

Family Integrity & Justice Quarterly

A Journal for Family Well-Being | Spring 2022



UNINTENDED BIAS & CULTURAL COMPETENCE



PK LEARNING



Duration
45 minutes



Target Audience
All child welfare professionals



Custom Content
Available upon request

This course is designed to introduce the child welfare professional to the principle of unintended bias and explore its meaning, enabling them to see that, while unintended bias is part of the normal human experience, it must be recognized and transformed into cultural competence in order to neutralize its impact on the delivery of child support services.

This course encourages child welfare professionals to identify their own unintended bias—first by examining the seven types of bias and how it impacts their work as service providers. Then, cultural competence is introduced, which is the healthy acknowledgement of how one’s own cultural viewpoint, attitude, and behavior can impacts others. Learners are guided to practice this cultural competence through scenario-based activities using enhance graphics and animations. Our goal is to empower child support professionals towards constructive interactions with those of differing cultures and worldviews.



**PUBLIC
KNOWLEDGE®**

YOUR CATALYST FOR POSITIVE OUTCOMES

(800) 776-4229
pubknow.com



Family Integrity & Justice Quarterly

A Journal for Family Well-Being

Editor-in-Chief

Jerry Milner
Director of Family Integrity & Justice Works
Public Knowledge®

Editor-in-Chief

David Kelly
Director of Family Integrity & Justice Works
Public Knowledge®

Publisher

Stacey Obrecht
President
Public Knowledge®

Managing Editor

Christie Matlock
Management Consultant
Public Knowledge®

Copy Editors

Kristin Baughman
Copywriter
Public Knowledge®

Stephanie Meisner-Maggard
Senior Marketing Specialist
Public Knowledge®

Design

Janelle Shields
Graphic Designer
Public Knowledge®

Editorial Board Members

Justin Abbasi
Co-Founder, Harbor Scholars: A Dwight Hall Program at Yale

Zabrina Alequire, JD
Family Defense Practitioner

Laura W. Boyd, Ph.D.
Owner and CEO, Policy & Performance Consultants, Inc.

Melissa D. Carter, J.D.
Clinical Professor of Law, Emory Law

Kimberly A. Cluff, JD
MPA Candidate 2022, Goldman School of Public Policy,
Legal Director, California Tribal Families Coalition

Kathleen Creamer
Managing Attorney, Family Advocacy Unit
Community Legal Services of Philadelphia

Angelique Day, Ph.D., MSW
Associate Professor
Faculty Affiliate of the Indigenous Wellness Research Institute
Director of Federal Policy for Partners for Our Children
School of Social Work, University of Washington Seattle
Adjunct Faculty, Evans School of Public Policy and Governance

Yven Destin, Ph.D.
Educator and Independent Researcher of Race and Ethnic Relations

Paul DiLorenzo, ACSW, MLSP
National Child Welfare Consultant

Carmen Hidalgo
Parent Advocate, Family Defense Practitioner

J. Bart Klika, MSW, Ph.D.
Chief Research Officer, Prevent Child Abuse America

Heidi McIntosh
Principal, LGC CORE Consulting, LLC

Jessica Pryce, Ph.D.
Director, Florida Institute for Child Welfare
Florida State University

Delia Sharpe, Esq.
Executive Director, California Tribal Families Coalition

Mark Testa
Distinguished Professor Emeritus, University of North Carolina, Chapel Hill

Elizabeth Wendel, MSW, LSW
International Consultant, Family Well-Being and Mental Health Systems

Advisory Board Members

Jamole Callahan
Director of Training and Development
National Center for Housing and Child Welfare

Angelique Day, PhD, MSW
Associate Professor
Faculty Affiliate of the Indigenous Wellness Research Institute
Director of Federal Policy for Partners for Our Children
University of Washington Seattle

Jude C. Louissaint, MSW, CPC
Management Consultant, Public Knowledge®

Glenda McMillan, MSW, LMSW
Regional Vice President, Public Knowledge®

Dr. Melissa T. Merrick
President and CEO, Prevent Child Abuse America

Stacey Obrecht, JD, CWLS, PMP
President, Public Knowledge®

Vivek S. Sankaran
Clinical Professor of Law, University of Michigan, Michigan Law

Shrouda Selivanoff, BAS
Director of Public Policy, Children's Home Society of Washington

Victor E. Sims, BA
Management Consultant, Public Knowledge®

Paul Vincent, MSW
Independent Consultant

Family Integrity
& Justice 

© 2022 by Family Integrity & Justice Works. All rights reserved. Family Integrity & Justice Quarterly is published quarterly by the Family Integrity & Justice Works (ISSN 2770-6982).

For information visit fijworks.com

Family Integrity & Justice Quarterly

A Journal for Family Well-Being

CONTENTS

- 6 | **All I Needed Was A Little Help**
Jerry Milner and David Kelly

FOREWORD

- 10 | **Why End Mandated Reporting**
Dorothy E. Roberts
- 16 | **News from FIJW
Coming Soon
Lifting Up Allies**

MY PERSPECTIVE

- 18 | **Hope VanSickle's Story:
Through the Eyes of a Mother**

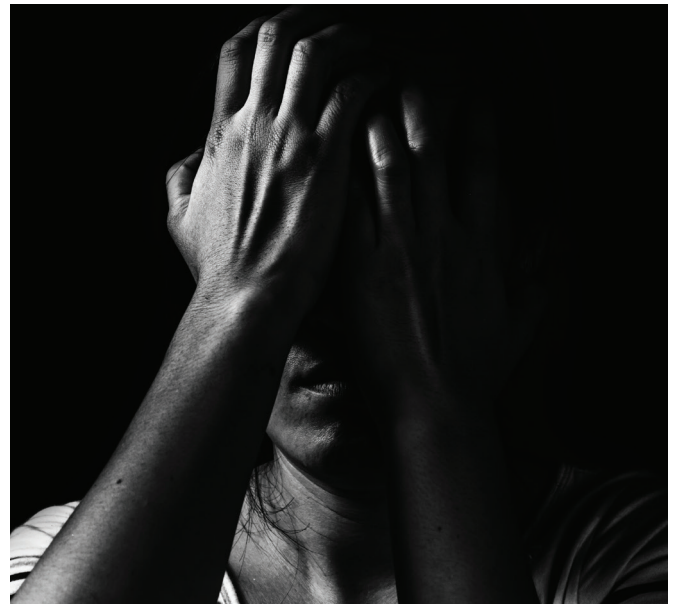
**Diana VanSickle's Story:
Through the Eyes of a Child**

FEATURES

- 22 | **Perfectly Imperfect: How Imprecise
Definitions of Child Neglect and
Poverty Reinforce Anti-Black Racism
in the Child Welfare System**
Sharon L. McDaniel
Sherri Simmons-Horton
Ervin Dyer, Yven Destin
Kathleen L. Gima
Anthony R. Sosso, Jr.
Jay Kadash
James T. Freeman
James A. Stratford
Constance Iannetta
Katherine Buckley

- 38 | **Trapped in the Web of Family
Policing: The Harms of Mandated
Reporting and the Need for
Parent-Led Approaches
to Safe, Thriving Families**
Imani Worthy
Tracy Serdjenian
Jeanette Vega Brown

- **50 Why?**
An Original Poem
Jawanza Phoenix



- 52 | **Justice-Centered Child and Family
Well-being Systems to
Address Neglect**
Priscilla A. Day, Angelique Day,
Mary McCarthy, Corey Best,
Katharine Briar-Lawson and
Jessica Pryce

70 | "Like a Trap": Mandatory Reporting and Dilemmas of Help-Seeking
Kelley Fong

► **80 Normal?**

An Original Poem
Timothy Dennis

82 | Rethinking the Community Response to Child Neglect in the 21st Century From Mandatory Reporting to Mandatory Supporting of Families
Amy Jantz Templeman
Romero Davis



► **92 What Happens After**

An Original Poem
Suzanne Laliberté

94 | Addressing the Root Causes of Child Neglect
Jennifer Jones
Bart Klika
Melissa Merrick

106 | Let CPS Focus on Child Safety, Not Everything Well-Being-Related
Mathangi Swaminathan

120 | The Challenge of Changing Amorphous, Limitless Neglect Laws in a Family Surveillance Society
Diane L. Redleaf

132 | Help Not Hotlines: Replacing Mandated Reporting for Neglect with a New Framework for Family Support

Shereen A. White
Shanta Trivedi
Shakira Paige
Meredith Giovanelli
Makena Mugambi

A BETTER WAY

144 | NEEDED: A Different Path for Child Welfare

Judge William Thorne
Karan D. Kolb

► **156 I AM**

An Original Poem
C.G.

REFLECTIONS

158 | A Call for Inspired Thinking
Victor Sims and Julie Breedlove



All I Needed Was A Little Help

Jerry Milner and David Kelly

This group of parents was not unlike the many others we have spoken with over the past few years. People who have told us their emotional stories of involvement in the child welfare system peppered more often than not with feelings of being overwhelmed, afraid, and hopeless within a system that has the power to split up their family, sometimes permanently, and sometimes subjectively. A system that too often feels punitive and experienced as racist by too many people of color.

They talked about the stigma of being involved with child welfare—the judgment, the demands to do better, to be better—the stigma that can add pressure to remove children from environments deemed undesirable by a social worker, a judge, a law enforcement officer.

As we listened, story after story reflected the parents' lack of essential resources and their frustration and shame over being unable to meet even basic needs—the lack of access to needed services, wait lists, unclear or conflicting expectations, complicated eligibility requirements, not knowing what is available or where to get it. Vulnerabilities such as lack of safe, affordable childcare, or transportation led to the inability to hold a job, which led to inadequate food, clothing, and shelter, which led to a well-intended but unknowledgeable mandatory reporter calling child welfare. Cascading challenges running one into the next.

Clear patterns emerged of calls to child abuse hotlines due to lack of supervision, children coming to school dirty, hungry, sometimes dressed inappropriately for the weather, or overtired. Reports of children not keeping up with their virtual homework—forget that the family must share one laptop computer with four children each night. We heard about struggles with stable employment, inadequate income, horrible housing situations, and parents trying their best. We heard about depression, loneliness, and struggles with

addiction. We repeatedly heard that help was needed and needed sooner but that there was no safe place to go—no place they could trust. One parent's words continue to resonate now months later; they were haunting in their clarity:

“All I needed was a little help . . . and they took my children away.”

Words powerfully delivered by a single Black mother who was trying her best to start over after leaving an abusive husband. She had multiple children and was now on her own. She was doing everything she could to keep her kids safe and meet their needs. She had been brave in leaving, an act of protection and love. It was painful for her to make the trip to social services to seek financial assistance; she'd always worked beginning in her early teens. She knew a little assistance now could help her get on her feet.

She recounted the reaction of the intake worker when she answered the question about how many kids she had and that they were all staying in a one-bedroom apartment in the wrong part of town. She told of the sinking feeling recognizing the look in the eyes of the woman across the desk and her curt replies; the meaning behind both was clear. The stigma the mother had feared was taking shape before her eyes, stereotypical dots being connected and stereotypical beliefs overshadowing recognition of her individual struggles, her reality, and humanity.

But the intake worker couldn't see any of that. She saw a poor black woman with “too many” kids and no income. And the mother asking for help could see the thought processes occurring on the other side of the intake desk: how could this mother possibly meet even their most basic needs? The judgment visible in expressions and laced into every question and response. So, a hotline call was made. The child protective service investigator that

responded to the report couldn't see that this mother was demonstrating strength and love by seeking help to stay afloat without the essentials that all families must have and had reached out for help as a protective act.

People who are legally bound to report such concerns may not be able to see the love and bonds that the children have for and with their parents, even when, maybe especially when times are tough, and how critical those bonds are to the child's and parents' feelings of worthiness, safety, and belonging.

Policymakers and advocacy groups that are singularly focused on increasing surveillance in the name of safety do not see the collateral damage it causes to real people that care about their children and children themselves. Damage that includes unnecessary separation, trauma, the inclusion of names on registry lists that will forever limit employment opportunities and economic mobility, and countless other indignities and ongoing threats to well-being for children and parents. They do not see how "better be safe than sorry" approaches create so much sorrow.

So, given this chain of events—knowing the risks of asking for help, why would we expect a parent, especially a poor, single Black mother to feel safe asking for help Why would she trust public agencies whose mission it is to help alleviate poverty, strengthen families, and enable parents to care for their children adequately when any or all might be required to report her situation to a hotline?

So, then, why couldn't she ask someone else—a service provider, a mental health counselor, an economic assistance worker, a daycare provider—for help? Why not admit that things are tough, beyond tough, and that you need help?

Because the risk is there, too.

These potential helpers are also the very people who are legally bound to report you, me, or this poor, single mother to the public agency. Because if I am unable to put food on the table or buy good shoes for all of my children or cannot keep up with bills or rent, I may fit the definition of a neglectful parent because these

people have seen me all through the years and know that I struggle chronically.

Because we have told those professionals over and over again – you must report, and if you don't, you'll be in trouble.

And so, she waited until things were very bad. Until her earnest attempts at recovery were hampered by everything else going wrong in her life. Until the demands of the child welfare system to do this and do that, and the requirement to hold a steady job became impossible to carry out. Until someone called child welfare, ". . . and they took my children away."

There is a better way.

"Poverty is not neglect. Poverty is rarely a willful attempt to deny children their basic needs. Poverty is not a reason to remove children from their parents. The availability of a financially better-off relative or foster family is not a reason to separate children from their parents or to keep them separated."

Poverty is not neglect. Poverty is rarely a willful attempt to deny children their basic needs. Poverty is not a reason to remove children from their parents. The availability of a financially better-off relative or foster family is not a reason to separate children from their parents or to keep them separated.

While many state definitions of child neglect expressly prohibit removing children solely due to poverty, the reality is that it happens every day. It happens because we allow poverty to go unchecked until things become very bad. We can say we are not removing due to poverty when, in fact, the inability of the family to meet basic needs underlies whatever other reasons we may put forward for removal.

We have meticulously built a system of mandatory reporting that allows unfettered

access into the lives of struggling families, using the tools at our disposal—investigations and removal. And, we will not intervene until things become very bad, which justifies our use of these tools for what we call neglect in the same ways that we justifiably use them in horrific cases of physical and sexual abuse. We must realize that poverty, trauma, and illness are not parental shortcomings and to stop treating them as such. We have time and time again codified contempt for poor families, parents that have suffered trauma, mental health, or substance misuse disorder. We have done so in the name of protection or providing safety nets, but these structures have, in reality, provided neither and often done great damage.

We have an opportunity to look beyond the limits of our perceptions of parents in the child welfare system, beyond what we want them to look like, and to look at them as they are—human beings with serious struggles. People who have too often had bad things happen to them and experienced trauma with lack of support, with generational histories of difficulty—but mostly human beings who love and want the best for their children.

Legislators at the federal level can demonstrate that they see and value families by converting Child Abuse Prevention and Treatment Act

from a tool of surveillance and assurances that states are doing the right thing into an altogether new vehicle funded to allocate funds to actually allow states and tribes to do things that benefit families. As evidence, one need only read the Commission to Eliminate Child Abuse and Neglect Fatalities report issued several years ago; the most poignant findings are that investment in upstream prevention and a true investment in familial supports are the best ways to prevent serious child injury and fatalities. We can get to the point where dramatically fewer calls to abuse hotlines are necessary and assure that those reports that do involve serious abuse are treated seriously.

We can replace surveillance and harm with investment and support.

And, when we can successfully replace our own privileged and uninformed perspectives and judgments, perhaps we can replace the things that are built on those perspectives—overly broad definitions of child neglect, required reporting as maltreatment those situations that reflect genuine struggles and needs for assistance, and a lack of compassion for those parents who want the best for their children, just as we say we want.

It begins with truly seeing the person sitting across the table.



© Chernetskaya | Dreamstime.com

FOREWORD

Why End Mandated Reporting

Dorothy E. Roberts

In *Torn Apart: How the Child Welfare System Destroys Black Families—And How Abolition Can Build a Safer World*, I argue that the U.S. child welfare system is part of a larger carceral regime, which includes prisons and police, that is designed to control marginalized and disenfranchised communities, especially those that are Black and Indigenous. Child welfare authorities claim to protect children from parental maltreatment by investigating, monitoring, and punishing families, and they exercise power over parents by wielding the threat to take away their children. In other words, the main function of child protective services (CPS) is to police families.

A critical aspect of the family policing system is its enlistment of professionals to report their suspicions of child maltreatment to state agencies. By federal edict, every state must identify people who work in professions that put them in contact with children—such as teachers, health care providers, social services staff, and day care workers—and require them by law to report suspected child abuse and neglect to government authorities. As an arm of the family policing system, mandated reporting is based on the system’s carceral logic, targets the marginalized communities under the system’s control, and promotes the harms family policing inflicts on children and their family caregivers. The articles in this important issue of *Family Integrity and Justice Quarterly* elucidate how mandated reporting enables state surveillance, how it works in conjunction with vague definitions of child neglect, and how ending these prongs of child welfare law can facilitate the transformation needed in our approach to supporting families and keeping children safe.

Mass Discriminatory Surveillance

States began enacting reporting laws in the 1960s in response to the “discovery” of child abuse in 1962 when pediatrician Henry Kempe and his colleagues published a paper coining the term “battered child syndrome.” Almost every state had passed mandatory reporting provisions by 1967. As the meaning of what constitutes child abuse broadened beyond severe cases of child abuse and mandated reporting expanded, the number of maltreatment reports skyrocketed—from ten thousand in 1967 to more than two million annually two decades later. Some states have passed “universal” reporting legislation that requires all residents, with few exceptions, to convey their suspicions to CPS or police.

Family policing relies on this expansive network of monitoring families that spans the school, health care, public assistance, and law enforcement systems. The confluence of social services and child protective services directs state surveillance against poor and low-income families, especially Black families, who are more likely to rely on public service providers. Using social services, receiving welfare benefits, and living in public housing subject families to an extra layer of contact with mandated reporters. Public professionals are far more likely to report maltreatment than are private professionals who serve a more affluent, paying clientele. Several of the articles point to an alarming statistic: More than half (53 percent) of Black children and more than a third (37.4 percent) of all children in America are the subject of a child maltreatment investigation by the age of 18.¹

¹ Kim, Hyunil et al. “Lifetime Prevalence of Investigating Child Maltreatment Among US Children.” *American Journal of Public Health* vol. 107,2 (2017): 274–280. doi:10.2105/AJPH.2016.303545.



Dorothy E. Roberts

Poor and low-income families are more likely to come in contact with professionals who are mandated to report child maltreatment. Receiving social services, relying on welfare benefits, living in public housing or shelters, and using public clinics or hospitals all subject parents to an extra layer of surveillance by government workers who are quick to call a hotline or 911 when they suspect maltreatment or a family's need for services. Thus, the authors from *Rise* write, "[M]andated reporting is an extension of the racist, classist, ableist family policing system—making the system unavoidable in Black and brown low-income communities." White et al. reaches a similar conclusion, "Taken as a whole, mandated reporting laws have done more harm than good, and as applied to people experiencing poverty, particularly Black families, these laws have given the state license to destroy their communities." By contrast, wealthy parents avoid the home inspections, drug testing, and psychological evaluations that the government imposes on poor and low-income parents.

As child welfare departments increasingly incorporate computerized databases and risk assessment tools, they can amplify the reach of reporting by individuals. Digitizing family policing worsens the problems caused by mandatory reporting. "Mandatory reporting will soon be a contributing factor to what has become known as algorithmic racism (Noble), and therefore must account for the racial bias in the information collected," McDaniel, et al., observe.

Vague and Amorphous Neglect Statutes

Although mandated reporting laws were originally intended to encourage physicians to identify hard-to-detect cases of physical child abuse, they now mostly lead to reports of child neglect. As White, et al. point out, "Issued in 1963, the Children's Bureau's model legislation placed a clear emphasis on reporting of child abuse by physicians... embrac[ing] the view that physicians were 'in an optimum position to form reasonable, preliminary judgments' as to how physical injuries occurred." As states expanded the breadth of mandatory reporting laws, they also "expanded definitions of child abuse and neglect in their reporting laws to

meet federal funding requirements." Parental neglect—and not only physical abuse—became a reportable offense. Thus, mandatory reporting became entangled with definitions of child neglect, creating "a false equivalency between intentional physical harm and conditions of poverty that impact the welfare of children."

Several of the articles in this issue discuss the state power enabled by vague and amorphous neglect statutes. For one thing, extending mandated reporting to child neglect vastly expands the reach of CPS surveillance because at least 73 percent of cases involve allegations of neglect.² The reach afforded family policing is exaggerated by the vagueness of state neglect statutes. "Child neglect reports have become so prevalent that it has become nearly impossible to get a clear picture of what 'child neglect' actually means," writes Diane Redleaf, pointing to categories such as "Injurious Environment" and "Lack of Supervision." "Neglect's boundaries are invisible. Just about any act or omission related to a child *could* qualify as neglect."

To make matters worse, the expansive reporting net captures mainly impoverished families because many state definitions of neglect conflate it with poverty. "Often, child neglect is confused with poverty even in states that prohibit the use of removal due to poverty alone," Jones, Klicka, Merrick note. The conflation of neglect and poverty exacerbates the system's racial inequities because "Children and families of color are more likely to be impacted by poverty and to come to the attention of the child welfare system for neglect and other forms of child maltreatment." Moreover, the vagueness of neglect statutes gives caseworkers and judges wide discretion, giving them leeway to make decisions based on biased assumptions and stereotypes. "In practice, these definitions lead to disparate application of child neglect reporting (McDaniel, et al.)." For these reasons, Mathangi Swaminathan concludes that educational neglect should be "diverted away from CPS to culturally appropriate community-centered resources."

²AFCARS Report No. 27, U.S. DEP'T OF HEALTH & HUM. SERVS., ADMIN. FOR CHILD. & FAMILIES, CHILDREN'S BUREAU (2020), <https://www.acf.hhs.gov/cb/report/afcars-report-27>. 27-34. doi:10.1080/19371918.2011.619449

Harming Children and Families

Proponents of mandatory reporting claim that this vast family surveillance machinery that targets the most disenfranchised families is necessary to ensure their children's welfare. This argument, however, is false: mandated reporting harms children and their families in multiple ways. As Templeman and Davis put it plainly: "Mandatory reporting, as it stands, is not an evidence-based policy."³ There is very little evidence that mandatory reporting benefits children and families in need of support."

Contrary to the asserted rationale, reporting concerns about children's welfare to child protection authorities does not result in a beneficial response. Instead, CPS treats these calls as accusations to be investigated, not requests for support. Most reports are unsubstantiated by CPS caseworkers, so the families receive no response at all, other than being needlessly traumatized by an investigation. According to White, et al, "[b]ecause broad reporting requirements encourage professionals to call in anything they find suspicious, even though not everything suspicious is indicative of maltreatment, mandated reporting often places unnecessary scrutiny on safe, healthy, and functional families."

Substantiated reports launch even more intrusive oversight that does nothing to meet families' enduring material needs like secure housing, a reliable income, and decent health care. Although many calls to the child abuse hotline are completely frivolous or vindictive, many professionals turn to CPS as a way to address the hardships they see families facing but are not equipped to handle themselves. It may be the only avenue they know for getting help to children in need. Yet mandated reporting has the opposite effect: it drives family caregivers from seeking services for fear the professionals who work there might turn them over to CPS, thus thwarting the potential for schools, health care clinics, and social service programs to be hubs of care for children. As the Rise authors write: "Mandated reporting creates a culture of fear that prevents parents from accessing resources and support that

contribute to family safety and well-being—even if they've never experienced a report." This culture of fear has negative repercussions for the entire community. "Beyond the negative impacts to families, mandated reporting of neglect weakens communities by creating barriers to authentic supports and services," write White, et al.

These observations are backed up by Kelley Fong's extensive ethnographic research. "In my research with low-income mothers in Rhode Island, I consistently heard about the dilemmas this set-up created," Fong recounts. "The mothers I met expressed confidence in their mothering, but recognized that professionals could easily misconstrue their best efforts to care for their children. In response, mothers proactively distanced themselves from educational, healthcare, and social service providers." Enlisting service providers in CPS surveillance then weakens their capacity to improve children's welfare. McDaniel, et al, give tragic examples of multigenerational harms experienced by children and their families as a result of investigations that led to taking children from their families instead of providing them with the concrete resources they needed.

Is Reforming the System Sufficient?

This article's illumination of mandatory reporting's role in policing families and the harms that the surveillance inflicts on children, families, and communities exposes the profound problems with family policing itself. This issue, therefore, begs a deeper question: if mandatory reporting is an extension of a fundamentally repressive system designed to monitor, control, and punish disenfranchised communities, is it enough to reform the system by ending mandatory reporting?

While ending mandatory reporting will curtail the power of CPS to police families, it will leave intact the system's foundational logic, design, and purpose. In *Torn Apart*, I argue that the

³ Raz M. Unintended Consequences of Expanded Mandatory Reporting Laws. *Pediatrics*. 2017 Apr;139(4):e20163511. doi: 10.1542/peds.2016-3511. Epub 2017 Mar 14. PMID: 28292874.

family policing system should be entirely dismantled and replaced with a radically reimagined way of supporting families and keeping children safe. Ending mandatory reporting is an important reform toward that vision—not to fix the family policing system, but to abolish it.

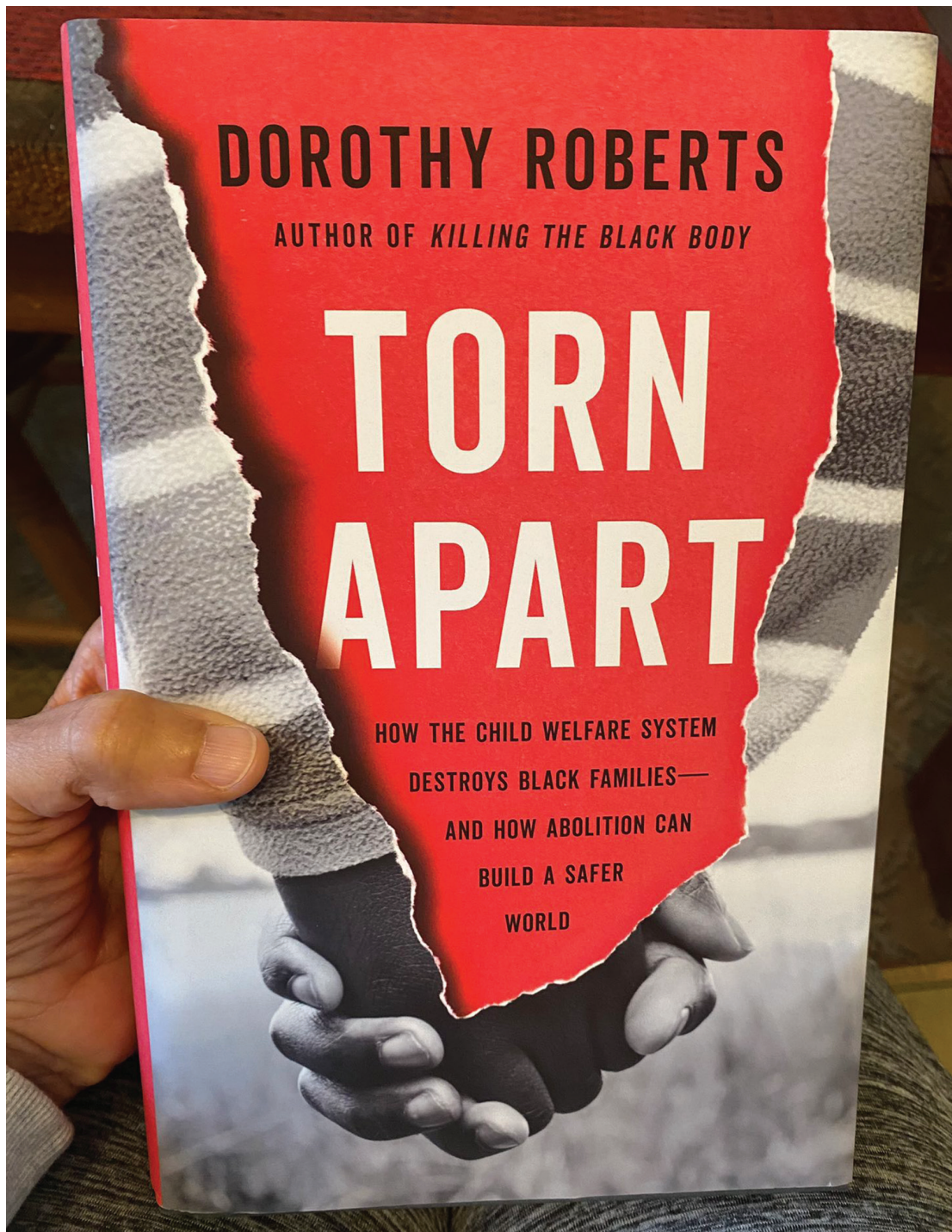
Several of the articles in this issue point the way toward abolition. In addition to ending mandated reporting and other laws that prop up the system, abolitionists should advocate for diverting resources away from CPS toward material resources and practices that would actually improve children’s welfare. As Day, et al. write, “[w]ith a vision of family preservation, resources that are currently used for child removal can be shifted to keep children at home safely, reducing trauma caused by removal and resulting in better long-term outcomes for children and families.” In addition, “we can leverage existing relationships to create new pathways to services without involving the family regulation system,” recommend White, et al. Giving examples from its Participant Action Research report, the authors from Rise aptly summarize this abolitionist approach,

“Abolishing the system — and ending mandated reporting — requires divesting from family policing and disentangling family support from family policing, so parents do not have to be involved with oppressive systems to access resources. Funding shifted away from family policing can be invested in community-led approaches to family and community safety and wellness. We must invest in community-led innovation to explore, adapt, and expand existing and promising healing, restorative, and transformative justice approaches to creating safety and accountability.”

Starting with this issue’s critique of mandatory reporting and vague definitions of neglect, readers may find themselves questioning the entire system that relies on these discriminatory and destructive laws. Many may conclude as I have that these practices are not

aberrational appendages that can be clipped to fix a fundamentally benevolent system. Rather, they are reflections of the carceral logic that animates family policing, and they help to demonstrate why family policing itself must be abolished.

Dorothy E. Roberts is a professor of Africana studies, law, and sociology at the University of Pennsylvania. She is an internationally-recognized scholar and social justice activist, whose books include Killing the Black Body, Shattered Bonds, Fatal Invention, and Torn Apart.



Dorothy Roberts, an award-winning scholar, and seen here holding her book, exposes the foundational racism of the child welfare system and calls for radical change. Many believe the child welfare system protects children from abuse. But as *Torn Apart* uncovers, this system is designed to punish Black families. Drawing on decades of research, legal scholar and sociologist Dorothy Roberts reveals that the child welfare system is better understood as a “family policing system” that collaborates with law enforcement and prisons to oppress Black communities. Child protection investigations ensnare a majority of Black children, putting their families under intense state surveillance and regulation. Black children are disproportionately likely to be torn from their families and placed in foster care, driving many to juvenile detention and imprisonment. The only way to stop the destruction caused by family policing, *Torn Apart* argues, is to abolish the child welfare system and liberate Black communities. This publication is available for [purchase](#).

Invitation for Creative Expressions

The FIJW team seeks to amplify and honor the voices of individuals who have experienced the child welfare system. Readers with lived expertise in the child welfare system as parents, children, young adults, kinship care providers or practitioners are invited to submit creative expressions for consideration and possible inclusion in future editions of the *Quarterly*. Original artwork, poems, and other visual works that speak to your experiences and the need for replacement are welcome on an ongoing basis.

Please email Christie Matlock, Managing Editor, cmatlock@pubknow.com for submission information.

Family Integrity
& Justice

A photograph of several hands of different skin tones stacked in a circle, symbolizing unity and community. A yellow diamond shape is overlaid on the center of the hands.

**"HONORING
THE POWER OF
FAMILIES AND
COMMUNITIES"**





On The Cover

The original cover art, shown here, was created by Lino Peña-Martinez. Lino lives in Washington, D.C. and works at the U.S. House of Representatives, Committee on Energy and Commerce. In his spare time, Lino is the President and Board Chairman of Sun Scholars, Inc. where he dedicates his effort towards supporting former foster and adopted youth in college. Lino manages Digital Operations at Fosterstrong, a nonprofit rebranding what it means to come from or be of the child welfare system.

Lino also worked at The Home for Little Wanderers, a congregate care facility, as a caseworker. As a foster care alumnus with a passion for civic engagement, Lino understands the intersection of complex trauma and social welfare and is deeply committed to transforming systems. He lives by a motto of "A world in which more is taken into account, is a world in which more can be addressed."

Coming Soon

Spring/Summer 2022 — Virtual Event: *The Harm of ASFA: A National Call for Action*

Join contributors to the inaugural issue of the *Quarterly* for a national virtual event naming the harms of ASFA and calling for clear and specific replacement. Hear directly from parents affected by ASFA and leaders in the field. More information will be shared via our FIJW child welfare listserv and you can sign up by visiting www.fijworks.com to receive news about our work, quarterly journal, and national events.

Summer 2022

Family Integrity & Justice Quarterly Volume 1, No. 3: ***The Need To Invest In Community-Based Supports***

The next issue of the *Family Integrity & Justice Quarterly* will focus on The Need to Invest in Community-Based Supports as a replacement strategy for one-size-fits-all approaches to service delivery common in child welfare. As a follow-up to our second issue on moving from mandatory reporting to systematic supporting of families to stay together, our third issue will examine the power of community to strengthen families. Among other aspects of the topic, we will explore community-based supports for kinship caregivers, primary prevention and older youth leaving foster care, as well as legislative strategies and advancement of culturally appropriate supports for families.



In Remembrance

Richard T. Cozzola passed away on Saturday April 16, 2022, surrounded by his wife, son, and siblings. Rich dedicated his life and career to public service and was a fierce and dedicated advocate for the Legal Aid community particularly families involved within the child welfare system. Rich was a supervising attorney specializing in legal issues involving children and adolescents at LAF (Legal Assistance Foundation) in Chicago, Illinois. His work and legacy will live on for generations as someone who fought to make this world better. Rich had a joyful, playful spirit and sense of humor and the ability to encourage and support others like no other. Our deepest condolences to Richard's family, friends, and colleagues.

My Perspective

Hope VanSickle's Story: Through the Eyes of a Mother

I always wanted to be a good mother and wife. For me, that meant surviving domestic violence from my husband. For me, that meant paying bills with money I didn't have to protect my two young daughters, both under the age of 8, from emotional and physical abuse. I took it so that they didn't see it or experience it. I was at a loss when I was arrested and incarcerated for my bill forgery. After I was arrested and incarcerated, I was scared and worried, but nothing could prepare me for when the state (Division of Youth and Family Services – DYFS) separated my daughters from my husband for not being able to pay the rent and for his alcoholism. It took several days for DYFS to alert me that they had been taken and it took them even longer to explain to me where they were and if they were safe. I was still their mother. I had done nothing wrong. They should have told me.

Getting Them Back

I was on autopilot. I found Legal Services of New Jersey, and we fought. Whatever the court ordered, or whatever my caseworker or my attorney asked of me, I did. I did it and three times more. I completed every program and obtained every certificate—so much so, I became the parent leader and guide for many of the prison programs. I completed the programs before every court hearing to make sure the judge knew I was trying to get them back. When I was released to a halfway house, I started to lead the programs at the halfway house. I gave them no reason to not return those girls to me, except for housing.

Housing

Because of my incarceration history, I did not qualify for many types of housing programs like Section 8 or other subsidized housing. I couldn't get a job easily, and I did not qualify for certain times of employment and financial assistance. I had to appeal denials and locate a program that would support me and work for me. This took time. My girls, at this point, were with a great foster parent. She supported reunification. But I

knew the time was ticking and that termination could happen if I couldn't find the "right housing." It was only through a special criminal release program that I was able to get employment and housing. I often think about how the criminal side was more capable of helping me and my girls than the child welfare side.

Relatives

Once my girls were taken, I gave the caseworkers and my attorneys my niece's number. She was very close to the girls, and I knew it would make the girls feel safe. But DYFS wouldn't place with them because of some criminal history for my niece's husband. He didn't have anything dangerous in his past, but his past would delay licensure of their home, and that was unacceptable to DYFS. It didn't matter that I would get to see them more or spend dinners with them—none of this mattered.

Shame

I also was scared. My girls now lived in a beautiful home with a bedroom, backyard, and lake. They even got a dog! I was insecure and vulnerable. I hated going to court in an orange jump suit with my hands handcuffed. I would even ask my attorney to miss court because I felt ashamed. Did the judge see me as a mother or a prisoner? I didn't look like me. Could the judge recognize that I was a good parent? That I loved my girls?



Hope embracing Diana

Diana VanSickle's Story: Through the Eyes of a Child

Removal

My story with the child welfare agency began when I was about 7. At that time, my father was struggling with alcohol addiction that was fueled by bills and financial stress. When the stress became too much, it led to domestic violence towards my mother. My mother was stuck in a cycle of domestic violence. The cycle went something like this: the bills needed to be paid, my parents didn't have the money, drinking, domestic violence, repeat. You could say that having money might stop the cycle, right? Well, in an effort to stop the cycle, and to keep her children safe, my mother wrote bad checks that soon after led to her incarceration.

Poverty Related to Housing

It did not end the cycle. My father was still sick, suffering from addiction, and left with his two daughters. I remember we were living in a motel at the time of my removal because we lost our home due to financial struggles. My father realized that our living conditions were not ideal, and he realized he needed help, so he asked for it but did not get it. It wasn't long after requesting help with housing and being denied that my sister and I were removed. I don't remember the exact moment of my removal and how it all happened, but what I do remember is that my father was very intoxicated and unconscious, and the cops showing up.

First Foster Placement

I was extremely fortunate to go through foster care with my younger sister because she was the only piece of home I had left. We went from home-to-home several times, and I do not know what I would have done without her. While the families we experienced were kind and meant well, they were not our family, and it was not home. From what I remember, one family wanted my sister and me to call them Mom and Dad right away, which can be extremely confusing and scary for a 5- and 7-year-old. I also remember that one of the families would make us stand in time-out and apologize to God as well as leave my sister and me in the guest room for long periods of time

as punishment. Again, I do feel these families meant well, but these situations made my sister and I miss home even more. Aside from some negative experiences, my sister and I eventually found the light at the end of our tunnel with our amazing foster parents, who ended up being our last.

Seeing Our Mother

During my mother's incarceration, we were fortunate enough to be able to visit her. Those days were the absolute best days. I remember being able to see my mom would be the light of my entire week. Not to mention I think those visits are what got my mother through it all. My sister and I did not care that she was incarcerated, or that we were visiting her at a jail site, we just wanted to see her. If you asked me today if I remember anything about the jail I visited my mother at so many years ago, I simply could not answer because I was not wondering why I was at a jail at the age of 7. I was just excited to see my mother and that is all that mattered to us.

Housing

When my mom was released from her incarceration, she did absolutely everything she possibly could to get us back. What seemed to make it more difficult was finding a job and finding a suitable living situation. It was difficult for her to find housing or a job after just being in jail. Either she was not accepted, or it was not suitable for us. As time went on, and my mother kept looking, she finally found a steady job and an apartment. My mother's reaction when she found out we were finally coming home was "Do you think the house will be good enough for them?" My mother felt that my sister and I would have a hard time transitioning from homes that were bigger and "nicer" to her newly found apartment. She was extremely wrong but what she had been through put her in that mindset. The house could have been the size of a shoe box, or the ugliest neon green, we would not have cared because that's not what makes a home. People make a home and my parents were and always will be my home.

My Voice

Throughout my time in the foster care system, I do not remember ever really being asked what I wanted. Sometimes it felt like I did not have a voice at all.

"Throughout my time in the foster care system, I do not remember ever really being asked what I wanted. Sometimes it felt like I did not have a voice at all."

While I do not remember ever being asked what I wanted, I discovered a letter not too long ago from 2007 to the judge. In short, I wrote that I understood my dad was sick and that I felt more comfortable staying with my mom until he recovered. I also mentioned that the foster parents I was with were amazing, but I was ready to go home to my mother whenever that could happen. I think because my sister and I were not consistently asked what we wanted to do, it made things more difficult, felt unfair to my sister and I, and caused more trauma for everyone involved.

Luckily, my sister and I were reunified with our mother. Unfortunately, that is not as common as we would want it to be for others. While we cannot change that, one thing that we can try to change is the idea of "unfit" parents. While my mother and father may have been experiencing hardships in that time of their lives, my sister and I never saw them as "unfit." We never saw my Dad as an addict and we never saw my Mom as a criminal. We saw them as our parents and our family. Today I am 23 years-old now and still jump for joy when I see my Mom and my Dad. I don't think of them based off of that time in their lives. I see them as my family and my only parents.

Please Listen

I would like to tell the world, as a daughter, to see people for who they are, not what they are on paper. On paper, my mother was incarcerated due to writing bad checks. She was seen as an unfit parent. As a person, she is the most compassionate woman who would do anything for her family and anyone she meets. On paper, my dad was an addict and an unfit parent. In person, he is the smartest, most hardworking,

goofy man I know. Both my parents mean the world to me despite being considered "unfit" on paper. "Unfit" to me seems that life just got the better of them at the time.

The reunification of my mother, sister and I was unfortunately delayed by poverty. My mother was struggling to find housing after her incarceration. In order for my mother to not lose her children, she had to find a decent paying job and find housing right out of her incarceration in a short time frame. It just did not seem fair. While I understand it was meant to be in our best interest, I felt that delaying the reunification was more harmful. Poverty is not neglect, and keeping two children away from their mother that was doing the best she could under the circumstances is unfair. Not to mention this delay of reunification gave false hope of adoption to a beautiful foster family. The topic of adoption came up when my mother was faced with the deadline to find a job and housing. So, she was to figure it out or her children would be adopted. My mother is the most determined person I know and she made it happen. If my mother was not pestering her team on what to do next every chance she could, I am not so sure it would have worked out the way it did.

While I was sheltered from it at the time, I am aware that there was concern being taken to visit my mother in a prison setting because of being a young child going into a prison. If I remember one thing from visiting my mother in prison, it was not the environment or the people that were around us but the moments we got to share. I remember the joy I felt the days leading up to go visit my mom. It was what my sister and I looked forward to, and it was what got us through it all. Without those visits, it would have been an even more difficult time than it already was. Aside from how it helped my sister and me, it most certainly helped my mother. She would write us letters from the day we left talking about the next time we would see each other. Each visit was a reminder and a glimpse of hope for what was to come after this. It pushed her to work so hard after everything was over, and we were her motivation to keep working hard. If children and even parents don't have those visits, they may feel lost and hopeless.

Hope and Diana

Today, we have jobs, and we have completed schooling and college. When strangers learn about our story, they often say they can't believe that we were one of "those" people.

Like we're normal and look successful. We are successful but we are a mother and daughter traumatized by that system and are those people. For this reason, we wanted to write together and share our story.

Diana VanSickle is a Legal Services of New Jersey Reunified Youth Advocate

Hope VanSickle is a Legal Services of New Jersey Reunified Honored Parent



Hope and Diana VanSickle

Perfectly Imperfect: How Imprecise Definitions of Child Neglect and Poverty Reinforce Anti-Black Racism in the Child Welfare System

Sharon L. McDaniel, Sherri Simmons-Horton, Ervin Dyer, Yven Destin, Kathleen L. Gima, Anthony R. Sosso, Jr., Jay Kadash, Med, MA, James T. Freeman, James A. Stratford, Constance Iannetta, Katherine Buckley

Abstract

Child neglect reports occur at a consistently higher rate than reports of other types of maltreatment. Black children are overrepresented in child neglect reporting and substantiation, which reflect compounded risk factors of poverty and anti-Black institutional bias in child protection systems. This paper will share the lived experiences of and draw from conversations with child welfare workers who are survivors of “neglect.” In addition, it will examine through literature reviews and research the history and biased legacy of child welfare in America, as well as the vast and vague definitions of neglect, which influence an uneven mandatory reporting system. While there is federal legislation providing minimum standards to states on how to define child neglect, these standards are broad and contribute to states’ varying authority in how to make child neglect determinations, thus giving local authorities room for racial subjectivity in child neglect substantiation and removal of Black children. This paper seeks to identify trends in child neglect legal definitions across the United States and discuss how child neglect laws and language target Black children. Connections to historical anti-Black racism in child neglect are also examined. Additionally included are recommended changes in the language and a challenge to the federal government to more clearly define child neglect, establishing a consistent standard for all states and locales that uphold equitable treatment of Black children in child neglect investigations.

The child welfare system, in its stated intention of protecting children, has served as a system of surveillance for Black families and has used their experiences with poverty as a weapon in family intrusion, family separation, and exclusion in the provision of resources to alleviate economic disadvantage. This paper will explore the lived experiences of professionals in the field who, as a response to personal exposure to the system’s ills, have dedicated their careers to the service of children in child welfare. Further, structural racism in the child welfare system manifests through the definition of child neglect, which falls under a broad classification of child maltreatment, labeling poor Black children and families as “at risk.” Ultimately, Black children and families who the child welfare system engages in due to allegations of neglect suffer harmful outcomes, such as prolonged trauma, oppression, and discrimination. Given the current challenges the child welfare system faces in the engagement of Black children and families, the paper will explore the historical context of race in child welfare, examining both the trends and data on how Black children and families have been engaged in the child welfare system over time. In today’s child welfare system, child neglect is considered a malevolent act by parents and caregivers and is not equally viewed for all, which disproportionately impacts Black Families. It disregards the reality that many Black families in the United States lack the support required to provide for basic needs like food, safety, and nurturance of children. Dismissing the link between poverty and neglect for Black families places the blame



“Waves” by Artist Akil Roper, akilroperart.com

squarely on Black parents and discounts the historical legacy of systemic racism, legal neglect’s vague classifications, and the patterns of surveillance of Black families once they are targeted by the system—all of which have produced lingering traumatic impacts on children, which the system professes to protect.¹ If the child welfare system is dedicated to the well-being of children, it must start by engaging Black children with lived

experiences in the child welfare system and using their stories to decolonize and redefine child neglect. This paper will demonstrate the link between neglect’s flawed definitions and mandatory reporting’s impact on Black children and families.

¹ Roberts, Dorothy. *Shattered Bonds: The Color of Child Welfare*. Civitas Books, 2009, p. 26.

Lived Experience Narratives

Studies detailing risk factors of neglect associated with the incidence of poverty fail to illuminate actual childhood accounts of those with lived experiences in the child welfare system. Feelings of confusion, uncertainty, and fear in individuals who endured the childhood trauma of family separation and/or intrusion at the hands of the child welfare system can only be articulated through their personal stories. Three people of color who are alumni of the child welfare system courageously walked through their journeys, highlighting system biases and the resulting gaps in service, as well as system actions that could have improved their experiences.

Two of the authors conducted a total of three individual semi-structured interviews in 2021 via Zoom and recorded to ensure accuracy, with the participants' verbal and written consent. The interviews lasted between one and a half to two hours, and pseudonyms were given to each participant to preserve anonymity. Participants all currently work within foster care/kinship care on the East Coast and were recruited through one author's professional network. The samples chosen were purposeful (and not randomly selected), as their voices are representative of the harm done to marginalized families, especially racialized minorities. Each participant, as a professional working in the field of child welfare, was fully aware of the purpose and intent of the project. No financial incentives were offered, and the participants were able to approve the final manuscript for the accuracy of their shared lived experiences.

Jackson's Story

Jackson, a Black male, experienced engagement in the child welfare system for six years. Placed with his maternal aunt and other family members with a history of abuse, neglect, and poverty, Jackson spoke of the child welfare system's failure to provide the needed support to his family, which would have alleviated their lingering circumstances and outcomes of neglect.

"Had anyone had a conversation with me or with my family about meeting us where we were or what we needed, I wonder how my mother's service plan would have been different in terms of reunification."

Jackson's personal resilience, despite his family circumstances, would lead him to excel in college and later give back professionally through his work as a child welfare professional and advocate in New York City. Until gaining that access, he had been mostly blind to the details of his own case—and to the system's rampant racial and other biases.

"The people running these agencies didn't look like me. They didn't grow up where I grew up, and they were making decisions based on statistics, and evaluations were being made but not by how well the families were functioning. Everyone in leadership, from the mayor to the commissioners and down, were all white people making decisions for how Black families should operate their homes, with a very, very removal-heavy system. There wasn't family finding; there wasn't a meeting. 'Child safety conferences' were something they did toward the end of my tenure—a mandate that came down from white people based on data, and data not about getting families to a level of functioning, but how many cases were opening and where. There weren't more community centers opening. There was never a question about what my family needed to thrive or what the families I worked with needed to thrive. It's the way the system is created. They're not doing surveys. People in the hood and in the ghetto are not asked questions about how to improve their families' level of functioning. They're the experts in their families. And even when they're not, we don't alter our questioning to get the information we need. We set people up."

