

# WHEN LITIGANTS CRY WOLF: FALSE REPORTS OF CHILD MALTREATMENT IN CUSTODY LITIGATION AND HOW TO ADDRESS THEM

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*When one litigant in a contentious custody or visitation case makes an intentional or malicious false claim of child maltreatment against another, the children and families involved suffer. Children are exposed to unnecessary and invasive child protective service investigations and may be subjected to needless physical examinations, interviews, and even removal from their homes. Falsely accused litigants may be scrutinized by the criminal justice system or lose employment. These experiences cause lasting trauma to children and families, particularly in low-income communities of color, while also complicating legal proceedings and delaying case conclusions.*

*To better understand the impact of false child maltreatment allegations in custody and visitation cases, we interviewed attorneys and social workers*

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*at The Children’s Law Center (CLC), a not-for-profit law firm in New York City that represents children in custody, visitation, family offense, and other Family Court proceedings. We asked participants about the impact of intentionally false reports of child abuse and neglect on their clients and cases and analyzed their responses for common themes and insights. In order to avoid unnecessary interventions, we propose including the false reporting of child abuse and neglect as a family offense for which one can seek an order of protection; permitting confidential, rather than anonymous, reporting of child maltreatment allegations; and improving child protective agencies’ practices and procedures for conducting investigations.*

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## INTRODUCTION

### Jake's Story<sup>1</sup>

*At age ten, “Jake” was intimately familiar with the Family Court system. His parents both had filed multiple custody and visitation petitions and had spent six years locked in contentious litigation against one another. With each case that his parents filed, Jake met multiple times with his lawyer at The Children’s Law Center, and they discussed the care that Jake received from his father, to whom the court had granted sole custody. Jake consistently stated that he was safe in his father’s home, and his lawyer believed him. But Jake’s mother repeatedly alleged that Jake’s father physically abused Jake.*

*Jake’s mother, upset that a judge had ordered that her visits with Jake be supervised, alleged, without proof, that Jake’s father had hurt him. For example, when Jake had a minor bruise under his eye, Jake’s mother told the child protective caseworker who supervised her visits that the father had hit Jake in the face, causing the bruise. The mother then called the New York State Child Abuse Hotline and the police, each time reporting that Jake had been beaten by his father.*

*All of the mother’s reports of child abuse were baseless. Yet, with each report, Jake became the subject of a new child protective investigation. He met with police officers and underwent body checks by caseworkers, sometimes during emergency late night home visits. Jake grew increasingly upset and frightened by these occurrences. When Jake was eight years old, he told his father that he was scared to ride his bicycle or play sports, for fear that he would injure himself and his mother would call the police to report another “suspicious” bruise.*

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1. We have changed “Jake’s” name to protect his identity and ensure client confidentiality.

*Jake's deeper fear was that someone would believe his mother and take him away from his father.*

*Even though the mother's allegations were all determined to be untrue, Jake was traumatized by her behavior and the investigations that resulted from her claims. He exhibited symptoms of trauma and anxiety, including flashbacks, stomach pains, and bedwetting. Additionally, Jake told his lawyer that he no longer wished to visit his mother. However, Jake's mother continued filing new custody cases against his father. As of July 2021, The Children's Law Center's representation of Jake in family court continued.*

In contested custody and visitation proceedings in family court, situations arise in which one litigant intentionally and maliciously makes false claims that another litigant has abused or neglected the children who are the subject of that litigation. Those claims can detrimentally affect the children, the litigants, and the functioning of the family court system overall. Jake's story highlights the difficulties that children and their attorneys may face when a parent in a contested custody litigation "cries wolf" and intentionally makes false allegations of child maltreatment against the child's other parent. His experience underscores the tremendous harm such false allegations cause children, their caregivers, and the larger family court system, as well as the lack of effective tools and remedies under the current law.

In this Article, we explore the impact that such false allegations of abuse and neglect have on the family court system and its stakeholders through our analysis of interviews we conducted with attorneys and social workers at The Children's Law Center (CLC), a not-for-profit law firm that represents children in New York City family court cases. We also propose potential solutions for how policymakers can begin to mitigate the harms caused by this complex issue.

In Part I, we examine the published data and literature on the issue of intentional or malicious false reporting of child abuse and/or neglect. We discuss the limitations of existing data and review research on the negative impact that false reports of child maltreatment have on families and children, including their increased involvement in the child welfare system, and the disproportionate impact of such reports on families of color and low-income families.

In Part II, we provide a brief overview of the methodology that we employed to conduct our study and of the prevalent issues and characteristics of the cases that interview participants discussed.

In Part III, we analyze our interviews with practitioners for common themes. The overwhelming consensus that emerged was that the

children in cases involving intentionally false reports of abuse and/or neglect experience significant stress and trauma. Interview participants asserted that frequent false reports of child abuse or neglect often resulted in children developing physical and mental health issues. Participants also highlighted the stress and trauma experienced by adult caretakers who were the subjects of false allegations, the disproportionate impact that false allegations had on low-income families, families of color, and non-English speaking families, and the challenges caused by the current lack of effective legal or policy remedies. Further, participants noted how false allegations created a strain on the family court system, often creating delays in court proceedings and diverting limited resources away from public and private institutions that serve families.

In Part IV, we analyze existing policies and practices, which we conclude fail to provide accessible remedies and are grossly inadequate to address the harms that false reporting of child maltreatment causes children, families, and the family court system. Finally, we propose the adoption of the following set of recommendations: (1) amending Section 812 of the New York Family Court Act to include intentional false reporting of child abuse or neglect as a family offense for which a litigant can seek an order of protection against the false reporter; (2) supporting the legislative proposal to abolish anonymous reporting and establish confidential reporting in its place; (3) improving training and procedures for all Administration for Children's Services (ACS) child protective caseworkers, so that they are better able to recognize and address repeat false allegations, support families, and minimize the harms experienced by child-welfare involved families.

## I.

### DISCUSSION

This Part will provide (a) background information concerning the reporting and investigation of child maltreatment in New York State; (b) an overview of the literature surrounding the issue of intentional or malicious false reporting of child abuse and/or neglect; and (c) an overview of the literature regarding the impact of child welfare involvement on families and children, including the disproportionate impact on families of color and low-income families.

#### A. *The Reporting and Investigation of Child Abuse and Maltreatment in New York*

New York's Child Protective Services Act of 1973 established the Statewide Central Register of Child Abuse and Maltreatment

(SCR), a centralized hotline operated by the New York Office of Children and Families that receives reports of child abuse or neglect from across the state.<sup>2</sup>

If a call to the SCR includes an allegation that “reasonably” can be assessed to contain a report of child abuse or maltreatment, the report is transferred to the appropriate local child protective service for investigation. The local child protective agencies must initiate investigations within 24 hours. Those investigations must include a visit to the home of the child named in the report and a determination of whether that child, or any other child in the household, is at risk if they remain in that home.<sup>3</sup>

In New York State, reports to the SCR currently remain anonymous.<sup>4</sup> A caller is not required to provide his or her name to the hotline, and the identity of the person who reported the alleged abuse is not disclosed.<sup>5</sup>

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2. N.Y. SOC. SERV. LAW § 422 (McKinney 2019).

3. N.Y. SOC. SERV. LAW § 424 (McKinney 2019).

4. While this article focuses on reports of child abuse or neglect made by laypersons, most reports are made by mandated reporters. *See* CHILD.’S BUREAU, U.S. DEP’T HEALTH & HUM. SERVS., CHILD MALTREATMENT 2019, xi (2021), <https://www.acf.hhs.gov/sites/default/files/documents/cb/cm2019.pdf> [<https://perma.cc/Q57T-XBR4>] (“For 2019, professionals submitted 68.6 percent of reports alleging child abuse and neglect. The term professional means that the person has contact with the alleged child maltreatment victim as part of his or her job.”). New York law defines mandated reporters as “persons and officials required to report [cases of suspected child abuse or maltreatment] . . . when they have reasonable cause to suspect that a child coming before them in their professional or official capacity is an abused or maltreated child, or when they have reasonable cause to suspect that a child is an abused or maltreated child where the parent, guardian, custodian or other person legally responsible for such child comes before them in their professional or official capacity and states from personal knowledge facts, conditions or circumstances which, if correct, would render the child an abused or maltreated child. . .” *See* N.Y. SOC. SERV. LAW § 413(1) (McKinney 2019). Mandated reporters include physicians and mental health professionals, school faculty and staff, childcare workers, and various law enforcement officers. *Id.* Mandated reporters are not permitted to make anonymous reports. *Id.* (“Any report shall include the name, title and contact information for every staff person of the institution who is believed to have direct knowledge of the allegations in the report.”). Some stakeholders in the family court system have asserted that anonymous reporting is a crucial tool in child protective investigations, as the guarantee of a reporter’s anonymity is thought to encourage and protect those who wish to make a report, including from the parents’ acts of retaliation and the souring of familial, neighborly, or community relationships. *See, e.g.,* Darryl H. v. Coler, 801 F.2d 893 (7th Cir. 1986); E.Z. v. Coler, 603 F. Supp. 1546, 1560 (N.D. Ill. 1985) *aff’d sub nom* Darryl H. v. Coler, 801 F.2d 893 (7th Cir. 1986); Michael R. Beeman, *Investigating Child Abuse: The Fourth Amendment and Investigatory Home Visits*, 89 COLUM. L. REV. 1034, 1063 (1989); Margaret H. Meriwether, *Child Abuse Reporting Laws: Time for a Change*, 20 FAM. L.Q. 141, 164 (1986).

5. *See* Selapack v. Iroquois Cent. Sch. Dist., 794 N.Y.S.2d 547, 548 (App. Div. 2005) (holding that Section 422 of N.Y. Social Services Law does not allow “for the

In New York City, the local agency that conducts child protective investigations is the Administration for Children’s Services (ACS).<sup>6</sup> ACS’s investigations involve interviews with all adults and children living in the home of the child who is the subject of the report and can include interviews with other family members, school staff, neighbors, or other parties who know the family.<sup>7</sup>

When physical abuse is suspected, the investigating ACS caseworker or a medical professional may conduct a physical exam of the child.<sup>8</sup> A physical evaluation can range from observations of the normally clothed areas of the child’s body by an ACS worker while in the child’s home to, in cases of suspected sexual abuse, an invasive examination of the child by a medical provider.<sup>9</sup> Children and youth who are the suspected victims of sexual or physical abuse also may be examined and treated at a Child Advocacy Center (CAC).<sup>10</sup>

Within 60 days of the initiation of an investigation, ACS must determine whether the report is “indicated” or “unfounded”.<sup>11</sup> If a report is “indicated”, this means that the investigation determined that “some credible evidence of the alleged abuse or maltreatment exists.” If a report is determined to be “unfounded”, the investigation failed to find “that some credible evidence of the alleged abuse or maltreatment

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disclosure of the name of the person reporting the suspected abuse where there is an allegation that such person acted with willful misconduct or gross negligence”). *See also Prevent and Report Child Abuse*, N.Y. STATE OFF. CHILD. & FAM. SERVS., [https://ocfs.ny.gov/main/prevent\\_child\\_abuse.asp](https://ocfs.ny.gov/main/prevent_child_abuse.asp) [<https://perma.cc/757F-HKMH>] (last visited May 21, 2021) (“Calls to the hotline are anonymous; callers’ identities are protected from disclosure.”).

6. *See* N.Y.C., N.Y., ADMIN. CODE § 21-901 (2021); *About ACS*, N.Y.C. ADMIN. FOR CHILD.’S SERVS., <https://www1.nyc.gov/site/acs/about/about.page> [<https://perma.cc/6ZM3-U3WX>] (last visited May 21, 2021).

7. *A Parent’s Guide to a Child Abuse Investigation*, N.Y.C. ADMIN. FOR CHILD.’S SERVS., <https://www1.nyc.gov/site/acs/child-welfare/parents-guide-child-abuse-investigation.page> [<https://perma.cc/QA5W-CQ6G>] (last visited May 21, 2021).

8. OFF. CHILD. & FAM. SERV., *Child Protective Services Manual*, G1-G9 (2020), <https://ocfs.ny.gov/programs/cps/manual/2020/2020-CPS-Manual.pdf> [<https://perma.cc/ZR86-JBFM>] (last visited May 21, 2021).

9. *Id.* at G1-G7.

10. *See* N.Y. SOC. SERV. LAW § 423-A (McKinney 2019); OFF. CHILD. & FAM. SERV., *supra* note 8, at F6, G5, L7. In New York City, each borough has a Child Advocacy Center (CAC), where children who are victims of suspected sexual or severe physical abuse are interviewed and treated by a multidisciplinary staff experienced in addressing the needs of abused children. Each CAC team includes an ACS Child Protective Specialist, an NYPD detective, a pediatrician, an attorney from the District Attorney’s office, and a clinical forensic specialist. *See also Child Advocacy Centers*, SAFE HORIZON, <https://www.safehorizon.org/child-advocacy-center> [<https://perma.cc/R6JT-HR5T>] (last visited May 21, 2021).

11. N.Y. SOC. SERV. LAW § 424(7) (McKinney 2019).



exists.”<sup>12</sup> The investigating ACS caseworker may temporarily remove the child from the home if he or she believes that the child is in immediate danger.<sup>13</sup>

*B. Most Calls to Child Protective Hotlines are Unfounded.*

While most calls to the SCR are well-intentioned, the literature acknowledges that some actors may place such calls in bad faith, knowing full well that the allegations therein are untrue. For example, Dr. Nico Trocmé, Director of the School of Social Work at McGill University, and Nicholas Bala, a professor at Queen’s University Law School, found that the experience of parents separating from each other creates an environment that can easily cultivate false or unfounded allegations of child abuse, especially in highly contentious custody disputes.<sup>14</sup>

The literature also acknowledges the difficulty in determining the exact incidence rate of intentionally false reporting of child abuse and neglect in the United States. In attempting to quantify the rate of such reports, one must acknowledge that the determination that an allegation is unfounded does not mean that the reports made were intentionally false or malicious.<sup>15</sup> Certainly, the data show that the majority of

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12. N.Y. SOC. SERV. LAW § 412(6)-(7) (McKinney 2019). As of January 1, 2022, the standard of evidence for an indicated report will change from “some credible evidence” to “a fair preponderance of the evidence that the alleged abuse or maltreatment exists.” See S. 7506-B, 234th Cong. (N.Y. 2020), <https://www.nysenate.gov/legislation/bills/2019/s7506> [<https://perma.cc/PAT9-6AF9>]. As a result, ACS will have to meet a higher burden in order to indicate a case. However, this heightened burden will not prevent the lodging and investigation of false complaints.

13. N.Y. FAM. CT. ACT §§ 1021, 1024. (Consol. 2005). In those cases, ACS then must file a petition in the family court “no later than the next court day after the petition is filed,” in order “to determine whether the child’s interests require protection, including whether the child should be returned to the parent or other person legally responsible.” N.Y. FAM. CT. ACT § 1027 (Consol. 2016).

14. Nico Trocmé & Nicholas Bala, *False Allegations of Abuse and Neglect When Parents Separate*, 29 CHILD ABUSE & NEGLECT 1333, 1342–43 (2005).

15. For a discussion of the difficulty of defining “false” allegations, see Nicholas M.C. Bala, Mindy Mitnick, Nico Trocmé & Claire Houston, *Sexual Abuse Allegations and Parental Separation: Smokescreen or Fire?*, 13 J. FAM. STUD. 26, 29 (2007) (“[Unfounded] accusations are most often multi-causal and are rarely simply the coniving manipulation of a competitive parent who wishes to win at all costs. There is a gradient between the parent who consciously deceives and the one who is deluded in belief and whose accusations are built of several elements: personal history projected onto the present relationship; shock and betrayal turned into malevolent mistrust of the other; aggression and hatred; fears based on regressed violent behaviour at the termination of the marriage; comments made in emotional turmoil; suggestibility enhanced by outsiders who are keen to find sexual abuse in men; wishes to denigrate, humiliate and punish the ex-spouse; distortion in thought processes in mentally vulnerable parents who view their overreactions as protectiveness; and finally, a fervent

investigated child abuse hotline calls do not result in child protective agencies taking action.<sup>16</sup> The National Child Abuse and Neglect Data System (NCANDS) estimated that, in 2019, approximately 4.4 million allegations of child abuse or neglect were reported to child protective service agencies nationwide,<sup>17</sup> resulting in investigations or alternative child protective service agency responses involving nearly 3.5 million children.<sup>18</sup> The NCANDS also reported that in 2019, about 656,000 investigations resulted in findings of child maltreatment.<sup>19</sup> Additionally, there were nearly 2.85 million investigated allegations of child abuse or neglect across the country that uncovered no evidence of child maltreatment, were closed without any determinations, and/or were determined to be unsubstantiated.<sup>20</sup>

As in the rest of the country, a large percentage of all child abuse and neglect reports in New York are ultimately determined to be unfounded. In New York State, there were 163,917 allegations of child maltreatment made to the SCR in 2019, resulting in investigations or alternative child protective service agency responses involving 216,016 children.<sup>21</sup> Those 2019 investigations resulted in 78,051 findings of child maltreatment.<sup>22</sup>

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desire to win a custody case and be rid of that person forever.”) (quoting ARTHUR LEONOFF & ROBERT J. MONTAGUE, *GUIDE TO CUSTODY AND ACCESS ASSESSMENTS* 357 (1996)).

