2021, there were nearly four million reports of child maltreatment nationwide.<sup>30</sup> Mandated reporters accounted for about 70% of those reports.<sup>31</sup> Yet less than 20% of those resulted in a determination of child maltreatment.<sup>32</sup> Even a smaller percentage of those cases resulted in a court filing, family separation, or any other action by the family policing system other than an investigation.

New York City’s own statistics are similarly disturbing. In the first six months of 2023, ACS received over 33,000 reports through the SCR.<sup>33</sup> Around 70% of those calls to the SCR in April, May, and June of 2023 were from mandated reporters.<sup>34</sup> In nearly three-quarters of the cases reported in the last six months, ACS determined the allegations made were unfounded.<sup>35</sup> ACS only filed for court intervention in about 8% of cases.<sup>36</sup> These numbers alone highlight the folly of mandated reporting – it 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.

After nearly fifty years of mandated reporting being in place under CAPTA, the data make clear that the vast scheme of surveillance, control, and punishment has not made children safer. Examining the child fatalities known to NYC’s family policing agency from 1993 - 2022 is revealing. The data show that a high number of reports called in does not necessarily correlate with lower numbers of fatalities of children known to the system.<sup>37</sup> For example, In fiscal year 2018, New York City received the highest number of SCR reports in a four-year period. And that same year the city experienced the highest number of fatalities of children known to the system.

Moreover, family policing investigations (whether ultimately founded or unfounded) are not innocuous, even when they close without further family police involvement. With every family policing investigation comes a threat to families privacy, dignity, autonomy, and

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<sup>30</sup> U.S. Department of Health & Human Services, Administration for Children and Families, Administration of Children, Youth and Families, Children’s Bureau, *Child Maltreatment 2021* (2022), available at <https://www.acf.hhs.gov/cb/report/child-maltreatment-2021>.

<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

<sup>33</sup> Administration for Children’s Services, *NYC Children Flash Report Monthly Indicators July 2023* at 8, available at <https://www.nyc.gov/assets/acs/pdf/data-analysis/flashReports/2023/07.pdf>.

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

<sup>36</sup> Rachel Holliday Smith, *What to Do When Children’s Services Comes to the Door*, The City (Oct. 5, 2023, 5:00 A.M.), available at <https://www.thecity.nyc/2023/10/5/23904075/childrens-services-acs-rights-parents-children>.

<sup>37</sup> National Coalition for Child Protection Reform, Don’t Turn Back, *Reform Has Never Made New York’s Children Safer: An Analysis of Trends in New York City’s Child Welfare* (last updated Jan. 2023), available at <https://drive.google.com/file/d/1yWmSXAHI9NNQzuhu8OWdoCSqksudMMB/view>.



engenders fear, stress, anxiety, and trauma. In any family policing investigation, caseworkers arrive at a family's home with a broad checklist of inquiries that reaches into the most private areas of family life. Regardless of the nature of the allegation, family policing caseworkers strip search children's bodies, rip open cupboards and dressers and ask irrelevant, invasive questions about a parent's mental health treatment and alcohol use, examining every aspect of a parent's life. This often happens in the middle of the night, NYPD in tow, with family policing caseworkers insisting on waking sleeping children to strip search and question them. Family policing caseworkers rip children from their classrooms to interrogate them without trusted adults present, making children anxious about attending school and trusting school staff. In this way, ACS subjects families to a longer, more invasive version of "stop and frisk," where they are reported by professionals based on mere suspicion and fear, only to find their homes turned upside down and that they and their children are left alone to pick up the pieces.<sup>38</sup>

## **B. Mandated Reporting is Rife with Racism and Classism**

It is well established that mandated reporting is and has been deeply infected with race and class bias.<sup>39</sup> Even in the 1970s, when mandated reporting was in its infancy, analysis of reporting by physicians revealed that "class and race...define who is and who is not reported to child protection agencies."<sup>40</sup> Fifty years later, scholar Kelley Fong states the present reality starkly—"[f]or poor mothers, particularly poor Black and Native American mothers, CPS contact is not a remote possibility, but a widespread occurrence."<sup>41</sup> More than half of Black children will experience a family policing investigation before their 18<sup>th</sup> birthday.<sup>42</sup> In New York City, where only 60% of children are Black or Latine, 90% of children named in investigations are Black or Latine.<sup>43</sup>

ACS has admitted as much – its own internal audit revealed a "predatory system that specifically targets Black and [B]rown parents" and subjects them to "a different level of scrutiny" where "race operates as an indicator of risk."<sup>44</sup> Contrary to ACS' mission of "promoting and protecting the safety and well-being of New York City's children and families,"

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<sup>38</sup> For more context on the similarities of police "stop and frisk" and the family regulation system, see Michelle Burrell, *What Can the Child Welfare System Learn in the Wake of The Floyd Decision?: A Comparison of Stop-And-Frisk Policing and Child Welfare Investigations*, 22 CUNY L. Rev. 124 (2019).

