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You Do Not Have the Right to Remain Silent: The Lack of Miranda Within “Child Welfare”

Reform within the “child welfare” system is widely discussed due to the systems prejudicial nature.[1] The system is called many names: the family policing system, the family regulation system, and the family destruction system.[2] Many Black and Brown families, specifically, struggle with systemic racism embedded in the “child welfare” system that causes constant fear that minor flaws will lead to family separation.[3] While many activists call for the system to be abolished, many supporters of abolition understand that the goal can only be achieved through reforms that hold the perpetrators accountable.[4] However, many activists have had little luck fixing a system that is so broken, as reform legislation constantly fails due to new horror stories of child harm and neglect that flood the media.[5] Child deaths, such as that of Jace Eubanks, that force the media to call for stricter regulations, however, are rare.[6]

Families forced to encounter the Administration for Child Services (ACS) and Child Protective Service (CPS) are unaware of their rights.[7] Through the abundance of cop shows on television, most Americans are aware of their right to remain silent and have a general understanding of their *Miranda Rights* in criminal proceedings; but there is no equivalent in the “child welfare” system.[8] The lack of transparency from CPS workers to the families they are investigating provides an extreme disadvantage, as families may be misrepresented in court by the ACS investigators.[9] ACS refuses to adopt these methods because it may make it harder for social workers to assess the safety of the children.[10] This, however, completely disregards the harm and rights of the accused family members. The workers may initially come across as a third-party investigator who are there to help the families; but in reality, they are not.[11] They are government workers sent to investigate.[12] They may be called social workers, but they act more like family police officers.[13]

If CPS workers were to provide families under investigation proper instructions at the beginning of a case through Family *Miranda Rights*, parents would be protected from the unnecessary harm that ensues from lack of knowledge.[14] Individuals who have disabilities, are commonly discriminated against.[15] Some caseworkers urge parents to invite them into their homes and tell their side of the story in order to prevent further interference.[16] Some parents and guardians are unaware of the possible ramifications from this.[17] For example, if a house lacks cleanliness or lacks organization, it may be used against the family in a future hearing.[18]

So far, bills proposed to the New York State Senate and the New York City Council to help amend the system were dismissed.[19] The New York State Senate bill failed because the framers would not concede and give family protection agencies more power.[20] The lack of transparency within the family policing system causes more harm than good.[21] The amoral nature of the family policing system is perpetuated at the beginning of a case due to the limited disclosure, which would be remedied by Family *Miranda Rights*.

- [1] Andy Newman, *Is N.Y.'s Child Welfare System Racist? Some of Its Own Workers Say Yes.*, New York Times (Nov. 23, 2022), <https://www.nytimes.com/2022/11/22/nyregion/nyc-acs-racism-abuse-neglect.html>.
- [2] Urban Matters, *Why a Child Welfare 'Miranda Rights' Law Is Essential: A Q&A with Advocate and Organizer Joyce McMillan*, New Sch. Ctr. For NYC Affs (June 2, 2021), <https://www.centrernyc.org/urban-matters-2/2021/6/2/why-a-child-welfare-miranda-rights-law-is-essential-a-qampa-with-advocate-and-organizer-joycemcmillan>.
- [3] Newman, *Is N.Y.'s Child Welfare System Racist? Some of Its Own Workers Say Yes.*, New York Times (Nov. 23, 2022).
- [4] Lisa Kelly, *Article, Abolition or Reform: Confronting the Symbiotic Relationship Between "Child Welfare" and the Carceral State*, 17 Stan. J. Civ. Rts. & Civ. Liberties 255, 319 (2021).
- [5] Alice Gainer, *Father sues New York City Administration for Children's Services After 4-Year-Old Son's Death Allegedly at the Hands of Mother's Boyfriend*, CBS New York (Oct. 18, 2022), <https://www.cbsnews.com/newyork/news/jace-eubanks-child-killed-nyc-acs-lawsuit/>.
- [6] *Id.*
- [7] L. Frunel & Sarah H. Lorr, *Lived Experience and Disability Justice in the Family Regulation System*, 12 Colum. J. Race & L. 1, 17 (2022).
- [8] Joyce McMillan, *Defenders, Advocates and Impacted Parents Urge Passage of Legislation Requiring ACS and Other Family Regulation Agencies to Inform Parents of Their Miranda Rights: Black and Brown Parents "Live in Fear" of Losing Children to a Racist, Dysfunctional System*, The Bronx Defenders (Oct. 22, 2021), <https://www.bronxdefenders.org/defenders-advocates-and-impacted-parents-urge-passage-of-legislation-requiring-acs-and-other-family-regulation-agencies-to-inform-parents-of-their-miranda-rights/>.
- [9] Frunel & Lorr, *Supra* note 7.
- [10] Newman, *Supra* note 3.
- [11] Michelle Burrell, *What Can the Child Welfare System Learn in the Wake of the Floyd Decision?: A Comparison of Stop-And-Frisk Policing and Child Welfare Investigations*, 22 Cuny L. Rev. 124, 145 (2019).
- [12] *Id.*
- [13] *Id.*
- [14] Frunel & Lorr, *Supra* note 7.
- [15] *Id.*
- [16] Burrell, *Supra* note 11.
- [17] Frunel & Lorr, *Supra* note 7.
- [18] Burrell, *Supra* note 11 at 131.
- [19] McMillan, *Defenders, Advocates and Impacted Parents Urge Passage of Legislation Requiring ACS and Other Family Regulation Agencies to Inform Parents of Their Miranda Rights: Black and Brown Parents "Live in Fear" of Losing Children to a Racist, Dysfunctional System*, The Bronx Defenders (Oct. 22, 2021).
- [20] Urban Matters, *Supra* note 2.
- [21] McMillan, *Supra* note 19.