16. See Dale Margolin Cecka, *Abolish Anonymous Reporting to Child Abuse Hotlines*, 64 CATH. U. L. REV. 51, 64 (2014) (citing NIS-4 statistic that reports regarding only 27.4 per 1,000 children nationally resulted in dispositions, despite the definition of disposition in this statistic including not only investigations of cases in which maltreatment was substantiated, but also investigations that determined families were “at risk of maltreatment.”)

17. See CHILD’S BUREAU, U.S. DEP’T HEALTH & HUM. SERVS., *supra* note 4, at xiv, 7, 18. The NCANDS reported that the 4.4 million referrals alleging child maltreatment included approximately 7.9 million children.

18. *Id.* at xiv, 18.

19. *Id.* at xiv, 20.

20. *Id.* at xiv, 17–18, 30. The NCANDS reported that 16.7 percent of children who were subjects of reports were classified as “victims” of maltreatment and the remaining 83.7 percent of children were “not determined to be victims or received an alternative response.” Depending on individual state policies, some investigations included in the NCANDS report were given dispositions beyond substantiated or unsubstantiated. For example, in some cases, the evidence did not meet the criteria under state law of a substantiated incidence of child abuse or neglect but did lead to an alternative response or some other indication that child maltreatment was suspected, or a case was closed without a determination because the case could not be completed. *Id.* at 16–17, 124.

21. *Id.* at 12, 28.

22. *Id.* at 25, 30. This figure is a duplicate count, meaning that if a child was involved in two indicated child abuse or neglect investigations during 2019, that would be included each time in this count. The number of substantiated investigations, not the child, is the unit of measure. See *Id.* at 17, 25.

In New York City, there were approximately 65,000 allegations of child abuse or neglect made to the SCR in 2019. From these reports, ACS conducted about 55,000 consolidated investigations,<sup>23</sup> involving approximately 85,000 children.<sup>24</sup> Approximately 20,000 (or about 37%) of these child abuse or neglect investigations in New York City resulted in ACS making findings of child maltreatment.<sup>25</sup>

### C. Harms of Intentionally False Reports

Although not every unfounded report of child abuse or neglect is an intentionally false report, parent advocacy groups, family law practitioners, social service providers, and even senior child welfare officials have all asserted that malicious and intentionally false reporting is a significant issue.<sup>26</sup> When it occurs, it exacerbates family stressors and introduces unnecessary and intrusive child protective agency scrutiny into families' lives.

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23. Consolidated investigations refer to investigations when multiple investigations involving a single family are included in one investigation, rather than treating investigations into each child's situation or each report separately. See OFF. OF CHILD. & FAM. SERVS., CONNECTIONS TIP SHEET: CONSOLIDATING DUPLICATE CPS INVESTIGATION OR FAR STAGES (2021), <https://ocfs.ny.gov/connect/jobaides/Tip%20sheets/Tip-Sheet-Consolidating-a-CPS-Investigation.pdf> [<https://perma.cc/9XTT-RFTH>] (“When a district receives multiple CPS intakes involving the same family, it may be appropriate to record all the required tasks within a single Investigation (INV) or Family Assessment Response (FAR) stage. In such instances, a subsequent INV or FAR stage may be closed as a duplicate to the previously-received INV or FAR stage. This process is commonly referred to as consolidation.”); see also N.Y.C. INDEP. BUDGET OFF., INVESTIGATING REPORTS OF CHILD ABUSE & NEGLECT: HAS N.Y.C. MET ITS GOALS SET 10 YEARS AGO TO INCREASE INVESTIGATIVE STAFF AND LOWER CASELOADS?, 2 (2016), <https://ibo.nyc.ny.us/iboreports/investigating-reports-of-abuse-and-neglect-has-nyc-met-goals-set-10-years-ago-to-increase-investigative-staff-and-lower-caseloads-october-2016.html> [<https://perma.cc/M77D-3HVB>] (“If a report concerns a child already involved in an open investigation, ACS has the option to consolidate the report into the existing investigation. Reports about multiple children in the same family are also consolidated into one investigation, as investigations involve the entire family, not just the child who is the subject of a report.”).

24. N.Y.C. ADMIN. CHILD. SERV., ABUSE/NEGLECT INVESTIGATIONS BY COMMUNITY DISTRICT, 2015-2019, 2 (2019), <https://www1.nyc.gov/assets/acs/pdf/data-analysis/abuseneglectreport15to19.pdf> [<https://perma.cc/YN7A-EDRA>].

25. *Id.*

26. See, e.g., *infra* Part III; Lou H., *The System Allowed My Ex to Use Investigations as a Weapon Against Me*, RISE (Sept. 23, 2019), <https://www.risemagazine.org/2019/09/when-investigations-become-a-weapon>; Nat'l Coal. for Child Prot. Reform, *Weapon of Family Destruction: Child Abuse Hotline Becomes a Tool of Harassment Through False and Malicious Reports – According to the People Who Run It!*, NCCPR CHILD WELFARE BLOG (June 17, 2019), <https://www.nccprblog.org/2019/06/weapon-of-family-destruction-child.html>.

1. *Negative Impact of False Reports on Families, Children, Communities, and the Child Welfare System.*

Research shows that when false reporting occurs, the impact of such reporting can be substantial. False reports of child abuse and/or neglect can lead to a cascade of social, psychological, and economic repercussions for the families involved. Natalie K. Worley, a researcher at Clemson University, and Dr. Gary B. Melton, a professor at The University of Virginia Curry School of Education and Human Development and the School of Medicine, argue that unfounded cases can result in families experiencing stigma in their communities, parents losing jobs as they engage in the arduous process of refuting the allegations against them, and children being removed from their homes unnecessarily. Further, Worley and Melton posit that investigations, which “inevitably result[ ] in a substantial invasion of privacy and almost certainly increase[ ] anxiety and helplessness,” can “fractionate” a family and destroy its relationships with others.<sup>27</sup>

Additionally, children who are the subject of false allegations can be traumatized by invasive child welfare investigations, which are “by their very nature intrusive and upsetting events, especially in emotionally charged situations such as when parents have separated.”<sup>28</sup> According to the Portland State University Center for Improvement of Child and Family Services, children may experience “surprise, shock, [and] chaos” during a child welfare investigation, as well as a “loss of control,” “powerlessness, helplessness,” and a “sense of guilt or failure.”<sup>29</sup> Recurring interviews may also “negatively impact a child’s self-esteem” due to the child constantly having to repeat negative as-

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27. NATALIE K. WORLEY & GARY B. MELTON, *Mandated Reporting Laws and Child Maltreatment: The Evolution of a Flawed Policy Response*, in C. HENRY KEMPE: A 50 YEAR LEGACY TO THE FIELD OF CHILD ABUSE AND NEGLECT 103, 107-08, 112 (Richard D. Krugman & Jill E. Korbin eds., 2013). Worley and Melton also argue that child protective services’ focus on investigations, compared with the relative inadequacy and underfunding of useful preventative services in some states, provides families with little help. *Id.* at 112. Worley and Melton further assert that unsubstantiated reports made by laypersons who are untrained regarding child maltreatment, including neighbors and relatives, can “exacerbate the stress experienced by an overburdened family by introducing CPS into their lives through unnecessary reports of suspected maltreatment.” *Id.* at 108.

28. Trocmé & Bala, *supra* note 14, at 1342.

29. CTR. FOR IMPROVEMENT CHILD & FAM. SERVS., PORTLAND ST. UNIV., SCH. SOC. WORK, *REDUCING THE TRAUMA OF INVESTIGATION, REMOVAL, & INITIAL OUT-OF-HOME PLACEMENT IN CHILD ABUSE CASES: PROJECT INFORMATION AND DISCUSSION GUIDE 12-13* (2009), <http://centerforchildwelfare.org/kb/TraumaInformedCare/ReducingTraumaofInvestigation.pdf> [<https://perma.cc/N6FK-YU4P>].

pects of the child's life or behaviors.<sup>30</sup> Children may also experience fear deriving from a lack of information about what investigations will entail for them.<sup>31</sup> Children involved in a child abuse or neglect investigation "may not know what's going to happen in the examination or the interview," which can be particularly traumatic because children are taught from a young age "not to talk to or trust strangers and not to let strangers touch their bodies; and these are strangers."<sup>32</sup>

Researchers also point to the waste of public resources and ineffectiveness of many child welfare agency investigations, including those caused by false reports. Dale Margolin Cecka, a family law clinical director and professor at the University of Richmond School of Law, argues that "over-reporting is a drain on the system," leading to "[u]nnecessary investigation of families (that) diverts resources from an already overburdened system."<sup>33</sup>

Officials and advocates in New York City have acknowledged that intentionally false child maltreatment reports often cause significant damage. In his testimony to the New York City Council Committee on General Welfare, then-ACS Commissioner Daniel A. Hansell acknowledged that although the SCR could serve as an "essential life-line" for children who are being seriously harmed or at imminent risk of harm, a child protective investigation "by its nature can be intrusive and traumatic" for families.<sup>34</sup> Advocacy groups have emphasized the harm that false reporting has on families. For example, in a publication released by RISE, a New York-based parent advocacy organization, one mother stated that her son's father had called in seven reports of alleged abuse in the prior three years.<sup>35</sup> She described the high levels of stress that she had experienced because of the father's repeated false allegations against her and her worry that something as innocuous as a scratch that her son had sustained in the schoolyard would result in further Child Protective Services (CPS) involvement.<sup>36</sup>

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30. CTR. FOR IMPROVEMENT CHILD & FAM. SERVS., PORTLAND ST. UNIV., SCH. SOC. WORK, WHAT IS THE POTENTIAL TRAUMA TO CHILDREN DURING THE INVESTIGATION? (2008-2009), <https://www.pdx.edu/center-child-family/sites/g/files/znlldhr2421/files/2020-07/CJA-trauma-of-investigation.pdf> [<https://perma.cc/42VE-K32S>].

31. *Id.*

32. *Id.*

33. Cecka, *supra* note 16, at 64–65.

34. See DAVID A. HANSELL, NYC ADMIN. CHILD. SERVS., TESTIMONY TO THE NEW YORK CITY COUNCIL COMMITTEE ON GEN. WELFARE, 6 (Oct. 28, 2020). <https://www1.nyc.gov/assets/acs/pdf/testimony/2020/GWCommitteeHearing.pdf> [<https://perma.cc/G6RF-QE89>].

35. See Lou H., *supra* note 26.

36. *Id.*

## 2. *Disproportionate Impact of False Reports on Communities of Color and Low-Income Communities.*

False allegations of child abuse or neglect can have a particularly detrimental impact on families of color, who have a history of overrepresentation and disparate treatment within family court and child protective service systems.<sup>37</sup> Families of color, particularly Black families, are more likely to be reported to and investigated by child protective services<sup>38</sup> and have higher rates of family separation and foster care involvement once they have entered the child protective system.<sup>39</sup> Commissioner Hansell confirmed that this is the case in New York City.<sup>40</sup> In October 2020, Commissioner Hansell testified

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37. See generally DOROTHY ROBERTS, *SHATTERED BONDS: THE COLOR OF CHILD WELFARE* (2002) [hereinafter ROBERTS (2002)]; John D. Fluke, Ying-Ying T. Yuan, John Hedderson & Patrick A. Curtis, *Disproportionate Representation of Race and Ethnicity in Child Maltreatment: Investigation and Victimization*, 25 *CHILD. & YOUTH SERVS. REV.* 359, 362, 372 (2003); Arthur Horton, Jr. & Jerry Watson, *African American Disproportionate Overrepresentation in the Illinois Welfare System*, 22 *RACE, GENDER & CLASS*, 65, 65, 70 (2015); Jeryl L. Mumpower & Gary H. McClelland, *A Signal Detection Theory Analysis of Racial and Ethnic Disproportionality in the Referral and Substantiation Processes of the U.S. Child Welfare Services System*, 9 *JUDGMENT & DECISION MAKING* 114 (2014); Dorothy E. Roberts, *The Racial Geography of Child Welfare: Toward a New Research Paradigm*, 86 *CHILD WELFARE* 125, 125–27 (2008) [hereinafter Roberts (2008)]; Dorothy E. Roberts, *Child Welfare's Paradox*, 49 *WM. & MARY L. REV.* 881, 883 (2007) [hereinafter Roberts (2007)]; WORLEY & MELTON, *supra* note 27, at 107–08.

38. ROBERTS (2002), *supra* note 37, at 7; Fluke, Yuan, Hedderson & Curtis, *supra* note 37, at 371; Horton & Watson, *supra* note 37, at 66–67 (explaining how African American children made up 19% of Illinois population but 34% of reports to Department of Children and Family Services, protective services, and maltreatment in 2007); Mumpower & McClelland, *supra* note 37, at 124, 125; Roberts (2008), *supra* note 37, at 128; Roberts (2007), *supra* note 37, at 882–83, 899; WORLEY & MELTON, *supra* note 27, at 107–08.

39. ROBERTS (2002), *supra* note 37, at 8; Horton & Watson, *supra* note 37, at 66–67 (discussing how Black children represented the majority of children in foster care in 2007 and end up staying in foster care longer than their counterparts); Nicholas Kahn & Mary Eschelbach Hansen, *Measuring Racial Disparities in Foster Care Placement: A Case Study of Texas*, 76 *CHILD & YOUTH SERVS. REV.* 213, 218 (2017); CHILD.'S BUREAU, *FOSTER CARE STATISTICS 2018*, at 1, 9–11 (2018), <https://www.childwelfare.gov/pubPDFs/foster.pdf> [<https://perma.cc/MGD7-ARCG>]; CHILD.'S BUREAU, *THE AFCARS REPORT 1, 2–5* (2020), <https://www.acf.hhs.gov/sites/default/files/documents/cb/afcarsreport27.pdf> [<https://perma.cc/XS4Q-FPWC>]; Roberts (2008), *supra* note 37, at 128; Roberts (2007), *supra* note 37, at 882–83.

40. See also ANGELA BUTEL, *DATA BRIEF: CHILD WELFARE INVESTIGATIONS AND NEW YORK CITY NEIGHBORHOODS 1–5* (2019) <https://static1.squarespace.com/static/53ee4f0be4b015b9c3690d84/t/5d12746c3cdaa000017dfc2a/1561490541660/DataBrief.pdf> [<https://perma.cc/DH9R-PG6V>]. Butel found that “when controlling for child poverty rate,” the neighborhoods “with more Black and Latino residents tended to have higher rates of investigation.” While the causes of this disparity have been debated, many researchers have acknowledged that racial bias in child welfare investigations and systemic factors such as higher rates of poverty and greater state and

before the New York City Council General Welfare Committee that in 2019, 41.4% of reports to the SCR involved children in families who identified as Black and/or African American, and 45.4% of reports involved children from Latinx/Hispanic families, even though those children comprise, respectively, about 23% and 36% of the NYC child population. Conversely, White children comprise 26.5% of that population but are the subject of only 8% of SCR reports accepted for investigation, and Asian/Pacific Islander children constitute 14.1% of that population but comprise only 5.3% of reports.<sup>41</sup>

Furthermore, Commissioner Hansell acknowledged the potentially harmful impact of child welfare investigation on children and families and recognized that the disproportionate representation of Black and Latinx/Hispanic families in SCR reports, and subsequent investigations, could result in disproportionate harm to these communities.<sup>42</sup> Hansell stated that ACS had a “collective duty” to ensure that its investigations were conducted only in response to a “true concern” regarding a child’s safety. Further, he asserted that investigations should not be “used inappropriately or disproportionately, resulting in further marginalization and trauma for families of color.”<sup>43</sup>

The overrepresentation of families of color in child welfare investigations also is problematic because research indicates that child protective services investigations into families of color are more likely to be erroneously substantiated. For example, in their research analyzing child protective welfare systems’ ability to detect actual incidences of child maltreatment, Dr. Jeryl L. Mumpower, a professor emeritus at Texas A&M Bush School of Government and Public Service, and Dr. Gary H. McClelland, a professor emeritus of psychology and neuroscience at the University of Colorado Boulder, found that “the rate of correct diagnoses is lower” for Black families, and that “the rate of errors, especially false-positive errors, is higher than for other groups.”<sup>44</sup>

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institutional intervention among families of color contribute to the disproportionate representation of families of color involved in the child welfare system. Furthermore, Butel reported that while there is a statistically significant relationship between higher rates of child poverty and higher rates of indicated cases, there was no statistically significant relationship between the higher “concentrations of Black and Latino residents” and higher rates of indicated cases. So, despite higher rates of child welfare investigations in Black and Latino neighborhoods, “a neighborhoods concentration of Black and Latino residents” was not correlated with higher rates of cases “in which ACS finds some credible evidence of abuse or neglect.”

41. HANSELL, *supra* note 34, at 5.

42. *See id.* at 6.

