

COLUMBIA JOURNAL OF RACE AND LAW

VOL. 15

May 2025

NO. 1

ARTICLE

OVERREPORTING AND INVESTIGATION IN THE NEW YORK CITY CHILD WELFARE SYSTEM: A CHILD'S PERSPECTIVE

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Child welfare agencies are tasked with protecting children, and in so doing, with investigating allegations of abuse and neglect. If done properly, such investigations can promote child safety. But the data suggests that New York City's Administration for Children's Services ("ACS") subjects far more children and families to intrusive investigations than is necessary. Nearly 100,000 children in New York City are investigated by the ACS each year, and ACS only seeks entry or body-search warrants in 0.4% of investigations. Moreover, the vast majority of these investigations are executed in homes where ACS ultimately decides that it is unlikely any abuse or neglect occurred. Such investigations come at a high cost to children: they are aggressive, traumatic, and coercive.

This piece argues that ACS' investigative apparatus not only harms more children than it protects, but the tactics it employs violate the state and federal constitutional rights of children and their families. Using ACS' own statistics, this piece demonstrates that New York unnecessarily investigates far too many, primarily Black and brown families; examines the harmful, and often unlawful reporting and investigation process in New York City; and enumerates reforms critical to protect both the safety and privacy rights of New York City's children and families.

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¹ We would like to thank the enormous team that supported this paper. Dawne Mitchell, Judy Stern, Riti Singh, Nora McCarthy, Justin Horton, Anna Blondell, Lena McMahon, and Fiona Donovan. Finally, many thanks to the pro bono team that supported our initial research including Emily Grasso, Julia Malkina, Chase Shelton, Elias Daiute, Zacharia Hasan, and Lydia Murray.

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INTRODUCTION

Imagine you are eight years old. Officials from the Administration for Children's Services (ACS)—New York City's child protective services agency—bang on your door in the middle of the night and demand to enter. These government agents do not meaningfully explain that you and your parent(s) have a right to turn them away. Instead, the ACS officials tell you that if you refuse to let them into your home, they can take you from your parent(s), call the police, and take your family to court. You and your family feel that you have no choice but to let them in. Once inside your home, the ACS worker—a stranger—takes you into a room, alone and separated from your parents, to interrogate and strip-search you.

And they do all of this without a court order.

ACS investigates nearly 100,000 children in New York City for abuse and/or neglect each year,² but it seeks warrants to enter homes or search children's bodies in only 0.4% of those investigations.³ These searches are aggressive, traumatic, coercive, and violate children's and families' federal and state constitutional rights.

If done lawfully, abuse and neglect investigations should promote child safety. But the data suggests that ACS often conducts intrusive investigations that may harm the families they are meant to protect. Only a small fraction (22.5%) of ACS investigations annually are substantiated—that is, they conclude that the occurrence of abuse and neglect was more likely than not in only a few investigations each year.⁴ That means that approximately 77,500 children, who are mostly Black and brown, are subjected to investigations of their homes and bodies without substantiation of a maltreatment allegation.

This piece argues that ACS' investigative apparatus not only harms more children than it protects, but also employs tactics that violate the state and federal constitutional rights of children and their families. Using ACS' own statistics, Part I analyzes the numbers to demonstrate that New

² *Demographics of Children and Parents at Steps in the Child Welfare System, FY 2023*, N.Y.C. ADMIN. FOR CHILD. SERVS. (2023), [demographics-children-fy-2023.pdf](https://www.nyc.gov/assets/acs/pdf/data-analysis/flashReports/2023/05.pdf) (nyc.gov).

³ Eli Hager, *Police Need Warrants to Search Homes. Child Welfare Agents Almost Never Get One.*, PROPUBLICA (Oct. 13, 2022, 8:00 AM), <https://www.propublica.org/article/child-welfare-search-seizure-without-warrants> (cited 0.2%). The most recent statistics for 2023 indicate a 0.4% rate of orders sought under New York Family Court Act §1034 ("1034 orders"). The most recent ACS FLASH report indicates that in calendar year 2023 there were 42,816 consolidated investigations along with 10,054 CARES cases. We include CARES cases in investigative numbers because we believe they still represent that intervention in families and the processes are nearly identical to those of investigations, especially in the first 7 days when determining if a case should be fully investigated or diverted to CARES. See *NYC Children FLASH REPORT monthly indicators*, N.Y.C. ADMIN. FOR CHILD. SERVS., at 5–6 (May 2024), <https://www.nyc.gov/assets/acs/pdf/data-analysis/flashReports/2024/05.pdf>. In this time period, we know that ACS sought 222 1034 orders. *Child Welfare Indicators Annual Report CY 2023*, NYC OPENDATA (Apr. 29, 2025), https://data.cityofnewyork.us/Social-Services/Child-Welfare-Indicators-Annual-and-quarterly-repo/3m2q-9maw/about_data. Doing the math, the current rate of entry and production orders sought is 0.4%.

⁴ *NYC Children FLASH REPORT monthly indicators*, N.Y.C. ADMIN. FOR CHILD. SERVS., at 9 (June 2024), <https://www.nyc.gov/assets/acs/pdf/data-analysis/flashReports/2024/06.pdf>.

York unnecessarily investigates far too many, primarily Black and brown, families. Part II details the reporting and investigation process in New York State and City and argues that the reporting and investigation process in New York City is coercive, punitive, and inextricably linked to the vestiges of slavery. Part III outlines the legal framework that applies to child welfare investigations, and argues that ACS investigations routinely violate children's and their families' Fourth Amendment and state constitutional freedom from unreasonable searches and seizures. Part IV describes the harms that children and families suffer from this violation and from ACS' current practices. Part V lays out essential steps for reform.

I. NEW YORK REPORTING AND INVESTIGATIONS BY THE NUMBERS

The statistics on reporting and investigation in New York City make clear that the child welfare system's culture and practices must change. By the age of eighteen, 44% of Black children and 43% of Latine children in New York City will be investigated by ACS⁵ as compared to a 19% of white children.⁶ According to ACS itself, only 22.5% of child welfare investigations were substantiated in 2023.⁷ In 2023, 95,590 children were subject to investigation in NYC.⁸ That means approximately 74,082 children were investigated without substantiated allegations of neglect or abuse in the last year alone.⁹ Experts also assert that approximately one third of cases that New York investigates should never have been investigated in the first place.¹⁰ Therefore, 33,545 children a year are subjected to intrusive investigations that never should have begun. The numbers demonstrate an overinclusive child welfare apparatus that needlessly traumatizes and surveils thousands of children and families every year.¹¹ Even ACS' own commissioner, Jess Dannhauser, has acknowledged that certain ACS investigations are "unnecessary," saying

⁵ See Caterina Pisciotta & Nora McCarthy, *Hotline Calls*, NYC FAM. POL'Y PROJECT, <https://familypolicynyc.org/data-brief/hotline-calls/> (last visited July 28, 2023).

⁶ See Cat Pisciotta & Nora McCarthy, *Racial Disparities*, NYC FAM. POL'Y PROJECT, <https://familypolicynyc.org/data-brief/racial-disparities/> (last visited July 28, 2023).

⁷ NYC Children FLASH REPORT, *supra* note 4.

⁸ *Demographics of Children and Parents at Steps in the Child Welfare System, FY 2023*, *supra* note 2, at 1–2. We are including cases diverted to differential response in our investigation numbers for the purposes of these statistics.

⁹ We do not know if these are all unique children, so we admit this number could include repeat investigations, though the language in the document seems to indicate unique children.

¹⁰ See Nora McCarthy, *No Filter*, NYC FAM. POL'Y PROJECT (Mar. 5, 2024), <https://familypolicynyc.org/report/scr/> (conversation with the author of the report revealing that "because the SCR is screening out such a low percent of reports (and because ACS itself reports that they receive many reports that should not have been screened in), we can surmise that at least one-third of all of these cases should not have been screened in and investigated.") (notes on file with author dated July 11, 2024).

¹¹ It is important to note that the rates of substantiation have dropped since 2022, which is likely due to the change in the legal standard for indicating a case. N.Y. SOC. SERV. LAW § 412(7)(ii) (McKinney 2022); *see also* Michael Fitzgerald, *New York Limits Access to Parents' Names on Child Abuse and Neglect Registry*, THE IMPRINT (Apr. 3, 2020), <https://imprintnews.org/news-2/new-york-access-names-neglect-registry/42044> (describing 2020 legislation raising the standard for CPS indication determinations from "some credible evidence" to a "fair preponderance").

that, “too many families of color in NYC have reports called into the state and are then subject to an unnecessary child protection investigation . . . [and] this large volume of calls distracts us from our effort to protect children truly in danger.”¹²

Even the statistics on *substantiated* reports paint a picture of an overzealous reporting system. Calls by mandated reporters—individuals trained to identify and report abuse or neglect—are substantiated at an average rate of 27%.¹³ For example, education personnel have a 14% substantiation rate, and medical professionals have a rate of 24%.¹⁴ Calls made by friends and family are substantiated 8.9% of the time and anonymous reports are only substantiated at 6.7%.¹⁵ In zip codes with higher poverty rates, social service workers called in a higher percentage of cases than in communities with lower rates, confirming the correlation between increased allegations of abuse and neglect and poverty.¹⁶ As neglect is often confused with poverty, it is unsurprising that well over half of hotline calls solely reference neglect, and nearly *all* of these calls include at least one neglect allegation.¹⁷

The statistics on race, reporting, and investigations in New York City are similarly shocking. Race, particularly if you are Black, is strongly determinative of family regulation system involvement. As noted above, nearly 45% of Black and Latine children experience an investigation of their family by age eighteen, whereas only 19% of white NYC children face investigation.¹⁸ Interestingly, neighborhood-level socioeconomic conditions are not a protective factor against racially-disproportionate ACS investigations—in New York City neighborhoods where overall child poverty rates are lower, Black children still face investigations at staggeringly high rates.¹⁹ In those neighborhoods, which are usually predominantly white, Black children are investigated far more often than their white neighbors. These numbers reveal that 15% of Black children in predominantly white communities will face an investigation, as compared to a city-wide average of 6%.²⁰ ACS’ own analysis confirms this trend: out of a total 95,590 children named in State Central Register (SCR) intakes in 2023, 44,249 (46.3%) were Latine, and 35,164 (36.8%) were Black.²¹

¹² Jess Dannhauser, *Testimony to the New York City Council General Welfare Committee*, N.Y.C. ADMIN. FOR CHILD. SERVS. (Mar. 13, 2023), at 2 <https://www.nyc.gov/assets/acs/pdf/testimony/2023/prelim-budget-hearing-fy24.pdf>. (on file with author.)

¹³ See *Hotline Calls*, *supra* note 5.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ See *Racial Disparities*, *supra* note 6.

¹⁹ *Id.* (stating also “citywide child poverty rates do not correlate with child welfare involvement rates by race” and “black children are extraordinarily vulnerable to investigations no matter how rich or poor the neighborhood they live in”).

²⁰ *Racial Disparities*, *supra* note 6. Many of these zip codes have public housing complexes.

²¹ *Demographics of Children and Parents at Steps in the Child Welfare System, FY 2023*, *supra* note 2. Citizens’ Committee for Children (CCC) made similar findings using 2021 data. See *Children in Child Abuse and Neglect Investigations*, CITIZENS’ COMM. FOR CHILDREN OF N.Y., <https://data.cccnewyork.org/data/bar/1/children-in-child-abuse-and->

These figures are disproportionate to the Latine and Black populations of New York City. According to the 2023 U.S. Census, 22.7% of the population of New York is Black; 28.4% is Latine.²² The ratio of children involved in substantiated versus unsubstantiated investigations was higher for Black and Latine children than for white and Asian children as well.²³

Combined, these statistics demonstrate that the reporting and investigation apparatus is dramatically overreaching, unnecessarily putting far too many children—and particularly children of color—in its crosshairs.

