
Family Court Justice: Miranda Rights for Families

By Justine Olderman and Wesley Caines

The Bronx Defenders

October 2021

SUMMARY

QUESTION: HOW CAN NEW YORK CITY REFORM ITS FAMILY REGULATION SYSTEM TO BETTER SERVE FAMILIES AND COMMUNITIES OF COLOR?

WHY IMPORTANT:

1. *Opportunity to improve fairness (solution can limit abuses and promote more equitable treatment of city residents and families in low-income communities of color).*
2. *Opportunity to increase trust in government and social services (by making communities less fearful of invasive visits and intrusive searches).*
3. *Opportunity to curb racial biases and reduce racial inequities (by limiting the trauma that children in certain communities' face).*

RECOMMENDATIONS:

1. *Require caseworkers with New York City's Administration for Children's Services (ACS) to fully inform parents and caregivers of their rights at the initial point of contact between the protective services representative and the parent/caretaker during an ACS investigation.*

CONSTRAINTS:

1. *Requires some state coordination (calls alleging suspected child maltreatment are made to the State Central Registry).*
2. *Opponents or skeptics could argue that New York already has robust laws in place to protect parents and caregivers, including the stipulation that ACS cannot enter a home and interview children without a court order or a parent's permission*
3. *Opponents or skeptics could argue that these new rules could stymie ACS investigations*
4. *Enforcement questions could arise - if the proposals are enacted, how can the city be sure that ACS caseworkers are informing residents of their rights, especially during the early stages when there will still be fear and distrust in the community?*



INTRODUCTION

The COVID-19 pandemic has exposed and exacerbated existing racial and economic inequities in New York City. At the same time, New Yorkers have taken to the streets to decry the harms to communities of color that are disproportionately the targets of police surveillance, enforcement, and abuse. As the City reckons with its current policing model, the family regulation system¹ — or the so-called “child welfare” system — must face the same scrutiny. A growing movement, led by families harmed by the system, is demanding that the City recognize and take responsibility for the harm the system has caused families and communities of color. The “Black Families Matter” movement is showing us that the racial inequities of the past continue to plague communities today, particularly when it comes to the removal of children.

Parents and caregivers describe the initial knock at their door by an Administration for Children’s Services (ACS) child protective worker as a deeply unsettling event, not only for themselves, but for their children. Child protective workers often provide little information or even misinformation to parents about the scope of the government’s power in order to gain access to their homes, compounding the fear of family separation. The vast majority of parents who are investigated are not represented by lawyers and do not have adequate information about the process or their rights in making critical decisions. Few are equipped with the information necessary to adequately respond to an investigation. The failure to advise parents of their rights often results in confusion, distress, and panic for both the adults and the children involved. Because of a “remove now, ask questions later” mentality, the result is that families are often separated, traumatically and unnecessarily, until counsel is provided when the case comes to court.

ACS caseworkers should be required to advise parents and caregivers who are the subject of an ACS investigation of their rights in an investigation, including the right to contact an attorney, at the first point of contact, similar to the Miranda rights that are provided when a person is placed under arrest. Requiring ACS to advise people of their rights, both orally and in writing, will ensure that ACS retains all the necessary legal authority to protect children, while providing the information and transparency parents need to protect their families from unlawful abuse of that authority. This would not create any new rights, but simply require ACS to give parents and caregivers critical information at the time they need it most.

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



BACKGROUND

Across the United States, 37% of all children will experience an investigation by the family regulation system; that is, one in three people will have their family integrity threatened during the course of their childhood.² Among Black children in particular, that number jumps to more than 50%.³ Each year, approximately 60,000 calls are made to the State Central Registry (SCR) alleging suspected child maltreatment.⁴ In New York City, each call triggers an investigation by ACS. In 2020 alone, ACS conducted over 41,000 investigations of NYC families.⁵ Allegations of neglect, which are often nothing more than a proxy for poverty, account for 60% of the calls to the SCR in NYC.⁶ It is a widespread misconception that most children are separated from their families in the family regulation system because their parents have abused or abandoned them. In fact, poverty is the leading predictor of family regulation system involvement and studies show that poor families are 22 times more likely to be involved in the family court system.⁷ In fact, allegations of neglect—which often include such issues as a parent’s failure to provide adequate food, shelter or medical care—compose the vast majority of family regulation system cases in the nation.