The process Jackson regularly witnessed illuminates the limits and harm of racist and culturally ignorant casework, often connected to white supremacist ideology and “disjointing the power associated with our Black family connections.”

“In my experience, we were taught to judge [families], and I’ve been involved in conversations where people were like, ‘They’re all like that.’ And, ‘Oh, that mother’s a user, she’s going to always be a crackhead.’ And these were things leadership said, and some of them were people of color, unfortunately, but this is the language.”

Jackson’s mother returned home from prison—clean—shortly before his aunt succumbed to an illness when he was a teenager. He shared that, yet again, no formal involvement by a caseworker occurred to help facilitate the transitions within his family.

But when he became a father himself years later, Jackson was able to genuinely, and “with open arms and an open heart,” forgive his mother. They have since mended their relationship—not through any support from the child welfare system but through their own desire to heal and bond together.

“We talk about these things that were kind of hard to discuss [as a child], but we find joy and laughter, and it brings closure. She’s in a place to talk about it.”

Are families in comparable situations simply forgotten? Or are they dismissed and devalued from the moment they become “at-risk”? Or are families of color and families in poverty simply dismissed and devalued altogether? As an active dad, Jackson wonders “what tools my mom had that would allow her to be the parent she potentially could have been.”

Today, Jackson has a more knowing perspective built by his professional and personal experiences, understanding that if his family had been equipped with equitable support, resources, and tools, their journey might have been more stable. He suggested child welfare agencies create family advocacy groups, such as a “parent advocate group at the executive level to inform some of the [decisions].”

“Why don’t we put a training in some of these communities to grow and help build parent leaders, so they can take active involvement in the child welfare process and advocate for parents and their needs?”



Jackson and his Dad

Camille's Story

Like Jackson, third-generation foster care alumna Camille—who was separated from her mother and siblings at 12-years-old—has made a career of helping children and families by providing the support her own family once lacked. She knows too well that the system fails to value all families equally. Instead, it ignores the needs of some and takes their children based on caseworkers' varying and subjective views of neglect—then makes decisions for them instead of with them. Curling lines of ink on an intake form can change a family's life forever when, more often than not, they simply need equitable assistance, care, and support, rather than interference from child welfare.

“Foster care has impacted my family for generations. My mom was in care. My grandmother was in care...a lot of times this stuff is generational; it's just not talked about. People are often dumbfounded to know that my mom actually lives with me, and she's an incredible grandparent to my three kids. I firmly believe I wouldn't have ever landed in foster care had she gotten the support she should have had, and even my grandmother before her.”

Camille detailed myriad barriers to stability comprising her family's generational trauma within child welfare: mental health, domestic violence, postpartum issues, and even the absence of self-care. Instead of offering support and services that could have helped stabilize their home, the child welfare system made its judgment and chose removal, which only compounded their trauma.

“My mom was in a domestic violence situation, so she was trying her best to get out of that. And the only thing they did was vilify her for her circumstances. There were so many different things having to do with housing, to my parents' separation, and my dad being incarcerated.

Nothing was really coming together at that time, and the assumed safest place for me was to be in care. We actually experienced more stuff with abuse in care than before care. They sent me out into rural Pennsylvania, and it was a major culture shock for me, [as an] inner-city girl. People were also super racist, and my family is super diverse. It was a lot. Being a female going into care is a whole different level of stuff—from people sexualizing me to violence, or the way I was spoken to that was extremely abusive.”

What is notable here is Camille's account of her intersectional experiences of racism and sexism, often underreported in the discussions of child neglect's impact on the child welfare system.

Placing Camille with stranger foster parents and far from her birth family—who had unreliable transportation—created additional barriers to visitation. Her mother's failing car could barely make it to Camille's placement, and when this resulted in missed visits, Camille shared that the child welfare workers would simply note her absences and use them against her in court. She added that even smaller-scale support like transportation passes and tokens would have made a significant impact on her case. Yet, again, her mother's need for support was instead viewed as neglect.

In her current work as a child welfare professional, Camille sees programs being implemented that could have helped her family avoid their generational system involvement, family separation, and trauma, but noted there is still much progress to be made.

“Years ago, I sat on the workgroup for [wraparound services] in Pennsylvania, and seeing how that gets implemented, I was like, ‘Oh, my goodness. This would have been amazing for my family.’ Because you have a clinical worker, a family support worker, and a youth support worker who go into the home. That

would have been incredible, having somebody who connected with me, someone to help my mom navigate all the services and stuff...things are kind of set up to keep people down. A lot of times, you have to be actually on-the-street homeless in order to get housing services. Who are they going to call? They're not going to call [Children and Youth Services] or [the Department of Human Services]. They don't want their kids taken away. They don't want the potential for their kids to be adopted."

Despite experiencing decades of repeated separation and harm, Camille and her family found their own path to healing. She, her mother, and her older sister even challenged one another to attend college, and they graduated together.

"We really planted our feet and dug in and said, 'This isn't going to be our family's legacy anymore. We're going to change generational trauma to generational healing.' So, that's what we've done."

Kelly's Story

Kelly, unlike Jackson and Camille, sees child welfare from the lens of a parent who lost her children yet is linked by similar generational cycles. Kelly's family has a legacy of substance abuse, and for nine years, she and her four children navigated the child welfare system. Each of her children had been exposed to drugs while she was pregnant, but various relatives stepped in to keep them out of strangers' homes by becoming their kinship caregivers, including her grandmother, who cared for them until she passed away.

But what support did Kelly receive? What support did her parents receive to end the cycle of substance abuse Kelly would eventually battle? Early interventions could have provided her support and stability to break free from the generational cycle of poverty. Now clean for 19 years, she has raised her youngest son.

However, due to the child welfare system's harsh scrutiny of potential caregivers with previous system involvement, Kelly was denied the opportunity to raise her grandchild, who currently languishes in foster care in a stranger's home. The child welfare system can be blind to redemption, especially that of birth parents. Kelly knows this personally, of course, but also professionally as a parent-support partner within a child welfare agency. She has witnessed behavior and language that "made my skin crawl," such as the way some caseworkers characterize and vilify birth parents. She has caught them describing birth parents using foul words and felt it was "simply disgraceful."

Understanding two-fold that birth parents fighting to reunify with their children are up against bias, contempt, indifference, shame, and blame, Kelly stated that child welfare professionals must:

Merry Christmas to a perfectly imperfect Mom You've been consistent and you've shown so much strength over the years, you are the definition of persistence, you've shown so much faith and trust in God, that it has translated into reality, you've helped me with so much, with giving me wisdom and advice, you've shown me how God can take a person and just with a little bit of faith turn their whole life around, you've taught me how to be grateful and last but not least you've shown me what it looks like to be covered by God's grace and his mercy because if it wasn't for God, None of this would be possible so I want to thank God for blessing me and giving me the opportunity to witness a great woman of God that has Purpose! Merry Christmas, Love your son

*A letter of love and resiliency of a reunited mom and her son.
(Note: this is a reproduction of the letter for printing purposes).*

“Be allies; have more compassion; have greater respect; listen better to families; be more responsive to families (answer the phone!); surround families with support services; treat birth parents like human beings; put themselves in birth parents’ shoes; understand parental grief; use affirming words when speaking with birth parents; build birth parents’ self-esteem; and have more sympathy and empathy.”

It may not have been a smooth process for Kelly and her children, but they are healing. She revealed a heartfelt letter her son penned during Christmas in 2017. In it, he referred to her as a “perfectly imperfect” mom who showed him “strength,” “consistency,” “wisdom,” and “persistence.”

Imagine how different—how much better—things could be for children and families if only the child welfare system would see what Kelly’s son sees—that there is no such thing as a perfect parent and that a parent’s flaws do not diminish their capacity to love their children.

Historical Overview

As the above narratives make clear, poor families and those of color are and have been neglected by the child welfare system. A loving parent’s lack of income, education, or privilege does not amount to neglect, nor does it erase a parent’s love and devotion. Skin color is not a crime and should not be considered a risk factor. However, legally introduced in colonial times and constitutionally supported since the nation’s founding, white supremacy has been the defining factor in the welfare and treatment of American children. More so, the American social-welfare experience has been one of denying or attempting to deny non-white children access to white institutions of social reform.²

By the early 1800s, America changed how it responded to indigent children. The growth of American cities swelled during the Industrial Revolution, calling for social reform to deal with poor white populations³ who were widely stigmatized and condemned to almshouses, known commonly as poorhouses.

In 1838, the Supreme Court decision of *Ex Parte Crouse* established it was the right and obligation of states—not “unsuitable” parents—to determine what was in the best interest of children.⁴ This decision did not pertain to Blacks, who mostly remained the enslaved property of whites.

Though largely removed from a state welfare system, the recognition of their humanity through the 13th Amendment and the Freedman’s Bureau, Lincoln’s final initiative before his death, enabled newly emancipated Blacks to be brought under the auspices of the social welfare system. Sadly, the Freedman’s Bureau was defunded and disbanded, which ended the first government-sponsored care for Blacks.⁵ This meant that as more Blacks began flooding into the north for greater freedoms, they remained vulnerable to poverty.

By the turn of the century, cities became overcrowded with so-called vagrants. Instead of dealing with the structural causes of poverty, “reformers” developed a juvenile-court system to deal with poor children, including youth of color, to decide whether they should be sent to foster homes, orphanages, or prisons.⁶

As society moved into the first few decades of the twentieth century, especially in the wake of the Great Depression, care for impoverished children continued shifting, according to Myers, from charitable society-sponsored child

² Bell, James. “Repairing the Breach: A Brief History of Color in the Justice System.” *W. Haywood Burns Institute for Youth Justice Fairness & Equity*, p. 4, 2016, https://www.njcn.org/uploads/digital-library/Burns-Institute_Repairing-the-Breach-Hist-of-Youth-of-Color-in-IJ_Sept-2015.pdf; Also see Hogan, Patricia T. and Sau-Fong Siu. “Minority Children and the Child Welfare System: A Historical Perspective.” *Social Work*, vol. 33, no. 6, Nov-Dec 1988, pp. 493, <https://www.jstor.org/stable/pdf/23715669.pdf?refreqid=excelsior%3A86f2d-f29e876ecc186affaed3a59abc>

³ Bourque, Monique. “Populating the Poorhouse: A Re-assessment of Poor Relief in the Antebellum Delaware Valley.” *Pennsylvania History: A Journal of Mid-Atlantic Studies*, vol. 70, no. 4, Autumn 2003, pp. 403, <https://www.jstor.org/stable/pdf/27778573.pdf?refreqid=excelsior%3A4a907a96534d625818ec7b03a2c79dec>

⁴ Bell, “Repairing the Breach,” pp. 5.

⁵ “Freedman’s Bureau.” *YouTube*, uploaded by NBC News Learn, May 1, 2020, <https://www.youtube.com/watch?v=5B4cpiTYhWk>

⁶ Bell, “Repairing the Breach,” pp. 10.

protective services to government-sponsored child protective services.⁷

How America decided to deal with the poor and marginalized was complicated by the American eugenics movement. In the 1920s and 1930s, this movement's goal was to eliminate undesirable genetic traits in humans through selective breeding, particularly targeting the West Coast's Latino community. Eugenics advocates declared that the "intelligence [for many] was not only hereditary but also directly correlated to morality, crime, and poverty."⁸

Thirty years later, amid school desegregation and civil rights movements, the non-white presence increased in white institutions of reform. Yet again, America tried a different response to deal with child protection and poverty. A seminal medical study by C. Henry Kempe on Battered-Child Syndrome explored child abuse and its social and medical ramifications,⁹ providing the framework for what would become "mandatory reporting," which in its early days obligated medical professionals to report suspected child abuse.

As more states expanded the number of mandatory reporters in the 1980s and 1990s,¹⁰ mandatory reporting was further complicated when crack cocaine debuted in Black and brown communities.¹¹ Rather than treating "the underlying economic motivations and the problems of drug addiction,"¹² the American government adopted a "Tough on Crime" approach, allied with the child protective services approach (i.e., remove or lock up Black children to save them).

The contemporary child welfare system looks too frequently at "rescuing" children from the ills of poverty by stripping them from their parents and cultural kinships and does nothing to address the structural and intersectional roots of poverty. This flawed philosophy has built a system that stacks the deck against poor parents and poor children.¹³

For this philosophy to play out in child protective services, Roberts places the blame on two key factors: institutional bifurcation and viewing poverty as neglect. First, she argues that the system is structured by class into two separate systems. One disadvantages and punishes the poor while the other

privileges and protects wealthier families—mostly by allowing them to opt-out of the punishing child welfare system. In the past, poor children were shuttled to almshouses.¹⁴ Today, impoverished children make up the majority of those whom public welfare departments investigate as being mistreated and placed in care outside their homes.¹⁵

Second, Roberts suggests the public child welfare system equates poverty with neglect. State laws in the late nineteenth century lumped together "dependent" and "neglected" children. They authorized juvenile court judges to commit children to institutions or foster homes if they were either dependent on the public for support or living without proper parental care.¹⁶

⁷ Myers, John E.B. "A Short History of Child Protection in America." *Family Law Quarterly*, vol. 42, no. 3, Fall 2008, pp. 454, <https://www.jstor.org/stable/pdf/25740668.pdf?refreqid=excelsior%3A08274bc98a74a8d-8e4d07bff48d62104>

⁸ Lira, Natalie. "Latinos and the Consequences of Eugenics." PBS: American Experience, 16 Oct. 2018, <https://www.pbs.org/wgbh/americanexperience/features/eugenics-latinos-and-the-consequences-of-eugenics/>; See also Chávez-García, Miroslava. "Intelligence Testing at Whittier School, 1890-1920." *Pacific Historical Review*, vol. 72, no. 2, 2007, pp. 194, <https://www.chicst.ucsb.edu/sites/secure.lsit.ucsb.edu.chic.d7/files/sitefiles/people/chavez-garcia/ChaveGarciaPHR.pdf>

⁹ Brown III, Leonard G. and Kevin Gallagher. "Mandatory Reporting of Abuse: A Historical Perspective on the Evolution of States' Current Mandatory Reporting Laws with a Review of the Laws in the Commonwealth of Pennsylvania." *Villanova Law Review*, vol. 59, iss. 6, 2005, pp. 37, <https://digitalcommons.law.villanova.edu/cgi/viewcontent.cgi?article=3262&context=vlr#:~:text=By%201974%2C%20thirty%2Dfour%20states,required%20police%20officers%20to%20report>

¹⁰ Brown III and Gallagher. "Mandatory Reporting," pp. 37-80.

¹¹ Ladner, Joyce A. "Children in Out-of-Home Placements." *Brookings*, 1 Sept. 2001, <https://www.brookings.edu/research/children-in-out-of-home-placements/>

¹² Sabol, William J., and James Patrick Lynch. "Crime Policy Report: Did Getting Tough on Crime Pay?" Urban Institute, 1997, <https://www.urban.org/research/publication/did-getting-tough-crime-pay/view/full-report>

¹³ Roberts, Dorothy. *Shattered Bonds*, pp. 26; see also Pimentel, David. "Punishing Families for Being Poor: How Child Protection Interventions Threaten the Right to Parent While Impoverished." *Oklahoma Law Review*, vol. 71, 2018, pp. 897, <https://digitalcommons.law.ou.edu/cgi/viewcontent.cgi?article=1362&context=olr>

¹⁴ Schneider, Dona and Susan M. Macey. "Foundlings, Asylums, Almshouses and Orphanages: Early Roots of Child Protection." *Middle States Geographer*, vol. 35, 2002, pp. 92-100, https://msaag.aag.org/wp-content/uploads/2013/05/11_Schneider_Macey.pdf

¹⁵ Roberts, Dorothy. *Shattered Bonds*, pp. 26.

¹⁶ Roberts, Dorothy. *Shattered Bonds*, pp. 27.

These flawed policies opened the door to the problems the impoverished experience today.

Through policing or child protective services, the government removes about 750 children from their parents each day.¹⁷ Approximately 75 percent of those removals are based solely on suspicion and fear that a child may come to harm, rather than on crimes or misconduct committed by parents or harm experienced by a child.¹⁸ Vague child neglect laws conflate poverty and neglect and force already disadvantaged families to face the prospect of being broken up for the putative protection of the children.¹⁹

“Raising children in poverty looks like parental unfitness if you believe that poor people are responsible for their own predicament and are negative role models for their children.”²⁰ This flawed philosophy is especially cruel to families at the intersections of race, class, and gender. If being poor means being unsafe, then Black mothers bear the burden. Being poor and Black and female pushes them into poor, segregated spaces where they face more crime and violence, as well as housing conditions beset with health and safety hazards. Is it neglect to let a child play outside? Is it neglect to let a child reside here if that is what is available?

Too often, in the eyes of biased decision-makers at all levels of the welfare infrastructure, the answer is yes, as these families and their intersections of race, gender, and class mark them as being neglectful.²¹ This means “the lower socioeconomic classes are disproportionately represented among all child abuse and neglect cases known to public agencies, and the vast majority of the families in these cases live in poverty or near-poverty circumstances.”²²

According to Roberts, poverty — not the type or severity of maltreatment — is the single most important predictor of placement in foster care and the amount of time spent there.²³

There is little question that children suffer due to poverty.²⁴ It is not particularly helpful, however, to “rescue” poor children from their impoverished parent(s) and significant cultural kinships. A better policy and philosophy on child well-being should focus on providing public resources that strengthen families, not those that tear them apart.

The reasons poor families are victimized in this way are complicated but start with the conflation of poverty and neglect. Poverty places children at risk, and so does neglect; we must not exacerbate the problem by allowing biases in detection and reporting or parenting stereotypes based on ethnicity and class. Punishing poor families for their poverty and labeling it as actionable “neglect” is not only a flawed philosophy but a cruel one, as well.²⁵

Overview of Federal and State Laws Pertaining to Child Neglect and Mandated Reporting

In the United States, federal and state laws contain definitions of child neglect, and each state sets forth requirements for mandatory and permissive child abuse and neglect reporting. Prior to 1963, only one state (CA) had a criminal statute prohibiting child abuse. In 1963, the Children's Bureau, in conjunction with the American Medical Association, the American Humane Association, and the Council of States Association, advanced model statutes for state legislatures to consider. By 1967, child abuse reporting laws existed in all 50 states. Although there were disparities regarding who was mandated to report abuse and neglect state by state, most adopted the Children's Bureau model requiring only

¹⁷ Adoption and Foster Care Analysis and Reporting System. “The AFCARS Report.” *United States, Department of Health and Human Services, Census Bureau*, no. 24, 20 Oct. 2017, <https://www.acf.hhs.gov/sites/default/files/documents/cb/afcarsreport24.pdf>

¹⁸ “Child Maltreatment.” *Child Maltreatment 2016 – Welcome to ACF, Children Bureau*, 2016, <https://www.acf.hhs.gov/sites/default/files/cb/cm2016.pdf>

¹⁹ Pimentel, David. “Punishing Families,” pp. 887.

²⁰ Roberts, Dorothy. *Shattered Bonds*, pp. 27.

²¹ Wexler, Richard. *Wounded Innocents: The Real Victims of the War Against Child Abuse*. Prometheus, pp. 49, 1990.

²² Pelton, Leroy H. “Child Abuse and Neglect: The Myth of Classlessness.” *American Journal of Orthopsychiatry*, vol 48, no. 4, 1978, pp. 610, <https://psycnet.apa.org/record/2013-42173-003>

²³ Roberts, Dorothy. *Shattered Bonds*, pp. 81.

²⁴ Brooks-Gunn, Jeanne, and Greg J. Duncan. “The Effects of Poverty on Children.” *The Future of Children*, vol. 7, no. 2, Autumn 1997, pp. 55–71, <https://www.jstor.org/stable/pdf/1602387.pdf>

²⁵ Pimentel, David. “Punishing Families,” pp. 906.

physicians and medical staff to report. Several states went far beyond that classification, mandating all citizens with evidence of abuse or neglect to report. Leading up to 1974, other states that had initially passed laws based on the Children's Bureau model amended them to expand the mandated reporting requirement to all citizens. However, most states limited the scope to certain professionals.

Due in part to the disparity in state definitions of child abuse and neglect, as well as the scope of those laws' mandated reporters, Congress passed the Child Abuse Prevention and Treatment Act of 1974 (CAPTA), as amended by the CAPTA Reauthorization Act of 2010, 42 U.S.C. §5101 et. seq.²⁶ CAPTA funded states to support the prevention, assessment, investigation, prosecution, and treatment for child abuse and neglect, requiring states pass laws mandating the reporting of child abuse and neglect. As a guide, CAPTA set forth a definition of child abuse and neglect and sanctioned states' expansion of the professionals mandated to report.

Not surprisingly, reports of child abuse and neglect dramatically increased, from an estimated 60,000 in 1974 to more than 1,000,000 in 1980 and 2,000,000 in 1990.²⁷ Since that time, in response to incidents including the Jerry Sandusky and clergy abuse scandals, many states have expanded their mandated reporting laws to include teachers, childcare workers, law enforcement, social-services providers, and other personnel with responsibility for the care or supervision of children.

In 2018, Congress passed the Family First Prevention Services Act (FFPSA), which attempted to shift funding toward early prevention of maltreatment and removal and away from foster care and group care by allowing states to use Title IV-E funds for prevention services before removing a child. While its focus on in-home prevention services is important, the FFPSA has been criticized by some who believe it did not address the racial disproportionality of Black families reported for abuse and neglect.²⁸

Definitions of Child Neglect

CAPTA, as amended, defines child abuse and neglect as "Any recent act or failure to act on the part of a parent or caretaker which results in death, serious physical or emotional harm, sexual abuse, or exploitation" or "An act or failure to act which presents an imminent risk of serious harm."²⁹ It is important to note that, while CAPTA contains a definition of neglect, it does not mandate states to adopt the same definition.

State definitions generally recognize one or more of the following categories of neglect: physical, medical, emotional, educational, and supervisory. In fact, most states define neglect as the failure of a parent or other person with responsibility for a child to provide the child's necessary food, clothing, and shelter, and in some cases, medical and educational needs. For example, Pennsylvania defines child neglect as: "any of the following when committed by a perpetrator that endangers a child's life or health, threatens a child's well-being, causes bodily injury, or impairs a child's health, development, or functioning; a repeated, prolonged, or egregious failure to supervise a child in a manner that is appropriate and considers the child's developmental age and abilities; the failure to provide a child with adequate essentials of life, including food, shelter, or medical care."³⁰

In some states, including New York and New Jersey, the failure to provide such needs only constitutes neglect if the responsible party is financially able to provide for the needs of the child but fails to do so.³¹ In contrast, Montana's law simply states that the "failure to provide cleanliness and general supervision" is considered neglect.³²

²⁶ *Capta Reauthorization Act of 2010: Report (to Accompany S. 3817)*. Washington, D.C.: U.S. G.P.O., 2010. Print.

²⁷ "Fighting Institutional Racism at the Front End of Child Welfare Systems: A Call to Action." *Children's Rights*, May, pp. 8, 2021, <https://www.childrensrights.org/fighting-institutional-racism-at-the-front-end-of-child-welfare-systems/>

²⁸ "Fighting Institutional Racism," pp. 10.

²⁹ 42 U.S.C. 5106.g

³⁰ 23 Pa.C.S. §6303

³¹ NY Social Services Law §371; see also NJ Ann. Stat. §9:6-8.21

³² Montana Stat. §41-3-102

A number of state laws contain language regarding the failure to provide adequate supervision for the child, which has led to wide interpretation. For example, the law of New Jersey states merely “the failure to provide proper supervision,” while the law in South Carolina provides “the lack of supervision appropriate to the child’s age and development.”³³ Other states define neglect as when a responsible person leaves a child unattended, without qualification for the child’s age or development. Other states define conduct that “subjects the child to harmful behavior that is terrorizing, degrading, painful, or emotionally traumatic.”³⁴ or allows “exposure to drugs, illegal materials, or sexual acts.”³⁵

In practice, these definitions lead to the disparate application of child neglect reporting. For example, Black families are almost twice as likely to be investigated for child abuse or neglect compared to white families and more likely to be reported by educational and medical professionals.³⁶

Additionally, most state laws do not adequately account for issues such as poverty, domestic violence, and substance abuse. United Family Advocates co-founder Diane Redleaf has called for state and local systems to “stop confusing poverty with neglect” and pass the “Family Poverty Is Not Child Neglect” bill proposed by Representative Gwen Moore (D-Wisc.) and endorsed by the Congressional Black Caucus.³⁷ Redleaf also advocates to change laws limiting children’s independent activities to fit within broader social justice, civil rights, and democratic reform movements that resonate across party, race, and class lines.³⁸

The nonprofit group LetGrow compiled a survey of all U.S. states’ criminal and juvenile neglect statutes as they pertain to “child independence” and proposed new model laws based on reform movements in several states.³⁹ These initiatives are believed to address undue “surveillance” of Black families, which results in unnecessary neglect reports.

For example, Oklahoma passed amendments to its child neglect statute in 2021 to provide a specific qualifier to the requirement to provide “supervision or adequate caretakers,” i.e., “to protect the child from harm or threatened

harm of which any reasonable and prudent person responsible for the child’s health, safety or welfare would be aware”; a specific exception from the definition of neglect for children who engage in “independent activities,” such as traveling to or from school or nearby commercial or recreational facilities, engaging in outdoor play, remaining at home unattended for a reasonable amount of time, remaining in a vehicle unattended (providing adequate inside temperatures), and engaging in similar activities with other children.⁴⁰ Progressive terms such as these are believed to be more aligned with cultural norms, while still protective of child safety.

Mandated Reporting Requirements

CAPTA requires states to have policies and procedures in place for the reporting of child neglect, including the maintenance of child abuse and neglect reporting hotlines. All states except Indiana, New Jersey, and Wyoming enumerate specific professional groups as mandated reporters, the list of which continues to expand.⁴¹

The typical reporting standard is when a mandated reporter “knows or has reasonable cause to believe” child neglect is occurring. “Reasonable cause” is meant to be a universal legal standard, suggesting all mandated reporters should make the same decision to

³³ N.J. Ann. Stat. §9:6–8.21; see also SC Ann. Code 63–7–20

³⁴ Nevada Stat. §432B.140

³⁵ Oklahoma Stat. §10A–1–1–105

³⁶ “Fighting Institutional Racism,” pp. 10.

³⁷ Redleaf, Diane L. “Biden’s Child Welfare Focus Should Be Removing Poverty from Neglect.” *The Imprint*, 21 Dec. 2020, <https://imprintnews.org/child-welfare-2/biden-child-welfare-focus-removing-poverty-neglect/50041>.

³⁸ Redleaf, Diane. “Narrowing Neglect Laws Means Ending State-Mandated Helicopter Parenting.” *Americanbar.org*, 11 Sept. 2020, <https://www.americanbar.org/groups/litigation/committees/childrens-rights/articles/2020/fall2020-narrowing-neglect-laws-means-ending-state-mandated-helicopter-parenting/>

³⁹ “State Policy Maps.” *Let Grow*, 1 July 2021, <https://letgrow.org/resources/state-policy-maps>.

⁴⁰ Oklahoma H.B. 2565–2021

⁴¹ “Mandatory Reporters of Child Abuse and Neglect.” *Mandatory Reporters of Child Abuse and Neglect – Child Welfare Information Gateway*, U.S. Department of Health and Human Services, Children’s Bureau, Apr. 2019, <https://www.childwelfare.gov/topics/systemwide/laws-policies/statutes/manda/>

report child abuse when presented with the same facts, regardless of personal beliefs.⁴² However, a number of states require only that a person "suspects" (OH); "in good faith suspects" (DE); "has reason to believe" (IN, ID, HI MD, MN, NV, OK, SC, UT); "has reason to suspect" (NC, NH, KS, VA, VT); or "has cause to believe" (LA and TX). In addition, only 19 states require a reporter to disclose their identity when reporting, and 44 states protect the disclosure of a reporter's identity.⁴³

Pennsylvania's law has been expanded to require a mandated reporter to make a report when "a person makes a specific disclosure to the mandated reporter that an identifiable child is the victim of child abuse".⁴⁴ This requirement is unqualified, i.e., the mandated reporter need not be able to identify the alleged perpetrator or meet with, or speak to, the child.

Redleaf points out that the availability of child abuse hotlines since 1974 and the increased use of cellular phones have escalated the number of calls. In particular, increased reports have been received regarding school-aged children discovered outside alone or playing with others, running errands, or left in a car for a short time, leading to punitive surveillance of children's independence across race and income levels, with parents unsure what decisions they can make regarding their children's activities, despite their own judgment of safety and appropriateness under the circumstances. Even if determined to be unfounded, a report and investigation is intrusive and leaves a record.⁴⁵

Advocates propose adopting a uniform standard for the mandated reporting of neglect, such as the laws passed in several states: the requirement of "blatant disregard of obvious dangers" (IL); the protection of children's "reasonable independent activities" (UT); and the protection of "reasonable and prudent parents" to "allow independent activities" (CO), excluding from the definition of neglect "independent activities . . . given the child's level of maturity, physical condition or mental abilities" (OK).⁴⁶

Recommendations and Conclusion

African American children, youth, families, and communities are victims of a system based

on imperialism, patriarchy, white supremacy, classism, and capitalism. Since 1619, the fate of African Americans has been viewed through the aforementioned prisms, and the child welfare system is a microcosm of more significant systematic and systemic challenges.

As a nation, there is a dominant perspective of how children should be raised; it is filtered through the gaze of whites and their elusive standards. Yet, this perspective lacks an analysis of historical issues related to slavery, racism, discrimination, and white supremacy culture. If one were to examine each state's report of neglect against the backdrop of its criminal justice standards, one can see a discernable pattern of behavior that supports institutional logic that continuously operates through a lens of surveillance and punishment rather than of culturally centered practices and support.

Examining the laws undergirding the child welfare system, as well as hearing directly from the subject experts who encountered the system as a kinship youth, foster child, and birth parent reveals a necessary overhaul of the child welfare system to prioritize the humanity essential in its work. As supported by the below recommendations, culturally centered practice is needed and should be measured by its effectiveness to create change for the children the child welfare system is intended to support—and must do no harm.

Therefore, it is this paper's specific intent to provide information and strategies to aid child welfare practitioners and policymakers to empower and counteract the inherent disadvantages poor families and families of color experience. This system of surveillance

⁴² Behun, Richard Joseph, Eric W. Owens, and Julie A. Cerrito. "The Amended Child Protective Services Law: New Requirements for Professional Counselors as Mandated Reporters in Pennsylvania." *Journal of the Pennsylvania Counseling Association*, vol. 93, pp. 80, Fall 2015, http://pacounseling.org/aws/PACA/asset_manager/get_file/113401?ver=61

⁴³ "Mandatory Reporters of Child Abuse and Neglect."

⁴⁴ 23 Pa.C.S. 6311(b)(iii)

⁴⁵ Redleaf, "Narrowing Neglect Laws."

⁴⁶ "Definitions of Child Abuse and Neglect." *Definitions of Child Abuse and Neglect – Child Welfare Information Gateway*, U.S. Department of Health and Human Services, Children's Bureau, Mar. 2019, <https://www.childwelfare.gov/topics/systemwide/laws-policies/statutes/define/>.

fails to identify the true risk factors for parents attempting to survive poverty, which hinders their ability not only to parent but also to cope with life stressors while negotiating the impact poverty has on their children.

Consequently, the system's failure and the resulting damage to Black families and children must no longer be tolerated. It is critical that the following strategies and recommendations be implemented across the country to combat the inherent biases in child welfare that continue to disadvantage Black families and result in disparate and negative outcomes that lock families into poverty and generational cycles of child welfare involvement. Our work demands change and calls for a new system of family well-being where all families are valued, and no family is targeted nor receives disparate treatment via racist and classist practices. The strategies and recommendations are:

1. Disaggregate data based on race and the various types of neglect. It is urgent that we examine demographics by race and make this a mandatory requirement as part of AFCARs reporting. If change is to occur, states need to show and account for who the children are who require intervention and support and delineate abuse and neglect demographics to ensure appropriate services are provided for families who require them.
2. Definitions of neglect should not fall under child maltreatment. It should be the responsibility of the federal government to more clearly define child neglect, establishing a consistent standard for all states and locales that uphold equitable treatment of Black children in child neglect investigations. The system fails to examine issues of neglect with consideration of the effects of poverty, community deprivation, and systemic oppression, which consistently lock out certain members of society from upward mobility and economic independence. The intentional action of assessing family well-being versus family risk factors will create a non-judgmental examination of the same. This strategy will forge a new system of family and child well-being to support families rather than punish them for the factors related to poverty

that challenged their ability to provide for and parent their children in alignment with societal parenting standards. This shift will challenge those who work with families to respect and value all families and provide them service without blame.

3. Create a new administrative requirement for placement on neglect cases. Separating neglect from definitions of child maltreatment will require child well-being workers to utilize new ways to assess and determine supportive intervention strategies to ensure families have the support and tools needed to maintain the well-being of children in their care. This recommendation strongly supports the use of a communal intervention strategy. Establish, as an administrative requirement, the use of a review committee, a communal (African-centered) approach before issuing a ruling on neglect. As Jackson, one of the subjects in our case studies, suggests child welfare agencies should create family advocacy groups, such as a "parent advocate group at the executive level to inform some of the [decision-making]." If such advocates are drawn from members of the Black community, who are facing or have faced the consequences of neglect, they can better advise administrators of the challenges and help establish more relevant and culturally and economically competent responses. It is important to understand that African-centered policy promotes the voices of participants and allows for an understanding that policy is not independent of people's lives. Therefore, people who face the consequences of such policies must be engaged in the village of those who shape the policy. This African-centered approach incorporates a family's values, identifies the source of their challenges, and in a collaborative, non-judgmental manner seeks common ground on how the family can increase their well-being indicators to successfully stabilize their home.
4. Overhaul the workforce. The education and training of workers, supervisors, and administrators in the current system have left many families in peril. As revealed by the lived experiences of the participants

interviewed, families are prevented from providing feedback or being considered partners in planning the services needed to ensure well-being. Again, when a system considers neglect as a parent's failure that results in child maltreatment, there is a value loss, and the system passes judgment on the parent as unfit. Consequently, the current system is risk-averse, seeking to assess blame and fostering the system mindset that leans toward removal.

5. Identify and mitigate problematic algorithms. With many states expanding the number of mandatory reporters and a few now adopting artificial intelligence to make reporting more efficient using algorithms, the problem of mandatory reporting will only worsen. As history has shown, the increase in reports has only resulted in racially disparate outcomes in the system—primarily the overrepresentation of youth of color. As states are armed with sophisticated pattern-analysis tools known as predictive-analytics algorithms, the problem will not only increase but be made concrete as it becomes embedded in the formulas of algorithms. While predictive algorithms have been met with more praise than criticism for their efficiency in screening the suitability of parents,⁴⁷ they pose a risk to minorities whereby decisions to investigate families may no longer be based on allegations but on “predictions for what might happen.”⁴⁸ It will be a familiar sight for vulnerable parents to see caseworkers at their doors based on racially biased data for the possibility of neglect and abuse—a sort of algorithmic racial profiling. Already, as Hurley reported in his 2018 article, the data the algorithms collect is racially biased from the over-surveillance of people of color and under-surveillance of white people. Mandatory reporting will soon be a contributing factor to what has become known as algorithmic racism⁴⁹ and, therefore, must account for the racial bias in the information collected.
6. Demonstrate value for families by employing concrete strategies that support their partnership. All prevention efforts and work with parents to prevent

child removal should be incentivized. The lived stories shared in this paper demand that families' voices take a central position in determining what is best for them as it relates to the challenges that have brought them to the attention of the system. Families know what is best for their children, so it is our responsibility to commit to partnering with them to stabilize their homes and prevent any further dismantling of their family systems. It is our commitment to ensure visibility for families who are struggling to parent and provide for their children due to poverty and support them in providing safety, permanency, and well-being for all children.

In summary, the goal of this work is to identify trends in legal child neglect definitions across the United States and discuss how child neglect laws and language target Black children. The authors call you to action: Share the lived experiences of families who were impacted by the child welfare system. Explore the connections to historical anti-Black racism in child neglect and how this has impacted the experience African American families have when interfacing with child welfare systems. Finally, recommend changes in the language of child neglect definitions to ensure policies and practices are consistent, with equitable treatment of all children in child neglect investigations, thus resulting in a new system of family well-being where all families are valued and treated with respect, and where every cultural and racial expression is honored in the intervention and service delivery to the family.

⁴⁷ Hurley, Dan. “Can an Algorithm Tell When Kids Are in Danger?” *The New York Times*, *The New York Times*, 2 Jan. 2018, <https://www.nytimes.com/2018/01/02/magazine/can-an-algorithm-tell-when-kids-are-in-danger.html>

⁴⁸ Hurley, Dan. “Can an Algorithm Tell.”

⁴⁹ Noble, Safiya Umoja. *Algorithms of Oppression: How Search Engines Reinforce Racism*. New York University Press, 2018.

Sharon L. McDaniel, Ph.D., Ed.D., MPA, is President and CEO of A Second Chance, Inc., an activist, author, and philanthropist.

Sherri Simmons–Horton, Ph.D., LMSW, is an Assistant Professor in the Department of Social Work at the University of New Hampshire.

Ervin Dyer, Ph.D., is an Adjunct Professor at the University of Pittsburgh's Department of Africana Studies and Board member at A Second Chance, Inc.

Yven Destin, Ph.D., is an educator and independent researcher of race and ethnic relations.

Kathleen L. Gima is Senior Director II of Communications, Content, and Brand Management at A Second Chance, Inc.

Anthony R. Sosso, Jr., JD, is an attorney practicing in Pittsburgh, PA, specializing in non–profit organizations.

Jay Kadash, M.Ed, MA, is Senior Executive, Vice President of Communications, Content, Training, and Systems Engagement at A Second Chance, Inc.

James T. Freeman, Ph.D., LCSW, MBAe, is an Associate Professor at the Graduate School of Social Work at Johnson C. Smith University.

James A. Stratford, MPA, is a Senior Executive Leadership Consultant at A Second Chance, Inc.

Constance Iannetta, BSW, is the Founder of Foster Strong.

Katherine Buckley is a family advocate, activist, and birth family support partner.



© Pixelheadphoto | iStock.com

Trapped in the Web of Family Policing: The Harms of Mandated Reporting and the Need for Parent-Led Approaches to Safe, Thriving Families

Imani Worthy, Tracy Serdjenian and Jeanette Vega Brown

*The article reflects the input of Rise staff and contributors and our broader community of parents and allies. It draws heavily on our collaboratively developed, parent-led reports, *Someone to Turn To: A Vision for Creating Networks of Parent Peer Care* and *An Unavoidable System: The Harms of Family Policing and Parents' Vision for Investing in Community Care*. The Rise staff includes Naashia B., Teresa Bachiller, Jeanette Vega Brown, Ashanti Bryant, Keyna Franklin, Noshin Hoque, Shamara Kelly, Teresa Marrero, Shakira Paige, Zoraida Ramirez, Genevieve Saavedra Dalton Parker, Tracy Serdjenian, Bianca Shaw, Halimah Washington, Robbyne Wiley and Imani Worthy.*

Introduction

A family's contact with the family policing system¹ often begins with a call to the child abuse and maltreatment "hotline" made by a mandated reporter. About two-thirds of reports to New York's Statewide Central Register (SCR) are made by mandated reporters—"certain professionals mandated by New York State law to report suspected child abuse and neglect."² While some states require *any person* who suspects abuse or neglect to report, this article focuses on mandated reporting by professionals working in roles that are meant to support families and that states commonly designate as mandated reporters, including social workers, teachers/school personnel, childcare providers, and health/mental health care providers.³

Mandated reporting is an extension of the racist, classist, ableist family policing system—making the system unavoidable in Black and brown low-income communities. Mandatory reporting laws provide a channel through which the surveillance and threat of the family policing system saturate intersecting systems where families should be able to access care, support, resources, and education (e.g., schools/daycares, hospitals, mental health services, shelters). Mandated reporting laws and practices especially harm Black, Latinx, and Native families and communities.

Rise is a parent-led organization advocating to abolish the family policing system, including ending mandated reporting—which is increasingly being called for by parents, advocates, and social workers. Rise supports parents' leadership to dismantle the family policing system by eliminating cycles of harm, surveillance, and punishment and creating communities that invest in families and offer collective care, healing, and support. This article is grounded in Rise's 16-year history working with impacted parents and learning from our community, programs, research, and interviews.

¹ Rise uses the term "family policing system" instead of "child welfare system" because our team believes that it most accurately and directly describes the system's purpose and impact. Learn more: <https://www.risemagazine.org/2021/05/why-were-using-the-term-family-policing-system/>

In our participatory action research survey, we used the term "child welfare" because it is more widely known, and we believed it would be clearer to parents completing the survey.

² Rise & TakeRoot Justice. (Fall 2021). *An Unavoidable System: The Harms of Family Policing and Parents' Vision for Investing in Community Care*. <https://www.risemagazine.org/wp-content/uploads/2021/09/AnUnavoidableSystem.pdf>

³ Child Welfare Information Gateway. *Mandatory Reporters of Child Abuse and Neglect*. <https://www.childwelfare.gov/pubPDFs/manda.pdf>



Rise Peer Vision Team (left to right): Keyna Franklin, Shakira Paige, Norahsee Ortiz, Imani Worthy, Teresa Marrero, Tenisha Sanders and Jeanette Vega (center)

Like the broader movement to defund policing, Rise calls for divesting from family policing and investing in families and communities. Mandated reporting is a symptom of and an ineffective response to families' lack of access to resources and support. We need to address societal inequities rather than perpetuate them through family and community surveillance and punishment. This article provides an overview of Rise's peer care model as an abolitionist approach to supporting safe, strong families without system involvement. It also outlines immediate steps to reduce hotline calls by mandated reporters.

A Harmful System

Mandated reporting feeds families into a harmful system that was built upon a history of slavery and genocide.⁴ Despite its historic and ongoing harm, "child welfare" is widely accepted as a system that protects children. Mandated reporters who have not personally experienced family policing may view the system as a source of help and resources. However, family policing systems were not designed to provide care or address root causes of family stress, such as poverty, and should not be looked to for these purposes.

Rise's parent-led participatory action research (PAR) report documents parents' experiences with the Administration for Children's Services (ACS), New York City's family policing system. Findings include:

- ACS fails to help parents. Economic supports, financial and employment assistance, were the least common services included in parents' ACS service plans, despite surveyed parents' very low incomes.⁵ Even when connections to services were helpful to families, they came at the cost of negative experiences with the system.
- ACS intervention inflicts lasting and layered trauma, including harming children physically and emotionally and actively harming families instead of helping them.
- ACS does not respect parents' cultural practices and values and violates norms of privacy and autonomy for parents and children.
- ACS involvement damages relationships that parents and families need to thrive.

- Parents lose their jobs, identities, and live in fear.⁶

The family policing system is deeply connected to broader systems of policing and punishment, both in ideology and in practice.⁷ This connection is apparent in stories by Rise parents who describe being arrested as part of the report and investigation process.⁸ Like policing and incarceration by the criminal legal system, surveillance and family separation by the family policing system impact predominantly Black and brown, low-income families living in communities marked by societal neglect. Involvement with family policing often lasts for years and for generations and impacts families long after cases are closed.⁹ Many parents at Rise were impacted by the foster system as children, and some are impacted as grandparents. Parents are placed on child abuse registries that create employment barriers, limit parents' involvement in their children's schools, prevent accumulation of generational wealth, and impact mental health.

Racism and Poverty

For the vast majority of families, system involvement is tied to economic stress, racism,

⁴ *Teaching Justice by Keeping Families Together*, a video series by CLEA, the Clinical Legal Education Association. (2020, Jan. 4). Retrieved from: <https://www.youtube.com/watch?v=Dzdt31cAlC8&t=1901s>

⁵ 53 percent of those surveyed reported an annual household income under \$25,000, including 28 percent with an income under \$10,000. Finding from: Rise & TakeRoot Justice. (Fall 2021). *An Unavoidable System: The Harms of Family Policing and Parents' Vision for Investing in Community Care*.

⁶ Rise & TakeRoot Justice. (Fall 2021). *An Unavoidable System: The Harms of Family Policing and Parents' Vision for Investing in Community Care*.

⁷ Franklin, K. (2020, Oct. 20). 'Abolition is the Only Answer': A Conversation with Dorothy Roberts. Retrieved from: <https://www.risemagazine.org/2020/10/conversation-with-dorothy-roberts/>

⁸ See for example: Farmer, C. (2020, Jan. 7). *We Just Needed Support: Instead, ACS tore us apart*. Retrieved from: <https://www.risemagazine.org/2020/01/we-just-needed-support/>; Anonymous. (2019, Oct. 16). *My Broken Life: My kids were never taken, but child protective services hurt my son and me so much*. Retrieved from: <https://www.risemagazine.org/2019/10/my-broken-life/>

⁹ Franklin, K. & Werner, S. (2020, Dec. 11). *Clearing Your Name After an Investigation: How to Seal and Amend Your Record*. Retrieved from: <https://www.risemagazine.org/2020/12/clearing-your-name-after-an-investigation/>

and community conditions that make it difficult to find support and resolve problems. Mandatory reporting laws are discriminatory by design and in practice, due to definitions of maltreatment that conflate poverty with neglect, pervasive systemic racism and classism, individual racism and prejudice based on stereotypes, and structural inequities.

Mandated reporting laws and broad definitions of neglect punish parents for societal conditions that leave families without necessities. In the eyes of the Office of Children and Family Services (OCFS), New York State's family policing agency, being unable to provide food, clothing, and shelter are signs of neglect.¹⁰ This broad category of neglect accounts for 76 percent of all "child maltreatment" allegations made to ACS.^{11,12} Researcher Frank Edwards explained,

"The child welfare system reflects how the U.S. treats poor people across the board. We blame individual people for problems our society creates. We treat widespread child poverty as if it's a problem with parents rather than a problem with our social safety net, economy, housing, and other factors that lead to families being in poverty and crisis."¹³

The system's racism is evident in data and parents' experiences. In NYC, 44 percent of Black children and 43 percent of Latinx children get investigated before their 18th birthday—more than double the investigation rate of white children (19 percent).¹⁴ In Minnesota, about 75 percent of Native children experience an investigation.¹⁵ Black and brown parents are penalized for not adhering to standards dictated by white supremacist institutions—standards they may not know about, share, or be in a position to follow. In Rise's PAR survey, 74 percent of parents said that their cultural practices and values were not respected during their involvement with child welfare.¹⁶ The family policing system's punishment of cultural differences and enforcement of criteria for suitable homes are forms of institutionalized racism and classism. Imani Worthy, Rise public speaking coordinator and a Black mother impacted by family policing, wrote about racist stereotypes

and the assertion of white, middle-class norms as parenting standards, "We are labeled ghetto, uncouth, angry, villains, uneducated. If you are poor and a minority, you are viewed as a threat to society or your family in some shape or form. Systems enforce a standard of conduct. If you don't meet what they view as 'right' (a.k.a white), you are punished."

Parents describe professionals' assumptions about and suspicion of parents of color. Jeanette Vega Brown, co-director of Rise and a Puerto Rican mother impacted by family policing, wrote,

"Racism and classism come in where white parents don't get the same questions, judgments, and punishments as Black, Latinx, and Native families. If you're a parent who looks like me and you go to the hospital, you will be questioned and assigned a social worker you didn't request. Our children are interrogated because doctors and social workers don't believe parents' reasons for bringing their children to the hospital."

Structural inequities, including lack of access to quality housing, schools, childcare, parks, legal representation, and health/mental health care, put families at risk of family policing

¹⁰ Marcenko, M. O., Lyons, S. J., & Courtney, M. (2011). *Mothers' experiences, resources and needs: The context for reunification*. Children and Youth Services Review, 33(3), 431-438. Retrieved from: <https://doi.org/10.1016/j.childyouth.2010.06.020>

¹¹ Joyce, K. (2019, Feb. 25). *The Crime of Parenting While Poor*. The New Republic. Retrieved from: <https://newrepublic.com/article/153062/crime-parenting-poor-new-york-city-child-welfare-agency-reform>

¹² NYC Administration of Children's Services. (2020). *Child Welfare Indicators Annual Report 2020*. Retrieved from: <https://www1.nyc.gov/assets/acs/pdf/data-analysis/2020/CityCouncilReportCY2020.pdf>

¹³ Franklin, K. & Werner, S. (2021, Nov. 3). 'A Call to Action': New Research Finds Extremely High Rates of Investigations of Black, Brown and Native Families. Retrieved from: <https://www.risemagazine.org/2021/11/a-call-to-action-research/>

¹⁴ Franklin, K. & Werner, S. (2021, Nov. 3). 'A Call to Action'.

¹⁵ Franklin, K. & Werner, S. (2021, Nov. 3). 'A Call to Action'.

¹⁶ Rise & TakeRoot Justice. (Fall 2021). *An Unavoidable System: The Harms of Family Policing and Parents' Vision for Investing in Community Care*.