<sup>39</sup> Children's Rights, *Fighting Institutional Racism at the Front End of the Child Welfare System: A Call to Action* (May 2023) at 14.

<sup>40</sup> Newberger, *supra* note 16.

<sup>41</sup> Kelley Fong, *Concealment and Constraint: Child Protective Services Fears and Poor Mothers' Institutional Engagement*, *Social Forces*, Volume 97, Issue 4, 1785–1810 (June 2019), available at <https://doi.org/10.1093/sf/soy093>.

<sup>42</sup> Hyunil Kim et al., *Lifetime Prevalence of Investigating Child Maltreatment Among US Children* *American Journal of Public Health* (2017), available at <https://doi.org/10.2105/AJPH.2016.303545>.

<sup>43</sup> Anna Arons, *An Unintended Abolition: Family Regulation During the COVID-19 Crisis*, 12 Colum. J. Race. L. 1, 8 (2022).

<sup>44</sup> Andy Newman, *Is N.Y.'s Child Welfare System Racist? Some of Its Own Workers Say Yes*, N.Y. Times (Nov. 22, 2022), <https://www.nytimes.com/2022/11/22/nyregion/nyc-acr-racism-abuse-neglect.html>.

ACS staff reported that racism and anti-Blackness embedded in ACS “hinders the safety of Black and Latine families.”<sup>45</sup>

Unsurprisingly, these admissions are corroborated by statistics. When their families are investigated, Black children are 24% more likely to be indicated and 49% more likely to be subject to court ordered surveillance.<sup>46</sup> Black families are more likely to be separated rather than kept together and mandated to engage in services than non-Black families.<sup>47</sup>

Class inequality and the myriad false narratives created about poor families undoubtedly also drive, in part, mandated reporting, thus putting poor families in the cross-hairs of the family policing system. Though class inequality often tracks racial inequality, it is not the sole driver of disparities in mandated reporting; racial bias is evident in family policing statistics regardless of class. In a 2019 study of ACS investigations of New York City neighborhoods, researchers found that even when controlling for poverty, poor neighborhoods with higher percentages of Black and Latine residents had higher rates of investigation.<sup>48</sup> Conversely, another study showed that Black families living in class-privileged neighborhoods were more likely to be investigated than white families.<sup>49</sup> In New York City, if poverty alone explained disparities in reporting, Black and Latine children would experience family policing at twice the rate of white and Asian children. Data show instead that Black and Latine children experience family policing six and five fold that of white and Asian families. This injustice begins so often with the biased call of a mandated reporter.

#### i. Medical and mental health professionals

As the COVID-19 pandemic laid bare, racism and classism are deeply entrenched in health care and have devastating consequences for communities of color.<sup>50</sup> Unsurprisingly, this

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<sup>45</sup> *New York City Administration for Children’s Services Racial Equity Participatory Action Research & System Audit: Findings and Opportunities (Draft)* (Dec. 2020).

<sup>46</sup> NYC Commissioner Jess Dannhauser Talking Points, NY Advisory Committee Meeting May 19, 2023, Committee Detail No. CD-2129685, [https://gsa-geo.my.salesforce.com/sfc/p/#t0000000Gyj0/a/3d000001GNZ4/bZWSVvhmsEkX8XL\\_OehqKh3O3c5XgEJgHtbysv\\_yoew](https://gsa-geo.my.salesforce.com/sfc/p/#t0000000Gyj0/a/3d000001GNZ4/bZWSVvhmsEkX8XL_OehqKh3O3c5XgEJgHtbysv_yoew).

<sup>47</sup> See Elisa Minoff, *Entangled Roots: The Role of Race in Policies that Separate Families*, Center for the Study of Social Policy (2018).

<sup>48</sup> 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>.

<sup>49</sup> *Racial Disparities*, Family Policy Project, <https://familypolicynyc.org/data-brief/racial-disparities/>.