II. REPORTING AND INVESTIGATING PROCESS IN NEW YORK

A. The Origins of Child Welfare Reporting and Investigation Practices Are Racist and Inextricably Linked to Slavery

It is widely understood that the child welfare system is an institution tethered to slavery and rife with racism.²⁴ Family separation was a cornerstone of slavery, used to preserve slave-owner dominance, and continued in post-slavery laws that perpetuated separation between Black children and their parents²⁵

The government's exclusion of Black people from social support systems post-slavery laid the groundwork for the modern-day child welfare system, and specifically the reporting and investigatory apparatus. For example, in the 1930s, Black mothers were excluded from government pensions for widowed women, and when Aid to Dependent Children was enacted, localities could set eligibility criteria, often excluding Black parents.²⁶ In the 1950s, during school desegregation, many states passed laws requiring a child's home to be "suitable" for receipt of public aid—tethering eligibility for aid to biased notions of parental fitness, again excluding Black families.²⁷ In the 1960s, state courts overturned suitability laws, but allowed families where children were removed from their homes to be excluded from public aid.²⁸ Consequently, when states investigated families to determine if they required aid, they began removing children at

[neglect-investigations#1383/17,12,10,9,99/1/1633/99](#) (last visited July 13, 2023) (reporting in 2021, there were 23,003 and 25,242 investigations against Black and Latine families, respectively, compared with just 4,270 and 2,872 investigations against White and Asian families, respectively).

²² See *QuickFacts: New York City, New York*, U.S. CENSUS BUREAU, <https://www.census.gov/quickfacts/newyorkcitynewyork> (last visited July 13, 2023).

²³ *Demographics of Children and Parents at Steps in the Child Welfare System, FY 2023*, *supra* note 2, at 1.

²⁴ Ernestine Gray, *ABA Resolution 606*, AM. BAR ASS'N, at 4 (Aug. 2022), <https://www.americanbar.org/content/dam/aba/administrative/news/2022/08/hod-resolutions/606.pdf>. See also DOROTHY ROBERTS, *SHATTERED BONDS: THE COLOR OF CHILD WELFARE* (2001).

²⁵ *Id.* at 5. (For example, under vagrancy laws, unemployed people were imprisoned and forced into chain gangs or direct service to former enslavers, separating them from their families.)

²⁶ *Id.* at 5.

²⁷ *Id.* at 6. (Statements from legislators at the time showing that, "these exclusions were not based on actual fitness determinations, but were instead designed to push Black families out of the community to limit their children's school enrollment.")

²⁸ *Id.* at 6–7.

rapidly increasing rates.²⁹ Instead of providing aid to families to help avoid removals, Congress earmarked Social Security funds to care for children who were placed out of their homes.³⁰ In one year, from 1961–1962, rates of post-investigation child removals skyrocketed 67%.³¹ Critically, the New York Family Court Act was written and published in 1964 amidst this forceful political climate.

The federal scheme has not changed meaningfully in the over seventy years since its enactment. Newer laws, building on the laws enacted in the 1950s and 60s, continue to perpetuate inequality. In 1974, the Child Abuse Prevention and Treatment Act (CAPTA) preserved broad definitions of abuse and neglect akin to earlier suitability requirements.³² The law also established and tethered federal reimbursement for states to existence of mandated reporters, individuals required to make reports about suspected abuse or neglect.³³

Given the direct connection between the child welfare system, slavery, post-slavery anti-Black family laws, and modern-day reporting, it is unsurprising that children of color are investigated at much higher rates than white children. Disproportionate investigation rates are therefore not an accident, but a reflection of the child welfare system's history and design.

B. Current Practices Lead to Overreporting and Over-Investigation

In New York State, a child welfare investigation begins with a call—or “report”—to the New York State Central Register (SCR), which operates under the State's Office of Children and Family Services (OCFS).³⁴ Anyone who suspects child abuse or neglect can call in a report, and may even do so anonymously.³⁵ Certain individuals, known as “mandated reporters”, *must* report suspected abuse or neglect. These reporter include physicians, psychologists, nurses, social workers, hospital personnel, school officials, and other similarly situated professionals.³⁶

During an SCR call, which usually lasts approximately twenty to thirty minutes, SCR staff determines whether the allegations require an investigation, or whether the call should be “screened out” based on their assessment of New York law's required elements of abuse or neglect allegations.³⁷ These assessments can be complex, and require SCR staff members to make quick determinations based on their interpretations of

²⁹ *Id.* at 7.

³⁰ *Id.* at 7.

³¹ *Id.* at 7.

³² *Id.* at 8.

³³ *Id.* at 9.

³⁴ See generally *Child Protective Services*, OFF. OF CHILD. & FAM. SERVS., <https://ocfs.ny.gov/programs/cps/> (last visited July 18, 2024); see also Melissa Friedman & Daniella Rohr, *Reducing Family Separations in New York City: The COVID-19 Experiment and a Call for Change*, 123 COLUM. L. REV. F. 52, 54 (2023).

³⁵ *Child Protective Services*, OFF. OF CHILD. & FAM. SERVS., <https://ocfs.ny.gov/programs/cps/> (last visited July 18, 2024).

³⁶ N.Y. SOC. SERV. LAW § 413 (McKinney 2022).

³⁷ *No Filter*, *supra* note 10.

what constitutes “reasonable suspicion,” “minimum degree of care,” “imminent risk of impairment,” and more.³⁸

Under OCFS policy, if the SCR accepts a report, which it does in about 75% of cases, the local child protective services agency—in New York City, ACS—must begin an investigation, by law, within 24 hours.³⁹ Unlike many other law enforcement agencies, once the call is referred by OCFS, ACS has no discretion whether to investigate: it must do so.⁴⁰ In carrying out this mandate, OCFS requires a Child Protective Specialist (“CPS”) to make in-person or telephonic contact with the subject or named person in the SCR report or another person who can provide information about whether the child may be in imminent danger within 24 hours.⁴¹ Within seven days of an SCR report, OCFS requires the CPS to assess the safety of the child, which includes conducting a home search and child interview.⁴² When carrying out home searches, the CPS must examine *all* rooms, irrespective of allegations, and the Casework Manual enumerates twenty-two aspects of the home that must be evaluated, including the refrigerator.⁴³

Notably, New York law does not require ACS to conduct a home search as part of its investigation.⁴⁴ Instead, it requires ACS to “evaluate the environment” of the subjects of the report and lays out the steps the agency must take if its workers are denied access.⁴⁵ OCFS and ACS’ home visit requirement is therefore *not* required by law. In fact, it constitutes a significant expansion of the law, contributing to a culture of intrusive investigations. Further, OCFS advises it is “good practice” for CPS workers to question children away from the parent, and such interrogations may be done without a parent’s permission.⁴⁶ ACS guidance is similar, recommending interviewing the child at school or a Child Advocacy Center, away from parents.⁴⁷ As such, ACS regularly interviews the child without the permission of a caregiver, and they typically do so in a separate room of the home during an initial visit, at school, or outside of the home. In the latter settings, the caregiver is often unaware that the child is being interviewed at all. During the investigative stage, ACS may also carry out

³⁸ *Id.*

³⁹ *Id.*; N.Y. SOC. SERV. LAW § 424(6)(a) (McKinney 2017).

⁴⁰ *Id.*

⁴¹ N.Y. COMP. CODES R. & REGS. tit. 18, § 432.2(b)(3)(i) (2014); *see also New York State Child Protective Services Manual*, OFF. OF CHILD. & FAM. SERVS., at B-1 (Oct. 2023), <https://ocfs.ny.gov/programs/cps/manual/2023/2023-CPS-Manual-Ch06-2023Oct.pdf>.

⁴² *New York State Child Protective Services Manual*, OFF. OF CHILD. & FAM. SERVS., at B-1 (Oct. 2023), <https://ocfs.ny.gov/programs/cps/manual/2023/2023-CPS-Manual-Ch06-2023Oct.pdf>.

⁴³ N.Y.C. ADMIN. FOR CHILD. SERVS., DIVISION OF CHILD PROTECTION CASEWORK PRACTICE REQUIREMENTS MANUAL at 20-21 (5th ed. 2013) (on file with author).

⁴⁴ N.Y. SOC. SERV. LAW § 424.

⁴⁵ *Id.*

⁴⁶ *New York State Child Protective Services Manual*, *supra* note 42, at F-5.

⁴⁷ DIVISION OF CHILD PROTECTION CASEWORK PRACTICE REQUIREMENTS MANUAL, *supra* note 44, at 23.

strip searches without consent of the parent or the child, a power it construes broadly.⁴⁸

Section 1034 of the New York Family Court Act is the legal mechanism for securing a search warrant in child welfare investigations in New York. In theory, Section 1034 serves to protect children's and families' Fourth Amendment and analogous state rights against unreasonable searches and seizures. During an investigation and prior to filing a petition, in the absence of parental consent or the existence of exigent circumstances, ACS must obtain a 1034 court order to (1) gain entry into a home ("entry order") or (2) gain access to a child's body ("order to produce").⁴⁹ Prior to issuing an order to produce, the Family Court must find "reasonable cause to suspect that a child or children's life or health may be in danger."⁵⁰ Recognizing the privacy interests at stake in a home investigation, before issuing an entry order, the Family Court must also find "probable cause to believe that an abused or neglected child may be found on the premises."⁵¹

The procedure for granting an entry order is the same as is required for granting a search warrant under New York's laws of criminal procedure.⁵² However, in deciding whether to grant such an order, the Family Court also must consider and weigh numerous factors, including the nature and seriousness of the allegations, the age and vulnerability of the children, the potential harm to the child if an investigation is not completed, the relationship of the source of the report to the family (including the source's ability to observe what has been alleged), any child protective or criminal history of the family, and "any other relevant information that the investigation has already obtained."⁵³ Finally, the statute requires that the court authorize only the necessary measures that are the "least intrusive to the family," protecting the particularity requirement of the Fourth Amendment and state analog.⁵⁴

ACS has up to sixty days to complete the investigation and determine whether the report is "unfounded" or "indicated"

⁴⁸ *New York State Child Protective Services Manual*, *supra* note 42, at H-2-3; see also *Preventing Strip Searches of Children and Youth: A Guide for Advocates New York State Supplement*, AM. BAR ASS'N (Mar. 2022), https://www.americanbar.org/content/dam/aba/publications/litigation_committees/childrights/strip-search-tool-kit-nys-supplement.pdf.

⁴⁹ N.Y. FAM. CT. ACT § 1034 (McKinney 2009).

⁵⁰ *Id.* § 1034(2)(a)(i).

⁵¹ *Id.* § 1034(2)(b)(i).

⁵² *Id.* § 1034(2)(c).

⁵³ *Id.* § 1034(d)(i)-(v); *Matter of L.R.*, 63 Misc. 3d 467, 468 (N.Y. Fam. Ct. 2019) (finding that probable cause existed to grant entry into the home and stressing "[e]ach of these children is of insufficient age to care for himself or herself, and, thus, are reliant on the adults in their lives...As such, they are vulnerable. The potential harm to the child or children if a full investigation is not complete is, as noted above, grave and life altering."); *In re Smith Child.*, 26 Misc.3d 826, 834 (N.Y. Fam. Ct. 2009) (denying an application for an entry order holding that an anonymous report and a history of prior investigations or reports by CPS alone were "insufficient to establish 'probable cause' for the issuance of an order of entry in a child protective investigation" absent other corroborating indications of maltreatment or abuse.).

⁵⁴ N.Y. FAM. CT. ACT § 1034(2)(e) (McKinney 2009).

(substantiated).⁵⁵ The standard for indicating a case is a fair preponderance of the evidence, meaning it is more likely than not that a child was maltreated.⁵⁶ During the investigation, and before any legal action is taken against a family, ACS subjects families to a minimum of bi-monthly home visits, allowing for up to a minimum of four additional, usually warrantless, searches following the initial home search.⁵⁷

Nearly one in five child welfare cases in New York City is diverted to a differential response program called CARES,⁵⁸ which allows ACS to assess families without deeming a case indicated or unfounded.⁵⁹ The program purports to support families without putting them through the typical investigative process and without seeking court intervention. Instead, they are placed into a distinct track, handled by a separate unit within ACS.⁶⁰ ACS removes these cases from its investigative statistics, painting a misleading picture that fails to acknowledge that families referred to CARES often undergo significant and traumatic contact with ACS. CARES cases require “a finding that no child in the home is in immediate or impending danger of serious harm.”⁶¹ The CARES program is run by ACS, and families can opt in or out of the program.⁶² After seven days, a final determination is made as to whether the family presents safety concerns that would require shift to a traditional investigation; otherwise it continues as a CARES matter.⁶³ The intervening seven days vary from a traditional investigation, but the inquiry into safety retains many of the hallmarks of an investigation including assessment of the home environment, safety of the child, the child’s needs, and interviews with children. In fact, 80% of CARES cases in 2022 and 75% of CARES cases in 2023 lasted forty-one to sixty days, the length of time of a traditional investigation, while only 6% were closed in under twenty days.⁶⁴ While proponents of the program tout a shrinking family regulation system, it is, in fact, an expansion.⁶⁵ As author Kelly Fong put it, “leaning

⁵⁵ N.Y. SOC. SERV. LAW § 424(7) (McKinney 2017).

