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JUVENILE RIGHTS

Juvenile Rights
Special Litigation and Law Reform Unit

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TESTIMONY

Oversight Hearing – Family Court Operations

Brad Hoylman-Sigal, Chair, NYS Senate Committee on Judiciary
Jabari Brisport, Chair, NYS Senate Committee on Children and Families

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I. Introduction

The Legal Aid Society (LAS) welcomes this opportunity to testify before the New York State Senate Committees on Judiciary and Children & Families regarding operational challenges within New York's Family Courts. We thank Senator Brad Hoylman-Sigal, Chair of the Senate Committee on Judiciary; and Senator Jabari Brisport, Chair of the Senate Committee on Children and Families, for offering the opportunity to highlight critical issues in this area.

II. About The Legal Aid Society

The Legal Aid Society, the nation's oldest and largest not-for-profit legal services organization, is more than a law firm for clients who cannot afford to pay for counsel. It is an indispensable component of the legal, social, and economic fabric of New York City – passionately advocating for low-income individuals and families across a variety of civil, criminal, and juvenile rights matters, while also fighting for legal reform.

The Legal Aid Society operates three major practices — Civil, Criminal and Juvenile Rights Practice through a network of borough, neighborhood, and courthouse offices in 26 locations in New York City. With its annual caseload of more than 300,000 legal matters, The Legal Aid Society takes on more cases for more clients than any other legal services organization in the United States, and it brings a depth and breadth of perspective that is unmatched in the legal profession.

Legal Aid's Juvenile Rights Practice ("JRP") provides comprehensive representation as attorneys for children who appear before the New York City Family Court in abuse, neglect, juvenile delinquency, and other proceedings affecting children's rights and welfare. Each year, LAS staff typically represent approximately 34,000 children. Legal Aid's Civil Practice includes the Family/Domestic Violence Unit, which works with survivors of domestic violence, handling orders of protection, custody, visitation, child and spousal support, as well as uncontested and contested divorces. LAS also works closely with various community-based organizations to make sure all have access to safety and to court. Our perspective comes from daily contact with children, parents, and families, and also from our frequent interactions with the courts, social service providers, and State and City agencies.

In addition to its individual representation, The Legal Aid Society also seeks to create broader, more powerful systemic change for society as a whole through its law reform representation. These efforts have benefitted some two million low-income families and individuals in New York City and the landmark rulings in many of these cases have had a state-wide and national impact. Our experiences engaging in courtroom and other advocacy on behalf of our clients as well as through coalition building with other stakeholders informs our testimony.

The Legal Aid Society's extensive history representing children and families throughout the family courts in all five boroughs places it in a unique position to speak directly to the operational challenges faced by attorneys and our clients alike.

III. The Need for Adequate Funding for Attorneys for Children and Other Family Court Stakeholders

At the outset, it is imperative to recognize that inequities in our Family Courts persist because of the chronic under-funding of every entity that operates within this system. While the NYS Office of Court Administration has begun to address what has been referred to as a second-class system of justice, the time is now to turn this narrative around by recognizing the desperate need for a 2024-2025 Judiciary Budget that provides full and adequate funding and critical resources and services for litigants, including fully funding the Attorneys for Children offices across the state.

A. Attorneys for Children Are Underfunded

Attorneys for children continue to experience salary inequities, high caseloads, and workload demands that far exceed national practice standards. This reality has led to unprecedented attrition and contributed to the burdens faced by the Family Court. Moreover, it threatens the safety and wellbeing of the children and families we serve and the system of justice we strive to uphold. We need fair and adequate funding to carry out our mandate – as children are at the heart of the Family Court matters and warrant vigorous representation.

A critical look at the 150-client cap for Attorneys for Children is overdue. The 150-client cap must be reduced to align with the caseload standards of government and legal services offices (of 55 – 65 cases at any given time) to ensure Attorneys for Children have the capacity to provide the highest quality representation for children and families that come before the NYS Family Courts.