43. *Id.*

44. Mumpower & McClelland, *supra* note 37, at 124.

Research also has focused on the community-wide impact of racial inequity and disproportionality in the child welfare investigation system. In a 2002 book, *SHATTERED BONDS: THE COLOR OF CHILD WELFARE*, Dorothy Roberts, a professor of law, sociology, and African studies at the University of Pennsylvania, writes that:

The system's racial disparity also inflicts a group-based harm. The damage caused by the child welfare system is visited upon a disproportionate share of Black people. Those parents and children directly injured by child welfare authorities should have legal claims based on the violation of their family and civil rights. . . . [T]he harmful impact of a racist child welfare system is also felt by Blacks who are not directly involved in it. The negative consequences of disrupting large numbers of Black families and placing them under state supervision affects Black people's status and welfare as a group.<sup>45</sup>

Roberts argues that the overrepresentation of Black families in the child welfare system, and the surveillance of family life felt in many Black neighborhoods, creates community and racial trauma that extends beyond the family unit.<sup>46</sup> She writes that "even if we could justify separating children from their parents in individual cases (and these decisions are often unwarranted), we must still contend with the collective harms that racially disparate state interventions in families produce."<sup>47</sup> More recently, in response to the national protests on racial injustice in 2020, Roberts asserted that the "disruptive" nature of "child maltreatment allegations and investigations, most of which are unsubstantiated[,] produce absolutely no help to families." She argued that child protective service agencies too often act as family regulators, "destroying [B]lack, [B]rown and [I]ndigenous families in the name of child protection."<sup>48</sup>

The racial and socioeconomic disproportionality described above is reflected in New York City's family courts. Leah Hill, a dean and professor of Family Law at Fordham University School of Law, wrote that the New York City Family Court system was a "world of overcrowded waiting rooms and long waits, where most litigants are poor people of color, where most proceedings conclude in ten minutes or

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45. ROBERTS (2002), *supra* note 37, at 233.

46. *Id.* at 233–49.

47. *Id.* at 243.

48. Dorothy Roberts, Opinion, *Abolishing Policing Also Means Abolishing Family Regulation*, IMPRINT: YOUTH & FAM. NEWS (June 16, 2020), <https://chronicleof-socialchange.org/child-welfare-2/abolishing-policing-also-means-abolishing-family-regulation/> [<https://perma.cc/W542-CAY4>].



less, and where waiting rooms often double as law offices.”<sup>49</sup> New York City family courts are “ill-equipped to address the needs of the hundreds of thousands of cases” and this disservice to the primarily low-income families of color served in this court system “may have set the groundwork for practices that unwittingly perpetuate bias” against these families.<sup>50</sup>

## II.

### METHODOLOGY AND PREVALENT CHARACTERISTICS OF CLIENT CASES

In this Part, we provide a brief overview of the methodology that our team employed in our study and the characteristics and issues that were prevalent in the cases discussed by participants. We conducted detailed interviews with attorneys and social workers to learn about (a) the characteristics and frequency of intentional and/or malicious false allegation(s) of child abuse or neglect in custody and visitation cases; (b) if and how such allegations negatively impact litigants, their children, and the New York City child welfare and family court systems more broadly; and (c) what policies and practices might prevent or ameliorate the impacts of such allegations.<sup>51</sup>

#### A. Methodology

Our research team consisted of two CLC attorneys and a legal fellow affiliated with the University of Pennsylvania.<sup>52</sup> From April to August 2020, we investigated our CLC colleagues’ experiences with cases involving intentional and/or malicious false allegation(s) of child abuse or neglect.<sup>53</sup> All the attorneys we interviewed were Attorneys for the Child (AFC) in family court proceedings in New York

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49. Leah A. Hill, *Do You See What I See - Reflections on How Bias Infiltrates the New York City Family Court - The Case of the Court Ordered Investigation*, 40 COLUM. J.L. & SOC. PROBS. 527, 530 (2007).

50. *Id.* at 531, 532.

51. Transcripts for all interviews are on file with the authors. They have been redacted to protect the confidentiality of study participants.

52. Our research intern/fellow began working on this project as a third year JD/M.S.Ed. candidate and conducted some of the work as coursework in the University of Pennsylvania’s Carey School of Law and Graduate School of Education, with permission of instructors in both schools. The intern/fellow continued working on this project as a paid post-graduate legal fellow. To conduct interviews with human subjects, institutional review board (IRB) paperwork was submitted to the University of Pennsylvania, and the University’s protocols for social science interviews with human subjects were followed. The IRB determined that this study was exempt from full IRB review under 45 CFR 46.104, category 2.

53. Throughout this Article, the terms “false reporting” or “false allegations” refer to cases in which allegations were both (a) unsubstantiated and (b) believed to be

City. The social workers we interviewed were licensed Master of Social Workers (LMSW) who had worked in collaborative teams with the attorneys we interviewed.

We selected participants through a combination of convenience, criterion, and chain sampling.<sup>54</sup> To recruit participants, we surveyed attorneys and social workers at CLC, seeking those who self-identified as meeting the following criteria: (a) the attorney or social worker had worked on one or more family court cases where he or she believed a litigant had made intentional or malicious false allegations of child abuse or neglect; and (b) in those case(s), ACS had determined that the allegations of child abuse or neglect were “unfounded.”<sup>55</sup>

Some interview participants wished to discuss more than one case/family that met our criteria. They were interviewed more than one time, with each interview focusing on a separate case/family. Additionally, some participants suggested colleagues who could speak to the same case (or similar cases). In those instances, researchers contacted the recommended individual(s). When more than one participant spoke about the same case, some participated with their colleague(s) in a joint interview about that case, while others participated in separate interviews.<sup>56</sup>

In total, we conducted sixteen interviews with fifteen former and current CLC staff attorneys and two CLC social workers.<sup>57</sup> Across these interviews, participants discussed thirteen separate family law cases/families in which an adult had engaged in false reporting of

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made with the intent to harass another individual or to further the reporting litigant’s interests in pending custody and/or visitation cases.

54. JOHN W. CRESWELL & CHERYL N. POTH, *QUALITATIVE INQUIRY AND RESEARCH DESIGN: CHOOSING AMONG FIVE APPROACHES* 157 (4th ed. 2018).

55. We excluded cases in which ACS had determined the reports of child abuse or neglect were unfounded, but there was evidence that the litigant had made the report in good faith (i.e., the litigant really believed that the child had been abused or neglected). Additionally, some potential participants were eliminated because their cases did not involve situations in which unsubstantiated claims were believed to be *intentionally* or *maliciously* false. In one case, the participants suspected that the reporting litigant may have had a mental health condition that impacted his own perception of the veracity of his claims. We discuss the challenges presented by the mental health concerns of reporting litigants in Part III, Section F.2.

56. Two of the attorneys who participated in these interviews were authors and developers of this research project. These attorneys only participated in group interviews when they had worked on the same cases as another attorney or social worker who was being interviewed. These attorneys did not conduct any of the interviews, nor did they code or analyze data.

57. A seventeenth interview was conducted but was not included in this data set due to technical issues with the recording. The participant who engaged in that interview also spoke about a different case in a separate interview that is included in this data set.

child abuse or neglect.<sup>58</sup> All interviews were conducted over Zoom due to COVID-19 safety precautions.

Participants were asked a prescribed series of questions, and their responses were recorded and then coded to identify themes and patterns across such cases.<sup>59</sup> In each interview, a researcher asked the participant(s) to focus on a single child or sibling group about whom they believed an adult had made one or more intentionally false report(s) of child abuse or neglect.<sup>60</sup> The researcher also asked the participants several open-ended questions about their experiences with false reporting in general.<sup>61</sup>

After we analyzed the data, we met with New York City Family Court stakeholders and discussed our preliminary findings and poten-

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58. It is important to note that in all the cases in this study, the child who was the subject of the alleged abuse or neglect was not the primary reporter of the abuse or neglect. Additionally, in all but one case, an adult litigant made allegations of child maltreatment that were dismissed and denied by the children who were allegedly abused and/or neglected. Furthermore, in the sole case in which a child at one point corroborated the reporting adult's allegations, that child later denied those claims. Research suggests that when children self-disclose sexual violence, it is typically unlikely that their allegations are intentionally false. *See* Trocmé & Bala, *supra* note 14, at 1333, 1342. Self-reported allegations of child abuse or neglect or of domestic violence, where survivors of abuse are the individuals making reports, may require a different analysis and different policy recommendations.

59. Interview protocols can be found in Appendices I and II. We developed interview questions through an iterative and collaborative process. The team drafted potential questions based on internal discussions. Ms. Glock-Molloy then shared these interview questions in a graduate qualitative research seminar, and the team incorporated the resulting feedback. After conducting the first few interviews, we refined the questions in order to incorporate themes and topics that had emerged organically and required further exploration. Additionally, our interview format was not entirely rigid, in that the researcher asked follow-up questions beyond the interview questions in order to clarify participants' responses or gather additional detail.

60. While each interview focused primarily on one case, many participants volunteered information about their experiences with other similar cases.

61. A single researcher conducted all interviews and coded and analyzed the resulting transcripts. Codes were developed utilizing feedback from the entire research team. The codes were revised based upon a review of research using legal, sociological, critical race, and gender theory to analyze and understand the child welfare system and allegations of abuse and neglect in family court proceedings. *See* App. III. All interviews were transcribed using Otter.ai transcription service. The online qualitative research tool Dedoose was used to assist with analysis. To address validity in this study, researchers employed various analytical and theoretical triangulation and participant validation strategies, strategic sequencing of methods, and dialogic engagement. *See* Sharon M. Ravitch & Nicole Mittenfelner Carl, *QUALITATIVE RESEARCH: BRIDGING THE CONCEPTUAL, THEORETICAL, AND METHODOLOGICAL* 194–203, 226–28 (2016).

tial policy and legislation proposals.<sup>62</sup> We incorporated the feedback received from these stakeholders into our final recommendations and conclusions.

### *B. Characteristics of Cases Discussed by Participants*

When two attorneys and/or social workers spoke separately about the same case, the themes discussed across interviews regarding those cases were aggregated.<sup>63</sup> For the purposes of this discussion, the individuals involved in family court cases who made allegations of abuse or neglect will be referred to as “reporting litigants,” and individuals who were subjects of reports of abuse or neglect will be referred to as “adult subjects of reports.” All allegations of child abuse or neglect discussed herein are allegations that ACS determined to be unfounded and that the interview participant believed were intentionally false (as opposed to mistaken allegations or allegations made in good faith but determined to be unfounded).

The most frequently mentioned allegations, from most to least frequent, were sexual abuse, physical abuse, excessive corporal punishment, inadequate guardianship, medical neglect, drug-related activity, and educational neglect.<sup>64</sup> Significantly, over ninety percent of reporting litigants in these cases made allegations by calling the SCR hotline directly. Additionally, reporting litigants made allegations through calls to the police or statements made to a mandated reporter,<sup>65</sup> presumably knowing that the mandated reporter was required to make a report to child protective services.<sup>66</sup>

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62. Stakeholders included, but were not limited to, attorneys for children in a variety of court proceedings, advocates for parents in custody/visitation and child protective cases, advocates for victims of domestic violence, and officials from ACS.

63. Attorneys and social workers largely described the same factors for each of the topics discussed in this section. If two interview participants spoke about the same case during different interviews, and the participant in the second interview provided additional data, that data was aggregated with the information gathered from the prior interview about that case. For example, if a social worker, interviewed separately from an attorney, mentioned an additional type of allegation made, the responses of the attorney and social worker were aggregated to include all allegations discussed regarding that specific case. At no point did two individuals speaking about the same case provide conflicting information.

64. Some interviews alluded to other types of abuse or neglect without providing specific details. This data is included in the “Other Allegations/Not Specified” category. A table illustrating the frequency of the types of allegations is located in Appendix IV.

65. See N.Y. SOC. SERV. LAW § 413 (McKinney 2019).

66. A table illustrating the Agency or Person to Whom Allegations Were Reported is located in Appendix IV.

### 1. Relationship Between Reporter and Adult Subject of Reports

The following tables describe how the reporting litigants and the adult subjects of reports were connected to each other and to the child or children in each case. Some cases involved more than one reporting litigant or adult subject of reports. Figures are displayed as percentages of the number of total cases where a particular type of individual was the reporting litigant or adult subject of reports.

TABLE A.1: LITIGANT(S) WHO MADE REPORTS OF ALLEGED CHILD ABUSE OR NEGLECT

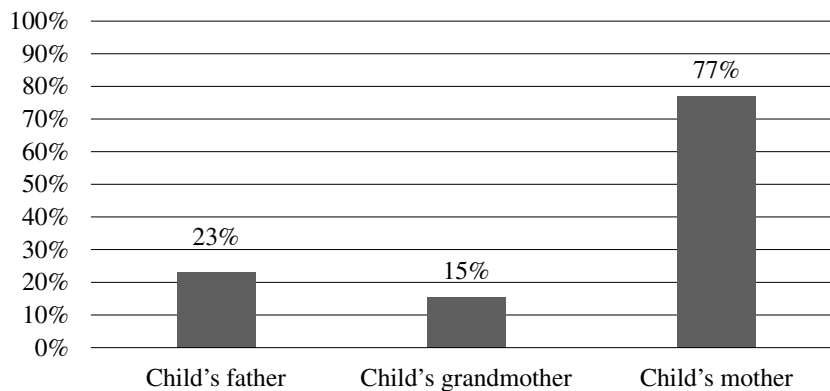
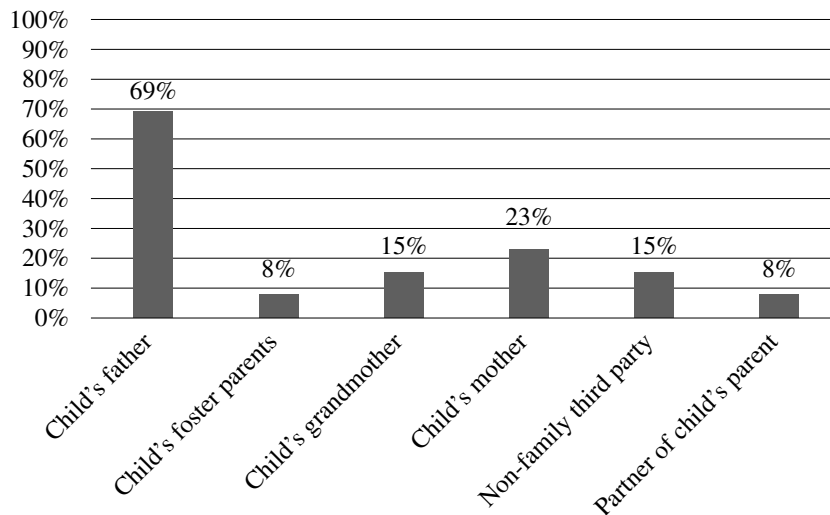


TABLE A.2: INDIVIDUAL(S) SUBJECT TO INVESTIGATION AS RESULT OF REPORTS OF ALLEGED ABUSE OR NEGLECT



## 2. Custody Arrangements of Reporting Litigants and Adult Subject of Reports

The following tables display the custody arrangements of reporting litigants and the adult subjects of reports. In the cases discussed, the majority of reporting litigants were non-custodial parents. The majority of adult subjects of reports were custodial parents or other primary caregivers. Figures are displayed as percentages of the number of total cases where reporting litigants had a particular custody arrangement.

TABLE B.1: CUSTODY ARRANGEMENTS OF REPORTING LITIGANT(S)

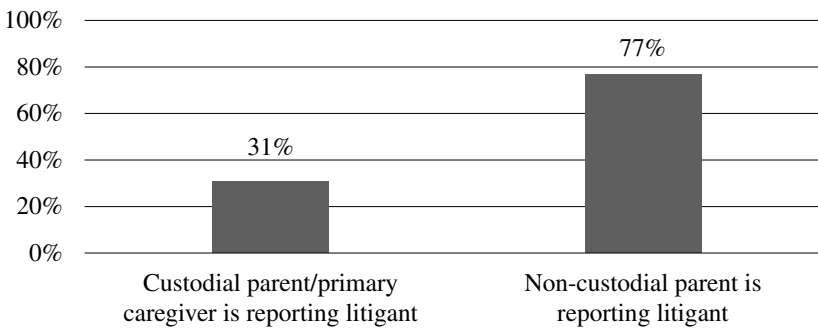
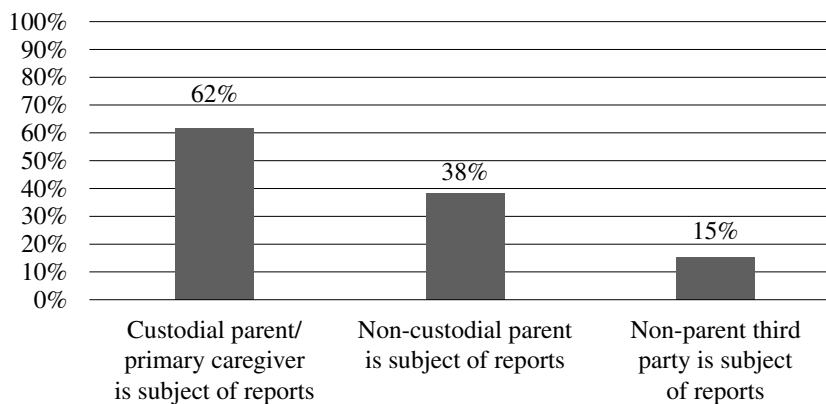


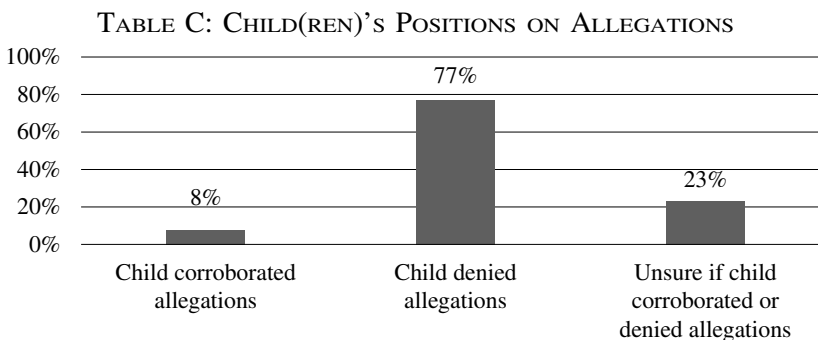
TABLE B.2: CUSTODY ARRANGEMENTS OF ADULT SUBJECT(S) OF REPORTS



## 3. Child's Statements on Allegations' Legitimacy

This chart displays how the interview participants discussed the child's corroboration or denial of the allegations of child abuse or neg-

lect made in the case.<sup>67</sup> Figures are displayed as percentages of the number of total cases where children held particular positions on the allegations made.



