

# Know Your Rights Training

Presented by

Trainer 1

&

Trainer 2

from the *Family Defense Practice* at  
Brooklyn Defender Services

**Brooklyn** (BDS)  
**Defenders**



# Introductions

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Brooklyn Defenders is a public defense office whose mission is:

*To provide outstanding representation and advocacy free of cost to people facing loss of freedom, family separation and other serious legal harms by the government*

We believe in a client-centered approach and work, in and out of court, to uphold the rights, freedom and dignity of people threatened by unjust, racist and harmful legal systems



# Family Defense Practice & Early Defense

- Our Family Defense Practice has been representing parents and other caregivers in Family Court since 2007. In the last year, we represented nearly 3,000 parents and caregivers in Brooklyn Family Court.
- Our mission is to reduce the harms of the family policing system; keep families safely together; and reunify families as soon as possible when separation occurs.
- Our Early Defense Team advocates for families undergoing an ACS investigation when no family court case has been filed to provide support and avoid family separation and court involvement.
- Knowing how to navigate the family policing system and having our team guide you through it can significantly change the outcome of an ACS investigation. You are not alone.



- BDS provides a lot of other services, such as civil justice, criminal defense, and immigration defense advocacy. Please visit [bds.org](https://bds.org) for more information.

# Presentation Goals

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**This presentation is not designed to give legal advice about your specific case. We cannot provide legal advice in a public setting. Please follow up with us privately by email ([EarlyDefense@bds.org](mailto:EarlyDefense@bds.org)) after this presentation if you need legal advice.**

- Explain your legal rights and responsibilities as a parent
- Describe how an ACS investigation works
- Give you information about how to deal with an ACS investigation
- Explain how an ACS investigation can become a Family Court case and what to expect in Family Court
- Empower you and hopefully prevent you from having a court case
- Answer your questions about how the system works generally

# What is the Family Policing System and ACS?

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- The family policing system is of surveiling and punishing Brown and Black families by the government.
  - Some of the main players in this system are mandated reporters (required to report), social service agencies, the family court system, and foster system agencies.
- The Administration for Children's Services (ACS) is the city agency charged with investigating reports of abuse or neglect and deciding whether children have been maltreated and whether to remove children from their parents and place them in foster care.
  - ACS also funds "preventive services" which are supposed to help families and prevent children from being removed and placed into foster care. They can also be a system of monitoring.

# How Does A Case Get Called In?

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- All ACS investigations start with a report of suspected child maltreatment or abuse made to the State Central Register (SCR) hotline.
  - The SCR is the New York State Central Registry for Child Abuse and Maltreatment in Albany, New York.
- The SCR hotline takes calls 24 hours a day/7 days a week.
- Anyone can call and make a report.
- Some professionals, called “mandated reporters” are required to report suspected neglect or abuse by law.
  - Examples of mandated reporters are: Doctors, Nurses, Therapists, Teachers, School Staff, Police, Day Care Staff, Drug and Alcohol Counselors
- Members of the public can call in reports anonymously.

# What Happens After A Call Is Made?

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- When a call is made, the SCR decides if it will accept or reject the report. Most of the reports are accepted.
- When a report is accepted, an Oral Report Transmission (ORT) is generated. An ORT includes who made the call to the SCR, a description of the allegation they made, and any other information they might have about the family.
- The SCR sends reports about NYC families to ACS to investigate.

# What an ACS Investigation Looks Like

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- By law, ACS has 60 days to decide if there is evidence that the reported maltreatment or abuse occurred. However, ACS might take action, including filing a case in family court or even removing children, at any time during or after the 60 days.
- Generally, an ACS investigator goes to the family's home and speaks to family members and contacts whoever called in the case. These case workers are not social workers.
- ACS can file a petition in Family court seeking to remove children if they believe the children are at *imminent risk*. The Judge decides if the children need to be removed.
- ACS can remove children without a court order if they believe a child is in danger and there is no time to get a court order, but they must file a petition by the next court day and the judge then decides whether the removal is warranted.



# What an ACS Investigation Looks Like

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- If a report is considered an emergency, ACS dispatches emergency case workers to the family's address. This can lead to multiple case workers investigating a report—the Emergency case worker (ECS) and then the assigned case worker (CPS).
- ACS sometimes brings police officers to a family's home when ACS is removing a child from the family or if something serious is alleged. They should not bring the police simply because a parent declines to assist them with the investigation, although they often do.
- Depending on the allegations and when ACS receives a report, ACS may go into a home and begin an investigation in the middle of the night.
- In addition to going to the home, ACS will speak to the source of the report. They may also try to speak to people who know the family like neighbors, teachers, and friends.