1. Attorneys for Children Must be Assigned in All Proceedings in the Child Protective Continuum, Including During Voluntaries and Adoptions

The New York State Legislature has long recognized the importance of affording legal representation to children in various court proceedings. Indeed, New York's Family Court Act was cited by the U.S. Supreme Court's seminal decision in *Matter of Gault*,[1] which required that children and youth be appointed an attorney in juvenile delinquency proceedings. In the context of child protective, permanency, and termination of parental rights proceedings, the Family Court Act grants a statutory right to counsel for children.[2] This is because the Attorney for the Child (AFC) plays a crucial role not only in the Family Court's determinations of fact and dispositional orders, but in

[1] *Matter of Gault*, 87 S.Ct. 1428
[2] N.Y. Fam. Ct. Act (F.C.A.) §§ 249(a), 1016, 1090(a)

zealously protecting the interests of children and advancing their express wishes.[3] However, despite the widespread recognition that AFCs provide a vital function for children and youth in these life-altering matters, AFCs are routinely left out of other important stages in the child protection continuum: specifically, in the early days of voluntary placements and in the course of adoption proceedings.

The Legal Aid Society represents approximately 600 children each year who are the subject of Voluntary Placement Agreements carried out pursuant to Social Services Law §358-a. The law requires that a voluntary petition be filed, at the latest, 30 days after a child is removed from their home.[4] However, many voluntary petitions are not filed until after a child has been removed from their home for more than 30 days. As a result, children placed in foster care on voluntaries are not timely assigned a lawyer to advocate for their interests. This can have serious ramifications. For instance, when a local social services district places a child into a highly restrictive Qualified Residential Treatment Program (QRTP) and then seeks an assessment of the need for such placement by a Qualified Individual (QI), it is essential that the child have an advocate to counsel them, express their wishes, and provide critical information for this assessment. However, if the child is on a voluntary placement, they do not typically have a lawyer assigned to them at this critical, initial juncture. As a result, the delayed assignment of counsel effectively skirts the intention of the federal Family First Prevention Services Act, which requires that the QI consult with a child's family and permanency team, including their attorney.[5] Denying these particular youth an opportunity to be counseled and represented during this process deprives them of a meaningful voice and reinforces a powerlessness and lack of control that has long-term negative effects on the child's wellbeing. Therefore, a mechanism must be developed to ensure the timely provision of counsel to children placed through Voluntary Placement Agreements, particularly when they may be placed in a QRTP.

<u>The New York State Legislature must pass legislation requiring assignment of counsel to all children as soon as they are placed in foster care, including children placed through voluntary petitions.</u>

Similarly, despite the life-altering nature of adoption proceedings, the attorneys who represent children in child protective, permanency, and termination of parental rights proceedings are routinely not assigned to subsequently represent children in the adoption proceedings that follow. Research indicates that the number of broken adoptions decreases if a court can make informed placement and service decisions during adoption proceedings.[6] The AFC serves a vital function by ensuring not only

[3] Rules of the Chief Judge, § 7.2; STANDARDS FOR ATTORNEYS REPRESENTING CHILDREN IN ADOPTION PROCEEDINGS (N.Y. STATE BAR ASSN. 2015), https://nysba.org/app/uploads/2020/02/Standards-for-Attorneys-Representing-Children.pdf
[4] Soc. Sec. Law (S.S.L.) § 358-a(1)(b)
[5] S.S.L. § 409-h(1)
[6] Dawn J. Post and Brian Zimmerman; *The Revolving Doors of Family Court: Confronting Broken Adoptions*, https://www.clcny.org/files/118689205.pdf; See https://adoptioncouncil.org/publications/adoption-advocate-no-72/; See

that necessary services and supports are in place for the child and their adoptive family, but that the placement itself is appropriate.

It is crucial that New York pass legislation mandating the assignment of attorneys for children in all adoption proceedings that follow Article 10 proceedings.

B. Other Family Court Stakeholders Are Underfunded

Court congestion is an extreme problem in Family Court. Staffing shortages and insufficient resources in Family Court continue to cause egregious court delays, which exacerbate the trauma experienced by children and families. Prior to the pandemic, Family Courts throughout New York State were already overburdened by caseloads, with over half a million cases filed between 2017 and 2019.[7] However, when COVID-19 blanketed our communities, courts closed to all but the most essential matters. The result was an overwhelming backlog of all matters not deemed "urgent" enough to be heard. While the number of filings dropped during the pandemic, they have slowly increased back to near pre-pandemic levels, with 446,022 cases filed in Family Court in 2022.[8] This return to business as usual has created ongoing court congestion, and inadequate resources have led to egregious delays that impede our clients' rights to due process.

