



New York State Defenders Association, Inc.

Public Defense Backup Center

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MEMORANDUM IN SUPPORT

The Family Miranda Rights Act A.1234 (Walker) & S.551 (Brisport)

The New York State Defenders Association (NYSDA) writes to strongly urge passage of the Family Miranda Rights Act, A.1234/S.551, requiring “Child Protective Services” (CPS) to inform parents and caretakers of their rights at the inception of a child protective investigation. This common-sense bill does not create any new rights. It simply ensures that parents and caregivers have information about existing rights so that they can make informed decisions for their families.

NYSDA, through our Public Defense Backup Center and Veterans Defense Program, provides comprehensive services to the approximately 6,000 public defenders, legal aid society lawyers, and court-appointed attorneys in over 130 county-based programs who represent people accused of crime and adults involved in family court cases who cannot afford to hire an attorney. We offer training, legal research, a statewide clearinghouse, and substantial technical and legal assistance that is critical to the effectiveness of overburdened defenders, and vital for improving racial and social justice.

There are few things more terrifying to a parent than receiving a random knock at the door from a representative of Child Protective Services telling you that you are the subject of a CPS investigation. These unannounced visits are often the first step in a long journey of fear and trauma that all too often ends with family separation and termination of parental rights. Despite stakes that could not be higher, there is currently no requirement that CPS workers advise parents and caretakers of their basic rights. Fundamental fairness dictates that this practice must stop.

During the course of investigating allegations of abuse and neglect, CPS investigators regularly pressure parents to allow them to search their home, interview family members, access private medical records, and much more. Parents are rarely, if ever told by CPS that they have the right to consult an attorney, and the right not to allow investigators to search their home and their children. New York law is clear that parents can refuse these requests absent a true emergency or a court order, yet investigators often tell parents that if they decline these demands, then their children will be removed. This scenario plays out regularly throughout the state.

New York has robust safeguards in place to ensure that child protective workers are able to conduct a thorough investigation into allegations of child neglect and abuse. Nothing in the Family Miranda Rights Act curtails these protections or limits the legal mechanisms available to CPS during an investigation. In NYSDA’s experience, most people would rather go to jail than have the government take their children. Yet, individuals accused of a crime are told their Miranda rights while parents and caretakers are expected and deemed to know these rights when the government comes knocking to investigate their family and their ability to parent.

This is a racial justice issue. The breadth of CPS's reach is far-reaching, but it certainly is not equally distributed. No one can reasonably dispute that the family regulatory system is rife with systemic racism, starting with that first fear-inducing knock at the door. Poor, Black, and brown families bear the heaviest burden of CPS involvement. Black families in particular are significantly more likely to be reported, investigated, placed on the statewide registry, and forcibly separated than are families of any other race. In New York City, for example, Black families are five times more likely than white families to be reported to the child abuse hotline, seven times more likely to have a case indicated, and 14 times more likely to be separated. These communities consistently report that the targeting of their families and neighborhoods for child protective investigations feels threatening, degrading, and highly stressful, much like the over-policing by law enforcement in those same communities.

Each year, over 165,000 New York families are subjected to invasive, stressful child protective investigations without being advised of their basic rights. Rights can only be meaningful if they are understood and respected by both government officials and the communities they serve. New York families facing child protective investigations and the risk of family separation deserve to know their rights.

For these reasons, the New York State Defenders Association strongly supports passage of A.1980/S.901.

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