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RE: Family Miranda (A.1980/S.901) and Social Services Law section 424

Jess Dannhauser
Commissioner, Administration for Children's Services
150 William Street
New York, NY 10038
By email: jess.dannhauser@acs.nyc.gov

Dear Commissioner Dannhauser:

We write as a group of law professors and scholars who study the legal system which responds to allegations of child neglect and abuse. We write because we understand that the Administration for Children's Services (ACS) claimed a certain understanding about the intersection between the Family Miranda Act now pending in the New York Assembly and Senate (A.1980/S.901) and the existing New York Social Services Law (SSL) section 424. Specifically, we understand that ACS has asserted that SSL section 424 somehow conflicts with the terms of the Family Miranda Act, thus requiring delay or amendments to the Family Miranda Act, even though ACS also offers general support for the Act and its purpose. We understand ACS's claim to be that section 424 requires ACS to see a child who is named in an allegation of neglect or abuse, possibly in the child's home, within 24 hours of the allegation's referral to ACS.

Having studied the pending legislation and the relevant portions of SSL section 424, we respectfully disagree with that interpretation. There is no tension between the Family Miranda Act and SSL section 424. Given ACS's general support for Family Miranda, we hope that this letter will help resolve any concerns about ACS fully endorsing the pending legislation.

Four main points explain why there is no tension between the Family Miranda Act and SSL section 424.

First, the SSL requires ACS "upon receipt of such report [of alleged child neglect or abuse], commence . . ., within twenty-four hours, an appropriate investigation . . . ." N.Y. Soc. Serv. L. § 424(6)(a) (emphasis added). There is no requirement that ACS complete its investigation within that time period. Indeed, the statute is clear that ACS has sixty days to complete its investigation. N.Y. Soc. Serv. L. § 424(7). Similarly, while section 424(6)(a) also provides that ACS must "see[] to the safety of the child," that section does not require ACS to do so within 24 hours; all the statute requires to happen within 24 hours is the commencement of an investigation. The SSL does not require ACS to see every child in every investigation within 24 hours of receiving the allegation. Nothing in the Family Miranda Act would change ACS's ability to conduct an appropriate investigation, including "seeing to the safety of the child" within that timeline.

Second, the statute does not prescribe the precise method by which ACS must "see[] to the safety" of the child, or meet other requirements of section 424(6)(a), such as conducting "an evaluation of the environment of the child[ren] . . . and a determination of the risk to such children." In particular, SSL section 424 does not say ACS must enter the home in every case. Indeed, when parents exercise their constitutional right to prohibit state agents from entering their home without a court order, SSL section 424(6-a) and (6-b) provide steps that ACS may take when parents exercise those rights. These are not mandatory steps. Rather, the statute provides that ACS should evaluate evidence to determine how to conduct an appropriate investigation. Those provisions outline steps ACS may take when parents exercise their rights and the evidence creates reason to believe a child's "life or health may be in danger immediately." N.Y. Soc. Serv. L. § 424(6-a). Moreover, even when such evidence exists, ACS must exercise case-specific discretion. The statute is clear that ACS "may" seek a court order from the Family Court. N.Y. Soc. Serv. L. § 424(6-a); *see also id.* at § 424(6-b) ("if a child protective investigator seeks an immediate family court order . . . .") (emphasis added).

Consistent with this language in SSL section 424, Family Court Act section 1034 specifies the situations in which the "child protective service may seek" and the Family Court may issue an order that a parent produce a child "for an interview" and "for observation of the condition of the child." Such orders may only be requested and issued "where there is reasonable cause to suspect that a child or children's life or health may be in danger." N.Y. Fam Ct. Act. § 1034(2)(a)(i)(A), 1034 (2)(a)(ii).

This focus on case-specific evidence and discretion is essential. It demonstrates that the SSL charges ACS with evaluating available evidence in each investigation and responding accordingly. In some cases, ACS will seek a court order pursuant to Family Court Act section 1034. In other cases, no court order will be allowed – and no home entry required – because insufficient evidence exists, or because other investigatory steps that do not interfere with families' Fourth Amendment and Due Process rights (such as interviewing collateral contacts) may "see[] to the safety" of the child and otherwise resolve the matter.

Third, to the extent there would be any ambiguity between the terms of the Family Miranda Act and SSL section 424 (and we do not believe there would), various canons of statutory construction would avoid any conflict in interpretation. Existing SSL section 424 and the Family Miranda Act would be related statutes and thus interpreted *in pari materia* – that is, they would be read together as one law. This is easily accomplished with these two provisions. The Family Miranda Act makes clear that court orders (justified by sufficient evidence) can trump a parent's refusal to permit ACS to enter the home, consistent with section 424's acknowledgement both that parents may refuse ACS entry and that ACS may seek a court order commanding entry.

Perhaps most fundamentally, even if SSL section 424 did require ACS to enter homes and observe children within 24 hours of receiving a neglect or abuse allegation, the Family Miranda Act would not conflict. That Act would merely require ACS to inform parents of rights that they already have under the U.S. Constitution and New York Constitution, and which (as described above) are already recognized in SSL section 424 and FCA section 1034. Indeed, it is difficult to understand why ACS would oppose advising individuals of constitutional rights that they already possess. In cases when parents assert those rights and ACS believes it needs to see the child to perform an adequate investigation, the law already provides ACS with a remedy – seek an order pursuant to

Family Court Act section 1034. Family Court Act section 1034(f) provides that family courts "shall be available at all hours to hear such requests," allowing ACS to apply for and obtain orders to see a child around the clock. The statute has long contemplated this method of balancing ACS investigations with parents' constitutional rights.

We recognize that we may misunderstand ACS's exact position and we welcome any correction or clarification. We are pleased that ACS is in general agreement with the provisions and goals of Family Miranda, and we hope that ACS will endorse it without reservations. If there are remaining concerns about Family Miranda, we would be happy to discuss them with you or your legal team.

Sincerely,

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