Rise staff (2021) — Back row (left to right): Naashia B., Shamara Kelly, Ashanti Bryant, Jeanette Vega, Teresa Marrero, Genevieve Saavedra Dalton Parker, and Tracy Serdjenian. Front Row (left to right): Halimah Washington, Imani Worthy, Robbyne Wiley, Keyna Franklin, Bianca Shaw, Noshin Hoque, Shakira Paige and Teresa Bachiller

system involvement, as does police presence in communities, criminal legal system involvement, and exposure to public services such as shelters and hospitals. Hospitals drug test pregnant people and newborns without patients’ consent—disproportionately targeting Black women, who do not have higher positive-result rates.¹⁷ A positive test can lead to a report and family separation, despite evidence that separation harms infants.^{18,19} As researcher Kelley Fong stated, “When we think about which schools have policies to call CPS [child protective services] after a certain number of absences versus calling and checking in with families about absences, or which organizations think about alternatives to CPS rather than immediately ... [calling] the hotline, these patterns are not race neutral.”²⁰

Fear and Coercion

Mandated reporting creates a culture of fear that prevents parents from accessing resources

¹⁷ Brico, E. (2021, Dec. 1). *Doctors Drug Test Black and Poor Families at Higher Rates, Risking Family Separation*. Talk Poverty. Retrieved from: <https://talkpoverty.org/2021/12/01/doctors-can-drug-test-new-parents-without-consent-pick-depends-race-class/>

¹⁸ Brico, E. (2021, Dec. 1). *Doctors Drug Test Black and Poor Families at Higher Rates, Risking Family Separation*.

¹⁹ Movement for Family Power. ReImagine Support. Retrieved from: <https://static1.squarespace.com/static/5be5ed0fd274cb7c8a5d0cba/t/60adc181f9d1cb4ef8cc53f9/1622000002581/Community-One-Pager-5-25-21.pdf>

²⁰ Farmer, C.; Franklin, K. & Werner, S. (2020, Nov. 19). *The Problems with “The Tool We Have.”* Retrieved from: <https://www.risemagazine.org/2020/11/the-problems-with-the-tool-we-have/>

and support that contribute to family safety and well-being.²¹ This culture of fear also prevents parents from talking openly with providers, such as doctors, school personnel, and therapists, about challenges. A Rise parent contributor wrote, “Being scared of the child welfare system [impacts] almost everything I do. Every move I make has to be given careful thought—what doctors I go to and what I tell a doctor or therapist. ... Because I have mental health issues, my son could be taken back by CPS at any time, for any reason.”²²

Jeanette confronted this dynamic at her son’s school:

“In my Parent Teacher Association (PTA), parents wouldn’t share their challenges. I told the school staff, “Because you are mandated reporters, parents are fearful of saying anything real to you, as you will report us.” A few parents agreed and said, “There’s no such thing as a safe space with mandated reporters. You just never know what they think is something to report.””

Power dynamics make parents vulnerable in interactions with mandated reporters. Professionals automatically are deemed more credible. Imani wrote, “It’s always their word over mine. That power struggle needs to change. If someone doesn’t like me, and my life and child’s life is ultimately in that person’s hands, how should I act?” Parents may feel angry, afraid, frustrated, or overwhelmed. These are natural feelings when surviving and coping with poverty, racism, toxic stress, trauma, and oppressive systems; however, any expression of those feelings by Black and brown parents may be used against them (e.g., as evidence that they need anger management or mental health services).

Additionally, the threat of a report is sometimes used coercively by mandated reporters to push parents to do what the provider thinks is best. Based on her research with mandated reporters, Kelley Fong explained,

“There is another side to what mandated reporters want, which is not just optional assistance offered to parents, but rehabilitation. They

want CPS to tell parents, “This is what we think you need to do better for your children.” Or “This is not the way to behave with the school.” ... Some reporters are using CPS as a way to pressure families to behave in certain ways and regulate families.²⁴

This culture of fear, punishment, and policing also shapes decision making by mandated reporters. Parents hear directly from service providers that they make reports because of the threat of losing their licenses for not reporting. No one wants to be in the news, lose their job, go to jail,²⁵ or be held responsible for a child being harmed. However, making a report does not necessarily protect a child, as the system does not effectively prevent harm—and most reports aren’t made out of fear that a child is in danger.²⁶ Kelley Fong explained, “By and large, mandated reporters are seeing families facing adversity and in need of an intervention they can’t provide, whether because they don’t have the knowledge, skills, resources, or time. Sometimes, schools say they don’t know what kind of therapeutic resources are out there and so they turn to CPS.”²⁷ These motivations align with the fact that the majority of investigations are not indicated, meaning they do not find evidence of abuse or neglect. In 2020, about 64 percent of investigations in NYC were not indicated,²⁸ even though, at that time, the

²¹ Farmer, C. & Franklin, K. (2020, Jan. 22). *New Research: How Fear of CPS Harms Families*. Retrieved from: <https://www.risemagazine.org/2020/01/how-fear-of-cps-harms-families/>

²² Anonymous. (2021, Jun. 2). ‘Fear of CPS Impacts Every Move I Make.’ Retrieved from: <https://www.risemagazine.org/2021/06/fear-of-cps-impacts-every-move-i-make/>

²³ Vega, J. (2017, May 1). *Applying a Toxic Stress Lens to Frontline Practice with Parents*. <https://www.risemagazine.org/2017/05/cofcca-speech-2017/>

²⁴ Farmer, C.; Franklin, K. & Werner, S. (2020, Nov. 19). *The Problems with “The Tool We Have.”*

²⁵ Child Welfare Information Gateway. *Penalties for Failure to Report and False Reporting of Child Abuse and Neglect*. (2019). Retrieved from: <https://www.childwelfare.gov/pubpdfs/report.pdf>

²⁶ Farmer, C.; Franklin, K. & Werner, S. (2020, Nov. 19). *The Problems with “The Tool We Have.”*

²⁷ Farmer, C.; Franklin, K. & Werner, S. (2020, Nov. 19). *The Problems with “The Tool We Have.”*

²⁸ NYC Administration for Children and Families. *Abuse/Neglect Investigations by Community District, 2015–2020*. Retrieved from: <https://www1.nyc.gov/assets/acs/pdf/data-analysis/abuseandneglectreport15to20.pdf>

State's legal standard was incredibly low, requiring merely "some credible evidence" for cases to be indicated.²⁹

Parents have been reported and investigated when they've rinsed their children's clothes in a tub without detergent, left younger children in the care of an older child, run late for picking their child up from school, or sought medical care for an infant with health challenges. Professionals may not consider the harm of a report—and may never hear from a family about its impact, as a family is unlikely to return to a doctor, therapist, or organization that reported them. Reports break trust, disrupting relationships between families and service providers.

Safety Without the System

Frequently, abolitionists are asked how children can be kept safe without the system, and by extension, without mandated reporting. The question overlooks how mandated reporting makes families less likely to access support and disregards the state violence reports initiated. Kelley Fong explained, "It is easy for mandated reporters to say, better safe than sorry, no harm no foul. What I heard from mothers was that this often wasn't the case. There was real harm caused even with cases that were not substantiated."³⁰ During the investigation process, investigators with the power to remove your children search your home, examine your children's bodies, and interview your neighbors and children's teachers. This is a stressful, terrifying, and intrusive experience for families. System involvement is also experienced by parents as shameful and disrupts romantic, familial, and platonic relationships.³¹ This can increase isolation rather than strengthening connections and care networks crucial to navigating family challenges.

Additionally, the question is based on the assumption that the system keeps children safe—but some children are physically, sexually, and/or emotionally abused, even murdered, in the system's "care."³² Research suggests that children "on the margin of placement" in the foster system tend to have better outcomes when they remain at home.³³ Scholar and activist Rita S. Fierro stated,

"There is no proof that children who are removed from their families sort out better. Actually, we have plenty of data that show that children who age out of foster care have a horrible time. Only 50 percent of them graduate high school, 30 percent of them end up homeless, and they have trauma rates higher than Vietnam veterans. So, the state is not a better parent than even parents who are having a hard time. But we don't hold states accountable for what happens to children after they are removed."³⁴

Our society must invest in destigmatized, compassionate ways of preventing and responding to harm that do not themselves inflict harm. B.R.E.A.T.H.E. Co-Founder Ashley Ellis discussed the value of building trust through restorative and transformative justice approaches,

"How do we . . . build what needs to be in place, that will allow me to show up and say," . . . I don't have what I need. I'm not at my best. Can you watch my kids while I get myself together?" You don't judge me and hold it over my head. There is no punishment. Imagine that — if people are so connected and community is able to show up.

²⁹ Although new legislation recently raised the legal standard in New York State to require a "fair preponderance" of evidence in family court, this is still a lower standard than that used in the criminal legal system. Franklin, K. & Paige, S. (2021, Jan. 18). *New SCR Legislation Took Effect Jan. 1st: What it Means for Parents*. Retrieved from: <https://www.risemagazine.org/2022/01/what-new-scr-legislation-means-for-parents/>

³⁰ Farmer, C.; Franklin, K. (2020, Jan. 22). *New Research: How Fear of CPS Harms Families*.

³¹ Rise & TakeRoot Justice. (Fall 2021). *An Unavoidable System: The Harms of Family Policing and Parents' Vision for Investing in Community Care*.

³² See for example: Hawaii News Now. *Court documents reveal horrific allegations against adoptive parents charged with murdering girl*. (Nov. 12, 2021). Retrieved from: <https://www.hawaiinewsnow.com/2021/11/12/adoptive-parents-isabella-ariel-kalua-make-first-court-appearance-girls-murder/>

³³ Doyle Jr., J.J. (Dec. 2017). *Child Protection and Child Outcomes: Measuring the Effects of Foster Care*. *American Economic Review*, Vol. 97(5), pp. 1583–1610. Retrieved from: <https://www.aeaweb.org/articles?id=10.1257/aer.97.5.1583>

³⁴ Fierro, Rita S. (2021, Oct. 27). *Rise Annual Fundraiser*. <https://vimeo.com/639995386>

Folks need proof that if they show up in their weakest moment, you're not going to turn them in, manage them, or shame them. Their story won't be weaponized against them and used as a reason to call the system, causing further harm and disconnection. When people experience that and see that harm will not happen, they're most likely to show up and ask for what they need. That helps to deepen trust and allows people to let their guard down."³⁵

Invest in Families and Communities

Abolishing the system—and ending mandated reporting—requires divesting from family policing and disentangling family support from family policing, so parents do not have to be involved with oppressive systems to access resources. Funding shifted away from family policing can be invested in community-led approaches to family and community safety and wellness. We must invest in community-led innovation to explore, adapt, and expand existing and promising healing, restorative, and transformative justice approaches to safety and accountability.³⁶

When we invest in families and communities, service providers will be less likely to encounter families experiencing crises due to a lack of resources such as housing, food, and childcare. Research has demonstrated that increasing the minimum wage can substantially reduce neglect reports;³⁷ resources such as cash and food can reduce domestic violence; and housing and childcare can increase safety.³⁸ Additionally, when families want resources or support, there will be more community-based resources and services to connect them to without turning to the system. We need to make resources available without qualifications, strings attached, or resource gatekeeping by family policing systems.

Rise's PAR project found that some parents were connected to a helpful resource or service through ACS—but support came at the cost of significant harm at the hands of the system.³⁹ Imani wrote,

“Most cases are due to lack of resources—resources that many

parents, including me, tried to obtain without the system and were denied. Then, those resources magically became available during one of the most emotionally and spiritually draining times of my life. Clothes, diapers, cradles and childcare are just a few examples of resources parents can access through the system. Why do we have to go through traumatic system involvement to receive resources that should be accessible without being reported?”

Participants in our PAR project, like parents involved in Rise more broadly, were clear that they do not trust the child welfare system and want support and resources to come from people and organizations outside of it.⁴⁰ Dorothy Roberts, researcher, scholar, and activist, described what we need to build as we end family policing,

“Ending the system doesn't mean leaving people to fend for themselves in a society that is structured unequally. We are talking about transforming society, including making structural changes at a societal level and changes in our communities. Ending structural racism is a tall order, but we need to work toward that. We need to care for families by providing housing and food [and] universal, equal, and free

³⁵ Paige, S. (2021, Jul. 6). *Building Safety in Community Through Restorative Justice*. <https://www.risemagazine.org/2021/07/building-safety-in-community-through-rj/>

³⁶ In Rise's glossary, we share our understanding of the terms healing justice, restorative justice and transformative justice drawing from a variety of sources: <https://www.risemagazine.org/2021/09/glossary-of-terms/>

³⁷ Baldari, C. & Mathur, R. (2017, Aug. 31). *Increasing the Minimum Wage is Good for Child Well-Being*. First Focus. Retrieved from: <https://firstfocus.org/blog/increasing-the-minimum-wage-is-good-for-child-well-being>

³⁸ Gruber, A. (2020, Jul. 7). *How Police Became the Go-To Response to Domestic Violence*. Slate. Retrieved from: <https://slate.com/news-and-politics/2020/07/policing-domestic-violence-history.html>

³⁹ Rise & TakeRoot Justice. (Fall 2021). *An Unavoidable System: The Harms of Family Policing and Parents' Vision for Investing in Community Care*.

⁴⁰ Rise & TakeRoot Justice. (Fall 2021). *An Unavoidable System: The Harms of Family Policing and Parents' Vision for Investing in Community Care*.

health care and education. At a community level, we need to care for each other without relying on violent systems like police, prisons, and child removal. It involves mutual aid and figuring out how to deal with families' problems and needs and the conflict and violence that occurs in families, in ways that are not punitive, inhumane, violent, and terroristic."⁴¹

Increasingly, community groups are proving that safety isn't about policing. Research on peer models and community-led efforts to provide resources shows that investing in peer support and in families and communities can prevent and reduce system involvement and strengthen well-being.⁴² Community groups are demonstrating ways to prevent and respond to physical and sexual abuse and domestic and community violence, and to provide support around mental health, substance use, grief, and healing—without policing systems.⁴³ Many communities have never felt safe engaging with police and have developed strategies for responding to crises without police involvement. While strategies and resources exist for responding to family crises without involving family police, we need to adapt and develop more—and make them widely available. It is important that resources are voluntary and unaffiliated with family policing systems and that programs addressing harm are not required to make reports.

Examples of community investments called for in Rise's PAR report include:

- Community-based supports for trauma recovery, especially healing from sexual and intimate partner violence, that recognize the historical and current vulnerability of Black and brown women.
- Peer and survivor-led services and approaches to intimate partner violence and mental health support.
- Culturally appropriate services and supports for individuals and families for healing from trauma, addressing grief and working through family conflict, including age-appropriate services for children.
- Holistic community centers, family mediation programs using restorative justice approaches, and programs to support LGBTQ children/youth and their families.
- Community-based care and harm-reduction approaches to substance use by parents, including voluntary in-home treatment programs for parents with children at home.

Build Peer Support Networks

Nationwide, school staff reports more allegations than any other category of reporters, yet reports made by schools are least likely to be substantiated or lead to family interventions. In NYC, approximately two-thirds of reports from school personnel do not lead to evidence of abuse or neglect.⁴⁴ One way of investing in community-led support and reducing reports and system involvement is described in Rise's proposed peer and community care model. This model was developed by parents impacted by family policing based on their lived experience and interviews with groups providing peer support, mutual aid, and credible messenger

⁴¹ Franklin, K. (2020, Oct. 20). 'Abolition is the Only Answer': A Conversation with Dorothy Roberts.

⁴² Rise. (2021). Insights. *Someone To Turn To: A Vision for Creating Networks of Parent Peer Care*. Retrieved from: https://www.risemagazine.org/wp-content/uploads/2021/05/Rise_PeerCareInsights2021_Final.pdf

⁴³ See for example: BEAM: <https://www.beam.community/>; Hidden Water: <https://hiddenwatercircle.org/>; Project Hajra: <https://alliedmedia.org/projects/project-hajra>; One Million Experiments: <https://millionexperiments.com/>; Hightower, J. & Rubinowitz, E. (2020, Nov. 7). Amid Worries Of Higher Stress, A National Project Is Training Chicago Barbers To Be Mental Health Advocates. WBEZ Chicago. Retrieved from: <https://www.wbez.org/stories/amid-worries-of-higher-stress-a-national-project-is-training-chicago-barbers-to-be-mental-health-advocates/442f917f-7a18-4ab6-bf9e4aaef6973e6>; Franklin, K. & Paige, S. (2021, May 25). 'When You Have Lived Experience, You Come with a Different Angle.' Retrieved from: <https://www.risemagazine.org/2021/05/when-you-have-lived-experience/>

⁴⁴ Lehrer-Small, A. (Jan. 27, 2022). NYC Schools Reported Over 9,600 Students to Child Protective Services Since Aug. 2020. Is It the 'Wrong Tool' for Families Traumatized by COVID? T74. Retrieved from: <https://www.the74million.org/article/nyc-schools-reported-over-9600-students-to-child-protective-services-since-aug-2020-is-it-the-wrong-tool-for-families-traumatized-by-covid/>

mentoring.⁴⁵ Rise plans to launch the model in schools with high report rates and measure its impact on the number of reports made by those schools over time. This data will be used to garner support for funding and scaling the program citywide.

Just as credible messengers and violence interrupters create safety without police presence,⁴⁶ parent peer care and advocacy can support family safety and well-being. Rise believes that training parents in impacted communities to build relationships with neighbors, offer emotional support, make connections to community resources, and advocate to expand community resources can reduce family stress before it builds and lead to healthier, thriving families. Our vision is that trained networks of peers with credible life experience will: increase the likelihood that parents in emerging crises safely get support without state intervention; and increase the flourishing of relationships that reduce stress, trauma, and isolation and strengthen healing, care, connectedness, and joy.

This approach is not a “replacement” for system intervention—it serves an entirely different purpose, rooted in relationships and values of trust, care, respect, and shared power. Relationship building that values and supports families without blame, coercion, and fear can better foster safety and help buffer the chronic stress families experience because of racism and poverty. In trusting relationships, people are more likely to be open about making mistakes or causing harm. People may feel more comfortable naming harms they’ve experienced or fears about harms that could occur. This creates opportunities for conversations about safety, accountability, and healing—including engaging in safety planning and using restorative justice circles to explore options for addressing conflicts and concerns.

We envision two roles—Peer Supporters and Community Supporters, who will not be mandated reporters and will be trained and equipped with knowledge, tools, and resources to provide information and support that families need quickly. Volunteer Peer Supporters will provide a listening ear and connections to resources, services, and

opportunities. Community Supporters will be hired part-time or full-time and embedded in schools and community-based organizations and provide a higher level of support. They will guide and support families through challenges and take referrals from Peer Supporters and from professionals working as mandated reporters. Peer and Community Supporters can connect parents to legal representation so parents can access support and discuss challenges without fear that their words will be used against them. Additionally, they can help parents prepare to navigate conversations with mandated reporters.

Support, Don’t Report

Individuals and organizations can take immediate action to avoid reports and advocate for change. Professionals can join growing calls to end mandated reporting and speak out about its harm to families and negative impact on service provision and therapeutic relationships. Organizations can build connections with mutual aid and community groups that respond to immediate resource needs. Additionally, organizations can prepare all staff or a point person to connect families to trusted community resources, supports, and services.

Jeanette’s experience with her son’s school provides one example of how an organization can create support structures to reduce reports. When Jeanette raised parents’ fear of reports, school staff said they wanted parents to feel comfortable reaching out for support, initiating a dialogue about what could change. Jeanette suggested the school implement a simple 1–2–3 process: (1) Inform parents of the issue; (2) Provide support to address it, co-creating a plan with clear steps and timelines.

⁴⁵ Rise. (2021). *Insights. Someone To Turn To: A Vision for Creating Networks of Parent Peer Care*. Retrieved from: https://www.risemagazine.org/wp-content/uploads/2021/05/Rise_PeerCareInsights2021_Final.pdf

⁴⁶ See for example: Cure Violence Global. *The Evidence of Effectiveness*. (2021, Aug.). Retrieved from: <https://cvg.org/wp-content/uploads/2021/09/Cure-Violence-Evidence-Summary.pdf>; Lynch, M.; Astone, N.M.; Collazos, J.; Lipman, M. & Esthappan, S. (2018, Feb. 20). *Arches Transformative Mentoring Program: An Implementation and Impact Evaluation in New York City*. Urban Institute. Retrieved from: <https://www.urban.org/research/publication/arches-transformative-mentoring-program>

This could involve providing resources directly or connecting a family to community resources or legal representation. Follow up and partner to address barriers; (3) Be transparent. Share mandated reporting requirements, if relevant. The idea is to avoid reports, but if a report is made, parents should be informed of the possibility beforehand, told why the call will be made and what will be shared, asked to be present when the call is made, and connected to legal representation.

Now, when the school has concerns, staff inform the PTA and Parent Coordinator. A peer informs the parent of the concern, offers resources, and averts a report. Jeanette shared, “A mother told us she lost her job and wasn’t sending her child to school because they were out of food. She was afraid that if her child said he was hungry, the school would call ACS. The team brought food to the family’s home without judging the parent, asking questions, or going into her home.”

Diana Autin, Executive Director of SPAN-NJ, discussed how their organization has nearly eliminated reports by having a point person assess whether a situation meets reporting criteria,

“Some people think if a child is living in an apartment with water running down the walls, they should report that family. No, what they should do is report the landlord—not the family. We have a point person who’s very well versed in what child abuse is and isn’t and knows that a lot of bad things happen from reporting—and also that the vast majority of reports are not found to be actionable. By putting that in place, we’ve been able to limit, to a great degree, misunderstanding of what child abuse is and thus inappropriate and unnecessary reporting.”⁴⁷

Organizations that have effective practices to meet family support and advocacy needs and de-escalate crises without involving policing systems should document and share what works. While small-scale actions do not remedy societal inequities, they make a difference for families and show that non-

punitive approaches can be effective—and should be invested in and implemented widely.

Address Training and Protocols

Improving mandated reporter training and protocols is not the solution—however, training and protocols contribute to the current high volume of reports. As steppingstones toward abolition, it is essential to immediately shrink the number of families funneled into the system. This could start with narrowing mandated reporting requirements to physical or sexual abuse, not neglect.

State systems should update all mandated reporter training and protocols immediately to distinguish poverty-related needs from child endangerment and abuse and to address support needs directly. Parents and youth impacted by the system should be engaged as partners in the development of training content. Rise recommends that systems:

- Train mandated reporters to know that a report is not a resource referral and should not be misused for that purpose. Mandated reporter training should identify potential consequences of reporting and the harm of investigations and family separation.
- Provide clear standards for recognizing the difference between poverty and neglect and resources for responding to poverty-related needs (e.g., food, clothing, housing) by connecting families to resources and support, including peer support.
- Set clear limits for when mandated reporters can be held liable for not reporting.
- Require organizations that employ mandated reporters to develop processes to assess concerns, identify options, and determine whether a report is required. Protocols should emphasize the importance of engaging directly with parents/families and connecting parents/caregivers to legal representation if a report will be made.

⁴⁷ Rise interview with Diana Autin, Executive Director of SPAN-NJ, on December 10, 2020, by Shakira Paige, Rise contributor, to inform Rise peer and community care model. (Unpublished).

Conclusion

Mandated reporting laws and practices feed families into the family policing system rather than addressing root issues, including racism, poverty, structural inequity, and lack of investment in Black and brown, low-income communities. Most reports aren't made because children are in danger—reports are often made because requirements conflate poverty with neglect. The system doesn't keep families or children safe and in fact, inflicts trauma, so it is important to invest in community-led approaches to preventing and responding to harm and violence.

Ending mandated reporting is key to supporting child and family well-being. Dorothy Roberts stated, "It doesn't make sense to keep an oppressive⁴⁸ system because we are unwilling to imagine something better. Let's imagine

something better, work toward it and get rid of what we know is oppressive." Parents impacted by family policing are imagining and creating something better. Imani summarized, "Abolition involves divesting from systems that create harm and investing those funds into community. The beauty of the peer support model is there is no system involvement. Our goal is to support families and communities to become powerful on their own and to support themselves—where community members have the resources they need." Rise's vision is that all families have the knowledge, resources and support they need to thrive without system involvement. We believe that when surveillance, separation, and loss of control over their family lives is not a threat, parents will reach out for support earlier on.

⁴⁸ Franklin, K. (2020, Oct. 20). 'Abolition is the Only Answer': A Conversation with Dorothy Roberts.

Imani Worthy is a Public Speaking Coordinator at Rise.

Tracy Serdjenian is a Communications Director at Rise.

Jeanette Vega Brown is the Co-Executive Director at Rise.

WHY?

By Jawanza Phoenix

It begins with an anonymous call to a hotline alleging child abuse or neglect. The real reason for the call is jealousy over the attention one woman gave to the man of the woman who made the anonymous call.

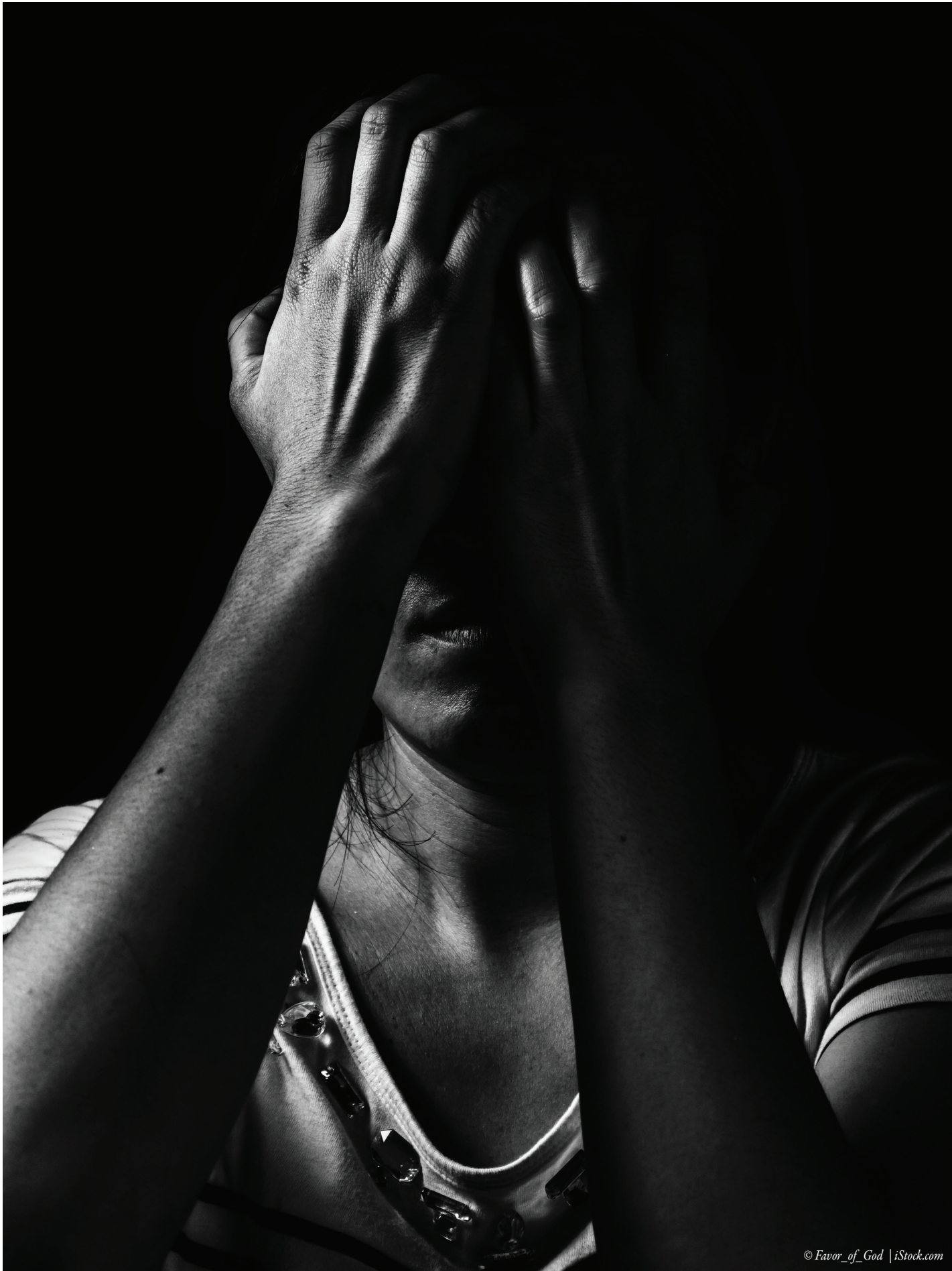
It begins when the government snatches the baby from the arms of a mother, sometimes in the dead of the night before she can say a proper goodbye.

It begins with some test they make her take called a “parenting assessment” which includes hundreds of questions but none which question how poor and uneducated black mothers have kept black babies safe for over four hundred years.

It begins when the government says a woman is not smart enough to raise her baby – something about “cognitive limitations” – and there are no pills she can swallow or classes she can take to make her better and bring back her baby.

It begins when the government says they have strangers who will adopt and raise the baby and the mother is forbidden to know where the strangers live.

It begins and it ends with a mother on her knees, clutching a photograph, asking God, the walls, the ceilings, anything or anyone who will listen, *Why?*



© Favor_of_God | iStock.com

Justice-Centered Child and Family Well-being Systems to Address Neglect

Priscilla A. Day, Angelique Day, Mary McCarthy, Corey Best, Katharine Briar-Lawson, and Jessica Pryce

Introduction

In order to understand the current state of child welfare, we must realize that the colonization of tribal nations, slavery and related horrific harms are the foundation of white supremacy embedded in child welfare and other systems in the U.S. The consequences of structural and institutional abuse persist today, in multiple laws, systems, and structures, developed over centuries.¹ Legacies of colonization and racism are apparent in the oversurveillance and over-representation of Indigenous and Black and non-white children in child welfare and interconnected social service systems.² To address these harms, especially as they are manifested in child welfare practices relating to child neglect and to inform remedies, it is critical that the intersection of poverty, inequality and racism, including a lack of understanding of tribal sovereignty,³ are examined as racialized injustices in the U.S. While disproportionate child welfare outcomes impact many children, especially non-white children, this paper focuses primarily on BIPOC children and families.

The process of creating sustainable and impactful social and organizational change is complex, and the child welfare system has tried over the years to make adjustments without excavating the legacies and causes of a failed social safety net for families who are descendants of the enslaved and Indigenous community. However, steps to mitigate these injustices have been narrow in scope, resulting in incremental, evolutionary modifications.⁴ The realization that the system does not meet the needs of families experiencing

poverty, especially Indigenous, Black and non-white children and their families, has long been known, as described in a White House Conference on Child Welfare and Race in 1930.

“The dependent and neglected Negro children, Mexican and [American] Indian families present unique problems needing special consideration and while there is theoretical agreement among leaders in health and social welfare that the children of these groups should receive the same standards of care as other children their needs are in reality little understood by the general public and in many communities, they are almost completely ignored.”

This conference, held over 90 years ago, reminds us that subsequent changes reflect small adjustments, not profoundly different ones. Evolutionary change is defined as gradual, incremental adaptations that serve as normal, natural, and neutral shifts.

¹ Roberts, Dorothy. *Shattered Bonds*. Basic Books. 2002.

² Dettlaff, A., Weber, K., Pendleton, M., Boyd, R., Bettencourt, B., & Burton, L. (2020). It is not a broken system, it is a system that needs to be broken: The upEND movement to abolish the child welfare system. *Journal of Public Child Welfare*, 14(5), 500–517. doi.org/doi.org/10.1080/15548732.2020.1814542SSS

³ Edwards, F.T., & Beardall, T.R., (2021). American Indians and Alaska Native child welfare system contact across U.S. states: Magnitudes and mechanisms. <https://osf.io/preprints/socarxiv/fcz5p/>

⁴ Minoff, E. (2018). Entangled roots: The role of race in policies that separate families. Center for the Study of Social Policy. www.cssp.org/resource/entangled-roots



Priscilla Day and her Grandbaby

Evolutionary change doesn't generally surprise its stakeholders because it supports the status quo infrastructure. The changes recommended in this article can be seen as moving towards more revolutionary change that challenges the status quo (defined as the existing state of social and political affairs)⁵ to child and family well-being, especially neglect.⁶ Revolutionary change is transformational,⁷ seeking remedies within and outside the system in a radically different, often unexpected way that is likely to create discomfort to those committed to the status quo. Historically, remaining comfortable has not rendered the types of outcomes needed for families experiencing poverty, and Indigenous, Black, and non-white families. Discomfort requires unlearning old ways of work and embracing new paradigms to create equitable, justice-centered child welfare support that concretizes humanity.

Having a national system of child protection might imply that the U.S. is supportive of children. However, data and the lived experiences of parents and youth tell a different story.⁸ On every dimension of the social determinants of health,⁹ the U.S. fails children, with American Indian, African American, Native Hawaiian, and Pacific Islander children impacted most severely.¹⁰ Hispanic children have also been overrepresented in 20 states.^{11,12} The U.S. has one of the highest rates of child poverty among industrialized nations.¹³ Our health care outcomes mirror those of developing countries.¹⁴ Indigenous, Black and non-white children and families bear the brunt of inadequate, disparate outcomes on basic needs¹⁵ like housing, water quality, food security, education, and environmental equity.

This article examines the policy context for child welfare practice in key legislation since 1962¹⁶ and its relevance to political, racial justice, and family support. This includes the need for racial equity and support of tribal sovereignty within the child welfare system. Then, we examine neglect statutes, the way they have been conceived, their variations, and implications relating to poverty and race. Specific remedies are offered, such as improved income and related concrete supports for impoverished families. This includes:

- Practice improvements drawn from the Indian Child Welfare Act (ICWA) and its practice innovations (integrative services, active vs. reasonable efforts and the role of courts, and other systems in advancing equity and justice for families).
- Changes in neglect laws.
- The promotion of neglect diversion, family-friendly helping supports, such as family resource centers—and more proportional, race equitable access to FFPSA funds based on those populations of color in foster care.¹⁷

⁵ Merriam Webster Dictionary, <https://www.merriam-webster.com/dictionary/status%20quo>

⁶ Difference between Evolution & Revolution, 2011. <https://www.differencebetween.com/difference-between-evolution-and-vs-revolution/>

⁷ Difference between Evolution & Revolution, 2011.

⁸ Merritt, Darcey H. (2020) How do families experience and interact with CPS? ANNALS of the American Academy of Political and Social Science .629. DOI: 10.1177/0002716220979520

⁹ U.S. Department of Health & Human Services, 2021. Child Maltreatment 2019. Administration for Children and Families, Administration on Children, Youth and Families, Children's Bureau. <https://www.acf.hhs.gov/cb/report/child-maltreatment-2019>

¹⁰ AnnieECaseyFoundation. 2019. "Children In High-Poverty, Low-Opportunity Neighborhoods." Kids Count Data Snapshot. *KidsCountDataSnapshot*, AnnieECaseyFoundation

¹¹ Puzzanchera, C., & Taylor, M. (2020). Disproportionality rates for children of color in foster care dashboard. National Center for Juvenile Justice. http://ncjj.org/AFCARS/Disproportionality_Dashboard.aspx

¹² Child Welfare Information Gateway. (2021). Child welfare practice to address racial disproportionality and disparity. U.S. Department of Health and Human Services, Administration for Children and Families, Children's Bureau. <https://www.childwelfare.gov/pubs/issue-briefs/racial-disproportionality/>

¹³ Organization for Economic Co-operation and Development. 2021. "OECD Income Distribution Database." <https://www.oecd.org/social/income-distribution-database.htm>, Organization for Economic Co-operation and Development, August. <https://www.oecd.org/social/income-distribution-database.htm>. Accessed 17 November 2021

¹⁴ Tikkanen, Roosa S., and Eric C. Schneider. "Social Spending to Improve Population Health Does the United States Spend as Wisely as Other Countries." *New England Journal of Medicine*, vol. 382, no. 10, 2020, pp. 885-887, <https://www.nejm.org/doi/full/10.1056/NEJMp1916585>. Accessed 13 12 2021.

¹⁵ Annie E. Casey Foundation. 2019.

¹⁶ U.S. Congress. 1962. "Public Law 87-543." Public Welfare Amendments of 1962. *Public Welfare Amendments of 1962*, United States Government Printing Office, 25 July.

¹⁷ Cornell School of Law, 25 US Code Chapter 21-Indian Child Welfare. www.law.cornell.edu/uscode/text/25/chapter-21

Two state policies are offered as examples of emerging initiatives to address anti-poverty measures and meet basic needs. One state policy example is from New Mexico with commitments to address basic needs for survival to help families thrive and end childhood ACES.¹⁸ Another is New York State's commitment to reduce child poverty by 50 percent in the next 10 years.¹⁹ With a vision of family preservation, resources that are currently used for child removal can be shifted to keep children at home safely, reducing trauma caused by removal and resulting in better long-term outcomes for children and families.²⁰

Background

Enduring multigenerational oppression of families, especially Indigenous, Black, and non-white, are reminders of the structural harms of racism and white supremacy. This can be seen in the overrepresentation of Indigenous, Black and other non-white children in the child welfare system, especially those in foster care.^{21,22,23,24} The intersectionality of race, gender, and class creates a set of toxic experiences and outcomes for these children and families who are often challenged to make ends meet in a society that is actively engaged in, and continues to be structured for their oppression.^{25,26,27,28} Systems of oppression have created barriers to economic security, furthering the destruction of Indigenous, Black, and non-white families through policies and practices that have undermined their family and community stability. Families serve as the primary source of belonging and care for children. Family interactions role model and teach children how to live in society and later, in their own families. Yet many low-income families have little support to do this important job. Community offered services and programs (schools, parenting classes, clubs, etc.) are often not welcoming or accessible to Indigenous, Black, and non-white families of color. Even access to entitlement and child welfare alternative response programs such as Differential Response (DR) are compromised by lack of access, bias, and racism. Indigenous, Black, and non-white families are often screened out of child welfare diversion options instead of being tracked to investigation and child

removal, and once in the system, these families tend to remain there longer and experience the harshest outcomes.^{29,30}

Families seeking concrete support in times of need run the risk of a child protection report.³¹ Single parenting women, especially Indigenous, Black, and other non-white women, are especially

¹⁸ 100% New Mexico. <https://www.100nm.org/>

¹⁹ New York State Legislature. *S2755c/A11063 of the Laws of NYS 2020*. Albany, 2021. 13 December 2021. <https://www.nysenate.gov/legislation/bills/2021/s2755>.

²⁰ Dettlaff, Alan, Kristen Weber, Maya Pendleton, Reiko, Boyd, Bill Bettencourt, and Leonard Burton. 2020. It is not a broken system, it is a system that needs to be broken: The upEND movement to abolish the child welfare system. *Journal of Public Child Welfare*, 14 (5). doi.org/doi.org/10.1080/15548732.2020.1814542SSS

²¹ Boyd, Drick. 2015. *White Allies in the Struggle for Racial Justice*. Orbis Books

²² Brave Heart, Maria Yellow Horse & Tina Deschenie, 2006. 'Resource Guide: Historical Trauma and Post-Colonial Stress in American Indian Populations'. *Tribal College Journal of American Indian Higher Education*, 17(3). 24-27 Spr 2006

²³ Child Welfare Information Gateway, 2021. *Child welfare practice to address racial disproportionality and disparity*. U.S. Department of Health and Human Services, Administration for Children and Families, Children's Bureau. <https://www.childwelfare.gov/>

²⁴ Dettlaff, et al., 2020.

²⁵ Dettlaff, Alan J. & Reiko Boyd, 2021. 'Racial Disproportionality and Disparities in the Child Welfare System: Why Do They Exist, and What Can Be Done to Address Them?'. *The Annals of the American Academy of Political and Social Science*. 692(1) <https://doi.org/10.1177/0002716220980329>.

²⁶ Devens, Carol. 1992. "If We Get the Girls, We Get the Race": Missionary Education of Native American Girls". *Journal of World History*, 3(2). p219-37 Fall

²⁷ Edwards, Frank, and Theresa Rocha Beardall. "American Indian and Alaska Native Child Welfare System Contact Across U.S. States: Magnitudes and Mechanisms." SocArXiv, 1 Apr. 2021.

²⁸ Evans-Campbell, Theresa. *Historical trauma in American Indian/Native Alaska communities: A multilevel framework for exploring impacts on individuals, families, and communities*. *Journal of interpersonal violence*,. 2008.. Mar;23(3):316-38. doi: 10.1177/0886260507312290

²⁹ Beardall, Theresa Rocha, and Frank Edwards. "Abolition, Settler Colonialism, and the Persistent Threat of Indian Child Welfare." *Columbia Journal of Race and Law*, vol. 11, no. 3, 2021, pp. 533-574.

³⁰ Fluke, John; Brenda Jones Harden, Molly Jenkins, Ashleigh Ruehrdanz. 'A Research Synthesis on Child Welfare Disproportionality and Disparities'. *Disparities and Disproportionalities in child welfare: Analysis of research*. Alliance for Research in Child Welfare. 2011

³¹ Fong, Kelly. 2020. 'Getting eyes in the home: Child Protective Services investigations and state surveillance of family life'. *American Sociological Review*. 85 (4):610-38.

at risk.³² The majority of children in the child welfare system, upwards of 80 percent, are there because of the nebulous category of neglect, directly related to family poverty.³³ Generational, structural poverty, and trauma have led to family and community disruption.³⁴ When coupled with bias, Indigenous, Black, and non-white families are at high risk for greater identification, investigation, child removal and termination of parental rights (TPR). The insufficiencies of systems, policies, and programs to effectively support families continue a cycle that results in ongoing family and community destruction and trauma.³⁵

System inadequacies can be seen in policies and child neglect statutes governing child welfare practice.^{36,37} Unless structural barriers and systemic racism are acknowledged, understood as causal, and addressed, society and policymakers will continue to disparage families experiencing poverty. Many of these systemic issues have been talked about for decades and include wage structures that require many poor parents to work two or three jobs for inadequate wages. This leads to housing policies that compromise access to safe, affordable housing; lack of family and sick leave policies; lack of access to quality health and childcare; inadequate transportation systems that require a parent to take several buses to get to work, to court, and so on. Systems of colonization, racist, and sexist policies have created intentional barriers that ascribe worth based on race, class, and gender identity, which directly impact the higher rates of child removal for Indigenous and Black children.^{38,39}

Laws That Have Contributed to Disproportionalities: Implications for Colonization and Racism

To contextualize some of the conditions that lead to high numbers of neglect cases dominating the child welfare system, we turn to several key laws. There is a dizzying array of laws, some that contradict or seek to “fix” ones that preceded them. For example, the Child Abuse Prevention and Treatment

Act (CAPTA) of 1974 is the primary federal legislation that ushered in mandated reporting of “suspected” abuse. When passed, it was assumed that CAPTA would guide practice relating to abuse, not neglect. CAPTA, and its later amendments, provides federal funding to states for the “prevention, assessment, investigation, prosecution, and treatment” of child abuse, in exchange for the fulfillment of certain requirements.⁴⁰ While the original intention of the child protection system, guided by Public Law 87-543 in 1962,⁴¹ was to intervene in families where children had experienced physical abuse that resulted in serious injury, the transition from informal efforts to intervene to help maltreated children to a more formal government intervention lacked national agreement on the definition and scope of what is reportable. CAPTA funding⁴² was provided to states to establish a child abuse system while neglect was never clearly defined. Child protection investigations of alleged child abuse and

³² Kendra Bozarth, Grace Western, and Janelle Jones, “Black Women Best: The Framework We Need for An Equitable Economy,” Roosevelt Institute and Groundwork Collaborative, September 2020, https://rooseveltinstitute.org/wp-content/uploads/2020/09/RI_Black-Women-Best_IssueBrief-202009.pdf.

³³ Huff Stevens, Ann. n.d. “Transitions into and out of Poverty in the United States”. Center for Poverty Research. UC Davis. <https://poverty.ucdavis.edu/policy-brief/transitions-out-poverty-united-states>

³⁴ Rostad, Whitney L, Katie A. Ports, Shichao Tang, Joanne Klevens, 2020. ‘Reducing the Number of Children Entering Foster Care: Effects of State Earned Income Tax Credits’. *Child Maltreatment*. 2020 25(4) 393-397. <https://doi.org/10.1177/1077559519900922>

³⁵ Minoff, Elisa et al. “What We Owe Young Children: An Anti-Racist Policy Platform for Early Childhood.” Center for the Study of Social Policy, December 2020. Available here: <https://cssp.org/resource/what-we-owe-young-children/>

³⁶ Minoff, Elisa, et. al. 2020

³⁷ Mignon, Sylvia. *Child welfare in the United States: Challenges, policy, and practice*. Springer Publishing Company, 2016

Dettlaff & Boyd, 2021.

³⁸ Dettlaff & Boyd, 2021.

⁴⁰ U.S. Department of Health and Human Services, Administration For Children and Families (2011, July). About CAPTA: Legislative History available at <https://www.childwelfare.gov/pubPDFs/about.pdf>.

⁴¹ U. S. Congress. “Public Law 87-543.” Public Welfare Amendments of 1962. Public Welfare Amendments of 1962, United States Government Printing Office, 25 July 1962.

⁴² U. S. Congress. PL 92-347 Child Abuse Prevention and Treatment Act. Law. 1 January 1974.

neglect can cause, exacerbate, and add to harm and trauma for children, families, and communities. In fact, studies have shown that mandated reporting does not decrease harm but instead undermines trust in social and support services, decreasing their efficacy.⁴³ The CAPTA stated,

"Child abuse and neglect" means the physical or mental injury, sexual abuse, negligent treatment, or maltreatment of a child under the age of eighteen by a person who is responsible for the child's welfare under circumstances, which indicate that the child's health or welfare is harmed or threatened thereby, as determined in accordance with regulations prescribed by the Secretary." (p. 4)

The bill further stigmatized Black, Indigenous, and non-white families as being solely responsible for their own poverty, resultant oversurveillance and child removal by the child welfare system without understanding that a legacy of genocide requires a social justice-focused solution. Erin Myers Cloud writes, "There are no popular documentaries about how violent family separation, toxic stereotypes about Black maternal unfitness, and financial incentives for dismantling Black families are shared features of chattel slavery and the modern foster care system. Nor is there the same degree of media scrutiny of the disproportionate percentage of Black families controlled through the foster care system as there is of the disproportionate control of Black bodies through the criminal legal system. Nor is there political discourse on what it would mean to abolish the foster care system."⁴⁴ Child welfare laws continue to ignore historical genocide that led to current system structures that result in the breakup of generations of Black, Indigenous, and non-white families.

Once CAPTA passed, each state was required to codify state law to comply with the federal regulations and to define what is reportable as child abuse and neglect. The national variability and vagueness in the definitions, particularly for neglect, are noteworthy.⁴⁵ Early in the implementation of CAPTA, questions were raised about the overreach into families. Senator Mondale, who led the committee that

drafted CAPTA, wrote in a letter stating his concern to the Secretary of HEW,⁴⁶

"As HEW now is administering the "Child Abuse and Neglect Treatment Act", I would like to make it clear that the intention of that act was to address the problems of the most severely threatened and abused children in our country. It was clear from the time the Senate first considered this legislation that the resources it could provide would not be adequate to deal effectively with the much more complicated and difficult problem of child neglect.

We must do all we can to safeguard families—particularly those who are poor and from minority groups—from being enveloped in a system, which may label them permanently as criminals or deviants: and which may lack the resources to provide services even if they are legitimately required." (p. 5)

Senator Mondale was not alone in his concern. Douglas Besharov, director of the National Center on Child Abuse and Neglect wrote, "Overreach of the Guardian State" where he stated,

"Unfortunately, this added protection for abused and neglected children has been purchased at the price of

⁴³ Fong, Kelly. (2019). Concealment and Constraint: Child Protective Services Fears and Poor Mothers' Institutional Engagement, *Social Forces*, 97 (4). 1785-1810. <https://doi.org/10.1093/sf/soy093>

⁴⁴ Erin Myers Cloud, 2019. *Toward the Abolition of the Foster System*. <https://sfoonline.barnard.edu/unraveling-criminalizing-webs-building-police-free-futures/toward-the-abolition-of-the-foster-system/>

⁴⁵ Krason, Stephen M. 2013. 'The Mondale Act and Its Aftermath: An Overview of Fourty Years of American Law, Public Policy and Governmental Response to Child Abuse and Neglect.' *Child Abuse, Family Rights, and the Child Protection System: A Critical Analysis from Law, Ethics, and Catholic Social Teaching*, Landham, MD: Scarecrow Press. 1-81.