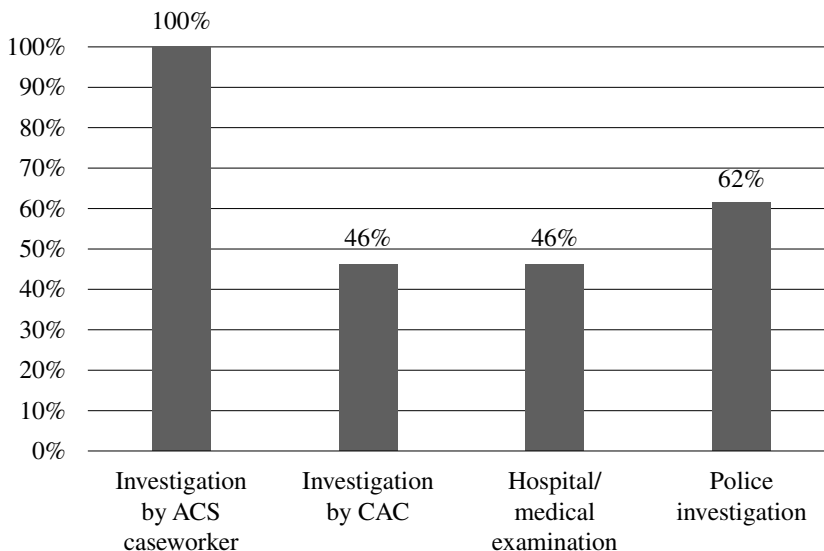
#### 4. Types of Investigations Resulting from Allegations

This table depicts the types of investigations that followed the allegations that were made, including whether the case involved an investigation by an ACS caseworker, an investigation involving the Child Advocacy Center (CAC),<sup>68</sup> a hospital or medical examination, or a police investigation. Allegations in some cases led to multiple kinds of investigations. Figures are displayed as percentages of the number of total cases where a particular type of investigation occurred.

67. In the only case in this sample where the child explicitly corroborated the allegations, that child later recanted and denied those allegations. That case was coded as both “child corroborated allegations” and “child denied allegations.” The code “unsure if child corroborated or denied allegations” refers to instances in which interview participants indicated that they were unsure of the child’s position on allegations, including cases where the child was an infant at the time or otherwise lacked the capacity to communicate.

68. A child will only receive services at a CAC if sexual abuse or severe physical abuse is known or suspected. *See Child Advocacy Centers, supra* note 10 (“At . . . Child Advocacy Centers (CACs), children who have suffered sexual abuse or severe physical abuse are treated by caring teams who are fiercely dedicated to ending child abuse and helping children and families heal. . . . These on-site teams include the following: Child Protective Specialists from the Administration for Children’s Services; Detectives from the New York City Police Department; Assistant District Attorneys from the borough District Attorneys’ offices; Corporation Counsel from the NYC Law Department; Pediatricians from premier local hospitals; and Clinical Forensic Specialists from Safe Horizon.”)

TABLE D: TYPES OF INVESTIGATION THAT OCCURRED AS RESULT OF ALLEGATIONS



### III.

#### THEMES ACROSS INTERVIEWS

This Part provides a summary and analysis of the important themes and lessons that emerged from the interviews that we conducted with practitioners.

##### *A. The Frequency of Cases Involving False Allegations Varies*

Interview participants were asked how frequently they had encountered cases involving false allegations across their careers. All participants responded that they had worked on multiple cases involving false allegations, although the number of cases each participant had encountered varied.<sup>69</sup> Several participants with more legal experience expressed that they frequently had encountered cases in which intentional or malicious false allegations had been made, primarily to the SCR, but also to mandatory reporters, such as the police. Further, participants who had litigated family law cases at other offices before joining CLC asserted that they had experienced false reporting in their previous positions. Two attorneys, who had twenty and thirty years of

69. Some interviewees were relatively new to the practice area, while others had been working in this field for decades. Consequently, participants' estimates of the number of cases with false reports that they had observed across their careers appeared to reflect the wide variation in years of experience in this practice area.



experience as AFCs in family court, respectively, estimated that they had encountered approximately 100 such cases, if not more.

Notably, some experienced participants reported having encountered lower numbers of false reports but also described the false reporting that had occurred on their cases to be particularly severe. One experienced attorney, who had worked at CLC for almost twenty years, noted that she had seen “different severity in terms of people calling in cases against each other.” She reported that she could confidently state that five cases involved false reporting, though she “suspect[s] there’s more.”

Some interview participants also mentioned that they had witnessed false allegations more frequently when working in specific family law practice areas, including custody and visitation practice.

*“[W]hen I switched from doing child protective cases to custody and visitation cases, I actually saw it more frequently. Not that it wasn’t something that happened on child protective cases, . . . [where] there were calls against foster parents . . . [and] teenage clients . . . who lived in the mother[-child] program, [who] sometimes they would call in cases against each other [if they were fighting]. . . . But in the custody and visitation context, . . . I see it happen a lot more . . . litigants call[ing] in against . . . each other to try and gain an advantage in their litigation.”*

An attorney who practiced in the specialized Integrated Domestic Violence Court, which serves families who were “dual engaged in criminal and family [court] cases,” stated that she observed cases in which there were false allegations “all the time.” She noted that families in her cases had a “higher level of conflict . . . and I think if I had to guess I would say that there’s some degree of [making false allegations] happening on 30% to 40% of cases.”

### *B. Impact of False Allegations on the Child.*

The attorneys and social workers who participated in these interviews represent the children in the cases discussed. Participants described the harmful impact of intentional false child abuse and neglect allegations on their clients. They explained that children experienced trauma, stress, frustration, changes in relationships with caretakers, and alterations to custody/visitation plans.

#### *1. Trauma and Stress Experienced by Child*

Many interview participants highlighted the trauma and stress experienced by children as one of the most serious consequences of these intentional false allegations of child abuse or neglect. Partici-

pants stated that, in many cases, children were subjected to multiple interviews by investigators from different agencies, such as ACS and the police, as well as to invasive and traumatic physical examinations. Some participants noted that the amount of trauma experienced by the child was dependent, in part, on the age and developmental capabilities of that child. Further, participants asserted that these intentional false reports exposed children to greater and unnecessary child welfare system involvement, which also upset and distressed them. A participant observed that repeated investigations in his or her case had “traumatized” the child, who was “upset by having to continue to go through these examinations by ACS and being asked about these things . . . . He doesn’t want ACS, the police to come and talk to him about this and like have to be physically examined.”

Interview participants also discussed the physical, developmental, and emotional effects that involvement in these cases had on their child clients. Some participants stated that children who were the subjects of intentional reports complained of physical symptoms, such as stomachaches and sleep disturbances. Other participants expressed concern for the toll that false reporting took on the mental and behavioral health of children and described child clients who exhibited problematic behaviors as a result.

*“[The child] kind of conflates reality with fantasy, but beyond an age that’s usually appropriate that you would normally do that. My opinion is that it’s influenced by kind of just some of the chaotic nature that she’s been exposed to. I do think that emotional harm that her parents ha[ve] caused her has had like a really formative impact on her.”*

*“There wasn’t evidence to support the allegations that were being called in. But it really has had . . . a destructive [impact] I think for our client just as far as she displays a lot of external behaviors acting out in school and bullying kids sometimes . . . . There’s a lot of different . . . mental health issues I think she’s experienced, both externally and internally as a result of it.”*

Participants also spoke about the frustrations that children expressed about their continued involvement with child welfare agencies and court systems as a result of false allegations. Expressions of frustration were particularly pronounced in cases in which multiple false reports were made and in cases in which ACS made emergency home visits in the middle of the night, waking children up from their sleep to interview them and conduct body checks. Depending on the ages of the children involved and the details of the case, children had different degrees of understanding and awareness of what was happening and

the allegations that had been made. In most cases, the child or children denied the allegations of abuse or neglect and experienced child welfare investigations as an invasion and disruption in their lives.<sup>70</sup> As a participant observed, the parent who was the subject of reports “kept the child away from as much of this as he could, but the child got woken up at 1:30 in the morning by a stranger . . . [to] check to see that he didn’t have bruises all over. And, you know, that happened on a number of occasions.”

In discussing the impact that repeated child welfare investigations resulting from false reports had on children, some participants noted that the training and experience of caseworkers conducting investigations can greatly affect the impact that the investigation has on the child. As a participant noted, caseworkers have “a wide spectrum” of experience, and unfortunately, inexperienced caseworkers sometimes “ask questions in ways that are not very nuanced,” and can negatively impact the child. Another participant voiced concern that “sometimes you have [ACS] caseworkers that are not trained at interviewing children regarding serious allegations . . . sometimes you have ACS workers that ask leading questions. Sometimes you have ACS caseworkers that are bias[ed].”

However, participants offered suggestions to address these issues. For example, one participant asserted that caseworkers could be trained to gather information in a manner that minimizes the trauma. Another noted that a caseworker could be granted greater discretion in how he or she conducts an investigation in a situation where “a parent is making the same set of allegations,” the AFC has interviewed the children multiple times, and it is clear that the children are “safe” and comfortable. The participant observed that it might be unnecessary for a caseworker to visit the home and interview the children again and suggested that there could be less invasive methods to confirm that the children were safe.

## 2. *Impact on Child’s Relationship with Parent(s)/Caregiver(s)*

Interview participants noted that intentional false child abuse or neglect allegations often resulted in a deterioration of the relationship between the child and the reporting litigant. This is, in part, attributable to the court’s weighing of litigants’ behavior towards each other as

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70. In only one case did the child corroborate the allegations, and in that circumstance, the child later denied those claims. In three other cases, the attorney or social worker interviewed did not know if the child corroborated or denied allegations. The children in all other cases explicitly denied the allegations of child abuse or neglect made in their cases. See Table C, *supra* Section II.B.3.

a relevant factor in a custody and/or visitation proceeding. In several of the cases that participants described, the family court considered whether a litigant had made false allegations against the other litigant. In those circumstances, the reporting litigant frequently was left with less access to the child. Restrictions on parental access ranged from the court's imposition of supervision during parenting time to a decrease in, or total suspension, of contact.

Additionally, although participants mentioned that the child or children continued to love both the reporting litigant and the adult subject of the false allegations, they also stated that some children grew to mistrust litigants who made repeated false reports. Participants noted that those children's relationships with reporting litigants became strained, especially when the children were subjected to repeated ACS investigations and/or more litigation. Participants further noted that such strained relationships were particularly evident in cases in which the child or children were old enough to be aware of the false allegations and subsequent investigations. In the most extreme instances, children lost trust in the reporting litigant. In those cases, children no longer wished to have unsupervised contact, or any contact at all, with the reporting litigant.

*"His relationship with the reporting parent has deteriorated . . . from wanting . . . a lot of time with that parent to being like, well, maybe if someone else is there, and then like be[coming] more and more reticent, as time has gone on, [to] being alone with that parent, even though . . . the child loves that parent. . . ."*

*"[H]e got tired of being investigated. He wishes mom would stop that. But he also came to realize how much it was attacking his father who he was bonded to and realized what a good dad he had. And the more his mother attacked his father, the more it hurt the relationship between him and his mother. To the point where a lot of the supervised visits at ACS, he would just say, 'No, I don't want to visit.'"*

*C. Impact of False Allegations on the Adults who are Subject of Reports, the Child Welfare System, and Family Court Proceedings*

While the attorneys and social workers interviewed represent the children in these cases, they also frequently interact with their clients' parents and caretakers. Participants described the stress and trauma experienced by parents and caretakers who were the subjects of intentionally false reports, as well as the impact that these allegations had on the family as a whole.

*1. Stresses Experienced by Individuals Subject to Investigation Because of False Reports*

Many interview participants spoke about the stress and trauma experienced by caretakers who were the subjects of the false child abuse or neglect allegations. Participants discussed how false allegations caused anxiety for litigants, who feared losing access to or contact with a child because of those allegations. Some participants also stated that the frequent investigations and court appearances to which litigants were subjected when false reports were made against them were overly burdensome. Litigants were forced to take multiple days off from work to attend court appearances or meet with investigators, and, in some cases, suffered job loss as a result. Litigants expressed overwhelming frustration as a result of these challenges, with some even crying in conversations with participants and during court appearances. One participant described how the adult subject of the report in his or her case “was a wreck . . . . Every time the doorbell rang [they] jumped.” The participant noted that this individual was so overwhelmed that he or she burst into tears in court twice.

*“[E]ven when something is unfounded it still subjects the person who the allegation is made against [to] a very invasive investigation — to having somebody in their home, speaking to collateral[ ] [witnesses], investigating their child like that in [and] of itself is serious and something that you sort of gloss over sometimes when you think, alright, it’s unfounded, no harm, no foul, but the reality is every time this happen[s] [it] is [a] huge invasion.*

Another participant noted that these allegations had a huge effect on the adult subjects of the reports. The participant observed that false allegations made one litigant leave his job, and ultimately “leave New York where he had lived most of his life and move away to try to get away from it.”

Several participants expressed concern that, as a result of the consequences of false allegations, some litigants who were the subjects of reports sought less access to their children or withdrew from their children’s lives altogether. Participants asserted that all of the above-noted strains, especially the demands on litigants’ limited time and financial resources and their exposure to invasive child welfare and police investigations, had caused some litigants to abandon their efforts to pursue and/or maintain a relationship with their children.

*“I think that it’s made the [adult subject of reports] a lot more cautious about what he’s asking for with his contact with his son. I think he would have probably jumped for overnights but because, you know, it was so easy for the mother to make allegations that he*

*kind of did baby steps and you know, okay, well, I get a few hours maybe I can have a few hours unsupervised maybe I can add an hour here and there . . . I think that that's affected his requests in court even though he really is entitled [to] so much more time [with his child.]"*

## 2. *Increased Familial Interactions with Child Welfare and Legal Systems*

Interview participants noted that false allegations often increased the family's involvement with child welfare services, police, and other systems. These agencies frequently took on invasive roles in the family's life. Participants reported that such an increase in child welfare system and law enforcement involvement led to increased stress and trauma for children and caretakers.

As one participant reported, the adult subject of the false report "doesn't really have a lot of recourse." She described that when allegations are made against a parent, the parent has "to let ACS do their investigation, and that's part of the problem. There's not really a lot he can do to intervene." Participants noted that false reports involved talking with "multiple people," including from child protective services, were "invasive" and were "really, really hard to deal with." Moreover, parents who were the subjects of repeated false reporting often felt helpless, defeated, and "lost." As one father who had been the subject of false reports said to the interview participant who represented his child, "'You know, it's not fair . . . it's pure harassment and I don't have the money. I'm on a really tight budget . . . I'm not working right now.'" This attorney noted that the repeated false reports and investigations were "really wearing" on the father and that "what's also really wearing . . . maybe most of all, is the idea that there's no real way to stop that."

Given the trauma and frustration associated with repeated investigations resulting from false reports, one participant emphasized that greater consistency and less turnover among ACS caseworkers could support families facing constant false allegations or similar challenges. She stated that she had observed that many litigants who made false reports made the same false allegations multiple times. She described how "helpful" it was in her cases when the ACS caseworker knew the family and was familiar with the history of the allegations. She further suggested that it would be helpful if ACS had a way to divert certain cases in which there was a history of repeated unfounded reports.

### 3. *Delayed Resolution of Family Court Legal Proceedings*

Several interview participants noted that intentional false allegations can create delays in court proceedings, and those delays have a significant impact on individuals and families. False allegations keep families involved in family court litigation far longer than they would have to be otherwise and diminish trust in the legal system. Participants discussed how this case prolongment negatively impacts individual families, often creating a strain on financial resources and litigants' time. They also alluded to the systemic impact that these cases may have on limited court resources.