When the local district of social services removes a child from their home, children and parents have the right to emergency hearings, pursuant to Family Court Act (F.C.A.) §§ 1027 and 1028, to determine if the removal is necessary or can be ameliorated through services or an order of protection.[9] Although "emergency" 1027 and 1028 hearings are required to be conducted on an expedited basis,[10] this essential statutory protection is routinely rendered ineffective due to court congestion. Frequently, courts simply do not have time to hear, or to complete, these hearings, depriving children and their parents of their essential due process rights and, at times, resulting in our clients remaining separated from their families even though they do not face an imminent risk of harm at home. Families who are

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also Dawn Post, *Adoption Bonuses and Broken Adoptions*, American Bar Association (Jan. 1, 2014), available at https://www.americanbar.org/groups/public_interest/child_law/resources/child_law_practiceonline/child_law_practice/vol-33/january-2014/adoption-bonuses-and-broken-adoptions/.

[7] Hon. Anthony Cannataro and Hon. Tamiko Amaker, 2022 Annual Report: Report of the Chief Administrator of the Courts, New York State Unified Court System, at 61, available at https://www.nycourts.gov/legacyPDFS/22_UCS-Annual_Report.pdf.

[8] *Id.*

[9] F.C.A. § 1027 mandates a hearing when ACS requests a court order to remove a child from their family or within a day of an "emergency removal" conducted without a court order. FCA § 1028 mandates a hearing at the request of a parent or person legally responsible or child who seeks the return of a child who has already been removed.

[10] A hearing pursuant to § 1027 must happen no later than the next court day after the filing of the petition or after the application for such a hearing has been made. A hearing pursuant to § 1028 must be held within three court days of the application and "shall not be adjourned." However, these hearings are often started and then adjourned midway through due to court congestion and delays in the provision of discovery.

separated by the family regulation system also spend months, even years, awaiting a fact-finding and resolution of the Family Court proceeding, typically due to court congestion.

Proceedings other than Article 10 abuse and neglect petitions face similar if not greater delays. Custody and visitation hearings overtake the calendar in the trial parts in some boroughs. Orders of protection and custody/visitation matters still take two to three years to resolve, and the backlog continues to grow. Child support matters are adjourned for six to seven months at a time.

A shortage of court personnel is also contributing to delays in Family Court proceedings. For example, insufficient interpreters throughout the state delay the start of proceedings as court staff rely on alternative resources, such as Language Line, or require adjournments if alternative resources are not available. A shortage of clerks makes Family Court processes disorganized and dehumanizing for parties. Supervised visitation can be delayed for months before a supervisor is available, and forensic custody evaluations are also often delayed, sometimes for more than three or four months, before an evaluator is available. Finally, there is a significant shortage of 18-b panel attorneys, and individuals with custody cases are waiting up to four to five months to be assigned an attorney, while their cases are adjourned, and critical needs remain unmet.

Systemic delays ultimately punish and harm families and children. Delays in access to supervised visitation impede reunification. Delayed family reunification or progress on a case means that children remain mired in the pre-placement shelters or foster care placements far longer than they should – if a remand is even necessary - and at a great detriment to their present and future wellbeing.

As noted in Jeh Charles Johnson's Report from the Special Advisor on Equal Justice in the New York State Courts, these delays disproportionately impact indigent families of color, particularly when judges do not have the opportunity to "slow down, unpack the case before them, look at it from multiple angles and 'surface their own biases and reactions' to the individuals involved."[11] The lengthy delays undermine the confidence of litigants in the system, further disincentivizing them from appearing, and perpetuating the biases that jurists may hold against them from the outset.[12] The well-known phrase that "justice delayed is justice denied" is even truer when children are the subject of proceedings.