<sup>50</sup> See Yearby et al., *Structural Racism In Historical And Modern US Health Care Policy*, *Health Affairs* (Vol. 41, No. 2) (Feb, 2022), available at <https://www.healthaffairs.org/doi/10.1377/hlthaff.2021.01466>; see also Miller et al., *Childbirth Is Deadlier for Black Families Even When They’re Rich, Expansive Study Finds*, *N.Y. Times* (Feb. 2023), available at <https://www.nytimes.com/interactive/2023/02/12/upshot/child-maternal-mortality-rich-poor.html>; and see Jamila Perritt, M.D., M.P.H., #WhiteCoatsForBlackLives — Addressing Physicians’ Complicity in Criminalizing Communities, *New England J. of Medicine* (Nov. 5, 2020), [https://www.nejm.org/doi/full/10.1056/NEJMp2023305?query=recirc\\_inIssue\\_bottom\\_article](https://www.nejm.org/doi/full/10.1056/NEJMp2023305?query=recirc_inIssue_bottom_article).

entrenched racism and classism also drive medical professionals reporting to the family policing system. Recent data show that medical professionals and mental health professionals make around 11% of mandated calls in New York City and about 16% of calls nationwide.<sup>51</sup>

Black mothers and birthing people experience bias in the medical system nearly from their first prenatal appointment and indeed, throughout their children's lives. Although there exists no mandate in New York that hospitals drug test pregnant and postpartum people and their newborns, nor does there exist a mandate that hospitals report a positive drug test to the SCR—quite the contrary, the law in New York State makes clear that a positive drug test alone is not indicia of neglect<sup>52</sup>—the practice is prevalent.<sup>53</sup> Consistent with racial disparities endemic to the family policing system at large, poor Black pregnant and postpartum people and their newborns are disproportionately targeted by hospitals for drug tests, regardless of whether they met hospital guidelines for testing.<sup>54</sup> Likewise, Black pregnant and postpartum people are also disproportionately reported to the family policing system for positive drug test results.<sup>55</sup>

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<sup>51</sup> U.S. Department of Health & Human Services, Administration for Children and Families, Administration of Children, Youth and Families, Children's Bureau, *Child Maltreatment 2021* (2022), available at <https://www.acf.hhs.gov/cb/report/child-maltreatment-2021>.

<sup>52</sup> See *Nassau Cty. Dep't of Soc. Servs. ex rel. Dante M. v. Denise J.*, 87 N.Y.2d 73 (1995)

<sup>53</sup> There is no law in New York that requires a hospital to drug test a pregnant woman or their newborn. Moreover, New York law does not require hospitals to report to the SCR a positive drug test of a pregnant woman or a newborn. Rather, New York Social Services Law provides that mandated reporters must make a report “when they have reasonable cause to suspect that a child coming before them in their professional or official capacity is an abused or maltreated child.” SSL § 413(1)(a). The law has been clear for more than two decades that without more, neither a positive toxicology for an illegal drug, nor a parent's admission of past drug use, is sufficient, in and of itself, to establish child neglect.

<sup>54</sup> See Hillary Veda Kunnis, et al., *The Effect of Race on Provider Decisions to Test for Illicit Drug Use in the Peripartum Setting*, *J Womens Health* (March 2007); see also Sebastian Schoneich, et al., *Incidence of Newborn Drug Testing and Variations by Birthing Parent Race and Ethnicity Before and After REcreational Cannabis Legalization*, *6 JAMA Network Open* 6 (Mar. 2023), available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC9996400/>; Marc A. Ellsworth, et al., *Infant Race Affects Application of Clinical Guidelines When Screening for Drugs of Abuse in Newborns*, *Pediatrics*, (May 17, 2010). Further supporting the conclusion that race plays a role in hospitals' determinations of who they test during the prenatal period, is the study's finding that even among mother-infant pairs who met the screening criteria, Black infants were three times more likely than white infants to be drug tested. See Brenda Warner Rotzoll, *Black Newborns Likelier to be Drug-Tested: Study*, *Chicago Sun-Times* (Mar. 16, 2001) (noting that “Black babies are more likely than white babies to be tested for cocaine and to be taken away from their mothers if the drug is present, according to the March issue of the Chicago Reporter”); Mishka Terplan, *Cannabis and Pregnancy: Maternal Child Health Implications During a Period of Drug Policy Liberalization*, *104 Preventative Medicine* 46 (2017), available at <https://pubmed.ncbi.nlm.nih.gov/28528172/>; and Oren Yaniv, “WEED OUT: More than a dozen city maternity wards regularly test new moms for marijuana and other drugs,” *NY Daily News* (Dec. 29, 2019), available at <https://www.nydailynews.com/new-york/weed-dozen-city-maternity-wards-regularly-test-new-mothers-marijuana-drugs-article-1.1227292#ixzz31hXS2sUE.fight>.

