



**MARYLAND
LEGAL AID**

Advancing
**Human Rights and
Justice for All**

House Bill 644

Family Law-Caretaker Bill of Rights

In the House Judiciary Committee, Hearing on February 15, 2024

Position: FAVORABLE

Maryland Legal Aid (MLA) submits its written and oral testimony on HB 644 at the request of Delegate Crutchfield.

Thank you for the opportunity to present testimony in support of HB 644, a bill that will provide notice to a child's parent or caretaker of their basic rights and protect them from invasive warrantless searches during an investigation of suspected child abuse or neglect. Maryland Legal Aid (MLA) is Maryland's largest non-profit law firm, with 12 offices serving each of Maryland's 24 jurisdictions, providing free civil legal services to the state's low-income and vulnerable residents. Our advocates represent parents and caretakers who are faced with suspected child abuse and neglect investigations and who are not aware of their basic rights during these investigations. As an organization that also represents children in CINA cases, we understand the impact and importance of CPS investigations, and believe this bill strikes an appropriate balance between the state's important role in protecting children, while respecting the fundamental privacy rights of all Marylanders. As the only organization in the state with this 360-degree perspective of the system, MLA strongly supports this bill's requirement that parents and caretakers be informed of their rights, including the right to consult an attorney. Therefore, we ask this committee to grant House Bill 644 a favorable report and urge its ultimate passage.

HB 644 requires Department of Social Services (DSS) agents to provide a child's parent or caretaker with oral and written notice of their basic rights during a child abuse or neglect investigation, in a language that they understand. MLA's clients are often subjected to unwarranted government intrusion into their homes, including by DSS. The bill will require DSS to inform a child's parent or caretaker of the allegations against them. DSS workers will also be required, at initial contact, to inform parents and caretakers of their rights, including their right to consult with a lawyer prior to or during the investigation, and except when ordered by a court, to refuse entry into their home, to deny requests to interview or physically examine their children, and to refuse to submit to substance abuse or mental health screens.

Currently, DSS often enters our clients' homes without their consent and without informed notice of the allegations against them. Our clients often do not have time to consult a lawyer before DSS enters – and are unaware of their right to do so. This bill would only allow DSS to enter and search a home only if they receive informed consent from the parent or caretaker, receive a court order, or obtain a warrant based on probable cause. Maryland law currently allows a DSS representative to enter a home without consent if they are accompanied by law enforcement and have probable cause to believe that a child is in serious, immediate danger, and this bill does nothing to change that. Therefore, this bill effectively balances the

rights of parents and caretakers to feel secure in their homes and persons, and the government's interest in legitimate, constitutionally compliant investigations.

HB644 does not sacrifice children's safety. This bill does not eliminate DSS's access to homes, it gives parents or caretakers notice of their due process rights – rights that already exist under the law but are often not invoked because of the intimidating nature of the investigations and the understandable desire of anxious parents to seem compliant. This bill prevents further vulnerability for already vulnerable families.

DSS investigations can fundamentally alter family relationships and trust.¹ Worse yet, most DSS investigations result in a finding that the allegations of abuse or neglect are unsubstantiated. In 2021, DSS investigated over 21,000 allegations of child maltreatment and in 71% of those cases, allegations of abuse were found to be *unsubstantiated or ruled out entirely*.² This makes it all the more important to require these state actors to follow the rules.

By passing this bill, Maryland will join other states around the country who have passed similar bills in recognition of the invasive nature of CPS investigations. In May 2023, Texas passed HB 730, which is substantially similar to the language of the instant bill and requires the department to give a parent notice of their rights during a CPS investigation, including the right to refuse entry to the home, consult with an attorney, and be apprised of the allegations against them. That law went into effect in September 2023, as did SB 1186 in Arizona which also enshrines a parent's rights during an investigation into Arizona law. In October of 2023, New York City launched a pilot program, identifying certain neighborhoods where notice similar to that required by HB 644, will be given to parents and caretakers at the onset of an investigation.

Lastly, just like HB 730 out of Texas, HB 644 requires the exclusion of any evidence obtained during these investigations if proper notice is not given. This assures compliance with these provisions and prevents further violations of a child's parent and caretaker's rights.

While we applaud the goals of HB 644 and urge its passage, we hope that in the near future, Maryland will consider going even further. It is, unfortunately, not uncommon for the person alleged to have caused harm to a child to be a minor themselves, often a family member or neighbor. Currently, Maryland law does not recognize, nor protect, the rights of minors or their parents being investigated for alleged misconduct.

In sum, this bill codifies and protects the fundamental due process rights of parents and caretakers. It also prevents overreach by and creates accountability for government overreach into our families—an issue that should unite Marylanders across the political spectrum. Thank you for considering this written testimony. **For the reasons stated above, MLA urges a favorable report on HB 644.** If you have any questions, please contact me at:

¹ Shanta Trivedi, *The Harm of Child Removal*, 43 NEW YORK UNIVERSITY REVIEW OF LAW & SOCIAL CHANGE 523 (2019).
https://scholarworks.law.ubalt.edu/all_fac/1085

² Children's Bureau An Office of the Administration for Children & Families
<https://cwoutcomes.acf.hhs.gov/cwodatasite/pdf/maryland.html#footnote1>

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