<u>New York State must provide adequate funding to increase the number of judges, clerks, translators, forensic evaluators, and visitation supervisors to ensure Family Court proceedings are conducted in a timely manner and that adequate attention is given to each family that comes before the bench.</u>

[11] Jeh Charles Johnson, State of New York Unified Court System, *Report from the Special Adviser on Equal Justice in the New York State Courts*, at 56 (October 1, 2020), available at https://www.nycourts.gov/whatsnew/pdf/SpecialAdviserEqualJusticeReport.pdf.
[12] *Id.* at 57.

IV. Family Court Must Leverage Technology to Increase Access to Justice for Litigants and Their Attorneys

Over the course of the COVID-19 pandemic, court functions were transformed to provide a virtual option for many proceedings. It has been three and a half years since the start of the pandemic, and while the world has resumed its new "normal," many of the technological advances in Family Court remain. However, there is no uniform policy on how and when virtual court proceedings must be conducted – an omission which leads to varying litigant experiences depending on the judge presiding over their case. This disparate treatment opens the door to inequity and limits access to due process protections.

Historically, young people and their families mired in the Family Court system, most of whom are poor, and Black or Latine, have been required to sacrifice entire days – when they could be going to work, going to school, or attending mandated services – to come to court and seek reunification. Families have also been forced to attend services at various locations across the five boroughs to stay together or reunify. As Jeh Charles Johnson's Report on Equal Justice in the New York State Courts notes, such sacrifices come at the expense of being subjected to a "'dehumanizing' and 'demeaning cattle-call culture' in New York City's highest volume courts," which disproportionately impacts people of color.[13] Yet, the pandemic showed us that the court system could function by means of virtual appearances. Being system-involved no longer means that families have to miss work or school.

However, to ensure that we are truly meeting the needs of court-involved families in this "post" pandemic era, it is critical that New York require and fund an evaluation of the litigant experience and specifically examine case outcomes as well as process. An evaluation of the Family Court process that centers impacted children and families will best inform this body of their concerns, needs, and barriers to accessing court services. Such an evaluation will also help determine whether and in what circumstances those who are directly affected by the Family Court system are meaningfully benefiting from this technology. Prior to setting broad-ranging policies that will impact thousands of children and families, it is critical to understand whether there are categories of court appearances (such as case conferences) where a virtual option is beneficial to families. It is also critical to minimize coercion to appear virtually if a family prefers in-person court access. Additionally, it is crucial to assess whether operating virtually has interfered with children's or parents' ability to understand the proceedings and communicate with their attorneys; how virtual court has functioned for unrepresented litigants; whether individuals have been able to access confidential spaces and reliable internet connections to use remote technology; and what tools or

[13] Jeh Charles Johnson, State of New York Unified Court System, *Report from the Special Adviser on Equal Justice in the New York State Courts*, at 54 (October 1, 2020), available at https://www.nycourts.gov/whatsnew/pdf/SpecialAdviserEqualJusticeReport.pdf.

skills litigants need to effectively participate virtually. Certainly, no such policy should permit a party to be required to utilize virtual appearances over their own objection.

A State-funded evaluation of litigant experience with virtual court is necessary to craft effective, equitable, and uniform procedures.

Furthermore, recent limitations on access to the Unified Court Management System ("UCMS") have also significantly limited the ability of Family Court litigants and their attorneys to access court records necessary for effective advocacy. UCMS permits individuals to check if their case has been calendared, find their next court date, and immediately view and print all signed orders and documents in their matter. However, in the past few years, UCMS has restricted its search function to only allow searches by case docket and has restricted access by attorneys to only a particular borough. Parties with newly filed petitions often do not have or know their docket number and cannot use the system. In addition, attorneys who routinely represent clients in Family Court can see only the docket they are assigned to, depriving them of a full picture of a client's cases and history. The lack of full UCMS access has also made it impossible for institutional providers to conduct full, comprehensive conflict checks as we are unable to get information regarding the full breadth of our clients' other cases. The lack of access causes direct harm to the parties involved, results in further racial and economic inequity, and impedes access to justice.[14]

Finally, it is crucial that electronic filing through the New York State Courts Electronic Filing (NYSCEF) system be made available in all Family Courts. While it may be possible for attorneys to submit documents to the court electronically though the Electronic Document Delivery System (EDDS), our staff report that EDDS is disorganized and documents submitted through EDDS often do not make their way to the appropriate judges, contributing to delays. Furthermore, unlike NYSCEF, where attorneys and litigants may consent to service via NYSCEF filing, delivery of documents through EDDS does not constitute service on any other party, further impeding access to Family Courts, particularly for unrepresented litigants.