⁴⁶ Juvenile Rights Project of the American Civil Liberties Union Foundation. 1977. 'Protecting Children by Reporting Parental Neglect: A Second Look.' *Children's Rights Report*, 7(1) American Civil Liberties Union Foundation, April

an enormous increase in the level of government intervention into private family matters, much of which appears to be unwarranted and some of which is demonstrably harmful to the children and families involved.” (p. 1)⁴⁷

Not long after, in 1980, the Adoption Assistance and Child Welfare Act (AACWA) was passed. The AACWA required “reasonable efforts” to maintain children with their families and offered new funding opportunities to focus on prevention and reunification. AACWA defined reunification as being in the child’s best interest but did little to expedite permanency, support cultural continuity, or acknowledge social disadvantage.⁴⁸ Although initially the AACWA was considered a success, with the foster care population decreasing by over 50 percent between 1980 and 1982, the decrease was before a period in our history when homelessness, substance abuse, single parenthood as well as HIV infections began to overwhelm the country and devastate communities of color. Many of these outcomes can be attributed to historical trauma and marginalization. By 1983, the foster care population again began to rise⁴⁹ with a focus on families who were most vulnerable. A review of outcomes showed that race played a definitive role in whether a child was reunified with their parents.[50] Moreover, there was veiled racist backlash as families who were receiving homemaker aid and cash assistance as part of family preservation programs were derided, further stigmatizing and shaming families struggling with poverty, and not surprisingly, most of the aid dwindled and stopped.

The Indian Child Welfare Act of 1978⁵¹ (ICWA) is one of the first pieces of child welfare legislation to acknowledge the strength of relative/kinship placements⁵² and contains the strongest federal statutory language in favor of family preservation.⁵³ ICWA is not a race-based law but rather acknowledges the inherent political sovereignty of tribes that was never extinguished during the colonization of the US. It requires that public child welfare agencies inquire about tribal heritage, and if there is reason to believe it exists, they are required to notify the child’s tribe(s) to engage as full partners in the child welfare case, including possibly transferring jurisdiction to a

tribal court. Failure to comply can leave public agencies subject to legal claims. Forty-eight states now have statutes that give placement preference to relatives, and 28 states have laws that statutorily recognize the importance of family integrity and preference for avoiding removal of a child from their home.⁵⁴ In addition, Title IV-E of the Social Security Act mandates that states applying to receive funds must give priority to relatives as caregivers provided that the relative caregiver meets all the “relevant” state child protection standards. Sometimes meeting these “relevant” standards creates barriers for kinship providers who live in poverty.

The Multi-Ethnic Placement Act (MEPA) was created in 1994 to address and prioritize expedient permanency, specifically to “decrease the length of time that children wait to be adopted; to prevent discrimination in the placement of children on the basis of race, color, or national origin; and to facilitate the identification and recruitment of foster and adoptive parents who can meet children’s needs.”⁵⁵ MEPA enforcement efforts largely focus on prohibiting placement delays. Unfortunately, the result was that workers often ignored mandates requiring recruitment

⁴⁷ Besharov, Douglas J. 1984. “Overreach of the Guardian State.” *The Wall Street Journal*, 2 April. pp. 1–3.

⁴⁸ Anyon, Yolanda. (2011). Reducing racial disparities and disproportionalities in the child welfare system: Policy perspectives about how to serve the best interests of African American youth. *Children and Youth Services Review*, 33(2), 242–253. <https://doi.org/10.1016/j.childyouth.2010.09.007>

⁴⁹ Christina White, *Federally Mandated Destruction of the Black Family: The Adoption and Safe Families*, 1 Nw. J. L. & Soc. Pol’y. 303 (2006). <https://scholarlycommons.law.northwestern.edu/njls/vol1/iss1/12>

⁵⁰ See <https://aspe.hhs.gov/reports/assessing-context-permanency-reunification-foster-care-system-0>

⁵¹ Cornell School of Law, 25 US Code Chapter 21–Indian Child Welfare. www.law.cornell.edu/uscode/text/25/chapter-21

⁵² Red Horse, J. (1997). Traditional American Indian family systems. *Family Systems & Health*, 15, 243–250.

⁵³ Indian Child Welfare Act of 1978. (Pub.L. 95–608, 92 Stat. 3069)

⁵⁴ Child Welfare Information Gateway. “Acts of Omission: An Overview of Child Neglect.” *Bulletin for Professionals*. *Bulletin for Professionals*, US Department of Health and Human Services, Children’s Bureau, 2018.

⁵⁵ Administration for Children and Families. (1995). Program Instruction. U.S. Department of Health and Human Services. <https://www.acf.hhs.gov/sites/default/files/cb/pi9523.pdf>

of foster and adoptive parents from racial and cultural groups that reflect the demographics of children in care.⁵⁶ MEPA primarily benefits white, heterosexual, middle-class couples seeking to adopt that already have power, privilege, and advantage in society and have few barriers to adoption.⁵⁷ This results in many of those parents adopting Black, Indigenous, and other non-white children who lack culturally specific training; understanding or access to support services that could meet the racial, cultural, and ethnic needs of the child in their care. While a child's race or cultural background should not, and legally cannot, be the only factor used to make placement decisions,⁵⁸ it is in a child's best interest to consider whether a prospective family can meet a child's cultural identity and development needs⁵⁹ because Black and Indigenous children continue to be overrepresented in foster care, experience longer stays in care, and are less likely to be adopted.^{60,61,62} Furthermore, of the American Indian/Alaska Native children who do get adopted, 56 percent are adopted to white families outside of their community.⁶³ Although American Indian/Alaska Native children who are members of federally recognized tribes are eligible for protections under ICWA, the law has never been fully understood, funded, or implemented in compliance with the law.

The Interethnic Placement (IEP) Act in 1996⁶⁴ mandated a 'colorblind' approach to foster care and adoption placements, prioritizing expedient placement of children with almost no consideration for the race of the child and prospective adoptive parent(s). The result was disregarding children's racial and cultural continuity in favor of transracial adoption.⁶⁵

Following the MEPA came the Adoption and Safe Families Act of 1997 (ASFA) that provided three goals for the child welfare system: safety, permanency, and child well-being. ASFA prioritizes legal permanency—reunification with family, adoption, or legal guardianship, in the shortest time period possible over other permanency considerations. The law sought to increase time to “permanence” but created additional challenges to family preservation and cultural continuity. In the name of timely permanency, individual parental responsibility was emphasized but at the same time, government-funded support services for

biological parents and extended families, including kin, were reduced.⁶⁶ ASFA required timelines for “permanence” that failed to account for historical trauma, poverty, lack of access to substance and behavioral health services, bias and other challenges parents face when trying to stabilize their families. It added barriers to reunification, such as not recognizing a parent's ability to maintain contact with a child or attend court hearings, especially when a parent is in treatment or incarcerated.⁶⁷ ASFA ultimately provides states the ability to terminate parental rights (TPR) based on an arbitrary time limit and unclear guidelines for “reasonable efforts.” In fact, current funding guidelines may incentivize states to move forward with TPR and adoption rather than family preservation as soon as timelines allow, considering the average

⁵⁶ McRoy, Ruth, Mica, Maryanne, Freundlich, Madelyn, & Kroll, Joe. (2007). Making MEPA-IEP work: Tools for professionals. *Child Welfare*, 86(2), 49–66.

⁵⁷ Jennings, Patricia. K. (2006). The Trouble with the Multiethnic Placement Act: An Empirical Look at Transracial Adoption. *Sociological Perspectives*, 49(4), 559–581. <https://doi.org/10.1525/sop.2006.49.4.559>

⁵⁸ Administration for Children, Youth and Families. (1995). ACYF-PI-CB-95-23. <https://www.acf.hhs.gov/sites/default/files/documents/cb/pi9523.pdf>

⁵⁹ Dettlaff, A. J., & Boyd, R. (2021).

⁶⁰ McRoy, Ruth, Mica, Maryanne, Freundlich, Madelyn, & Kroll, Joe. (2007). Making MEPA-IEP work: Tools for professionals. *Child Welfare*, 86(2), 49–66.

⁶¹ Puzanchera, Charles, and M. Taylor. “Disproportionality rates for children of color in foster care dashboard.” *National Center for Juvenile Justice*, National Council of Juvenile and Family Court Judges Juvenile Law Program, 2020, http://ncjj.org/AFCARS/Disproportionality_Dashboard.aspx. Accessed 23 12 2021.

⁶² Cross, Terry. (2011, July 18). A “Mission Not Impossible:” *Understanding and Reducing Disparities and Disproportionality. Tribal and Urban Indian Systems of Care Grantee Meeting*. https://www.nicwa.org/wp-content/uploads/2016/11/MissionNotImpossible_DisparitiesDisproportionality.pdf

⁶³ *About ICWA*. (n.d.). National Indian Child Welfare Association. <https://www.nicwa.org/about-icwa/>

⁶⁴ McRoy, Ruth, Mica, Maryanne, Freundlich, Madelyn, & Kroll, Joe. (2007).

⁶⁵ Anyon, Yolanda. (2011). Reducing racial disparities and disproportionalities in the child welfare system: Policy perspectives about how to serve the best interests of African American youth. *Children and Youth Services Review*, 33(2), 242–253. <https://doi.org/10.1016/j.childyouth.2010.09.007>

⁶⁶ Walsh, Alison. (2016). States help families stay together by correcting a consequence of the Adoption and Safe Families Act. *Prison Policy Initiative*. <https://www.prisonpolicy.org/blog/2016/05/24/asfa/>

⁶⁷ Walsh, Alison. (2016).

annual public cost is \$10,302 for an adopted child compared to \$25,782 for a child in foster care.⁶⁸ AFSA guidelines contradict ICWA guidelines and can result in ICWA not being followed.⁶⁹

Federal acts other than ICWA have done little to address the issue of child neglect and its link to poverty, structural racism, and other risks for child removal. While promising, the Family First Prevention Services Act of 2018 (FFPSA) promotes the use of IV-E funds for behavioral health, kinship, and legal services but precludes use of such funds for basic needs linked to poverty and neglect such as housing, childcare, transportation, jobs, and income supports.⁷⁰

ICWA may have more protections for tribal children and families because of the unique political status of tribes and their citizens, but this law has no compliance requirement or accountability for not implementing it as it was intended, so rates of removal after its passage are not significantly lower than before. In fact, culturally competent practice, while called for, is not required. No federal law requires provisions for accommodating cultural variations in parenting and child supervision. Thus, children and their families are subjected to white norms by a mostly white workforce, educated, trained, and supported by mainstream trainers and supervisors—guided by laws and policies that frame the work in ways that allow for implicit bias and racist assumptions to influence all decision points in a case and in the application of practices.

An example of a cultural variation is that in Native Hawaiian and Pacific Islander cultures, including the Torres Strait Aboriginal peoples, and many other indigenous cultures, the practice of having a child live with a relative; once a historically accepted practice. This recognized the ancestral understanding of family as extended family and cultural family members (clans) expands the caregiving network. In indigenous cultures, this is accepted as customary adoption. Having children live with a relative happened for many reasons not related to abuse or neglect so there was no stigma attached to it. It served an important function to support family members and as a way to ensure the transmission of family

and cultural history from elders to youth, thus facilitating the continuation of wisdom, stories, songs, and ceremonies.⁷¹ American Indian/Alaska native children regained the right to formalize customary adoption for use in tribal courts under ICWA. This practice of “gifting” a child to another relative called “posaki” is considered illegal.⁷² When Hawaiian Islands were annexed by the US, similar to what happened in the rest of the U.S., the imposition of Anglo values and practices undermined traditional family structures that have dominated ever since and continues, despite movements to reclaim indigenous rights and lands. If Native Hawaiian and Pacific Islanders and other groups who had similar historical practices had the same rights as those covered by ICWA, they could use their own restorative cultural practices that helped their families and communities thrive for millennia. Another cultural example are practices such as co-sleeping seen in the Hispanic and other cultures that can be deemed inappropriate or attributed to crowded conditions by public child welfare agencies, but in fact were passed down by generations as an important familial bonding practice. No neglect statute makes room for cultural variations in child-rearing.

DeGurre et al. (2021) argue that Eurocentric and Anglo approaches to child-rearing may place parents from other cultures at risk of being charged with neglect. This may include the disinclination to use seat belts (seen as emotionally and socially distancing a child),

⁶⁸ Fixsen, Amanda. (2011). Children in Foster Care: Societal and Financial Costs. A Family for Every Child. https://www.afamilyforeverychild.org/wp-content/uploads/2018/04/children_in_foster_care.pdf

⁶⁹ Simmons & Troupe, National Indian Child Welfare Association. P.L. 105-89. Adoption and Safe Families Act of 1997: Issues for Tribes and States Serving Indian Children. Nov. 1999. <http://muskie.usm.maine.edu/helpkids/pubstext/icwa.html>

⁷⁰ Child Welfare Gateway, <https://capacity.childwelfare.gov/about/cb-priorities/family-first-prevention>

⁷¹ Cultural differences in child rearing practices. <https://cspm.csyw.qld.gov.au/practice-kits/care-arrangements/working-with-aboriginal-and-torres-strait-islander/seeing-and-understanding/cultural-differences-in-child-rearing-practices>

⁷² Day, Angelique (2022) Child Welfare Federal Protections for Native Hawaiian and Pacific Islander Families, Partners for our Children, University of Washington, School of Social Work

as well as older children caring for younger children.⁷³ Merritt further argues that parents' positionality also affects the judgments that are rendered against them and claim that parents with income and status (often white) have privileges that others who are poor do not. As a consequence, racial, cultural, and income-based disproportionalities are found across child welfare decision points reporting, screening in of reports into the system for investigations, differential access to placement prevention and reunification resources, kinship care arrangements, court actions, adoptions, and independent living arrangements.

Neglect Statutes: Implications for Those Poor and of Color

The U.S. child welfare system is designed to intervene when a parent is not caring for their child but has vague and arbitrary standards that differ from state to state rather than federal, state, and local support structures for families who have become vulnerable due to the lack of a social safety net chipped away by institutional racism and oppression.⁷⁴ The rate of screened in state neglect cases in 2019 varies widely from 92.2 percent to 1.5 percent with the national average of 61 percent of total child neglect cases; 40 percent of neglect cases were screened out; of those investigated only 16.7 percent were substantiated and another 13.8 percent were referred to Alternative Response.⁷⁵ The child welfare system spends an inordinate amount of time making decisions about neglect cases that could be diverted to other services and causes real harm to families who experience such an investigation and potential child removal.

An exploration of neglect statutes across the U.S. reveals structural race and poverty implications and demonstrates a need for federal clarity. A typology was created to describe how states define neglect.⁷⁶

- 1) Absence of medical, dental, surgical, behavioral health, and other services.
- 2) Failure to provide basic needs—food, failure to thrive, clothing, education, and shelter.

- 3) Lack of appropriate supervision and control of child.
- 4) Failure to protect from sexual abuse, trafficking, physical abuse, and other harms.
- 5) Mother's substance abuse and/or infants positive test for substances.
- 6) Neglect as a by-product of something other than poverty.
- 7) Inadequate caregiving due to incarceration, hospitalization or child abandonment.
- 8) Environmental issues such as lack of cleanliness, drugs present/drug house.
- 9) Parental health, mental health, developmental disabilities, or domestic violence.
- 10) Unlawful granting of custody/adoption.
- 11) Risk because siblings previously found neglected.
- 12) Neglect of child in out-of-home care.

⁷³ See DeGuerre, Kristcha; Jessica Strolin-Goltzman, Katharine Briar-Lawson; Brenda Gooley. 2021. Child neglect: Statutes, rates, and a neglect diversion model. *Greenwich Social Work Review*. 2(2). <https://journals.gre.ac.uk/index.php/gswr/article/view/1269?fbclid=IwAR2UhLc1-CIFeY4ZxB6KFxuClp23alNEFy8SJDAAunvzmsFOt-f4uDcLmvV0>. Also see Friedman, E. and Billick, S. (2014) 'Unintentional child neglect: Literature review and observational study', *Psychiatric Quarterly*, 86(2), pp.253-259. <https://doi.org/10.1007/s11126-014-9328-0>; also see Lansford, J., Godwin, J., Uribe Tirado, L., Zelli, A., AlHasan, S., Bacchini, D., Bombi, A., Bornstein, M., Chang, L., Deater-Deckard, K., Di Giunta, L., Dodge, K., Malone, P., Oburu, P., Pastorelli, C., Skinner, A., Sorbring, E., Tapanya, S. and Alampay, L. (2015). 'Individual, family, and culture level contributions to child physical abuse and neglect: A longitudinal study in nine countries', *Development and Psychopathology*, 27(4, part2), pp.1417-1428. <https://doi.org/10.1017/S095457941500084X>

⁷⁴ Krason, Stephen M. 2013. 'The Mondale Act and Its Aftermath: An Overview of Forty Years of American Law, Public Policy and Governmental Response to Child Abuse and Neglect.' *Child Abuse, Family Rights, and the Child Protection System: A Critical Analysis from Law, Ethics, and Catholic Social Teaching*, Landham, MD: Scarecrow Press. 1-81.

⁷⁵ Department of Health and Human Services, 2021. *Child Maltreatment*, Administration for Children and Families, Children's Bureau. <https://www.acf.hhs.gov/cb/report/child-maltreatment-2019>

⁷⁶ DeGuerre, Kristcha & Briar-Lawson, Katharine. 2021. A typology and neglect statutes and exploration of rate variation among states. Albany, NY: School of Social Welfare, University at Albany. Unpublished paper.

The first three categories (omissions in care and in meeting the basic needs of the child) are found in the majority of states (approximately 37–45). These challenges to provide care and meet basic needs can be attributed directly or indirectly to poverty, marginalization, and inequality—often linked to structural racism. Impoverishment is often blamed on the parent but can also be seen as a direct result of racial inequalities in the U.S., including a legacy of genocide and unhealed trauma. On top of this, current racism and discriminatory practices impact family income, job security, safe/affordable housing, community safety, and other needed supports.⁷⁷ This lack of a basic safety net results in many children being removed from homes that could otherwise, with concrete supports, be safe.

The remaining nine categories are found in fewer than 20 states. Sixteen states have clauses in their neglect statutes that state that they exclude poverty as a primary reason for being screened in or charged for neglect, yet neglect cases in these states remain high because workers fail to recognize challenges related to poverty⁷⁸ and don't or can't provide the resources needed to support family stability.

Three states are considered to be positive outliers with low rates (1.5 – 7.7 percent) of screened-in neglect. Two of these positive outliers use a form of firewall so that if the family requires a response related to another social service program or TANF related system, it is likely to be screened out.⁷⁹ Such screened out cases acknowledge that families need services and supports rather than investigations and threats of out of home placement of children. All three states with low neglect rates use forms of family support centers (child and parent centers, family resource centers, and community health centers that also address basic needs) as well as Differential Response to aid families.

Whether due to risk or implicit bias, impoverished parents, especially of color, are subjected to surveillance and consequent disproportionalities in the child welfare system.⁸⁰ Remedies need to address contributors to risk, such as poverty, as well as racial bias. The most recent Child Maltreatment Report 2020⁸¹

describes the predominant characteristics of caregivers involving child maltreatment leading to system entry. Of the seven categories, three are directly related to poverty. These are inadequate housing, financial problems, and public assistance (which refers to a risk factor related to the family's participation in income and related health and social services such as TANF, Medicaid, WIC etc.). Over 44 percent of caregivers fell into these three explicitly poverty-related categories. Alcohol, drug abuse, domestic violence, and caregiver disability are the remaining categories that may also be related to poverty, marginalization, exclusion, as well as trauma but are not as explicitly evident given the data provided.

Remedies need to address risk, such as poverty, as well as racial bias. Moreover, systemic racism that ensures that goods, services, jobs, and housing are unequally distributed warrants priority attention in all branches of government.

Remedies

This paper argues for family justice centered on active and exhaustive efforts so that children can safely remain with their parents. These should start with a re-examination of opportunities for neglect diversion that include educational, social, fiscal, human, and policy investments into tribal and non-tribal communities so that the well-being and safety of children can be provided by families and their community, rather than through current state-sanctioned, harm inducing interventions.

Remedies should address the array and inconsistent current policies and neglect

⁷⁷ Beech, Bettina, B. Chandra Ford, Roland J. Thorpe, Marino A. Bruce, Keith C. Norris (2021). 'Poverty, Racism, and the Public Health Crisis in America'. *Public Health*, 06. doi: 10.3389/fpubh.2021.699049

⁷⁸ DeGuerre & Briar-Lawson, 2021.

⁷⁹ DeGuerre, Kristcha; Jessica Strolin-Goltzman, et al. 2021. Child neglect: Statutes, rates, and a neglect diversion model. *Greenwich Social Work Review*. 2(2). https://journals.gre.ac.uk/index.php/gswr/article/view/1269?fbclid=IwAR2_UhLc1-CIFeY4ZxB6KFxuCl-p23aINeFy8SJDAnvzmsFOtf4uDcLmvV0

⁸⁰ Merritt, Darcey H. (2020).

⁸¹ US Department of Health and Human Services. (2022). *Child Maltreatment*, Administration for Children and Families, Children's Bureau. <https://www.acf.hhs.gov/cb/report/child-maltreatment-2020>

statutes. This includes 1) *changes to or abolishment of neglect laws and promotion of neglect diversion* to economic and social welfare firewalls, so families with economic and social service needs are diverted out of the CPS system; the provision of 2) *income and related concrete supports in times of need* as rights and reparations for systemic and historical colonization and racism; the and the 3) *universal adoption of active efforts* (based on ICWA) by child welfare and other systems to promote family preservation, strong family and cultural engagement; 4) *proportional distribution of FFPSA IV-E funds and collaborative efforts across systems to leverage joint concrete resources*; 5) *Community and tribal supports for family-based resource centers*. Rather than surveillance and child removal, families should have the right to receive help from parent-driven centers that offer more equitable access to services, supports, authentic family engagement, and peer support.

For too long, calls for change have been incremental and evolutionary. Revolutionary change is needed to provide entitlements as reparations and basic rights involving family support and tribal and community-based services. Each remedy is described in greater detail below.

Justice Centered, Active, and Exhaustive Efforts

1) Change or abolish neglect laws and promote neglect diversion

Neglect due to poverty is a community and cross-system responsibility.⁸² Families need access to key resources and supports including: living wages, safe, affordable housing, food security, technology, behavioral health, substance treatment, and strong education through community and culturally based helping pathways.^{83,84} Families deserve real-time assistance⁸⁵ when they walk into an agency to seek help without fear that their request for services will result in a report triggering an investigation and possible child removal.⁸⁶ Further, services must be delivered by culturally responsive staff that ethnically represent the communities and tribes served.

We recommend that the Children's Bureau clarify neglect under CAPTA's child abuse and neglect definition to ensure more national consistency and systematically focus CPS efforts to address conditions of serious harm or imminent risk of serious harm. Regional Children's Bureau offices should receive guidance and in turn, provide guidance to the states in their region to support neglect diversion and active efforts. A child abuse investigation should only be initiated after services have failed or when there is evidence of physical or sexual abuse or of severe neglect that present an immediate and imminent threat to a child's safety. Families struggling with a lack of food, housing, health care, childcare, or general resources should be able to access services to support them. Neglect laws need to clearly define the basis for an investigation, and mandate neglect diversion so that families can get help in accessible family, tribal, and community support centers.

2) Income and related concrete supports in times of need

Justice-centered remedies must include more systematic development of income and related supports as preconditions in support of families to provide for their children. The fact that referrals to entitlements such as TANF is 50 percent less for African American families⁸⁷ for example, is an indicator of how disparities, discrimination, and simple access to existing

⁸² Fallon, Barbara; Rachel Lefebvre, Delphine Collin-Vézina, Emmaline Houston, Nicolette Joh-Carnella, Tina Malti, et al. (2020) 'Screening for economic hardship for child welfare-involved families during the COVID-19 pandemic: A rapid partnership response', *Child Abuse & Neglect*, 110 (part A). <https://doi.org/10.1016/j.chiabu.2020.104706>

⁸³ Dettlaff, A. J., & Boyd, R. (2021).

⁸⁴ Milner, Jerry and David Kelly (2020) It is time to stop confusing poverty with neglect. *Children's Bureau Express*. Available at: <https://cbexpress.acf.hhs.gov/index.cfm?event=website.viewArticles&issueid=212&ionid=2&articleid=5474>

⁸⁵ Gustafson, Kaaryn. (2011) *Cheating ourselves: Public Assistance and the Criminalization of Poverty*. New York: NYU Press Scholarship. <https://nyu.universitypressscholarship.com/view/10.18574/nyu/9780814732311.001.0001/upso-9780814732311>

⁸⁶ 100% New Mexico. <https://www.100nm.org/>

⁸⁷ Safari, Ali & Floyd Ife (2020). TANF is still too low to help families, especially Black families, avoid increased hardship. Washington D.C.: Center on Budget and Policy Priorities. Oct.8

resources add to the risk factors for child abuse and neglect reports. Effective multicultural, multi-ethnic/racial, and tribal strategies must become the primary practice paradigm for all of the child welfare and related systems. Economic resources and services must be available without involving CPS, and there must be a transition from the oversurveillance of children and parents to supporting families and preventing ACES that lead to child welfare intervention.⁸⁸

Services cannot be narrowly focused on a single problem or issue. The priority must be comprehensive family wellness services and resources in every community and tribe as proposed by strategies like 100% New Mexico. New Mexico has embraced an innovative, collaborative approach with the goal of providing 10 services, five for surviving and five for thriving that are available and accessible for all of their citizens across many critical systems. This, initiative called the 100% New Mexico, is *“a first in the nation, a statewide strategy to identify barriers to ten vital family services and create access for all residents. The initiative is driven by county stakeholders, designed to achieve the goals of preventing adverse childhood experiences (ACEs), family trauma and social adversity. By ensuring ten vital services for surviving and thriving, each county can also increase student achievement and provide families with the services to endure public health crises and economic disruptions.”*⁸⁹

Along with many other efforts, they support the use of Family Resource Centers as a means of providing access to essential services for all citizens, whether in the inner city, suburban, or rural areas. The statewide initiative uses a trauma-informed understanding of the importance of creating access to support families who may be or could be struggling with health and safety concerns.

Services for survival are medical and dental, behavioral health including substance use, housing security (safe and affordable), food security, and transportation access to vital services. The premise is that this array of basic services are needed for all citizens just to survive. There is no stigma or blame attached to needing these or being vulnerable because

you don't have them. In addition, there are five other services needed to thrive: parent support, quality early childhood education, community-based, high-quality schools, youth mentor programs, and job training services. All citizens deserve access to these ten critical services provided with high-quality, in local settings, to meet the unique needs of families. The premise is by having these “10 vital services in place and accessible, the local capacity to prevent all costly public health challenges, including substance use disorders, hunger, homelessness, suicidal ideation, domestic violence, and child maltreatment, are greatly increased.”⁹⁰ While there are no public data about the outcomes in New Mexico about these strategies, we need to follow what is happening there as an upstream way to address family and child health and well-being.

Other key supports to address the concrete needs of families include universal economic family support such as basic guaranteed income, children's allowances or child tax credits,^{91,92,93} housing with integrated support for families to prevent removal and to assist in reunification,^{94,95} childcare subsidies and universal pre-kindergarten. Children should never be removed from their families because

⁸⁸ Roberts, Dorothy. *Shattered Bonds*. Basic Books. 2002.p. 17. Also see Dethlaff, Alan, Kirsten Weber, Maya Pendelton et al., *How we endUP*. June 18 2021. www.upendmovement.org/wp-content/uploads/2021/06/How-We-endUP-6.18.21.pdf

⁸⁹ 100% New Mexico, <https://www.100nm.org/>

⁹⁰ 100% New Mexico, <https://www.100nm.org/>

⁹¹ Berman, Matthew. 2018. Resource rents, universal basic income, and poverty among Alaska's Indigenous peoples. *World Development*. 106 © 161–172

⁹² Guo, Eileen. Universal basic income is here—it just looks different from what you expected. *MIT Technology Review*. 2021. www.technologyreview.com/2021/05/07/1024674/ubi-guaranteed-income-pandemic/

⁹³ National Public Radio (NPR) 2021. California program giving \$500 no strings attached stipend pays off, study finds. www.npr.org/2021/03/04/973653719/california-program-giving-500-no-strings-attached-stipends-pays-off-study-finds

⁹⁴ Amon, Elizabeth. 2021. *A Village Apart: Lummi Nation Creates a Unique Community to Support Families*. The Imprint: Youth and Family News www.imprintnews.org/family/a-village-apart/57033

⁹⁵ Native American Connections www.nativeconnections.org/housing/

their families are poor. The creation of affordable college⁹⁶ and trade schools and accessible job training programs are needed for jobs that pay a living wage so that parents can earn enough money to take care of their families. Legal aid needs to be embedded in helping systems to ensure parents' legal rights⁹⁷ are represented to assure access to existing entitlements, seek funding for reparations^{98,99} and other needed services.¹⁰⁰ Peacekeeping courts¹⁰¹ are also a potential remedy that uses a consensus, non-adversarial court approach in assisting parents in healing in order to safely parent their children and break the generational trauma of child removal.

New York State offers an example of legislation designed to reduce child poverty through a more comprehensive service approach. The Child Poverty Reduction Act¹⁰² establishes the Child Poverty Reduction Advisory Council to effectuate a 50 percent reduction of child poverty within ten years. Legislative expectations are that New York will,

“...intentionally, significantly, and consistently cut child poverty, year over year. Beyond that, and just as important, the law holds policymakers publicly accountable for whether and how policy and budget decisions affect children living in poverty. The Child Poverty Reduction Act creates the roadmap to a future in which New York is deliberate about reducing child poverty and addressing equity.”¹⁰³

The Advisory Council will develop a blueprint to reduce poverty and elevate programs that show evidence of reducing poverty. such as the Earned Income Tax Credit (EITC), programs that support housing, employment, and access to affordable childcare with annual reports to the legislature.¹⁰⁴

3) Universal adoption of active efforts

ICWA is considered by many to be the “gold standard” of child welfare policy and practice. [105] It offers the first federal child welfare legislation to set minimum federal standards for the removal and placement of children in state child welfare proceedings¹⁰⁶ and requires social workers to make active efforts

to prevent the breakup of the Indian family before a child can be removed from their home and before parental rights can be terminated. ICWA also established best practices in the placement of an Indian child with extended family, tribe, and community members when children are not able to remain safely in their home. It requires that active efforts be made to help tribal children maintain their cultural connections and tribal nation affiliation^{107,108} While ICWA's fundamental application is based upon an American Indian/Alaska Native child's

⁹⁶ Schroeder, Laurie Mason. 2019. 'A whole new world: New law lets Pennsylvania foster kids attend college tuition-free'. The Morning Call. July 25. www.mcall.com/news/pennsylvania/mc-nws-pa-fostering-independence-through-education-law-20190725-ikkhp66qmnhg7lcq5lplzya37i-story.html

⁹⁷ Family Justice Initiative: Attributes of high quality legal representation for children and parents in child welfare proceedings. <https://www.scu.edu/ethics-spotlight/ethics-and-systemic-racism/regarding-reparations-the-us-should-adhere-to-the-highest-standards-of-justice/>

⁹⁸ H.R. 40: *Exploring the path to reparative justice in America* <https://www.hrw.org/news/2021/02/17/hr-40-exploring-path-reparative-justice-america>

⁹⁹ Green, Brian Patrick. 2020. Regarding Reparations, the US should adhere to the highest standard of justice, <https://www.scu.edu/ethics-spotlight/ethics-and-systemic-racism/regarding-reparations-the-us-should-adhere-to-the-highest-standards-of-justice/>

¹⁰⁰ Gerber, Lucas A., Yuk C. Pang, Timothy Ross, Martin Guggenheim, Peter J. Pecora et al., 'Effects of an interdisciplinary approach to parental representation in child welfare', *Children and Youth Services Review*, 102, 2019, 42-55, <https://doi.org/10.1016/j.childyouth.2019.04.022>

¹⁰¹ The National Judicial College. 2016. Justice in a circle: how a peacekeeping court works. Nov. 20. www.judges.org/news-and-info/justice-in-a-circle/

¹⁰² New York State Legislature. *S2755c/A11063 of the Laws of NYS 2020*. Albany, 2021. 13 December 2021. <https://www.nysenate.gov/legislation/bills/2021/s2755>.

¹⁰³ Schuyler Center for Analysis and Advocacy. "Child Poverty Reduction Act." News article. News SCAA, Albany, SCAA, 2 12 2021, <https://scaany.org/category/child-poverty/>. Accessed 13 12 2021.

¹⁰⁴ The New York Senate, <https://www.nysenate.gov/legislation/bills/2021/s2755>

¹⁰⁵ About ICWA. (n.d.). National Indian Child Welfare Association. <https://www.nicwa.org/about-icwa/>

¹⁰⁶ Bureau of Indian Affairs, Department of the Interior (2016). 25 CFR 23.

¹⁰⁷ About ICWA. (n.d.). National Indian Child Welfare Association. <https://www.nicwa.org/about-icwa/>

¹⁰⁸ Burge, Phillip. (2020). Attempting to operationalize a multi-dimensional definition of permanency in child welfare practice: Results from a demonstration project. *Journal of Public Child Welfare*, DOI: 10.1080/15548732.2020.1835784

unique political status as a citizen of a tribal nation, ICWA also recognizes the importance of culture as a critical factor in the healing and preservation of American Indian/Alaska Native children and families.

Child welfare systems should uniformly be required to adopt active efforts for family preservation, promote strong family and cultural engagement, and expedite family reunification as described in ICWA.¹⁰⁹ Active efforts have been defined in ICWA as affirmative, thorough, and, timely efforts, including assistance to access concrete supports, intended primarily to maintain or reunite a child with his or her family consistent with the prevailing social, and cultural conditions and way of life.^{110,111} Active efforts serve to prevent the child from being removed unless imminent harm is present. Imminent harm means “immediate and impending threat of a person causing substantial physical injury to self or others”¹¹² and is different from a concern or risk. Risk can be addressed with a safety plan followed with services, while imminent harm requires immediate intervention followed by services. When imminent harm goes away, the child should be returned home as soon as possible, with services, if required. Further, ICWA is a remedy to end TPR except in the most egregious circumstances, always leaving the door open for reunification.^{113,114,115,116} The priority that ICWA places on the importance of family support and active efforts offers a practice standard that should be the priority for child welfare practice across the U.S.

- 4) Proportional distribution of FFPSA IV–E funds and collaborative efforts across systems to leverage joint concrete resources.

Equity in terms of prevention should mean that states are providing services proportionate to the racial make-up of their foster care populations. For example, if tribal children make up 20 percent of a state’s foster care population, then 20 percent of their FFPSA prevention dollars should be spent on tribal children, preferably by tribal services. Funding to provide concrete resources should be available with FFPSA funds. The same is true for other children of color. Child welfare policymakers and providers must

show a commitment to active efforts that are responsive to the needs of individual families and privilege family preservation.

Systems must collaborate to work together to ensure the needs of all families are being met. As stated by 100% New Mexico: “By working together, all county stakeholders can address social adversity that contributes to poor health and education outcomes.” These efforts “brings together under one umbrella all the providers and educators who provide the ten vital services for surviving and thriving. With collaboration, technology, and the goal of alignment of services, we are committed to designing and implementing a seamless countywide system of health, safety and resilience”.¹¹⁷

What if this was the focus and goal of every state—to ensure the health and well-being of all of its citizens and end child ACES? When we stop blaming families impacted by genocide and living with trauma, we can provide approaches that focus on community health and well-being. Practices are warranted that break intergenerational trauma instead of exacerbating or adding to it. It is time for justice-centered, family well-being-focused

¹⁰⁹ Washington State Department of Children Youth and Families. (2018). Annual foster parent and adoptive home recruitment report. Retrieved from <https://www.dcyf.wa.gov/sites/default/files/pdf/reports/Foster-AdoptiveHomePlacement2018.pdf>

¹¹⁰ Bureau of Indian Affairs, Department of the Interior (2016). 25 CFR 23.

¹¹¹ *About ICWA*. (n.d.). National Indian Child Welfare Association. <https://www.nicwa.org/about-icwa/>

¹¹² Law Insider, n.d. <https://www.lawinsider.com/search?q=ACTIVE+EFFORTS>

¹¹³ *About ICWA*. (n.d.). National Indian Child Welfare Association. <https://www.nicwa.org/about-icwa/>

¹¹⁴ Burge, Philip. (2020). Attempting to operationalize a multi-dimensional definition of permanency in child welfare practice: Results from a demonstration project. *Journal of Public Child Welfare*, DOI: 10.1080/15548732.2020.1835784

¹¹⁵ Mennon, Ferol E., Matthew Brensilver, Penelope K. Trickett, 2010. Do maltreated children who remain at home function better than those who are placed? *Child Youth Serv. Rev.* 32 (12): 1675–1682. Doi: 10.1016/j.child.youth.2010.07.010

¹¹⁶ Mishra, Aura Ankita, Laura M.Schwab–Reese, Lauren V. Murfree. 2020. ‘Adverse childhood experiences associated with children’s patterns of out of home placement over time and subsequent negative outcomes during adolescence’. *Child Youth Care Forum.* 49(2):247–263. doi: 10.1007/s10566–019–09526–4.

¹¹⁷ 100% New Mexico. <https://www.100nm.org/spotlight-on-health/>

laws, funding, training, structures, and practices to be the collaborative goal across all systems.

5) Community and tribal supports for family-based resource centers

Community and family resource centers¹¹⁸ (FRC) offer examples of effective concrete and other supports. Parents themselves may run these FRCs and be supported by social workers to offer culturally relevant and Indigenous support. Every zip code should be funded, and target districts that are designated as Title I schools and models like 100% New Mexico¹¹⁹ should be explored. Before a report is made to CPS by the school (social workers, guidance counselors, nurses, resource officers) they should be required to make a referral to an FRC. In communities with FRCs, reports to CPS dropped, and families reported getting their needs met through alternative ways.¹²⁰ We encourage policymakers and local leaders to embrace the promising practice of anti-racism and anti-oppressive, values-driven interactions with families. This approach was developed specifically to ensure the collective commitment to listen to families impacted by racism and systems of oppression. The proven impact has shown: 1) a drastic reduction of Black and non-white children entering foster care; 2) increased sense of parent leadership and agency; and 3) a profound organizational culture shift.¹²¹

Summary

Since CAPTA was first enacted, the goal has been to prevent abuse or neglect, so child removal never has to happen. To fully implement this vision, a revolutionary transformation is needed to provide vulnerable families concrete resources, employment, safe housing, childcare, and food security, as it is done throughout other industrialized nations.¹¹² This change of focus would place the burden on systems and our nation to ensure more equitable distribution of goods, incomes, and related resources. The existing child welfare system targets individual families while not addressing the many systems that create and perpetuate inequities and related discriminatory practices. Such a transformation requires us to examine current

spending priorities and available evidence from other similar countries that document the long-term benefits of early investment in family and employment supports that correspond to the health and well-being needs of all of our communities.¹²³ Such an approach would put caseworkers in the role of justice warriors supporting parents first to meet their basic needs. Child removal should be a last resort rather than a perfunctory task, and family reunification should always remain a possibility. The priority for funding would be shifted to community and tribal-led services to provide housing, food support, educational and employment opportunities, violence reduction, and environmental safety. Direct mental health, addiction treatment, and parenting education would be culturally and gender-responsive, delivered by professionals who understand the legacy of genocide and racism, and provided in a trauma-informed systemic way. Now is the time to realize the future so many before us have envisioned and create real justice as we move toward a justice-centered child and family well-being system for all.

Marion Wright Edelman, founder of the Children's Defense Fund said,

"You and I now have the opportunity — and awesome responsibility — to compose and play the next movement of America's symphony of freedom and justice — to forge a nation where more good people out-plan and out-

¹¹⁸ Child Welfare Information Gateway, Family Resource Centers. <https://www.childwelfare.gov/topics/preventing/prevention-programs/familyresource/>

¹¹⁹ 100% New Mexico. <https://www.100nm.org/>

¹²⁰ Casey Family Programs, June 20, 2019. Do place-based programs, such as Family Resource Centers, reduce risk of child maltreatment and entry into foster care? <https://www.casey.org/family-resource-centers/>

¹²¹ Corey Best, Morgan Cooley, Marianna Colvin, & Vaughn Crichlow, 2021. *Authentic Family Engagement and Strengthening: A Promising Family-Centered Approach for Advancing Racial Justice with Families Involved with the Child Protection System*. 99 (5). CWLA.

¹²² Tikkanen, Roosa S., and Eric C. Schneider. 2020. "Social Spending to Improve Population Health Does the United States Spend as Wisely as Other Countries." *New England Journal of Medicine*, 382,(10). pp. 885–887, <https://www.nejm.org/doi/full/10.1056/NEJMp1916585>. Accessed 13 12 2021.

¹²³ Tikkanen, Roosa S., and Eric C. Schneider.2020.

mobilize evil people; where more people fight for justice than those who fight to maintain an unjust status quo; where more people committed to nonviolence out-organize and challenge those who saturate our nation with guns and destabilize or destroy our nations with war. Together we can build a nation that will be able to pass the test of the God of history asking whether we gave food to the hungry and clothes to the naked, cared for the sick, visited those in prison, gave water to the thirsty, and saw and helped the least of these, my children."¹²⁴

¹²⁴ Wright Edelman, Marion. 2008. *The Sea is so Wide and My Boat is so Small: Charting a Course for the Next Generation.*

Priscilla A. Day, MSW, Ed.D, is Professor Emeritus at the University of MN Duluth.

Angelique Day, Ph.D., MSW, is an Associate Professor School of Social Work and Adjunct Faculty, Evans School of Public Policy and Governance; Faculty Affiliate and Federal Policy Lead, Partners for Our Children Faculty Affiliate, Indigenous Wellness Research Institute University of Washington, Seattle.

Mary McCarthy, Ph.D., LMSW, Co-PI National Child Welfare Workforce Institute, University at Albany, School of Social Welfare.

Corey B. Best is a Community Curator at Mining For Gold, LLC.

Katharine Briar-Lawson, Ph.D., LMSW, is Professor and Dean Emeritus, National Child Welfare Workforce Institute, School of Social Welfare, University at Albany, SUNY.

Jessica Pryce, Ph.D., is a Director at the Florida Institute for Child Welfare, Florida State University.



© Jim Parkin | Dreamstime.com

“Like a Trap”: Mandatory Reporting and Dilemmas of Help-Seeking

Kelley Fong

They'll help me along the way to let me know, oh, they're on my side. But once they see something wrong with my baby, CPS is like 911. They're definitely gonna call.

– “Christina,” Providence, RI

Introduction

In the weeks after 21-year-old Christina’s baby was born—her first child—she kept getting phone calls from hospital staff and social service providers.¹ They were encouraging Christina to accept “home visiting” services, in which a nurse or social worker would come to her home to offer parenting information and guidance. Home visiting is a major national strategy to improve maternal and child health and well-being, receiving at least \$400 million annually in federal funding and aimed at serving low-income families just like Christina’s.²

But Christina declined. “No, no thank you, that’s okay. I’ll just, you know, take care of my kid by myself,” she recalled replying—not because she saw little value in the service, but because she knew it came with risks. Research links home visiting programs to reduced child abuse and neglect and improved child health and development.³ Yet, as with other service providers families encounter, home visiting staff are legally mandated to report suspected child abuse and neglect to state Child Protective Services (CPS) authorities. These reports are commonplace, especially in Black, Native American, and low-income communities.⁴ One in three children nationwide, and one in two Black children, will be the subject of a CPS report during childhood.⁵

Christina, a Black mother living in Providence, Rhode Island, had not yet been reported to CPS, and she wanted to keep it that way. So, she explained how she weighed the decision: “I always think of the good and the bad. The good is, they do help you. But the bad is, do

I really wanna risk if they feel as though I’m not taking care of my baby according to their book?”

Nearly 70 percent of reports to CPS come from professionals like doctors, teachers, social services staff, and therapists, who collectively file well over one million reports each year.⁶ These professionals are the very systems we hope will support children and families.

¹All names used are pseudonyms. Christina was previously “Lisa” in Kelley Fong, “Concealment and Constraint: Child Protective Services Fears and Poor Mothers’ Institutional Engagement,” *Social Forces* 97, 4 (2019): 1785–1810. Since then, she decided she preferred a different pseudonym. This research presented in this article was supported by the Multidisciplinary Program on Inequality and Social Policy at Harvard University, the Julius B. Richmond Fellowship from the Center on the Developing Child at Harvard University, the Doris Duke Fellowship for the Promotion of Child Well-Being, and the National Science Foundation Graduate Research Fellowship.

² U.S. Department of Health and Human Services [HHS], *The Maternal, Infant, and Early Childhood Home Visiting Program Brief* (2021).

³ HHS, *Home Visiting Program Brief*.

⁴ Lawrence M. Berger and Jane Waldfogel, “Economic Determinants and Consequences of Child Maltreatment,” *OECD Social, Employment, and Migration Working Papers, No. 111* (OECD Publishing, 2011); Frank Edwards et al., “Contact with Child Protective Services Is Pervasive but Unequally Distributed by Race and Ethnicity in Large U.S. Counties.” *PNAS* 118, 30 (2021): e2106272118; Kelley Fong, “Neighborhood Inequality in the Prevalence of Reported and Substantiated Child Maltreatment,” *Child Abuse & Neglect* 90 (2019): 13–21; HHS, *Child Maltreatment 2019*.

⁵ Hyunil Kim et al. “Lifetime Prevalence of Investigating Child Maltreatment Among U.S. Children,” *American Journal of Public Health* 107, 2 (2017): 274–80.

⁶ HHS, *Child Maltreatment 2019* (2021).



"Christina," with her son, now six years old, near their home in Providence, RI.

© Phoebe Shuman-Goodier

Yet, in their connection to CPS, they become conduits to an entity empowered to take what parents cherish most: their children. This setup puts low-income mothers in a bind. In contexts of adversity, mothers understand that professionals can easily misconstrue their best efforts to care for their children. As I find in my research in Rhode Island, low-income mothers proactively distance themselves from educational, healthcare, and social service providers.⁷ At times, like Christina, they decline services offered, or they hesitate to be fully forthcoming with the service providers they encounter. These cautious, risk-averse responses are reasonable from the perspective of mothers who love their children above all, but may also exacerbate the challenges children face.

In this way, CPS's impact extends beyond the families directly and presently involved. Dorothy Roberts writes that in impoverished Black neighborhoods, "Everyone in the neighborhood has either experienced state intrusion in their family or knows someone who has. Parents are either being monitored by caseworkers or live with the fear that they may soon be investigated."⁸ With CPS's pervasive intervention, it penetrates spaces where it is not currently or physically present. The threat of CPS looms over low-income mothers weighing engagement with social service providers—providers that might, on the one hand, offer assistance but could also turn them in as negligent parents. In the remainder of this article, I summarize my data and research methods, then present findings using three illustrative case examples. I close by discussing the implications of the research. Specifically, commitments to promote child well-being must reckon with how our institutional networks of support are entangled with the system parents fear above all.

Data and Methods

Between 2015 and 2019, I conducted 175 in-depth interviews with 83 low-income mothers in Providence, Rhode Island. I recruited participants during encounters in the community or at local service agencies (41 participants), via flyers (21 participants), and through referrals from previous study participants (21 participants). I visited service

providers to recruit, but these providers did not broker introductions for me, and I told mothers I was not connected to the providers. The project focused on low-income mothers as those most highly exposed to CPS intervention,⁹ mothers whose income qualified them for Supplemental Nutrition Assistance Program (SNAP) benefits were eligible to participate.¹⁰

I invited eligible mothers to participate in a research study on mothers' perceptions of governmental and non-profit agencies. I conducted most interviews in mothers' homes. In initial interviews, mothers shared their life histories and their perceptions of various service systems (CPS and others) over the course of approximately two hours. Most mothers also participated in follow-up interviews, generally around one hour. Participants received \$20 cash at each interview.

The interview sample largely consisted of White, Black, and Latina mothers (28 non-Latina White, 26 non-Latina Black, and 23 Latina participants). Participants reported a median monthly household income of \$800, well below the federal poverty line. Many, but not all, shared experiences of adversity over the life course, such as experiences of abuse or neglect as children, domestic violence, and homelessness. Their experience with CPS as parents ranged; some (30 of 83) had never come into contact with the agency when we first met, while others had CPS cases in court (32 of 83), including having children removed and placed out of the home. The research findings presented here emerged from my systematic analysis of the interview data.

Deciding to participate was itself a risk

⁷ Such concerns may also extend beyond low-income mothers to middle- and upper-class Black mothers, who may have social networks with CPS experience and recognize that their class status cannot protect them from racism. Additionally, I did not interview fathers, but they too may withdraw from service providers due to concerns about CPS reporting. Future research should consider the perspectives of these groups.

⁸ Dorothy Roberts, *Shattered Bonds: The Color of Child Welfare* (New York: Basic Books, 2002): 240–41.

⁹ Berger and Waldfogel, "Economic Determinants and Consequences"; HHS, *Child Maltreatment 2019*.

¹⁰ For more details on the study's data and methods, see Fong, "Concealment and Constraint."

calculation on which my sample is selected, especially given my position as a relatively privileged doctoral student at the time. Sampling through participant referrals helped connect me with mothers who might not participate otherwise, and several participants told me they would not ordinarily participate in a project like mine. Nevertheless, to the extent that particularly cautious mothers avoided the interview, CPS risks might be even more salient in a more comprehensive sample. The interviews yielded rich data on low-income mothers strategizing around CPS concerns, but I am open to the possibility that more remained concealed—consciously or unconsciously—from me.