As one participant observed, false allegations prolong a family's court involvement and "breed[ ] resentment." The participant believed these cases "just undermine[ ] . . . people's belief [in] systems, as people feel like anyone can just say anything." Another participant said, "the main issue is it just keeps the family in court like endlessly because [the reporting litigant] keeps filing things there . . . [T]hey should have been out of court [years ago] when . . . they had this final order of custody, . . . but [ ] she keeps bringing these new allegations which just keeps the family in court."

Several attorneys also noted that frequent false allegations impacted their relationships with their clients. One attorney observed of his/her client, "I see him often and I talked to him all the time [C]hildren shouldn't be talking to their lawyers so much. You should not grow up with your lawyer being like on your speed dial."

#### *D. False Reports Have a Destructive Impact on Stakeholder Agencies and Institutions*

In addition to emphasizing the damaging effect of false allegations on individual children and families, participants described how intentionally false allegations had a destructive impact on the overburdened New York City Family Court system, as well as other agencies ancillary to that system.

As noted in the above section, the investigations and associated motion practice caused by false allegations often delayed the resolution of cases, sometimes for inordinately long periods of time. As one participant observed, the litigant's repeated false allegations in one case so monopolized judicial resources that although the case had been pending in family court for several years and was on its "third judge," there had been no substantive progress in resolving the ultimate issues of custody and visitation. Moreover, the attorney voiced

frustration that with each new judge, the parties and counsel were forced to essentially start over and “reinvent[ ] the wheel.”

Participants acknowledged that quantifying the total costs associated with false reports would be difficult but agreed that these costs were “huge.” A participant expressed frustration at the “cost” and the amount of time spent on false reports. The participant stated, “it would be really scary to put a price tag on . . . [the] resources” that were expended on investigating false reporting in these cases, particularly if the costs of “personnel” and court time were included.

Participants also noted that false allegations not only wasted the resources of ACS and the court system but also the resources of the city’s educational and hospital systems, as investigations often required one or more medical examinations and interviews with school personnel and medical providers.

Participants observed that investigating false reports of child abuse and neglect diverted limited resources away from children and families who have actually experienced abuse or neglect.

*“[A]ll the resources that have to go into the investigation that’s required when a case gets called in is huge . . . . Not only that the family and like our client expenses, but also . . . ACS, the agency, schools have to get involved and use their resources. I mean, all the different points like the court and like medical resources have to be used for examinations and reports and testing. It’s a huge [waste] . . . [and] the strain on the system is also absurd, I think, and really harmful.”*

*E. False Reports Exacerbated Existing Inequities Based on Race, Socioeconomic Status, and Linguistic Barriers.*

Interview participants observed that the litigants who are the subjects of false allegations “are lower income” people, primarily people of color, and they are “often viewed with suspicion by society.” Participants explained that false reports of abuse/neglect exacerbated issues related to race, socioeconomic status, and language. Several participants discussed how racial and socioeconomic bias infiltrated child welfare and family court processes.

They observed that bias negatively impacted the experiences of children and families in their cases, who were subjected to unnecessary investigations. Additionally, some participants explicitly noted how the history of racism and racial bias in the child welfare system contributed to the stress experienced by families who faced child abuse or neglect allegations.



As one participant observed, there are tremendous “biases in the system,” including “implicit bias.” Another participant observed that, even when parents knew that they had “done nothing wrong,” they worried about the impact an ACS investigation would have on their lives. This participant felt that such concern was understandable because these parents had observed ACS removing children from other families in their communities and placing them into foster care, including in cases where the removals “shouldn’t have necessarily happened.”

Several participants noted that low-income families face unique stressors when they are the subject of child abuse or neglect allegations and that the challenges of constant court appearances and legal proceedings disproportionately impacted families with limited economic resources.

One interview participant noted that because her client’s mother, who was the subject of false allegations, was a recent immigrant and a non-English speaker, she faced additional hurdles in “navigat[ing] different systems and having the language barrier.” Additionally, the mother had issues taking off from her job to attend court and to bring her child to medical examinations that were triggered by the allegations. The participant noted that this mother became “depressed” and exhausted.

As a senior attorney observed about a case in which repeated false reports were made against a grandmother, “. . . This is a family where it’s a low-income, grandmother, woman of color, and the amount of anxiety that ACS provoked for her I think is in some ways reflective of what people in her community have experienced with ACS . . .”

#### *F. Challenges of Representing Children in Cases That Involve False Allegations*

##### *1. The Importance of Child and Abuse Survivor Safety*

Participants highlighted the need to take every allegation seriously and expressed their concerns about dismissing any report that might be true. Some participants acknowledged that they struggled because they simultaneously wanted to believe and support individuals who made reports of abuse and to protect families from the trauma and stress of unnecessary child welfare system involvement. As one participant noted, “you don’t want to discourage parents from protecting their children when their children need to be protected,” but child abuse investigations “can themselves be a form of abuse.”

One participant stated that she wanted to “believe when people are . . . brave enough to come forward with allegations . . . [b]ut the reality of working in family court is that there are a lot of motivations and not everything is truthful.”

Two participants who worked collaboratively on a case included in this sample stated that a child initially echoed the parents’ claims of terrible abuse but later denied that any abuse had occurred. One participant noted that she wanted “to be able to believe” her client and validate the child’s experiences, but the client was “being pushed and pulled in many directions by people who exercise[d] tremendous influence over her.” Notably, this was the sole case in our study in which a child confirmed the reporting litigant’s allegations of abuse or neglect. As noted in Part II, section B.2, *supra*, in all other cases included in the study besides that one, the child or children never confirmed the reported allegations, or lodged complaints of their own regarding such behavior.

## 2. *False Allegations and Mental Health Considerations*

Interview participants also stated that the mental health of the reporting litigant can be a critical factor in cases involving unfounded allegations. Some participants noted that they had worked on cases where a reporting litigant had a documented or suspected mental illness that may have affected their perception of a scenario, such that they believed in the veracity of their allegations. Determining whether a reporting litigant intentionally or maliciously made an untrue allegation becomes substantially more complicated when a reporting litigant has mental health issues. Participants highlighted difficulties that they faced attempting to secure mental health evaluations and services that could benefit families in these situations.<sup>71</sup>

One attorney noted that she believed that the reporting litigant in her case, who was the child’s father, had significant underlying mental health issues that “impacted the way . . . he interacted with the mom [and] interacted with a child.” The attorney stated that if the court had had the ability “to know some of his limitations[,]” perhaps we could have obtained “some type of help” or services for the father, and then the case would be in “a different place now than where we are.”

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71. Participants noted the unique difficulty presented by cases in which a reporting litigant, due to mental illness, actually believed the unfounded allegations of abuse or neglect that they lodged against another adult. For example, one participant noted that the hardest cases are when the parent or the child seems to sincerely believe that it happened.

Another attorney discussed a case in which a mother, who had only supervised visitation with her child, had made multiple unfounded allegations against the child's father. The attorney stated that the mother "wasn't getting anything that she was seeking . . . [The false allegations] really served to hurt her if her goal was to get her child back as soon as possible, because it just made her . . . credibility obviously . . . nil. And, [it] raised a lot of questions about her mental health."

#### IV.

##### THE LIMITATIONS OF CURRENT REMEDIES AND OUR POLICY RECOMMENDATIONS

###### A. *Current Remedies for Addressing False Child Abuse and Neglect Allegations in New York, and Their Limitations*

Notably, interview participants expressed frustration that existing laws and policies failed to effectively mitigate the harm of such false allegations.

###### 1. *Current Remedies under New York Civil Law*

New York Penal Code § 240.50(4), which addresses falsely reporting in the third degree, makes it a criminal offense to knowingly make a false report of child abuse or neglect to the SCR or to any mandated reporter.<sup>72</sup>

However, prosecutors rarely bring criminal charges against individuals for making false allegations of child abuse or neglect. A recent search of criminal cases in New York State that cited § 240.50(4) revealed only five published cases.<sup>73</sup> If a litigant wanted to pursue criminal charges under § 240.50(4), the litigant would need to work with police, prosecutors, and the criminal court system more broadly. Litigants may be reluctant to become involved with the criminal justice system, given the challenges of navigating the criminal court system, as well as if they have had prior experiences with and/or mistrust of law enforcement.

Participants acknowledged the challenges involved in pursuing criminal prosecution for false reporting. Additionally, participants discussed how, even if criminal prosecution were feasible in these cases,

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72. N.Y. PENAL LAW § 240.50(4) (McKinney 2019).

73. *United States v. Patterson*, 449 F. Supp. 3d 375 (S.D.N.Y. 2020); *Scollar v. City of New York*, 74 N.Y.S.3d 173, 178 (App. Div. 2018); *People v. Lovallo*, 926 N.Y.S.2d 346 (App. Term 2011); *People v. Walker*, 117 N.Y.S.3d 537 (Crim. Ct. 2020); *People v. Trester*, 737 N.Y.S.2d 522 (J. Ct. 2002).

it could lead to negative consequences for children and families. As one participant noted, they would not encourage the criminal prosecution of a parent who made multiple false reports because the arrest and prosecution of a parent would be devastating for the child involved. That participant stated that their client's "emotional well-being involve[d] having a relationship with [her other parent and] that losing that relationship would be devastating to her."

Alternatively, individuals who are the victims of false child protective reports may pursue civil remedies to address false allegations. For example, they may file civil lawsuits, claiming harms such as defamation, negligence, or emotional distress. However, the civil court system is largely inaccessible to litigants in family court, most of whom lack the time or resources to navigate a complex new court system. Further, most existing remedies to address false reporting are available only to litigants who can afford legal counsel. Even then, such remedies only would benefit litigants if they were suing individuals or institutions that could afford to pay damages. As a result, a large percentage of such lawsuits are filed against institutional entities, such as hospitals or school districts, which typically have resources to pay in case of settlement or lawsuit.<sup>74</sup> Thus, existing legal avenues fail to provide real solutions for those facing false allegations in the context of family court litigation.

Participants noted that existing civil remedies failed to effectively stop false reporting behavior. One existing civil remedy is for a party to obtain an order from the family court jurist presiding over the family's custody/visitation case that bars the reporting litigant from making further family court filings without prior authorization from the court. However, as one attorney noted, this remedy "doesn't really help" because it "just doesn't stop a person." The reporting litigant may still be permitted by the clerk to file additional court filings, may "go to different courts," and can still make calls to the SCR. As another participant observed, family court is especially challenging for a

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74. See, e.g., *Hunter v. Lourdes Hosp.*, 107 N.Y.S.3d 482, 483 (App. Div. 2019); *M.H.B. ex rel. C.B. v. E.C.F.S.*, 112 N.Y.S.3d 60, 62 (App. Div. 2016); *Diana G-D ex rel. Ann D. v. Bedford Cent. Sch. Dist.*, 932 N.Y.S.2d 316, 319 (Sup. Ct. 2011); *Biondo v. Ossining Union Free Sch. Dist.*, 888 N.Y.S.2d 75, 76 (App. Div. 2009); *Zornberg v. N. Shore Univ. Hosp.*, 815 N.Y.S.2d 719, 720 (App. Div. 2016); *Forrest v. Berlin Cent. Sch. Dist.*, 815 N.Y.S.2d 774, 775 (App. Div. 2006); *Hachmann v. Cnty. of Nassau*, 818 N.Y.S.2d 102, 103 (App. Div. 2006); *Selapack v. Iroquois Cent. Sch. Dist.*, 794 N.Y.S.2d 547 (App. Div. 2005); *Dagan ex rel. Dagan v. Brookdale Hosp. Med. Ctr.*, 608 N.Y.S.2d 682, 683 (App. Div. 1994); *Miriam P. v. City of New York*, 558 N.Y.S.2d 506, 507 (App. Div. 2016); *Isabelle V. ex rel. Neyes V. v. City of New York*, 541 N.Y.S.2d 809, 809 (App. Div. 1989); *Kempster v. Child Protective Servs. of Dep't of Soc. Servs. of Suffolk*, 515 N.Y.S.2d 807, 808 (App. Div. 1987).

litigant when the opposing litigant has resources and a more sophisticated understanding of family court and thus can “manipulate the system.”

### *B. Our Recommendations*

Based upon the cases reviewed in this study, it is clear that, within the context of custody and visitation litigation, false allegations of child abuse and neglect occur in a variety of situations and with some frequency. Moreover, false reports of child abuse and neglect, and the resulting investigations, cause varied and potentially long-lasting harms to children and their families. Additionally, the existing remedies are grossly inadequate, and most litigants have no means of seeking redress.

We acknowledge that, given the complexity of this issue, there is no one-size-fits-all solution to address it. Additionally, we recognize that addressing false reporting is one of the myriad challenges faced by families who come into contact with the child welfare system and the family court. However, we believe that the adoption of the following recommendations could decrease the frequency of false allegations of child abuse and neglect and substantially mitigate the harm such allegations may cause.

#### *1. Make False Reporting of Allegations of Child Abuse or Neglect a Family Offense under New York State Law*

Section 812 of the Family Court Act defines certain Penal Law violations as “family offenses” and describes the procedures by which an individual can file a family offense petition in family court against a spouse, or former spouse, or member of their family or household, to request an order of protection.<sup>75</sup>

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75. N.Y. FAM. CT. ACT § 812(1) (McKinney 2019) (creating procedures to permit individuals to seek an order of protection when spouses, former spouses, or members of the same family or household commit any of the enumerated family offenses). In New York State, what is referred to in other jurisdictions as a restraining order is known as an order of protection. An order of protection can order the abuser either to stop abusing the victim and his or her children, or to completely stay away from the victim, his or her children, and/or specified locations, such as the victim’s home or workplace. An individual can file a family offense petition seeking an order of protection in civil courts, including family court, when a family member or intimate partner commits a “family offense” against them – i.e., one of multiple criminal acts alleged in the statute, such as harassment, assault, or disorderly conduct. The criminal court can enter an order of protection against an abuser even in cases in which he or she is unrelated to the victim.

To provide litigants with an enforceable remedy for false allegations of child abuse or neglect, New York could amend Family Court Act Section 812 to include “falsely reporting an incident in third degree,” as it is defined in Section 240.50(4) of the Penal Law,<sup>76</sup> in the list of acts that constitute a family offense.

The inclusion of false child welfare reporting, as it is defined in the Penal Law, as a family offense in Section 812 would provide individuals with a direct path to seek an order to protect them from false reports and harassment. Petitioners could seek an order of protection from the family court requiring an offending individual to refrain from further committing the offense of false reporting<sup>77</sup> and/or any other acts “that create an unreasonable risk to the health, safety or welfare of a child.”<sup>78</sup>

If adopted, this proposal would allow litigants to avoid some of the challenges that they would face if they sought to remedy this situation by filing a civil lawsuit. For example, individuals filing a separate case outside the family court system would have to bear the costs of obtaining additional legal representation, as well as the impracticalities described above, of seeking monetary damages. Further, an individual filing a family offense case in family court would have the benefit of litigating in a familiar courthouse, in front of a judge who already knows the family and its issues. Indeed, this convenience could prove particularly important for working and/or low-income litigants, who need the protection that this amendment would grant them but are unlikely to be able to afford the costs of pursuing a civil case.

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76. N.Y. PENAL LAW § 240.50(4) (McKinney 2019). Specifically, that statute provides that:

A person is guilty of falsely reporting an incident in the third degree when, knowing the information reported, conveyed or circulated to be false or baseless, he or she . . . 4. Reports, by word or action, an alleged occurrence or condition of child abuse or maltreatment or abuse or neglect of a vulnerable person which did not in fact occur or exist to: (a) the statewide central register of child abuse and maltreatment, as defined in title six of article six of the social services law or the vulnerable persons' central register as defined in article eleven of such law, or (b) any person required to report cases of suspected child abuse or maltreatment pursuant to subdivision one of section four hundred thirteen of the social services law or to report cases of suspected abuse or neglect of a vulnerable person pursuant to section four hundred ninety-one of such law, knowing that the person is required to report such cases, and with the intent that such an alleged occurrence be reported to the statewide central register or vulnerable persons' central register.

*Id.*

77. N.Y. FAM. CT. ACT § 842(c) (McKinney 2019).

78. N.Y. FAM. CT. ACT § 842(e) (McKinney 2019).

Similarly, the adoption of this amendment would permit individuals to protect themselves from false reports without involving the criminal justice system and appearing in criminal court. Notably, none of the family court litigants discussed in our study sought criminal sanctions against the litigant who had made false reports against them. There may be myriad reasons why these litigants chose not to do so, including the desire to avoid involvement with a criminal justice system that many perceive to be racist, as well as concerns about repeatedly appearing in different and new courthouses. Also, the litigants seeking protection may wish, for the benefit of the child, to avoid the arrest and/or incarceration of the child's other parent or family member. Regardless of the motivation, pursuant to this proposal, interactions with police and the criminal justice system would occur only if the person against whom the order of protection was issued had violated the order. Then, the party protected by the order potentially could pursue criminal charges against the individual who violated the order.<sup>79</sup> Otherwise, the case would remain in front of the same family court jurist who is already familiar with the family.

