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**Testimony of the New York Civil Liberties Union
to
The New York State Assembly Committee on Children and Families
regarding the
Child Welfare System and Mandated Reporting of Child Abuse or Maltreatment
in New York State**

September 27, 2023

The New York Civil Liberties Union (NYCLU) respectfully submits the following testimony with regard to the New York State Assembly Standing Committee on Children and Families public hearing on the child welfare system and mandatory reporting of child abuse or maltreatment in New York State.

I. Introduction

The NYCLU, an affiliate of the American Civil Liberties Union (ACLU), is a not-for-profit, non-partisan organization with eight offices throughout New York State and more than 180,000 members and supporters. The NYCLU's mission is to promote and protect the fundamental rights, principles, and values embodied in the Bill of Rights of the U.S. Constitution and the New York Constitution. This includes the constitutional guarantee of equal protection under the laws and the right to privacy and personal autonomy, including in the realm of family life.

Today's hearing examines the topic of mandated reporting – an area that is ripe for scrutiny. The set of state and federal laws that categorically require both public and private employees to identify and report on suspected child maltreatment has expanded over the past several decades, covering a wide range of professions and driving tens of thousands of reports each year. The Assembly regularly entertains bills to expand this system even further. Such laws are ostensibly meant to protect children from abuse and neglect. Yet like many legal structures that embrace an enforcement model to address complex social issues, mandated reporting takes a rigid and adversarial approach to child safety that ends up undermining more holistic solutions.

Rather than keeping children safe, mandated reporting laws have warped the roles of service professionals, sown confusion, and led to a glut of unjustified reports. Mandated

reporting has played a primary role in pushing an untold number of families into the child protective system – better described as the family regulation system. A call from a mandated reporter is often the entry point for parents and children into a system that separates families, subjects them to intrusive supervision, and leaves lasting trauma.

Reforming mandated reporting laws is just one piece of addressing the harms of the family regulation system, and we thank the committee for holding this important hearing. As the committee considers how mandated reporting might be reformed, we foremost urge the committee to listen to the parents who will testify today about their experiences with these systems. In our testimony, we focus on how New York’s mandated reporter laws came to be, and how they upend the duty of professionals tasked with supporting families and disrupt efforts to provide meaningful support for families.

II. Overview of New York’s mandated reporting laws

New York’s mandated reporting laws are best understood against a national legal and political backdrop. In 1962, a medical journal article coined the term “Battered Child Syndrome” to describe the clinical condition of a severely abused, neglected, or maltreated child that could result in death.¹ In response, the federal Department of Health, Education and Welfare created models for state laws requiring specific individuals—mainly physicians—to inform authorities of suspected child abuse.² Although mandated reporting initially focused on providing doctors with information about how to identify and report the extreme abuse to which “Battered Child Syndrome” referred, it quickly grew to encompass a broad range of suspected abuse or neglect and became weaponized against low-income Black and Brown families.³

This shift towards widespread surveillance and reporting coincided with political backlash against low-income Black families as they received an increasing share of public benefits.⁴ Contemporary narratives blamed poor, unmarried, Black women with children for burdening the state, dubbing them the “undeserving poor.”⁵ The infamous 1965 Moynihan Report encapsulated these attitudes, attributing the increase in Black welfare recipients to an alleged “breakdown” in family structure.⁶ It was during this period of

¹ G Inguanta and Chatarine Sciolla, *Time Doesn’t Heal All Wounds: A Call to End Mandated Reporting Laws*, 19 *Columbia Social Work Review* 116 (2021), <https://journals.library.columbia.edu/index.php/cswr/issue/view/765/162>.

² Inguanta and Sciolla, *supra* note 1; Iris Ann Albstein, *Note: Child Abuse and Maltreatment: The Development of New York’s Child Protection Laws*, 5 *Fordham Urb. L.J.* 533 (1977), <https://ir.lawnet.fordham.edu/ulj/vol5/iss3/8>.

³ Inguanta and Sciolla, *supra* note 1.