<sup>55</sup> Sarah C. M. Roberts & Amani Nuru-Jeter, *Universal Screening for Alcohol and Drug Use and Racial Disparities in Child Protective Services Reporting*, *39 J. Behav. Health Serv. Res.* 3 (Jan. 2012), available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3297420/>; see also Kathi L H Harp & Amanda M Bunting, *The Racialized Nature of Child Welfare Policies and the Social Control of Black Bodies*, *27 Soc. Polit.* 258 (Oct. 2019), available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7372952/>

Beyond drug testing, pregnant people of color who refuse certain medical procedures during childbirth are at greater risk of medical professionals calling the family policing system.<sup>56</sup> Similarly, racism in mandated reporting persists postpartum. For example, people of color (especially those who are poor) who have given birth are also disproportionately reported to the family policing system for experiencing postpartum depression and other postpartum mood disorders.<sup>57</sup>

Finally, the medical system does not become more hospitable as Black children grow older. Unchecked racist practices at pediatric emergency rooms in hospitals result in Black children being reported to the system as alleged victims of child abuse at higher rates, despite presenting with the same medical conditions as white children.<sup>58</sup> While white parents whose children present with unexplained injuries or medical conditions are given the benefit of the doubt and often met with compassion, Black and Latine parents are more likely to be suspected as the cause of a child's injury or medical condition.

## ii. Social services

Racially biased surveillance by social service providers, from shelter caseworkers to public assistance case managers, create an insidious reality where poor parents are being reported by the very people from whom they seek assistance in meeting their families' basic needs. Social service providers make eighteen percent of all mandated reports in New York City and around eleven percent nationwide.<sup>59</sup>

In our work as public defenders representing parents and caretakers facing investigation and prosecution by ACS for allegations of child maltreatment, we see how shelters managed by the Department of Homeless Services (DHS) use the threat of a report to the SCR or ACS as a means to enforce shelter rules and control shelter residents. For example, we have represented clients facing ACS investigations and indeed neglect prosecutions for allegations including, but not limited to:

- violating shelter curfew rules;
- seeking babysitting support from and/or providing babysitting support to other shelter residents in moments of need;

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<sup>56</sup> Violence Against Women in the Medical Setting: An Examination the U.S. Foster System, Movement for Family Power and National Advocates for Pregnant Women (May 31, 2019), available at [https://ccrjustice.org/sites/default/files/attach/2019/06/MFP\\_NAPW\\_UN\\_YAW\\_Submission-20190531-Final.pdf](https://ccrjustice.org/sites/default/files/attach/2019/06/MFP_NAPW_UN_YAW_Submission-20190531-Final.pdf)

<sup>57</sup> See *Id.* at 5.

<sup>58</sup> Carole Jenny et al., *Analysis of Missed Cases of Abusive Head Trauma*, 282 JAMA 621, 623 (1999); Wendy G. Lane et al., *Racial Differences in the Evaluation of Pediatric Fractures for Physical Abuse*, 288 JAMA 1603, 1606 tbl. 2 (2002).

<sup>59</sup> July 2023 Monthly Flash Report, *supra* note 33 at 8; U.S. Department of Health & Human Services, Administration for Children and Families, Administration of Children, Youth and Families, Children's Bureau, *Child Maltreatment 2021* (2022), available at <https://www.acf.hhs.gov/cb/report/child-maltreatment-2021>.

- being improperly logged out of the shelter; and
- “inappropriate” living conditions, that are in fact often the realities of living in shelter housing, including cleanliness issues, broken furniture and necessities, need for already requested repairs, and clutter due to a lack of storage space.

Instead of providing support for families who are already navigating tremendously difficult and stressful circumstances, social service providers respond to parents and caretakers with threats and forced family separation.

### iii. Schools

Mandated reporting in schools subjects families to the threat of separation just by seeking education for their children. Educators make a significant percentage of all mandated reports, accounting for 20% of reports in New York City and between 15% and 20% nationwide.<sup>60</sup> Yet at least one study found that 90% of child maltreatment reports by teachers were not substantiated.<sup>61</sup>

Here again, data support what people impacted by the family policing system have long said: educators, like social service providers and medical professionals, use reporting to the family policing system to control families and coerce compliance. For instance, in our work, we have seen schools routinely report Black families when their children refuse school or experience mental health or learning challenges. Moreover, upon a closer look, it becomes clear that a disproportionate number of reports of “neglect” by schools are actually reports of poverty—reports that children are hungry, unkempt, tardy or absent from school.<sup>62</sup> Worse yet, calls are used as a tool to retaliate against parents advocating for their children’s needs in the educational setting. We have represented countless clients who have endured ACS intervention as retaliation for the parents advocating for their children with school administration around issues including, but not limited to, bullying, the school’s failure to provide services required by the child’s Individualized Education Program, and inadequately addressing a child’s disability. In every setting where poor, Black and Latine, and other marginalized families need the support of a system that exists to provide basic services, biased and retaliatory reporting is weaponized to punish and control.