Research Findings

CPS does not patrol the streets for abusive or neglectful parents. Instead, it relies on reports from community members, especially those whose jobs put them in contact with children and families. This means that, as staff from the Center for Family Representation write, “institutions and professionals that are meant to provide necessary services to the community—medical providers, social services agencies, the police, and schools—act as tentacles of surveillance,” funneling marginalized families to CPS.¹¹

Although the low-income mothers I interviewed articulated confidence in their parenting, they also acknowledged their vulnerability to CPS reports. Even those who had never been reported to CPS generally knew friends, neighbors, and/or relatives who had. They recognized CPS reports as a risk, as reporting could be capricious, and reporters might easily mistake their hardships as neglect. Mothers weren’t wrong in their assessments. The threshold for reporting is low, with CPS encouraging professionals to report any suspicions they have. And reporters do not need proof of abuse or neglect; credible allegations are sufficient for CPS to investigate. The vast majority of CPS reports allege neglect rather than abuse,¹² which often involves manifestations of poverty and adversity.

In this context, mothers strategized to protect their families from CPS’s intervention—think of Christina concluding home visiting services

weren’t worth the risk. Even for those never reported to CPS, the possibility of reports created tradeoffs that added risk to help-seeking. Three-quarters of the mothers I interviewed (63 of 83), across racial and ethnic groups, with and without CPS experience, identified proactive strategies they pursued to protect themselves from CPS reports.¹³ They described avoiding or declining social services; they said they didn’t always want to be fully forthcoming with service providers.¹⁴

Many participants described positive relationships with doctors, schools, and other authorities, so their CPS fears were not generally all-consuming. Still, in their accounts, the possibility of CPS reporting infused interactions with service systems, even if in the background, barely perceptible until coming to the forefront in key moments. Service providers may aspire to cultivate positive relationships to better serve families, but their role as mandated and frequent CPS reporters undermine these aims.

Brittni

One January, I spoke with Brittni and her boyfriend Pete, as Brittni’s two toddlers from a previous relationship snuggled with her. She and Pete, both White, opened up right away about living in their car before entering a local family shelter a few weeks prior. They’d come to Rhode Island to live with Pete’s uncle. Things didn’t work out; when Pete’s uncle kicked them out, they had nowhere to go. Brittni kept the situation from her parents, who already judged

¹¹ Charlotte Baughman, et al., “The Surveillance Tentacles of the Child Welfare System,” *Columbia Journal of Race and Law* 11, 3 (2021): 501.

¹² HHS, *Child Maltreatment* 2019.

¹³ I discuss these findings at greater length in Fong, “Concealment and Constraint.” Declining to mention these strategies did not imply a lack of strategizing around CPS. For example, a few mothers had little to say about CPS in the interview, reluctant to discuss the sensitive and highly stigmatized topic. Additionally, I focus on proactive strategizing here; on mothers’ disengagement from service providers after these providers report them to CPS, see Kelley Fong, “Getting Eyes in the Home: Child Protective Services Investigations and State Surveillance of Family Life,” *American Sociological Review* 85, 4 (2020): 610–38.

¹⁴ In some instances, strategizing around CPS involved mothers making themselves visible to systems rather than withdrawing from them. Yet this service participation, when undertaken superficially, to fend off CPS, fostered a sense of constraint.

her for her young, single motherhood and whom she didn't want to disappoint further.

So, for six months, they said, they stayed in the car with the kids and all their things. They went to the park, spent time at the library, and tried to scrape together enough money from odd jobs for an occasional motel stay to shower and do laundry. As autumn became winter, a winter when New England's polar vortex made national news, they took turns staying up and turning on the car for heat. What terrified them most during those months was the prospect of someone reporting them to CPS:

Pete: Every night we were in the car, my worst fear was hearing this on the window [*knocks*] –

Brittini: A cop.

Pete: – and then it's a police officer, and boom, next thing you know, the kids are getting taken away. That woulda killed me. That woulda killed her.

Brittini and Pete emphasized their devoted care for the children. "There are days where we wouldn't eat just so they could," Brittini recounted. "We've always put them forward." Still, Brittini said it was just "common knowledge" that police would frame their situation as child neglect and notify CPS. So, they took pains to hide their living conditions: finding hidden spots to park, buying black posterboard to put against the car windows, and switching up the rest stops where they spent the night.

Welfare and SNAP benefits can be lifelines to families in such situations. But Brittini and Pete weren't receiving this assistance. They sought to conceal their living situation from the welfare office, too, believing that staff there would likely alert authorities. When the family visited the welfare office seeking benefits, the staff asked for proof of Rhode Island residency. Having come from out of state, and now living in their car, Brittini and Pete didn't have anything to show. Brittini explained:¹⁵

"I didn't tell [welfare] we were living in the car because if they find out, they have to tell CPS, and CPS will come and take the kids away. I just, we were homeless. I didn't wanna like,

divulge too much information about it. They were like, "Well, we don't have any proof that you're actually living in Rhode Island, nothing, so there's nothing that they can do."

Ideally, Brittini and Pete suggested, welfare would respond by offering housing assistance, or at least by finding a way to approve the benefits given the family's living situation. But realistically, the couple believed that disclosing their situation would lead to a CPS report. Indeed, in my research, I reviewed case records in which social service providers alerted CPS about parents staying in cars with their children.

Brittini felt she had to choose between alleviating material hardship and keeping her family together. She opted for the latter. As we see, mothers' strategizing may protect against state scrutiny but can also cut their families off from critical sources of support. Others I interviewed, in explaining why they chose not to enter homeless shelters during times of need, spontaneously pointed to shelters' practices of calling CPS.¹⁶ Mothers spoke about not disclosing their homelessness to doctors or to children's schools, giving relatives' addresses if needed, for fear of being reported to CPS.

When we first met, Brittini and Pete were grateful to be living in the family shelter with their children. Two months later, I called Brittini to see how everything was going. She'd left that shelter for another one. After staff threatened to call CPS on her, she said, she decided she'd "had it."

Desiree

As Brittini's case indicates, families must make their needs and vulnerabilities known to receive state and non-profit support. Yet the mothers I interviewed worried about the ramifications of disclosing challenges like homelessness, housing instability, challenge meeting children's material needs, parenting

¹⁵ For consistency, I substitute "CPS" for participants' references to the Rhode Island Department of Children, Youth, and Families throughout this article.

¹⁶ In Providence, waitlists for housing assistance are years long, leaving the shelter system as among the only paths to enter into (at least short-term) subsidized housing.

practices and stressors, substance use, and domestic violence. Seeking help, accessing services and being forthcoming about one's needs, is fraught when doing so can lead to a CPS report.

Desiree, a Dominican and Puerto Rican mother of two, outlined this catch-22. She had long endured numerous, compounding adverse experiences, but two years after we first met, things had taken a turn for the worse. Her daughters, now seven and eight, Desiree had been going without formal income for months, explaining that her welfare benefits were cut off after missing an appointment. She was making ends meet by selling some of her SNAP benefits and shoplifting cat food and shampoo when needed. "I barely eat because I feel guilty," she shared. "'Damn . . . my kids can be eating this.' It's hard."

She'd tried to reach out to local social service agencies, but said they told her she didn't qualify. Desiree felt caught.

"What's next? Should I be taking pictures of myself eating out of a trash can? Maybe that'll help? No, that won't. They'll just call CPS on me because I'm eating out of a trash can... I feel like if let's say I tell welfare, "Hey, this mess is going on, and I can barely afford to keep my kids." "You can't afford to keep your kids? You know we're gonna have to call the city on you. We're gonna have to call CPS." I'm damned if I do. I'm damned if I don't... I don't eat so that my kids can eat, but I'm scared to ask for any help these days, because I'm scared that it's gonna work against me."

Desiree understood that sharing the severe deprivation she was experiencing could open up opportunities for assistance, but she worried it could also lead to a CPS report. Such a report would launch a terrifying investigation oriented around fixing Desiree's individual inadequacies rather than addressing her family's chronic material needs. And CPS, Desiree emphasized, wouldn't help her daughters. They'd been in foster care briefly before; her older daughter, Desiree said, returned with head lice, and her younger daughter contracted an infection that

left her with painful cysts all over her legs. So, caring for her daughters meant keeping threats like CPS at bay.

Shakira Paige, a peer trainer at parent advocacy organization Rise, and a New York City mother not part of the study, faced a similar challenge when she ran out of food stamps while living in a shelter with her children. For six days, waiting until the first of the month, the family subsisted on peanut butter. Shakira echoed Desiree in explaining why she didn't reach out for help, "I didn't tell anybody what was going on because I was scared to get [a CPS] case because I didn't have the necessities for my kids."¹⁷

Recently, Desiree's methadone clinic had informed her about a new, Medicaid-funded program they offered that could help with housing, SNAP benefits, employment, mental health, and other services. But Desiree hadn't reached out to this program:

"I'm scared to come to them because even though we signed a confidentiality agreement, but if they feel that CPS authorization office needs to be called, they will do it. It sucks. I feel like I can't tell anybody anything, because oops, I might've said too much. I might have a knock on my door, and somebody might be here to take my kids. That's one of my biggest fears... That's why I keep a lot of stuff to myself."

This program had never reported Desiree to CPS, but she understood that their obligations to CPS trumped any confidentiality promises they might make her. Program staff would be legally mandated to report. She'd had enough experience with frontline bureaucrats to figure they wouldn't understand or empathize with her situation. After all, Desiree presumed, they lived an entirely different life, "in your little house with your little white picket fence, and your two dogs, and your husband."

Desiree and Shakira were striving to do their best for their children, strategizing to make their limited resources last. But the possibility

¹⁷ Rise, *Someone To Turn To: A Vision for Creating Networks of Parent Peer Care* (2021): 7.

of drawing CPS attention kept them from reaching out for needed resources to care for their children. They had to weigh disclosing their needs against the possibility of state scrutiny and even separation. For marginalized families, the prospect of CPS reporting turns potential lifelines into landmines. As entry points to CPS, social service providers become agents of the punitive state rather than allies offering assistance.

Colleen

Colleen was raising seven children under the age of eight, including newborn twin boys, with her long-time boyfriend. She took on childcare while he worked at a warehouse. “All of my time is taken up with my kids,” Colleen, a White mother, said. Even when showering or using the bathroom, she added, she couldn’t get a moment to herself. She loved reading but never got to escape into a book anymore. “That’s probably why I’m so friggin’ high-strung and depressed lately,” she reflected. “Not really depressed, but I’m not myself, ‘cause I have no time to do anything I enjoy doing.”

But when her children’s pediatrician and the school asked about her mental health and parenting stressors, Colleen questioned their intentions. She recognized them as conduits to CPS, saying parents should “definitely” be careful when talking with “anyone who works for an agency... like Head Start, the doctors.” As Colleen explained, offhand comments about using substances, feeling stressed with children, or food insecurity could be misconstrued: “Some people, you say something to them, they’ll take it out of context. They’ll call CPS on you.”

Colleen had accepted visiting nurse services, thinking they would help her children. Still, she felt anxious when her visiting nurse asked questions. As we talked about CPS concerns, she commented, “It makes you nervous sometimes, when [the visiting nurses] come, especially if you know you’re struggling or something, and you don’t want them to know, because it makes you nervous that they could do something like ruin your life, even though you’re doing the best you can.” Colleen’s account identifies an important reason mothers

often decline to share their parenting concerns with helping professionals.¹⁸ Although social workers and doctors might ask questions to provide mothers with information and support, mothers like Colleen understood these inquiries as opportunities to be turned in for wrongdoing. They figured it was safer to keep their responses superficial. “I answer the question, but I really don’t answer it,” said Aaliyah, a Black mother. As another Black mother, Ruby put it, “I tell them what I want them to know.”

Later, Colleen read the questionnaire her children’s school regularly asked her to complete:

Colleen: I feel little interest or pleasure in doing things. I feel too stressed to enjoy my child. I get more frustrated than I want with my child’s behavior.” It’s like a trap. If you say yeah, I get more frustrated with my child’s behavior, that means you’re gonna hit ‘em or something, they probably think... So, I just circle “sometimes.” Why do you need to know about what I do?

Interviewer: Why do they want to know?

Colleen: “I dunno. Just ‘cause they, I dunno, maybe they wanna, I feel like they wanna know ‘cause they wanna threaten your family or something... It seems to be like, sometimes they do wanna report you or something or catch you doing something wrong.”

From the school’s perspective, this might have been a well-intentioned effort to offer additional support. Increasingly, understanding that education and health are influenced by parenting and home environments broadly, schools and pediatricians seeks to help

¹⁸ Amy M. Heneghan, MaryBeth Mercer, and Nancy L. DeLeone, “Will Mothers Discuss Parenting Stress and Depressive Symptoms with Their Child’s Pediatrician?” *Pediatrics*, 113, 3 (2004): 460-67; Gerald B. Hickson, William A. Aldemeier, and Susan O’Connor, “Concerns of Mothers Seeking Care in Pediatric Offices: Opportunities for Expanding Services.” *Pediatrics*, 72, 5 (1983): 619-24.

parents with other needs.¹⁹ Colleen’s children’s schools and doctors had never called or even threatened to call CPS. But Colleen saw this as a real possibility, given pervasive CPS reporting, so she concealed the full scope of her family’s needs. Opening up about vulnerabilities carried risks, as providers could “trap” her and “ruin [her] life” by summoning CPS.

Discussion and Implications

Educational, healthcare, and social service systems can serve as vital sources of support for families, especially marginalized families. Such systems want to encourage parents to disclose stressors and challenges to reach out in times of need. This institutional help-seeking is an important part of protective parental capacity—a key way parents with limited resources can promote their children’s well-being.²⁰ Strong institutional and social support networks can assist parents in raising their children in safe and nurturing environments.

But parents know that authorities may treat their poverty and adversity as abusive or neglectful parenting. Purportedly, service providers refer families to CPS wanting to improve conditions for children and ensure children’s safety.²¹ Yet as we see in the accounts of Christina, Brittini, Desiree, Colleen, and others, the current practice of widespread CPS reporting by support-oriented systems undermines this goal by fraying families’ connections with these very systems. As those I interviewed explained, seeking help is no easy decision when those in a position to assist are also potential tattletales. Parents in need face a no-win situation: close off opportunities for support or open themselves up to the risk of state scrutiny and family separation.

This research also highlights the impact of CPS beyond its direct intervention with families. As a looming threat, it shapes what parents do and say, with ramifications for the resources they mobilize for their families and the relationships they develop with service providers. New mothers like Christina know to be wary about accepting social services that might misconstrue manifestations of poverty

as neglect. In communities highly exposed to CPS, the specter of CPS accompanies families to doctors’ visits, to parent-teacher conferences, to homeless shelters, to therapy appointments.²²

Walking back the U.S.’s reliance on CPS as a response to family adversity is thus an important means of advancing child well-being goals. Parents should be able to seek help, to access needed resources without hesitation and speak openly about the challenges they are facing, without fearing family separation. This means that service providers must work to earn parents’ trust. One mother I interviewed described exercising caution around some service providers, but identified one non-profit organization on her side, “If I don’t got food in the house, they not gonna go behind my back and letting know CPS, you know what I mean? If I need food in the house, they help me to get the food. Or if my child need clothes and I don’t got the money, they help me to get the clothes. That’s why I have trust to them.”

Reporting systems must follow this organization’s lead to find alternative ways to serve families rather than immediately turning to CPS. Brianna Harvey and colleagues note that schools, a primary reporter to CPS, “are well-positioned to create new pathways to the supports and services from which most families reported to [CPS] might actually benefit.”²³ Harvey and colleagues sketch out an alternative vision of schools detached from the child welfare system, one involving a cultural shift away from coercion as well as legal shifts that narrow mandated reporting statutes. With these shifts, schools could re-envision their

¹⁹ American Academy of Pediatrics, “Family Pediatrics Report of the Task Force on the Family,” *Pediatrics* 111, 6 (2003): 1541–71; Cynthia Franklin and Calvin L. Streeter, “School Reform: Linking Public Schools with Human Services,” *Social Work* 40, 6 (1995): 773–82; Mario Luis Small, “Neighborhood Institutions as Resource Brokers: Childcare Centers, Interorganizational Ties, and Resource Access among the Poor,” *Social Problems* 53, 2 (2006): 274–92.

²⁰ I thank anonymous reviewers for raising this point.

²¹ Fong, “Getting Eyes in the Home.”

²² Rise, *Someone To Turn To*.

²³ Brianna Harvey, Josh Gupta-Kagan, and Christopher Church, “Reimagining Schools’ Role Outside the Family Regulation System.” *Columbia Journal of Race and Law* 11, 3 (2021): 576.

role—for instance, assisting families in accessing public benefits, legal services, and medical and mental health care; instituting peer support programs; and expanding in-school social work services.

Bolstering families' engagement with service providers also requires developing referrals and resources outside the child welfare system. Mandatory reporters seeking to help families need non-CPS outlets to which they can turn. Police in some jurisdictions are developing alternatives—for instance, deploying clinicians and healthcare workers rather than armed officers to mental health calls or rerouting calls from police dispatch to longer-term harm reduction services.²⁴ A similar approach in the child well-being field could make accessing services and disclosing stressors a pathway to assistance, rather than investigation. Any such alternative should be well-resourced as well as staffed and directed by people from impacted communities who have the skills to respond to families' needs without involving CPS.

As we see, reducing CPS does not imply abandoning families facing adversity. Instead, service providers must move towards more effective and affirming ways of serving them. Even by CPS's own estimation, the vast majority of reports do not involve children in imminent danger; at the outset, the professionals making these reports expect children will remain at home, and most investigations summarily close after the requisite assessment period.²⁵ CPS has become a catch-all for all manner of concerns about families.

But this doesn't have to be the case. In the initial months of the COVID-19 pandemic, CPS operations scaled back considerably due to social distancing guidelines and school closures. Reports and investigations plummeted. Yet this retreat did not compromise child safety. Nationally, child fatalities between October 2019 and September 2020 were no greater than in previous years, actually declining from the prior year.²⁶ Emergency room visits for child abuse and neglect dropped, and hospitalizations for abuse and neglect were similar to pre-pandemic rates.²⁷ After schools reopened, there was no "rebound effect" suggesting serious, unreported abuse or neglect. Legal

scholar Anna Arons, analyzing data from New York City, concluded that "with less surveillance and fewer separations, children stayed just as safe."²⁸ Meanwhile, as a subway train conductor and mother of three told The Marshall Project in the early months of the pandemic, "Poor people are usually constantly inspected by all these agencies. Now there is kind of a peacefulness."²⁹ With increased attention to family well-being during this time, families turned to mutual aid and other community networks; governmental policy supports such as expanded unemployment insurance, eviction moratoria, and stimulus checks helped families provide for their children's needs. As the pandemic experience showed us, we can reduce the scope of CPS while also keeping children safe—perhaps even keeping them safer.

Desiree described her encounters with bureaucrats and the alternative she envisioned, "Everything is official, official. I have to call that person. I have to call this person. You're humans. Just like me. Why can't you just help me?"

²⁴ Jackson Beck, Melissa Reuland, and Leah Pope, "Case Study: CAHOOTS," Vera, November 2020, <https://www.vera.org/behavioral-health-crisis-alternatives/cahoots>; Forrest Stuart and Katherine Beckett, "Addressing Urban Disorder Without Police: How Seattle's LEAD Program Responds to Behavioral Health-Related Disruptions, Resolves Business Complaints, and Reconfigures the Field of Public Safety," *Law & Policy* 43, 4 (2021): 390-414.

²⁵ Fong, "Getting Eyes in the Home"; HHS, *Child Maltreatment* 2019.

²⁶ HHS, *Child Maltreatment* 2020 (2022).

²⁷ Robert Sege and Allison Stephens, "Child Physical Abuse Did Not Increase During the Pandemic," *JAMA Pediatrics* (2021): doi:10.1001/jamapediatrics.2021.5476.

²⁸ Anna Arons, "An Unintended Abolition: Family Regulation During the COVID-19 Crisis," *Columbia Journal of Race and Law* (forthcoming).

²⁹ Eli Hager, "Is Child Abuse Really Rising During the Pandemic?" The Marshall Project, June 15, 2020, <https://www.themarshallproject.org/2020/06/15/is-child-abuse-really-rising-during-the-pandemic>.

Kelley Fong, Ph.D., is an Assistant Professor of Sociology at the Georgia Institute of Technology.



“Christina” and her son

© Phoebe Shuman-Goodier

Normal?

By Timothy Dennis

What is normal?
Is it a feeling?
Perhaps an emotion
Whatever it is

I will never know
Is it a prescription?

What aisle is it at the grocery store?
Is it something I can even afford
Wherever would I find it?

What does it smell like?
Can you touch it?
Perhaps it tastes good

But how would I know if I found it?
What is normal?



© Pumikan Sawatroj | Dreamstime.com

Rethinking the Community Response to Child Neglect in the 21st Century

From Mandatory Reporting to Mandatory Supporting of Families

Amy Jantz Templeman and Romero Davis

Introduction

Keeping children safe and families strong is a shared responsibility across communities, as we all benefit from child and family well-being. This vision of a 21st-century child and family well-being system that fundamentally reforms child welfare as we know it was described by the federal Commission to Eliminate Child Abuse and Neglect Fatalities in its report *Within Our Reach: A National Strategy to Eliminate Child Abuse and Neglect*.¹ The commission called for a public health approach to child and family well-being that promotes equitable solutions and brings public and private partners together to coordinate resources that support families. This 21st-century system includes child protection but is not limited to it, as it extends to all systems that help to bolster child and family well-being. The national strategy described by the commission offers a bridge between safety and well-being, promoting the concept that strong families are safe families.

Perhaps now, more than ever, a system that proactively supports families outside of child welfare agencies is critical, as families across the country experience increased stress levels due to the COVID-19 pandemic and its effects on economic security, health, and well-being. Right now, child welfare is at a moment of reckoning. Reckoning with its history of systemic racism, over-reporting of people living in poverty to child protection, and its structural design that too often removes children from their families and “regulates and punishes Black and other marginalized

people.”² Leaders, advocates, organizers, and constituents are calling to defund, abolish, or, at the very least, transform our current system.

There is national and state momentum to reform mandatory reporting as part of a move toward a more equitable child and family well-being system. Some have called for repurposing mandatory reporters into mandatory supporters who link families with supportive services before suspected harm occurs and a call to child protection is determined to be necessary.³ New York City’s Administration for Children’s Services hosted a webinar in March 2021 to announce changes to its local mandatory reporting system, while Idaho and Texas are considering legislation to narrow the reporting of child abuse and neglect allegations.⁴ Experts are concluding

¹ Commission to Eliminate Child Abuse and Neglect Fatalities. *Within Our Reach: A National Strategy to Eliminate Child Abuse and Neglect Fatalities*. 2016, Washington, DC: Government Printing Office, <http://www.acf.hhs.gov/programs/cb/resource/cecanf-final-report>.

² Roberts, Dorothy. “Abolishing Policing Also Means Abolishing Family Regulation.” *The Imprint*, 16 June 2020, <https://imprintnews.org/child-welfare-2/abolishing-policing-also-means-abolishing-family-regulation/44480>.

³ Louge, Claire. “Mandated Supporters.” *Prevent Child Abuse Arizona*, 7 July 2020, <https://pcaaz.org/mandated-supporters/>.

⁴ Fitzgerald, Michael. “New York City Child Welfare Chief Calls For Changes to Mandated Reporting System.” *The Imprint*, 15 March 2021, <https://imprintnews.org/child-welfare-2/child-welfare-chief-calls-for-changes-to-mandated-reporting-system/52710>.

that our current system of mandatory reporting is doing more harm than good and calling for reforms that promote racial and economic equity and help to strengthen, rather than surveil, families.

This article sets out to do four things:

1. Explore the consequences of current neglect and mandatory reporting policies on children and families.
2. Describe how neglect and mandatory reporting fit into a 21st-century child and family well-being system and public health approach.
3. Identify ways that framing science can be applied to communications about neglect and mandatory reporting reform.
4. Examine what we can learn about reform efforts underway and replacement approaches.

Consequences of Current Neglect and Mandatory Reporting Policies on Children and Families

This is a critical time for our country to examine its response to child neglect and its policies for mandatory reporting. Throughout 2020–2021, there was a national narrative driven by media coverage that children were unsafe at home during the pandemic because calls to child protection from mandatory reporters were down. The media’s focus on the role of mandatory reporters as the end-all and be-all solution to addressing child abuse falls short. Education personnel, including teachers, are responsible for 20 percent of all reports during the school year that are made to child abuse hotlines, but only 11 percent of those calls are substantiated as child maltreatment.⁵ Education personnel are not often trained and not expected to connect families with

⁵ Weiner, D., Heaton, L., Stiehl, M., Chor, B., Kim, K., Heisler, K., Foltz, R., & Farrell, A. *Chapin Hall Issue Brief: COVID-19 and Child Welfare: Using Data to Understand Trends in Maltreatment and Response*. Chapin Hall at the University of Chicago, 2020.



Amy Jantz Templeman



Romero Davis

upstream, supportive resources before a suspected incident occurs.

Child welfare must move beyond a reliance on addressing individual or family risk factors and instead advocate for families, explaining to other systems how environment, social conditions, and policies influence the experiences of children and families. The overwhelming majority of cases (76 percent) that come to the attention of child protection are due to neglect,⁶ which is often related to poverty. In other words, there are limitations to the helpfulness of the most frequent reports to child protection, and families experiencing poverty are likely not getting the kind of help they need with concrete supports such as food, housing, and employment. Child neglect is more common in families that are experiencing poverty and conditions related to it, such as inadequate food, clothing, shelter, access to medical care, and an overload of stress. The weight of excessive stress, especially related to poverty, can impede a parent's ability to provide the type of care they envisioned for their child and family.

Another feature of our current mandatory reporting system is the oversurveillance of families of color, which can be attributed, in part, to reporters having limited tools available to help families (often child protective services is the only known resource) along with racial biases that influence decision making.⁷ More than half of Black children and more than one-third of all children in America are the subject of a child abuse or neglect investigation by the age of 18.⁸ In California, "Black children were more than twice as likely as White children to be referred for maltreatment, have their cases substantiated, and enter foster care before age five."⁹ Yet, after adjusting data for socioeconomic and health indicators, this study showed Black and Latinx children may actually be at lower risk than their socioeconomically similar white counterparts for referral and entry to foster care. This type of oversurveillance, perpetuated by an overly prescriptive mandatory reporting structure that does not encourage reporters to connect families with preventative, supportive services, is a racial justice issue that demands alternative responses to suspected neglect.

Findings on racial disparities suggest that the risk of child maltreatment is not linked to race or ethnicity directly, but rather correlated with poverty and poorer health outcomes that are disproportionately experienced by people of color.¹⁰ Black, Hispanic/Latinx, and Indigenous populations experience poverty at higher rates than white populations, and children and families of color are overrepresented in the child welfare system. Black children comprise 13.8 percent of the total child population; however, they account for 22.6 percent of children identified as victims by child protective services.

As we look to reform mandatory reporting, it is essential to consider how it works today. Each state is required by the federal Child Abuse Prevention and Treatment Act (CAPTA) to have procedures in place that require certain individuals to report suspected child abuse or neglect.¹¹ These state policies also describe the standards for making a report. Although state policies vary, there are common themes captured in a literature review of mandatory reporting:

⁶ U.S. Department of Health & Human Services, Administration for Children and Families, Administration on Children, Youth and Families, Children's Bureau. *Child Maltreatment 2020*. 2022, <https://www.acf.hhs.gov/cb/report/child-maltreatment-2020>.

⁷ Child Welfare Information Gateway. "Child Welfare Practice to Address Racial Disproportionality and Disparity." *Bulletins for Professionals*, U.S. Department of Health and Human Services, Administration for Children and Families, Children's Bureau, April 2021, <https://www.childwelfare.gov/pubs/issue-briefs/racial-disproportionality/>.

⁸ Kim, Hyunil et al. "Lifetime Prevalence of Investigating Child Maltreatment Among US Children." *American Journal of Public Health* vol. 107,2 (2017): 274-280. doi:10.2105/AJPH.2016.303545.

⁹ Putnam-Hornstein, Emily et al. "Racial and ethnic disparities: a population-based examination of risk factors for involvement with child protective services." *Child Abuse & Neglect* vol. 37,1 (2013): 33-46. doi:10.1016/j.chiabu.2012.08.005.

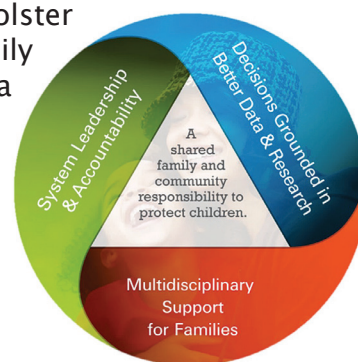
¹⁰ Rathore, K., Connolly, G., & Karter, C. *Chapin Hall Issue Brief: Recommendations to Address the Inequitable Impacts of COVID-19 in Child Welfare, Housing, and Community Capacity*. Chapin Hall at the University of Chicago, 2020.

¹¹ Child Welfare Information Gateway. *Mandatory Reporters of Child Abuse and Neglect*. U.S. Department of Health and Human Services, Children's Bureau, 2019.

- Mandatory reporting, as it stands, is not an evidence-based policy.¹² There is very little evidence that mandatory reporting benefits children and families in need of support. On the contrary, mandatory reporting at times discourages families from seeking supportive services in fear of being reported. The other concern is that mandatory reporting does not have an explicit end goal, making progress even harder to measure.
- Mandatory reporters overwhelmingly report having a negative experience with reporting, which may lead to a hesitation or unwillingness to report.¹³ A meta-synthesis of 44 research articles found that negative experiences were reported by mandatory reporters in 73 percent of articles. The analysis includes accounts of “harm to therapeutic relationships and child death following removal from their family of origin.”
- The harmful cycle of family separation is highlighted in the literature we reviewed on mandatory reporting.¹⁴ Families of color in the U.S. have a long history of separation. From the indigenous children who were removed and placed in boarding schools to the current threats and practices of family separation in deportation cases, generations of Black, Indigenous, and People of Color (BIPOC) communities are all too familiar with the destruction of families by government intervention. They have deep trauma associated with family interventions, even when these interventions are meant to be helpful. For example, there are harmful psychological effects of surveillance on women in domestic violence shelters, who run the risk of being separated from their children as they deal with other traumas. Mandatory reporting in these contexts does not promote the well-being of children, families, and communities.

How Neglect and Mandatory Reporting Fit into a 21st-Century Child and Family Well-Being System and Public Health Approach

A 21st-century child and family well-being system that fundamentally reforms child protection was described by the federal Commission to Eliminate Child Abuse and Neglect Fatalities in its report “Within Our Reach: A National Strategy to Eliminate Child Abuse and Neglect Fatalities.” The commission called for a public health approach to child and family well-being that includes child protection but is not limited to it, as it extends to all systems that can help to bolster child and family well-being. The commission’s recommended national strategy is described through the graphic here, which places a shared family and community responsibility at the middle, surrounded by three essential elements—leadership and accountability, decisions grounded in better data and research, and multidisciplinary support for families. Our country’s response to neglect and policies on mandatory reporting could be better shaped to follow a public health approach, shared responsibility to bolster child and family well-being, and a commitment to multidisciplinary support for families.



¹² Raz M. Unintended Consequences of Expanded Mandatory Reporting Laws. *Pediatrics*. 2017 Apr;139(4):e20163511. doi: 10.1542/peds.2016-3511. Epub 2017 Mar 14. PMID: 28292874.





¹³ McTavish, Jill R et al. “Mandated reporters’ experiences with reporting child maltreatment: a meta-synthesis of qualitative studies.” *BMJ Open* vol. 7,10 e013942. 16 Oct. 2017, doi:10.1136/bmjopen-2016-013942.

¹⁴ Goodman, L.A., Fauci, J.E. The Long Shadow of Family Separation: A Structural and Historical Introduction to Mandatory Reporting in the Domestic Violence Context. *J Fam Viol* 35, 217–223 (2020). <https://doi.org/10.1007/s10896-020-00132-w>.

Core Components of a 21st-Century Child and Family Well-Being System from the Commission

Transforming child welfare to be more focused on supporting families does not mean that we give up our responsibility to keep children safe. Shifting our focus to support families before harm occurs will ultimately mean that fewer children require protection because their families are better supported, safe, and healthy.¹⁵ Applying a public health approach moves us away from a reactive approach based on individual or family risk factors and toward a prevention focus that uses the social determinants of health as its lens. Our health is determined, in part, by external conditions — social and economic factors, opportunities, and resources in our homes, neighborhoods, and communities. Critical elements of a public health approach to child safety and well-being are described in the graphic here.

Public Health Approach

-  It looks for the maximum benefit for the largest number of people, promoting the healthy development and well-being of children
-  It works not only at the family level, but also at the community and societal levels
-  Public and private sectors work together to align, leverage, and coordinate existing resources to provide support to children and families and to address risks and promote resilience before there is a crisis
-  CPS remains a critical component, but the goal is for fewer families to require CPS involvement

To address the social determinants of health, it is critical to engage the broader ecosystem of child- and family-serving groups; however, they must be coordinated in order to promote well-being in a 21st-century system.¹⁶ Child welfare would benefit from taking a closer look at the System of Care (SOC) approach that was developed in 1986 as a cross-systems approach to support behavioral health and other needs of children, youth, and families. This approach requires multiple federal agencies to align initiatives that support a public health approach to child and family well-being. Some of the guiding principles of SOC¹⁷ that are most relevant to reforming neglect and mandatory reporting policies include:

- Ensure the availability of and access to a broad, flexible array of effective, evidence-informed, community-based services and supports for children and their families that addresses their physical, emotional, social, and educational needs, including traditional and nontraditional services and informal and natural supports.
- Provide individualized services in accordance with the unique potential and needs of each child and family, guided by a strengths-based, wraparound service planning process and an individualized service plan developed in true partnership with the child and family.
- Deliver services and supports within the least restrictive, most normative environments that are clinically appropriate.
- Ensure that families, other caregivers, and youth are full partners in all aspects of the planning and delivery of their own services and in the policies and procedures that govern care for all children and youth in their communities, states, territories, tribes, and nation.

Reforms to neglect and mandatory reporting policies can also be informed by lessons learned from Child Safety Forward, a federal demonstration initiative to develop equitable solutions that address serious injuries and

¹⁵ Covington, Teri. Transforming Child Welfare Systems to a 21st Century Model that Strengthens and Supports Families and Communities: Innovations from the Field. Alliance for Strong Families and Communities, 2020.

¹⁶ Jones, J. and Templeman, A. "We Have Chance to Build Better Child, Family Well-Being System." *Youth Today*. 15 June 2020. <https://youthtoday.org/2020/06/we-have-chance-to-build-better-child-family-well-being-system/>.

¹⁷ Stroul, B., Blau, G., & Friedman, R. *Updating the System of Care Concept and Philosophy*. Georgetown University Center for Child and Human Development, National Technical Assistance Center for Children's Mental Health, 2010.

fatalities from abuse and neglect, using a public health approach.¹⁸ The three-year initiative was launched by the U.S. Department of Justice, Office of Justice Programs, Office for Victims of Crime in October 2019. The efforts are responsive to the 21st-century child and family well-being system as envisioned by the Commission to Eliminate Child Abuse and Neglect Fatalities and will result in models for coordinated responses. Social Current serves as the national technical assistance center to the five demonstration sites: St. Francis Hospital in Hartford, Connecticut; Cook County Health in Illinois; Indiana Department of Health; Michigan Department of Health and Human Services; and Sacramento County's Child Abuse Prevention Council in California. The initiative seeks to broaden our existing knowledge base to help inform policies and practices that support a public health approach to child and family well-being.

The Child Safety Forward site at Michigan's Department of Health and Human Services built a collaborative initiative to achieve systems change. Now in the second year of implementation, Michigan is enhancing the level of services for families in need of support and improving safety planning across Michigan's child protection system. To improve the level of services for families, they are examining outcomes of current policies and practices related to families with low or moderate risk for child maltreatment, often those with neglect allegations, to identify change recommendations. They will also partner with statewide or regional outreach efforts that focus on protective factors and work to promote these services to families.

Finally, the Michigan team is reviewing current safety planning practices—assessing the perceived needs, barriers, and facilitators to safety planning among child protective services workers and other professionals; and assessing the perceptions of safety plans among persons with lived experience. Collectively, this information will be used to identify areas for practice change and inform the development of educational resources and supports to reinforce safety plan best practices.

As we consider a public health approach that supports the health and well-being of all

children and families and the concept of shifting from mandatory reporting to mandatory supporting, it is important to understand how much support is needed by parents and other caregivers. While all parents need help sometimes, research shows parents are not getting the support and help they need.¹⁹ In a national survey of parents with young children:

- 48 percent of parents report not receiving the help or support they need.
- 8 percent of parents overall say they get no support at all.
- 47 percent of fathers and 29 percent of mothers say they don't know where to find [parenting] information they can trust.

How Framing Science Can Be Applied to Communications About Neglect and Mandatory Reporting Reform

When making a case for reform of neglect and mandatory reporting policies, the biggest communications challenges are to describe:

- Why today's practices are harmful.
- Solutions to those problems.
- How children truly in need of protective services will be helped in a reimagined system.

¹⁸ Disclaimer: This product was supported by cooperative agreement number 2019-V3-GX-K005, awarded by the Office for Victims of Crime, Office of Justice Programs, U.S. Department of Justice. The opinions, findings, and conclusions or recommendations expressed in this product are those of the contributors and do not necessarily represent the official position or policies of the U.S. Department of Justice.

¹⁹ *Tuning In: Parents of Young Children Tell Us What They Think, Know and Need*. Zero to Three, Bezos Family Foundation, 2016, <https://www.zerotothree.org/resources/1425-national-parent-survey-report>.

Recommendations for reframing childhood adversity as a public, preventable, and solvable issue can help us to set up these explanations.²⁰

Topic	Reframing Recommendations
Why Current Neglect and Mandatory Reporting Practices are Harmful	Address Root Causes. When we over surveil families experiencing poverty rather than neglect, we cause harm, including potential family separation. We miss out on the opportunity to address external conditions that truly “get under the skin” to shape well-being. These root causes include financial stress, isolation, housing, or unmet behavioral health needs.
Solutions to Current Practices, Such as Mandatory Supporting	Use the “Overloaded” Metaphor. See the communications guide found here to help explain how external pressures on families contribute to neglect.
How Children Truly in Need of Protective Services Will Be Helped in a Reimagined System	Appeal to Collective Responsibility. We all have an obligation to the health and well-being of our neighbors, and strong families are safe families. Child protection will still have a role to play in ensuring safety when necessary, and “shifting our focus to supporting families before a crisis will ultimately mean that fewer children will need protecting because their families are better supported, safe, and healthy.” ²¹

What We Can Learn About Reform Efforts Underway and Replacements Approaches

The main purpose of improving mandatory reporting is to connect families with the right types of help within communities. Creating better decision-making tools for mandatory reporters can be a highly effective mechanism for bringing community stakeholders together with child protection agencies to expand community-based prevention support. Tools can help the reporters make decisions about when it is appropriate to report to child protective services (CPS) and when it is better to connect families with other services. Child protection reporter guides²² have been created for countries outside of the U.S. and are now under consideration in some U.S. communities. As those communities complete their reform efforts, their experiences will inform the field’s strategies for replacement approaches. Based on what we know now, these are the replacement approaches we suggest considering to reform neglect and mandatory reporting policy and practice. We understand these approaches are not simple and, in some cases, represent large-scale systems change and cultural shifts in how we think about family support.

- Community Leaders, Parents, and Youth Should Be Engaged in Neglect and Mandatory Reporting Reform Efforts.** Engaging parent and youth partners, pediatricians, schools, housing providers, and other resource providers is essential. When inviting child-serving professionals to the conversations, it is important to avoid being critical and acknowledge their intention to help children and families. For example, raise the question, “We know you see a lot of things you are worried about. Wouldn’t it be great if we could better help families?” It is equally crucial to invite families who have system involvement and acknowledge their intention to do the best they can for their children.

²⁰ Sweetland, J. Reframing Childhood Adversity. FrameWorks Institute, 2021.

²¹ Covington, 2020.

²² Beier, K. and Meulendyke, K. “Is it Child Abuse? Mandated Reporter Guides Can Help.” Evident Change, 19 April 2019, <https://www.evidentchange.org/blog/it-child-abuse-mandated-reporter-guides-can-help>.

- **Explore Mandatory Supporters as an Alternative Pathway that Supports Families' Economic and Concrete Needs.** Alternative pathways to strengthening families are proposed in S.1927, the Senate's CAPTA Reauthorization Act of 2021.²³ The option of having mandatory supporters refer families to resources outside of child protection is an alternative pathway to help that is different than differential response. Although differential response models differ among states, it is typically a multitrack response within the child protection system after a report to CPS. Cases that are accepted for differential response must meet the statutory definition for an investigation or family assessment. A mandatory supporter model would function outside of child protection and within community-based organizations that can shore up services such as housing and employment support. The model should be developed in collaboration with SOC efforts; community-based child abuse prevention programs funded by CAPTA; and other federal, state, and local initiatives that promote connections to services and supports before families reach a crisis.
- **Measure the Effectiveness of Current Neglect and Mandatory Reporting Laws.** These policies can benefit from more research and the development and clear goals and outcomes. Key research questions include: Are children safer because of neglect policies? Are children safer because of mandatory reporting? What evidence helps us to answer that question? Do neglect policies or mandatory reporting help to increase child and family well-being? How do we know?
- **Disentangle Poverty and Neglect.** A key question to raise as mandatory reporting is assessed at the national level is how to disentangle poverty and neglect. This approach requires systems change that shifts mental models of what it means to be poor and what our collective responsibility is to connect people with economic and concrete supports that strengthen communities and families. It is important that the child protection workforce recognizes how economic stressors can overload families and how they might be offloaded, rather than labeling the parents or other caregivers as inadequate, along with racial and implicit biases that play a role in decision making.
- **Increase Economic and Concrete Supports to Families.** The child welfare community needs to unequivocally call for more upstream economic supports for families before a crisis occurs. We need to examine how all child welfare programs, including Titles IV-E, IV-B, CAPTA, and other programs outside of child welfare such as Medicaid, might better invest in family strengthening programs such as Family Resource Centers and other community-based supports. The Family First Prevention Services Act was a step in the right direction to support families and prevent entry into foster care, but investments need to move further upstream in a public health approach to child and family well-being. We also need ongoing support for economic policies that promote child and family well-being, such as the Earned Income Tax Credit, the expanded Child Tax Credit, expanded Medicaid coverage, access to voluntary home visiting programs, and more. These policy improvements will require federal investment.
- **Shift Child Protection's Relationship to Mandatory Reporters.** If mandatory reporters become mandatory supporters, calls to child protective services should decrease because of increased upstream, preventive connections to community-based resources. The calls that are made to CPS should be for more serious situations. This shift could give CPS an opportunity to partner more closely with mandatory reporters, potentially providing follow-up information and collaboration after calls.
- **Revamp Training Requirements for Mandatory Reporters/Supporters.** We need to understand what types of training are most helpful to mandatory reporters/supporters, especially as we look to make changes to current systems. The Commission to Eliminate Child Abuse and Neglect Fatalities called for reforms to mandatory reporter training on the topics of (1) family engagement, development, and strengthening; (2) understanding distinct racial and ethnic

²³ United States, Congress. S.1927 – CAPTA Reauthorization Act of 2021. <https://www.congress.gov/bill/117th-congress/senate-bill/1927>

cultures and racial and ethnic cultural norms and differences; (3) understanding the historical context of racism; (4) understanding and recognizing biases; and (5) how biases can impact assessment of risk, access to services, and delivery of services.

- Develop a Communications Community of Practice to Reframe these Issues. There are significant communications challenges in framing childhood adversity such as abuse and neglect as public, preventable, and solvable issues, even though we know it is the most effective approach to communications. As we reform neglect and mandatory reporting policies, the child welfare field would benefit from a community of practice that learns and shares best practices with each other.

Conclusion

The time is overdue to examine how neglect and mandatory reporting laws are related to poverty, oversurveillance, and injustice. We are enthusiastic about the field's current interest in taking a closer look at how poverty affects families, especially families of color, and how economic and concrete supports would better meet the needs of those families and would prevent the need for more drastic measures such as an investigation by child protection and potential family separation. As a field and with cross-sector partners, we can work to shift mental models and rebuild systems to invest early in upstream, family-strengthening programs, well before any type of crisis occurs. A true public health approach to supporting families and building protective factors would incorporate a SOC approach where federal, state, and local initiatives are aligned and working together to keep families strong.

Let's move forward to shape policies and practices with this clear vision in mind so that all families have the opportunity to thrive.

Authors' Note

Our interest in neglect and mandatory reporting is professional and deeply personal, as both of our families have been directly affected by involvement with child protective services. We are curious to know what would have happened if our relatives who came to the attention of CPS for allegations of neglect were connected earlier to community-based services. Could those connections have prevented family separation? Also, as former mandatory reporters who carried the hotline number in our phones, we wondered how often reports to child protection result in real help for families. As professionals in child and family well-being, we are grateful to help shape bold, needed reforms to our country's response to neglect and mandatory reporting. The authors wish to thank former Social Current policy fellow Thalia Preza for contributing to this article.

*Amy Templeman is the Director of Within Our Reach, and
Director of Practice Excellence, at Social Current.*

Romero Davis is a Senior Program Manager Social Current.



© Lunamarina | Dreamstime.com

What Happens After

By Suzanne Laliberté

No one ever sees what happens to us after
The trials or the triumphs the tears and the laughter
If you Google search my name, you'll get the headlines and my mug shots
Caught with drugs and kids in car, mom arrested by the cops.
Everyone remembers my face, front page in all the papers
The attacks and the belittling by the internet crusaders
No one knew my story or my name before that day
And certainly didn't care to see what followed in its wake.
Everyone assumed I was another junkie mom just like all the rest
That my kids should never return to me cuz that would be in their best interest
No one saw my children's pain or heard them crying every day
Not capable of understanding why everything they ever knew suddenly just went away
They didn't hear the heartbreak in my teenage daughter's cries
Not believing I had relapsed or understanding why
They didn't feel the unbearable pain I suffered through each night
Sitting in a dark and silent house that had always been full of love and light.
Or when I crawled back to my support network on my hands and knees
Begging for help getting back in treatment to finally beat my disease
When I walked into a program for women and children alone
Embarrassed and ashamed, ready to do anything to bring my babies home
The grueling months without them and nights we spent apart
Mending my spirit and recovering our broken hearts
The court dates and the case workers and child advocates
Who penetrated our lives and examined every bit of it.
Giving up my freedom to privacy and boundaries
Bearing my deepest secrets like a novel for all to read
The day my kids were returned to me or the smile on their faces
The tears of joy we all felt in those long embraces
How I fought my way back up from the bottom to the top
Showed my kids how much I love them and that I never stopped.
The therapy and meetings and eventually returning home
After 6 long months the first time we were allowed to be alone
The following years as we got back to our routine

And
built a stronger bond as a solid healthy team
No one sees the class mom who shows up for every event at school
Rushing them to activities, sports, and swimming lessons at the pool
They do not see the letter still hanging on my wall
From the day my case was finally closed and my rise after my fall
They do not see my children who are happy and thriving
Because they are back home with me instead of divided
The work it took to fight against a system built for one to fail
That is so corrupt and backwards it makes it hard to heal
How every day they throw at you higher hoops to jump through
Making it almost impossible to accomplish all they ask of you
Every time you do everything they asked you to complete
Only to find out there's more you have to beat
How a broken system works against addicts in recovery
Or anyone who is lower class or underprivileged in any way
How very few people actually succeed
When the odds are stacked against us and very hard to beat
But I see it all everyday in everything my children do
In every smile, every word and every I love you
I see how far we've come from that terrible fateful day
When the most important things to me were almost taken away
I see this woman looking back at me reflected in the mirror
I see a warrior staring back at me, every day a little clearer
No one else gets to see what happens to us after
The trials and the triumphs the tears and all the laughter
But no one needs to see me back up on my feet
Especially if at one time they were reveling in my defeat
They don't get to see the beauty of my children and our success
Or how wonderful our life is cuz we are truly blessed

Addressing the Root Causes of Child Neglect

Jennifer Jones, Bart Klika, and Melissa Merrick

Introduction

Child neglect has been overarchingly defined as acts of omission whereby a caregiver fails to provide basic needs and services that a child requires for optimal safety, health, and well-being. However, creating the conditions that support caregivers' abilities to meet the many needs of their children, particularly in the context of caregivers' own needs and histories of adversity, relies on commitments and actions by every sector to redefine and reinterpret what is meant by neglect. Often, child neglect is confused with poverty even in states that prohibit the use of removal due to poverty alone.¹ Children and families of color are more likely to be impacted by poverty and to come to the attention of the child welfare system for neglect and other forms of child maltreatment. While the dominant narrative in this country is to blame such families, true transformation lies in understanding, naming, and transforming the processes and inequities that make these negative outcomes for families more likely, such as structural and systemic racism and poverty. To achieve a child and family well-being system that prioritizes race equity, we must co-create that system with those children, youth, and families who have been impacted by the deficiencies of the current system and determine if reforming child neglect laws is one of the answers.

