



MEMORANDUM OF SUPPORT

S.5573 (Montgomery)

The New York State Child Welfare Coalition is a group of community-based providers, attorneys representing children and parents, and policy advocates working to improve our State's system for children and families. **We support S.5573, which would update the standard of proof for indicated reports of child abuse and maltreatment and require a fair preponderance of evidence of the alleged abuse or maltreatment for a report to be indicated, and call upon the Legislature to pass it this year.**

S.5573 would raise the standard of evidence for indicating reports of child abuse and neglect from *some credible evidence* to a *preponderance of evidence*. This change is a critical next step to reform the State Central Register of Child Abuse and Maltreatment (SCR). We believe 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 2017, over 47,500 reports were indicated.¹

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 requires that reports be indicated only when an investigation shows that it is "more likely than not" that abuse or neglect occurred. 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.

New York currently has the lowest possible standard of evidence for indicating cases of child abuse and maltreatment. Forty-one states currently have a higher standard of evidence.² 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.³ This has led to the situation in which local child welfare officials are currently

¹ New York State Office of Children and Family Services. 2017 Monitoring and Analysis Profiles With Selected Trend Data: 2013-2017. New York State, retrieved from

<https://ocfs.ny.gov/main/reports/maps/counties/New%20York%20State.pdf>

² Twenty-one states use a preponderance of evidence standard; only eight states other than New York currently use a credible evidence standard. See U.S. Department of Health & Human Services Children's Bureau, *Making and Screening Reports of Child Abuse and Neglect*, retrieved from <https://www.childwelfare.gov/pubpdfs/repproc.pdf>.

³ See *Matter of Lee TT*, 87 N.Y.2d 699 (1996); *Valmonte vs. Bane*, 18 F. 3d 992 (1994).

required to indicate cases at a lower standard of evidence and the parent gets a different standard of evidence if they appeal the finding against them. As a result, an extremely high percentage of cases that are reviewed through the administrative process are overturned, but most parents do not pursue this opportunity. Parents do not have a right to counsel, and many parents fail to receive notice of their right to have the finding against them reviewed.

Raising the standard better protects parents' due process rights without undermining child safety, and will 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 local CPS staff and requiring that they consider all evidence before making a determination. Finally, this change would also ensure that all allegations of child maltreatment are evaluated using the same standard, regardless of whether the parent was able to challenge the finding against them in a subsequent administrative review.

We respectfully urge the New York Legislature to pass and the Governor to sign **S.5573**, which will reduce the risk of harm to families of unnecessary intervention by the child welfare system and limit the collateral consequences of having an indicated case on the SCR.

SIGNED BY:

Bronx Defenders
Brooklyn Defender Services
Children's Aid
Children's Defense Fund-New York
Citizens' Committee for Children of New York, Inc.
Council of Family and Child Caring Agencies
Court Appointed Special Advocates of NYC
Families Together in New York State
Graham Windham
Harlem Dowling
Northern Rivers Family of Services
Prevent Child Abuse New York
RISE
Rising Ground, Inc.
Schuyler Center for Analysis & Advocacy
Sheltering Arms
The Center for Family Representation, Inc.
The Children's Agenda
The Children's Village
The Legal Aid Society
Westchester Children's Association