⁴ See Martin Guggenheim, *How Racial Politics Led Directly to the Enactment of the Adoption and Safe Families Act of 1997—The Worst Law Affecting Families Ever Enacted by Congress*, 11:3 *Columbia Journal of Race and Law* 711 (2021), <https://journals.library.columbia.edu/index.php/cjrl/article/view/8749/4495>, at 716-18; Inguanta and Sciolla, *supra* note 1.

⁵ Guggenheim, *supra* note 4.

⁶ *Id.*

suspicion and pathologizing of low-income Black and Brown families, that the federal government passed the Child Abuse Prevention and Treatment Act (CAPTA), which created financial incentivizes for states to enact broad reporting laws that essentially transformed professionals and private citizens into agents of state surveillance.⁷

The evolution of New York's mandated reporting laws mirrored this national trajectory. New York first enacted mandated reporting in 1964 as part of the Penal Law, requiring every physician and surgeon to report suspected abuse to a specified agency, such as a society for the prevention of cruelty to children.⁸ The legislature ultimately moved this requirement into the Social Services Law, and in 1970, enacted the Child Protective Proceedings Act, which combined abuse and neglect provisions within the Family Court Act.⁹ In 1973, the year before Congress enacted CAPTA, New York passed the Child Protective Services Act, expanding the state family regulation apparatus and establishing the essential framework we operate in today.¹⁰ The Child Protective Services Act lengthened the list of agencies and individuals required to report suspected abuse and maltreatment, and it provided broad definitions for those terms.¹¹ It also created the State Central Register of Child Abuse and Maltreatment (SCR), requiring it to receive reports of suspected abuse and neglect from all members of the public, including both volunteers and mandated reporters, 24 hours a day, seven days a week.¹²

This expansion of mandated reporting and inclusion of neglect under the SCR's purview led to a dramatic increase in reports. In 1972, there were 3,319 reports of abuse filed in New York State—already a significant increase from the 416 reports filed in 1966.¹³ Under the 1973 Act, reports of abuse more than doubled to about 7,000, and a staggering 49,000 reports of neglect were filed in a single year.¹⁴ This rapid increase in reports to the SCR, primarily based on alleged neglect, caused legal scholars to raise issues of system overload, false and malicious reporting, and inadequate training for caseworkers as early as the mid-1970s.¹⁵

⁷ Inguanta and Sciolla, *supra* note 1.

⁸ Alstein, *supra* note 2.

⁹ *Id.*; N.Y. Fam. Ct. Act § 1011 (McKinney). Note, however, that provisions dealing with child protection still remain in the criminal code to this day. N.Y. Penal Law § 260.10 (McKinney).

¹⁰ Alstein, *supra* note 2.

¹¹ *Id.* The New York Child Protective Services Act required reporting by physicians, surgeons, medical examiners, coroners, dentists, osteopaths, optometrists, chiropractors, podiatrists, residents, interns, registered nurses, hospital personnel engaged in the admission, examination, care, or treatment of persons, a Christian Science practitioner, school official, social service worker, day care center worker, or any other child care or foster care worker, mental health professional, peace officer, or law enforcement official. *Id.*

¹² *Id.* New York City had its own city-wide register to record reports as early as 1964. The state legislature also created an earlier version of a statewide register in 1966, but it was only used for statistical and internal purposes. *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ See Alstein, *supra* note 2.

Despite these early warnings, mandated reporting has continued to balloon. Today, New York Social Services Law § 413 enumerates 47 categories of professionals required to report when, in their official or professional capacity, they have reasonable cause to suspect that a child is an abused or maltreated child.¹⁶ Although this “reasonable suspicion” threshold allows professionals to exercise judgment in determining whether a report is warranted, other provisions of the Social Services Law incentivize them to err on the side of over-reporting, threatening those who fail to report a case of suspected abuse or maltreatment with a class A misdemeanor and/or civil liability.¹⁷ Once a report is made, a mandated reporter must comply with all requests for records made by CPS, including requests to turn over sensitive and typically confidential information, such as medical and clinical records.¹⁸