There is a widely held belief among proponents of reforming our nation's child welfare system that a key element of that transformation is changing the definition of child neglect laws in this country. This paper will explore the contribution of changing the definitions of child neglect to this transformation and make recommendations for the comprehensive policy and practice efforts we must prioritize to achieve optimal health, safety, and well-being for all children and families. The paper

begins with a brief historical overview of child abuse and neglect and the ways in which the issue of physical abuse was prioritized in policy and practice responses over the issue of child neglect. Next, we review data on rates of child neglect and discuss its relationship with poverty. In doing so, we highlight the disproportionate rate of children and families of color living in poverty and encountering the child welfare system. We then discuss how the COVID-19 pandemic has exacerbated child and family needs and ways in which concrete and economic supports have mitigated some of the effects associated with increased adversity. In closing, we provide recommendations for the creation of a child and family well-being system which includes changes in statutory definitions of child neglect, but also prioritizes practice and programmatic strategies along with a robust policy agenda to support all children and families.

Historical Context of Child Neglect

Many attribute Dr. Henry Kempe as a pioneer in raising public awareness about the physical harms created by extreme and harsh parenting or—what today is referred to as child physical abuse. For one of the first times, Kempe linked unexplained injuries to children (e.g., broken bones, bruising) presenting in hospital settings with dangerous and potentially fatal parenting practices. In examining X-ray data from approximately seventy hospitals nationwide and conducting interviews with district attorney offices, Kempe and colleagues

¹ Connecticut, Delaware, Florida, Iowa, Kansas, Michigan, Mississippi, New Hampshire, New Jersey, New York, North Dakota, Rhode Island, South Carolina, Texas, and Wisconsin.



Mom and child from the Healthy Families America home visiting program.

identified hundreds of cases of severe abuse.² What resonated about Kempe's findings were that the injuries inflicted upon children at the hands of adults were tangible; you could see the bruising on a children's body or identify a broken bone. As Berliner³ notes, "There is something about abuse; that it is acts not omissions, that it is intentional not inadvertent, that it is discrete not diffuse, that it is brutal not insidious, that makes it so evocative not only for the professionals but society at large."

Kempe's research and writings about what was termed the "battered child syndrome" arguably led to the creation and passage of the Child Abuse Prevention and Treatment Act (CAPTA) of 1974. Key to this legislation was the creation of uniform federal definitions of abuse and neglect, a system of national surveillance to identify the magnitude of the problem, and specific funding to study the long-term effects associated with abuse and neglect.⁴ Today, CAPTA continues to provide critical funding for community-based child maltreatment prevention efforts nationwide.

Knowledge of Kempe's contribution to the field, along with the historical context of CAPTA, is essential in understanding why child neglect, and solutions to address the issue, were not central to the early CAPTA legislation. At least two forces were at play; first, the work of Kempe and colleagues created a narrative about individual caregivers harming individual children. The consequence of this narrative was that strategies and solutions to the problem were not seen as systemic but individual in nature and were focused primarily on physical abuse. Parenting programs were created to teach parents how to be better parents. However, as Nelson⁵ notes, "Individualizing problems turns policy makers away from considering their structural causes. Policies which "treat" medical deviance no doubt help thousands of people, but they do so at the cost of expanding state intervention without increasing the state's ability to redress the fundamental inequities which underlie, say, abuse and neglect."

Second, there was explicit political pressure to decouple strategies to mitigate abuse from those of anti-poverty programs. According to Nelson,⁶ when Congress was working on

passing CAPTA in 1974, Democrats removed any potential perception that it could be viewed as an anti-poverty program. The Nixon administration vehemently opposed anti-poverty programs, so proponents of CAPTA attempted to remove any mention of such in the passage of CAPTA. As a result, responses to child abuse and neglect have focused heavily on mental health and parent education rather than on economic and concrete supports, and this continues to be the case today. The consequence of this decision, however, was to create a bifurcated system whereby voluntary offers of assistance (e.g., those addressing material hardship and poverty) were not coordinated or connected with mandatory services like child welfare.⁷

Over the years, researchers and advocates have argued that child neglect has not received the attention it deserves. Wolock and Horowitz⁸ were among the first to highlight the lack of attention given to the issue of child neglect in their seminal article "The Neglect of Neglect." Citing early research, the authors corrected many misconceptions about the prevalence of neglect, as well as its association with poverty. They argued that addressing child neglect would require greater focus on the economic conditions of families, including poverty, unemployment, housing, and health.

² Kempe, C. H., et al. "The Battered-Child Syndrome." *Jama*, vol. 181, no. 1, 1962, pp.17-24., doi:10.1001/jama.1962.03050270019004.

³ Berliner, Lucy. "The Problem with Neglect." *Journal of Interpersonal Violence*, vol. 9, no. 4, 1994, pp.556, <https://doi.org/10.1177/088626094009004009>.

⁴ United States, Children's Bureau, and Child Welfare Information Gateway. *About CAPTA: A Legislative History*, Department of Health and Human Services, Children's Bureau, and Administration for Children and Families, 2019. <https://www.childwelfare.gov/pubs/factsheets/about/>

⁵ Nelson, Barbara J. *Making an Issue of Child Abuse: Political Agenda Setting for Social Problems*. University of Chicago Press, 1984. pp. 18.

⁶ Nelson, Barbara J. *Making an Issue of Child Abuse: Political Agenda Setting for Social Problems*. University of Chicago Press, 1984.

⁷ Daro, Deborah. "A Shift in Perspective: A Universal Approach to Child Protection." *The Future of Children*, vol. 29, no. 1, 2019, pp. 17-40., <https://doi.org/10.1353/foc.2019.0002>.

⁸ Wolock, Isabel, and Bernard Horowitz. "Child Maltreatment as a Social Problem: The Neglect of Neglect." *American Journal of Orthopsychiatry*, vol. 54, no. 4, 1984, pp. 530-543., <https://doi.org/10.1111/j.1939-0025.1984.tb01524.x>.

A decade after its writing, Dubowitz⁹ revisited the “neglect of neglect.” While reiterating many of the concerns initially raised by Wolock and Horowitz¹⁰, he challenged the field to place greater emphasis on definition, identification, treatment, and prevention of child neglect. Yet another decade later, in 2007, McSherry¹¹ and Dubowitz¹² continued to raise concern in scientific circles about how neglect remains neglected in the field.

What We Know About Child Neglect

All children need safe, stable, nurturing relationships and environments to thrive and flourish. We have a collective obligation to ensure all children have what they need to reach their full potential and reside in environments that are safe and secure. Families facing an overload of stress related to poverty and racism can hamper a caregivers’ ability to provide the supportive relationships and conditions children need to prosper.

According to decades of scientific research, we know that supportive relationships and interactions with caregivers, known as “serve and return,” results in healthy brain development.¹³ These healthy interactions provide the foundation for a child’s developing brain and are critical during the first three years of life.¹⁴ Researchers also recently discovered that positive childhood experiences can protect against depression and poor mental health. Sixty percent of individuals with four or more adverse childhood experiences (ACEs) and only zero to two positive childhood experiences (PCEs) reported depression or poor mental health in comparison to over 20 percent with four or more ACEs and six to seven PCEs.¹⁵ However, when a child has traumatic experiences, like experiencing neglect or abuse, it can have grave consequences and can alter the brain’s architecture and function. This can result in later adult negative physical and mental health issues. Significant research also shows many of the negative health outcomes associated with adverse childhood experiences, like child abuse and neglect, are among the top ten leading causes of death in the U.S.^{16,17,18,19,20,21}

Child neglect is cited as the most common form of child maltreatment in the U.S. According to Child Trends, among all children reported as being maltreated, those identified as neglected

⁹ Dubowitz, Howard. “Neglecting the Neglect of Neglect.” *Journal of Interpersonal Violence*, vol. 9, no. 4, 1994, pp. 556–560., <https://doi.org/10.1177/088626094009004010>.

¹⁰ Wolock, Isabel, and Bernard Horowitz. “Child Maltreatment as a Social Problem: The Neglect of Neglect.” *American Journal of Orthopsychiatry*, vol. 54, no. 4, 1984, pp. 530–543., <https://doi.org/10.1111/j.1939-0025.1984.tb01524.x>.

¹¹ McSherry, Dominic. “Understanding and Addressing the ‘Neglect of Neglect’: Why Are We Making a Mole-Hill out of a Mountain?” *Child Abuse & Neglect*, vol. 31, no. 6, 2007, pp. 607–614., <https://doi.org/10.1016/j.chiabu.2006.08.011>.

¹² Dubowitz, Howard. “Understanding and Addressing the ‘Neglect of Neglect’: Digging into the Molehill.” *Child Abuse & Neglect*, vol. 31, no. 6, 2007, pp. 603–606., <https://doi.org/10.1016/j.chiabu.2007.04.002>.

¹³ “Serve and Return.” *Center on the Developing Child at Harvard University*, Harvard University, 27 Jan. 2020, <https://developingchild.harvard.edu/science/key-concepts/serve-and-return/>.

¹⁴ Perry, Bruce D. *Bonding and Attachment in Maltreated Children: Consequences of Emotional Neglect in Childhood*. Child Trauma Academy, 1999.

¹⁵ Bethell, Christina, et al. “Positive Childhood Experiences and Adult Mental and Relational Health in a Statewide Sample: Associations Across Adverse Childhood Experiences Levels.” *JAMA Pediatrics*, vol. 173, no. 11, 2019, e193007–e193007.

¹⁶ Brown, David W., et al. “Adverse Childhood Experiences and the Risk of Premature Mortality.” *American Journal of Preventative Medicine*, vol. 37, no. 5, 2009, pp. 389–396, Science Direct, <https://doi.org/10.1016/j.amepre.2009.06.021>.

¹⁷ Chapman, Daniel P., et al. “Adverse Childhood Experiences and Frequent Insufficient Sleep in 5 U.S. States, 2009: A Retrospective Cohort Study.” *BMC Public Health*, vol. 13, no. 1, 2013, pp. 1–9., <https://doi.org/10.1186/1471-2458-13-3>.

¹⁸ Chapman, Daniel P., et al. “Adverse Childhood Experiences and the Risk of Depressive Disorders in Adulthood.” *Journal of Affective Disorders*, vol. 82, no. 2, 2004, pp. 217–225., <https://doi.org/10.1016/j.jad.2003.12.013>.

¹⁹ Dube, Shanta R., et al. “Childhood Abuse, Neglect, and Household Dysfunction and the Risk of Illicit Drug Use: The Adverse Childhood Experiences Study.” *Pediatrics*, vol. 111, no. 3, 2003, pp. 564–572., <https://doi.org/10.1542/peds.111.3.564>.

²⁰ Gilbert, Leah K., et al. “Childhood Adversity and Adult Chronic Disease.” *American Journal of Preventive Medicine*, vol. 48, no. 3, 2015, pp. 345–349., <https://doi.org/10.1016/j.amepre.2014.09.006>.

²¹ Merrick, Melissa T., et al. “Prevalence of Adverse Childhood Experiences from the 2011–2014 Behavioral Risk Factor Surveillance System in 23 States.” *JAMA Pediatrics*, vol. 172, no. 11, 2018, pp. 1038–1044., <https://doi.org/10.1001/jamapediatrics.2018.2537>.

increased from 49 percent in 1990 to 75 percent in 2017. In comparison, the number of children reported with physical abuse declined from 27 to 18 percent.²² There is consistent and substantial research that shows a relationship between poverty and neglect, including a causal relationship.^{23,24} Despite neglect being present in all socio-economic classes, families with lower socio-economic status (SES) had higher rates of some forms of neglect.^{25,26,27} Families below the poverty line are three times more likely to be substantiated for child abuse,²⁸ and children living in poverty or with low incomes are at highest risk for child neglect.²⁹ This may be due in part to families not having access to sufficient financial resources to provide adequate care and the necessary material items to ensure children thrive.^{30,31} In fact, numerous studies have documented increases in economic and concrete supports to families reduce cases of neglect. Economic supports like childcare subsidies have been demonstrated to reduce foster care placements.³² Even more profound is a recent study where researchers found that giving poor mothers a modest cash stipend resulted in increased brain activity and function in their babies.³³ On the other hand, states that implemented time limits of less than five years on families receiving Temporary Assistance for Needy Families (TANF) saw a 33 percent increase in neglect cases.³⁴

In a first of its kind study in 2017, researchers at Oxford University found that child neglect increased in the U.S. because of unemployment brought on by the 2007 fiscal crisis.³⁵ After reviewing decades worth of data reported to state child protective services agencies, the researchers found that a one percent increase in the unemployment rate led to a 20 percent increase in reported neglect. The Oxford researchers also discovered a substantial difference in rates of neglect between those states that increased the number of weeks for receiving unemployment benefits (14 percent) than those that were less generous (22 percent).³⁶ Researchers also argue the reason child neglect has not decreased in the U.S. is due to our failures at the policy level to recognize and implement economic and

²² "Child Maltreatment." *Child Trends*, Child Trends, 7 May 2019, <https://www.childtrends.org/indicators/child-maltreatment>.

²³ Slack, Kristen S., and Lawrence M. Berger. "Who Is and Is Not Served by Child Protective Services Systems? Implications for a Prevention Infrastructure to Reduce Child Maltreatment." *The ANNALS of the American Academy of Political and Social Science*, vol. 692, no. 1, 2020, pp. 182–202., <https://doi.org/10.1177/0002716220980691>.

²⁴ Berger, Lawrence M, et al. "Income and Child Maltreatment in Unmarried Families: Evidence from the Earned Income Tax Credit." *Review of Economics of the Household*, vol. 14, no. 4, 2017, pp.1345–1372, <https://doi.org/10.1007/s11150-016-9346-9>.

²⁵ Jonson-Reid, Melissa, et al. "Neglect Subtypes, Race, and Poverty." *Child Maltreatment*, vol. 18, no. 1, 2012, pp. 30–41., <https://doi.org/10.1177/1077559512462452>.

²⁶ Vanderminden, Jennifer, et al. "Rates of Neglect in a National Sample: Child and Family Characteristics and Psychological Impact." *Child Abuse & Neglect*, vol. 88, 2019, pp. 256–265., <https://doi.org/10.1016/j.chiabu.2018.11.014>.

²⁷ Slack, Kristen S., and Lawrence M. Berger. "Who Is and Is Not Served by Child Protective Services Systems? Implications for a Prevention Infrastructure to Reduce Child Maltreatment." *The ANNALS of the American Academy of Political and Social Science*, vol. 692, no. 1, 2020, pp. 182–202., <https://doi.org/10.1177/0002716220980691>.

²⁸ Drake, B., & Jonson-Reid, M. (2014). Poverty and child maltreatment. In J. Korbin & R. Krugman (Eds.). *Handbook of Child Maltreatment* (pp. 131–148). Springer.

²⁹ Berger, Lawrence M. "Income, Family Structure, and Child Maltreatment Risk." *Children and Youth Services Review*, vol. 26, no. 8, 2004, pp.725–748, <https://doi.org/10.1016/j.childyouth.2004.02.017>.

³⁰ Fortson, Beverly L, et al. "Preventing Child Abuse and Neglect: A Technical Package for Policy, Norm, and Programmatic Activities." *Centers for Disease Control and Prevention*, Centers for Disease Control and Prevention, 2016, <https://stacks.cdc.gov/view/cdc/38864>.

³¹ Jonson-Reid, Melissa, et al. "Neglect Subtypes, Race, and Poverty." *Child Maltreatment*, vol. 18, no. 1, 2012, pp. 30–41., <https://doi.org/10.1177/1077559512462452>.

³² Yang, Mi-Youn, et al. "Child Care Subsidy and Child Maltreatment." *Child & Family Social Work*, vol. 24, no. 4, 2019, pp. 547–554., <https://doi.org/10.1111/cfs.12635>.

³³ DeParle, Jason. "Cash Aid to Poor Mothers Increases Brain Activity in Babies, Study Finds." *New York Times*, 2022.

³⁴ Ginther, Donna, and Michelle Johnson-Motoyaya. "Do State TANF Policies Affect Child Abuse and Neglect." *Paper Presented at the APPAM 39th Annual Fall Research Conference*. 2017, https://www.econ.iastate.edu/files/events/files/gintherjohnsonmotoyama_appam.pdf.

³⁵ University of Oxford. "Unemployment Triggers Increase in Child Neglect According to New Research." *Science Daily*, Science Daily, 2017. <https://www.sciencedaily.com/releases/2017/11/171103085315.htm>

³⁶ University of Oxford. "Unemployment Triggers Increase in Child Neglect According to New Research." *Science Daily*, Science Daily, 2017. <https://www.sciencedaily.com/releases/2017/11/171103085315.htm>

concrete supports as a strategy to prevent child maltreatment.³⁷

As has been well-documented through research studies, black families are over-represented in the child welfare system, including both reports and substantiations for child neglect.^{38,39,40} In fact, one study found that 53 percent of all black children experience a child welfare investigation by age 18.⁴¹ At the same time families of color often reside in communities with high concentrations of poverty with limited access to services and supports. In a study by Jonson-Reid, Drake, and Zhou⁴² comparing poor and nonpoor children with investigated child abuse and neglect reports, among black children, 91 percent of those reported for neglect lived in homes having Aid to Families with Dependent Children (AFDC) histories, while only 55 percent of white children reported for neglect lived in similarly poor households. Additionally, black children reported for neglect were more likely to be identified for needing services but lived in communities where those services were not readily available and so could not access support that may have proven beneficial.⁴³

The context in which children and families live, work, and play is an important consideration in any transformation of our nation's child welfare system. In a study looking at data from the Wisconsin and South Carolina Behavioral Risk Factor Survey, researchers found that poverty was significantly associated with physical distress even after accounting for ACEs.⁴⁴ Ellis and colleagues⁴⁵ argue that adverse community environments, like lack of affordable and safe housing, systemic racism, and lack of social mobility often compound one another and create conditions that further exacerbate the individual ACEs that people experience. In their "Pair of ACEs" framework, they explain how we must understand and address the underlying root causes of childhood adversity. Often, the various individual traumas and adversities are the things we see and observe. However, the things that are steeped in systemic inequities and often are not always visible prohibits individuals from growing and thriving and results in interventions and policy responses that are directed toward individual behaviors and often do not align with the systemic issues that are inherent in people's lives, and often overlooked.

³⁷ Feely, Megan, et al. "The Social Welfare Policy Landscape and Child Protective Services: Opportunities for and Barriers to Creating Systems Synergy." *The ANNALS of the American Academy of Political and Social Science*, vol. 692, no. 1, 2020, pp. 140-161. <https://doi.org/10.1177/0002716220973566>.

^[38] United States, Children's Bureau, and Child Welfare Information Gateway. *Child Welfare Practice to Address Racial Disproportionality and Disparity*, Dept. of Health and Human Services, Children's Bureau and Administration for Children and Families, 2021. <https://www.childwelfare.gov/pubs/issue-briefs/racial-disproportionality/>.

³⁹ Font, Sarah A., et al. "Examining Racial Disproportionality in Child Protective Services Case Decisions." *Children and Youth Services Review*, vol. 34, no. 11, 2012, pp. 2188-2200. <https://doi.org/10.1016/j.childyouth.2012.07.012>.

⁴⁰ United States, Children's Bureau, and Susan H. Chibnall. *Children of Color in the Child Welfare System: Perspectives from the Child Welfare Community*, Dept. of Health and Human Services, Children's Bureau and Administration for Children and Families, 2003. <https://www.childwelfare.gov/pubs/otherpubs/children/>.

⁴¹ Kim, Hyunil, et al. "Lifetime Prevalence of Investigating Child Maltreatment among US Children." *American Journal of Public Health*, vol. 107, no. 2, 2017, pp. 274-280., <https://doi.org/10.2105/ajph.2016.303545>.

⁴² Jonson-Reid, Melissa, et al. "Neglect Subtypes, Race, and Poverty." *Child Maltreatment*, vol. 18, no. 1, 2012, pp. 30-41., <https://doi.org/10.1177/1077559512462452>.

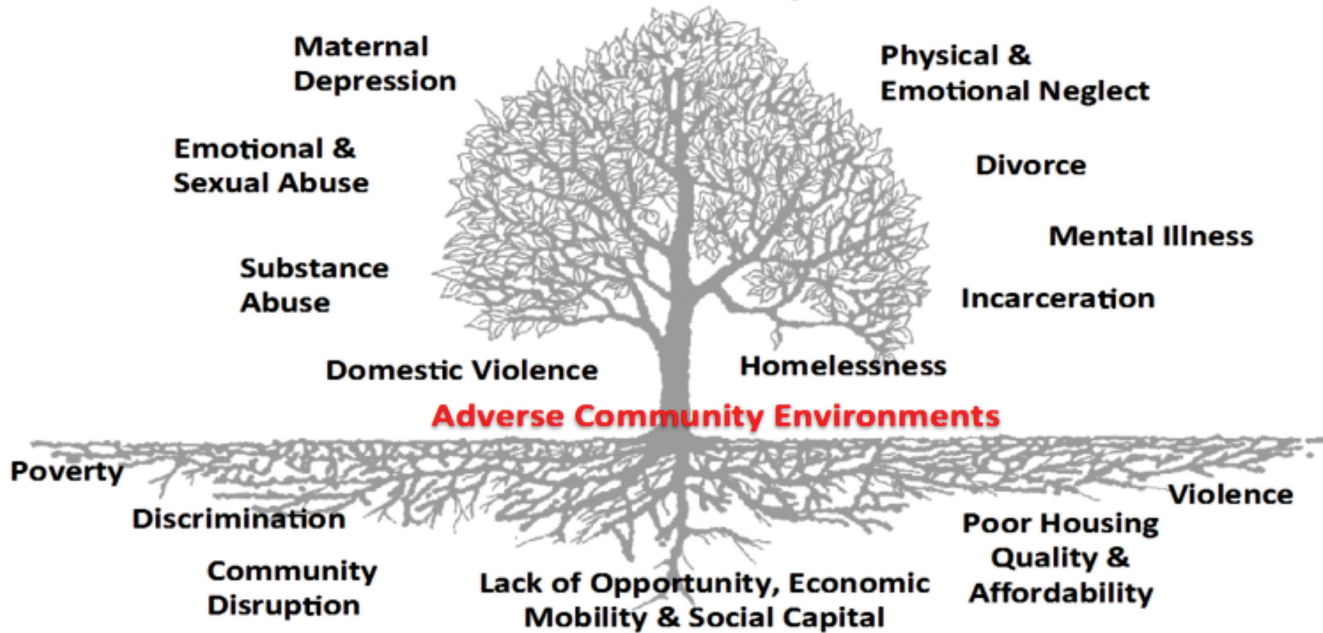
⁴³ Jonson-Reid, Melissa, et al. "Neglect Subtypes, Race, and Poverty." *Child Maltreatment*, vol. 18, no. 1, 2012, pp. 30-41., <https://doi.org/10.1177/1077559512462452>.

⁴⁴ Crouch, Elizabeth, et al. "Examining the Association between ACEs, Childhood Poverty and Neglect, and Physical and Mental Health: Data from Two State Samples." *Children and Youth Services Review*, vol. 116, 2020, p. 105155. <https://doi.org/10.1016/j.childyouth.2020.105155>.

⁴⁵ Ellis, Wendy R., and William H. Dietz. "A New Framework for Addressing Adverse Childhood and Community Experiences: The Building Community Resilience Model." *Academic Pediatrics*, vol. 17, no. 7, 2017, pp. S86-S93. <https://doi.org/10.1016/j.acap.2016.12.011>.

The Pair of ACEs

Adverse Childhood Experiences



Ellis, W., Dietz, W. (2017) A New Framework for Addressing Adverse Childhood and Community Experiences: The Building Community Resilience (BCR) Model. *Academic Pediatrics*. 17 (2017) pp. S86-S93. DOI information: 10.1016/j.acap.2016.12.011

COVID-19 and Child Neglect

Currently, families and communities nationwide are experiencing extreme forms of stress and hardship due to the COVID-19 pandemic. Early in the pandemic, some speculated that cases of child abuse and neglect would soar as children were forced into quarantine due to shelter-in-place orders.⁴⁶ Following nationwide school closures, there was a precipitous drop in referrals to state child welfare agencies for concerns of abuse or neglect.⁴⁷ But did these declines represent true decreases in child abuse and neglect? Data from the national child abuse hotline (not child welfare data) provides some indication that despite the declines in formal reports to child welfare agencies, children and families still were presenting with needs. Ortiz and colleagues⁴⁸ found that reports to the child abuse hotline declined sharply following the shelter-in-place orders; however, they rebounded quickly. By May 2020, calls and text messages to the child abuse hotline had exceeded prior years, indicating that children and families were still experiencing challenges.

At the current moment (January 2022), it remains unclear whether child abuse and neglect increased or decreased during the COVID-19 pandemic. However, it is generally understood that the risk factors for child abuse and neglect increased during this period. Within weeks of the official shelter-in-place orders in March 2020, Lee, and colleagues^{49,50} conducted a series of surveys with caregivers

⁴⁶ Hardison, Elizabeth. "The Perfect Storm: How COVID-19 Has Multiplied Risk for Children in Abusive Households." *Pennsylvania Capital Star*, 2020, <https://www.penncapital-star.com/covid-19/the-perfect-storm-how-covid-19-has-multiplied-the-risk-for-children-in-abusive-households/>.

⁴⁷ Jonson-Reid, Melissa., et al. "Child Abuse Prevention Month in the Context of COVID-19". *Center for Innovation in Child Maltreatment Policy, Research, and Training*, Washington University, 2020. <https://cicm.wustl.edu/child-abuse-prevention-month-in-the-context-of-covid-19/>

⁴⁸ Ortiz, Robin, et al. "Assessing Child Abuse Hotline Inquiries in the Wake of Covid-19: Answering the Call." *JAMA Pediatrics*, vol. 175, no. 8, 2021, pp. 859-861., <https://doi.org/10.1001/jamapediatrics.2021.0525>.

⁴⁹ Lee, Shawna J., et al. "Parental Social Isolation and Child Maltreatment Risk during the COVID-19 Pandemic." *Journal of Family Violence*, 2021, <https://doi.org/10.1007/s10896-020-00244-3>.

⁵⁰ Lee, Shawna J., et al. "Parenting Activities and the Transition to Home-Based Education during the COVID-19 Pandemic." *Children and Youth Services Review*, vol. 122, 2021, p. 105585., <https://doi.org/10.1016/j.chilyouth.2020.105585>.

to understand how the pandemic was affecting the risk factors for abuse and neglect. The authors found that caregivers were already beginning to report increased symptoms of mental health problems (e.g., depression, anxiety), increased family conflict, worry about finances, and social isolation. Subsequent studies corroborated these findings, showing that many of the risk factors for abuse and neglect were exacerbated by the pandemic.

There is speculation as to why child welfare reports decreased during the COVID-19 pandemic. Baron and colleagues⁵¹ suggest that because of shelter-in-place restrictions, educators, who are mandated by law to report suspected cases of abuse and neglect and constitute approximately 21 percent of all child welfare reports (pre-pandemic), were no longer physically observing children every day. As a result, fewer reports were being placed by educators to child welfare agencies for concerns of abuse or neglect. This does not suggest however, that child abuse and neglect decreased, only the reporting of the behavior.

Sege and Stephens,⁵² on the other hand, suggest that the decreases in child welfare reports might represent an actual decrease in child maltreatment during the COVID-19 pandemic. Due to the increases in governmental support in the form of concrete and economic supports provided to families during the pandemic, it is possible that these supports buffered the risks that families were experiencing, an argument supported by a mounting body of research. Family supportive policies such as paid family leave and childcare subsidies, policies such as Earned-Income Tax Credits (EITC), and minimum wage have all been shown to have an effect on indicators of abuse and neglect.^{53,54,55} Cancian found that mothers who participated in TANF and were eligible to receive their full child support payment (instead of the state keeping a portion), were 10 percent less likely to have a screened-in maltreatment report on their child than mothers who received only partial child support.⁵⁶ Puls, in looking at state public spending, found that for each additional \$1,000 spent per person living in poverty, there was a 4.3 percent reduction in maltreatment reporting, a four percent reduction in substantiations, and almost eight percent reduction in fatalities.⁵⁷ In addition,

states with expanded Medicaid compared to those without experienced a decrease in reported neglect.⁵⁸

State Child Neglect Laws

Child neglect is the leading category of child maltreatment substantiation nationally, yet there is no uniform definition or a standard for what constitutes neglect. CAPTA requires that states define child abuse and neglect to mean, “Any recent act or failure to act on the part of a parent or caregiver that results in death, serious physical or emotional harm, sexual abuse, or exploitation;” or “An act or failure to act that presents an imminent risk of serious harm.” Neglect is frequently defined in states as the failure of a parent or other person with responsibility for the child to provide needed food, clothing, shelter, medical care, or supervision to the degree that the child’s

⁵¹ Baron, Jason E., Ezra G. Goldstein, and Cullen T. Wallace. “Suffering in Silence: How COVID-19 School Closures Inhibit the Reporting of Child Maltreatment.” *Journal of Public Economics*, vol. 190, 2020, pp.104258. *Science Direct*, <https://www.sciencedirect.com/science/article/pii/S0047272720301225>.

⁵² Sege, Robert, and Allison Stephens. “Child Physical Abuse Did Not Increase during the Pandemic.” *JAMA Pediatrics*, 2021, <https://doi.org/10.1001/jamapediatrics.2021.5476>.

⁵³ Maguire-Jack, Kathryn, et al. “A Scoping Review of Economic Supports for Working Parents: The Relationship of TANF, Child Care Subsidy, Snap, and EITC to Child Maltreatment.” *Aggression and Violent Behavior*, 2021, p. 101639., <https://doi.org/10.1016/j.avb.2021.101639>.

⁵⁴ Klevens, Joanne, et al. “Effect of the Earned Income Tax Credit on Hospital Admissions for Pediatric Abusive Head Trauma, 1995–2013.” *Public Health Reports*, vol. 132, no. 4, 2017, pp. 505–511., <https://doi.org/10.1177/0033354917710905>.

⁵⁵ Raissian, Kerri M., and Lindsey Rose Bullinger. “Money Matters: Does the Minimum Wage Affect Child Maltreatment Rates?” *Children and Youth Services Review*, vol. 72, 2017, pp. 60–70., <https://doi.org/10.1016/j.childyouth.2016.09.033>.

⁵⁶ Cancian, Maria, et al. “The Effect of Additional Child Support Income on the Risk of Child Maltreatment.” *Social Service Review*, vol. 87, no. 3, 2013, pp. 417–437., <https://doi.org/10.1086/671929>.

⁵⁷ Puls, Henry T., et al. “State Spending on Public Benefit Programs and Child Maltreatment.” *Pediatrics*, vol. 148, no. 5, 2021, p. e:2021050685., <https://doi.org/10.1542/peds.2021-050685>.

⁵⁸ Brown, Emily C., et al. “Assessment of Rates of Child Maltreatment in States with Medicaid Expansion vs States without Medicaid Expansion.” *JAMA Network Open*, vol. 2, no. 6, 2019, pp. e-195529–e-195529v., <https://doi.org/10.1001/jamanetworkopen.2019.5529>.

health, safety, and well-being are threatened with harm. Elements of neglect typically include education, medical, substance use and abandonment. However, there remains disagreement about what should be included in child neglect definitions.⁵⁹ Fifteen states have definitions that exclude reasons of poverty when determining child neglect. For example, Wisconsin defines neglect as the “failure, refusal, or inability on the part of a caregiver, for reasons other than poverty, to provide necessary care, food, clothing, medical or dental care, or shelter so as to seriously endanger the physical health of the child.”

Rebbe argues that laws are created by governments as solutions to problems, and as a means of telling their citizens they have been heard. However, because each state differs in how they define neglect, whether a family is reported and substantiated for neglect is based on where they live. These variations can also cause issues at all levels of interventions, including the policy and practice levels.⁶⁰

Researchers have identified two distinct viewpoints for the definition of child neglect. The first is centered on the parental behavior as a contributor to the neglect of a child, and the second is child-focused, specifically on the consequences of the parental behavior.^{61,62} The argument for the focus to be on parent’s behavior is centered on the perspective that the behavior of a parent can be a sign of actual or potential neglect. Whilst the child focus argument centers on contributory factors such as poverty.⁶³

Within states, vagueness and inconsistency allow child welfare workers the discretion of whether to substantiate for child neglect. Some states are so broad in their definitions and include things like inadequate supervision or care. Advocates of reforming the child welfare system in this country believe that changing the definition of child neglect will help address the potential for children being removed from their homes due to poverty alone, and subsequently address the racial disparities of higher reports and substantiation rates of black children. There is also a growing call by parent rights advocates and government mistrust individuals for changes in neglect state statutes because of real and perceived

fears of parents being charged for neglect who give their children more independence.⁶⁴

In Rebbe’s review of state child neglect laws, she found that many states often did not include many of the components of the Fourth National Incidence Survey (NIS-4), including categories that are not often part of state definitions (overprotectiveness and inadequate structure).⁶⁵ The NIS-4, even though its primary purpose is to provide data regarding child abuse and neglect, is often used to identify policies and solutions given its “common definitional framework,”⁶⁶ and thus could be considered to provide more uniformity to state laws.

Moving Forward

The authors recommend that changing child neglect definitions and laws could certainly contribute to a part of the child welfare transformation we seek. In doing so, it is hoped that children and families, specifically families of color who disproportionately experience poverty, will avoid costly and punitive child protective services intervention. However, we maintain that while definitional changes are necessary, such changes must occur in the

⁵⁹ Rebbe, Rebecca. “What Is Neglect? State Legal Definitions in the United States.” *Child Maltreatment*, vol. 23, no. 3, 2018, pp. 303-315., <https://doi.org/10.1177/1077559518767337>.

⁶⁰ Rebbe, Rebecca. “What Is Neglect? State Legal Definitions in the United States.” *Child Maltreatment*, vol. 23, no. 3, 2018, pp. 303-315., <https://doi.org/10.1177/1077559518767337>.

⁶¹ Rebbe, Rebecca. “What Is Neglect? State Legal Definitions in the United States.” *Child Maltreatment*, vol. 23, no. 3, 2018, pp. 303-315., <https://doi.org/10.1177/1077559518767337>.

⁶² Rose, Susan J., and William Meezan. “Defining Child Neglect: Evolution, Influences, and Issues.” *Social Service Review*, vol. 67, no. 2, 1993, pp. 279-293., <https://doi.org/10.1086/603982>.

⁶³ Rebbe, Rebecca. “What Is Neglect? State Legal Definitions in the United States.” *Child Maltreatment*, vol. 23, no. 3, 2018, pp. 303-315.

⁶⁴ Riley, Naomi S, et al. “Reforming Child-Neglect Laws.” *National Affairs*, 2021, <https://www.nationalaffairs.com/publications/detail/reforming-child-neglect-laws>.

⁶⁵ Rebbe, Rebecca. “What Is Neglect? State Legal Definitions in the United States.” *Child Maltreatment*, vol. 23, no. 3, 2018, pp. 303-315., <https://doi.org/10.1177/1077559518767337>.

⁶⁶ Pecora, Peter, et al. *The Child Welfare Challenge: Policy, Practice, and Research*. 3rd ed., Aldine Transaction, 2009. pp. 130.

context of operational and procedural changes for professionals. If ongoing training does not coincide with changes in state statute, we should not be surprised when the problem does not resolve. However, the question remains that if definitional changes are successful in helping to disentangle cases of child neglect from poverty, what are we to do for the children and families who are screening out of child welfare yet continue to demonstrate significant need and financial hardship? In fact, researchers have shown that negative outcomes associated with child neglect often do not differ between substantiated and unsubstantiated cases.⁶⁷

We must work to create a universal, non-stigmatizing system of care built on the notion that all children and families need assistance—the type, timing, and intensity of support may differ by family, but all families need help at some time. Some families may need light-touch support around issues of breastfeeding or infant safe sleep, while others may need more intensive, longer-term home visiting support. Indeed, some families may not require support till their child is a toddler, school-age, or teenager. We need to ensure that families have access to community-based services and supports whenever they need them. Far too often, the only way families who need help can receive assistance is by coming to the attention of the child welfare system. Regardless of the reason or the timing, we need a system of care and support that answers the call of families with an appropriate, adequately dosed, and culturally aligned response.

This comprehensive prevention system must work in partnership with, yet sit independently outside of, the current child protection system. Child welfare agencies were created to address problems once they occur, not necessarily to prevent problems from occurring in the first place or to address issues of poverty and systemic racism. While child welfare can arguably become more prevention-focused, expanding the scope and role of child protection is a mistake. In fact, by advancing a comprehensive prevention system with an explicit focus on addressing poverty, we believe that caseloads within the child protection system will shrink. Of course, we will also need a system of child protection, but the goal is to

leave these services as a final resort instead of the first door in which families enter.

Though not a new idea, we know that partnerships are key to building a comprehensive prevention system. No single organization, program, or model can prevent child abuse and neglect alone. As noted prior, child welfare must be a partner in this work but should not be the driving force. Instead, community-based organizations are poised to understand the needs of local communities and develop responses that are culturally and linguistically relevant. Family resource centers and home visiting programs should work in partnership with Community Action Agencies and help connect families to state and federal programs, like TANF and SNAP, that will provide much-needed economic supports to families and decrease the likelihood of their involvement with the child welfare system. It is also critical that those with lived expertise are included in the design, implementation, and evaluation of this prevention system. Individuals and families that have experienced prevention services or been through the child welfare system have unique insights on how to create supportive, collaborative approaches to addressing child and family needs.

Further, if we would like to see more radical change, we must implement a bold policy agenda focused on providing economic and concrete supports to all families that struggle with financial hardship. Policies that strengthen family financial security can help create the conditions for all children, families, and communities to thrive. The child tax credit, paid family leave, cash assistance, and other policies that raise family incomes can lessen the weight of the stressors of poverty that overload families. We posit a more substantial transformation if we address the systemic issues of poverty and racism that result in families coming to the attention of the child welfare system, rather than solely focusing on state-by-state statutory changes to the definition of neglect. According to Feely, et al, “Financial hardship remains one of the few preventative factors that is unaddressed

⁶⁷ Wald, Michael S., “Beyond CPS: Developing an Effective System for Helping Children in “Neglectful” Families.” *Child Abuse and Neglect*, vol. 4, 2015, pp. 49–66.

in the current policy context, and in fact “intentional public policy decisions would create a different context for communities, families, and individuals.”⁶⁸ Based on the research showing the complex relationships between race, poverty, and neglect, by putting a bigger emphasis on addressing poverty we should see a decrease in child neglect cases in the U.S.

Conclusion

Families are our greatest asset in ensuring that all children are safe and have what they need to thrive and succeed—especially now. This extraordinary moment provides an opportunity to shift the narrative from child welfare to child and family well-being. We must leverage this new way of thinking to develop and deliver effective and impactful community-based resources that assist families in ways that strengthen and help keep them together.

Though many of us and our neighbors have faced tremendous hardship and loss these past two years, there remains hope. There is great momentum and an incredible sense of urgency to ensure that all children and families

have access to services and supports to keep their families safe and strong. Now is the time to act, to move upstream and prevent child abuse and neglect before it happens and maximize opportunities for every child to reach their full potential—regardless of race, gender, or socioeconomic background. We are encouraged by the continued growing interest in prevention, and together we know we can grow a better future for all.

⁶⁸ Feely, Megan, et al. “The Social Welfare Policy Landscape and Child Protective Services: Opportunities for and Barriers to Creating Systems Synergy.” *The ANNALS of the American Academy of Political and Social Science*, vol. 692, no. 1, 2020, pp. 140–161. <https://doi.org/10.1177/0002716220973566>.

Jennifer A. Jones, MSW, is a Chief Strategy Officer at Prevent Child Abuse America.

Bart Klika, Ph.D., MSW, is a Chief Research Officer At Prevent Child Abuse America.

Melissa T. Merrick, Ph.D., is President and CEO of Prevent Child Abuse America.



© Noriko Cooper | Dreamstime.com

Let CPS Focus on Child Safety, Not Everything Well-Being-Related

Mathangi Swaminathan

Abstract

We need to fundamentally reassess screening criteria for neglect reports within Child Protected Services (CPS) and only screen-in cases that present an imminent threat to a child's safety. Over one in three children overall and one in two African American children experience a CPS intervention by the age of 18. Nearly 75 percent of screened-in referrals are for neglect and have largely targeted people living in poverty, impacting racial disproportionality, placing children and families at increased risk for harm, and exhausting CPS's own human and financial resources in the process.

In this paper, a case study of a diversionary culturally appropriate community-led program from Olmsted County, Minnesota, is presented as a replacement approach for educational neglect referrals. Using the learnings from the program, an alternative intake process for all types of neglect referrals is suggested. Supporting families with culturally appropriate community-led and family-centered resources instead of a traumatizing government-centered intervention is a better solution.

Introduction and Context

Child Protective Services (CPS) was officially created by Congress in 1974 to protect children from serious harm in the United States. Medical, school, and legal administrators were part of the mandatory reporting system to ensure that children were safe from imminent harm. According to the Child Abuse Prevention and Treatment Act (CAPTA), child maltreatment is defined as serious harm to children, the most obvious being physical, sexual, or emotional abuse. These were considered harsh conditions under which it became safer for children to be removed from their parental homes and be placed in foster care.^{1,2}

However, CPS has evolved to include an expansive list of allegations under the umbrella term neglect. Over one in three children experience a CPS intervention by the age of 18. This rate increases to 53 percent among African American children.³ [7.9 million children were reported](#) for child maltreatment in 2019, and nearly 75 percent of the screened-in reports were neglect-based.

Neglect has consistently been the major reason for referrals to CPS, and its proportion as a percentage of screened-in referrals has increased steadily over the last three decades. Since 1990, the number of screened-in referrals increased by 29 percent, from 1.8 million in 1990 to 2.386 million in 2019. However, the number of neglect referrals increased by a whopping 105 percent. The proportion of referrals involving physical and sexual abuse showed a decrease by 7.5 percentage points and 3.7 percentage points respectively between 1995 and 2019, indicating the extent of increase in neglect referrals.

¹ Child Welfare Information Gateway. *Child Maltreatment 2019: Summary of Key Findings*. Apr. 2021, <https://www.childwelfare.gov/pubpdfs/canstats.pdf>

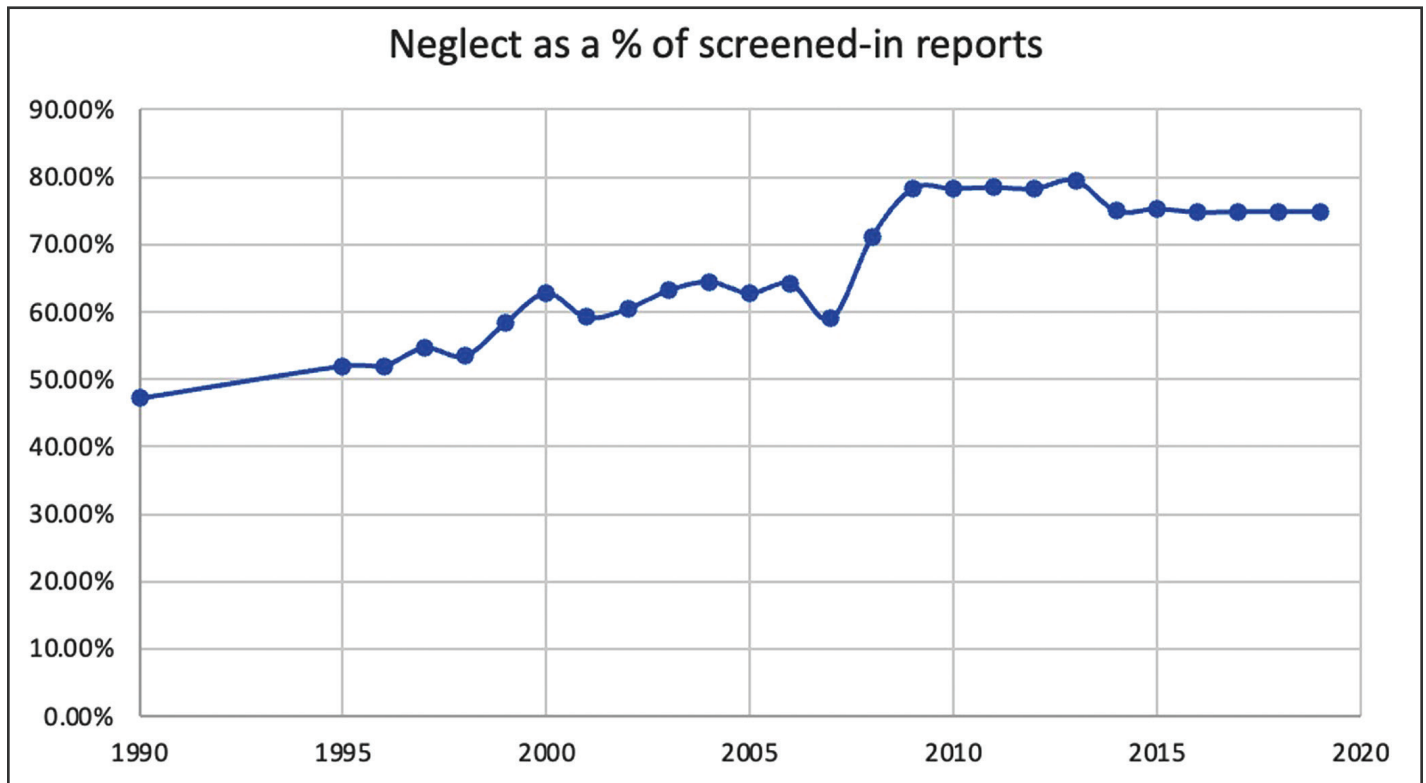
² Children's Bureau/ACYF/ACF/HHS. "About CAPTA: A Legislative History." *Child Welfare Information Gateway*, 2019, <https://www.childwelfare.gov/pubs/factsheets/about>.

³ Kim, Hyunil, et al. "Lifetime Prevalence of Investigating Child Maltreatment Among US Children." *American Journal of Public Health*, vol. 107, no. 2, Feb. 2017, pp. 274-80, <https://doi.org/10.2105/ajph.2016.303545>.



Mathangi Swaminathan

Figure 1: Neglect as a percentage of screened-in referrals



Source: Reports from 1995 to 2019 retrieved and compiled.⁴

The list of allegations included under neglect is large, undefined, confusing, and debatable. There is no national consensus on what is considered neglect and the implementation differs by agency practice. In contrast to other types of abuse, such as physical or sexual abuse, which are acts of commission, neglect is an act of omission. Neglect is better defined by the absence of something than by the presence of an active threat to a child. The very nature of omission and its absence thereof has led to an expansive list of allegations under neglect.

There are six common types of neglect defined by experts: physical, medical, inadequate supervision, emotional, environmental, and educational. Hence in practice, neglect includes a vast variety of situations ranging from substance abuse, domestic violence to poverty. (Children’s Bureau)

Neglect has largely targeted people living in poverty, thus further impacting racial disproportionality. Poverty and neglect look very similar to each other in their absence of resources. There is overwhelming evidence that children from low-income families are over-represented in the child protection system.⁵ A study on the effect of additional child support income on reporting rates found that “an increase of just \$102 in annual income reduced the likelihood of being re-reported by 10 percent, which was statistically significant.”⁶

Within Olmsted County, Minnesota, where this author is based, African Americans account for six percent of the population, but over [25 percent](#) of those who live in poverty. Between 2016 and 2019, African American children in Olmsted County were twice as likely as white children to be reported to

⁴ Child Maltreatment. 2020, https://www.acf.hhs.gov/acf-data-research?f5B0%5D=office%3A5&f%5B1%5D=program_topic_id%3A938. ACF Data & Research.

⁵ Pelton, Leroy H. “The Continuing Role of Material Factors in Child Maltreatment and Placement.” *Child Abuse & Neglect*, vol. 41, Mar. 2015, pp. 30-39, <https://doi.org/10.1016/j.chiabu.2014.08.001>.

⁶ Cancian, Maria, et al. “The Effect of Additional Child Support Income on the Risk of Child Maltreatment.” *Social Service Review*, vol. 87, no. 3, 2013, pp. 417-37, <https://doi.org/10.1086/671929>.

child protection, and multiracial children were seven times as likely as white children to enter out-of-home care.⁷

We need a different type of response to neglect situations. For example, Morton and McDonald suggest a public health response instead of a criminal justice response to cases of neglect. The authors explain how the child protection system was fashioned after the criminal justice response system to address serious physical or sexual abuse that may involve antisocial caregiver behaviors, in that they tend to involve immediate harm with an accompanying intent to inflict pain or suffering upon the child. “Unless probable cause exists to support a possible criminal prosecution, or circumstances clearly indicate an immediate threat of serious harm to children in the household necessitating immediate removal, referrals for neglect should first receive a public-health response.” The authors describe how a public-health response is more health-oriented and strength-based, rather than criminalizing and authoritative in nature.⁸

To begin with, we at least need to develop a process that separates cases that present an imminent threat to the safety of a child from those that do not.