⁵⁶ N.Y. SOC. SERV. LAW § 422 (McKinney 2022).

⁵⁷ David Shalleck-Klein et al., *Gould v. City of N.Y., Class Action Complaint and Jury Demand*, CLASSACTION.ORG at 13 (Feb. 20, 2024), <https://www.classaction.org/media/gould-et-al-v-the-city-of-new-york.pdf> (citing N.Y.C. ADMIN. FOR CHILD. SERVS., *Warrants, Entry Orders and Orders to Produce* (on file with Gould’s Plaintiffs’ counsel)); N.Y.C. ADMIN. FOR CHILD. SERVS., *Warrants; Entry Orders and Orders to Produce a Child* (on file with author).

⁵⁸ *Demographics of Children and Parents at Steps in the Child Welfare System, FY 2023*, *supra* note 2, at.

⁵⁹ *The Collaborative Assessment, Response, Engagement & Support (CARES) Approach*, N.Y.C. ADMIN. FOR CHILD. SERVS., <https://www.nyc.gov/site/acs/child-welfare/cares.page> (last visited July 18, 2024).

⁶⁰ *Id.*

⁶¹ N.Y. COMP. CODES R. & REGS. tit. 18, § 432.13 (2014).

⁶² *Id.*

⁶³ *Id.*

⁶⁴ (on file with author).

⁶⁵ See Miriam Mack et al., *Written Testimony of the Article 10 Family Defense Organizations in New York City*, N.Y. ADVISORY COMM. TO THE U.S. COMM’N ON CIV. RTS., at 7-8 (Aug. 19, 2023), <https://cfrny.org/wp-content/uploads/2023/08/Joint-Defender-Civil-Rights-Commission-Testimony-FINAL.pdf>. Family defense organizations in New York City make clear that CARES cases are “no less coercive.” In fact, in some ways they are “more invasive” than typical cases because the time of the services can extend longer than a traditional investigation.

into CPS' ['Child Protective Services'] helping role does not negate its coercive power . . . [S]upport delivered through CPS remains inextricably tethered to surveillance; the promise of care is inseparable from the threat of removal . . . [D]ifferential response often gives families essentially the same thing [as traditional CPS intervention] in different wrapping paper."⁶⁶ Because these families are, in effect, investigated and because they remain in contact via CARES services with ACS *without* an indicated case, this paper categorizes cases referred to the CARES track as investigations.

If ACS deems a case indicated, it can opt to address the alleged maltreatment in one of three ways: it can offer services to the family, file a petition in Family Court alleging abuse or neglect while seeking court-ordered services, and in some instances, file a petition and seek the removal of the child from the home.⁶⁷ While providing services, be it by consent or court-ordered, ACS continues to monitor the family via home visits, strip searches, and communication with connected individuals and entities such as family and schools. While those voluntarily engaging in services may opt out, many do not feel able to opt out for fear of losing their children. Therefore, ACS involvement in a child's life lasts until ACS or the court closes the case, which can be months or even years later.⁶⁸

Given the staggering number of children investigated in NYC annually, the low rates of substantiation, and ACS's wide latitude for intrusion at the investigative stage, it is clear that children in NYC are unnecessarily and aggressively surveilled by the apparatus purportedly designed to protect them.

C. Investigations in New York City are Invasive, Punitive, and Coercive

A simple interrogation into the child welfare system makes it clear why many call it the "family regulation" or "family policing" system.⁶⁹ To state the obvious: investigations are invasive for children and families. ACS workers themselves describe investigations as "[c]aseworkers making unannounced visits [to] strip-search children looking for bruises and peer[ing] into refrigerators and around homes looking for signs of bad

⁶⁶ KELLEY FONG, INVESTIGATING FAMILIES: MOTHERHOOD IN THE SHADOW OF CHILD PROTECTIVE SERVICES, 202 (2023).

⁶⁷ See *A Guide for Parents of Children in Foster Care*, N.Y.C. ADMIN. FOR CHILD. SERVS., at 6, 15–16, 49 (2023), https://www.nyc.gov/assets/acs/pdf/parent_handbook.pdf [<https://perma.cc/P2F6-6XAD>].

⁶⁸ Friedman & Rohr *supra* note 35, at 55.

⁶⁹ We believe the Narrowing the Front Door Working Group summed the need for this language up best: "Throughout this report and recommendations we refer to the 'family regulation system' or 'family policing system.' By adopting this language, we follow how directly impacted people describe their lived experience with what has traditionally been called the 'child welfare system' or the 'child protection system.' This terminology reflects their experience with the system's prioritization of and roots in surveillance, punishment, and control rather than genuine assistance to and support of families living in poverty and families in other marginalized groups, particularly Black and brown families." ANGELA OLIVIA BURTON ET AL., NARROWING THE FRONT DOOR TO NYC'S CHILD WELFARE SYSTEM REPORT AND COMMUNITY RECOMMENDATIONS (2022), https://www.narrowingthefrontdoor.org/_files/ugd/9c5953_86404362d37449fc9d93c19ba2300f7f.pdf; see also ROBERTS, *supra* note 24.

parenting.”⁷⁰ Section 424 of New York’s Social Services Law requires ACS to undertake “an evaluation of the environment of the child named in [a] report and any other children in the same home.”⁷¹ In interpreting this mandate, ACS and OCFS have given caseworkers wide latitude to enter homes (often at night), strip search children, pull them from schools, interview a myriad of individuals related to a child’s life, and essentially turn a family’s life inside out and upside down.⁷² In a discarded study conducted by ACS, a CPS worker likened an investigation to “being stopped and frisked for 60 days.”⁷³ One worker went so far as to say “Black and brown parents are treated at every juncture as if they are not competent parents capable of providing acceptable care to their children.”⁷⁴

The New York City child welfare system is also punitive—often punishing poverty. ACS’ own survey found that symptoms of poverty, such as inadequate housing or childcare, are frequently punished as signs of neglect.⁷⁵ In fact, experts at the federal Children’s Bureau and beyond find that confusing poverty for neglect is one of the gravest issues plaguing the child welfare system today.⁷⁶ Rather than meeting the needs of a family, the system is designed to police them.

ACS promotes an image of its investigative system as focused on “social work skills”⁷⁷ and on providing therapeutic support for families. However, ACS/OCFS training, recruiting, and guidance materials reveal that the investigations are more closely connected to policing than social work.⁷⁸ For years, ACS trained new CPS workers at the New York City Police Department (“NYPD”) Training Academy and these workers attended NYPD’s Criminal Investigator’s Course.⁷⁹ Ultimately, ACS established its own facility for investigative training to supplement the NYPD training, modeled after the NYPD “fun house,” which is a “mock multi-room apartment,” in which hired actors play the roles of parents and children being investigated by ACS in order to train ACS CPS officers on how to conduct home searches and investigative interviews.⁸⁰ For more complex cases, ACS employs “Investigative Consultants,” who must have “five (5) years of satisfactory full-time experience in the field of law enforcement” and “at least three years of this experience must have been obtained while working in Special Victims, Forensics, Homicide, Domestic Violence, Missing Persons, Precinct Detective; or a closely related law

⁷⁰ Andy Newman, *Is N.Y.’s Child Welfare System Racist? Some of Its Own Workers Say Yes.*, N.Y. TIMES (Nov. 22, 2022), <https://www.nytimes.com/2022/11/22/nyregion/nyc-acsracism-abuse-neglect.html>.

⁷¹ N.Y. SOC. SERV. LAW § 424 (McKinney 2017).

⁷² See *supra* Section II.B.

⁷³ Newman, *supra* note 71.

⁷⁴ *Id.*

⁷⁵ *Id.*

⁷⁶ Friedman & Rohr, *supra* note 35, at 71.

⁷⁷ *Becoming a Child Protective Specialist*, N.Y.C. ADMIN. FOR CHILD. SERVS., <https://www.nyc.gov/site/acs/about/becoming-cps.page> (last visited July 22, 2024).

⁷⁸ Tarek Z. Ismail, *Family Policing and the Fourth Amendment*, 111 CAL. L. REV. 1485, 1501 (2023).

⁷⁹ *Id.*

⁸⁰ *Id.*

enforcement work unit or task force” or other law enforcement experience.⁸¹

Given that much of CPS’ training is rooted in law enforcement tactics, it is no surprise that child welfare investigations are unequivocally coercive.⁸² Using tactics similar to those employed by the police, including shows of force, threat of court intervention, and surveillance during their investigations, CPS repeatedly searches the home and routinely strip-searches the child. Though ACS provides parents with a handout describing their rights at the first contact, as described in Section III B below, this advisory is perfunctory.⁸³ In reality, CPS often resorts to heavy-handed tactics such as threatening parents with court intervention, removal of their child, and police involvement.⁸⁴ ACS’ own “[c]aseworkers said they felt pressured to push their way into people’s homes without advising parents of their rights. They ‘feel complicit in the harm that A.C.S. [sic] can cause Black and brown families’ and powerless to change the system.”⁸⁵

This is unsurprising, given the breadth of caseworkers’ discretion, which they exercise in a system that expects access to families, children, and homes, without meaningful attention to privacy rights and the laws that protect them. For example, the OCFS guidance states that, “[w]hen a CPS receives allegations that a child has injuries *on those parts of his or her body normally covered by clothing* (usually the torso/trunk and upper thighs), it *must consider* whether to have the child undress to allow for a visual confirmation of any injuries”,⁸⁶ despite this, former caseworkers reveal that strip searching children down to their underwear is a “routine” practice, irrespective of the nature of the triggering allegations.⁸⁷ As discussed below in Section III B, caseworkers very rarely seek judicial approval prior to entering a family’s home or strip searching a child. The structure of the child welfare system, compounded by caseworker training and OCFS guidance on how to implement the laws, create a culture of investigation without court ratification. Because there is no mechanism for a court to suppress illegally obtained evidence suppression in family

⁸¹ *Investigative Consultant – Level 1*, OFF. CAREERS WEBSITE OF THE CITY OF N.Y., <https://cityjobs.nyc.gov/job/investigative-consultant-level-1-in-nyc-all-boros-jid-10139> (last visited July 19, 2024).

⁸² Ismail, *supra* note 79, at 1492, 1501.

⁸³ See Section III.B; *see also*, NYC ADMIN. FOR CHILD PROTECTIVE SERVS., *Child Protection* (2023).

⁸⁴ Ismail, *supra* note 79, at 1492, 1497–8, 1501; *see also* Shalleck-Klein *supra* note 57, at 16–18 (enumerating six coercive hallmarks of an investigation: threatening to take children away, threatening to call the police, telling parents they have no choice, misrepresenting or abusing ACS authority, failure to meaningfully inform parents of their rights, and making a public scene); New York Advisory Committee, *Examining the New York Child Welfare System and Its Impact on Black Children and Families*, U.S. COMM. ON CIV. RTS., at 54 (May 2024), https://www.usccr.gov/files/2024-05/ny-child-welfare-system-sac-report_0.pdf (a recent report by the New York Advisory Committee to the U.S. Commission on Civil rights, noting “multiple [stakeholders] provided testimony that CPS obtains entry to the household through methods of coercion.”).

⁸⁵ Newman, *supra* note 71.

⁸⁶ *New York State Child Protective Services Manual*, *supra* note 42, at H-1 (emphasis added).

⁸⁷ Newman, *supra* note 71.

regulation proceedings, the issue of when or how searches are carried out is never litigated. Rather than going to court, caseworkers circumvent the law and coerce consent for easier access to children.

The way investigations are carried out is not the fault of the individual caseworkers—they are acculturated to a broken system far bigger than themselves. Instead, it is a result of the laws,⁸⁸ policies,⁸⁹ training,⁹⁰ culture, practice and, ultimately, the design of the entire child welfare system.⁹¹

III. ACS INVESTIGATIONS VIOLATE THE RIGHTS OF CHILDREN AND THEIR FAMILIES

ACS investigations are not only invasive—they also circumvent a child's right to privacy. Everyone, including children and parents, has the right to be free from unreasonable searches and seizures. These rights are enshrined in the Fourth Amendment of the United States Constitution, and in Article 1 Section 12 of the New York State Constitution. In the context of child welfare investigations, these rights are reflected in the Family Court Act, which lays out a mechanism for seeking a court order prior to conducting a home investigation or strip search of a child. However, the scope of the current apparatus, and the coercive way it functions, make clear that ACS fails to uphold these rights.