According to analysis done by the Center for New York City Affairs, “[t]he 10 community districts in New York City with the highest rates of child poverty had rates of investigation four times higher, on average, than the 10 districts with the lowest child poverty. And among districts with similar poverty rates, those with higher concentrations of Black and Latino residents tended to have higher rates of investigation.”⁸ Indeed, the vast majority of the calls to the SCR are made against Black, Latinx, low-income, and other socially marginalized families. Many of these calls are made anonymously and are never substantiated or filed in court. In about 65% of its investigations, ACS finds no credible evidence of child maltreatment.⁹

² Hyunil Kim, Christopher Wildeman, Melissa Jonson-Reid, Brett Drake, “Lifetime Prevalence of Investigating Child Maltreatment Among US Children”, *American Journal of Public Health* 107, no. 2 (February 1, 2017): pp. 274-280.

³ Id.

⁴ FLASH Monthly Indicator Report (January 2021) <https://www1.nyc.gov/assets/acs/pdf/data-analysis/flashReports/2021/01.pdf>

⁵ Id.

⁶ Id.

⁷ Martin Guggenheim, General Overview of Child Protection Laws in the United States, in *REPRESENTING PARENTS IN CHILD WELFARE CASES: ADVICE AND GUIDANCE FOR FAMILY DEFENDERS* 1, 17 (Martin Guggenheim & Vivek S. Sankaran eds., 2015)

⁸ Angela Butel, Data Brief: Child Welfare Investigations and New York City Neighborhoods. The New School; The Center For New York Affairs (June 2019) <https://static1.squarespace.com/static/53ee4f0be4b015b9c3690d84/t/5d12746c3cdaa000017dfc2a/1561490541660/DataBrief.pdf>.

⁹ FLASH Monthly Indicator Report (January 2021) <https://www1.nyc.gov/assets/acs/pdf/data-analysis/flashReports/2021/01.pdf>



Nevertheless, the law requires that the government initiate an intrusive investigation of the parents, their children, and homes whenever a call is accepted by the SCR. During these investigations — which carry with them the threat that a child will be forcibly removed from a home even where the allegations are meritless — families are subjected to invasive, stressful, and traumatic treatment. The trauma of these investigations is amplified because parents are left in the dark about the process and their right to make decisions about how the system intervenes in their family.

The number of investigations conducted by ACS is often driven by high-profile stories of child deaths in the press. A report by the New School's Center for New York City Affairs found that between October 2016 and May 2018, “[more than a year and a half after a pair of widely publicized child deaths, New York City’s child welfare agency continued] to investigate a dramatically higher number of families” than in previous years, filing “Family Court petitions involving close to 26,000 children — a 54 percent jump over a corresponding timespan beginning in 2014.”¹⁰ The number of “emergency removals” increased by 30% over the same period.¹¹

PARENTS AND CAREGIVERS ARE KEPT IN THE DARK

New York City families are regularly subjected to invasive child protective investigations without being advised of their basic rights. The families who allow ACS investigators into their homes without full knowledge of their rights — and who are never given a chance to speak with an attorney — are overwhelmingly people of color from low-income communities. New York law is clear that, absent a true emergency, ACS cannot enter a home and interview children without a court order or a parent’s permission.¹² Caseworkers, however, routinely do not communicate even these basic rights to parents and regularly tell parents that if they fail to cooperate with their demands, their children will be removed. Parents receive no explanation of their rights during an investigation, are rarely informed of the allegations against them, and are not told of their right to speak to an attorney.

In 1966, the United States Supreme Court decided the landmark case of *Miranda v. Arizona*, a case that changed American culture by requiring police to advise people

¹⁰ Abigail Kramer, *Child Welfare Surge Continues: Family Court Cases, Emergency Child Removals Remain Up*. The New School; The Center For New York Affairs (July 2018) <http://www.centernyc.org/child-welfare-surge-continues>

¹¹ Id.