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<sup>60</sup> July 2023 Monthly Flash Report, *supra* note 33 at pg. 8; U.S. Department of Health & Human Services, Administration for Children and Families, Administration of Children, Youth and Families, Children’s Bureau, *Child Maltreatment 2021* (2022), available at <https://www.acf.hhs.gov/cb/report/child-maltreatment-2021>.

<sup>61</sup> Baughman et al., *The Surveillance Tentacles of the Child Welfare System*, 11 Colum. J. Race & L. 501, 517 (2021).

<sup>62</sup> Children’s Rights, *Fighting Institutional Racism at the Front End of the Child Welfare System: A Call to Action* (May 2023) 13, <https://www.childrensrights.org/wp-content/uploads/2021/05/Childrens-Rights-2021-Call-to-Action-Report.pdf>.

### C. Mandated Reporting Denies Poor, Black, and Latine Families Needed Support and Does Not Make Children Safer

Any child separated from their parents experiences devastating psychological and physical effects that can last a lifetime. In describing the effect of migrant children being separated from their parents at the southern U.S. Border, Dr. Charles Nelson, professor of pediatrics at Harvard Medical School, warned that

“[when children are separated from their parents]...their heart rate goes up. Their body releases a flood of stress hormones such as cortisol and adrenaline. Those stress hormones can start killing off dendrites — the little branches in brain cells that transmit messages. In time, the stress can start killing off neurons and — especially in young children — wreaking dramatic and long-term damage, both psychologically and to the physical structure of the brain. “The effect is catastrophic. . . . There’s so much research on this that if people paid attention at all to the science, they would never do this.”<sup>63</sup>

Research on “short stays” in foster placements, defined as those lasting less than thirty days, show how quickly children are traumatized and in complex ways, harming their social and emotional functioning and ability to develop secure attachments.<sup>64</sup>

By the time the suspicions or snap judgments of mandated reporters make their way through the family police into the courts, their statements are often amplified and exaggerated through a devastating real-life game of telephone. Children are separated from their families on the barest of allegations, all in deference to the supposed statements of helping professionals who seldomly appear in court. Even when errors are corrected and children are returned quickly, lasting damage has been done. Ultimately, the commandeering of helping professionals by the family policing system makes parents and families afraid to access the very resources that are needed to support their family’s wellbeing. We see this tragic dynamic play out on a daily basis in our work:

- *One parent was reported to the SCR by her child’s school due to her son’s absences from school. The child’s school was aware of her son’s significant medical issues—from his chronic asthma which caused her son to go to the emergency room on more than one occasion, despite him constantly using his nebulizer medication, to injuries resulting from a dog bite. The child’s school was aware that the medical issues were the reason for the*

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<sup>63</sup> William Wan, *What Separation from Parents does to Children: The Effect is Catastrophic*, Washington Post (June 18, 2018),

[https://www.washingtonpost.com/national/health-science/what-separation-from-parents-does-to-children-the-effect-is-catastrophic/2018/06/18/c00c30ec-732c-11e8-805c-4b67019fcfe4\\_story.html](https://www.washingtonpost.com/national/health-science/what-separation-from-parents-does-to-children-the-effect-is-catastrophic/2018/06/18/c00c30ec-732c-11e8-805c-4b67019fcfe4_story.html).

<sup>64</sup>Vivek S. Sankaran & Christopher Church, *Easy Come, Easy Go: The Plight of Children Who Spend Less than Thirty Days in Foster Care*, 19 U. PA. J.L. & SOC. CHANGE 207 (2017), available at <https://scholarship.law.upenn.edu/jlasc/vol19/iss3/2>.

*child's absences, and indeed, this mother consistently provided medical notes as proof. Instead of supporting this parent, or at the very least, trying to work with her, the school reported her to the SCR. The school's decision to report this parent rather than support her made her feel disrespected and betrayed. Ultimately, this mother decided to remove her son from the school because she lost all trust in the school's ability to serve her son and work with her family.*