A. Children Have a Statutory Right to Privacy

The Fourth Amendment of the United States Constitution, which applies to the states via the Fourteenth Amendment and is enshrined in the New York State Constitution, establishes “[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures.”⁹² This right, the Constitution continues, “shall not be violated,” and is protected through a warrant requirement, mandating that “no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.”⁹³ Notably, the protections of the Fourth Amendment are not limited to the criminal context. They extend to all “activities of sovereign authority.”⁹⁴

It is undisputed that the Fourth Amendment applies to children.⁹⁵ As such, a child has the right to be free from unreasonable searches of his

⁸⁸ Josh Gupta-Kagan, *Confronting Indeterminacy and Bias in Child Protection Law*, 33 STAN. L. & POL'Y REV. 217 (2022).

⁸⁹ *New York State Child Protective Services Manual*, *supra* note 42.

⁹⁰ Ismail, *supra* note 79, at 1501.

⁹¹ Gray, *supra* note 24.

⁹² U.S. CONST. amend. IV; N.Y. CONST. art. I, § 12 (containing identical language).

⁹³ *Id.*

⁹⁴ *New Jersey v. T.L.O.*, 469 U.S. 325, 335 (1985) (internal quotations and citations omitted).

⁹⁵ *See Id.* at 333 (holding that the Fourth Amendment's protections apply to searches of children conducted by public school officials); *see also* *California v. Hodari D.*, 499 U.S. 621, 626–27 (1991) (finding a minor's Fourth Amendment rights were not violated, thereby recognizing such rights exist); and Kristin Henning, *The Fourth Amendment Rights of Children at Home: When Parental Authority Goes Too Far*, 53 WM. & MARY L. REV. 55, 61 (2011).

person, as well as unwanted governmental intrusion into his home.⁹⁶ While a child can therefore deny a police officer or a child welfare caseworker entry into their home without a warrant or the presence of exigent circumstances, the reality is that a child's right to do so is often inextricably linked to that of their parent.⁹⁷ Imagine a circumstance in which a parent and child are home and law enforcement knocks on the door. Whether a child welfare worker or police officer, the entrant does not address the critical question—whether they may enter the family's home—to the child. Instead, they focus on the parent. That does not make the child's rights any less real, but rather, simply overlooked.

Though few courts have evaluated a child's right to privacy at home separately from their parents' involvement or consent, those that have recognize the minor's independent rights to the Fourth Amendment's protections.⁹⁸ More generally, the Supreme Court has consistently found that the Fourth Amendment's "overriding function" is to "protect personal privacy and dignity against unwarranted intrusion by the State."⁹⁹ An individual's right to personal privacy is perhaps strongest in their home, as "[a]t the Amendment's 'very core' stands the 'right of a man to retreat into his own home and there be free from unreasonable government intrusion.'"¹⁰⁰ In addition to protecting against unreasonable government intrusion in one's own home, the Fourth Amendment also protects one's right to bodily integrity and privacy of one's person.¹⁰¹ As a result, courts have held that strip searches of children "implicate fundamental Fourth Amendment rights," placing particular emphasis on a child's unique vulnerability to such a search.¹⁰²

Home and strip searches conducted without a warrant are therefore presumptively unreasonable, unless (1) the party has voluntarily consented to the search, (2) exigent circumstances exist, or (3) there is a "special need . . . beyond the normal need for law enforcement, [that] make

⁹⁶ U.S. CONST. amend. IV; N.Y. CONST. art. I, § 12 (containing identical language).

⁹⁷ As scholar Kristin Henning has written:

While it is largely beyond dispute that children have a legitimate expectation of privacy and security from government intrusion when they are alone, the reality is that most children do not live by themselves and are rarely alone. As a result, a child's expectation of privacy in his living space can rarely be examined in a vacuum, and children seldom exercise their Fourth Amendment rights in the home without some involvement or reference to a parent or guardian.

Henning, *supra* note 96, at 70.

⁹⁸ *Id.* at 72 (citing as examples, *In re Rudy F.*, 12 Cal. Rptr. 3d 483, 490 (Ct. App. 2004)); *Commonwealth v. Porter*, 923 N.E.2d 36, 45 (Mass. 2010)); *In re Welfare of B.R.K.*, 658 N.W.2d 565, 574–76 (Minn. 2003).

⁹⁹ *Schmerber v. California*, 384 U.S. 757, 767 (1966); *see also Camara v. Municipal Court*, 387 U.S. 523, 528 (1967) (stating that the "basic purpose" of the Fourth Amendment "is to safeguard the privacy and security of individuals against arbitrary invasions by governmental officials.").

¹⁰⁰ *Florida v. Jardines*, 569 U.S. 1, 6 (2013) (citing *Silverman v. United States*, 365 U.S. 505, 511 (1961)); *see also Caniglia v. Strom*, 593 U.S. 194, 198 (2021).

¹⁰¹ *In re. Shernise C.*, 934 N.Y.S.2d 171, 174 (2d Dept. 2011).

¹⁰² *Id.* at 175 (citing *Bell v. Wolfish*, 441 U.S. 520, 558 (1979)).

the warrant and probable-cause requirement impracticable.”¹⁰³ The “special needs exception” loosens the warrant requirement where searches advance state interests unrelated or tangential to law enforcement.¹⁰⁴ The exception substitutes a balancing test for the warrant requirement in contexts ranging from driving checkpoints to work-related searches of public employees’ offices.¹⁰⁵ Notably, virtually every federal appellate court has held that the Fourth Amendment applies to caseworkers conducting child welfare investigations, and that a caseworker’s entry into the home constitutes a search to which the warrant and probable cause requirements apply.¹⁰⁶ In so holding, more than half of the federal courts of appeals have rejected a “special needs” exception in child welfare investigations, which would otherwise loosen the warrant requirement.¹⁰⁷ Notably, courts considering the legality of child welfare investigations in New York have not applied the lesser scrutiny of the special needs exception. The Second Circuit, which covers New York, is silent on whether the special needs exception applies to home searches and body checks in child welfare investigations. It has left open the possibility that the exception *may* apply to child welfare *seizures* (including the removal of children from a parent’s care) but has not held that it applies to searches alone.¹⁰⁸ Without the loosening of the warrant requirements, the traditional Fourth Amendment requirements of a warrant or consent absent exigent circumstances therefore apply.

For example, in *Tenenbaum v. Williams*, the Second Circuit held that removing a child from her school and taking her to a hospital “where she was required to remain for several hours before being examined and returned to her parents,” constituted a seizure to which the Fourth Amendment applied.¹⁰⁹ Though the seizure took place three days after child welfare workers searched the child’s home and inspected her body, the court did not address the legality of the home search.¹¹⁰ Instead, the court considered whether the special needs exception could ever apply to a child’s removal. The court, however, “refrain[ed] from deciding categorically,” holding that the result was the same whether the “probable

¹⁰³ *Ferguson v. City of Charleston*, 532 U.S. 67, 74 n.7 (2001) (citations omitted).

¹⁰⁴ *New Jersey v. T.L.O.*, 469 U.S. 325, 351 (1985) (Blackmun, J., concurring); *Mich. Dep’t of State Police v. Sitz*, 496 U.S. 444, 449 (1990); *O’Connor v. Ortega*, 480 U.S. 709, 720 (1987).

¹⁰⁵ *T.L.O.*, 469 U.S. at 351–52 (Blackmun, J., concurring); *Sitz*, 496 U.S. at 448–50; *O’Connor*, 480 U.S. at 721.

¹⁰⁶ Anna Arons, *The Empty Promise of the Fourth Amendment in the Family Regulation System*, 100 WASH. U. L. REV. 1057, 1088 (2023) (citing *J.C. v. District of Columbia*, 199 A.3d 192, 200 (D.C. 2018); *Andrews v. Hickman County*, 700 F.3d 845, 859 (6th Cir. 2012); *Gates v. Tex. Dep’t of Protective & Regul. Servs.*, 537 F.3d 404, 419–20 (5th Cir. 2008); *Riehm v. Engelking*, 538 F.3d 952, 965 (8th Cir. 2008); *Roska ex rel. Roska v. Peterson*, 328 F.3d 1230, 1240 (10th Cir. 2003); *Doe v. Heck*, 327 F.3d 492, 509 (7th Cir. 2003), *as amended on denial of reh’g* (May 15, 2003); *Calabretta v. Floyd*, 189 F.3d 808, 813 (9th Cir. 1999); *Tenenbaum v. Williams*, 193 F.3d 581, 602 n.14 (2d Cir. 1999); *Lenz v. Winburn*, 51 F.3d 1540, 1547 n.7 (11th Cir. 1995); *Wildauer v. Frederick County*, 993 F.2d 369, 372 (4th Cir. 1993); *Good v. Dauphin Cnty. Soc. Servs. for Child. & Youth*, 891 F.2d 1087, 1092 (3d Cir. 1989)).

¹⁰⁷ *Id.*; see also Ismail, *supra* note 79, at 1520–22.

¹⁰⁸ See, e.g., *Tenenbaum*, 193 F.3d at 604; *Kia P. v. McIntyre*, 235 F.3d 749, 762 (2d Cir. 2000); *Southerland v. City of N.Y.*, 680 F.3d 127, 158 (2d Cir. 2012).

¹⁰⁹ *Tenenbaum*, 193 F.3d at 602.

¹¹⁰ *Id.*

cause” or “special needs” “reasonableness” test was applied, thereby avoiding the question of whether the special needs exception ever could apply.¹¹¹ The court did, however, note “if . . . caseworkers have ‘special needs,’ we do not think that freedom from ever having to obtain a predeprivation court order is among them. Caseworkers can effectively protect children without being excused from ‘whenever practicable, obtain[ing] advance judicial approval of searches and seizures.’”¹¹²

Following suit, in *Matter of Shernise C.*, New York’s Appellate Division, Second Department, clearly declined to apply the special needs exception when reversing the Family Court’s order for a forensic examination of a child’s body following allegations of sexual abuse.¹¹³ Notably, the court evaluated the reasonableness of such an order *after* a petition alleging sexual abuse was filed—a situation where there was presumably far more evidence of alleged abuse than there would be at the outset of an investigation.¹¹⁴ Finding that such an order violated the child’s Fourth Amendment rights, the court held, “[r]egardless of whether the traditional probable cause requirement or some lesser requirement of individualized suspicion applies here under the ‘special needs’ doctrine, reasonableness remains the ultimate touchstone of the Fourth Amendment.”¹¹⁵

While the Second Circuit and New York State courts have not definitively ruled out the applicability of the special needs exception to child welfare home and body searches, the courts’ reluctance to apply it and loosen the warrant requirement is notable. In both *Tenenbaum* and *Shernise*, federal and state courts in New York explicitly recognized the important reality that caseworkers can obtain judicial approval for such investigations without undermining their ability to effectively protect children.

As described *supra*, Section 424 of New York’s Social Services law requires ACS to evaluate the “environment” of any child named in a report to the SCR, as well as of any other children in the same home. Notably, the law does not describe when or how ACS must make this evaluation. As also described *supra*, Section 1034 of the Family Court Act lays out the procedure for ACS to secure a warrant in child welfare investigations. Thus, in such investigations, “a Family Court order is equivalent to a search warrant for Fourth Amendment purposes.”¹¹⁶ Despite the process that Section 1034 requires, ACS virtually never seeks such orders prior to searching a home and a child. Instead, they rely on coercive tactics to carry out unsanctioned home and strip searches.

¹¹¹ *Id.* at 604–05.

¹¹² *Id.* at 604 (citing *Terry v. Ohio*, 392 U.S. 1 (1968)); *see also* Arons, *supra* note 107, at 1089 n.179.

¹¹³ *In re. Shernise C.*, 934 N.Y.S.2d at 175.

¹¹⁴ *Id.* at 173.

¹¹⁵ *Id.* at 175.

¹¹⁶ *Southerland*, 680 F.3d at 144 n.15.