The Legislature must direct the NYS Office of Court Administration to reinstate the ability to search by client name and to search all boroughs in UCMS and must promptly implement electronical filing statewide.

[14] See The Impact of COVID-19 on the New York City Family Court: Recommendations on Improving Access to Justice for All Litigants, The New York City Family Court COVID Work Group A Joint Project of the New York City Bar Association and The Fund for Modern Courts, (Jan. 2022) https://s3.amazonaws.com/documents.nycbar.org/files/Final_Family_Court_Report_22.2.4.pdf); see also, Letter to Judge Ruiz Regarding Equitable Access to Justice in the NYC Family Courts, The Council on Children (July 20, 2021) https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/letter-to-judge-ruiz)

V. Ensure Sufficient Funding of ATD/ATP Programs to Meet the Needs of Court-Involved Youth

It is well established that Alternatives to Detention (ATD) and Alternatives to Placement (ATP) are essential tools for a just and effective juvenile legal system. Detention increases the risk of deeper system involvement, while programs that connect youth to pro-social services and a network of people who can provide support are some of the most protective factors that ensure a young person's future success. The success of an ATD or ATP program may depend largely on the appropriate matching to the needs of the young person and/or their family. For example, particularly for youth engaged in problematic behaviors stemming from challenges in their environment, Multisystemic Therapy (MST) is a community and family-based therapeutic model scientifically proven to disrupt problem behaviors in at-risk youth. As such, programs such as Esperanza and Juvenile Justice Initiative (JJI) that offer MST have been critical for court-involved youth. Unfortunately, Esperanza has now closed its doors due to lack of funding and it is our understanding that JJI cannot accommodate new youth at this time.

Furthermore, New York City's Department of Probation recently revoked, with very little notice and no explanation, its multi-year contract with the Impact Program as developed by the Center for Alternative Sentencing and Employment Services (CASES). While such a program was no substitute for those offering MST services, it was a crucial addition to the already inadequate array of ATP programs available to young people.

New York State must ensure that adequate programming exists to serve the needs of court-involved young people.

VI. Raise The Age Has Been a Success and Should Be Properly Funded

It is unequivocal: Raise the Age (RTA) has been a success. It has not led to more juvenile violent crime, as originally predicted by critics of the bill. In fact, arrests in New York City have been decreasing since before the passage of RTA. Since 2013, New York City has seen a 77% decrease in adolescent arrests. Among serious offenses, including violent crime, the City has seen a decrease of 48%.[15] A recent report from John Jay College of Criminal Justice that analyzed New York Police Department data found that the share of felony dangerous weapons offenses committed by people under 18 has gone down since RTA was passed in 2017.[16] Those under 18 also represented a smaller share of felony weapons arrests in 2022 (8%) than in 2014 (9%) or 2006 (11%).[17]

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[15] Analysis of NYPD data by CCC for 2013-2022. https://www.google.com/url?q=https://cccnewyork-my.sharepoint.com/:x:/g/personal/conea_cccnewyork_org/EYAMWzovMzdAoamAPEKVwU0BmYPawdnhGUfOGB7BsWbc9Q?e%3DeKOMMX&sa=D&source=docs&ust=1691527954733370&usg=AOvVaw2FiyCcr7Ir2UFxoCG9aYtS

[16] *Did 'Raise the Age' Lead to More Juvenile Violent Crime?*, John Jay Research & Evaluation Center (Feb. 21, 2023), available at https://new.jjay.cuny.edu/news-events/news/did-raise-age-lead-more-juvenile-violent-crime-0.