# What Are a Family's Rights During an Investigation?

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- A family being investigated by ACS has certain rights under N.Y. State law and the 4<sup>th</sup> Amendment of the U.S Constitution, including the right to
  - Speak to a lawyer before or at any time during or after the investigation
  - Decline to participate in an investigation
  - Decline to permit ACS to enter their home without a court order
  - Communicate with ACS in their primary language
- Whenever possible, parents should speak to a lawyer about their ACS investigation before sharing information with ACS.
- ACS can go to court to ask for an order to enter your home and/or see your children (called a 1034 petition) without your permission.
- It is natural to be upset and angry when ACS tries to invade your family's privacy. Nevertheless, ACS often tries to use it against parents when they think parents are being "hostile," "belligerent" or "uncooperative" or yelling in front of their kids.

# A family's rights during an investigation cont.

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- Parents often feel they have no choice but to do what the investigator tells them to do. A parent may decide they want to speak with or share information with an ACS investigator. However, unless ACS has a court order, parents are not legally required to
  - Let investigators into their homes (unless ACS is conducting an emergency removal)
  - Answer the caseworker's questions
  - Allow their children to be interviewed by ACS or the police
  - Take a drug test or submit to a mental health evaluation
  - Bring their children to a Child Advocacy Center to be examined or interviewed
  - Sign releases giving ACS access to confidential information
- NY Family Court Act Section 1034 says that ACS has to get a court order before they can enter a home or interview a child if a parent doesn't agree.
  - If ACS says they have a court order, or that a judge had given them permission, or that you are required to do something, ask ACS to provide you with the order. If ACS shares the order, you only have to comply with what the order states, nothing more.
  - These orders may only allow ACS access to the home or the children one time. It does not allow repeated access to your home or your children. If ACS gets an order, they might come unannounced and with police.

# HIPAA Guidelines/ Sharing Information with ACS

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- ACS often fails to fully explain to parents their rights regarding signing HIPAA releases giving ACS access to their families' confidential medical, mental health or drug treatment information. These rights include:
  - The right to **decline** to sign HIPAA releases unless ordered by a court
  - The right to **limit** the type of information ACS can get or the amount of time the release is in effect
  - The right to **revoke** their consent to the release at any time
  - The right to **a copy** of the release, both before (to give them time to review, consider and/or consult with others) and after signing
  - The right to **consult** with an attorney, their medical provider or anyone else before signing.
  - The right to specify the persons or agencies permitted to release information. **ACS should not be asking a parent to sign a blank HIPAA form that does not specify the person or entity who they are permitting to release information to ACS**

# What ACS does during an investigation

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When conducting an investigation, ACS investigators often tell families they are “required to” do certain things, such as:

- Go into the home
- Open up refrigerator, cabinets, closets, and rooms
- Speak with everyone in the household
- Strip search children for marks and bruises
- Question children without any family members present
- Return to the home several times during the investigation
- Question and/or examine children at a “Child Advocacy Center”

BUT ACS needs a parent’s permission do these things and parents do not have to agree, except that

- if ACS has a court order, parents must follow the order
- ACS is allowed to come into the home to remove a child who they think is in immediate danger.

# Child Safety Conferences (CSCs)

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- If ACS asks a parent to come to their office for a meeting, they should ask if it is a Child Safety Conference.
- Parents are allowed to bring someone to the conference for support (ACS does not like having attorneys there).
- You don't have to say anything at the conference because it can be used against you. Sometimes it is better to just listen and ask questions.
- Potential outcomes of the meeting include:
  - ACS might ask you to do voluntary services
  - ACS might file a petition in family court
  - ACS may ask the court to remove children to be placed in foster care
- Parents can present proof that the report is false, or documentation of services they have completed (such as parenting classes or therapy) or they can ask ACS to call service providers who are supportive.
- It is natural to be upset and angry when ACS says negative, judgmental, or untrue things about you and your family. Nevertheless, ACS often tries to use it against parents when they express these feelings.

# Service Plan

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- During an investigation, ACS might suggest “services” or design a “service plan.”
- ACS is supposed to offer services to try to address whatever they think is a safety issue in order to avoid removing children from their parents.
- Parents do not need to agree to do all recommended services. Only the court can actually require services.
- However, if a family agrees to do some type of service that they feel will be beneficial for them, this may help avoid a family court case or removal.
- Parents who decide to participate should ask for services that work with their schedule and are convenient to travel to.
- Parents can also ask ACS to provide or help them get things that would help their family including shelter, daycare, emergency cash, food, beds for their children, diapers, formula, etc.
- A parent has the right to consult an attorney or get advice before agreeing to any services.