B. ACS Investigations Routinely Violate Children and Their Families' Rights to Privacy

In conducting its investigations, ACS routinely fails to seek court orders setting forth parameters of the investigation. Instead, it conducts home and bodily searches without meaningful consent and/or absent exigent circumstances, a plain violation of the Fourth Amendment and the accompanying protections in New York State law.¹¹⁷ According to Family Court holdings applying Section 1034, “it has long been established, since at least 1968,” that parents “are under no obligation to cooperate with a child protective agency’s investigation of them.”¹¹⁸ However, in reality, despite the Family Court Act’s provision for entry orders, the vast majority of child welfare home and body searches take place without judicial approval. On average, ACS obtains entry orders for fewer than 0.4% of home searches.¹¹⁹

While parents are not required to allow CPS access to their child or their home during an investigation, the OCFS handbook on investigations does not include any provisions requiring that parents be notified of this right or any other legal rights during the first interview, nor at any other time, except for notification of their rights pursuant to the amendment or expungement of SCR reports.¹²⁰ If a parent denies access, within 24 hours of such denial, the CPS, in consultation with a supervisor, must determine whether there is a potential danger to the children that necessitates seeking a court order for entry, and also must inform the adult who denied access that they plan on obtaining such order.¹²¹ The CPS also may request law enforcement assistance before seeking a court order.¹²² Implicit in this framework is that CPS’ initial tactic is to gain access into the home with a mere knock on the door. Only if denied entry do the child and family’s legal rights come into play, relegating those rights to little more than an afterthought in the investigative process and putting the onus on a terrified family to enforce their constitutional rights.

While New York City does notify parents of some of their rights by providing a handout to families at first contact with CPS, that notification is not mandated by New York law, nor is it meaningful.¹²³ The handout

¹¹⁷ See generally Ismail, *supra* note 79 (describing the Fourth Amendment protections that must apply to CPS searches).

¹¹⁸ *In re Smith Children*, 891 N.Y.S.2d 628, 633 (N.Y. Fam. Ct. 2009).

¹¹⁹ See *supra* note 3.

¹²⁰ *New York State Child Protective Services Manual*, *supra* note 42, at F-3.

¹²¹ N.Y. FAM. CT. ACT § 1034(2)(d) (McKinney 2009); N.Y. COMP. CODES. R. & REGS. tit. 18, § 432.2(b)(3) (2014). See also *New York State Child Protective Services Manual*, *supra* note 42, at F-13.

¹²² *New York State Child Protective Services Manual*, *supra* note 42, at F-11-13.

¹²³ See NYC ADMIN. FOR CHILD PROTECTIVE SERVS., *Child Protection* (2023). For example, the handout says:

We want you to know you have a right to not let ACS into your home. If you choose not to let ACS into your home, ACS is required by law to determine how best to assess the safety of your child(ren). This may include seeking permission from Family Court to complete the assessment.

includes five bullet points which explain that ACS received a report, it has a legal obligation to assess the safety of the child(ren), requests permission to enter the home and have a conversation with the parent, acknowledges the parent has a right not to let ACS in their home and, if denied, may seek permission from the court to complete the assessment.¹²⁴ The handout notes the parent can call an attorney and that an additional handout with contact information will be given.¹²⁵ Nowhere in this handout does ACS reference or acknowledge that they can or will speak with a child, let alone possibly strip search them. Moreover, the process of handing over a pamphlet is perfunctory, in no way ensuring a recipient understands their rights or feels empowered to animate them.

Therefore, most parents—and certainly most children—do not meaningfully understand their rights to refuse a caseworker’s request to enter the home or to interview and strip search the child. Without an understanding of their rights, and with the often-coercive presence of a government agent in their doorway, many families consent for fear of what might happen if they do not. This is particularly true for children, who may either be unaware of their rights or are not able to assert them when faced with an adult authority figure. Courts have found interviews of children at school, for example, to constitute seizures under the Fourth Amendment because children often do not understand that they are free to leave or otherwise refuse to participate.¹²⁶ Notably, ACS does not maintain data on how often families consent freely, consent after threat of court intervention, or refuse to consent at all.

Moreover, ACS routinely conducts investigations not only without meaningful consent or court order, but also without evidence of exigent circumstances. As laid out earlier, only 22.5% of child welfare investigations were substantiated in 2023. This paints a clear picture of the large number of non-exigent investigations. ACS can, and should, enter a child’s home only in an emergency when that child is in imminent danger of harm. In general, if “an agency has reasonable suspicion that someone inside a home is seriously hurt, likely to be hurt, or in need of medical attention such that getting a warrant in time would be impossible, CPS agents—just like the criminal police—are permitted to enter the home.”¹²⁷ It is only in those circumstances that exigent circumstances exist. However, in nearly 77% of cases, ACS enters the home where it ultimately finds insufficient evidence of abuse or neglect—let alone where someone is seriously injured, likely to be injured, or in need of medical attention. Though there are, of course, instances where ACS is unable to determine

ACS Important Information for Families handout (on file with author). The language in the handout does not capture what it means to ‘best assess safety’ or ‘seeking permission.’ It does not clarify that a 1034 order could be more limited in scope than a search done under general consent. Moreover, handing someone a one-page explanation of legal rights, without immediate access to an attorney, while simultaneously threatening, overtly or by implication, to take someone’s children, is not meaningful notification of someone’s rights.

¹²⁴ *Id.*

¹²⁵ *Id.*

¹²⁶ *See, e.g.,* Phillips v. Orange, 894 F. Supp.2d 345, 362 (SDNY 2012)

¹²⁷ Ismail, *supra* note 79, at 154 (internal citations omitted)

the exigency of the circumstances through the SCR call alone, the overall substantiation rate is too low to suggest that exigent circumstances existed in the majority of cases. This makes clear that the investigation itself contravenes children's Fourth Amendment rights and the mandates of the Family Court Act and New York State Constitution.

Taken together, the above demonstrates that despite the legal mandate that ACS only enter homes or strip search children with meaningful consent, exigent circumstances, or a court order, most investigations in New York City are carried out illegally. Couple the illegality of the intrusion with the massive overreach of a system that unnecessarily investigates 77,500 mostly Black and Latine children annually, it becomes clear that the child welfare investigation system is fundamentally broken.

IV. OVERREPORTING AND INVESTIGATION CAUSE CHILDREN SIGNIFICANT HARM¹²⁸

Overreporting and subsequent over investigation are not only unlawful, but they also are unequivocally harmful to children. As one author points out, “[t]he profound irony of this approach is that, in the name of saving children from the harm that their parents and guardians are thought to pose, states ultimately cause more harm to many more children than they ever help.”¹²⁹ Children subject to investigation suffer repeated harms through the pendency of investigation, which can take up to 60 days.¹³⁰ It “should be noncontroversial” that such interventions could cause harm to children.¹³¹ While empirical harm-related data is scarce, what does exist shows that the harms caused by this overly intrusive process, some of which are elaborated upon below, range from “temporary discomfort to significant long-term harm.”¹³²

First, strip searches, a common practice in New York,¹³³ are extremely damaging to children—so much so that the ABA even issued a resolution recommending the elimination of strip searches in child welfare cases except in extreme circumstances.¹³⁴ The ABA found that strip

¹²⁸ Much of the research in this section was carried out by Emily Grasso, Julia Malkina, Chase Shelton, Elias Daiute, Zacharia Hasan, and Lydia Murray. We are grateful for their research assistance.

¹²⁹ Doriane L. Coleman, *Storming the Castle to Save the Children: The Ironic Costs of a Child Welfare Exception to the Fourth Amendment*, 47 WM. & MARY L. REV., 413, 417 (2006).

¹³⁰ See *supra* Section II.B.

¹³¹ Coleman, *supra* note 129, at 520, fn 315.

¹³² *Id.* at 419.

¹³³ Newman, *supra* note 71; see also New York Advisory Committee *supra* note 5, at 54.

¹³⁴ The American Bar Association's Resolution Prohibiting Strip Searches of Children and Youth, Except in Exceptional Circumstances states:

That the American Bar Association urges all federal, state, local, territorial, and tribal governments to adopt policies and contractual provisions that prohibit conducting strip searches of children and youth. . . [and] research in adolescent development also

searches, even those that do not go beyond the underwear, are “dehumanizing,” “perceived as particularly intrusive by children,” and can “seriously traumatize children,” which can have lasting psychological effects.¹³⁵ It further noted “any strip search, no matter the underlying justification, has a debilitating impact that clearly does not account for the child’s best interests.”¹³⁶ In the context of a child welfare strip search, the issue is heightened. Strip searches can “re-traumatize” victims of abuse or neglect.¹³⁷ In fact, experts recommend that when a body search is required, “a comprehensive and trauma-informed physical by a medical professional, not a strip search, would best meet the goal.”¹³⁸

Second, even absent a strip search, an investigation by the State causes “real emotional and psychological harm.”¹³⁹ Specifically, “family members, including children, might suffer from . . . trauma, anxiety, fear, shame, guilt, stigmatization, powerlessness, self-doubt, depression, and isolation” as a result of child welfare investigations.¹⁴⁰ The investigation itself sows fear and anxiety around the possibility of removal.¹⁴¹ Even the ACS Commissioner acknowledged the harm and trauma of the investigations carried out by his own staff: “[w]e understand that the impact of an investigation on a family is significant—investigations are often disruptive, stressful and can be traumatic.”¹⁴² Former Deputy Mayor of Health and Human Services Anne Williams Isom recently said, “[c]hild welfare investigations can be traumatic, stressful, and intrusive for families, and they disproportionately impact families of color.”¹⁴³

Third, the infringement on parental authority during an investigation is traumatic to children.¹⁴⁴ Studies conducted in medical

supports the legal conclusion that strip searches impact young people even more severely than adults.

Resolution Prohibiting Strip Searches of Children and Youth, Except in Exceptional Circumstances, AM. BAR ASS’N (Aug. 2020), 1-5, https://www.americanbar.org/content/dam/aba/publications/litigation_committees/childrights/111b-annual-2020-final.pdf.

¹³⁵ *Id.* at 20.

¹³⁶ *Id.* at 5.

¹³⁷ *Id.* at 6.

¹³⁸ Riya S. Shah & Jessica Feriman, *Strip Searching Children is State-Imposed Trauma*, AM. BAR ASS’N (Oct. 12, 2021), https://www.americanbar.org/groups/crsi/publications/human_rights_magazine_home/empowering-youth-at-risk/strip-searching-children-is-state-imposed-trauma/.

¹³⁹ Coleman, *supra* note 129, at 520.

¹⁴⁰ *Id.*

¹⁴¹ *Id.* See also Ismail, *supra* note 79 at 1535–36.

¹⁴² Dannhauser, *supra* note 12 at 3.

¹⁴³ ADMINISTRATION FOR CHILDREN’S SERVICES, NYC PUBLIC SCHOOLS & NEW YORK STATE OFFICE OF CHILDREN AND FAMILY SERVICES ANNOUNCE STRATEGIES TO ADDRESS RACIAL DISPROPORTIONALITY IN THE CHILD WELFARE SYSTEM, ADMIN. FOR CHILD. SERVS. (Oct. 19, 2023), <https://www.nyc.gov/assets/acs/pdf/PressReleases/2023/address-racial-disproportionality.pdf>.

¹⁴⁴ Ismail, *supra* note 79, at 1535–36 (citing Gupta-Kagan, *supra* note 89) (describing a medical study finding that children react with anxiety to temporary infringements of parental autonomy). See also, e.g., Ctr. for Improvement of Child and Fam. Servs., *Reducing the Trauma of Investigation, Removal, & Initial Out-of-Home Placement in*

settings found children react with anxiety even to temporary infringements on parental autonomy.¹⁴⁵ As one set of authors said, “[t]he younger the child and the greater her own helplessness and dependence, the stronger is her need to experience her parents as her law-givers—safe, reliable, all-powerful, and independent.”¹⁴⁶ The “invasion of family privacy alters the relationship between family members” and causes children to “react with anxiety even to temporary infringements of parental autonomy.”¹⁴⁷ The stress inflicted on a parent during an investigation also affects a child’s wellbeing.¹⁴⁸ Intuitively, this makes sense. If a caregiver is stressed by an investigation, that negatively affects those around the caregiver. At least one study has found that the “intense level of supervision and intervention” from child welfare intervention impacted parents’ ability to parent effectively by undermining parental authority, sometimes leading to increases in rebellious behavior in the children.¹⁴⁹ In New York, over-investigation has been found to be disruptive, humiliating, and even traumatic for caregivers.¹⁵⁰

Finally, over reporting and over-investigation also may result in avoidance of reporters. Some research suggests that fear of CPS oversight leads parents to limit their children’s access to mandatory reporters, resulting in decreased access to medical, welfare, legal, labor market, or educational institutions.¹⁵¹ Given the disproportionate minority representation in New York’s child welfare system and across the country, it is logical that people in minority populations would be fearful of “catching an ACS case” and might feel that this risk is greater than the need for

Child Abuse Cases, PORT. ST. UNIV. SCH. SOC. WORK (July 2009), at 12–13, <https://www.pdx.edu/center-child-family/sites/centerchildfamily.web.wdt.pdx.edu/files/2020-07/CJA-project-Information-and-discussion-guide.pdf> (describing “the potential trauma to children during investigation and removal” as “shock”, “confusion”, “loss of control”, “a sense of being kidnapped”, helplessness”, “betrayal”, “loss of trust”, “a sense that the world is unsafe”, “and a sense of guilt”).

