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**Testimony of the New York Civil Liberties Union
to
The New York State Assembly Standing Committee on Children and
Families
regarding the
Statewide Central Register of Child Abuse and Maltreatment**

October 9, 2024

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 administration of the Statewide Central Register of Child Abuse and Maltreatment.

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.

The NYCLU views state intervention in family life as a core civil liberties issue that implicates families’ fundamental rights to privacy, due process, and family integrity. There is increasing consensus that the family regulation system—the term we use to describe what is traditionally and misleadingly known as the “child welfare system”—ensnares far too many families, seriously infringing on these

rights.¹ Today’s hearing examines the administration of the State Central Register of Child Abuse and Maltreatment (SCR), which is operated by the New York State Office of Children and Family Services and receives reports of suspected child abuse and maltreatment from across the state and refers them for investigation by local departments of child protective services (CPS). Given the decentralized nature of many aspects of the family regulation system, the SCR is one of the key mechanisms the state has to narrow the front door to system-involvement and prevent unnecessary harm by screening out reports that do not meet the legal criteria to warrant CPS referral. However, while the SCR is intended to play a pivotal role in shaping the scale and scope of state intrusion into the lives of New York families by determining which reports legally require investigation and which do not, it often fails to do so. Data strongly suggests that the SCR is failing to effectively filter out reports that do not meet the definition of suspected neglect or abuse. Increased transparency and accountability are needed to ensure that the SCR rigorously adheres to legal guardrails—especially when the stakes are as high as potential family separation.

We thank the Committee for holding this important hearing and welcome the opportunity to testify.

II. Scope and Consequences of Reporting to the SCR

As the central hub for reports of suspected abuse and maltreatment, the SCR plays a critical role in the operation of New York’s family regulation system. Each year, approximately 300,000 reports of suspected abuse or neglect are made to the SCR.² With the expansion of mandated reporting laws that require certain categories of professionals to report suspected child maltreatment under the threat of criminal and professional penalties, this number has ballooned over the years and resulted in rampant over-reporting.³

¹ See, New York Advisory Committee to the U.S. Commission on Civil Rights, *Examining the New York Child Welfare System and Its Impact on Black Children and Families*, May 2024, <https://www.usccr.gov/files/2024-05/ny-child-welfare-system-sac-report.pdf>; see e.g., Commissioner Jess Dannhauser, *Testimony to the New York City Council General Welfare Committee*, March 13, 2023, at 3, <https://www.nyc.gov/assets/acs/pdf/testimony/2023/prelim-budget-hearing-fy24.pdf>.

² Thomas P. DiNapoli, *Office of Children and Family Services: Oversight of Child Protective Services (Report 2021-S-17)*, Office of the New York State Comptroller Division of State Government Accountability, Jan. 2023, <https://www.osc.ny.gov/files/state-agencies/audits/pdf/sga-2023-21s17.pdf>.

³ In 1972, the year before New York established the SCR, 3,310 reports of abuse were filed in New York State. The following year, after a new law created the SCR, required the SCR to receive reports of suspected abuse and neglect, and expanded the list of mandated reporters, reports of abuse more than doubled to about 7,000, and a staggering 49,000 reports of neglect were filed. This rapid increase in reports to the SCR, primarily based on alleged neglect, caused legal scholars to raise

For each call they receive, SCR staff determine whether the allegations meet the criteria provided by the Social Services Law and Family Court Act to be referred to CPS for investigation. To be referred for investigation, a report must include reasonable cause to suspect that a minor child has been impaired or is in imminent danger of impairment by a parent or person legally responsible to exercise a minimum degree of care for the child.⁴ The report must also include sufficient demographic information to find the family and initiate an investigation, and it must be within the jurisdiction of New York State. Once the SCR accepts a report of abuse or neglect and refers it to the relevant locality, CPS is legally required to open an investigation into the family.⁵ Accordingly, it falls to the SCR to play the essential role of filtering out meritless reports in order to prevent needless investigations.