- *Ms. S was reported to the SCR by the hospital where Ms. S received prenatal care and gave birth to her child. Early in her pregnancy, Ms. S was drug tested without her knowledge or consent. Although Ms. S had a positive drug test early in her pregnancy, she and her newborn tested negative at birth (again, done without her knowledge, much less consent). Nevertheless, the hospital reported Ms. S to the SCR. Following the hospital's report, ACS took Ms. S's newborn from her. ACS never told her that she did not have to speak with them or that she had rights. Just hours after her child's birth, Ms. S felt like her parental rights were in the process of being terminated. The non-consensual testing and report to the SCR made Ms. S feel betrayed by the hospital. She was left feeling like she could never trust the hospital again. What is more, Ms. S explains that the hospital ruined her experience of the beginning of motherhood.*
- *Ms. A was also reported to the SCR by her child's school. Prior to the school calling in a report to the SCR, Ms. A had good communication with the school and her child was doing well. After her child became upset with Ms. A because she would not allow her child to date, her child reported to the school that she was being mistreated in her home. Instead of reaching out to Ms. A to discuss the child's report, the school immediately called the SCR. The school reached out to Ms. A only after they communicated with ACS. Due to the school's call, ACS and the police came to Ms. A's apartment, which has caused long lasting trauma for Ms. A and her family.*
- *Mr. P and his family have been reported to the SCR by his children's medical providers on several occasions. Since they were young, Mr. P's children have had various health issues. Mr. P and his partner (the children's mother) have worked tirelessly to manage the children's health issues. While the children's medical providers should have been a source of guidance and support, Mr. P believes that, instead, they have been one of the major forces undermining his children's health and wellbeing. The health care providers have judged and stigmatized Mr. P and his family based on how the family looks, talks, and acts, and have used ACS investigations as a tool to discourage Mr. P from asserting his family's right to make informed choices about the type of medical care the children receive. For example, Mr. P and his family have been reported as "non-complaint" for disagreeing with certain medical interventions and asking for alternative courses of treatment. Mr. P and his family also have been reported for missing the children's appointments, even though the missed appointments were due, in large part, to the family having limited resources to travel and/or medical providers giving them incorrect*

*information about the dates and times of their appointments. After being targeted for years by his children's health care providers, Mr. P feels scared of and unsure about working with healthcare providers generally, and worries that every interaction with a doctor may lead to another ACS investigation.*

- *Ms. O was reported to the SCR by DHS shelter staff. Ms. O sought temporary housing for her family. On the day she applied for shelter for her family, she and her teenage daughter argued and her daughter became physical with her. Ms. O tried her best to deescalate the situation, but her teenager ran away. Ms. O had been working with ACS and reached out to her ACS caseworker who told Ms. O to continue with the shelter application process. Her caseworker also advised her to call the police and report her teenager missing. Ms. O filed a missing persons report and her ACS worker reached out to DHS to let them know Ms. O was following the guidance given to her. Nevertheless, the DHS shelter staff threatened to call the SCR on Ms. O based on Ms. O not knowing her daughter's location. Scared that the DHS staff would call in a case on her, Ms. O decided to leave the shelter intake office immediately and reach out to community-based supports in order to find a place for her and her family to stay. To this day, Ms. O does not know if she can ever trust the shelter system again.*

These five examples from our clients illustrate how families are not supported by the family policing system better than any of our analysis and observations ever could. Parents impacted by the system have made clear that what is provided is not support, but coercion, control, trauma and punishment.<sup>65</sup> ACS's budget and budget priorities corroborate impacted parents' experience. In 2022, ACS's executive budget totaled \$2.96 billion; of the agency's costs, foster system and adoption costs and costs related to investigations are among the highest.<sup>66</sup> Moreover, the money that could be used to directly support families and invest in communities is largely spent on ACS's "secondary prevention" services, which "have come to function as mandated extensions of child protective investigations."<sup>67</sup> Even more tellingly, as the New York City Family Policy Project points out, "[prevention] agencies are not allowed to spend preventive dollars on famil[ies] basic needs, such as food, transportation, or diapers."<sup>68</sup>

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<sup>65</sup> See *New York's Family Policing System Fails to Inform Families of their Rights*, Law & Disorder Podcast, May 30, 2023, <https://kpf.org/player/?audio=401870> (at 38:40); see also *Why a Child Welfare 'Miranda Rights' Law Is Essential; A Q&A with Advocate and Organizer Joyce McMillan*, Center for NYC Affairs (June 2, 2021), <http://www.centernyc.org/urban-matters-2/2021/6/2/why-a-child-welfare-miranda-rights-law-is-essential-a-qampa-w-ith-advocate-and-organizer-joyce-mcmillan>; and see Megan Conn, *Pressure Builds to Reduce Racial Disproportionality in New York's Child Welfare System*, The Imprint (Jan. 19, 2021 5:30 p.m.), <https://imprintnews.org/child-welfare-2/new-york-calls-grow-address-racism-child-welfare/51073>; Molly Schwartz, *Do we Need to Abolish Child Protective Services*, Mother Jones (Dec. 10, 2020), <https://www.motherjones.com/politics/2020/12/do-we-need-to-abolish-child-protective-services/>.