With such an expansive roster of mandated reporters, vague definitions of what constitutes maltreatment or abuse, and criminal penalties for failure to report, it is no wonder the number of reports to the SCR have skyrocketed. In 2019, New York accepted 163,917 reports to the SCR.¹⁹ The actual number of reports made may have been nearly twice this, considering states on average screen out approximately 45% of calls that do not meet agency criteria.²⁰ Nationwide, the majority of SCR reports —68.6 percent—are made by mandated reporters.²¹ According to federal data, 21% of reports come from educational personnel, 19.1% from legal and law enforcement professionals, 11% from medical personnel, 10.3% from social services staff, and 6 percent from mental health personnel.²²

III. Mandated reporting encourages over-reporting, undermines trust, and exacerbates racial disparities

The mandated reporting framework established by New York, while intended to maximally protect children, represents a government overreach that often does more harm

¹⁶ N.Y. Soc. Serv. Law § 413 (McKinney). This section requires reporting when a mandated reporter has “reasonable cause to suspect that a child coming before them in their professional or official capacity is an abused or maltreated child, or when they have reasonable cause to suspect that a child is an abused or maltreated child where the parent, guardian, custodian or other person legally responsible for such child comes before them in their professional or official capacity and states from personal knowledge facts, conditions or circumstances which, if correct, would render the child an abused or maltreated child.” In addition, any person may make a report to the SCR pursuant to Social Services Law § 414. N.Y. Soc. Serv. Law § 414 (McKinney).

¹⁷ See N.Y. Soc. Serv. Law § 420 (McKinney).

¹⁸ N.Y. Soc. Serv. Law § 415 (McKinney). Substance abuse treatment records are exempted from this disclosure requirement, as disclosure of those records is governed by federal law. *Id.*

¹⁹ Adoptive and Foster Family Coalition New York, *Child Abuse or Maltreatment Reports to the Central Register: Must Include the Caller’s Name and Contact Info* (2021), <https://affeny.org/wp-content/uploads/Child-Abuse-and-Maltreatment-Reports-to-the-Central-Registry-May-2021.pdf> (citing 2019 data from the US Children’s Bureau).

²⁰ *Id.* New York does not report the number of screened-out referrals to the SCR, but for the 45 other states that do report this information to the U.S. Children’s Bureau, 45.5% of reports were screened out, on average. *Id.*

²¹ *Id.*

²² Children’s Bureau, U.S. Department of Health and Human Services, *Child Maltreatment 2019: Summary of Key Findings* (2021), <https://www.childwelfare.gov/pubpdfs/canstats.pdf>.

than good. The very design of the system encourages over-reporting, unnecessarily funneling children into a family regulation system that families describe perversely as making them feel less safe and perpetuating intergenerational cycles of poverty and trauma.²³

The harms of mandated reporting are inextricably linked to the nebulous way that neglect is conceived of under state law, which allows for a range of conditions to be treated as child maltreatment.²⁴ At a national level, about 75 percent of substantiated cases are for neglect, with less than a quarter involving physical abuse.²⁵ It has been widely observed that what ends up alleged as child neglect is very often the unavoidable symptoms of raising children in poverty.²⁶ Indeed, while OCFS's guide for mandated reporters cursorily states that poverty or financial inability to provide is not maltreatment, it also points to dirty clothes, malnourishment, and "begging for food" as indicators of maltreatment.²⁷ Making reporting mandatory ensures that symptoms of poverty will more frequently be treated as child maltreatment.

The affirmative duty to report, along with the vague definition of child neglect under state law, places professionals in a position where reporting will often seem like the most advisable course even if they are uncertain in their observations or where other interventions would be more effective. As noted above, failure to report suspected maltreatment can cost a mandated reporter their employment and expose them to civil or even criminal liability.²⁸ At the same time, individuals are protected from liability when they do report suspected child maltreatment.²⁹ In marginal or doubtful cases, a mandated reporter may reason that the potential consequences of not contacting the SCR outweigh the risk of making an unjustified report.

The impact of these warped incentives is evident in the number of reports that are discarded upon initial investigation. In 2021, of the more than 43,000 child protective

²³ antwuan wallace, Abigail Fradkin, Marshall Buxton, Sydney Henriques-Payne, *Draft New York City Administration for Children's Services Racial Equity Participatory Action Research & System Audit: Findings and Opportunities*, National Innovation Service (2020), <https://int.nyt.com/data/documenttools/draft-report-of-nyc-administration-for-children-s-services-racial-equity-survey/fc3e7ced070e17a4/full.pdf>.