¹⁴⁵ *Id.*

¹⁴⁶ JOSEPH GOLDSTEIN, ET AL., *THE BEST INTERESTS OF THE CHILD: THE LEAST DETRIMENTAL ALTERNATIVE* 97 (1986).

¹⁴⁷ *Id.*

¹⁴⁸ Michael Evangelist et al., *Child Protective Services Contact and Youth Outcomes*, 136 *CHILD ABUSE & NEGLECT* 1, 9 (2023); see also, e.g., Darcey H. Merritt, *How Do Families Experience and Interact with CPS?*, 692 *THE ANNALS OF THE AM. ACAD. OF POL. & SOC. SCI.* 203, 209 (2020) (hypothesizing that CPS oversight “can also transfer distress intergenerationally to children” and strain parent-child relationships).

¹⁴⁹ See Dorothy E. Roberts, *The Racial Geography of Child Welfare: Toward a New Research Paradigm*, 87 *CHILD WELFARE* 125, 134 (2008) (“Respondents reported that children’s awareness agency’s potential power over parents increased the threat to parental authority. Six interviews included stories of children who reported false accusations of maltreatment to DCFS to avoid their parents’ rules or to rebel against parents who disciplined them.”); Alan J. Dettlaff et al., *It Is Not a Broken System, It Is a System That Needs to Be Broken: The upEND Movement to Abolish the Child Welfare System*, 14 *J. OF PUB. CHILD WELFARE* 501, 504 (2020) (discussing Roberts article).

¹⁵⁰ Newman, *supra* note 71 (citing Asher Lehrer-Small, *Exclusive Data: Educators’ ‘Careless’ Child Abuse Reports Devastate Thousands of NYC Families*, *THE 74* (Oct. 6, 2022), <https://www.the74million.org/article/exclusive-data-educators-careless-child-abuse-reports-devastate-thousands-of-nyc-families/>).

¹⁵¹ Evangelist, *supra* note 148, at 9.; see also, e.g., Merritt, *supra* note 148, at 209 (citing Kelley Fong, *Concealment and Constraint: Child Protective Services Fears and Poor Mothers’ Institutional Engagement*, 97 *SOC. FORCES* 1785 (2019)).

otherwise necessary or beneficial services—all the more reason to eliminate mandated reporting, as discussed in Section V.

V. RECOMMENDATIONS

New York City's child welfare system unlawfully subjects too many children to investigation without sufficient protection of families' rights. Below, we describe seven potential reforms to the investigative process, including changes that would redirect expected cost savings to more productive and less coercive investments in families.

A. New York Must Eliminate Mandatory Reporting and Forego CAPTA Funding

To stem the tidal wave of children investigated in NYC, New York must eliminate mandatory reporting, which makes up a whopping 68% of all SCR calls.¹⁵² A mere 22.6% of those cases were substantiated in 2024.¹⁵³ Even if not mandated, many people will still report suspected abuse. What they will not report, however, are fringe cases, which could eliminate a huge number of unnecessary reports.

Mandatory reporting leads to over-reporting, as discussed in Section I. Under New York Law, there are forty-eight categories of mandated reporters.¹⁵⁴ Of mandated reporters, the highest percentage of SCR calls come from educational personnel (24%, 14% substantiated), followed by social services personnel (19%, 24% substantiated), law enforcement (19%, 47% substantiated), and medical/mental health professionals (9%, 24% substantiated).¹⁵⁵ While the substantiation rates for mandated reporters in NYC are somewhat higher than the overall NYC substantiation rate, they are still shockingly low.¹⁵⁶

If a mandated reporter has “reasonable cause to suspect child abuse or maltreatment,” they must report, and if they fail to do so, they face criminal and/or civil penalties.¹⁵⁷ Depending on the individual's employer and licensure requirements, they could also face disciplinary action or lose their job. Mandated reporters err on the side of reporting for fear of legal

¹⁵² *Id.*

¹⁵³ CTR. FOR N.Y.C. AFFAIRS, WATCHING THE NUMBERS 2025 1 (2025), <https://static1.squarespace.com/static/53ee4f0be4b015b9c3690d84/t/680978ceead453d0af154bf/1745451214178/WTN2025.pdf>.

¹⁵⁴ Bronx Defenders et al., *Testimony of the Article 10 Family Defense Organizations in New York City Presented Before the New York State Assembly Standing Committee on Children & Families*, CENTER FOR FAM. REPRESENTATION at 6 (Sept. 27, 2023), <https://www.bronxdefenders.org/wp-content/uploads/2023/10/NYS-Assembly-Hearing-Mandated-Reporting-2023-Joint-Testimony-FINAL-10.6.23.pdf>.

¹⁵⁵ Nora McCarthy, Hotline Calls (on file with author).

¹⁵⁶ The fact that law enforcement referrals are the most substantiated makes logical sense. Law enforcement personnel are emergency responders who make referrals during an acute emergency. Particularly in those scenarios, they would continue to report irrespective of the mandate.

¹⁵⁷ *Summary Guide for Mandated Reporters in New York State*, OFF. OF CHILD. & FAM. SERVS. at 1, at 4 (Feb. 2016), <https://otda.ny.gov/policy/directives/2017/ADM/17-ADM-06-Attachment-4.pdf>.

liability,¹⁵⁸ creating a culture of “when in doubt, call the SCR.”¹⁵⁹ Moreover, bias can play a role in who is reported, as evidenced by the racial disproportionality in the system.¹⁶⁰

Some advocates argue for improved training—not eliminating mandatory reporting but making it better. While training improvements are necessary, efforts historically have proven insufficient. In 2023, ACS announced an initiative to reduce over-reporting in the child welfare system by re-training mandated reporters in NYC public schools, public and private hospitals, youth and community development organizations throughout NYC, and entities connected to the Mayor’s Office to End Domestic and Gender-Based Violence.¹⁶¹ The goal of the trainings were to move from mandated reporting to mandated supporting.¹⁶² Since the beginning of 2023, ACS has conducted or co-led more than 180 presentations/training sessions reaching more than 12,000 people.¹⁶³ While this work is critically important, it is not sufficient. The result of these efforts is only an overall 4% reduction in SCR reports city-wide to date.¹⁶⁴

Mandatory reporting persists, in part, because it is tied to federal funding that state and local governments are eager to receive. The Federal Child Abuse Prevention and Treatment Act (CAPTA) predicates federal reimbursement funding for child welfare on mandatory reporting.¹⁶⁵ The funding is minimal, in 2023 totaling approximately \$4.7 million,¹⁶⁶ which

¹⁵⁸ Mike Hixenbaugh et al., *Mandatory Reporting Was Supposed to Stop Severe Child Abuse. It Punishes Poor Families Instead.*, PROPUBLICA (Oct. 12, 2022, 8:00 AM), <https://www.propublica.org/article/mandatory-reporting-strains-systems-punishes-poor-families> (quoting Haven Evans, director of programs at Pennsylvania Family Support Alliance).

¹⁵⁹ Annie Sciacca, *New York Announces New Mandated Reporter Training to Reduce ‘Unwarranted’ Child Maltreatment Reports*, THE IMPRINT (Feb. 15, 2023, 5:26 PM), <https://imprintnews.org/top-stories/new-york-announces-training-to-reduce-unwarranted-child-maltreatment-reports/238580>.

¹⁶⁰ See *The Child Welfare System and the Mandatory Reporting of Child Abuse or Maltreatment in New York State: Hearing Before the N.Y.C. Standing Comm. on Child. & Fam. and the Standing Comm. on Foster Care*, 2023 Leg. Sess. (N.Y. 2023) (written testimony of the Legal Aid Society’s Juvenile Rights Practice), at 3–4 (citing Ta-Nehisi Coates, *The Black Family in the Age of Mass Incarceration*, THE ATLANTIC (Oct. 2015), <https://www.theatlantic.com/magazine/archive/2015/10/the-black-family-in-the-age-of-mass-incarceration/403246/>) (on file with author); and Bronx Defenders et al., *supra* note 154, at 4 (citing ROBERTS, *supra* note 24, at 174–80 citing KHIARA M. BRIDGES, *THE POVERTY OF PRIVACY RIGHTS* 51–64 (2017); and ALAN J. DETTLAFF, *CONFRONTING THE RACIST LEGACY OF THE AMERICAN CHILD WELFARE SYSTEM: THE CASE FOR ABOLITION* 162-77 (2023)).

¹⁶¹ PowerPoint Presentation from Jill Krauss, N.Y.C. Admin. for Child.’s Serv.s, *The Evolving Focus of NYC Child Welfare: Addressing Over-Reporting and Promoting Family-Centered Supports*: PLI Presentation (July 26, 2024) (on file with author).

¹⁶² *Id.* at 8.

¹⁶³ *Id.* at 28.

¹⁶⁴ *Id.* at 29.

¹⁶⁵ 42 U.S.C. § 13031(b)(1)-(8) (1990).

¹⁶⁶ CAPTA/CARA State Grant FY2023, OFF. OF CHILD. & FAM. SERVS. at 1 (Oct. 27, 2023), <https://ocfs.ny.gov/main/policies/external/2023/lcm/23-OCFS-LCM-24.pdf>.

is a paltry 0.08% of OCFS' projected FY 2024 budget of \$5.8 billion.¹⁶⁷ That amount of money is just not worth the cost to children and families.

Eliminating mandatory reporting is not a bar on reporting altogether. If someone suspects abuse or neglect, they may, and should, still make a call. But a decision to report—that is, a decision to put a child and her family on the radar of a coercive investigative apparatus—should not be driven by a reporter's fear of personal or professional consequences. Removing reporting mandates would deter reporters from filing unnecessary reports for self-protection and focus instead on child protection.

B. New York Must Strengthen SCR Screen-Out Protocols to Prevent Unnecessary Investigations

To address the overbreadth of the child welfare investigative apparatus, ACS must reform the way it screens initial calls to the SCR. Despite ACS' and OCFS' widespread acknowledgement that it investigates far too many families every year,¹⁶⁸ and the dramatic reduction in both the number of child welfare cases filed¹⁶⁹ and children removed into foster care,¹⁷⁰ not enough has been done to address the very front door of the system—the SCR. Today, rates of investigation, meaning calls referred from the SCR, remain as high as they were in the 1990s.¹⁷¹

New York State screens out—that is, declines to refer certain calls to local child welfare agencies—far fewer SCR calls than most other states. From 2018–2022, New York State screened out only 25% of calls, as compared to a national average of 50%, despite a lower call rate.¹⁷² While New York City has a lower screen-in rate than New York State, akin to the national average, the majority of Black and Latine children live in zip codes with double or triple the national/city averages of screen-in.¹⁷³

As described above in Section II.B, the frontline SCR operator must determine whether the allegations require investigation or should be screened out for failure to meet the necessary elements of a call.¹⁷⁴ SCR staffers are trained for six weeks to receive and screen out calls.¹⁷⁵ If a call is screened in, it *must* be investigated. Despite the complexity of this work, SCR workers are not provided a structured decision making tool to assist in screening, nor does OCFS have a regular, ongoing quality assurance

¹⁶⁷ *Division of the Budget*, OFF. OF CHILD. & FAM. SERVS. (2024), <https://www.budget.ny.gov/pubs/archive/fy24/ex/agencies/appropdata/ChildrenandFamilyServicesOfficeof.html#:~:text=Budget%20Highlights,compared%20to%20FY%202023%20levels>.

