

**2023 – 2024 Legislative Memorandum**

**Subject: Ensuring Parents Know Their Rights in Child Protective Investigations  
S.901 (Brisport) / A.1980 (Walker)**

**Position: SUPPORT**

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Tens of thousands of New York families face investigation by Child Protective Services (CPS) every year. These investigations typically begin with a knock on the door, often at night, by a case worker who insists that the parent must let them into their home, answer deeply personal questions, provide access to their children for questioning and strip body searches, and sign releases for access to medical and school records. Case workers frequently pressure parents to comply with their demands, even threatening to involve police if parents refuse. They rarely advise parents that they in fact have rights, including the right to be informed of the allegations against them, to speak to an attorney, and to request that CPS obtain a court order before entering their home, absent a true emergency.

In the law enforcement context, police are required to read people in custody their rights, commonly known as a *Miranda* warning.<sup>1</sup> But CPS caseworkers have no equivalent mandate to inform parents of their rights in a child protective investigation despite the high stakes, including the possibility of permanent family separation. As a result, parents are left frightened, confused, and vulnerable to revealing more information than necessary, which may be used against them in family court proceedings.

Keeping parents in the dark about their rights is particularly harmful for low-income Black and Brown families, who are investigated by CPS at disproportionate rates and tend to face harsher consequences as the result of an investigation.<sup>2</sup> Black children are more than twice as likely as white children to be the subject of a CPS

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<sup>1</sup> *Miranda v. Arizona*, 384 U.S. 436 (1966).

<sup>2</sup> See, e.g., New York State Bar Association Committee on Families and the Law, *Report and Recommendations on Racial Justice and Child Welfare* (March 2022), available at <https://nysba.org/app/uploads/2022/03/Committee-on-Families-and-the-Law-report-and-all-comments.pdf>.

report and are accordingly disproportionately represented in foster care.<sup>3</sup> For these families, knowing their rights at a pivotal moment could mean the difference between remaining together or being traumatically separated.

S5484-B (Brisport) / A6792-A (Walker) would empower families in these situations by requiring CPS agents to provide parents with their rights in a child protective investigation at the first point of contact. For example, CPS workers would be required to tell parents that they have a right to remain silent and contact an attorney, and that they do not have to sign releases to access their confidential medical information. This would allow them to make informed decisions that best serve their family, including the crucial decision to seek timely legal representation.

Notably, this legislation would not create any new substantive rights for parents. Rather, it would ensure that parents know what their rights already are – an essential precondition to exercising them. This would maintain the existing balance between parents’ due process rights and the state’s interest in ensuring child safety.

S.901 (Brisport) / A.1980 (Walker) is needed to equip parents to protect their civil liberties and family integrity when faced with frightening and high-stakes government intervention in their intimate lives. It is an urgent matter of basic fairness and due process, and the NYCLU supports its prompt passage.

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<sup>3</sup> Over one third of the youth in foster care in New York are Black, despite comprising only ten percent of the population. *Id.*