<sup>66</sup> See *How NYC's Child Welfare System is Currently Funded and How Funding Can Shift*, Family Policy Project, <https://familypolicynyc.org/2022/02/11/nyc-child-welfare-funding/> (last accessed September 15, 2023).

<sup>67</sup> See *id.*

<sup>68</sup> *Id.*



In an alleged effort to narrow the pathways that thrust families into the family policing system and offer an alleged non-investigatory track for families that are reported to the SCR, ACS has increasingly marketed its Collaborative Assessment, Response, Engagement and Support (CARES) program. ACS claims that is a voluntary, “non-investigative child protection response” where caseworkers “assess the safety of the children and then partner with the family to identify needs, empower the family to make decisions that address the needs of their children, and connect families to appropriate services.”<sup>69</sup> Contrary to ACS’s claims, it is no less coercive than traditional investigations, is far more intrusive in the lives of families, and is therefore not a shift away from the harms of mandated reporting.

In fact, this program greatly expands the reach of ACS in the lives of NYC families. In 2022, over 6,900 calls to the SCR were diverted to the program.<sup>70</sup> ACS utilizes CARES in cases “where there is no immediate or impending danger to children and where there are no allegations of serious child abuse.”<sup>71</sup> In our experience, these are typically low-risk reports that would be “unfounded” following an investigation. Through our representation of parents during traditional family policing and CARES investigations, as well as discussions with parent advocates and other impacted parents, we know that, just like “traditional” ACS investigations, involvement in this program comes with invasive surveillance and uses coercion to compel compliance. And though ACS describes it as voluntary, a parent’s refusal to participate in CARES results in a formal investigation which threatens employment. In some cases, the worker even comes with the police to coerce the parent’s cooperation with the program. If at the start of every case, parents are presented with a difficult choice – cooperate with CARES or face a “traditional” family policing investigation that could result in the removal of your children, family court involvement, and an indicated case that could impact your current or future employment – then the CARES approach cannot be called “voluntary.” These “non-investigative” cases are even more invasive than traditional investigations, collecting detailed and extensive information about the family, providing parents with “homework,” and repeatedly visiting the home for what may be longer than a typical 60-90 day ACS investigation. All of ACS’ interactions with a family are recorded as part of standard case practice, and will be used against a family in the event that a petition is eventually filed in family court. Finally, CARES functions as a shadow system without due process protections or judicial oversight, and where parents typically do not have legal counsel.

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<sup>69</sup> See Testimony to the New York City Council General Welfare Committee: Hearing before NYC City Council Gen. Welfare Committee, Mar. 13, 2023 (Testimony of ACS Commissioner Jess Dannhauser), <https://www.nyc.gov/assets/acs/pdf/testimony/2023/prelim-budget-hearing-fy24.pdf>.

<sup>70</sup> *Id.*

<sup>71</sup> NYC Children: Administration for Children’s Services, *The Collaborative Assessment, Response, Engagement & Support () Approach*, available at <https://www.nyc.gov/site/acs/child-welfare/.page>.

Rather than keeping children and families safe, mandated reporting causes direct harm to New York's most marginalized communities. Residents of these communities are acutely aware of the risks to their family's safety when interacting with helping professionals. Parents cannot safely ask for help, express their concerns to a therapist, seek drug treatment, or ask for assistance from medical providers or teachers without risking the trauma-inducing and harmful response of the system. Instead they face impossible choices about whether to seek necessary support, for fear their request for support will instead be met with surveillance, judgment, punishment and family separation.

### **III. Solutions**

Given the serious harms and limitations of our current mandatory reporting system, we must reconsider our law and practice. 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. We must fully reimagine our policies mandated reporters. We are at an important moment where alternative systems of support are being acknowledged, researched, created, and proven effective. This committee is particularly well-situated to translate this momentum—to reduce the disparate and harmful impact of reporting and investigation, and to rebuild systems of support—into real and long-lasting change.

To do so, we must end our current system of mandating professionals to report families. Teachers, nurses, case managers, therapists, and social workers—professionals best able and most willing to support marginalized families—are largely unaware of the harmful impacts of their reports and/or feel forced to report families to a harmful and biased system of investigation and family separation out of fear of losing their own livelihoods and professional licensure. Ending our current mandate will allow these professionals to focus on providing support to families, as opposed to making harmful reports, and would simultaneously create opportunities to better train and support professionals in their efforts to assist families. Ending mandated reporting would create opportunities to repair trust between marginalized communities and these professionals. It also allows this Committee to better fund the programs and resources that have been demonstrated to provide real lasting support to families.