As Burton and Montauban explain, “We submit that this belief structure as it applies to neglect is based on an antiquated idea of child protection that was rooted in a desire to address serious physical and sexual abuse, which indeed is antisocial behavior.” “But the vast majority of neglect, and poverty, has nothing to do with antisocial behavior.” Conflating acts of commission (such as physical or sexual abuse) with acts of omission (such as the inability to provide for childcare) has led to practices that have criminalized poverty across the country.⁹

Child protection intervention, when there is no obvious threat to the imminent safety of a child, has a serious negative impact on the well-being of children and families at large. A 2013 study measured the outcomes of children from “marginal cases” where the investigators disagreed about the placement recommendation. The study found that placing such children in foster care increased their likelihood of risk-taking behavior and in becoming delinquent during adolescence, compared to those who remained at their parental home. Further, children who were placed in foster care also required emergency healthcare in the short-term more than those who remained at home.¹⁰

Weeding out cases that do not present an imminent threat to children from CPS will reduce agency overload and decision-making errors. This has particular significance for CPS, where decisions can impact long-term well-being or result in the death of a child. Child Protection agencies receive thousands of reports every week, many of which are well-being-related and do not threaten the safety of the child. “Child welfare caseworkers in New York City field over 1,000 reports a week of mistreatment and neglect—everything from dirty clothes and chronically missed meals to a broken arm.”¹¹ “The need for good judgment under conditions of uncertainty is emotionally draining for even the most skilled worker.”¹²

While CPS is expected to help all families with any kind of adversity, it is “fundamentally oriented around parental wrongdoing, and it is empowered to separate families.” Reports are often made by

⁷ Minnesota Department of Human Services. 2019. Child Welfare Statistics.

⁸ Morton, McDonald, Tom, Jess. “Poverty and Neglect: America Must Change Its Views on Both.” *The Imprint*, 15 Feb. 2021, <https://imprintnews.org/child-welfare-2/america-must-change-its-view-of-poverty-and-neglect/51659>

⁹ Burton, Angela Olivia, and Angeline Montauban. “Toward Community Control of Child Welfare Funding.” *Columbia Journal of Race and Law*, vol. 11, no. 3, July 2021, <https://doi.org/10.52214/cjrl.v11i3.8747>.

¹⁰ Doyle, Joseph J., Jr. “Causal Effects of Foster Care: An Instrumental-Variables Approach.” *Children and Youth Services Review*, vol. 35, no. 7, July 2013, pp. 1143–51, <https://doi.org/10.1016/j.childyouth.2011.03.014>.

¹¹ Newman, Andy, et al. “These Children Were Beaten to Death. Could They Have Been Saved?” *The New York Times*, 26 Oct. 2021, <https://www.nytimes.com/2021/10/26/nyregion/child-abuse-reports-deaths-nyc.html>.

¹² The Annie E Casey Foundation. *The Unsolved Challenge of System Reform*. 2003, <https://assets.aecf.org/m/resourcedoc/aecf-theUnsolvedChallengeSystemReform-2003.pdf>.

well-meaning professionals hoping for extra support for the families, who assume CPS can support all well-being needs of a child, not just those that present a threat of imminent harm.¹³

An acknowledgment that one's performance is influenced by stressors (also known as stress recognition) is vital to any job, even more so in a job that relies heavily on safety planning.¹⁴ A 2017 study studied the link between stress and decision making on 56 college students. Participants who received the stressor responded with higher heart rates and skin conductance responses, reported more negative affect, and made less advantageous choices on the decision-making task. The study concluded that "the presence of a stressor may generally result in failure to attend to the full range of possible consequences of a decision."¹⁵

"The well-being of children served by the child welfare system are put at risk by the difficulties child welfare agencies experience in recruiting and retaining competent staff as turnover results in staff shortages and high caseloads that impair workers' abilities to perform critical case management functions."¹⁶ Job burnout and work-related stress have repeatedly been rated as the top two reasons for social workers either being absent at work or for their high turnover.^{17,18} The workforce is "also fraught with contradictions that contribute to burnout, high turnover, and worker cynicism." Social services jobs were ranked among the five worst-paying jobs in the country. This, coupled with the responsibility to make hundreds of life-altering decisions every single day leading to decision fatigue, have led to a dangerously overburdened and compromised system.¹⁹

A study of 485 caseworkers from Oregon's Department of Human Services revealed that providing manageable caseloads and strengthening job resources have a statistically significant impact on their turnover. This is particularly significant because the average turnover of caseworkers is less than two years.²⁰

By diverting reports of overall well-being from those that particularly threaten the child's safety or long-term development, caseloads can be reduced, and fatality mistakes can be avoided. Grouping physical or sexual abuse with financial or educational neglect puts acute pressure on a system that is already overburdened and prone to secondary trauma.

Educational neglect is one example of child well-being-related intervention that is being given a child protection response. Approximately 25 states define educational neglect as the "failure to educate the child required by law," and this is defined by mandatory attendance requirements in state statutes.²¹ For example, in Minnesota, educational neglect is defined as seven unexcused

¹³ Kelley, Fong. "We Shouldn't Rely on CPS To Address Family Adversity." *The Imprint*, 21 Sept. 2020, <https://imprintnews.org/opinion/we-shouldnt-rely-on-child-protective-services-to-address-family-adversity/47496>.

¹⁴ Sexton, et al. "The Safety Attitudes Questionnaire: Psychometric Properties, Benchmarking Data, and Emerging Research." *BMC Health Services Research*, vol. 6, no. 1, Dec. 2006, pp. 1-10, <https://doi.org/10.1186/1472-6963-6-44>.

¹⁵ Wemm, Stephanie E., and Edelgard Wulfert. "Effects of Acute Stress on Decision Making." *Applied Psychophysiology and Biofeedback*, vol. 42, no. 1, Mar. 2017, pp. 1-12, <https://doi.org/10.1007/s10484-016-9347-8>.

¹⁶ Zlotnik, Joan Levy, et al. "Factors Influencing Retention of Child Welfare Staff: A Systematic Review of Research: A Report from the Institute for the Advancement of Social Work Research Conducted in Collaboration with University of Maryland School of Social Work for Families & Institute for Human Services Policy." University of Maryland Baltimore, 1 June 2005, <https://archive.hshsl.umaryland.edu/handle/10713/74>.

¹⁷ Kim, Hansung, and Madeleine Stoner. "Burnout and Turnover Intention Among Social Workers: Effects of Role Stress, Job Autonomy and Social Support." *Administration in Social Work*, vol. 32, no. 3, June 2008, pp. 5-25, <https://doi.org/10.1080/03643100801922357>.

¹⁸ Mor Barak, Michal E., et al. "Antecedents to Retention and Turnover among Child Welfare, Social Work, and Other Human Service Employees: What Can We Learn from Past Research? A Review and Meta-analysis." *Social Service Review*, vol. 75, no. 4, Dec. 2001, pp. 625-61, <https://doi.org/10.1086/323166>.

¹⁹ The Annie E Casey Foundation. *The Unsolved Challenge of System Reform*. 2003, <https://assets.aecf.org/m/resourcedoc/aecf-theUnsolvedChallengeSystemReform-2003.pdf>.

²⁰ Kothari, Brianna H., et al. "Retention of Child Welfare Caseworkers: The Role of Case Severity and Workplace Resources." *Children and Youth Services Review*, vol. 126, July 2021, p. 106039, <https://doi.org/10.1016/j.childyouth.2021.106039>.

²¹ "Definitions of Child Abuse and Neglect." *Children's Bureau*, Mar. 2019.

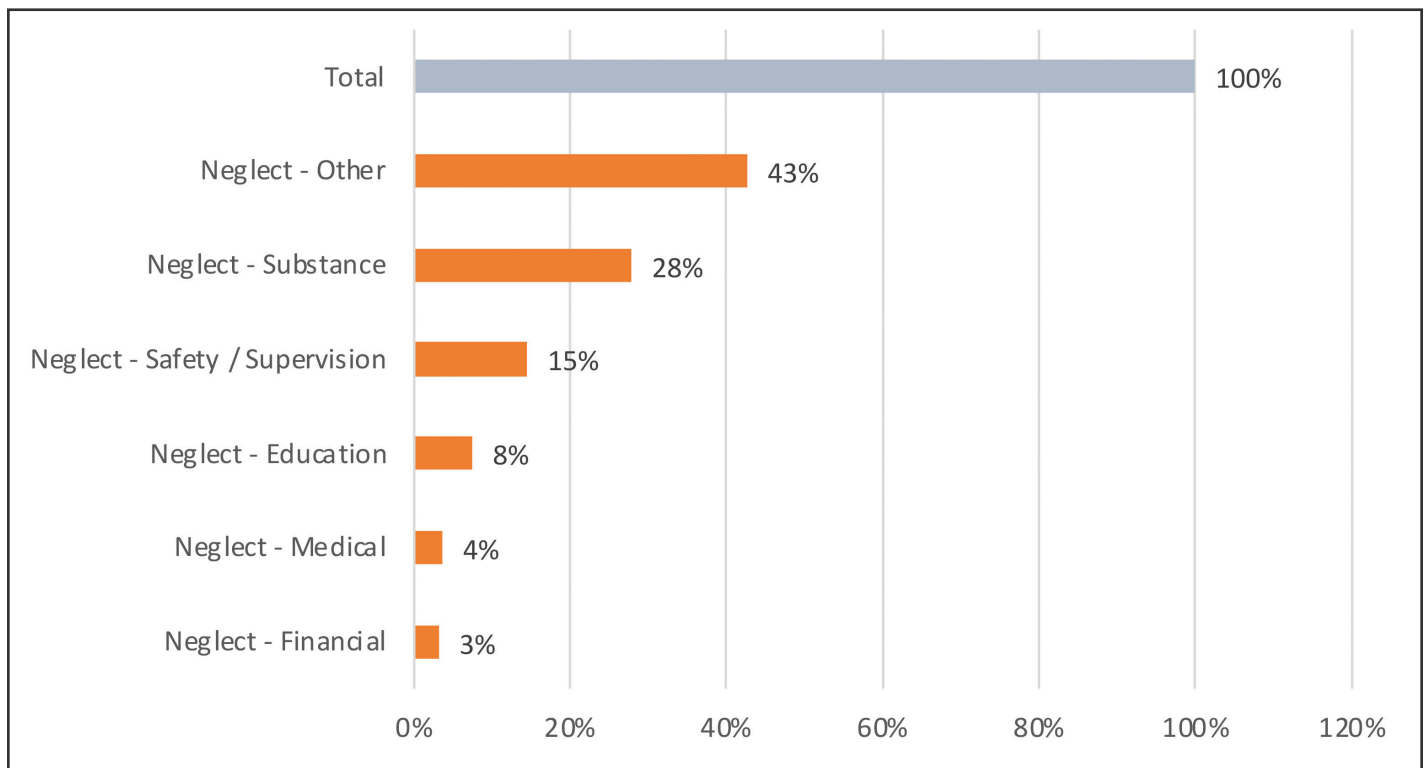
absences in a school year. Children who report more than seven unexcused absences would be reported to child protection, and the family is put under tremendous stress. Educational needs have been conflated, once again, with child safety.

Minnesota, Olmsted County & Educational Neglect

Minnesota’s 2021 guidelines for neglect expand upon the statutes that define eight types of neglect. These include failure to provide necessary food, clothing, housing, childcare, substance and alcohol abuse, medical and educational neglect, and environmental conditions.²²

Within Olmsted County, Minnesota, neglect continues to be the reason for most reports. Nearly one in two cases of neglect are marked as “other” cases of neglect. “Other” includes domestic violence and all other types of unclassified neglect. What types of neglect cases are defined as “other” and how that further expands the definition of neglect and intersects with poverty and racial disproportionality is an important question that needs to be further studied.

Figure 2: Types of neglect reports in 2019, Olmsted County, MN



Source: Child Welfare Statistics, MN Department of Human Services

Case Study: Educational Neglect and an Upstream Intervention (PACE)

Educational neglect is defined as seven unexcused absences according to Minnesota statutes.²³ In practice, school administration takes the call when to report children who miss school. Sometimes, the child is reported at the eighth instance, and sometimes several months after. They also decide whether to file the report as an official educational neglect referral or as a general preventive referral.

²² Office of the Revisor of Statutes. *Compulsory Instruction*. 2021, <https://www.revisor.mn.gov/statutes/cite/120A.22>.

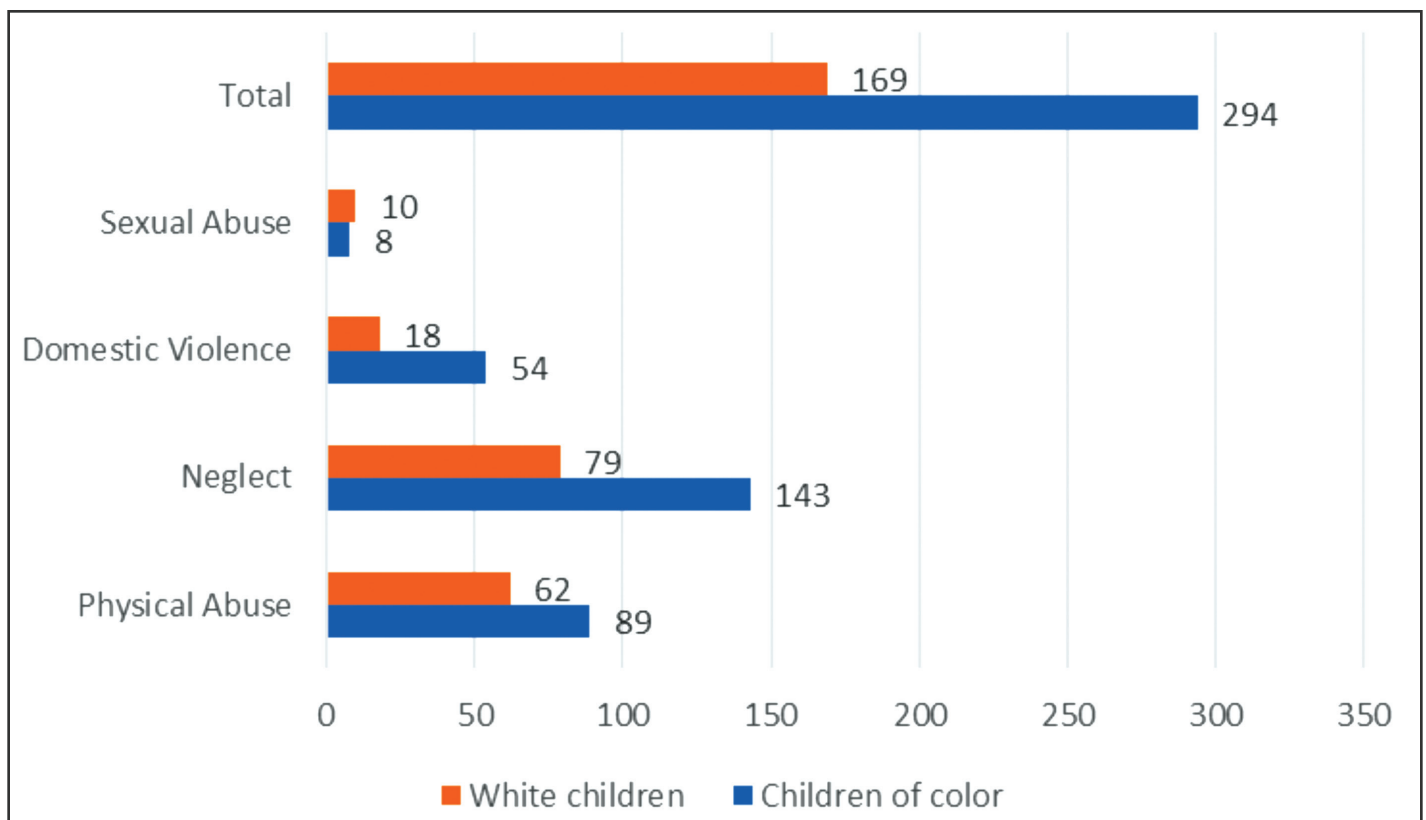
²³ Office of the Revisor of Statutes. *Compulsory Instruction*. 2021. <https://www.revisor.mn.gov/statutes/cite/120A.22>.

Why do children miss school? Often it is a symptom of something happening within the family. It could be poverty-related (example: lack of transport), systemic racism-related (example: the hostile relationship between family and school), mental health-related (example: ADHD diagnosis), or something that is child safety-related (example: sexual abuse, substance abuse). Currently, agencies have conflated the education needs of a child and their family (child well-being-related) with child safety, exacerbating the stressors for the family and further traumatizing the child.

Despite representing just 34 percent of overall student composition in 2019 in Olmsted County, Minnesota, children of color were reported nearly twice as often as white children and represented 63 percent of all children reported to the system. Neglect is the most common source for racial disproportionality at the time of reporting. The number of children of color reported for neglect is nearly double that of white children, with a disproportionality rate of over 500 percent.²⁴

Parents And Children Excel (PACE) program was developed by Olmsted County in partnership with a local non-profit, Family Service Rochester, in 2008 to provide alternate culturally appropriate family-centered supports to children and families of color referred for education-related challenges. Most families need additional protective factors that include material support such as transport, house rental assistance, health insurance or mental health referrals. A child protection intervention would only further traumatize a family undergoing stress already.

Figure 3: Children reported by school authorities to CPS in Olmsted County, Minnesota, 2017-2019



Source: Data from Olmsted County, Child and Family Services

Children referred to PACE could be facing two types of challenges: attendance-related (often through educational neglect reports) or behavior-related (called preventive referrals). In the decade between 2010 and 2019, nearly one in two referrals were preventive referrals. However, in 2020, during the

²⁴ Disproportionality rate = $\{(\# \text{ of children of color reported}) / (\# \text{ of white children reported} * \text{Proportion of children of color in student population})\} \%$

pandemic, the number of reports to PACE increased by 75 percent and almost all were educational neglect reports rather than preventive referrals. How this relates to poverty and economic conditions caused by the pandemic is to be further studied. If a root cause analysis revealed that education neglect referrals were largely poverty-related, we would be effectively criminalizing poverty. The implications on legislation and practice would be significant.

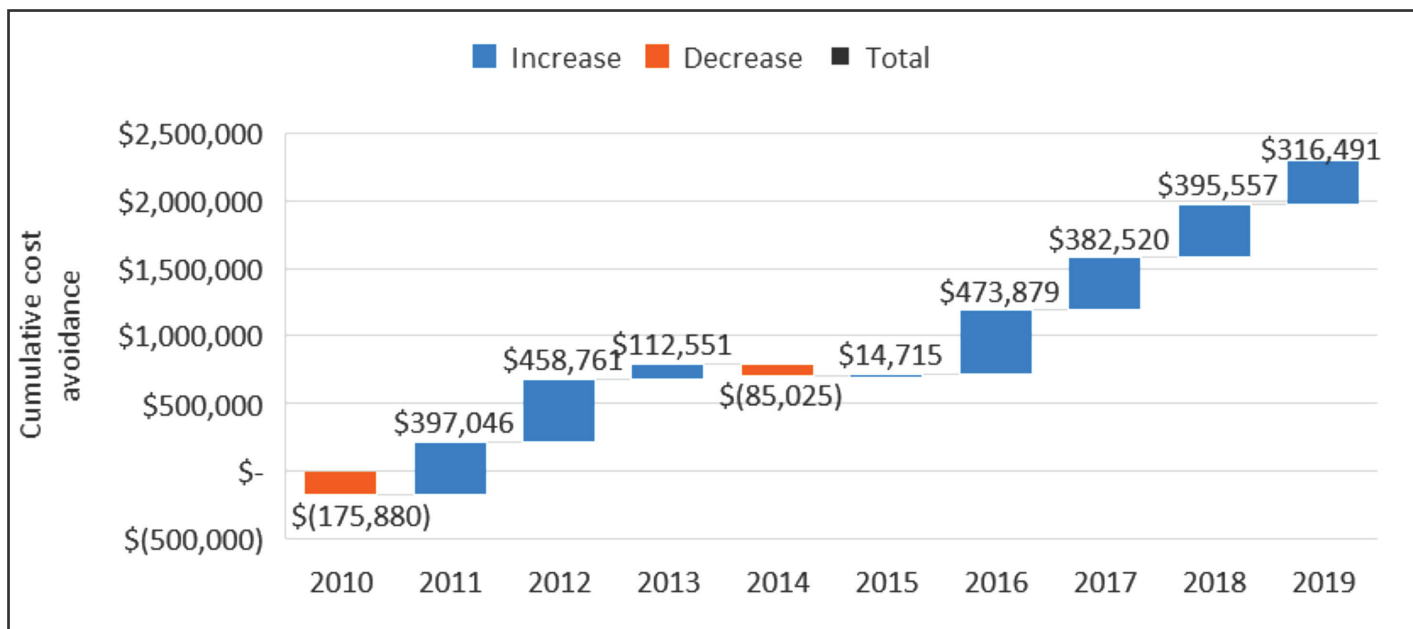
Families of color who were referred for education-related challenges were given the option to work with the PACE program. If the family refused and the report was an official educational-neglect report, they were referred to CPS in accordance with MN statutory laws. If the referral was preventive, the family would simply exit the system if they chose not to work with PACE.

Most families who entered the PACE program had prior interactions with the child welfare system; 93 percent of families had interacted with the system at least once prior to their first PACE referral. In a program evaluation conducted by this author, children and families who received services from the PACE program were less likely to re-enter the child welfare system, as compared to those who did not work with the PACE program.

“Results indicate that children who receive case management services from PACE reduce their short-term re-entry rates by 16 percent and long-term entry rates by seven percent, as compared to those who don’t, on average, controlling for family size; primary parent’s age, marital status, race, and ethnicity; target child’s age and gender; history of interactions with child welfare and child protection systems; nature of referral (educational neglect or preventive); year of PACE referral and year of case closure. While the short-term impact of 16 percent was statistically significant at the 95 percent level, the long-term impact was not.”²⁵

The average cost of serving one child through child protection was between two and three times more expensive than the average cost of serving one child through PACE. By diverting cases that don’t need the county’s most expensive resources (i.e., out-of-home care) to PACE, the county avoided a cost of nearly two million across 10 years.²⁵

Figure 4: Cumulative cost avoidance to Olmsted County



Source: Author’s calculations

²⁵ Swaminathan, Mathangi. “An Evaluation of a Diversionary Program for Children of Color on Reentry into the Child Welfare System.” *Child Welfare*, vol. 99, no. 5, 2022.

Olmsted County started avoiding costs as soon as the second year of operation of the PACE program. The fluctuations in the annual cost avoidance numbers over the last decade are a result of fluctuations in the number of children reported for education-related challenges and county leadership and policies that led to a lesser percentage of children from child protection moving to out-of-home care.

Why did PACE Succeed?

PACE is designed as a diversionary program despite mandatory reporting laws. School professionals are subjected to mandatory reporting and are in fact, the largest group of professionals reporting to the child welfare system across the country.²⁶ Olmsted County designed a diversionary program despite this reporting system in the following ways:

- a) **Social worker-led team:** PACE team only has staff with a social work education and background, with similar training and qualifications required by CPS staff. PACE staff are hence trained to support children and families through both poverty and abuse-related concerns in case any arise during the time case management services are being provided.
- b) **Subject to state and federal timelines:** In cases of educational neglect, the PACE team is subject to all timelines mandated for CPS assessments, including the five-day response for family assessments. They follow all state and federal guidelines for reporting and other protocols.²⁷
- c) **Close coordination between CPS and PACE:** Both teams work in close coordination with each other, especially because not all information is available at the time of intake. In situations where a family is re-reported to CPS when a PACE case is already open, the case remains with the PACE team to address all areas of concern.
- d) **Coordination between the school district and PACE staff:** Each PACE staff is associated closely with at least one community school in Rochester Public School district, the largest school district in the county. This close association helps in improving engagement between families and schools, detecting referrals preventatively, and better supporting families.
- e) **Data sharing between the school system and PACE team:** Regular data on attendance and academics is shared between the Rochester Public School district and the PACE team to monitor progress.
- f) **Led and supported by staff of color:** The PACE team is the result of an agreement between Olmsted County and Family Service Rochester, a non-profit. Most PACE staff are contracted to the county through the non-profit. This community-centered engagement has helped develop a team that is 80 percent staff of color and 100 percent those with lived experience. This is especially important considering the team works only with families of color in the county. This multi-lingual team that reflects the population they work with has also helped develop trust and better support families. In comparison, Olmsted County Department of Child and Family Services has been struggling for several years to improve its staff diversity to better reflect the clients they serve. Many reasons for this lack of diversity include union laws, complex recruitment processes, lack of data transparency, background requirements of the job and geographical location of the county, among many others.

It is a well-documented fact that diverse teams produce better outcomes. In the private sector, this has been measured in terms of financial returns, higher return on equity, innovation, or smartness.²⁸

²⁶ Children's Bureau/ACYF/ACF/HHS. "About CAPTA: A Legislative History." *Child Welfare Information Gateway*, 2019, <https://www.childwelfare.gov/pubs/factsheets/about>

²⁷ Minnesota Department of Human Services. "Child Welfare Data Dashboard." *Minnesota Department of Human Services*, May 2021, <https://mn.gov/dhs/partners-and-providers/news-initiatives-reports-workgroups/child-protection-foster-care-adoption/child-welfare-data-dashboard/>.

²⁸ Rock, David, and Heidi Grant. "Why Diverse Teams Are Smarter." *Harvard Business Review*, Nov. 2016, <https://hbr.org/2016/11/why-diverse-teams-are-smarter>.

Currently, families of color are disproportionately represented in the child welfare system. However, not much data exists on the race and ethnicity of those who make these reports or respond to them. A 2011 report indicated the “disproportionately low numbers of African American caseworkers;”²⁹ however, no data was available to indicate the race and ethnicity of caseworkers as compared to the population they serve. A report from 2016 found that Fresno and Santa Clara County agencies in California did not have enough bilingual workers to meet the language needs of the populations they served, perhaps pointing to poor workforce diversity and a similar gap for populations outside these counties as well.³⁰

- g) **Resources and referrals:** The PACE team supports families with both resource and referral supports, as well as other educational engagement–related supports. Understanding that poverty plays a big role in the family’s referral is key to their mode of operation.

Implications

1. Educational Neglect

Do educational neglect referrals present an imminent risk to a child’s safety? While the child not attending school is an area of concern for the overall well–being of the child and indicates a family in need of support, further traumatizing the family through a child protection referral is not the right solution.

There is a fine line between saving children from trauma and making things worse.³¹ In an interview of 37 people who were involved with or experienced recent out–of–home placement, a 2008 report recorded 12 types of trauma, and the importance of developing Trauma–Informed Practice Strategies for caseworkers.³² Repeated interviewing can traumatize the child even further.

The “harm of removal” needs to be a part of every child welfare decision due to the trauma of the child investigation process, removal from the family, and the high rates of abuse in foster care. As of 2019, “Only two jurisdictions require courts to consider the harms that will occur when a child is taken from her family.”³³ Harm of removal includes emotional and psychological harm (separation and attachment disorders, grief, unique harms for minority children), foster care placement instability and long–term mental and sexual health of the child. Family separation can be devastating—not just for the child but intergenerationally for the family.

In several informal interviews with child welfare agencies across the country, agency leadership often concurred that educational neglect reports presented a distraction and burden to the agency tasked primarily with protecting a child’s safety. Although no known study has been published to the knowledge of this author to corroborate this, the fact remains that educational neglect referrals are being screened–in as per state and federal statutes, along with severe forms of abuse referrals.

²⁹ Fluke, John, et al. *Research Synthesis on Child Welfare: Disproportionality and Disparities*. Jan. 2011, https://www.researchgate.net/publication/285631551_Research_synthesis_on_child_welfare_Disproportionality_and_disparities.

³⁰ Center for the Study of Social Policy. *Final Report to the Walter S. Johnson Foundation*. 2015, <https://cssp.org/wp-content/uploads/2018/08/Santa-Clara-Fresno-Report-1.pdf>.

³¹ Bartkowiak, Brittany. “The Fine Line between Saving Kids from Trauma and Making Things Worse.” *State of Opportunity*, 27 Feb. 2015, <https://stateofopportunity.michiganradio.org/families-community/2015-02-27/the-fine-line-between-saving-kids-from-trauma-and-making-things-worse>.

³² Center for Improvement of Child and Family Services, Portland State University, School of Social Work. *Reducing the Trauma of Investigation, Removal, & Initial Out-of-Home Placement in Child Abuse Cases*. 2009, <http://centerforchildwelfare.org/kb/TraumaInformedCare/ReducingTraumaofInvestigation.pdf>.

³³ Trivedi, Shanta. “The Harm of Child Removal.” *ScholarWorks@University of Baltimore School of Law*, 2019, https://scholarworks.law.ubalt.edu/all_fac/1085/?utm_source=scholarworks.law.ubalt.edu%2Fall_fac%2F1085&utm_medium=PDF&utm_campaign=PDFCoverPages.

Educational neglect should be delinked from the child protection system. More effective community-driven interventions such as PACE address educational neglect better, and there is an inherent mismatch between support needed by families unable to send their child to school and those offered by the child protection agency. An MN inter-agency report directed a task force to “evaluate the cross-section of educational neglect and child protection.” Several county child welfare agencies, along with the MN Association of County Social Service Administrators (MACSSA) have added their support.³⁴

2. Other Types of Neglect

The implications of diverting resources from CPS into diversionary community-centered programs continue to affect other types of neglect, particularly those that do not threaten a child’s safety. Examples include medical and financial neglect that may benefit from family-centered community resources than an intervention by CPS. While 12 states have exempted the financial inability to provide for a child from the definition of neglect, the others have not.³⁵ As counties and state agencies develop the courage, confidence, and processes to shift resources away from traditional CPS services that have remained the norm for several decades, neglect under CPS can be redefined to strictly include only those that address direct safety.

A Modified Approach to All Types of Neglect

Child well-being is deeply connected to family well-being. Well-being is long-term and includes a holistic look at the whole child and family system. This includes physical health, development, and safety; psychological and emotional development; social development and behavior; and cognitive development and educational achievement.^{36,37}

Child safety is incredibly important, without which well-being is not possible. However, true well-being often means supporting children and families with protective factors such as material and other resource supports, spiritual and emotional supports, and connection to community resources.

CPS is an agency that by its very nature, is set up to prosecute families who display antisocial behavior. Hence, an intervention by CPS with a prosecution lens places an additional stressful factor on families that is very different from the support they need to thrive. For example, each report needs to have at least one “victim” and “offender” recorded in Social Services Information System, the MN state data entry system. The very words used in the state system show how CPS was built on the backbone of the criminal justice system—to prosecute the offender and protect the victim from further harm.

Agencies need to differentiate between situations that present an imminent threat to safety and those that are well-being-related right at the beginning of the intake process. Cases where the child is unsafe need child protection support. Those that are screened in for other reasons but do not present an imminent threat to the child’s safety may benefit from additional support to increase the family’s protective factors through community-centered solutions.

Taking the learnings from the PACE approach and expanding them to all types of neglect, a modified process chart is constructed below.

³⁴ Minnesota Inter-County Association. End of Session Reports. 2021.

³⁵ Child Welfare Information Gateway. *Child Maltreatment 2019: Summary of Key Findings*. Apr. 2021, <https://www.childwelfare.gov/pubpdfs/canstats.pdf>.

³⁶ Moore, Kristin A. What Is Child Well-Being?: *Does It Matter How We Measure It?* 7 Nov. 2013, <https://www.childtrends.org/wp-content/uploads/2013/12/2013-57ChildWBMeasure1.pdf>.

³⁷ “Promoting Child & Family Well-Being – Child Welfare Information Gateway.” *Child Welfare Information Gateway*, <https://www.childwelfare.gov/topics/preventing/promoting/>. Accessed 20 Dec. 2021.

1. **Separate abuse from neglect:** Is there abuse involved (physical, sexual, or emotional abuse as defined in statutory laws) along with neglect?
 - a. CPS can intervene when abuse is involved.
 - b. **If only neglect exists, is there an immediate threat to the child’s safety?**
 - i. To make the decision-making process robust and as free of bias as possible, do at least two racially diverse investigating officers agree that there is an immediate threat to a child’s safety? If not, refer families to culturally appropriate community-centered resources. If yes, continue to work with CPS.

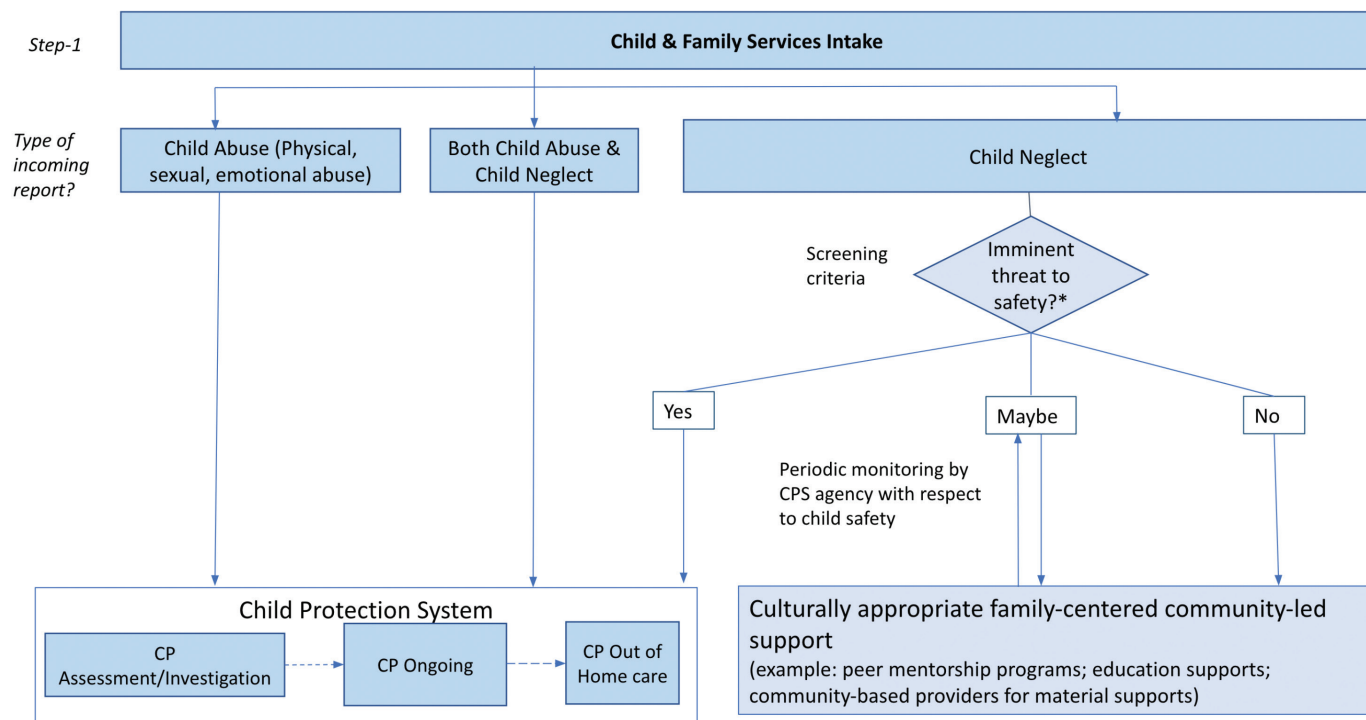
In situations where the staff is not always sure about the child and family situation at the time of intake, the following measures can be adopted from the PACE program:

- a) Periodic monitoring and a working relationship between CPS and the referred community-centered programs to ensure the child’s safety
- b) Trained social worker staff at the referred program sites to help fully support the family

This would be a win-win situation for all stakeholders involved: the families (to be able to work with programs that reflect their needs and culture); for CPS (to reduce workload, direct focus on child safety and boost staff morale) and for the health of communities of color overall.

While an exhaustive list of what exactly constitutes an “imminent threat to child’s safety” will be state law-dependent and beyond the scope of this article, even an approach that begins to ask this question at the time of intake is powerful. An intention to divert children and families away from CPS to community-centered resources can lead to long-term change, as has been witnessed in Olmsted County.

Figure 5: Recommended Process Flow for CPS



* Decided by a racially diverse team of at least two investigating officers.

Modifying processes with the intention to increase protective factors for families and avoid separation can yield powerful results. For example, Red Lake Nation’s Child and Family Services (renamed to Ombimindwaa Gidinawemaaganinaadog: “Uplifting All of Our Relatives”) redesigned their process to

focus on intergenerational family wellness and root their values in the Anishinaabe language, culture, traditions, and beliefs. The result of community-centered, culturally relevant support is evident. Between 2017 and 2021, children in out-of-home placement decreased by a whopping 68 percent.³⁸

Implementation

The deciding criteria at the beginning of the intake process need to be redesigned. As is explained in Figure 5, separate well-being-related concerns from those that immediately threaten the safety of a child at the beginning of the process at intake. The anchoring decision-making question makes a difference in the response of CPS agencies.

Agencies can begin to fund diversionary programs by starting small. A few staff and a small budget can be used to divert cases referred for one type of neglect, the most obvious being educational neglect. Any educational neglect referrals that do not have a safety component at referral (such as physical, sexual, or psychological abuse) may be diverted to the diversionary program that has all the characteristics listed in the previous section on “Why did PACE succeed?” Although there may be some initial upfront investment, agencies begin to avoid costs by redirecting funds upstream, sometimes as soon as the second year of operation (refer to Figure 4). As agencies begin to learn more and develop the confidence to have alternate community-centered programs for more types of neglect, CPS staff will be able to focus on their primary purpose, ensuring that every child is safe from imminent harm.

Integrate child well-being response with schools and legal systems. Educational personnel and legal and law enforcement personnel make the greatest number of referrals to CPS.³⁹ Close collaboration between agencies also helps shift the nature of reports coming into CPS and to monitor cases that are in the “gray zone” at the point of intake (the “maybe” box of Figure 5).

Inter-agency data sharing, monitoring, and evaluation are incredibly important to track progress. Bureaucratic procedures and laws meant to protect the public from harm have instead been used as means of restricting sharing of even non-identified data. For example, educational diversionary programs need to track long-term outcomes such as graduation rates and educational improvement over time to truly assess if their programs are making a difference. However, laws such as FERPA have been used as reasons to prevent data sharing and evaluation between schools and education programs. The impact is hence rarely tracked to improve programs or hold teams accountable to their stated goals.

Conclusion

CPS needs a fundamental rehaul of its purpose and vision and focus on child safety alone. Situations such as educational neglect that are well-being related and not safety-related need to be diverted away from CPS to culturally appropriate community-centered resources. Agencies need to develop both the capacity and courage to first, unlink educational neglect and then, other types of neglect from CPS to promote long term well-being for the child. Diversionary programs such as PACE, that are more effective and cheaper than CPS, may be the solution.

Acknowledgement

This work was deeply supported by My-Linh Vo, who passionately volunteered for this project and contributed to the research at Olmsted County Department of Health, Housing and Human Services.

³⁸ Steiner, Andy. “MinnPost.” *MinnPost*, 24 Jan. 2022, <https://www.minnpost.com/greater-minnesota/2022/01/red-lake-nation-recognized-for-decolonized-approach-to-child-and-family-services/>. Accessed 10 Feb. 2022.

³⁹ Children’s Bureau/ACYF/ACF/HHS. “About CAPTA: A Legislative History.” *Child Welfare Information Gateway*, 2019, <https://www.childwelfare.gov/pubs/factsheets/about>.

Special thanks to Jessie Stratton, program manager at Olmsted County Child and Family Services for her energy and ideas, to Leigh Durbahn, Lead Management Analyst at Olmsted County Department of Health, Housing and Human Services for her extensive proofreading and suggestions, and to Shannon Scott, Director of Learning and Leadership Development at Foster America for her valuable ideas. Thank you to the Olmsted County PACE team for their work on the ground every day.

Mathangi Swaminathan is a Senior Fellow of Foster America placed at Olmsted County Department of Health, Housing and Human Services. She is also the founder of Parity Lab and an alumna of Harvard Kennedy School of Government. Email: mathangi.swaminathan@foster-america.org



© Vadreams | Dreamstime.com

The Challenge of Changing Amorphous, Limitless Neglect Laws in a Family Surveillance Society

Diane L. Redleaf

Introduction: Overbroad Neglect Laws and Neglect Reporting Laws Make Defense of Families Nearly Impossible

Child neglect has become a dog that has swallowed child abuse's tail. Despite the focus of public attention on child abuse as the prime "evil" that requires public attention, nowadays, child neglect allegations dwarf child abuse allegations by wide margins (with 74.9 percent of the reported victims).¹ Child neglect reports have become so prevalent that it has become nearly impossible to get a clear picture of what constitutes "child neglect". Neglect's boundaries are invisible. Just about any act or omission related to a child *could* qualify as neglect. Most states lump widely disparate categories of neglect together (although 10 states categorize "medical neglect" separately² and 25 states treat educational neglect separately as well).³

But reported data also tells nothing about how serious or harmful so-called neglect is.⁴ From readily available data, it is impossible to distinguish between a 9-year-old who was happily playing in her own backyard when a passerby called the hotline versus a toddler who was left unattended overnight.⁵ Both are potential "victims" of "neglectful supervision."⁶

The amorphous quality of child neglect laws also makes the legal defense of accused parents especially difficult.

A new framework is needed.

Precisely because neglect is so polymorphous, advocates must become clearer about the

¹ Data cites are to HHS, *Child Maltreatment* (2019) unless otherwise indicated. "Neglect only" cases account for 61.0 percent of the alleged victims; while physical abuse only accounts for 17.5 percent of victims and sexual abuse only just 9.3 percent of victims. Not only does neglect dwarf abuse, but rates of physical and sexual abuse have considerably declined over the past two decades, while rates of neglect have held steady and remain the highest among the reported maltreatment types. From 1990 to 2017, rates of substantiated physical abuse declined by 40 percent and sexual abuse rates by 62 percent; by contrast, rates of substantiated neglect fell by only 8 percent over this same period. As discussed below, see n. 12, raw numbers of children reported to hotlines have steadily increased with disproportionate impact.

² ASU Morrison Policy Institute, "Child Neglect in Arizona" (2017).

³ See <https://www.childwelfare.gov/pubPDFs/define.pdf>. This article focuses on neglect as an overarching category. Although some of the conclusions of this paper will apply to both medical neglect and educational neglect, these subcategories are not a focus of the paper.

⁴ See *note 2 supra* (finding that a whopping 81 percent of neglect reports involved claims of inadequate supervision vs. 19 percent alleging physical neglect and 9 percent alleging medical neglect). At the same time, supervisory neglect cases resulted in 5 times fewer removals of children than other categories of neglect. See n.13 and discussion in text related to Coohy study addressing similar examination of inadequate supervision cases in Iowa.

⁵ See the discussion of overbreadth of the "inadequate supervision" ground in Illinois, D. Redleaf and C. Fuller, *When Can Parents Let Children Be Alone*, And see below Section III.B.

⁶ Rates of error in substantiated findings, in both abuse and neglect cases that are reviewed by neutral magistrate reviews are "staggering," according to federal courts that have heard constitutional challenges to registered findings. I have written elsewhere about the lack of due process in child abuse and neglect registers. See, e.g., *Verdict*, *Child Abuse Registers Abuse Due Process*, *Verdict Magazine* (April 2018), available at <https://documentcloud.adobe.com/link/track?uri=urn%3Aaaid%3Aascds%3AUS%3A45d0172f-8241-4ee8-bffa-cdd679854179>.



Diane L. Redleaf

language they employ to describe both legitimate and illegitimate claims regarding harmful parenting. This requires hard work on definitions and their interpretation. It also calls for multi-strategy advocacy, coalition building, and persistence.

This paper presents some recent and emerging models for this advocacy drawn from my experience representing families and pressing for policy change. This experience includes class-action litigation, appellate litigation, and legislative policy change proposals, including “Family Poverty is not Neglect.”

In Part II, I provide a brief overview of the history and the prevalence of neglect reporting in conjunction with the development of mandatory child abuse reporting laws and practices.

In Part III, I discuss some common features of neglect laws to demonstrate their breathtaking range, as well as some reasons why neglect laws have gotten a pass for too long. I urge rethinking the use of the term “neglect” altogether (and abandoning it!), as its function is purely pejorative and unhelpful in determining which children are in genuine need of state intervention.

In Part IV, I describe three specific neglect-narrowing strategic campaigns in which I have been directly involved, showing how multi-strategy advocacy can narrow the reach and traumatic impact of the family regulation system into family life.

In Part V, while proposing the elimination of “neglect” in favor of a new lexicon, I nevertheless discuss the governing standard that should be applied to cases that fall within the currently conceived range of cases in which some state intervention may be justifiable. I also discuss some proposed revised definitions that significantly tighten neglect laws in critical respects.

Finally, I conclude with some suggestions as to how advocates can build broad-based campaigns focusing on changing neglect laws to create systems that meet children’s needs and do not needlessly traumatize families.

The Origins, Rationales and Prevalence of Neglect Reporting Requirements

Mandatory child abuse reporting, adopted nationally in 1974 through passage of the Child Abuse Prevention and Treatment Act (CAPTA),⁷ started out as a modest measure to address doctors’ fears of lawsuits for reporting parents suspected of battering their children. The policy was crafted deliberately to obscure the broader social and economic contexts in which harm to children at the hands of their caregivers occurs. Advocates for mandatory reporting deliberately painted severe child abuse as a cross-class issue that was untethered to poverty or any problems that might call for costly solutions. Mandatory reporting was viewed as essentially cost-free.⁸

Despite its initially limited rationale, laws defining mandatory reporting duties gradually extended into every child-serving profession, from acupuncturists to funeral directors.⁹ Indeed, mandated reporter categories expanded to the point that many states have thrown in the towel, defining every adult as a mandated reporter.¹⁰ Simultaneously, state and private-partnered public education campaigns cajole the general public to look for and report child abuse (“see something, say something”).¹¹

Today, every state faces an epidemic of hotline calls that it struggles to respond to in

⁷ 42 U.S.C. §§5101 et seq.

⁸ This history and analysis of the politics and messaging campaign that went into the adoption of CAPTA is masterfully recounted in B. Nelson, *Making an Issue of Child Abuse: Political Agenda Setting for Social Problems*, (University of Chicago Press, 1984). The book is also prescient in foretelling some serious concerns that would widen and deepen as CAPTA was implemented around the country.

⁹ 325 ILCS 5/4 (Illinois reporting law) lists embalmers and animal control officers too.

¹⁰ See http://www.ncdsv.org/images/SPARC-FF-CF_ardingMandatedReportingOfChildMaltreatment_9-2012.pdf.

¹¹ See, for example, <https://nj1015.com/if-you-see-something-say-something/>. And see, Department of Homeland Security campaign to report suspicious terrorist activity, adding to the drumbeat of public urging to report any and all “suspicions” to authorities. <https://www.dhs.gov/see-something-say-something>

a timely manner. But today's epidemic is driven by neglect calls, not child abuse allegations. The latest published figures show that over 7.8 million children were reported to hotlines (more than 10 percent of children in the United States). Year after year, the increase in total referrals alleging child abuse and neglect has been a virtual straight line up. Referrals that are screened in to receive an investigation has reached the point that 53 percent of African American and 38 percent of all children will have a child abuse or neglect investigation at some point in their lives.¹²

Yet, neglect as a category for reporting has been treated like an afterthought—a tag added to the undeniable public concern about physical and sexual child abuse. Child abuse registers are rarely referred to as “neglect registers” despite serving as a repository for retaining untold millions of neglect findings. Once lumped together with heinous abuse, it is hard to disentangle the parent charged with a vague form of neglect from the web of labels that put her parenting abilities into a negative light.

I. What Neglect Laws Look Like and Why They Get Away with Being So Vague

A. The Meaninglessness, Though Pejorative, Nature of Neglect Allegations, and The Effect on Family Defense

“Neglect” has no content; it is merely a pejorative label. It points to no specific culprit or perpetrator. Indeed, whole communities, states, or nations might be responsible for a neglected child's plight. While child abuse necessarily has a perpetrator, neglect perpetrators can be invisible, numerous or ubiquitous—all of us may be responsible. Labeling a child “neglected” tells nothing about how the child got to be in a state of deprivation.

Actual neglect laws operate with a breathtaking sweep. Indeed, “neglect” so poorly describes any specific conduct that it is shocking that it is the basis for a legal mandate to make hotline calls.

What do I mean when I say “neglect” has no content?

