children's defense fund new york

MEMO OF SUPPORT
A.8060A (Jaffee) / S.6427A (Montgomery)

July 25, 2019

The Children's Defense Fund-New York (CDF-NY) supports the signing of A.8060A (Jaffee) / S.6427A (Montgomery) into law. This bill will reduce the harsh and disproportionate consequences of having an indicated case on New York's Statewide Central Register of Child Abuse and Maltreatment (SCR). The bill will ensure fairness and due process for people facing significant barriers to employment for up to 28 years as a result of their name being on the SCR.

Our *Leave No Child Behind* mission is to ensure every child a healthy start, a head start, a fair start, a safe start and a moral start in life, and successful passage to adulthood with the help of caring families and communities. We provide a strong, effective and independent voice for all the children of America who cannot vote, lobby or speak for themselves. We pay particular attention to the needs of poor children, children of color and those with disabilities.

In New York, we are dedicated to improving conditions for children across the State, based on research, public education, policy development, organizing and advocacy activities. Our priorities are health, education, early childhood, youth justice and child welfare.

Bill Context

Under current law, hundreds of thousands of families statewide face severe collateral consequences when a parent or caregiver is added to the SCR, mostly for cases of alleged neglect that stem from poverty. Under current law, New York's standard for placing parents on the SCR is far lower than that of most other jurisdictions and New York shares SCR records with more employers in ways that impede access to job opportunities. These include many of the best jobs that would otherwise be available to impacted parents, including in the healthcare and education fields. Most of these records are based on allegations of poverty-related neglect, not abuse, and most of the allegations have never been reviewed by a judge. Common allegations of neglect include lack of adequate housing, failure to provide adequate childcare, failure to provide adequate education, and parental substance abuse.

Troublingly, New York's SCR law currently treats allegations of poverty-related neglect the same way it treats child abuse that has been proven in court. As a result, thousands

of parents are routinely denied employment when there is no child safety concern that justifies this constraint on their ability to support their families. Moreover, because Black and Latinx parents are disproportionately subjected to these allegations, the impacts deepen inequality in our society. This an issue of racial and economic justice that we believe urgently needs to be addressed.

When a call is made to the SCR state hotline alleging maltreatment, either from mandated reporters—such as doctors, teachers, or shelter caseworkers—or from anonymous reporters, alleging some form of child maltreatment, a record of the allegations is created, kept on file at the SCR, and transmitted to the local child protective service agency for investigation. After investigation by a local child protective service agency, this report will be deemed "indicated" if the agency finds "*some credible evidence*" to support the allegations. This measure is a "bare minimum" standard that "imposes no duty on the fact finder to weigh conflicting evidence, no matter how substantial, and allows a report to be indicated even if only one out of several believable items of evidence supports it."[1] The majority of these cases are never taken to Family Court to be reviewed by a judge to determine whether there is sufficient evidence to support the allegations.

Many employment opportunities require SCR background checks in their hiring process, including custodial or administrative jobs in hospitals and schools, home health aides, and jobs working with children. Consequently, an indicated report in the SCR severely hampers a parent's ability to keep or secure gainful employment. All parents deserve the right to work and support their families, but the current law fails families when it upholds this barrier to employment. This legislation will help reduce the disproportionate impact of the determinations of indicated reports on families and children of color and help to achieve more strength-based and positive outcomes for families.

The current law's impact is enormous: 47,541 indicated reports were added to the database in 2018 alone.[2] The process to remove one's name from the SCR is complicated and few have their cases amended and sealed—in 2017, only 1,300 had their cases sealed.[3]

Impact of These Reforms

A.8060-A/S.6427-A makes the SCR fairer and more efficient for parents and families, particularly those living in marginalized communities, in four key ways by:

1. **Limiting unnecessary and unfair employment barriers for parents by automatically, conditionally sealing indicated reports of neglect or maltreatment after eight years to most employers.**

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[1] *Matter of Lee TT, 87 N.Y.2d 699 (1996).*

[2] Stewart, N. (2019, Feb 25). *The Child Abuse Charge Was Dismissed. But It Can Still Cost You a Job.* Retrieved from https://www.nytimes.com/2019/02/25/nyregion/ny-child-abuse-database.html

[3] Ibid.

Under current law, the length of time a case is on a parent's record is based solely on the age of their child, not the disposition of the case, the severity of the allegations, or successful rehabilitation. Under current law, there is no distinction in the employment consequences imposed for poverty-related neglect from the employment consequences for caregivers who have committed physical or sexual abuse.

A.8060-A/S.6427-A automatically seals indicated reports of neglect after eight years to most employers, while ensuring that all reports continue to be available to child welfare and foster care agencies. Indicated reports of neglect will be sealed to child care, pre-school, and early intervention programs after twelve years. If a parent has a subsequent indicated case, there is not automatic sealing. Reports of abuse continue to stay in the SCR for up to ten years after the youngest child turns 18, as they do now.