Further, it is worth noting that there is an increased likelihood that the family court, rather than the criminal court, would issue an order of protection. This is because the family court requires a lower threshold for proving a family offense than does the criminal court for proving a violation of the Penal Law. While a prosecutor must establish that an individual is guilty beyond a reasonable doubt to find that he or she committed the criminal misdemeanor of false reporting, a petitioner in a family offense proceeding would need to prove only by a preponderance of the evidence that the individual engaged in that act.<sup>80</sup>

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79. Pursuant to N.Y. FAM. CT. ACT § 812(a), the family court and the criminal court retain concurrent jurisdiction over family offense petitions. According to § 812(g), notwithstanding a complainant's election to proceed in family court, the criminal court is not divested of jurisdiction to hear a family offense proceeding. Further, N.Y. FAM. CT. ACT § 846 provides that a litigant may file a petition alleging that the respondent has failed to obey an order of protection, issued from the New York Family Court, or another competent jurisdiction. Upon such filing, the family court may "(A) hear the violation petition and take such action as is authorized under this article; or (B) retain jurisdiction to hear and determine whether such violation constitutes contempt of court, and transfer the allegations of criminal conduct constituting such violation to the district attorney for prosecution pursuant to section eight hundred thirteen of this article; or (C) transfer the entire proceeding to the criminal court pursuant to section eight hundred thirteen of this article."

80. See N.Y. FAM. CT. ACT § 832 (McKinney 2019) (stipulating that at a hearing in a family offense proceeding, the allegations must be "supported by a fair preponderance of the evidence"). See also N.Y. FAM. CT. ACT § 841(2) (b) & (c) (McKinney 2019) (noting that a "family court proceeding is a civil proceeding" whereas a "pro-

Another benefit of this proposed amendment is that, pursuant to Section 841 of the Family Court Act, the family court has the authority to enter dispositional orders that are remedial in nature,<sup>81</sup> once the allegations contained in a family offense petition have been established. One dispositional alternative that the court may order is that a respondent “participate in a batterer’s education program designed to help end violent behavior, which may include [a] referral to drug and alcohol counseling.”<sup>82</sup> Participation in such services may help a litigant who repeatedly has made false reports to address some of the issues underlying that behavior. Notably, Family Court Article Six, which governs custody and visitation cases, does not grant the court this same authority to order that a litigant engage in services.<sup>83</sup>

The benefits of including false reporting as a family offense were recognized by one interview participant who stated that, in cases where allegations of abuse and neglect were clearly false, “[I]t really could make a difference . . . [A]s it stands now, false reporting is only criminal and so you’d have to prove it beyond a reasonable doubt. . . . And with this, it would be . . . easier to prove. And you also could nip things in the bud because . . . if someone does this again, and again, it’s harassment. . . . You hope that . . . stops people at least some of the time to know that they could get these orders.”

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ceeding in the criminal courts is for the purpose of prosecution of the offender and can result in a criminal conviction of the offender.”).

81. *See* *People v. Markidis*, 708 N.Y.S.2d 243, 244 (Rochester City Ct. 2000) (“Indeed, all the alternatives contained in Family Ct. Act § 841 are remedial in nature”).

82. N.Y. FAM. CT. ACT § 841(c) (McKinney 2019). A now-accepted term for such programs is “Accountability Programs for Those Who Harm.” *See* Accountability Programs for Those Who Harm. <https://opdv.ny.gov/initiatives> [<https://perma.cc/LLQ5-KYYL>] (last visited Dec. 10, 2021). Such programs also frequently are referred to as “Abusive Partner Intervention Programs.” *See, e.g.*, Abusive Partner Intervention Program (APIP). <https://urinc.org/program/apip/> (last visited Dec. 10, 2021).

83. New York State case law is clear that in custody/visitation litigation pursuant to Family Court Act Article 6, the court cannot condition a litigant’s access on participation in services, such as mental health or substance abuse treatment. *See, e.g.*, *Hardy v. Hardy*, 149 N.Y.S.3d 483, 485 (App. Div. 2021) (“Here, the Family Court erred in conditioning the filing of any future petitions by the father to modify parental access upon his successful completion of an anger management class and a negative drug test, and we modify the order so as to eliminate that condition.”); *Lajqi v. Lajqi*, 111 N.Y.S.3d 860, 861 (App. Div. 2015) (denying “that branch of the defendant’s motion which was to direct the plaintiff to undergo a psychiatric evaluation as a condition of continued visitation with the parties’ child”); *Welch v. Taylor*, 981 N.Y.S.2d 777, 779 (App. Div. 2014) (finding that the trial court improperly conditioned a father’s visitation upon his enrollment in a substance abuse program, but noting that it would have been acceptable for the court to order such enrollment as a component of visitation).



Admittedly, including false reporting as a family offense will not provide a remedy for all situations of abuse of the SCR hotline.<sup>84</sup> To file a family offense petition, the individuals involved must be “members of the same family or household,” which includes a wide range of relationship categories, including formerly married individuals, individuals who share a child together, and “persons who are not related by consanguinity or affinity and who are or have been in an intimate relationship regardless of whether such persons have lived together at any time.”<sup>85</sup> However, while not every relationship falls under this category, in nearly all family court cases, and in almost every case in this study, the litigant targeted by the false allegations would have been able to file a family offense petition.

## 2. *Abolish Anonymous SCR Reporting in New York, and Institute a System that Permits Confidential Reporting*

Various stakeholders and advocacy groups have acknowledged the challenges created by false reporting and have developed their own recommendations for legal and policy reforms to address this issue, including ending the SCR’s acceptance of anonymous reports. Currently, anyone may call the SCR hotline and lodge an anonymous

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84. While some stakeholders, in conversation with the authors, raised the concern that perpetrators of domestic violence could use the amended statute to bring a family offense case against an individual who made a legitimate, truthful report of child abuse or neglect against them, for the reasons discussed above, we believe that the benefits of amending the statute outweigh the risks.

85. Pursuant to N.Y. FAM. CT. ACT § 842 (McKinney 2019),

(1) “members of the same family or household” under the statute are defined as:

(a) persons related by consanguinity or affinity;

(b) persons legally married to one another;

(c) persons formerly married to one another regardless of whether they still reside in the same household;

(d) persons who have a child in common regardless of whether such persons have been married or have lived together at any time; and

(e) persons who are not related by consanguinity or affinity and who are or have been in an intimate relationship regardless of whether such persons have lived together at any time. Factors the court may consider in determining whether a relationship is an “intimate relationship” include but are not limited to: the nature or type of relationship, regardless of whether the relationship is sexual in nature; the frequency of interaction between the persons; and the duration of the relationship. Neither a casual acquaintance nor ordinary fraternization between two individuals in business or social contexts shall be deemed to constitute an “intimate relationship.”

*Id.* § 812.

report.<sup>86</sup> Some researchers and practitioners have advocated ending the anonymous reporting of child abuse or neglect and requiring all reporters to identify themselves.<sup>87</sup> This change could serve as an additional deterrent of false reporting and could mitigate the harm caused by false reports.

To that end, in 2021, Assemblyman Hevesi introduced Bill 7879 to the New York Assembly Children and Families Committee that would have abolished anonymous reporting to the SCR.<sup>88</sup> The bill proposed the amendment of paragraph (a) of subdivision 2 of Section 422 of the New York Social Services Law, in that it would require the transmittal of the name and contact information of a caller to the SCR to the local child protective agency charged with investigating the case. The bill also proposed the addition of a new paragraph (d) to that section, which provides that: “[a] caller making a report of suspected child abuse or maltreatment to the central registry shall be asked for their name and contact information. No report shall be transmitted to a local child protective service or investigation unless the caller’s name and contact information is provided.”<sup>89</sup> At the time of publication, that bill has not passed during the 2021–2022 legislative session.<sup>90</sup>

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86. *Selapack v. Iroquois Cent. Sch. Dist.*, 794 N.Y.S.2d 547, 548 (App. Div. 2005); *Prevent and Report Child Abuse*, *supra* note 5.

87. *See, e.g.*, Cecka, *supra* note 16, at 69–70, 82. In his research, Cecka argues it is logistically difficult for child protective service agencies to report false allegations of child abuse or neglect to law enforcement, even when states maintain criminal statutes against making such false reports. According to Cecka, anonymous child abuse and neglect hotlines require that “steps must be taken before the confidential CPS report can be released” and that “in some states, the reports are released when the prosecutor or the aggrieved party files a petition, and it is not always easy to convince a judge to obtain records in a timely manner.” *Id.* at 69. Cecka also acknowledges that the child protective agency may have difficulty convincing prosecutors to take on the false child abuse or neglect allegations that they have referred, and that child protective agencies are concerned that reporting false allegations may disincentivize reports when concerns are merited. Even in cases where child protective services and law enforcement may wish to move forward, anonymous reporting can mean that “the reporter cannot be held accountable in any way for a report, no matter how baseless and malicious it is.” *Id.* at 70.

88. Assemb. B. 7879, 244th Cong., 2021 Reg. Sess. (N.Y. 2021).

89. *Id.*

90. A Senate version of the bill was introduced to the New York Senate Children and Families Committee, during the 2019–2020 New York State legislative session. That bill proposed an amendment that included nearly identical language. S. 5572, 2019–2020 Assembly, 242nd Legis. Sess. (N.Y. 2019), <https://legislation.nysenate.gov/pdf/bills/2019/s5572>. That bill did not pass during that session, and a new version of the bill has not yet been reintroduced in the Senate. *Id.* The bill’s sponsor, New York State Senator Velmanette Montgomery, retired in 2020. *See* Nick Reisman, *Montgomery to Retire From Senate*, NY1 (Jan. 13, 2020, 6:47 AM), <https://www.ny1.com/nyc/all-boroughs/ny-state-of-politics/2020/01/13/montgomery-to-retire-from-senate>.

Notably, nearly all of the cases discussed by interview participants (92%) involved at least one false report made to the SCR, and many involved multiple such calls. Although participants were not asked specifically about whether these calls were anonymous, several noted that they were. For example, one participant discussed a case in which there had been at least three anonymous phone calls to the SCR, which resulted in “multiple” visits by ACS to the child’s home and interviews with the child at school and camp. The participant asserted that “it seems like it’s more than likely” that the child’s mother had made all the calls but that he or she did not know for certain because the SCR phone calls are “anonymous.” Another participant described a case that involved multiple false reports against a child’s mother, with a “variety” of allegations, including sexual and physical abuse. According to that participant, all those involved with the case “suspected” that, despite the father’s denials, he had made the reports because those reports were made at the same time as and mirrored the allegations included in the father’s additional court filings.<sup>91</sup>

Additionally, parent advocates who have been adult subjects of false child abuse allegations have been among the most vocal supporters of these bills and other reforms to abolish anonymous reporting. These advocates state that the current anonymous system of reporting in New York prevents the “tracking of false and malicious reporting.”<sup>92</sup> They support changing anonymous reporting to confidential reporting, which they assert would disincentivize individuals from making false reports and would aid child welfare agencies in determining the credibility of allegations.<sup>93</sup> Confidential reporting would require individuals to provide their “name and basic information when [they] make a report,” which “would make [an individual] think twice” before doing so.<sup>94</sup> However, such a change would not discourage individuals from calling in legitimate reports of child abuse, because although the caller would be required to provide this basic information, his or her identity would remain confidential and would *not* be accessible to anyone involved in the report, including the individual against whom the report was made.

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91. That participant stated that, regarding the most recent anonymous call to the SCR, it was “unclear who had called it in” but the timing of that call was “very suspicious to everyone.”

92. Keyna Franklin, Melissa Landrau & Sara Werner, *False and Malicious CPS Reports: Why NY Should End Anonymous Reporting*, RISE (Sept. 1, 2020), <https://www.risemagazine.org/2020/09/false-and-malicious-reports-why-ny-should-end-anonymous-reporting/>.

93. *Id.*

94. *Id.*

Parent advocates and advocates for survivors of domestic violence noted that while anonymous reports are untraceable, confidential calling would permit a “tracking method” to be implemented, so that those working in the child welfare system could more easily identify multiple unfounded reports from the same source.<sup>95</sup> According to those advocates, permitting confidentiality, rather than anonymity, in reporting, could make “the difference between whether someone will be re-victimized or will have the ability to hold on to normalcy in their household(s) . . . that have been disturbed by ACS intervention.”<sup>96</sup>

3. *Improve Training and Procedures for Child Protective Workers and SCR Operators, and Develop Better Supports for Families*

In this study, multiple participants expressed a desire for ACS to implement changes related to caseworker training and agency practices to minimize trauma and unnecessary interactions between families and child protective services in instances where it is clear that intentional false reports of abuse or neglect have been made. Interview participants acknowledged that ACS’s foremost mandate is to ensure the safety of children who are the subject of a report. However, they noted that repeated ACS investigations could, in and of themselves, traumatize children. Therefore, by making some strategic changes to its policies and procedures, ACS could play a significant role in decreasing the trauma caused by repeated false reports.

i. *Improve Training for Child Protective Workers and SCR Operators*

To begin, we recommend enhanced training and screening procedures to educate all ACS caseworkers, SCR operators, and mandated reporters about intentional false reports to the SCR. The training should include information regarding how to recognize a pattern of false claims between litigants, how to identify instances when a parent who is engaged in custody litigation attempts to interfere with another parent’s access to and relationship with the child, and how to notify appropriate authorities about suspected false reporting and abuse of the SCR child maltreatment hotline. Further, the training should include information about parental interference as a child neglect cause of action.<sup>97</sup>

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95. *Id.*

96. *Id.*

97. Article 10 of the New York Family Court Act, specifically, N.Y. FAM. CT. ACT § 1012(h), provides a neglect cause of action when a parent demonstrates an “unwill-

Of particular importance is the need, in conjunction with the other training topics mentioned above, to train caseworkers about implicit bias and the impact that it may have on their investigations. Fortunately, during his October 2020 City Council testimony before the General Welfare Committee, ACS Commissioner Hansell noted that all ACS staff will be required to complete implicit bias training programming as “part of the[ir] core training.”<sup>98</sup> Although we cannot overstate the importance of this endeavor, we recognize that it is only one step “toward addressing disparities among families that are reported to the SCR.”<sup>99</sup> Consequently, anti-racism and anti-bias training,<sup>100</sup> combined with training specifically related to custody and

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ingness or inability . . . to exercise a minimum degree of care toward the child,” which results in the “impairment of emotional health” or “impairment of mental or emotional condition” of that child. N.Y. FAM. CT. ACT LAW § 1012(h) (Consol. 2021). Arguably, this occurs when a parent seriously interferes with the other parent’s access to or relationship with the child. Courts have found neglect when parents made repeated false allegations, or encouraged and supported such false allegations, which resulted in a child’s being subjected to, among other things, unnecessary interviews with caseworkers or police. *See, e.g., In re Daniel D.*, 121 N.Y.S.3d 913 (App. Div. 2020) (mother’s repeated allegations, which she made in an effort to interfere with the father’s parental access with the child and to damage the father’s relationship with the child, presented an imminent danger of emotional impairment to the child and did not meet the minimum degree of care required of a “reasonable and prudent parent” (internal citations omitted)); *In re Ava M.*, 6 N.Y.S.3d 640 (App. Div. 2015) (mother’s history of making repeated unfounded allegations against the father, which resulted in the child undergoing multiple medical examinations and interviews with caseworkers and police, created an imminent risk of emotional or mental impairment and did not meet the minimum degree of care required of a parent); *In re Salvatore M.*, 961 N.Y.S.2d 292 (App. Div. 2013) (mother neglected her child by making repeated unfounded allegations of abuse against the father, which led to multiple medical examinations and interviews of the child, and limitations on the father’s visitation with the child, as well as by constantly probing the child for signs of abuse during supervised visits with the child, after the child was removed from her care). However, while this cause of action is an additional potential remedy for addressing the issue of false reporting, it does not obviate the need for the adoption of our recommendations. Indeed, it presents its own set of problems, because as discussed above, increasing a family’s involvement with the court system and child welfare system can cause additional negative consequences, particularly for individuals of color and individuals from low-income communities.

98. HANSELL, *supra* note 34 at 17–18.

99. *Id.* at 6.