[17] *Id.*

One of the key components of RTA is investment in programs and services for adolescents. These programs are intended to create off-ramps and enhance rehabilitation for young people who become systems involved. This component of RTA has been beset by problems, and RTA implementation has suffered. While $800 million was allocated statewide for RTA over the first 4 years, it has been reported that only $270 million was actually invested in communities during that time.[18] The reimbursement approval process for counties is cumbersome, and it is extremely challenging for small community-based organizations closest to the young people they serve to receive funding. In addition, since RTA was passed, New York City, home to half of the youth involved in the juvenile and criminal legal system, has been excluded from receiving state funding. Permitting the City to access these dollars is necessary now.

VII. The Number of Families Needlessly Ensnared in The Family Regulation System Must Be Reduced

While it is essential to adequately fund the stakeholders in the family regulation system, it is equally essential to work to dramatically reduce the number of families needlessly subjected to the system. In New York City, 44% of Black children and 43% of Latinx children will be the subject of an investigation before their 18th birthday.[19] In fiscal year 2022 alone, 91% of all NY State Central Register (SCR) reports from New York City targeted non-white families – only 28% of which were indicated.[20] Indeed, the vast majority of reports to the SCR from the entire state are unfounded after an investigation. In 2022, 76.1% of the 148,087 total reports to the SCR in New York State were

[18] Brendon J. Lyons, *'Raise the Age' falling short on transforming troubled youth*, Times Union (Feb. 5, 2022) available at https://www.timesunion.com/state/article/Raise-the-age-16802730.php.https://nam10.safelinks.protection.outlook.com/?url=https%3A%2F%2Fwww.timesunion.com%2Fstate%2Farticle%2FRaise-the-age-16802730.php&data=05%7C01%7CKSchertz%40legal-aid.org%7Cbb7508e431174f90ad4f08dbdbc88000%7Cf226ccf384ef49ca9b0a9b565b2f0f06%7C0%7C0%7C638345426430121564%7CUnknown%7CTWFpbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzIiLCJBTiI6Ik1haWwiLCJXVCI6Mn0%3D%7C3000%7C%7C%7C&sdata=1hCPEZrbVXnL8G93O2zpzIAQx0PLXidjXz4sltlyMi8%3D&reserved=0

[19] Rise, *A Call to Action: New Research Finds Extremely High Rates of Investigations of Black, Brown and Native Families* (2021), available at . https://www.risemagazine.org/2021/11/a-call-to-action-research/.

[20] Administration for Children's Services, *Demographics of Children and Parents at Steps in the Child Welfare System, FY 2022*, available at https://www.nyc.gov/assets/acs/pdf/data-analysis/2022/demographics-children-fy-2022.pdf. This calculation is derived from the number of families who identified as African American/Black non-Hispanic, Hispanic/Latinx, Asian/Pacific Islander non-Hispanic, and Multiple Race non-Hispanic. Excluded from this calculation were families identifying as White non-Hispanic and Other/unknown.

unfounded.[21] Three pending bills would take important steps to reduce unnecessary intervention in families, particularly families of color.

A. New York Must Pass the Family Miranda Rights Act (A1980/ S901)

To help reduce unnecessary removals and effectively reducing filings of Article 10 proceedings, New York must also pass the Family Miranda Rights Act. In New York, the Local Department of Social Services is not required to inform parents of their rights *at any point* during a child protective investigation – including that, absent a court order, a parent need not speak with a child protective services worker or permit the worker to enter their home, or provide information or submit to drug testing, and also that they are entitled to be advised of the allegations against them and to have an attorney present during any interview by child protective services. During that 60-day investigation period, children can be subject to strip searches (even where the allegations do not involve any acts of physical or sexual abuse), children can be pulled from their classes during school, and children are subject to invasive questioning by strangers. The Family Miranda Rights Act would require workers to inform parents and caretakers of their rights at the *start* of an investigation.[22] Given the coercive nature of the family regulation system, it is essential that this basic information be routinely shared with parents. We additionally believe the Legislature should require that children be advised of those rights in age-appropriate language. These measures would increase transparency and help reduce trauma to families *caused* by child protective services investigations when children and parents are faced with the coercive power of state intervention into family privacy.