¹⁶⁸ Dannhauser, *supra* note 12.

¹⁶⁹ *NYC Children FLASH REPORT monthly indicators* *supra* note 3, at 12.

¹⁷⁰ *See No Filter*, *supra* note 10.

¹⁷¹ *Id.*

¹⁷² *Id.*

¹⁷³ *Id.*

¹⁷⁴ *Id.* The required elements to accept a SCR report are (1) reasonable cause to suspect, (2) that a minor child has been, (3) impaired or is in, (4) imminent danger of impairment because of the failure of a, (5) parent or person legally responsible to exercise a, (minimum degree of care for the minor child, (6) in New York, and (7) sufficient demographic information is provided.

¹⁷⁵ *Id.*

protocol in place.¹⁷⁶ Additionally, OCFS does not provide any opportunity for secondary review of SCR screen-out decisions.¹⁷⁷ For example, if the Local Department of Social Services (LDSS) investigating a case knows the report to be malicious or false, they cannot close the case without some form of investigation.¹⁷⁸

Evidence shows that screen-out reforms can succeed. Early 2023 data reflects reductions in screened-in reports from anonymous reporters which outpaced the system-wide reduction in screen-in rates overall.¹⁷⁹ OCFS implemented one critical change: SCR staff is now required to ensure anonymous reporters speak with a supervisor. That one change alone dramatically reduced the screen-in rate for calls from anonymous reporters, which are notoriously the lowest-substantiated types of calls at.¹⁸⁰ OCFS also implemented a structured decision-making tool during the pandemic to address educational neglect, reducing rates of educational neglect cases screened in.¹⁸¹

There are four critical changes that lawmakers and OCFS must make to the SCR screening process. First, OCFS must improve screening protocols including developing structured decision-making tools to assist screening, regularizing quality assurance assessments, and mandating additional levels of screening or scrutiny by supervisors for all calls, particularly those from reporters with lower substantiation rates like anonymous reporters. Second, SCR staff must receive further and ongoing training on what constitutes a screen-in case. Third, OCFS needs to embrace transparency and publish more training, statistical, and protocol information. Fourth, New York must enact legislation allowing localities to screen out cases.¹⁸²

Strengthening screen-out protocols is essential for the safety of New York City's children. Not only do stricter screen-out protocols eliminate harmful, unnecessary investigations, they also allow the system to focus its limited resources more effectively and efficiently on those children that are truly in need.

C. ACS Must Minimize the Invasiveness of Investigations, Including Reducing Reliance on Middle-of-the-Night Searches, Strip Searches, and In-School Interventions

As laid out in section IV, ACS home searches significantly harm children. The paradigmatic ACS investigation is a knock on the door in the middle of the night, followed by a warrantless home entry and strip search

¹⁷⁶ *The Statewide Central Register on Child Abuse and Maltreatment: Hearing Before the N.Y.C. Comm. on Child. & Fam.*, 2024 Leg. Sess. (N.Y. 2024) (testimony of Melissa Freedman).

¹⁷⁷ *Id.* at 13.

¹⁷⁸ *Id.*

¹⁷⁹ *No Filter*, *supra* note 10

¹⁸⁰ *Id.*

¹⁸¹ *The Statewide Central Register on Child Abuse and Maltreatment: Hearing Before the N.Y.C. Comm. on Child. & Fam.*, 2024 Leg. Sess. (N.Y. 2024) (testimony of Nora McCarthy), <https://familypolicy.nyc.org/wp-content/uploads/2025/01/FPP-SCR-Testimony-Written-FINAL.pdf>.

¹⁸² *Supra* note 160.

of a child.¹⁸³ This is undeniably traumatic. Acknowledging that the standard protocol is unacceptable, ACS released guidance in 2022 and 2023 limiting which cases may be investigated during off-hours by emergency units rather than during business hours by borough offices.¹⁸⁴ The impetus for the guidance is the “recog[nition of] the racial inequities and disproportionalities in our child welfare system.”¹⁸⁵

This ACS protocol is limited in scope. ACS may only defer the following types of cases: cases requesting additional information on an existing case already under investigation, duplicate reports, court-ordered investigations, reports made by a borough office CPS team, educational neglect, cases with indicators for false or malicious reporting, subsequent reports with active borough office responses, and fatality reports with no surviving siblings.¹⁸⁶ While these changes to investigation protocol are necessary, they are not sufficient. Any case without an immediate threat to a child’s safety or wellbeing must be deferred to daylight or business hours.¹⁸⁷

As we have stressed, strip searches are a common practice in ACS investigations, even when physical or sexual abuse is not alleged in the underlying report.¹⁸⁸ It is unnecessary to strip search a child as frequently as ACS does. ACS should only strip search a child when the underlying allegations relate to physical or sexual abuse or the investigation reveals concerns regarding physical or sexual abuse.

Lastly, ACS must curtail school interrogations. Schools, essential spaces for children’s growth and development, must not be co-opted to trample children’s and families’ rights to refuse to speak with ACS. Further, ACS should be careful not to compound the trauma of an investigation by adding the embarrassment and discomfort of an in-school interview. As with middle-of-the-night investigations and strip searches, school interviews should be used sparingly, only when necessary.

ACS must commit to harm reduction in investigations. It must narrowly tailor its investigative protocols to fit the underlying allegations or any other suspected maltreatment discovered during that investigation. Most investigations can be carried out during normal business hours, unless there is reason to believe a situation is currently or imminently dangerous. An educational neglect case does not require a strip search of a child, without any other indicators of bodily harm. Children and parents need the opportunity to decline to be interviewed or searched, and ACS should seek an order pursuant to Section 1034 of the Family Court Act when a family declines, rather than using the school as a free-for-all access point for children during investigations.

¹⁸³ See Newman, *supra* note 71.

¹⁸⁴ Memorandum from Franc Cresciullo, RE ECS Case Types for Borough Off. Deferral (Apr. 5, 2023) (on file with author).

¹⁸⁵ *Id.*

¹⁸⁶ *Id.*

¹⁸⁷ We acknowledge that those cases deferred to CARES are typically investigated during the day, so this statement refers only to traditional investigations.

¹⁸⁸ *Supra* note 160, at 16.

D. Implementing the Above Recommendations to Reduce the Number of Investigations Also Reduces the Cost of Investigations—Savings That Should Be Used to Support Families

ACS spends more than \$300 million a year on child welfare investigations.¹⁸⁹ That is the cost of investigating 55,000 families including nearly 100,000 children per year, with a mere 22.5% substantiation rate.¹⁹⁰ If ACS cut the investigation rate by half, then half of that funding could ostensibly go to supporting the families that need aid, obviating the need for system involvement.

Studies show that even minimal cash assistance reduces child maltreatment. From July to December 2021, as part of the pandemic-related American Rescue Plan, the federal government expanded the Federal Child Tax Credit, amounting to a national child allowance of \$250-300 per family per month.¹⁹¹ In the first month of the program alone (July 2021), the monthly childhood poverty rate plummeted by 25.6%.¹⁹² In the first five months of the program, 800,000 children rose above the childhood poverty line, a change of 27%.¹⁹³ In New York, studies show that “86% of households with income below \$35,000 used their child tax credit for basic needs, including food, clothing, rent, utilities, and education costs.”¹⁹⁴ Nationwide, the results were similar, at 88%.¹⁹⁵

In June 2022, the American Academy of Pediatrics (AAP) confirmed that cash assistance reduces child maltreatment rates.¹⁹⁶ The AAP analyzed IRS data on weekly state tax refunds from Earned Income Tax Credit and the Expanded Child Tax Credit programs and looked at the rates of maltreatment reports, in those areas, shortly after families received funds.¹⁹⁷ The AAP found, “a statistically significant reduction in rates of child maltreatment reports associated with higher tax refund amounts during the week of issuance, the week after issuance, and three

¹⁸⁹ Keyna Franklin & Nora McCarthy, *How NYC’s child welfare system is currently funded and how funding can shift*, NYC FAM. POL’Y PROJECT (Feb. 11, 2022), <https://familypolicynyc.org/2022/02/11/nyc-child-welfare-funding/>.

¹⁹⁰ *Id.* See also NYC Children FLASH REPORT *supra* note 4.

¹⁹¹ Friedman & Rohr, *supra* note 35, at 73 (citing Zachary Parolin et al., *Monthly Poverty Rates among Children after the Expansion of the Child Tax Credit*, 5 POVERTY & SOC. POL’Y BRIEF 1 (2021), <https://perma.cc/6TLJ-8YJ3>) (“[The expanded Federal Child Tax Credit] pays the benefit out in regular installments: families can now receive monthly installments up to \$250 for each older child and up to \$300 for each younger child.”).

¹⁹² *Id.*

¹⁹³ *Id.* (citing Megan A. Curran, *Research Roundup of the Expanded Child Tax Credit: The First 6 Months*, 5 POVERTY & SOC. POL’Y REP. 1, 7 (2021), <https://perma.cc/S4Q9-A4AY>).

¹⁹⁴ *Id.* (citing Claire Zippel, *9 in 10 Families With Low Incomes Are Using Child Tax Credits to Pay for Necessities, Education*, CTR. ON BUDGET & POL’Y PRIORITIES (Oct. 21, 2021), <https://www.cbpp.org/blog/9-in-10-families-with-low-incomes-are-using-child-tax-credits-to-pay-for-necessities-education> [<https://perma.cc/6C62-QBV4>]).

¹⁹⁵ *Id.* (Stating that eighty-eight percent of U.S. households with income below \$35,000 used the tax credit for basic needs, including food, clothing, rent, utilities, and mortgages. Ninety-one percent of families in the same cohort used the credit for the above basic needs, education costs, or both.)

¹⁹⁶ *Id.* (citing Nicole L. Kovski et al., *Short-Term Effects of Tax Credits on Rates of Child Maltreatment Reports in the United States*, 150 PEDIATRICS 1, 1, 2, 5 (2022)).

¹⁹⁷ *Id.*

weeks after issuance.”¹⁹⁸ For every \$1,000 per-child a family received, the rates of reported maltreatment dropped by approximately 5%.¹⁹⁹ Earlier studies show the same, namely “evidence for an association between more generous EITCs and reductions in several indicators of child maltreatment, including hospital admissions for pediatric abusive head trauma, self-reported parenting behaviors that approximate neglect, foster care entries, and child protective services involvement.”²⁰⁰

Additional funding to create better systemic supports can also play a meaningful role in creating healthier and safer home environments. In 2021, the AAP found that state spending on benefit programs such as housing, cash, in-kind assistance, housing infrastructure, childcare assistance, refundable Earned Income Tax Credit, and Medical Assistance Programs was strongly associated with reductions in child maltreatment.²⁰¹ Strikingly, the study showed that for every additional \$1,000 states spent on benefit programs for people living in poverty, there was a 4.3% reduction in reports of abuse or neglect, 4% reduction in substantiation, 2% reduction in foster care placement, and a 7.7% reduction in child fatalities.²⁰²

Poverty is a key driver in the child welfare system.²⁰³ This rings particularly true in New York City where the value of cash assistance has depreciated significantly, leaving more families unable to meet basic needs.²⁰⁴ Rather than spending money on unnecessary, invasive, and harmful investigations, New York should spend those resources up front to better support families. Reinvestment in people and communities likely will lower maltreatment report rates even further.

E. New York Must Enact Legislation to Protect Against Harmful and Unnecessary Investigations

1. New York Must Pass the Anti-Harassment in Reporting Bill to Reduce the Number of Children Unnecessarily Subjected to Investigations

The Anti-Harassment in Reporting Bill (also known as the Confidential Reporting Bill)²⁰⁵ replaces anonymous reporting with confidential reporting, requiring all reporters to identify themselves to the investigator, to deter false and malicious reporting.²⁰⁶ That identification would not be conveyed to the subject of the report. Eliminating anonymous

¹⁹⁸ *Id.* at 74.

¹⁹⁹ *Id.* at 73.

²⁰⁰ Kovski, *supra* note 196, at 2.

²⁰¹ Friedman & Rohr, *supra* note 35, at 72 (citing Henry T. Puls et al., *State Spending on Public Benefit Programs and Child Maltreatment*, 148 PEDIATRICS 1, 1 (2021) (“States’ total spending was inversely associated with all maltreatment outcomes.”)).

²⁰² *Id.* at 73.

²⁰³ *Id.* at 71–73.

