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POSITION ON PROPOSED LEGISLATION

BILL: HB 0644 Family Law- Caretaker Bill of Rights

FROM: Maryland Office of the Public Defender

POSITION: Favorable

DATE: 02/13/2024

The Maryland Office of the Public Defender respectfully requests that the Committee issue a favorable report on House Bill 0644.

House Bill 0644 will require a Child Protective Service (CPS) Worker who is investigating a parent or guardian for allegations of abuse or neglect to advise parents of their rights upon their first contact with the parent and prior to initiating the investigation.

House Bill 644 is an important bill. The purpose of this bill is to protect parents and children from the unrestricted powers of Child Protective Services (CPS). When allegations of abuse or neglect are called into the CPS hotline, case workers are sent out to the child's home to investigate those claims. However, unlike police officers with warrants and court orders, case workers have nothing in hand to give them the authority to enter, or limit the reach of their power once they enter a family's home. These workers are given free range by the government to enter and search peoples' homes, disrupt their lives and examine alleged victim children's bodies before determining whether there is any credible evidence that the allegations are true or that the abuse or neglect has occurred. Social workers, or often case workers (workers who are not licensed social work professionals), frequently fail to inform parents why they are being investigated before attempting to force their way into parents' homes. And if parents refuse entry, the police are often called, and parents are threatened that they must consent to the search or face removal of their children. During this process parents are asked to take drug tests, provide personal information and documentation and sign agreements regarding the care of their children without being advised of their rights or being able to speak with an attorney.

This bill derives from the Miranda Rights warning required in criminal matters as a result of *Miranda v. Arizona*¹ (Miranda). Miranda requires that any person taken into police custody and interrogated by the police has to be informed of their rights to remain silent and their right to counsel. The Supreme Court found it necessary for Miranda Rights to be put in place as a procedural safeguard to protect against self- incrimination and compulsion. The law requires people to be informed that they do not have to speak to police and that they have a right to counsel to protect against in custody interrogations that may result in compulsory confessions. While parents face the same threats of self- incrimination and compulsion while being investigated by CPS, the requirement that a parent be informed of their rights prior to any form of questioning has never been codified.

The court in *Miranda v. Arizona* recognized that this type of protection was necessary where the threat of losing custody of one's child is at play. The court's opinion recognized the duress a parent is placed under to comply with the demands of a state agency in its discussion of *Lynum v. State of Illinois*. In that case, a mother, who was being interrogated regarding a criminal matter, was compelled to cooperate with police after police threatened to call social services and have her children removed from her care if she did not. This is the exact threat that parents face when DSS comes to their door. And yet, in the state of Maryland, CPS never gets permission from the court or advises parents of their rights before starting their investigation.

This bill would not impede on the ability of a CPS worker or the Department of Social Services from keeping a child safe from immediate harm or danger. The bill gives exception to Family Law § 5-709 that allows workers and law enforcement to enter a home and remove a child who is in serious, immediate danger. Outside of emergency situations, CPS has twenty-four hours to initiate an investigation regarding physical and sexual abuse and five days to investigate cases of neglect and mental injury. It is in the context of these types of cases where there is no perceived immediate and serious risk of harm that caretakers would be advised of their rights prior to the start of an investigation. Even in this context, this bill would be extremely impactful given that 71% of CPS investigations were ruled out in 2022. Among the investigations that were substantiated for some level of maltreatment, the vast majority (60%) stemmed from an issue of neglect. This shows that most investigations involve circumstances that are not emergent and families could be advised of

¹ *Mirand v. Arizona*, 348 U.S. 436 (1966)

their rights and properly informed before a CPS investigation is conducted. If after being advised of their rights, a parent refuses to cooperate, CPS can petition for a court order.

One of the benefits of providing Miranda Rights for parents is the prevention of what is known as hidden foster care. This is when parents are told they must send their children to live with friends or relatives to avoid their child being placed in foster care. In these instances, children are separated from their families without a court determination that it is in the best interest of the child to be removed from their home. Children are placed out of the home with no court supervision to ensure they are being provided the proper care and attention, without time frames of how long the child must remain out of the home, and with no measures or provisions for the parents to get their children back. This practice results in children being separated for unlimited amounts of time with no due process and no means for reunification.

This bill undoubtedly will have a positive racial impact as Black children are disproportionately represented at every phase of the CPS process with their families having little understanding about the process. In Maryland, Black children constitute 30.6% of the population and 54.5% of the foster care population.² Nationally, Black children are more likely to be reported by doctors, educators, and law enforcement than white children for conditions that are similar and even less severe than their white counterparts.³ Relating to CPS investigations in particular, Black children are more likely to be investigated than any other group. Fifty- three percent of all Black children will be investigated by CPS before their 18th birthday.⁴ Parents of Black marginalized children need to be advised of their rights.

Allowing parents to be informed of their rights ensures the safety of children and their families. CPS investigations are traumatizing to the entire family. When families know what can and cannot be done during an investigation, they are able to make decisions in the best interest of their children. The Office of the Public Defender has begun the work of advising parents of their rights through our pre-petition program, [Better Together](#). Funded exclusively with grants and federal matching

² <https://cwoutcomes.acf.hhs.gov/cwodatase/pdf/maryland.html>

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https://med.stanford.edu/news/all-news/2023/02/child-abuse-report-race.html?utm_source=Stanford+ALL&utm_campaign=5fe1ef2d62-int_COPY_01&utm_medium=email&utm_term=0_c042b4aad7-5fe1ef2d62-55004962

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<https://www.americanbar.org/groups/litigation/resources/newsletters/childrens-rights/racial-discrimination-child-welfare-human-rights-violation-lets-talk-about-it-way/#:~:text=Over%2050%20percent%20of%20Black,the%20rate%20of%20white%20children>

funds, the pilot program gives parents access to an attorney and other services at the outset of an investigation, before any petition has been filed in court. Participating parents are typically unaware of their rights and the attorney advises of their rights and options. Often, this results in parents being more cooperative with DSS as they better understand the process and how to best protect their family.. Through this program, we have been able to assist parents in safely maintaining their children in their homes while at the same time avoiding the overreach of CPS. Advising parents of their rights keeps parents and communities safe.

According to the Constitution, all citizens are granted certain basic rights. Among those are the right to privacy, the right that no person should be compelled to be a witness against themselves, and that any accused should have the right to assistance of counsel. These rights are important to protect citizens from unlawful intrusion into their lives of all government entities including the Department of Social Services (DSS). By requiring DSS and its agents to inform parents of their rights, we ensure that all citizens, even the most vulnerable among us, have not only the above rights respected but most importantly their right to family.

For these reasons, the Maryland Office of the Public Defender urges this Committee to issue a favorable report on House Bill 0644.

Submitted by: Maryland Office of the Public Defender, Government Relations Division.

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