¹² See NY FAM CT § 1024 (permitting emergency intervention where there is an “imminent danger to the child’s life or health” and “there is not time enough to apply for an order”); NY FAM CT § 1034 (permitting a child protective agency to seek a pre-petition court order to gain access to the home environment during the course of an investigation upon a showing that “probable cause” exists); see also *In re Smith Children*, 891 N.Y.S.2d 628 (Family Court 2009).



placed under arrest of their rights. Miranda warnings were a critical first step toward reigning in police abuses because rights can only be meaningful if they are understood by government officials and the communities they serve. Yet in child welfare proceedings, where missteps carry the profound risk of unjustified family separation, parents typically remain unaware of their rights. Frequently, parents are actively misled about their rights and pressured to acquiesce to demands that are harmful to their families. This practice antiquated, unnecessary, and harms New York families.

A. The Harms of Misinformation During the Investigation

Families are rarely told why they are being investigated or who made the allegations. While ACS is required by law to provide certain notices to a parent or caregiver, it is not required to provide these notices at the initial point of contact. Moreover, the required notice does not communicate the immediate rights at stake during the investigation.¹³ Instead of providing parents with immediate notice of their rights, ACS demands access to the home without a warrant or court order. Parents are often led to believe that if they do not cooperate, their children will be taken from their care. Once in the home, ACS checks every room and often searches cabinets, drawers, the refrigerator, and medicine cabinets. Parents feel powerless and fearful during these invasive visits and intrusive government searches.

All parents want their children to be happy, healthy, and well-cared for. Parents regularly acknowledge that they need assistance to provide for their children because of the poverty that disadvantages their families. However, when ACS knocks on the door, families involved with these investigations do not experience them as providing help. These are not social work interactions; instead, parents experience them as prosecutions. Parents describing the experience of an investigation say:

“They treat us as less than human.”

“I can’t trust somebody on services, if I can’t trust them to tell me my rights.”

“They say they want us to trust them, but they are being deceitful.”

“Parents do need help, but they don’t want it from people who make them feel like less than a person.”

Any trust established at the outset of the investigation is later shattered when the reality of an investigation is revealed. Parents feel betrayed by a person who

¹³ See SSL § 424(6)(a); 18 NYCRR 432.2(b)(3)(ii)(f) (requiring CPS to provide a written notification of the existence of the report and the subject’s right to seek to amend the report); 18 NYCRR 432.2(b)(3)(ii)(f) & 432.3(j) (requiring notice to be mailed or personally delivered within seven days of the report).



purported to be there to help, but ultimately prosecutes them, and are less likely to accept services from a worker when this trust is destroyed.

B. The Government Investigation

When ACS performs its investigation, it routinely conducts an in-depth interview of the parent. The information obtained during that interview is highly personal and can form the basis of allegations made against the parent in either an administrative or court proceeding. The interview involves soliciting information about diagnoses, medications, disciplinary methods used, sexual partners, family contact information, history of ACS involvement, history of substance use including drugs, alcohol, and cigarettes, history of domestic violence and much more. Any part of this interview can lead to a parent making a statement that leads to the filing of a child maltreatment petition. ACS seldom, if ever, advises parents of their right to seek legal advice before proceeding with these interviews. Indeed, ACS caseworkers routinely tell parents that they are merely there to help families access services, and then uses information obtained under such auspices to police the family and charge parents with neglect.

C. CPS Worker Interactions with the Children

ACS routinely arrives at people's homes in the middle of the night and tells parents that they must interview the child and see the child's unclothed body in order to check the child for marks or bruises. If the children are sleeping, the parent will be forced to wake them up and get them from their beds to be examined by a virtual stranger. The CPS worker will also insist that they need to speak with the child alone. Parents are not told of their right to refuse to consent to such intrusive bodily examinations or upsetting interviews on their children's behalf. The extent of trauma a child experiences, and the powerlessness a parent feels under these circumstances, cannot be underestimated.

D. Service Referrals

During an investigation, prior to any court involvement, ACS will often ask parents to do a variety of things, insisting that the variety of referrals will assist the family. These include submitting to drug tests, mental health evaluations, preventive services, and signing broad releases to allow ACS to speak with medical and mental health providers for the child or the parent. Parents may even be asked to sign blank HIPAA releases, without all fields filled out. Sometimes ACS will insist that a parent take a child to be physically examined, telling the parent to go to doctors directly affiliated with ACS rather than taking their child to their own pediatrician. Any information gleaned from these referrals can be used against a family in an administrative or family court proceeding.