²⁴ New York defines a neglected child as one whose physical, mental, or emotional condition is impaired or at imminent risk of becoming impaired because of the failure of a parent or person legally responsible to exercise a minimum degree of care in supplying a child with adequate food, clothing, shelter, or education, though financially able to do so or offered financial or other reasonable means to do so. N.Y. Family Court Act § 1012(f)(i).

²⁵ Children's Bureau, *supra* note 22.

²⁶ See, e.g., Human Rights Watch, "If I Wasn't Poor, I Wouldn't Be Unfit": The Family Separation Crisis in the U.S. Child Welfare System, Nov. 17, 2022, <https://www.hrw.org/report/2022/11/17/if-i-wasnt-poor-i-wouldnt-be-unfit/family-separation-crisis-us-child-welfare>.

²⁷ Office of Children and Family Services, *Summary Guide for Mandated Reporters in New York State*, <https://ocfs.ny.gov/publications/Pub1159/OCFS-Pub1159.pdf>.

²⁸ N.Y. Soc. Serv. Law § 420.

²⁹ N.Y. Soc. Serv. Law § 419.

investigations conducted in New York City, just under 34% were indicated.³⁰ Statewide, just more than a quarter of SCR reports are indicated.³¹ Such figures strongly suggest a culture of overreporting.

The harm to families from dubious or otherwise unnecessary reports can be devastating. Even if a report is ultimately unfounded, the process of being investigated can be stressful, destabilizing, and even traumatic for parents and children. Case workers will routinely ask parents invasive questions about their past, search their homes, visit their children at school, and sometimes conduct strip searches of their children. Investigations can last up to 60 days, and parents who express frustration are often subject to greater scrutiny.

Mandated reporting also undermines the trust between professionals and the people with whom they work, which is necessary to provide effective services. Nearly all of the professional roles subject to New York's mandated reporting laws – from teachers to social workers to doctors – are those that rely on honest, two-way communication with those they serve. Many parents have developed an unfortunate but not unreasonable belief that being transparent about their medical conditions, their children's educational needs, or other matters will lead to an SCR report. Those suspicions make parents hesitant to engage with various services, which can then exacerbate underlying issues.³²

On the other end, professionals are hampered by mandated reporting laws in their ability to serve clients and perform their jobs effectively. The structure of mandated reporting creates a contradictory dual role for service providers that asks them to assist people while also requiring them to monitor and police their own clients. A social worker committed to supporting a family struggling with food insecurity may feel compelled to report a parent for the same issues they were assigned to help with. A teacher working cooperatively with a parent to resolve a student's attendance issues might feel pressure to report them for educational neglect. In many instances, the duty to report will be at odds with a professional's responsibility to assist and support.

The effect of mandated reporting is to turn professionals into involuntary law enforcement agents, requiring them to initiate government intervention against their clients and patients even if their independent professional judgment points to other solutions. Many service providers will no doubt choose to make a report for child

³⁰ New York City Administration for Children's Services, *Abuse/Neglect Investigations by Community District, 2016-2021*, available at <https://www.nyc.gov/assets/acs/pdf/data-analysis/abuseneglectreport16to21.pdf>.

³¹ New York State Kid's Well-being Indicators Clearinghouse, *KWIC Indicator: Child Abuse/Maltreatment - Indicated Reports of Child Abuse and Maltreatment*, available at https://www.nyskwic.org/get_data/indicator_profile.cfm?subIndicatorID=45&indYear1=2015&indYear2=2019&go.x=19&go.y=17

³² See Kelley Fong, *Concealment and Constraint: Child Protective Services Fears and Poor Mothers' Institutional Engagement*, 97 *Social Forces* 1785 (2019), <https://doi.org/10.1093/sf/sov093> (finding that low-income mothers concealed hardships from potential institutional reporters, such as healthcare, educational, and social service systems, potentially precluding opportunities for assistance).

maltreatment when they truly believe it is necessary, absent an affirmative legal obligation to do so. But by making child maltreatment reporting mandatory, the law obscures and redefines professional roles across many different fields.