# Investigation Outcomes

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- Within 60 days ACS is required to determine if a case is “indicated” or “unfounded.”
  - “Indicated” means they believe that there is fair preponderance of evidence that maltreatment or abuse occurred
  - Unfounded means ACS does not have credible evidence that neglect occurred
  - A report can be “indicated” without ACS ever filing a case in family court
- Parents are supposed to get written notice of the outcome of the investigation, but often they don’t.
- If the case is indicated the parent has a right to a “fair hearing” to contest the decision.
- If they receive notice of an indicated case, a parent must respond to the letter within 90 days in order to get a hearing.
- If a parent does not challenge an indicated case or loses their fair hearing, an indicated report stays on their record at the SCR for eight years. An indicated *abuse* case is kept until the youngest child turns 28 years old.



# Effects of having an indicated case

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- For some jobs, employers are required to check the SCR and are prohibited from hiring someone with an indicated case:
  - Home Attendants, Home Health Aides, Security Guards, Teachers, Paras, School Bus Drivers, Day Care Providers, and other jobs which work closely with children
- Many other employers can also check the SCR and have internal policies that prevent them from hiring anyone with an SCR record
- ACS can review past reports (even unfounded) if a person comes in contact with ACS in any way including if a parent is being investigated again.
- Having an indicated case also makes it more difficult to become a foster or adoptive parent
- an indicated case can be used against a parent in a custody case

# When ACS removes a child

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- An ACS worker might tell a parent that they are going to court to remove their children or get an order requiring them to do certain things to prevent removal.
- The ACS worker is not the final decision maker. There are many people involved in the decision to file a case in family court and even if they do, the judge makes the final decision.
- ACS must tell the parent where and when the case will be filed. The parent should go to court to argue against any orders they are asking for.
- Parents have the right to a lawyer if ACS files a case against them. They can hire a private lawyer but if they cannot afford one the court will appoint a lawyer for them. If their case is in Brooklyn Family Court, it is likely that BDS will represent them.
- Parents have a right to a hearing to oppose the removal or ask for the return of their children. At the hearing, ACS has to prove that the children are or would be at imminent risk in their care.
- If ACS says they are going to try to get a court order removing a child, parents should immediately speak to friends and relatives about whether they can care for the children in case the removal is granted.
- ACS will conduct a background check of all resources. It is helpful to have their names, phone numbers and dates of birth. ACS will do a criminal and ACS background check of them and anyone over 18 who lives in their home.

# Early Defense

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Our Early Defense Team is an interdisciplinary team of attorneys, social workers, and paralegals that supports parents and caregivers throughout an ACS investigation.

Parents and caretakers in Brooklyn can contact us for assistance at our direct number:

**(646) 974-9343**

Parents and caretakers can also visit this website for more information:

**[www.yourfamilyyourrights.org](http://www.yourfamilyyourrights.org)**

# Early Defense

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- When a parent who has been contacted by ACS calls our hotline, we ask for their family members' names and dates of birth so that we can do a “conflict check” to make sure we can represent them. We call the parent back shortly to let them know if we can help them. If not, we will provide them other ways to get help.
- Services we provide to eligible parents and caregivers
  - Information and advice about the ACS investigation
  - Possible legal and social work advocacy for clients including at conferences
- Why our services are needed
  - Prevent family separation
  - Prevent court filings
  - Prevent coercive invasion of families' privacy by ACS
  - Harm reduction

# Early Defense by Borough

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## BROOKLYN

**Brooklyn Defender Services:** (646) 974-9343 or (347) 592-2500 or email: [familyintake@bds.org](mailto:familyintake@bds.org)

## MANHATTAN

If you live in Manhattan zip codes 10025, 10026, 10027, 10029, 10030, 10031, 10032, 10033, 10034, 10035, 10037, 10039, or 10040, call **Neighborhood Defender Service of Harlem:** (619) 630-8936 or email [fdtintake@ndsny.org](mailto:fdtintake@ndsny.org)

Call or text **Center for Family Representation** if you live in any other zip code: (646) 809-4308 or email at [cfrintake@cfrny.org](mailto:cfrintake@cfrny.org)

## QUEENS

Call or text **Center for Family Representation:** (347) 286-4365 or email at [cfrintake@cfrny.org](mailto:cfrintake@cfrny.org)

## BRONX

Call the **Bronx Defenders** ([www.Bronxdefenders.Org](http://www.Bronxdefenders.Org)): (845) 535-9790 or (347) 778-1266 or (718) 838-7878 OR EMAIL: [familyintake@bronxdefenders.org](mailto:familyintake@bronxdefenders.org)

# Thank you for your time

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Questions? Contact us:

Trainer 1: T1 email

Trainer 2: T2 email

**Brooklyn** (B  
D  
S)  
**Defenders**