²⁰⁴ ANNIE KUCKLICK & LISA MANZER, *OVERLOOKED & UNDERCOUNTED* 3 (Alyssa Mast et al. eds., 2023), https://selfsufficiencystandard.org/wp-content/uploads/2023/04/NYC2021_Demo.pdf.

²⁰⁵ Assemb. A66, 2025-2026 Leg., Reg. Sess. (N.Y. 2025); S.B. 550, 2025-2026 Leg., Reg. Sess. (N.Y. 2025).

²⁰⁶ *Id.* See CHILD. & L. COMM. & COUNCIL ON CHILD., N.Y. CITY BAR, *SUPPORT FOR THE ANTI-HARASSMENT IN REPORTING BILL* (2022), <https://perma.cc/RT7L-BL2T>.

reporting would reduce unnecessary investigations, harm to children, intrusion on families, and would lessen the strain on child welfare resources without reducing child safety.²⁰⁷ While this bill was introduced in 2021, it remains pending today.

As described in Section II.B., anyone can report suspected abuse or neglect to the SCR at any time, for any reason, and may do so anonymously.²⁰⁸ Anonymous reports are the least likely to be substantiated at a rate of 7%,²⁰⁹ and make up only 7% of all SCR calls.²¹⁰ Though by virtue of their anonymity it is impossible to determine the source of the reports, it stands to reason that a percentage of these reports are designed to harass the subject, particularly given the low substantiation rates.

Data scientists agree that this legislation “would allow OCFS and ACS to more easily identify and screen out false and malicious reports, such as reports by exes or landlords that seek to weaponize the child welfare system.”²¹¹ Given the extremely low rate of substantiation, coupled with the likelihood for harassment, anonymous reporting must be converted to confidential reporting.

2. New York Must Pass the Family *Miranda* Bill and Add Specific Reference to Children’s Rights to Curtail Extra-Judicial Intrusion, Minimizing Trauma

Laypeople can hardly imagine an arrest without the statement, “you have the right to remain silent, anything you say can and will be used against you.” In child welfare matters, a similarly pressing constitutional interest is at stake—the right to raise your children free of government intrusion and the concomitant right to be raised by your parents as such.²¹² Yet, no similar formal statement of rights at the outset of a case is legally mandated in New York.²¹³ Section III.B described ACS’ unlawful practice of conducting home searching absent meaningful consent. Comparatively,

²⁰⁷ See CHILD. & L. COMM. & COUNCIL ON CHILD., N.Y. CITY BAR, *supra* note 206; see also Rachel Stanton & Louise Feld, *New York State Should Act to Prevent False Reports of Child Maltreatment in Custody Cases*, 271 N.Y. L.J. 1, 6 (2024).

²⁰⁸ See *supra* Section II.B.; see also *How to Make a Report*, N.Y.C. ADMIN. FOR CHILD. SERVS., [https://www.nyc.gov/site/acs/child-welfare/how-to-make-report.page#:~:text=Call%20311%20in%20NYC%20or,\(800\)%20342%2D3720](https://www.nyc.gov/site/acs/child-welfare/how-to-make-report.page#:~:text=Call%20311%20in%20NYC%20or,(800)%20342%2D3720) (last visited Oct. 7, 2022) (stating that “[a]nyone can make a report [to SCR] (and may do so anonymously), when they suspect child abuse or neglect.”).

²⁰⁹ See *Hotline Calls*, *supra* note 5.

²¹⁰ Madison Hunt, ‘Weaponizing’ Calls to CPS Hotline: New York Legislation Would Deter False Reports, THE IMPRINT (May 19, 2022, 6:51 PM), <https://imprintnews.org/child-welfare-2/new-york-bill-false-hotline-reports/65267>.

²¹¹ *Hotline Calls*, *supra* note 5.

²¹² Friedman & Rohr, *supra* note 35, at 56.

²¹³ As of July 2024, ACS is providing all families with written notification of their rights at first contact with ACS. However, that notification is not sufficient and often perfunctory. Eric Robinson, *ACS expands program to inform parents of rights amidst child welfare investigations*, NEWS 12 THE BRONX (Jan. 18, 2024, 7:11 PM), <https://bronx.news12.com/acs-expands-program-to-inform-parents-of-rights-amidst-child-welfare-investigations>.

states like Texas provide Family *Miranda* warnings.²¹⁴ The fact that ACS can investigate a family without notifying the family of their rights prevents children and families from asserting those rights.

The Family *Miranda* Bill, first introduced in 2019, requires child protective investigators to inform parents and caretakers of their *existing* legal rights at the outset of an investigation.²¹⁵ Specifically, the bill requires parents to be notified that unless court ordered, they are not required to permit a child protective investigator into their home; they are entitled to be informed of the allegations against them; they are not required to speak to the child protective investigator, and any statements made to the investigator may be used against them; they are not required to permit the investigator to interview their children; and they are entitled to seek advice of an attorney and have that attorney present during an interview with the child protective investigator.²¹⁶ These rights must be conveyed in the parent's preferred language.²¹⁷

In addition to enacting the Family *Miranda* Bill, the legislature should amend the current iteration of the bill to reflect that these rights extend to the child and require the CPS to provide the same notices to children aged-seven and over when they are outside the presence of their parents. CPS approach children when they are home alone or unaccompanied out in the community with impunity. Children must be made aware that they do not need to speak to a CPS, allow a CPS to strip search them, or allow CPS in their home.²¹⁸

If a parent or child is aware that they can deny ACS entry into their home or access to their body, outside of emergency circumstances, ACS will be forced to go to the Family Court to seek court orders and will have to establish reasonable cause to justify intruding into a family's home or life. In fact, a prerequisite for a 1034 entry or production order is that the child or family denied ACS access.²¹⁹ If an individual is not aware of their rights, they are not able to assert those rights. Families' lack of awareness fuels the massive overreach of ACS into children's homes and lives, causing unquantifiable harms.

Presently, ACS voluntarily provides parents with a perfunctory leaflet setting out their rights at the first contact, further addressed in Section III B. Moreover, without enacting the Family *Miranda* bill, ACS could discontinue the program at any time. Without a meaningful statement of rights, children and families cannot be expected to animate those rights.

²¹⁴ Eli Hager, *Texas, New York Diverge on Requiring Miranda-Style Warnings in Child Welfare Cases*, PROPUBLICA (July 5, 2023, 3:00 PM), <https://www.propublica.org/article/texas-new-york-diverge-miranda-warning-bill>.

²¹⁵ S.B. 551, 2025–2026 Leg., Reg. Sess. (N.Y. 2025); Assemb. B. 1234, 2025–2026 Leg., Reg. Sess. (N.Y. 2025).

²¹⁶ *Id.*

²¹⁷ *Id.*

²¹⁸ Many thanks to Theresa Moser for the time spent thinking through this recommendation.

²¹⁹ N.Y. FAM. CT. ACT § 1034(2)(B) (McKinney 2009).

3. New York Must Pass the Informed Consent Act to Reduce Inappropriate SCR Reports

In New York City, medical providers, especially those in public hospitals, routinely administer non-consensual drug testing to pregnant women and newborns.²²⁰ Unsurprisingly, studies show that Black women are more likely than white women to be drug tested before or immediately after birth, despite equivalent rates of drug use.²²¹ Once a positive toxicology is detected, it is usually reported to the SCR, irrespective of whether providers identified harm to the child, which is required before making an SCR call.²²² Many call this practice “test and report,” akin to the infamous stop and frisk protocols carried out by the NYPD.²²³ “Test and report,” without consent, is one of many root causes for over-reporting, and eliminating it, would further serve to stem the tide of unnecessary reports to the SCR.

“Test and report” is contrary to the current medical guidance, leads to overreporting, and also negatively affects children.²²⁴ Research shows that “fears of child welfare involvement have led to women of color delaying prenatal care, sometimes leading to adverse pregnancy outcomes.”²²⁵ Children suffer when care is delayed or avoided due to fear.

The Informed Consent Act, first introduced in 2023, would require medical providers to obtain written and oral consent before drug testing a pregnant person or their newborn, except in the case of medical emergency, which permits a provider to test or verbally screen in the absence of consent.²²⁶

In November 2020, New York City Health + Hospitals required written informed consent prior to toxicology testing during pregnancy in the city’s 11 public hospitals.²²⁷ New York City child welfare and health-related agencies also issued a joint statement that “positive toxicology tests alone do not warrant reports to child welfare authorities.”²²⁸ This policy is

²²⁰ See *Legislative Memo: Prohibiting Drug Testing of Pregnant People*, NYCLU (Dec. 13, 2021), 1 <https://www.nyclu.org/resources/policy/legislations/legislative-memo-prohibiting-drug-testing-pregnant-people>.

²²¹ Michael Fitzgerald, *New York City Moves to Limit Drug Testing of Pregnant Women*, THE IMPRINT (Nov. 20, 2020, 4:40 PM), <https://imprintnews.org/child-welfare-2/new-york-city-limit-drug-testing-women-foster/49557>.

²²² *Drug Testing New Parents*, BROOKLYN DEFENDERS, <https://bds.org/issues/drug-testing-of-new-parents> (last visited July 22, 2024).

²²³ See *id.* See also *Opposition to Criminalization of Individuals During Pregnancy and the Postpartum Period*, AM. COLL. OF OBSTETRICIANS & GYNECOLOGISTS, <https://www.acog.org/clinical-information/policy-and-position-statements/statements-of-policy/2020/opposition-criminalization-of-individuals-pregnancy-and-postpartum-period> (last visited July 22, 2024); and Fitzgerald, *supra* note 220.

²²⁴ AM. COLL. OF OBSTETRICIANS & GYNECOLOGISTS, *supra* note 223; Stephen W. Patrick & Davida M. Schiff, *A Public Health Response to Opioid Use in Pregnancy*, 139 PEDIATRICS 1 (2017).

²²⁵ Yasmeen Khan, *NYC Will End Practice of Drug Testing Pregnant Patients Without Written Consent*, GOTHAMIST (Nov. 17, 2020), <https://gothamist.com/news/nyc-will-end-practice-drug-testing-pregnant-patients-without-written-consent> (further stating even new policies meant to standardize screening procedures have actually further codified racial disparities).

²²⁶ Assemb. B. A3694, 2025-2026 Leg., Reg. Sess. (N.Y. 2025).

²²⁷ Fitzgerald, *supra* note 220.

²²⁸ *Id.*

consistent with New York law, as under Family Court Act §§ 1012 and 1046(a)(iii), substance use alone does not constitute neglect.²²⁹

These policies articulated by City agencies, however, do not apply to private hospitals. While NYC agencies are pushing in the right direction, the Informed Consent Act must be enacted into law to ensure these protections are upheld and endure, particularly in private settings.

Enacting the Informed Consent Act will stem the tide of SCR calls from hospital settings. As ACS succinctly put it, eliminating “test and report” without consent, and clarifying that a positive test alone does not necessitate a call to the SCR, are important steps “to reduce unnecessary and inappropriate child welfare involvement, especially for families of color.”²³⁰ Birth-related toxicology reports will not disappear altogether, but they will be reserved for instances where harm is suspected, and consent was either given or not necessary due to emergency circumstances.

CONCLUSION

Each year, NYC investigates nearly 100,000 children based on reports of abuse or neglect. More than three out of four of these cases are not substantiated, subjecting the children involved to traumatic intrusions into their homes and their bodies. In nearly all cases, ACS conducts these searches without seeking or obtaining a warrant. Given the modest substantiation rate, it is not reasonable to assume (and ACS does not argue) that exigent circumstances arise commonly enough to explain ACS’s near-routine failure to obtain court orders for its searches and seizures. Coupled with the inherent coercion of a home search that makes meaningful consent all but impossible to obtain, ACS’s investigative apparatus—justified by protecting children—violates families’ rights to privacy and harms the very children it aims to protect.

The act of intruding on a child’s home or body is traumatic. Violations of privacy and dignity of this magnitude should be narrowly tailored and used with care and only by necessity. The New York City child welfare system as it operates today fails to meet that standard. We hope to have shed light on the dangers ACS’ current investigatory practice poses to children specifically, and call upon ACS and New York lawmakers to make meaningful reform.

²²⁹ See Nassau Cnty, Dep’t of Soc. Servs. on Behalf of Dante M. v. Denise J., 87 N.Y.2d 73 (1995).

²³⁰ Fitzgerald, *supra* note 221.