2. **Ensuring that SCR reports are amended and sealed automatically when a case is resolved favorably in Family Court.**

Under current law, a parent must submit notice that they want to challenge the record in a fair hearing before their case in family court is decided. Even when cases are dismissed after a fact-finding hearing in family court, parents have to re-litigate the exact same allegations in the fair hearing. Parents lose critical rights if they wait to file for the fair hearing or do not know that they should file immediately. **A.8060-A/S.6427-A** automatically amends and seals indicated reports when a Family Court Judge determines there is not sufficient evidence of abuse or neglect.

3. **Allowing parents to request a fair hearing at the time of their choosing and allowing Administrative Law Judges to consider evidence of a parent's rehabilitation whenever considering whether to seal an indicated report.**

Under current law, evidence of rehabilitation can only be used as a reason to seal the record of a person's indicated case if they request a hearing within 90 days of notice of the indicated report. However, fair hearings are often requested and held years later, when there is significant evidence of rehabilitation. Under current procedures, this evidence is not considered and Administrative Law Judges do not have the same ability to seal indicated reports as they do in earlier hearings. The legislation ensures that parents can request a fair hearing at a time of their choosing and allows Administrative Law Judges to consider a person's demonstrated rehabilitation in all cases.

The legislation also allows a person to request review of whether an indicated report continues to be relevant to employment, if there has been a change in circumstances, but not more than biennially.

4. **Raising the standard of evidence for indicating reports of child abuse and neglect from *some credible evidence* to a *fair preponderance of evidence*.**

New York currently has the lowest possible standard of evidence for indicating cases of child abuse and maltreatment: *some credible evidence*. Forty-one states currently have

a higher standard of evidence. New York law requires the higher preponderance of evidence standard in all civil court cases, including for all court cases involving allegations of child abuse and maltreatment. In addition, New York courts have struck down portions of the current statutory scheme, holding that the Constitution requires that parents have the opportunity to have indications of abuse and neglect reviewed at the preponderance of the evidence standard before the information is provided to employers. This has led to a confusing situation in which child welfare officials are currently authorized to indicate cases at a lower standard of evidence, while at a fair hearing, a more rigorous standard of evidence is applied. As a result, an extremely high percentage of cases that are reviewed through the administrative process are overturned, but most parents do not have the wherewithal to seek review. There is no right to counsel, and many parents do not receive notice of their right to review.

The current standard of *some credible evidence* does not require CPS investigators to consider exculpatory evidence or even to weigh all the available evidence. In contrast, the proposed preponderance of evidence standard holds that reports be indicated only when abuse or neglect more likely than not occurred. New York's unusually low standard of evidence has exacerbated the unintentional harm to families of intervention by the child welfare system and led to the excessive number of indicated cases in New York. In 2018, over 47,500 reports were indicated. Most of these families were never heard by a judge because local child protective service (CPS) agencies never deemed the allegations serious enough to take to court. Yet, these unreviewed indications significantly limite employment options for those parents.

A.8060-A/S.6427-A raises the standard of evidence for indicating reports of child abuse and neglect from *some credible evidence* to a *fair preponderance of evidence*. Raising the standard would prevent unintentional and unjustified collateral consequences of child welfare investigations by requiring that in every case the evidence be assessed at the higher standard, even if the matter does not get to the court level. It would allow all cases to be treated the same, whether the person was able to seek review or not, and eliminate unnecessary barriers to employment.

In addition, raising the standard of evidence is expected to lower the racial disproportionality of child welfare decision-making by limiting the discretion of CPS staff and requiring that they consider all evidence before making a determination. The proposed standard remains far lower than the beyond-a-reasonable-doubt standard used in criminal cases and the clear-and-convincing evidence standard the Supreme Court requires in termination of parental rights cases.

A.8060-A/S.6427-A will save resources spent on duplicative administrative reviews and hearings currently held on allegations that have already been determined by a family court to be unsupported by the evidence, and by ending the need for many fair hearings after eight years through the automatic, conditional sealing mechanism. These savings will apply to indicated reports that are already on the SCR, as well as to future reports.

A.8060-A/S.6427-A will bring New York law in line with other states that have more flexible statutes that recognize the significant stigma and collateral consequences faced by people with an indicated report in the SCR.

A.8060-A/S.6427-A will end grave injustices, promoting access to employment for thousands of families every year, reducing the harm to families of intervention by the child welfare system, and limiting the collateral consequences of having an indicated case on the SCR. On behalf of our constituents, the children and families of New York State, we urge the governor to sign it into law immediately.

If you have any questions, please do not hesitate to contact Julia L. Davis, Esq., Director of Youth Justice and Child Welfare, Children's Defense Fund-New York, 212-697-0882, jdavis@childrensdefense.org.