Rather than further investing in mandates that force frontline workers into a policing role that harms families, our state's resources would be better used by directly supporting families and professionals, and avoiding a need for 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.<sup>72</sup> 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.<sup>73</sup> When New York City families experienced a sudden and drastic decrease in their exposure to mandated reporters during the COVID-19 pandemic lockdown, officials feared that reports of child maltreatment would drop and that because of this reduction in reporting, children would be harmed. Instead, families found support elsewhere, both through imaginative and community-based mutual aid networks and through cash injections from new pandemic government programs.<sup>74</sup> Data from this period reveals that during this lockdown period, there was no rise in child abuse and no subsequent increase in reports.<sup>75</sup> The former Commissioner of the Administration of Children’s Services himself testified that by all normal measures of child well-being, this unplanned reduction in mandated reporting and increase in support to families did not lead to a reduction in safety.<sup>76</sup> In fact, given clear evidence that investigations and family separation are traumatic for children—this reduction of reporting in and of itself may have in fact increased safety for children.

This research, and our collective lived experience during the COVID-19 lockdown, shows that by divesting from systems of mandated reporting and investigation, and investing in tangible support for families, we can simultaneously decrease harm to children caused by these harmful systems, and increase safety. These supports can include direct cash payments; investments in long term, safe, and affordable housing and child care; provision of food, clothing, furniture; investments in community-based mutual aid networks; and educating medical and mental health providers in ways to connect families directly to these resources.

Here in New York State, we have already begun to take action that reduces harmful reporting, assists providers in connecting families to meaningful support, and preserves trusting relationships between parents and providers. For example, a misinterpretation of the Comprehensive Addiction and Recovery Act (CARA)—a piece of federal legislation that

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<sup>72</sup> NYS Unified Ct. Sys. Div. of Tech. & Court Research, Family Court Caseload Activity, <https://app.powerbigov.us/view?r=eyJrIjoiaMTExOWU2ZWEtNWMyNi00MGU1LTlIMmYtODY4OTU5MDA4YjJmIiwidCI6IjM0NTZmZTkYLNWZDEtNDA2ZC1iNWZLTUzNjRiZWwYtGzMyJ9> (last visited Oct. 4, 2008) (for 2023 YTD, noting 17,990 neglect cases filed and 1,410 abuse cases filed).

<sup>73</sup> 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).

<sup>74</sup> Arons, *supra* note 42.

<sup>75</sup> *Id.*

<sup>76</sup> Michael Fitzgerald, *No Evidence of Pandemic Child Abuse Surge in NYC, But Some See Other Crises for Child Welfare System*, The Imprint (June 15, 2021), <https://imprintnews.org/top-stories/no-evidence-of-pandemic-child-abuse-surge-in-new-york-city-but-some-see-other-crises-for-child-welfare-system/55991>; see also Melissa Friedman & Daniella Rohr, *Reducing Family Separations In New York City: The Covid-19 Experiment And A Call For Change*, 123 Colum. L. Rev. 52 (2023), available at [https://columbialawreview.org/wp-content/uploads/2023/03/Friedman-Rohr-Reducing\\_family\\_separations\\_in\\_new\\_york\\_city.pdf](https://columbialawreview.org/wp-content/uploads/2023/03/Friedman-Rohr-Reducing_family_separations_in_new_york_city.pdf).

focuses on substance use and pregnant and birthing people—led medical providers to report pregnant and birthing parents due to substance use, even when this is not what is required by the law. By taking a closer look at the legislation, focusing on support, and working with advocates, the New York State Department of Health created clear guidance that allowed our health systems to remain in compliance with the law, while also training and connecting medical providers to an incredible state-wide database of services and resources that they could directly link their patients to. Medical providers have expressed the great benefit of being able to support rather than report their patients, to whom they have a duty of care.

Beyond ending the mandate currently restricting helping professionals, increasing investment in supportive resources, and connecting professionals to these resources, this committee should:

- initiate and support any efforts to remove all penalties and fines for a failure to report a family. The fear of this punishment - incarceration, loss of licensure, and financial penalties - is often a driver of reporting families;
- oppose all efforts to expand categories of mandated reporters;
- support efforts to repeal CAPTA, which incentivizes maintaining this harmful system of mandated reporting and investigation;
- support efforts to stop New York State from accepting any 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 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 (A109B/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 and screened 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 United States Constitution.

We are grateful to the Assembly Committee on Children & Families for hearing concerns regarding New York State's current system of mandated reporting, and taking steps to ending the current system and its harmful outcomes. We welcome the opportunity to work with the Committee to find ways to invest in strengthening access to needed resources to keep families safe and together.

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