Finally, mandated reporting contributes to the widely acknowledged racial disparities within the family regulation system. Nationally, children from diverse racial and ethnic backgrounds are overrepresented in reports of child maltreatment.³³ In medical settings, implicit racial biases in the evaluation and diagnosis process have been linked to higher rates of reporting of minority children than white children.³⁴ Educational professionals are twice as likely to report Black children than white children for maltreatment.³⁵ When professionals are pressured to make reports more frequently, the effects of these biases will be more pronounced, exacerbating the disparities already embedded within the system.

IV. Conclusion

Some may view mandated reporting as taking a “better safe than sorry” approach to child and family wellbeing, but the vast web of surveillance these policies create comes with significant costs and dubious benefits. Mandated reporting needlessly ensnares tens of thousands of families whose cases are ultimately unfounded in the family regulation system each year, subjecting them to the traumatic stress and humiliation of an investigation and diverting state resources that could be better spent providing struggling families with catch-free material support. Moreover, mandated reporting unfairly deters families from taking full advantage of the medical, educational, and social service supports that are available to them for fear that exposing their challenges will catalyze a report.

Other states have recognized these harms and have begun taking steps to reform and reduce mandated reporting.³⁶ It is time for New York to not only follow suit, but to lead, by reimagining what it means to keep families safe and supported. The NYCLU urges this committee to explore reforms that will reduce over-reporting, especially for poverty-related conditions, restore trust between professionals and those they serve, and direct resources where they are most needed—to families themselves. As a starting point, the

³³ Dorothy Roberts and Lisa Sangoi, *Black Families Matter: How the Child Welfare System Punishes Poor Families of Color*, *The Appeal* (Mar. 26, 2018), <https://theappeal.org/black-families-matter-how-the-child-welfare-system-punishes-poor-families-of-color-33ad20e2882e/>.

³⁴ Vincent J. Palusci & Ann S. Botash, *Race and Bias in Child Maltreatment Diagnosis and Reporting*, *Pediatrics*, Vol. 148, Issue 1 (Jul. 2021), <https://publications.aap.org/pediatrics/article/148/1/e2020049625/179923/Race-and-Bias-in-Child-Maltreatment-Diagnosis-and?autologincheck=redirected>.

³⁵ Kele Stewart & Robert Latham, *Covid-19 Reflections on Resilience and Reform in the Child Welfare System*, 48 *Fordham Urb. L.J.* 95, 120 (2020) (citing Kathryn S. Krase, *Child Maltreatment Reporting by Educational Personnel: Implications for Racial Disproportionality in the Child Welfare System*, 37 *CHILD. & SCHS.* 89, 94 (2015)).

³⁶ See, e.g. California Assembly Bill A.B. 2085, signed by Governor Sept. 29, 2022 (clarifying that poverty is not neglect for purposes of mandated reporting); Texas House Bill 3379, effective Sept. 1, 2021 (limiting the circumstances under which a professional must report suspected abuse or neglect).

legislature should explore shrinking the expansive list of professionals subject to mandated reporting requirements (and resist the urge to add to it), reduce mandated reporting for situations where only neglect is suspected, and give professionals the discretion to pursue remedies other than an SCR report when they believe a child may be in need.

As it considers how best to tackle issues related to mandated reporting, the Assembly can also act now to reduce the harm of the family regulation system more broadly. That begins with legislation to prohibit anonymous reports of child maltreatment that are often used as tools of harassment,³⁷ to ensure that parents are aware of their rights when facing an investigation,³⁸ and to ban nonconsensual drug testing of pregnant people in New York hospitals.³⁹ We welcome the Assembly's attention to these issues and look forward to working with you towards meaningful legislative solutions.

³⁷ A.B. 2479 (Hevesi) / S.B. 902 (Brisport)

³⁸ A.B. 1980 (Walker) / S.B. 901 (Brisport)

³⁹ A.B. 109-B (L. Rosenthal) / S.B. 320-B (Salazar)