CPS investigations can be stressful, destabilizing, and traumatic for families, even when CPS dismisses a case as unfounded. 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. Thousands of New York families are subjected to these investigations every year, despite CPS ultimately finding no evidence of neglect or abuse.⁶

These investigations also represent a shameful misuse of public resources that would be better spent providing families with the tangible supports they really need, like access to child care, affordable housing, supplies like diapers and formula, nutritious food, and even direct cash assistance.⁷

issues of system overload, false and malicious reporting, and inadequate training for caseworkers as early as the mid-1970s. 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>.

⁴ NYC Family Policy Project, *No Filter: New data shows that New York screens out fewer hotline calls than most states, contributing to the state's high investigation rate*, Mar. 5, 2024, https://familypolicynyc.org/report/scr/#_ftn1; See, N.Y. Soc. Serv. Law §§ 422, 413, 414; N.Y. Fam. Ct. Act. § 1012.

⁵ NYC Family Policy Project, *supra* note 4; N.Y. Soc. Serv. Law § 424.

⁶ New York State Kid's Well-being Indicators Clearinghouse, *KWIC Indicator: Child Abuse/Maltreatment - Indicated Reports of Child Abuse and Maltreatment*, https://www.nyskwic.org/get_data/indicator_profile.cfm?subIndicatorID=45&indYear1=2015&indYear2=2019&go.x=19&go.y=17.

⁷ The vast majority of investigations are based on allegations of neglect, which is often conflated with circumstances related to poverty, such as housing insecurity or inability to afford child care, food, or parenting supplies like diapers and formula. 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,

III. The SCR Is Failing to Screen Out Reports as Required by Law

In theory, the SCR should play a pivotal role in limiting the number of unfounded investigations by screening out baseless reports. However, in practice, data obtained by the NYC Family Policy Project through a freedom of information law (FOIL) request suggest that the New York SCR fails to effectively carry out its filtering function, referring thousands of reports for investigation despite not meeting the legal threshold of suspected abuse or neglect.

According to the NYC Family Policy Project’s analysis, from 2018-2022, the New York SCR rejected only about 25 percent of calls alleging maltreatment—well below the national average of 50 percent.⁸ Although the New York SCR received fewer calls than the national average in this period, its low screen-out rate yielded a higher-than-average investigation rate—meaning a higher proportion of children in New York were subjected to a CPS investigation than in other states.⁹

While the vast majority of reports received by the SCR—nearly 80 percent—are ultimately found to be unsubstantiated,¹⁰ only 12 percent of SCR calls were rejected and not forwarded on to CPS because staff determined that the allegations did not meet the legal definition of suspected abuse or neglect.¹¹ (The majority of screened-out calls were rejected for failing to meet more technical criteria—for instance, they did not involve a child under 18 or allege maltreatment by their parent or person legally responsible for them, or they did not concern a family within New York’s jurisdiction.¹²) This strongly suggests that SCR staff are not rigorously applying state law that defines what is and is not reportable.

The fact that in New York City, the Administration for Children’s Services (ACS) diverts almost a quarter of screened-in reports to its “CARES” program, which is designed for cases that are not considered high risk, further indicates of a lack of

<https://www.hrw.org/report/2022/11/17/if-i-wasnt-poor-i-wouldnt-be-unfit/family-separation-crisis-us-child-welfare>; New York Advisory Committee to the U.S. Commission on Civil Rights, *supra* note 1, at 58-62. Research shows that policies that concretely target family economic hardship, such as state investment in public benefit programs, can reduce interactions with the family regulation system. Mahima Golani, *Economic Policies Can Protect Against Child Welfare Involvement. How NYC Is Doing, Explained.*, NYC Family Policy Project, Apr. 03, 2024, <https://familypolicynyc.org/explainer/economic-vulnerability/>.

⁸ NYC Family Policy Project, *supra* note 4.

⁹ *Id.*

¹⁰ New York State Kid’s Well-being Indicators Clearinghouse, *supra* note 6.