100. There has been substantial recent debate among scholars and practitioners about the types of effective organizational training and their impact on helping to identify and combat bias and discrimination. Implicit bias training, also referred to as unconscious bias training or cognitive bias training, focuses primarily on an individual’s prejudices or pre-conceived beliefs. Francesca Gino & Katherine, Coffman, *Unconscious Bias Training That Works*, HARVARD BUS. REV., Sept.–Oct. 2021, <https://hbr.org/2021/09/unconscious-bias-training-that-works>. There has been growing critique of workplace trainings that focus primarily on implicit bias. Research has shown that implicit bias training may improve scores on indicators of prejudice and stere-

visitation disputes and issues of parental interference, could provide caseworkers with a more defined skillset to address these complex cases and to help ensure that “government intervention is sought and used only when there is true concern for the safety of a child or imminent risk to a child, and that it is not used inappropriately or disproportionately, resulting in further marginalization and trauma for families of color.”<sup>101</sup>

Also of note is the fact that ACS itself has emphasized the importance of increased training with respect to false reports for SCR hotline operators and mandated reporters.<sup>102</sup> Specifically, Commissioner Hansell, in his October 2020 testimony, proposed “stronger screening procedures and training for the SCR hotline operators” in order to screen out reports that are clearly fraudulent or harassing.<sup>103</sup> While

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otyping, but there has been no evidence that implicit bias training without other interventions results in permanent, long-term reductions of implicit bias scores or, more importantly, sustained and meaningful changes in behavior. Tiffany L. Green & Nao Hagiwara, Opinion, *The Problem with Implicit Bias Training*, SCI. AM. (Aug. 28, 2020), <https://www.scientificamerican.com/article/the-problem-with-implicit-bias-training>. Further, existing research suggests that if such training is conducted poorly, or in a vacuum, it can cause an opposite impact from that which is intended and lead white employees to experience anger and frustration. *Id.* Critics of implicit bias training often note that while there may be value in addressing bias at the individual level, systemic policy change is necessary to reduce prejudice and to improve equity meaningfully, and that workplace diversity and anti-racism measures must focus on organizational change and accountability. *Id.* See also Frank Dobbin & Alexandra Kalev, *Why Doesn't Diversity Training Work? The Challenge for Industry and Academia*, ANTHROPOLOGY NOW, Sept. 2018, at 48, 50. In their 2021 article, *Moving Beyond Implicit Bias Training: Policy Insights for Increasing Organizational Diversity*, Drs. Ivuoma N. Onyeador, Sa-Kiera T.J. Hudson, and Neil A. Lewis, Jr. argue that organizations should focus on trainings that not only educate members of their organizations about bias but also prepare for, rather than accommodate, defensive responses from dominant group members, and implement structures that foster organizational responsibility for diversity, equity, and inclusions goals. Ivuoma N. Onyeador, Sa-Kiera T.J. Hudson & Neil A. Lewis, Jr, *Moving Beyond Implicit Bias Training: Policy Insights for Increasing Organizational Diversity*, 8 POL'Y INSIGHTS FROM BEHAV. AND BRAIN SCI. 19 (2021). Thus, in order to ensure its efficacy, any workplace training implemented by ACS must be thoughtful, evidence-based, and implemented in conjunction with other efforts aimed at effecting long-term structural change. We also acknowledge that there is no amount of workplace training that can address the larger issues of racism in the child welfare and family court systems, but in making these recommendations, we hope to encourage stakeholders to take harm-reduction measures.

101. *Id.*

102. HANSELL, *supra* note 34, at 4, 8-10, 18 (outlining ACS initiatives to implement stronger screening procedures, provide guidance to the Department of Education on reporting, collaborate with the Department of Health and Mental Hygiene and Health + Hospitals to limit calls to only those instances in which there is a concern about a child's safety, and advocate for three statewide reforms).

103. *Id.* at 9. This recommendation resulted from concerns that, during the COVID-19 pandemic, educators overreported child neglect when students failed to attend virtual classes, owing not to parental neglect, but to families' struggles with technology

this would be a positive measure, it does not go far enough to protect families, as it is likely that some harassing reports will not be identified as such during the initial SCR screening. Thus, we suggest that, as part of its screening procedures, ACS create a system to “flag” families in which there are repeat offenders, or repeat victims, of false reporting, as evidenced by the presence of multiple unfounded cases.

*ii. Improve Procedures for Child Protective Workers*

Further, when conducting its initial investigation into these flagged cases, in which allegations are highly likely to be false, ACS should employ procedures to mitigate the specific trauma that these types of cases visit upon children and families. First, ACS should reassign the same caseworker to conduct the repeated investigations of a family with false unfounded allegations against them. Participants observed that families with a history of unsubstantiated reports against a caretaker experienced better outcomes when there was a single caseworker involved in the case than when multiple caseworkers were involved. Thus, ACS should avoid sending multiple investigators to children’s homes in these cases. Also, participants repeatedly cited middle-of-the-night visits by child protective workers as being a terrifying and traumatic experience for children. Therefore, in flagged cases, ACS caseworkers should wait until the daytime to visit the family for investigation. Additionally, in these cases, caseworkers should avoid unnecessary physical examinations. In short, as interview participants noted, ACS caseworkers should seek to avoid any unwarranted invasions of the privacy and bodily integrity of the children and families that are in these situations.<sup>104</sup>

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or other complications related to the COVID-19 crisis. *Id.* at 8. As a result, Commissioner Hansell also proposed that all mandated reporters receive implicit bias training to deter unnecessary reports and investigations by addressing “implicit biases that may influence . . . perceptions and interpretations and to make sure that reports are objective.” *Id.* at 9.

104. Notably, one interview participant described how in her case, after the court granted the father weekend visitation with the child, every time her child client visited the father’s home for the following three-to-four-month period, reports were made to the SCR, or directly to a caseworker “[who] became very [involved] with family,” alleging that the father had abused the child. Although ACS “didn’t think any of these allegations were credible at all” in this case, the father repeatedly was investigated, and the child was subjected to multiple medical examinations and even hospital visits. The participant noted that the involvement of a caseworker that “knew the family” became very helpful in decreasing the harm caused by the false reports. Particularly in cases such as this one, where ACS strongly believes that the reports of child abuse and neglect were false, adopting the improved procedures we propose could dramatically decrease the stress and trauma such reports cause children and families.

Also, ACS should be afforded an even more *explicit* grant of discretion to conclude an investigation as soon as it deems appropriate, if, in the course of that investigation, it finds no legitimate concerns regarding the children's safety and well-being, and it discovers either a clear history of prior unfounded reports or clear evidence that the report appears to have been made for the purpose of harassment. Social Services Law § 424 details New York State child protective agencies' duties upon receipt of a report of child abuse or maltreatment, and directs that those agencies must determine, within 60 days, whether a report will be "indicated" or "unfounded."<sup>105</sup>

Based on the language of S.S.L. § 424(7), the agency currently may conclude an investigation at any point before the sixty-day period has ended, as soon as that investigation has been determined to be unsubstantiated. However, in our study, and in subsequent discussions with stakeholders regarding our research, we learned that despite the plain language of this statute, it was extremely rare for the agency to end an investigation prior to the conclusion of the 60-day period.<sup>106</sup>

Accordingly, we recommend adding language to S.S.L. § 424 that explicitly permits the child protective agency to conclude its investigation as soon as it deems appropriate, and before the 60-day period specified in S.S.L. § 424(7), if, after conducting its initial investigation of the current report and thoroughly reviewing the family's history with the local child protective agency, (i) it determines that there is a history of prior unfounded reports or that the report appears to have been made for the purpose of harassment; *and* (ii) it has not uncovered any new concerns about the safety of the children during its initial investigation and determines that the new report is likely unfounded. We offer this recommendation because, although we think the current legislative language is clear, we recognize that local child protective agencies may not change their practices without codification of a more overt statement regarding the time frame in which they are allowed to conclude an investigation.

This amendment would permit New York State child protective agencies to focus on and direct resources towards open cases that are indicated or about which the agencies have not yet decided whether to substantiate a report. Further, this could help minimize the uncertainty and trauma experienced by families, such as those discussed in this

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105. See S.S.L. § 424(7).

106. Stakeholders noted that in their experiences, ACS rarely, if ever, officially concluded an investigation prior to the end of the 60-day period. Parent advocates also confirmed that their clients never received confirmation that their case had been unfounded and closed before the end of the 60-day period.



study, by decreasing the amount of time they must wait for the conclusion of an investigation.

In offering this recommendation, we are cognizant of several recent, high-profile cases in which, despite substantiated allegations of abuse, caretakers had unsupervised access to children whom they later harmed or killed.<sup>107</sup> Based on publicly-available information, it appears that child protective investigations into each of those families had revealed or resulted in a number of *indicated* cases against the parents who ultimately harmed or killed their children.<sup>108</sup> Our proposed changes to the Social Services Law and ACS investigatory practices would not have been applicable in those instances, or analogous situations, as they only are relevant in cases in which all prior investigations were deemed unfounded. Indeed, our proposal is narrowly tailored and therefore would not apply in scenarios where there was even a single indicated case.

*iii. Better Support for Families and Individuals Experiencing False Reports of Child Abuse or Neglect*

In addition to better training, screening, and investigatory procedures, ACS should provide specific support for families and individuals who are the targets of false reporting.

At their first point of contact with child welfare officials, individuals who are the adult subject of investigations should receive written and oral information about their rights in a case involving false allegations of child abuse or neglect and be informed of the allegations against them.<sup>109</sup> This information should include available civil and

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107. See, e.g., Thomas Tracy & Chelsia Rose Marcus, *NYPD Officer and Fiancée Charged with Murder of Cop's 8-year-old Autistic Son Who Froze to Death In Garage*, N.Y. DAILY NEWS (Jan. 24, 2020), <https://www.nydailynews.com/new-york/nyc-crime/ny-father-long-island-20200124-ccxc3md33zhrnp6klmzvmg55i-story.html>; Rich Calder, *In Just 3 Months, 10 Kids Died on NYC Child Services' Watch*, N.Y. POST (Dec. 22, 2016, 12:36 AM), <https://nypost.com/2016/12/22/acs-on-the-hook-for-deaths-of-10-at-risk-kids-in-3-months-probe/>. Further, while available sources do not clearly state whether child protective services had officially indicated an investigation against the father of Kyra Franchetti, who later murdered Kyra and killed himself, at least one source noted that, according to Kyra's mother, child protective services had noted the father's "anger and rage issues," and asserted that he was unable to care for Kyra. See Rose Weldon, *A Mother's Fight for Child Safety Continues in the New York State Assembly*, ISLAND NOW: MANHASSET TIMES (Mar. 10, 2021), <https://theislandnow.com/manhasset-107/a-mothers-fight-for-child-safety-continues-in-the-new-york-state-assembly/>.

108. See Tracy & Marcus, *supra* note 107; Calder, *supra* note 107.

109. On March 8, 2021, New York State Senator Jabari Brisport introduced Senate Bill 5484, which, if enacted, would require child protective caseworkers, at the outset of a child protective investigation, to provide written and oral information regarding a

criminal legal responses to false reporting, including information about how and where to receive free and independent legal support. Individuals also should be provided with information about how to challenge and expunge records of child protective investigations. All written information should be available in multiple languages, in order to serve families from diverse backgrounds, and should be available on ACS's website, as well as distributed to all parents and caregivers involved in investigations. Further, caseworkers should be prepared to answer families' questions regarding the disseminated materials.

ACS's alternative child protection response program, CARES (Collaborative Assessment, Response, Engagement and Support), also should be equipped with resources to assist with the specific needs of families experiencing frequent false reporting.<sup>110</sup> CARES is tasked with "work[ing] with families to identify services they may need, without subjecting the family to an investigation."<sup>111</sup> SCR hotline operators could direct more families away from investigations and into the CARES program, which may be better situated to address the needs of families facing false allegations.

#### CONCLUSION

This study illustrates that the false reporting of child abuse and neglect by litigants in family court cases in New York City has wide-reaching negative effects on individuals, families, communities, and public institutions. Our interviews with attorneys and social workers revealed that the impact of such malicious false reports can be devastating and that the existing remedies are inadequate to address the enormous harm.

Participants discussed how investigations of these allegations caused stress, trauma, and anxiety to both children and caretakers. Children endured invasive physical examinations, intensive questioning by various professionals, and disruptions in their relationships with caregivers and other family members, as well as separation or distancing from the parent who made the allegations. Caretakers who were falsely alleged to have abused or neglected children were ex-

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parents' rights during that investigation. Notably absent from that bill is a requirement that similar information be provided to children. While it is true that some children who are the subject of child protective investigations do not have the capacity to understand such information, because of age or developmental issues, this is not the case for all children, especially older children and teenagers. S. 5484A, 2021-2022 Assembly, 244th Legis. Sess. (N.Y. 2021).

110. HANSELL, *supra* note 34, 11-12 (the CARES program was previously referred to as the Family Assessment Response, or "FAR").

111. *Id.*

posed to greater child protective services, police, and court involvement. The impact of false reports was exacerbated by litigants' limited financial resources. As a result of allegations, parents struggled to make frequent court appearances (because they were unable to take time off from work) or lost jobs. Additionally, if they were not eligible for assigned counsel, they often were unable to afford adequate representation.

Participants also discussed racial equity concerns related to litigants' potentially increased child welfare and criminal justice system involvement. Participants recognized that families of color faced greater anxiety when in contact with those systems, given implicit (and sometimes explicit) bias and systemic racism, and noted that the stress of child welfare system involvement was exacerbated for individuals from communities that historically have been targeted or marginalized by child welfare intervention. Interview participants shared observations of racial bias from caseworkers and others within the family court system.

This study demonstrated that the false reporting of abuse and neglect in custody and visitation cases presents a complex issue, which causes immense harm, and is unlikely to be solved by any single policy change or legislative proposal. As opposed to the existing remedies, solutions must be accessible to families across income levels and must intentionally work toward greater racial and socioeconomic equity in family court. Any legislative or policy reform should also incorporate feedback from families and stakeholders most impacted by child welfare and family court systems.

A multi-faceted approach, which includes the adoption of the proposed recommendations—(1) the introduction of false reporting of child abuse or neglect (PL 240.55(4)) as a family offense, (2) abolishment of anonymous reporting to the SCR, to be replaced with confidential reporting, (3) improved training and procedures for child protective workers and SCR operators, and (4) better provision of services to families who suffer repeated false reports—could alleviate a significant amount of the harm currently caused by these false reports.

Additionally, as this study involved interviews with a small sample of practitioners who represent children, primarily in custody and visitation proceedings, in the New York City Family Court, further research should involve a more diverse sample of stakeholders.<sup>112</sup> Fu-

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112. This study was qualitative in nature and reflects the experiences of participants who work in the field. Therefore, the findings from this study should not necessarily be considered representative of any larger population.

ture researchers should investigate the experiences and insights of other child advocates, parent advocates, court officials, and, most significantly, individuals who have faced false reporting of child abuse and neglect.<sup>113</sup>

Further, as this study focused only on instances of false allegations that took place in the course of custody and visitation cases, further research also should include a broader cross-section of New York City Family Court and Supreme Court cases, as well as cases from other jurisdictions within New York State.

While we endeavor to protect families from the trauma of unnecessary and invasive state intervention, we must ensure that we acknowledge and support survivors of abuse, neglect, and domestic violence. It is important to recognize the challenges that survivors of abuse and interpersonal violence face in reporting their experiences and seeking justice. Individuals who seek to undermine survivors have often claimed, without support, that the allegations of survivors were false.<sup>114</sup> This narrative has contributed to the difficult environment survivors face when seeking justice and accountability.<sup>115</sup> Calls to address the harms of false allegations by litigants in the family court

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113. For example, future researchers may want to survey family and supreme court judges in order to learn from the experiences and insights of members of the judiciary concerning the false reporting of child abuse and neglect in their caseloads. The findings from such research could inform additional potential reforms to improve the lives of children and families in custody and visitation proceedings involving allegations of abuse and neglect. Such reforms could include targeted trainings for judges, such as trainings on the stresses and trauma experienced by children and individuals subject to investigation by child protective services, and the use of intentional false reports of abuse and neglect as a litigation tactic in custody, visitation, and family offense cases.

114. See, e.g., Lise Gotell & Emily Dutton, *Sexual Violence in the 'Manosphere': Antifeminist Men's Rights Discourses on Rape*, 5 INT'L J. FOR CRIME, JUST. & SOC. DEMOCRACY, no. 2, 2016, at 65, 74.

115. There is an extensive critique in the literature of parental alienation theories and research that suggests that courts are biased against parents (presumably often mothers) who allege abuse in custody cases. See Joan S. Meier, *U.S. Child Custody Outcomes in Cases Involving Parental Alienation and Abuse Allegations: What Do the Data Show?*, 42 J. SOC. WELFARE & FAM. L. 92, 96, 100 (2020) (providing evidence that women face gender bias in family court proceedings and that when they file claims that the children's father has committed abuse, they risk both counterclaims that they are alienating the child and higher rates of custody loss); Lesley Laing, *Secondary Victimization: Domestic Violence Survivors Navigating the Family Law System*, 23 VIOLENCE AGAINST WOMEN 1314, 1327-28 (2017) (noting that in the findings from a qualitative study of female domestic violence survivors involved in custody disputes with past abusers, many survivors "found that their motives were scrutinized and questioned" and "experienced disbelief and minimization of their victimization, which engendered a powerful sense of injustice, suggesting that the family law system is a site of secondary victimization"); Catherine Humphreys, *Child Sexual Abuse Allegations in the Context of Divorce: Issues for Mothers*, 27 BRIT. J. SOC. WORK 529, 536 (1997) (discussing how the stereotype of a mother making false child

system do not, and should not, undermine calls to believe survivors and to support the goals of the #MeToo movement. We must continue to work to create environments in which survivors' stories are believed and their needs addressed. It is critical that any proposed legal or policy reform to address false allegations also safeguards survivors of violence and incorporates their input and feedback.

We believe that our proposed reforms will help to mitigate the negative impact of intentionally false child abuse and neglect reporting without deterring the reporting of legitimate concerns. This is an especially important goal when one considers how families of color and low-income families, including those families discussed in this survey, have been marginalized and criminalized by the child welfare system. Providing remedies such as those discussed above would prevent false allegations and mitigate the harmful impact that the investigations of such allegations have on families, thereby decreasing litigants' and children's unnecessary involvement with child welfare agencies and the court system.

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abuse allegations in custody arrangements can be damaging, particularly for mothers who are themselves survivors of domestic violence).