When parents are misinformed or misunderstand their rights and their options during child protective investigation, they cannot make decisions that are in the best interests of their families. This misinformation is harmful to New York children and



families and can be remedied by simply advising parents of their rights at first contact between the family and the ACS.

THE SOLUTION: MIRANDA RIGHTS FOR FAMILIES

Ensuring that parents have access to their rights during an investigation will allow parents to make informed decisions for their family and will make this investigation process less frightening and traumatizing for the whole family. ACS should advise parents and caretakers of the following rights at the initial point of contact in a CPS investigation:

- The parent or caretaker is not required, unless court ordered, to permit the child protective services representative to enter the residence of the parent or caretaker.
- The parent or caretaker who is the subject of the investigation is entitled to be informed of the allegations being investigated.
- The parent or caretaker is not required, unless court ordered, to speak with the child protective services representative, and any statement made by the parent, caretaker or other family member may be used against the parent or caretaker in an administrative or court proceeding.
- The parent or caretaker is entitled to seek the advice of an attorney and to have an attorney present when the parent or caretaker is questioned by a child protective representative.
- The parent or caretaker is not required unless court ordered to allow a child protective services representative to interview or examine a child.
- The parent or caretaker is not required, unless court ordered, to agree to any requests made by a child protective services representative, including, but not limited to, requests to sign a release of information, to take a drug or alcohol test, or to submit to a mental health evaluation; and
- Contact information for resources which may be available to parents and caretakers during a child protective services investigation, including legal services from a designated organization.

Armed with critical information about their rights, parents and caretakers will be in a better position to make informed decisions about the best course of action for their family.

A. The Benefits of Advising Parents of their Rights

The rights of families are best protected when parents are fully informed of their rights and responsibilities so that they can make the best decisions for their family.



Parents who find themselves the subject of a child protective investigation are most often people of color in low-income communities. These communities often do not have the same access to legal help that a person of privilege would have under the same circumstances. When parents are able to connect with legal service providers or other community resources during the investigation, they can have support from community resources who can help ensure the parent has all the information to take the steps that are in the best interest of their family and can help explain the investigation process. The goal of giving parents information about their rights at the first point of contact is not to stymie the investigation. Instead, it is about ensuring that parents are aware of the significance of the investigation and the rights that are at stake in that moment — ranging from privacy concerns to familial integrity.

B. Understanding the Role of ACS Ensures a Better Relationship with the Family

Families often have a very strained relationship with the ACS worker throughout the existence of an investigation or subsequent legal proceeding. This is often due to the breakdown of trust when the information gained during the investigation — using observations of the home, interviews, service referrals, and signed releases — is used as a basis for filing an abuse or neglect case against the parent, especially when it was not clearly explained that this information could be used against them in court. With the assistance of attorneys, social workers, and other family and community resources, the parent can form a working relationship with ACS that is in the best interest of their family and based on transparency, rather than misinformation.

C. Requiring ACS to Advise Families of Their Rights Would Not Modify New York’s Strong Protections for Children

New York has robust safeguards in place to ensure that ACS is able to conduct a thorough investigation into allegations of child maltreatment. Advising parents of their rights would not curtail these protections or limits the legal mechanisms available to ACS during an investigation. Under Section 1034 of the Family Court Act, child protective agencies can seek court orders to help them facilitate an investigation and protect children even before they have filed a case in court. In those rare situations where there is credible evidence to believe a child is in immediate danger, ACS has legal authority to take a child into custody without a court order.¹⁴ Moreover, the Family Court Act specifically allows ACS to obtain orders to gain access to a home or remove a child, orders of protection, or other forms of intervention prior to filing a petition in court.¹⁵ It is notable that these legal mechanisms are rarely used. Instead, ACS routinely enters homes without meaningful consent and imposes authority not based in law.

¹⁴ Family Court Act §1024

¹⁵ Family Court Act §1022