¹¹ NYC Family Policy Project, *supra* note 4. This 12 percent includes calls rejected because there was “no reasonable cause to suspect” abuse or neglect; “no harm/effect on child,” or “no imminent danger” of harm.

¹² *Id.*

discernment by SCR staff.¹³ It suggests that, for roughly 25 percent of screened-in cases originating in New York City, it is possible to determine on the face of the report that there is no imminent danger of impairment to the child. Yet, statewide, the SCR screens out only one percent of calls on that basis.¹⁴

In order to effectively execute its responsibilities under state law, it is incumbent on the SCR to critically and substantively screen reports before referring them to CPS to ensure that families are not subjected to investigation where it is not truly required by state law. This is especially critical given the system's propensity to mischaracterize symptoms of poverty as neglect. The Family Court Act includes explicit language to clarify that poverty is not neglect—parents should not be investigated for failure to provide their children with adequate food, clothing, shelter, or education because they lack the financial means to do so.¹⁵ Despite this, we know that poverty is a key indicator of whether or not a family will become system-involved.¹⁶ The SCR must play a role in helping to differentiate between reports alleging symptoms of poverty and those that align with the statutory definition of neglect.

The SCR's failure to screen out reports in accordance with the law also manifests in the disturbing pattern of cases that arise from reports of prenatal substance use. New York has a clear policy that substance use is not an indicator of child abuse or neglect.¹⁷ By law, the SCR should not accept reports based on allegations that a person used substances while they were pregnant. Yet, around the state, we continue to see new parents investigated, and, in some cases, separated from their infants within days of birth, on that basis.¹⁸ These cases are devastating for

¹³ *Id.*

¹⁴ *Id.*

¹⁵ 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).

¹⁶ *See, e.g.*, New York Advisory Committee to the U.S. Commission on Civil Rights, *supra* note 1, at 58-62; Human Rights Watch, *supra* note 7.

¹⁷ Marilyn A. Kacica and Stephanie Shulman, Letter to Hospital CEOs and Birth Center Administrators Re. CAPTA/CARA, Nov. 23, 2021, https://www.health.ny.gov/prevention/captacara/docs/dear_hospital_letter.pdf.

¹⁸ *See, e.g.*, New York Civil Liberties Union, *Press Release: NYCLU and National Advocates for Pregnant Women File Complaints on Behalf of Mothers Reported to Child Protective Services After Poppy Seed Consumption Caused False Positive Drug Test Results*, Dec. 16, 2021, <https://www.nyclu.org/press-release/nyclu-and-national-advocates-pregnant-women-file-complaints-behalf-mothers-reported#:~:text=Dec%2016%2C%202021-,NYCLU%20and%20National%20Advocates%20for%20Pregnant%20Women%20File%20Complaints>

families, who are less likely to be reunited when a child is removed as an infant;¹⁹ harmful for maternal health, as pregnant people may be deterred from seeking prenatal care out of fear of being reported to CPS;²⁰ and antithetical to reproductive rights, as they undermine pregnant people’s bodily autonomy and equality and punish their conduct on account of their pregnancy.

IV. Amplification of Racial Disparities

Racial disparities in the family regulation system are well-established.²¹ Across the United States, more than half of Black children will experience a CPS investigation before they turn eighteen.²² Nearly one in ten Black children will be removed from their parents and placed into foster care—double the rate of white children—and once separated, Black families are also twice as likely to suffer permanent termination of parental rights.²³ In New York, these disparities begin with racially disproportional reporting to the SCR.

¹⁹ on, drug%20testing%20of%20pregnant%20people; Jon Harris, *Dunkirk Mother Drug Tested Without Consent Before Baby’s Birth at Children’s Hospital Pushes for Change*, Buffalo News, Mar. 10, 2024, https://buffalonews.com/news/local/business/health-care/dunkirk-mother-drug-tested-without-consent-before-babys-birth-at-childrens-hospital-pushes-for-change/article_f35b7394-d01a-11ee-905e-f7c28363f822.html; Andy Newman, *Mother Wins \$75,000 After New York Took Her Baby Over Marijuana Use*, New York Times, Sept. 7, 2023, <https://www.nytimes.com/2023/09/07/nyregion/mother-legal-marijuana-settlement.html>.