## APPENDIX I: INTERVIEW PROTOCOL, ATTORNEY INTERVIEWS

Time of Interview:

Date:

Interviewee:

Position of Interviewee:

Interviewer:

**Introduction/Confirmation Email Draft**

Dear [Participant]:

Thank you for agreeing to participate in this interview during this unusual time with so much transition and change.

The purpose of this interview is to gather stories and experiences about false child abuse and neglect reporting in New York City. The questions will focus on your experiences serving clients and their families who have faced incidences of false reporting.

Our interview should last approximately one hour and will take place over video conference. (Include Zoom or Skype meeting invitation and password).

With your consent, the interview will be recorded.

Transcripts and analyses of the interview will be shared with staff members at The Children's Law Center as part of this false reporting research and advocacy project. Additionally, I am a law student at The University of Pennsylvania and the transcripts and analyses of the interview will be shared as part of a law school seminar project and a class in the Graduate School of Education in qualitative methods. Because the content of these interviews will be shared, please use pseudonyms when referring to clients and refrain from including personally identifiable information.

**Questions**

1. You responded that you have had cases in which you believe false reports were made to the Statewide Central Register of Child Abuse and Maltreatment Hotline. How many cases have you worked on in which you believe false reporting occurred?
2. In each case, how many times were reports called into the hotline?
3. Who made the calls in each case?
4. Who were the allegations made against?
  - a. Were the allegations made against one or multiple adults?

- b. What were the relationships between the caller(s) and the subject(s) of the call?
5. What were the allegations made in the reports?
6. Could you describe any investigation(s) that followed the report(s)?
  - a. Who conducted the investigation?
  - b. What agencies and stakeholders were involved in the investigation? (Child Advocacy Center, police, etc.)
7. Did the allegations lead to a physical examination of a child?
  - a. Who performed the examination?
  - b. Did the allegations lead to a hospital visit?
8. What were the outcomes of the investigations?
9. How aware was the child or youth of the allegations being made?
  - a. Was the child aware of the allegation?
  - b. Did the child corroborate the allegations?
  - c. Did the child deny the allegations?
10. How did the subjects of the allegations respond to reports of child/abuse neglect?
  - a. Did the subject pursue legal action? Did the subject inquire about what types of legal actions were available?
  - b. Did the subject pursue or inquire about other ways to address these allegations?
11. Could you describe the impact of the allegations?
  - a. What was the impact on the child or children?
  - b. What was the impact on the child(ren)'s caregiver?
  - c. What was the impact on contact or visitation between a child and parents or caregivers?
  - d. Were there any other short-term or long-term effects of the allegation(s) on the child or caregiver and their relationships?
  - e. Were there any other short-term or long-term legal implications that impacted your case?
12. In any of your cases, did allegations of child abuse or neglect that you believed to be false impact how you approached your case?
13. Is there anything else you would like to share from your experiences working with cases in which you believe there were false allegations of child abuse or neglect?

14. Has working on cases where you believe false reporting has occurred impacted your approach to your legal practice?

#### APPENDIX II: INTERVIEW PROTOCOL, SOCIAL WORKER INTERVIEWS

Time of Interview:

Date:

Interviewee:

Position of Interviewee:

Interviewer:

#### **Introduction/Confirmation Email Draft**

Child Youth Pseudonym:

Dear [Participant]:

Thank you for agreeing to participate in this interview during this unusual time with so much transition and change.

The purpose of this interview is to gather stories about your experiences with litigants who have made false child abuse and/or neglect allegations against fellow litigants in New York City Family Court custody and visitation cases. The questions will focus on your experiences serving clients and their families who have faced incidences of false reporting.

Our interview should last approximately one hour and will take place over video conference. (Include Zoom or Skype meeting invitation and password). If you have multiple cases that involve such allegations, we may schedule subsequent interviews so that we have adequate time to discuss each case.

With your consent, the interview will be recorded.

Transcripts and analyses of the interview will be shared with staff members at The Children's Law Center as part of this false reporting research and advocacy project. Additionally, I am a law fellow with The University of Pennsylvania and redacted transcripts and analyses of the interview may be shared as part of a research project in the University of Pennsylvania's Graduate School of Education. Because the content of these interviews will be shared, please use pseudonyms when referring to clients and refrain from including personal identifying information.

#### **Questions**

1. You responded that you have had cases in which you believe false reports were made to the Statewide Central Register of Child Abuse and Maltreatment Hotline (SCR) and/or to the



police. Approximately how many cases have you worked on in which you believe false reporting occurred?

Let's start with your first case, which I will refer to as matter of x v. x.

2. What type of legal case was it (e.g., initial custody, modification, family offense case, etc.)?
3. What year did Children's Law Center (CLC) become involved in the case?
  - a. Which CLC attorneys worked on this matter? If so, what is their name? What was their involvement in the case?
  - b. Was another CLC social worker assigned to the case? If so, what is the name of the social worker?
4. Approximately how many times were reports made to the SCR?
5. Who made the false report in each instance?
  - a. What was the caller's relationship to the child?
6. Who were the allegations made against?
  - a. Were the allegations made against one adult, or multiple adults?
  - b. What was the relationship between the subject of the call and the child?
  - c. What were the relationships between the caller(s) and the subject(s) of the call?
7. Describe the allegations made in the initial report?
  - a. Approximate date of first report?
  - b. What was the posture of the case at the time the caller made the allegations?
  - c. If there were multiple reports, approximately how much time passed between the first report and the subsequent report(s)?
    - i. Dates of the subsequent reports? (Approximate if don't have that information accessible)
  - d. What allegations were made in the subsequent reports?
  - e. Did the allegations differ between the reports?
    - i. If yes, describe how they changed?
  - f. Did this caller make reports against the subject to the police?
    - i. If yes, describe the allegations in those reports.
  - g. Did the caller make reports against the subject to other individuals (e.g., caseworker, doctor, teacher, guidance counselor, child's attorney, etc.)

8. Please describe any investigation(s) that followed the report(s)?
  - a. Who conducted the investigation?
  - b. What agencies and stakeholders were involved in the investigation? (ACS, Child Advocacy Center, police, district attorney's office, etc.)
9. Did the allegations lead to a physical examination of the child or children?
  - a. Who performed the examination?
  - b. Did the allegations lead to a hospital visit?
  - c. Did the allegations lead to a visit to the Child Advocacy Center?
10. What were the outcomes of the investigations?
  - a. Was the report to the SCR indicated or unfounded?
  - b. If a report was indicated, did ACS file an article 10 abuse or neglect petition against the subject of the report?
11. Was the subject of the report arrested? If so, was a criminal case filed against the subject of the report?
12. Approximately how old was the child or children at the time of the report?
13. What was the child's or children's awareness of the allegations?
  - a. If the child was aware of the allegations, how did they learn of the allegations?
  - b. Did the child corroborate the allegations?
  - c. Did the child deny the allegations?
14. How did the subjects of the allegations respond to reports of child abuse/neglect?
  - a. Did the subject pursue legal action in the ongoing family court case?
  - b. Did the subject pursue legal action outside of the ongoing family court case?
  - c. Did the subject inquire about what types of legal actions were available?
  - d. Did the subject pursue or inquire about other ways to address these allegations?
15. Please describe the impact that the allegations had on the child and the family overall?
  - a. What was the impact on the child or children?
  - b. What was the impact on the subject of the report? (and if different, on the child(ren)'s caregiver)?

- c. What was the impact on contact or visitation between the child and the subject of the calls?
  - d. What was the impact on contact or visitation between the child and the caller?
  - e. Were there any other short-term or long-term effects of the allegation(s) on the relationship between the child and the subject?
  - f. Were there any short or long-term effects of the allegation(s) on the relationship between the child and the caller?
  - g. Were other family members impacted by the allegation made? If so, how?
16. Do you feel these allegations had an impact on any of the resources or systems the family interacts with? If so, how?
  17. Is there anything else that you would like to share about your experiences working on this case that you believe would be helpful for us to know?
  18. Is there anything else you would like to share from your experiences working with cases in which you believe there were false allegations of child abuse or neglect?
  19. Has working on cases where you believe false reporting has occurred impacted how you approach your social work practice?

APPENDIX III: DESCRIPTIONS OF CODES APPLIED TO  
TRANSCRIPTS OF INTERVIEWS

<u>Key</u>
<p><b><u>Code Category</u></b></p> <ul style="list-style-type: none"> <li>• <u>Code</u>: Code Description               <ul style="list-style-type: none"> <li>○ <u>Code Subsection</u>: Subsection Description</li> </ul> </li> </ul>

**Overview**

- Type of Case / Overview of Case: Type of family law case when false allegations were made (initial custody, modification, etc.)
  - Initial Custody
  - Modification
  - Neglect
  - Family Offense
  - Other type of Case When CLC Became Involved
  - When/ How CLC Became Involved: Year Children’s Law Center became involved in the case, details of how CLC became involved
  - CLC Stakeholders Involved: Names of other CLC attorneys or social workers involved in case
  - Posture of Case at Time of Report

**Description of Case**

- Reporter(s): Description of anyone who has made child abuse reports in this case
  - Mandated reporter involved: Code applied if interview participant mentioned that mandated reporter has made calls
  - hotline call: Code applied if interview participant mentioned that hotline calls were made
  - report made to police: Code applied if interview participant mentioned that reports were made to police
  - relationship between reporter and subject: Any known details about reporter/ subject’s identities, genders, relationships to child, relationship to each other, prior litigation history if applicable
  - reporter mental health concerns
- Description of Allegations Made: Description of child abuse/ neglect allegations made
  - Subject of Reports: Description of individuals who were subject(s) of alleged false child abuse/ neglect reports

- Dates/ Frequency of Reports: Description of any conversation regarding dates of reports and their frequency
- Consistency/ Change Across Reports: Code applied to any conversation of consistency and/or change across reports
- Type of Abuse
  - sexual abuse allegations: Code applied if sexual abuse was alleged in case discussed
  - excessive corporal punishment allegations: Code applied if excessive corporal punishment was alleged in case discussed
  - medical neglect: Code applied if medical neglect was alleged in case discussed
  - educational neglect: Code applied if educational neglect was alleged in case discussed
  - physical abuse: Code applied if physical abuse was alleged in case discussed
  - inadequate guardianship: Code applied if inadequate guardianship was alleged in case discussed
  - drug related allegations: Code applied if drug related allegations were made
  - other/not specified in interview: Code applied if other form of abuse was alleged in this case or if the interview participant did not specify what type of abuse was alleged
- Description of Investigations: Description of any investigations that followed allegations
  - ACS caseworker conducted investigation: Code applied if interview participant mentioned that ACS caseworker conducted investigation
  - Physical exam involved in investigation: Code applied if interview participant mentioned that a physical exam was part of investigation
  - Hospital/ medical visit involved in investigation: Code applied if interview participant mentioned that the child was brought to the hospital or a medical office as part of investigation
  - Child Advocacy Center involved in investigation: Code applied if interview participant mentioned that child was brought to Child Advocacy Center as part of investigation

**Outcome of Investigation**

- report indicated?: Code applied if any of the presumably false allegations made against subject or reports were indicated following ACS investigation
- report unfounded: Code applied if any of the presumably false allegations made against subject of reports were unfounded following ACS investigation
- subject of report arrested?: Code applied if subject of reports were arrested at any point in investigation

**Impact on Investigation on Child**

- Child's Awareness of Allegations: Description of child's awareness of allegations
  - child's corroboration of allegations: Code applied if child corroborated allegations believed to be false
  - child's denial of allegations: Code applied if child denied allegations believed to be false
  - unclear if child corroborated or denied allegations: Code applied if attorney or social worker did not know or was unsure if child corroborated or denied allegations
- Impact on Child's Relationship with Parents/ Caretakers: Description of how allegations and investigations has impacted child's relationship with parents/ caretakers
- Child's Trauma Response to Allegations: Description of any trauma experienced by child as a result of allegations and investigations

**Impact of Allegation on Subject of Reports**

- Did subject report pursue legal action?: Code applied if subject of report pursued any legal action in response to allegations believed to be false
- Adult's Stress/ Trauma Response to Allegations: Description of any stress or trauma experienced by subject of report as result of allegations and investigations

**Impact of Allegations on Case**

- Impact of Allegations on Custody/Visitation: Description of any impact of allegations on custody/ visitation
- Delay in Case Due to Allegations: Code applied if allegations believed to be false resulted in any delays in the case

**Impact of Allegations on Attorney**

- # of Potentially False Reports Across Career: Number of times CLC attorney believes to have observed false reporting across career / number of times false reports made in particular case
- Impact of Allegations on How Attorney Approached Case: Description of any ways that allegations believed to be false impacted how attorney addressed case
- Impact of Cases Believed to Have False Allegations on How Attorney Approaches Practice: Description of any ways that working with cases that have involved false reporting have impacted attorney's practice

**Impact of Allegations on Systems**

- Monetary Cost Associated with False Allegations: Code applied if attorney discusses monetary costs associated with allegations believed to be false and subsequent investigations
- Other Resources Associated with False Allegations: Code applied if attorney discusses any non-monetary resources expended due to allegations believed to be false and subsequent investigations

**Key Quotes****Changes Addressing Issues of False Allegations**

- Critiques of Existing Policy/ Recommendations for New Policy

**Discussions About Coaching or Alienation**

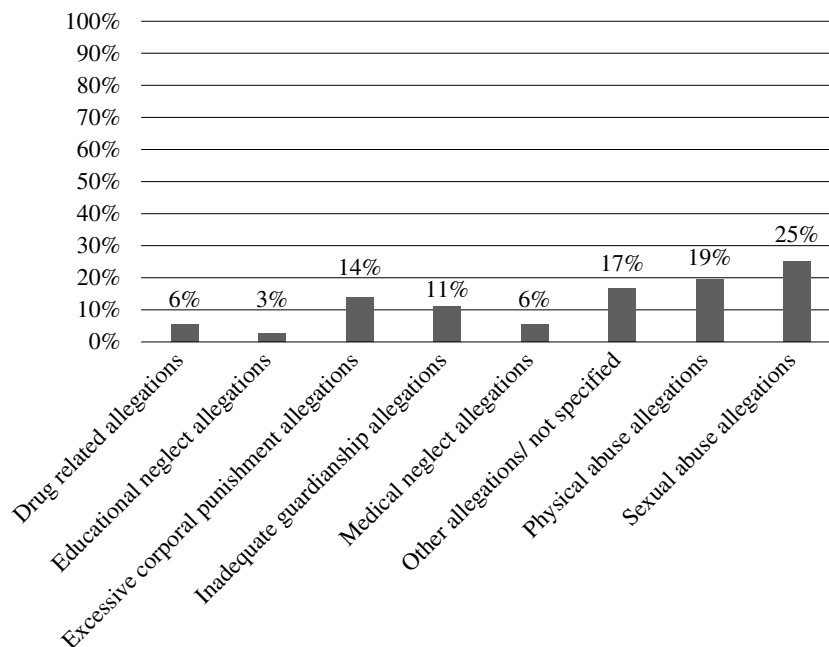
## APPENDIX IV: SUPPLEMENTAL TABLES

## 1. Type of Allegations Made

This table describes the frequency of types of child abuse or neglect allegations in the cases discussed.

Some cases involved multiple types of allegations. Figures are displayed as percentages of all total occurrences of specific types of allegations across the cases discussed.

TABLE 1: TYPE OF ALLEGATIONS DISCUSSED ACROSS CASES

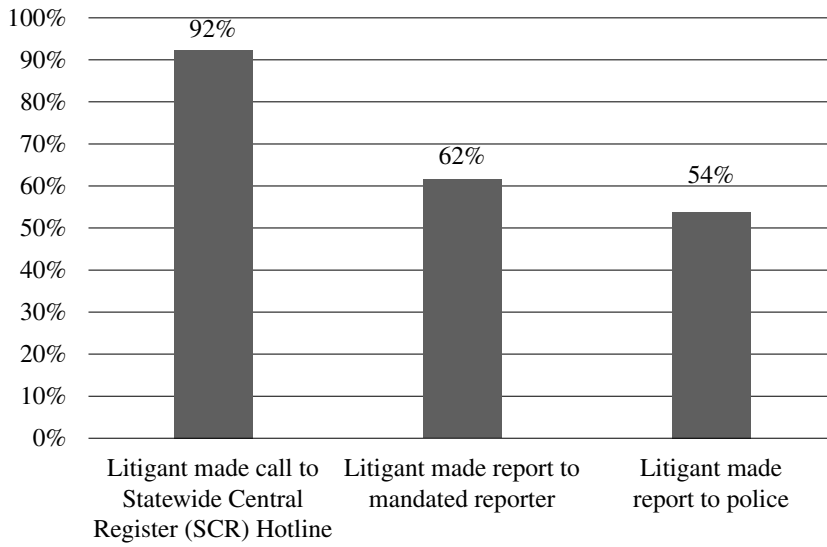


## 2. Agency or Person To Whom Allegations Were Reported

This table describes the means by which the allegations in each case were reported. Some cases involved multiple kinds of reporting. Figures are displayed as percentages of the number of total cases where a particular type of reporting occurred.



TABLE 2: TO WHOM ALLEGATIONS WERE REPORTED



APPENDIX V: INTERVIEW PARTICIPANT INFORMED CONSENT FORM  
Available Upon Request