B. New York Must Pass the Anti-Harassment in Reporting Act (A2478/S902)

While the vast majority of calls to the NY State Central Register (SCR) come from mandated reporters who are required to provide their identity, New York must also address the issues stemming from reports made by anonymous callers. Currently, anyone may make an anonymous report of child maltreatment to the SCR, meaning they do not have to provide any personal information. The result is abuse of the system by individuals seeking to harass parents and caretakers through false and malicious reporting. Common perpetrators of such harassment are spiteful ex-partners, landlords, and neighbors. Alarmingly, domestic violence survivors report that their abusers routinely use anonymous reporting as a harassment tool.

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[21] *2022 Monitoring and Analysis Profiles with Selected Trend Data: 2018-2022*, NYS OCFS, Office of Strategic Planning and Pol'y Dvlpmnt., Bureau of Research, Eval. & Performance Analytics, *available at* https://ocfs.ny.gov/reports/maps/counties/New%20York%20State.pdf.

[22] It should be noted that the Family Miranda Act would not prevent a child protective services worker who has reasonable cause to believe that exigent circumstances pose an imminent danger to a child's life or health from taking any action to protect the child that is currently authorized under New York law before providing information to the parent or caretaker about their rights during an investigation. See, e.g., Family Court Act § 1024.

Given the harm to children and families caused by unnecessary investigations, it is imperative that New York pass the Anti-Harassment in Reporting Act, which would deter harmful (and wasteful)[23] reports by requiring that callers provide their name and contact information when making the report and that the SCR maintain that information confidentially.

C. New York Must *Pass* the Informed Consent Act (A109/S320)

The family regulation system unjustifiably targets poor families, particularly families of color, through drug testing practices. Medical providers, especially in public hospitals which often treat poor people of color, routinely administer nonconsensual drug testing of pregnant people, new parents, and their newborns. When there is a positive toxicology, rather than receiving support or referrals to rehabilitative services, new parents are met by a CPS caseworker at their bedside, where they are interrogated, sometimes mere hours after giving birth, often to be separated from their newborn shortly thereafter. This is true even though New York law makes clear that a positive toxicology test alone does not in and of itself suggest that an infant is harmed or is at risk of harm.[24]

The Informed Consent Act would require medical providers to obtain oral and written consent from pregnant and perinatal people before drug testing them or their newborns. The bill is carefully crafted to ensure that in case of a medical emergency, providers may test or verbally screen individuals without their specific and informed consent. Obtaining specific and informed consent prior to administering a drug test is recommended by several leading medical associations, including the American College of Obstetricians and Gynecologists (ACOG)[25] and the American Academy of Pediatrics.[26] While parents may still experience coercion to consent to testing, this bill is a significant step towards making the public healthcare system and family regulation system less racially and economically biased.

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[23] "A March 2022 report from New York's Adoptive and Foster Family Coalition found that from 2015 to 2019, 7% of calls to the SCR were anonymous and . . . only 3% of anonymous reports were substantiated." Supra note 29 at 76 (citing Madison Hunt, 'Weaponizing' Calls to CPS Hotline: New York Legislation Would Deter False Reports, Imprint [May 19, 2022] https://imprintnews.org/child-welfare2/new-york-bill-false-hotline-reports/65267 [on file with the Columbia Law Review]).

[24] New York law does not require reporting to the SCR of a positive drug test of a mother or newborn at birth because, pursuant to Family Court Act § 1012 and § 1046(a)(iii), substance use in and of itself does not establish neglect. Nassau County Dept. of Social Services on Behalf of Dante M. v. Denise J., 87 NY2d 73 (Ct of Appeals 1995).

[25] American College of Obstetricians and Gynecologists Committee on Health Care for Underserved Women, *Opposition to Criminalization of Individuals During Pregnancy and the Postpartum Period*, Statement of Policy (Dec. 2020), https://www.acog.org/clinical-information/policy-and-position-statements/statements-of-policy/2020/opposition-criminalization-of-individuals-pregnancy-and-postpartum-period.

[26] American Academy of Pediatrics, A Public Health Response to Opioid Use in Pregnancy (2017), https://publications.aap.org/pediatrics/article/139/3/e20164070/53768/A-Public-Health-Response-to-Opioid-Use-in.

VIII. Conclusion

Thank you again to the Senate Committees on Judiciary, and Children and Families for looking closely at how to improve Family Court operations. We are happy to answer any questions.

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