¹⁹ NYC Family Policy Project, *Newborns and Infants*, <https://familypolicynyc.org/data-brief/newborns-and-infants/>.

²⁰ See, DeAnna Y. Smith and Alexis Roane, *Child Removal Fears and Black Mothers’ Medical Decision-Making*, 22.1 Contexts 18 (2023), <https://doi.org/10.1177/15365042221142834> (describing how “Black mothers are highly aware of the collaboration between the health care system and punitive institutions like CPS” and how “fear of child removal not only shapes *how* Black mothers receive maternity and pediatric care for themselves and their children but also *where* they receive care.”); National Perinatal Association, *Position Statement, Perinatal Substance Use* (2017) (warning that “threats of discrimination, incarceration, loss of parental rights, and loss of personal autonomy are powerful deterrents to seeking appropriate prenatal care”); Meenakshi S. Subbaraman et. al., *Associations Between State-Level Policies Regarding Alcohol Use Among Pregnant Women, Adverse Birth Outcomes, and Prenatal Care Utilization: Results from 1972 to 2013 Vital Statistics*, Alcohol Clinical and Experimental Research (June 2018), <https://doi.org/10.1111/acer.13804> (concluding that “most policies targeting alcohol use during pregnancy do not have their intended effects and are related to worse birth outcomes and less [prenatal care utilization].”).

²¹ See, e.g., DOROTHY ROBERTS, *TORN APART: HOW THE CHILD WELFARE SYSTEM DESTROYS BLACK FAMILIES—AND HOW ABOLITION CAN BUILD A SAFER WORLD* (2022); 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>.

²² Shereen White & Stephanie Marie Persson, *Racial Discrimination in Child Welfare Is a Human Rights Violation—Let’s Talk About It That Way*, American Bar Association (Oct. 13, 2022), <https://www.americanbar.org/groups/litigation/resources/newsletters/childrens-rights/racial-discrimination-child-welfare-human-rights-violation-lets-talk-about-it-way/>.

²³ *Id.*

In addition to maintaining the legal standards for what does and does not merit a CPS investigation, the SCR has an important role to play in moderating the impacts of racial bias in the family regulation system. When the SCR fails to adequately interrogate the sufficiency of the reports it receives, it risks accepting reports driven by bias, rather than legally cognizable suspicions of abuse or neglect. In doing so, the SCR plays an active role in allowing reporters' racial biases to fuel racial disproportionality throughout subsequent stages of family regulation system involvement.

V. Conclusion

Some may view the SCR as taking a "better safe than sorry" approach to child and family wellbeing, but the costs to families subjected to the traumatic stress and humiliation of an investigation, even when unfounded, cannot be overstated. New York should take steps to reduce the number of reports referred to CPS by the SCR and ensure that SCR staff rigorously apply the legal standards that determine the threshold for CPS involvement.

The Assembly should require more transparency regarding the SCR's policies and processes for evaluating the calls it receives, along with increased accountability for screening in reports that do not meet the legal threshold for abuse or neglect. This oversight must include an examination of whether and how the SCR accepts reports based on poverty or substance use in direct contravention of state policy.

Additionally, the Assembly should take steps to reduce the overall number of reports made to the SCR. It should pass the Anti-Harassment in Reporting Act (S.902B Brisport / A.2479A Hevesi) to cut down on bad-faith reports made to the SCR under the cover of anonymity and the Informed Consent Act (S.320B Salazar / A.109B Rosenthal) to reduce non-consensual drug testing and reporting of pregnant people and new parents based on alleged substance use. It should also explore changes to the state's mandated reporting laws that incentivize over-reporting and lead to a glut of unsubstantiated reports. Moreover, the Assembly should pass the Family Miranda Act (S.901A Brisport / A.1980A Walker) to ensure parents are aware of their rights when they do face an investigation. We welcome the Assembly's attention to these issues and look forward to working with you towards meaningful legislative solutions.