1. Neglect is too many things at once. Many disparate kinds of actions, or failures to act, are swept into the label “neglect.” For example, in Illinois, there is a detailed lexicon for all abuse and neglect allegations. Abuse has 23 different allegations; neglect has 47, ranging from “death by neglect,” to “environmental neglect” (e.g., rodent infestation), to neglecting a “mental or emotional impairment” of a child. The allegation system provides relatively clear physical or sexual abuse findings of various descriptions (from head injuries to sexual exploitation), while specific manifestations are not required for a neglect charge to be substantiated.

But even this description of one state's complex lexicon just scratches the surface. In May 2003, Carol Coohy catalogued 10 different forms “supervisory neglect” reported to Iowa child protective services.¹³ “Not watching a child closely” amounted to 29.3 percent of the reports (the largest category). Cases within the broad “supervisory neglect” rubric included exposing a child to a domestic violence perpetrator to “driving while intoxicated.” Possible harm to the children ranged from “not even problematic” (leaving a healthy child alone for a few minutes) to deadly dangerous.

¹² V. Sankaran, “With Child Protection, Racism is Hiding in the Discretion,” *The Imprint*, 6/21/20, <https://imprintnews.org/child-welfare-2/with-child-welfare-racism-is-hiding-in-the-discretion/44616>; And see <https://youthtoday.org/2021/08/black-children-most-likely-to-be-investigated-by-cps-study-says> (noting some jurisdictions have rates higher than 60 percent of all Black children having experienced a hotline investigation). Edwards, Frank, et al. “Contact with Child Protective Services Is Pervasive but Unequally Distributed by Race and Ethnicity in Large US Counties,” *Proceedings of the National Academy of Sciences*, vol. 118, no. 30 (National Academy of Sciences July 2021). www.pnas.org.libproxy.lib.unc.edu, <https://doi.org/10.1073/pnas.2106272118>. Kim, Hyunil, et al, “Lifetime Prevalence of Investigating Child Maltreatment Among US Children.” *American Journal of Public Health*, vol. 107, no. 2, American Public Health Association, Feb. 2017, pp. 274–80. ajph-aphapublications.org.libproxy.lib.unc.edu (Atypon), <https://doi.org/10.2105/AJPH.2016.303545>.

¹³ Carol Coohy, “Defining and Classifying Supervisory Neglect,” *Child Maltreatment*, Vol. 8, No. 2 (May 2003).

Coohy points out that a problem in the neglect categories is they are not mutually exclusive.

2. No specific evidence of harm is required under neglect laws, nor is any degree of severity required. Instead, because neglect is the omission of action, rather than a specific action, it generally operates in the realm of the potential risk of harm rather than actual harm that has already occurred.¹⁴
3. Neglect laws typically are very summary and employ vague concepts. Some states merely provide that the State has jurisdiction to adjudicate “neglect” without much elaboration. Neglect laws in children’s codes and reporting laws also often employ enough wiggly words that the door into the child welfare system is wide open, permitting discretion to pejoratively label just about any conduct or failure to act as one person believes another “should” have done.

A 50–state (plus D.C.) survey undertaken by Let Grow in 2020 examined state neglect laws in relation to so-called “neglectful supervision.”¹⁵ The project’s goal was to determine which states had laws that expressly prevent children from engaging in routine independent activities like playing outside, walking to school, or being home alone.

The project created a 50–state map of criminal child endangerment and children’s code neglect laws. Let Grow concluded that 45 states had overly vague neglect laws with no protection to the child playing happily alone, should that unlucky child have the hotline called. State laws might use entirely conclusory labels (see, e.g., Connecticut,¹⁶). Other states were little better, incorporating a definition of neglect that uses the term “lack of proper care,” as if the term “proper” contained some limitation.¹⁷

4. Neglect laws do not set a clear boundary between good and bad parenting behavior.

For all of the reasons above, neglect laws provide little notice to the public when conduct

within the “neglect” category crosses a line that makes it blameworthy. While laws, in general, should guide community members’ behavior, limitless neglect laws provide no such meaningful guidance to either parents or neglect reporters (or for legal counsel, whose job includes knowing the law and advising clients accordingly).

Such undefined “know it when you see it” findings of wrongdoing would be legally intolerable in a criminal justice context. Criminal law jurisprudence incorporates the time-honored principle that the law must give notice to a person accused of a crime when their conduct would potentially subject them to criminal penalties. Criminal laws that are unduly vague can be stricken as unconstitutional.¹⁸ Rarely does this occur in the child welfare/family regulation context, however.

These factors all lead to a conundrum for defenders of families accused of neglect. Family defense attorneys face the unenviable task of establishing that their parent client

¹⁴ I’m grateful to Thomas Morton for his framing of the neglect vs abuse dichotomy as centered on the reliance of “risk” in neglect vs. actual harm in abuse cases. See T. Morton and B. Salowitz, “Evolving a Theoretical Model of Child Safety in Maltreating Families,” *Child Abuse and Neglect* (November 20, 2006).

¹⁵ Two articles [here](#) and here describe the project more fully.

¹⁶ Connecticut law provides: “A child may be found ‘neglected’ who, for reasons other than being impoverished, (A) has been abandoned, (B) is being denied proper care and attention, physically, educationally, emotionally or morally, or (C) is being permitted to live under conditions, circumstances or associations injurious to the well-being of the child.” Conn. Gen. Stats. § 46b-120(4) (2019). This law, typically, uses passive tenses (“is being denied” “is being permitted” and a host of limitless vague terms— “proper” “care” “attention” “conditions” “circumstances” and “associations”) with no threshold requirement of serious harm to the aspirational and amorphous “well-being” of the child. Pennsylvania law is similar. 42 Pa. Stat. and Consol. Stat. Ann. § 6302 (West)

¹⁷ For an example of one of many state statutes that includes “lack of ‘proper’ care” in its neglect definition, see Nevada statutes at NRS 432B.140.

¹⁸ New life was infused into vagueness review by the relatively recent decision of Justice Neil Gorsuch in *Sessions v. Dimaya*. 200 L. Ed. 2d 549 (2018). In a 5–4 ruling, the Court struck a criminal immigration statute that provided penalties for “crimes of violence” on the ground that it was “void for vagueness” in a case that raised the question of whether a residential burglary fit within the statute.

isn't blameworthy under a legal standard that could touch any possible parenting omission. Judges liberally apply both hindsight as any past deficient behavior and risk aversion as to the future possibility that the parent might provide less-than-optimal care of a child. Since neglect standards are not generally clear or limited to egregious cases of harm, they permit rampant substitution of judgment by caseworkers, social service providers, and prosecutors for basic parenting decisions, without recognizing the "heads you win, tails I lose" quality of choices many parents face.

In this respect, though counterintuitive, defense lawyers often find it easier to defend parents from abuse than neglect claims. It is much harder to rebut a negative stereotype than respond to allegations that can be supported or contradicted by real evidence.¹⁹

Advocates for policy change are stymied too when the categories for data gathering tell nothing about either the harm that is assessed or the needs of the child that are unmet.

B. Factors That Have Led to the Neglect Morass

While neglect was an afterthought as child abuse reporting expanded, neglect cases now crowd out resources for the children who are in genuine danger of harm inflicted by their caregivers. Laws treat neglect as an available catch-all category for negative judgments against parents. Many reasons contribute to laws that treat neglect as an available catch-all category:

- Fuzzy thinking about parenting and its challenges.
- An impatience with legal-line drawing.
- The genuine challenge of defining categories of harm to children with care.
- A failure to reckon with the harms wrought by state intervention against often defenseless.
- Racially unequal populations. [KB1] [CM2]

Yet, these broad categories have a clear impact, serving as justifications for further harming Black, brown, Native, poor, and single (usually female) parents—i.e., the already relatively powerless parents in our society. In this respect especially, the reconsideration of neglect laws is a racial and social justice imperative.

Of course, parents *do* have a legal obligation to take care of their children, and disapproval of parents who fail in these obligations is pervasive. Children who have no parents to care for them are entitled to have the state step in under the "parens patriae" doctrine. However, neglect laws go further and blame the parent for fundamentally failing their child, often without clarity about the specific duty of care the parent breached.²⁰

Benign-sounding rationales for neglect reporting, however, have been offered. During the Dupuy litigation (a class action challenge to the child abuse registry system for allowing "practically nominal" amounts of evidence to suffice for substantiation of findings), one of the architects of the Illinois child protection system testified that neglect reporting was initially viewed as a beneficent social service rationing device.²¹ Believing the taxpaying public had no appetite to provide concrete and social services to poor, "neglect" labels offered a triage opportunity to deliver social services to a subset of needy children. This was not meant

¹⁹ I noticed this difference (i.e., factually complex physical abuse cases were easier to defend than low-level neglect allegations) in my own caseload and, with staff of the Family Defense Center, wrote a series of articles about it under the heading of how gender plus bias operates in the child welfare system. See: <https://www.americanbar.org/groups/litigation/committees/childrens-rights/articles/2011/protecting-mothers-against-gender-plus-bias-part-1/>; <https://www.americanbar.org/groups/litigation/committees/childrens-rights/articles/2012/protecting-mothers-against-gender-plus-bias-part-2/> and <https://www.americanbar.org/groups/litigation/committees/childrens-rights/articles/2012/protecting-mothers-against-gender-plus-bias-part-3/>

²⁰ "Neglect" findings create an exception to the presumption of fitness under *Troxel v. Granville*, 530 U.S.57 (2000) (holding parents' fundamental rights are not forfeited absent a showing of unfitness).

²¹ *Dupuy v. McDonald*, 141 F. Supp. 2d 1090 (N. D. Ill. 2001), *aff'd* in relevant part, 397 F. 3d 493 (7th Cir. 2005). This rationale was presented by plaintiff's expert William Ryan, a former head of the Illinois Division of Child Protection in the Greg Coler DCFS Administration.

to provide more grounds for separating families. Nor was there a plan for neglect findings to be used in registers as employment blacklists. The early designers of hotline systems and registries did not fully envision the ways these laws would evolve to harm families.

The view that labeling families “neglectful” can “help” as a triage gateway to services has not disappeared. Alternative gateways to needed services are not well developed for many categories of children.

However, reversing course is difficult once a family receives a neglect label in a state’s central register or in a juvenile court case. When asked to construe neglect laws, judges often act as rubber stamps instead. If cases make their way to the appellate court, appellate judges may throw up their hands, treating neglect as beyond the pale of definition. Judicial opinions declare that neglect is a “sui generis” category that judges “know when they see it.”[22] Without clarity in the law to separate neglect from non-neglect, parents who have legal advocates are stymied in presenting a case for exoneration.

Recently, however, the sweep of neglect laws has received more focused criticism. As Professors Richard Barth and Jill Duerr-Berrick and their colleagues state:

“Additional confusion may arise due to how neglect is defined in some state policies guiding reporting. The large majority of states include in their definition lack of supervision and abandonment, lack of medical care, and some form of lack of basic needs; they also range from requiring risk of harm to actual harm in order to respond (Rebbe, 2018). Many states try to differentiate between what may be termed, involuntary neglect—conditions associated with poverty alone—from cases that should be determined as maltreatment because parental behaviors or inaction stem from more than lack of resources (Rebbe, 2018)...There are well-founded critiques regarding the variability of child neglect laws across the country (Milner & Kelly, 2020; Wald,

2014); efforts to clarify and narrow these definitional frames for certain forms of intervention are warranted (Day et al., 2021). On the other hand, it is not clear how such clarifications should be implemented.”²³

These authors’ uncertainty to the contrary, it is possible to develop effective strategies for narrowing neglect. Indeed, several such strategies have already borne fruit, as discussed in the next section.

II. Three Specific Unbounded Categories of Neglect and Three Narrowing Neglect Strategies

A. Unbounded Category: "Injurious Environment" and the Five-Year-Long Strategy to Narrow this Category in Illinois.

Sometimes, old-fashioned lawyering pays off. That was the case in the multifaceted successful effort to narrow the sweeping “injurious environment” category of neglect in Illinois. As of 2013, one-third of the substantiated findings in the Illinois child abuse register fell into this huge, boundless category. As a result of a five-year-long multi-part campaign, in 2013, Child Protective Services (CPS) rule that defined the “injurious environment” category of neglect stricken as void by the Illinois Supreme Court. Two class-action suits followed, and tens of thousands of parents and caregivers eventually had their names expunged from the Illinois State Central Register. A tighter legal definition also emerged, setting the stage for developing model legislation discussed in Part IV below.

In 2009, Julie Q. had an “injurious environment” finding substantiated against her as to her 9-year-old daughter after her ex-husband accused her of drinking in her daughter’s presence. (Julie did not deny her past history of alcohol abuse). After failing at the first two levels of her plea for exoneration, her case proceeded to the Illinois Appellate Court.

²³ Richard Barth, Jill Duerr-Berrick et al, “Research to Consider While Effectively Re-Designing Child Welfare Services, Research on Social Work Practice 2021 (Sage), Vol. 0(0) 1-16 at 4.

There, she argued that Illinois' "injurious environment" neglect rule was unauthorized by Illinois statutes.

Sara Block (then a Skadden fellow working in the intersection of child welfare and domestic violence) uncovered the eventually winning argument. Her legislative history research revealed that the Illinois legislature—in 1980—had deliberately removed the term "injurious environment" from the state's reporting law. Legislators had decried the "injurious environment" language as overbroad and standardless. But despite the legislature's clear intent not to allow such overbroad statutory language, in 2002, Illinois's CPS agency adopted a definition of "injurious environment" in its administrative rules.

Based on the plain conflict between that Illinois rule and the legislation that had removed that same language, the Illinois Appellate Court declared the state's "environment injurious" rule unauthorized and "void ab initio."

While Julie Q.'s case was awaiting Illinois Supreme Court review, the child welfare agency tried to reinsert the "injurious environment" language back into Illinois statutes. But lawyers for parents immediately objected. They joined with allies (especially in the domestic violence advocacy community, who understood how this ground was weaponized against domestic violence victims). Stakeholders began to work together to fashion a better, tighter definition of neglect—defining neglect as the "blatant disregard" of "obvious danger to the child" which would result in "serious harm" such that any reasonable parent would take precautionary measures to prevent such danger. These tightened amendments were adopted into Illinois law in 2012.

The Illinois Supreme Court affirmed the appellate court's voidness holding. The CPS agency then expunged the names of over 13,000 persons listed as perpetrators of "environment injurious" neglect from the State Central Register. It did not immediately change its "injurious environment" rule, however. Rather, the State continued to issue findings of neglect under the void rule. A class-action suit, *Ashley M. v. DCFS*, sought an injunction to compel adoption of a new rule and the

expungement of cases that continued to be substantiated following the Julie Q. ruling.²⁴

Eventually, over 26,000 individuals had their names removed from the Illinois State Central Register following the *Julie Q.* case and two class-action suits.

This work still represents a high-water mark in campaigns to narrow neglect laws, but it also shows what is possible through concerted legal and legislative efforts. It also set the state for model neglect law development (discussed in Section IV).

B. Unbounded Category #2: Lack of Supervision

Perhaps it should have been obvious that eliminating one big category of neglect would create new pressures to expand the use of another catch-all category. But soon after the "environment injurious" category was tightened—the number of cases substantiated for "inadequate supervision", the second largest category of neglect in the Illinois system, began to increase. In individual cases, allegations of "inadequate supervision" were added to cases at the same time as "injurious environment" allegations were eliminated. The CPS agency continued to use an open-ended "inadequate supervision" rule for thousands of cases.

This state of affairs continued until Natasha Felix's story got national attention in the Washington Post. Natasha Felix was a low-income Puerto Rican mother. Her children, ages 11, 9, and 5 had been playing in the park that abutted her apartment. She could see them out the window and looked out a few times while they played for 30–40 minutes. But a daycare teacher, there with a group of children, called

²⁴ *Ashley M., et al. v. Illinois Department of Children and Family Services, et al.*, 2013 CH 2027; A (class action seeking expungement of findings prior to adoption of a new rule); *Etonia C. et al v. Illinois Department of Children and Family Services*, 15 CH. 4487 Chancery Div., Cook County Circuit Court) (filed after DCFS used emergency rulemaking inappropriately to adopt a new rule).

The Family Defense Center (which I founded) operated a large scale pro bono legal services program with 15 major Chicago law firms, described [here](#). This program in turn provided high quality legal services including the ability to conduct class action and major civil rights cases like the ones described in this article.

the hotline. After investigation, Natasha was listed as a child neglecter. For over two years, her appeals for exoneration were pending and she was unable to work as a home health worker due to the blacklisting effect of being on the Illinois Child Abuse Register.

After losing at two levels, Ms. Felix's case reached the Illinois Appellate Court. The *Washington Post* story came about only because two children (last named Meitiv), ages 10 and 6, already created an international stir. These Silver Spring, Maryland children were stopped when walking home alone from a familiar park and quickly became poster children for CPS overreach, putting the term "free-range kids" into the national conversation. After I reached out to Post reporter who had been writing about the Meitiv kids, she soon added an account of Ms. Felix's plight to the litany of stories about the Meitivs.

The *Washington Post* story about Natasha Felix left the Illinois DCFS Director chagrined. He quickly urged a settlement of Ms. Felix's appellate court case and the development of a new policy.

But the CPS agency did not draft a new rule quickly. Indeed, a trial-level judge soon declared the State's "inadequate supervision" rule, like the "injurious environment" rule, was void.[25] Extensive negotiations, a class-action suit,[26] and the engagement of another major law firm to press for new rules and a process for expunging registered findings proved necessary once again.

This work also set the stage for the eventual adoption of legislative proposals pressed by Let Grow and its allies. See Section D below.

C. Unbounded Category #3: Poverty Masking as Neglect, Neglect Masking as Poverty, and the Tangle of Causation.

Possibly the most boundless category within the array of neglect laws is the category that intersects with poverty most clearly: the labeling of children "neglected" when their parent fails to meet their "basic needs" for food, shelter, clothing, and medical care. Most state neglect laws have such a definition of neglect.

But, as Prof. David Pimental notes, only about 12 states and the District of Columbia make a specific exception for parents who lack the financial means or ability to provide these necessities for their children.²⁷ Most of these states exempt impoverished parents from liability for neglect, however, only if the acts or omissions are "solely" or "primarily" the result of their lack of financial means. Exactly how a caseworker is expected to assess the primacy of the role that poverty played in "neglect" is generally unclear.

Federal law proposals introduced by Rep. Gwen Moore²⁸ would forbid the separation of children from their parents on the basis of poverty. These proposals would require adopting policies and procedures to clarify the difference between poverty and neglect, with an assurance that concrete services (housing, cash supports) are available to parents who face separation from their children. But while the notion that children should not be separated from their parents for reasons of poverty is broadly accepted, disentangling poverty from what passes as neglect can be challenging in practice. There is a deep reluctance on the part of child welfare systems and large segments of the public to provide concrete supports for families. Unfortunately, the entanglement of poverty with neglect exacerbates their poverty and traumatizes children and families.²⁹ If concrete services would prevent a family separation, however, the label "neglect" too often stands in the way.

D. Models That Tighten Neglect Standards — Across the Board and Piece by Piece

As the discussion above shows, it is possible

²⁵ *Manier v. DCFS*, 14 CH 20237 (Hall, J.) which resulted in a finding that the "inadequate supervision" rule was void. (CH numbered cases are Cook County Circuit Court cases).

²⁶ *Nicole P. v. IDCFS*, 2016 CH 12809 (Meyerson, J.).

²⁷ D. Pimental, "Punishing Families for Being Poor: How Child Protection Interventions Threaten the Right to Parent While Impoverished," 71 OKLA. L. REV. 885 (2019), <https://digitalcommons.law.ou.edu/olr/vol71/iss3/5>

²⁸ "Family Poverty is Not Child Neglect" has been introduced twice, in 2018 (H.R. 6233) and 2019 H.R. (2535) and its provisions were incorporated into the House version of Stronger CAPTA.

²⁹ See D. Redleaf, "[Biden's Child Welfare Focus Should be Removing Poverty from Neglect.](#)" *Imprint* (Dec. 21, 2020).

to tighten neglect definitions. Yet, work to meaningfully narrow neglect grounds is challenging, multifaceted, often legally complex, intersectional, resource-intensive, and sometimes frustrating. The forces of the status quo are strong.

Fortunately, advocates can look to some powerful new tools. The American Law Institute has recently (in 2019) proposed a tightened research-based redefinition (a “Restatement”) of physical neglect (as distinct from educational neglect and emotional neglect). The authors agree that neglect laws are too vague and overbroad, stating, “Unlike the category of physical abuse, which addresses a relatively circumscribed set of parental behaviors, the category of physical neglect covers a wide range of parental behavior. Without a sufficiently narrow definition, the state could intervene in the lives of many families. In light of the potential harm to children and families stemming from involvement in the child-welfare system, as well as the threat to family integrity.” The proposed restatement on Physical Neglect (civil law version) adopts a significantly tighter version of the law than is currently in effect in most states. Its governing standard provides “a child is physically neglected when the child suffers serious physical harm or is exposed to a substantial risk of serious physical harm as a result of the failure of a parent, guardian, or custodian to exercise a minimum degree of care in providing for the physical needs of a child.”³⁰

The challenge of narrowing and/or eliminating large swaths of neglect laws and practices has also been taken up by United Family Advocates, a bipartisan coalition working to advance policy change in the interest of families, and Let Grow, a national advocacy organization that pushes for laws and policies that promote children’s independence and resilience in place of state-mandated “helicopter” parenting. A model law drafted by United Family Advocates, which picks up on the 2012 Illinois legislative change discussed above, passed as an ALEC model and one taken up by Let Grow too.³¹ Children’s independence laws, promoted by Let Grow, which also narrow neglect definitions, passed in Utah in

2018 and in Oklahoma and Texas in 2021.³² In 2022, Let Grow is working with bipartisan coalitions of allies, including affected parents and family defense attorneys, psychologists, law professors, and school administrators, among others, on similar law proposals in Colorado, Nebraska, and South Carolina.

Beyond these positive, though incremental changes, however, it would make sense to abandon the neglect label altogether and substitute current law with specific harm categories that can be enumerated and specified more clearly, as in the discrete categories of “abandonment” or “failure to thrive.”

To be sure, some parents will remain unable or unwilling or unfit to protect their child even when the means of caring for the child are available to them. But egregiously dangerous disregard for children’s safety can be defined without using overbroad language that sweeps the good in with the bad. There is no genuine need for a sweeping fault-finding (and ultimately punitive) adjudicatory system that uses the overarching language of neglect.

“Dependency” categories should be employed for parents who are incapacitated by mental health conditions or serious addictions that render them truly unable to care for their children. These parents likely would have their own needs better met by a system did not use punitive labels for disabilities.

Such revisions would: (1) allow parents to know when their conduct crosses its line; (2) provide for meaningful legal defenses that are amenable to evidentiary proof; and (3)

³⁰ *Restatement of the Law – Children and the Law* § 2.24 TD No 2 (2019), Section 2.24. Additional sections on specific forms of neglects contain some troubling “waffle words” but also contain helpful guidance, including for example, requiring that parents “know or should have known” of harm or risk of harm in “failure to protect” cases and “fail to take reasonable precautionary measures to protect the child”—language that mirrors the Illinois post-Julie Q. amendments.

³¹ The Let Grow version of this law is [here](#) (Model 2 is the original model; states have adapted this model in versions 1, 3 and 4); the ALEC version of the same model law is [here](#). United Family Advocates web page is [here](#).

³² See Utah SB 65 (2018), Utah Code Ann 78-6, Oklahoma, H.B. 2565 (2021), and Texas H.B. 567 (2021). Let Grow has also developed a legislative toolkit and model laws that it uses in its coalition building and campaigns.

facilitate the collection of more meaningful data, including allowing the severity of the child's need to be reported and evaluated. Current neglect laws fall very far from these benchmarks.

While the models developed by ALI, UFA, ALEC, and Let Grow are excellent starting points, a broader coalition of supporters is needed to secure passage of reformulated approaches to neglect laws. Neglect overbreadth is impacting many populations, particularly communities of color, domestic violence survivors, formerly incarcerated parents, single mothers, and persons living in poverty. Successful neglect narrowing campaigns have worked hand-in-hand with strong family defense legal advocates, pro bono legal programs, and legislative allies. It is important to expand the resources and alliances (including, especially, expansion of legal advocacy programs) in order eliminate the harmful use of neglect laws and neglect reporting that oppress, rather than protect, children and families.

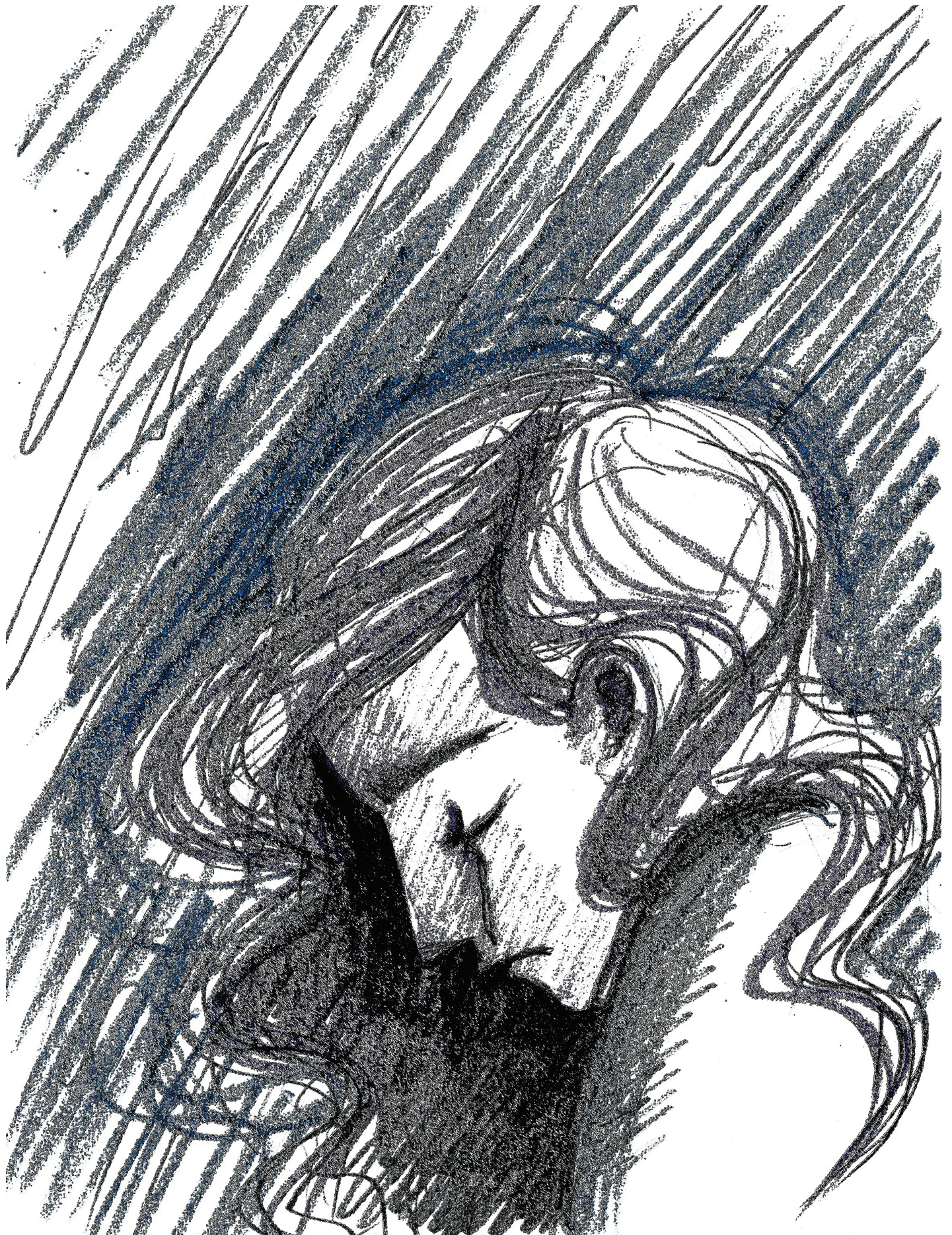
Conclusion

Absent limitations on what constitutes neglect, the notion that millions of adults in America are now under a duty to report reasonable suspicion of neglect to the authorities is absurd. Neglect itself is a category that should be erased as both meaningless and harmful to the assessment of children's needs. Public systems that respond to children's basic needs and address harm to children will continue to be needed, of course, but the process of neglect reporting and investigation diverts resources from families, adds to family poverty, and traumatizes its targets. Neglect (except in more carefully delineated categories like "abandonment") should be removed from mandatory reporting laws. We should no longer require anyone to make a call, when they think a child is neglected, if we cannot state with clarity what child neglect is.

Diane L. Redleaf is a Chicago-based attorney. She has been a civil rights litigator, policy advocate, non-profit agency founder, author, law professor for nearly four decades.



© Lunamarina | Dreamstime.com



© Carla Castagno | istock.com

Help Not Hotlines: Replacing Mandated Reporting for Neglect with a New Framework for Family Support

Shereen A. White, Shanta Trivedi, Shakira Paige,
Meredith Giovanelli, and Makena Mugambi

Introduction

There is no shortage of calls to reimagine legal and social systems and rethink the concept of safety in order to strengthen and empower communities as recognition of the detrimental effects of these systems on marginalized communities grows. As these calls draw every system in this country under a microscope, we must examine and dismantle all practices, policies, and structures that stand in the way of building well-resourced, strong communities where children and families can remain safely together. One such practice within the child welfare system is that of mandated reporting. Reporting for neglect based on lack of financial resources or an inability to access support services is particularly cruel and pernicious; it must end if we want to achieve the ultimate goal of strengthening communities. Taken as a whole, mandated reporting laws have done more harm than good. As applied to people experiencing poverty, particularly Black people, these laws have given the state license to destroy their families and communities.

Parents and former foster youth who have first-hand experience with the child welfare system have provided us with insight into what communities and families need to thrive. Rather than protecting children and strengthening families, mandated reporting too often uproots children, devastates families, and inflicts additional trauma on children and parents. It has deviated so far from its stated purpose that it has been likened to “stop and frisk” for families¹ — a tool of omnipresent surveillance

and devastation. Mandated reporting is a key reason that many impacted parents, activists, advocates, and scholars now call the “child welfare” system, the “family regulation” or “family policing” system.² In our response to calls to reimagine the family regulation system (“family regulation system” or “the system”), we must be led by the voices of impacted parents and young people in envisioning and implementing a framework for child safety

¹ Michelle Burrell, *What Can the Child Welfare System Learn in the Wake of the Floyd Decision?: A Comparison of Stop-And-Frisk Policing and Child Welfare Investigations*, 22 CUNY L. REV. 124, 130-38 (2019), <https://academicworks.cuny.edu/clr/vol22/iss1/14/>.

² Dorothy Roberts, *Abolishing Policing Also Means Abolishing Family Regulation*, *The Imprint* (June 16, 2020), <https://imprintnews.org/child-welfare-2/abolishing-policing-also-means-abolishing-family-regulation/44480> (asserting that the “misnamed ‘child welfare’ system . . . is designed to regulate and punish black and other marginalized people,” and “could be more accurately referred to as the ‘family regulation system.’”); *Family Policing Definition*, upEND Movement, <https://upendmovement.org/family-policing-definition/> (last visited Dec. 14, 2021) (noting that the term family policing system, “more accurately captures the roles this system plays in the lives of families, which include surveillance, regulation, and punishment, all roles associated with policing rather than children’s welfare”); Halimah Washington et al., *An Unavoidable System: The Harms of Family Policing and Parents’ Vision for Investing in Community Care, Rise & TakeRoot Justice* (2021), at 6, <https://www.risemagazine.org/wp-content/uploads/2021/09/AnUnavoidableSystem.pdf> (Explaining that “‘family policing’ highlights the system’s connection to and similarities with the criminal legal system,” and “most accurately and directly describes the system’s purpose and impact.”).

that is rooted in community success and not family punishment.

History Of Mandatory Reporting

Established over five decades ago, mandated reporting is a policy that lacks empirical justification for its efficacy but continues to fuel unnecessary surveillance and regulation of families.³ While it purportedly exists to protect children from harm by encouraging early identification of child maltreatment, the system of mandated reporting has ultimately contributed to increased surveillance and separation of Black and Brown families, without necessarily improving the safety of children who are harmed or at risk of harm.⁴

Reporting of child maltreatment became the focus of family regulation policy in the 1960s, amidst growing public concern over the occurrence of child abuse. Although child abuse received attention in some medical scholarship dating from the 1940s, the publication of Dr. C.

³ Patricia A. King et al., *Legal Interventions, in Violence in Families: Assessing Prevention and Treatment Programs* 158, 161 (Rosemary Chalk & Patricia A. King Eds., 1998) (observing that reporting requirements were adopted without evidence of their effectiveness); *The Child Abuse and Treatment Act: 40 Years of Safeguarding America's Children, Nat'l Child Abuse & Neglect Training & Publ'ns Project* (2014), at 15–16, https://www.acf.hhs.gov/sites/default/files/documents/cb/capta_40yrs.pdf (explaining that institutional support for efforts to identify and treat child abuse and neglect was widely lacking because “there was no research related to outcomes and no basis for the formulation of policy other than a desire to protect children from harm and dangerous parenting.”); Mical Raz, *Too Much Reporting, Too Little Service, in Abusive Policies: How the American Child Welfare System Lost Its Way* 55, 70–71 (U.N.C. Press 2020) (asserting that mandated reporting emerged as “the main legacy of 1970s child abuse policy,” and “[d]espite a dearth of evidence on its effectiveness, [it] continues to be the mainstay of current child abuse policies.”).

⁴ Charlotte Baughman et al., *The Surveillance Tentacles of the Child Welfare System*, 11 *Colum. J. Race & L.* 501, 507 (2021) (asserting that “the family regulation system and its ‘surveillance tentacles’ monitor families in low-income communities and increase their susceptibility to becoming entangled in the system. This rampant surveillance is inextricably linked to mandated reporting.”); Gary B. Melton, *Mandated Reporting: A Policy without Reason*, 29 *Child Abuse & Neglect* 9, 15 (2005) (concluding that mandated reporting is a “bankrupt policy,” which “has had clearly negative side effects, some of which probably adversely affect children’s safety.”).



Shakira Paige



Shanta Trivedi



Makena Mugambi, Shereen A. White and Meredith Giovanelli

Henry Kempe's *The Battered-Child Syndrome* drew unprecedented national attention to the issue.⁵ Kempe proposed that physicians "should report possible willful trauma to the police department or any special children's protective service that operates in [their] community," and that reporting "should be restricted to the objective findings which can be verified and, where possible, should be supported by photographs and roentgenograms."⁶ Following the publication of Kempe's seminal article in 1962, the Children's Bureau convened a group of professionals and experts in the field to discuss and develop specifications for a model mandatory reporting law that states could use to design their own reporting statutes.⁷

Issued in 1963, the Children's Bureau's model legislation placed a clear emphasis on reporting of child abuse by physicians.⁸ The Bureau embraced the view that physicians were "in an optimum position to form reasonable, preliminary judgments" as to how physical injuries occurred.⁹ Between 1963 and 1965, the Council of State Governments and the Children's Division of the American Humane Association also issued model legislation with proposed reporting requirements for medical professionals.¹⁰ The underlying assumption in advancing mandated reporting as a policy solution to address child maltreatment was that it would not only encourage identification of children in crisis, but also contribute to child protection and safety.¹¹ The Children's Bureau, for example, explained that the sole purpose of their model legislation was "to protect the child," and expressed hope that identifying children in crisis would lead "to protection from further abuse and to providing [children] with a safe and wholesome environment."¹²

By 1967, all 50 states had enacted legislation requiring professionals, primarily those in the medical field, to report suspected cases of child abuse.¹³ States expanded the scope of their reporting laws considerably in the following decade. The shift towards broader mandated reporting requirements was strongly influenced by the passage of the Child Abuse Prevention and Treatment Act of 1974 (CAPTA).¹⁴ CAPTA conditioned federal funding on meeting certain minimum standards for responding to child abuse and neglect, jointly

defined as "the physical or mental injury, sexual abuse, negligent treatment, or maltreatment

⁵ John E.B. Myers, *A Short History of Child Protection in America*, 42 *Fam. L. Q.* 449, 454-55 (2008); C. Henry Kempe, et al., *The Battered-Child Syndrome*, 9 *Child Abuse & Neglect* 143, 143 (1985), https://www.kempe.org/wp-content/uploads/2015/01/The_Battered_Child_Syndrome.pdf (defining the battered-child syndrome as "a term used . . . to characterize a clinical condition in young children who have received serious physical abuse, generally from a parent or foster parent.").

⁶ Kempe, et al., *supra* note 5, at 153.

⁷ *U.S. Dep't of Health, Edu., & Welfare, Children's Bureau, The Abused Child: Principles and Suggested Language for Legislation on Reporting of the Physically Abused Child* (1963), at 1, <https://babel.hathitrust.org/cgi/pt?id=pur1.32754078884032&view=1up&seq=1>.

⁸ *Id.* at 5-6.

⁹ *Id.*

¹⁰ Alan Sussman, *Reporting Child Abuse: A Review of the Literature*, 8 *Fam. L. Q.* 245, 247 (1974); Monrad G. Paulsen, *Child Abuse Reporting Laws: The Shape of the Legislation*, 67 *Colum. L. Rev.* 1, 5 (1967) (explaining that the American Medical Association also issued suggested legislation for reporting in 1965, but proposed a broader list of reporters, including school teachers and social workers.); Leonard G. Brown III & Kevin Gallagher, *Mandatory Reporting of Abuse: A Historical Perspective on the Evolution of States' Current Mandatory Reporting Laws with a Review of the Laws in the Commonwealth of Pennsylvania*, 59 *Vill. L. Rev. Tolle Lege* 37, 39 (2014), <https://digitalcommons.law.villanova.edu/vlr/vol59/iss6/5/> (noting that the Children's Bureau's model legislation became the most influential of the four proposals).

¹¹ Ben Mathews, *Mandatory Reporting Laws: Their Origin, Nature, and Development Over Time*, in *Mandatory Reporting Laws and the Identification of Severe Child Abuse and Neglect* 3, 5 (Ben Mathews & Donald C. Bross Eds., 2015) (observing that the fundamental premise in the mandated reporting laws enacted between 1963 and 1967 was that "doctors . . . are well placed to identify cases of severe maltreatment, and by reporting it enable intervention by welfare agencies to interrupt the abuse and facilitate health rehabilitation and other services for the child and family."); King et al., *supra* note 3, at 161 ("The mandatory reporting laws were adopted in the belief that they would reveal cases of child maltreatment that were previously undetected and would provide a means for children and families to receive appropriate services prior to the occurrence of serious injuries, thus enhancing child safety and well-being.").

¹² *U.S. Dep't of Health, Edu., & Welfare, Children's Bureau, supra* note 7, at 2.

¹³ Myers, *supra* note 5, at 456; Brown III & Gallagher, *supra* note 10, at 40-42 (explaining that while most state's followed the Children's Bureau's model closely, placing the duty to report on physicians, Nebraska, Tennessee, and Utah instituted universal reporting laws).

¹⁴ Mathews, *supra* note 11, at 9-10.

of a child”¹⁵ These minimum standards pushed states to expand the definitions of child maltreatment in their reporting statutes and broaden the network of professionals required to surveil families.

In the four years after Congress enacted CAPTA, 14 states introduced reporting requirements for nurses, 24 introduced reporting requirements for social workers, 25 introduced reporting requirements for educational personnel, and 31 introduced reporting requirements for law enforcement personnel.¹⁶ This transformed the narrow reporting regime envisioned by Kempe and the Children’s Bureau into an expansive system, reliant on an extensive network of reporting professionals. Importantly, these sweeping changes were not grounded in evidence that more reporting, from a wider range of sources, contributed to better outcomes for children at risk.¹⁷ Instead, they were driven by the goal of involving more professionals who regularly interfaced with families, and were therefore “seen to have frontline prevention and reporting responsibilities,” in child protection.¹⁸

In response to CAPTA, states also expanded definitions of child abuse and neglect in their reporting laws to meet federal funding requirements.¹⁹ While earlier mandated reporting statutes focused on “physical injury,” the new wave of reporting laws introduced “negligent treatment,” sexual abuse, and emotional or psychological abuse as categories of child maltreatment.²⁰ Classifying “negligent treatment” as a reportable offense created a false equivalency between intentional harm and conditions of poverty that impact the welfare of children.²¹ Moreover, it contributed to an “epidemic of reporting” that overburdened the family regulation system with unfounded reports, disproportionately harming low-income and minority families.²² As discussed below, these outcomes continue to compromise the effectiveness of the mandated reporting regime in protecting children, and threaten efforts to strengthen communities.

¹⁵ For example, in order for a state to qualify for federal funding, it was required to “provide for the reporting of known and suspected instances of child abuse and neglect” in line with the federal definition of child abuse and neglect. CAPTA, Pub. L. No. 93-247, 88 Stat. 4 (1974); David Pimentel, *Fearing the Bogeyman: How*

the Legal System’s Overreaction to Perceived Danger Threatens Families and Children, 42 *Pepperdine L. Rev.* 235, 243-44 (2015).

¹⁶ Brown III & Gallagher, *supra* note 10, at 42.

¹⁷ Raz, *supra* note 3, at 55-56 (explaining that while many speculated that more reporting would equate to better care for children, “as states adopted more stringent requirements for mandatory reporting, and more reports came streaming in, there was no evidence that increasing reporting helped better identify and assist children at risk.”); Grace W. K. Ho et al., *Universal Mandatory Reporting Policies and the Odds of Identifying Child Physical Abuse*, 107 *Am. J. Pub. Health* 709 (2017) (comparing outcomes in states with and without universal mandatory reporting, and finding no correlation between the more expansive universal reporting requirements and increased identification of children at risk of physical abuse).

¹⁸ *The Child Abuse and Treatment Act: 40 Years of Safeguarding America’s Children*, *Nat’l Child Abuse & Neglect Training & Publ’ns Project* (2014), at 17, https://www.acf.hhs.gov/sites/default/files/documents/cb/capta_40yrs.pdf; Douglas J. Besharov, *The Legal Aspects of Reporting Known and Suspected Child Abuse and Neglect*, 23 *Vill. L. Rev.* 458, 467 (1978), <https://digitalcommons.law.villanova.edu/cgi/viewcontent.cgi?article=2180&context=vlr> (observing that most states expanded reporting requirements to nonmedical professionals because they recognized that other professionals have regular contact with children, and are also in a position to identify abuse and neglect).

¹⁹ Prior to CAPTA, there was no federal standard requiring states to include neglect in their mandated reporting laws. As such, few states required reporting professionals to refer cases of alleged neglect to child protection agencies. Besharov, *supra* note 18, at 460 (observing how states amended legislation to require reports of suspected neglect as well as abuse in part because of the impetus of CAPTA); Mathews, *supra* note 11, at 9-10.

²⁰ *Compare* U.S. Dep’t of Health, Edu., & Welfare, Children’s Bureau, *supra* note 7, at 11 (requiring physicians to report cases involving “serious physical injury or injuries.”), with CAPTA, Pub. L. No. 93-247, 88 Stat. 4 (1974).

²¹ Angela Olivia Burton & Angeline Montauban, *Toward Community Control of Child Welfare Funding: Repeal the Child Abuse Prevention and Treatment Act and Delink Child Protection from Family Well-Being*, 11 *Colum. J. Race & L.* 639 (2021) (explaining that this false equivalency “effectively transform[ed] child poverty from a social, economic, and racial justice issue into a problem of individual parental pathology and deviant behavior.”).

²² Raz, *supra* note 3, at 63; Myers, *supra* note 5, at 456 (observing that reports of child maltreatment increased from 60,000 in 1974 to one million in 1980 and two million in 1990); Douglas J. Besharov, “Doing Something” About Child Abuse: The Need to Narrow the Grounds for State Intervention, 8 *Harv. J. L. & Pub. Pol’y* 539, 557 (1985) (reporting that between 1976 and 1985, the number of unfounded reports of suspected maltreatment increased from 35 percent to 65 percent).

Mandated Reporting for Neglect: A Barrier to Strengthening Communities

Families in need should not be subjected to surveillance and investigations by the family regulation system, yet the inclusion of neglect in mandated reporting laws ensures that they are. Despite the initial goal of using mandated reporting to capture severe physical abuse, almost all states have regimes that require reporting of not just abuse but also neglect.²³ The most recent federal data from 2019 shows that at least 73 percent of child welfare cases were based on neglect, not abuse.²⁴ At a minimum, reimagining this system requires assessing the impact of neglect reporting requirements on family and community well-being, and addressing the observed structural harms by ending the current practice altogether.

Overreporting Due to the System's Conflation of Poverty and Neglect

Across the country, standards for neglect are notoriously vague and amorphous²⁵ and mandatory reporting requirements are difficult to understand.²⁶ For example, some states include neglect within the definition they provide for abuse rather than classifying it as a distinct term.²⁷ Additionally, many states provide a single definition for “child abuse or neglect,” “abused or neglected child,” or “abuse or neglect,” rather than separating the terms to identify critical differences.²⁸ This vagueness and ambiguity combined with the fact that people report based on their own bias and moral judgements, results in overreporting.²⁹ While mandatory reporters are required to report suspected neglect, not all suspicions

of Health & Hum. Servs., Admin. for Child. & Families, Children's Bureau (2020), <https://www.acf.hhs.gov/cb/report/afcars-report-27>; Kristcha DeGuerre & Katharine Briar-Lawson, *A Typology of Child Neglect Statutes and Exploration of Rate Variation among States* (unpublished manuscript) (on file with author), at 5 (observing that 45 states categorize failure to provide for basic needs, including food, nutrition, clothing, education, and shelter, as neglect).

²⁵ David Pimentel, *Punishing Families for Being Poor: How Child Protection Interventions Threaten the Right to Parent While Impoverished*, 71 Okla. L. Rev. 885, 895 (2019), <https://digitalcommons.law.ou.edu/cgi/viewcontent.cgi?article=1362&context=olr>.

²⁶ Most states require mandated reporters to refer cases to the system when they have “reasonable suspicion” or “reasonable cause to suspect” that a child has been subjected to abuse or neglect. This requirement is incredibly confusing absent clear guidance on what constitutes reasonable suspicion. *Mandatory Reporters of Child Abuse and Neglect, Child Welfare Info Gateway* (2019), at 3, <https://www.childwelfare.gov/pubpdfs/manda.pdf>; Benjamin H. Levi & Georgia Brown, *Reasonable Suspicion: A Study of Pennsylvania Pediatricians Regarding Child Abuse*, 116 Pediatrics (2005) (finding “significant variability in how [Pennsylvania] pediatricians interpret reasonable suspicion, with a range of responses so broad as to question the assumption that the threshold for mandated reporting is understood, interpreted, or applied in a coherent and consistent manner.”); Lee McKoin, *Systemic Racism in Child Abuse Reporting by Clinicians*, Medium (June 6, 2019), <https://medium.com/race-law-a-critical-analysis/systemic-racism-in-child-abuse-reporting-by-clinicians-f2fec0f94ee6> (noting that “calling CPS is a difficult decision” because mandated reporters must question whether they would be getting a child out of a dangerous situation or imposing significant and unwarranted stress on a family, while knowing that they may be penalized for not following reporting requirements).

²⁷ See e.g., Ga. Code Ann. § 19-7-5(b) (which includes “neglect or exploitation of a child by a parent or caretaker thereof” in the statutory definition of “child abuse”).

²⁸ See e.g., Me. Rev. Stat. Ann. Tit. 22 § 4002 (defining “abuse or neglect” as “a threat to a child’s health or welfare by . . . deprivation of essential needs,” among other circumstances.).

²⁹ Mical Raz, *Calling Child Protective Services is a Form of Community Policing That Should Be Used Appropriately: Time to Engage Mandatory Reporters as to the Harmful Effects of Unnecessary Reports*, 110 Child. & Youth Servs. Rev. 1, 3 (2020) (finding that assessments of potential risk to children depend on moral judgments about parental behavior, and are correlated with the race and ethnicity of the family in question); *Child Maltreatment 2019*, U.S. Dep’t of Health & Hum. Servs., Admin. for Child. & Families, Children's Bureau (2021), at 7, <https://www.acf.hhs.gov/sites/default/files/documents/cb/cm2019.pdf> (reporting that the family regulation system receives roughly 4 million referrals annually).

²³ Josh Gupta-Kagan, *Toward a Public Health Legal Structure for Child Welfare*, 92 Neb. L. Rev. 897, 930 (2014); Mandatory Reporters of Child Abuse and Neglect, Child Welfare Info. Gateway (2019), <https://www.childwelfare.gov/pubPDFs/manda.pdf> (listing standards for reporting in all 50 states, D.C., and the five major territories).

²⁴ While the AFCARS report lists “housing” as a distinct removal cause, housing issues often trigger neglect cases because of broad statutory definitions that conflate poverty and neglect. *AFCARS Report No. 27, U.S. Dep’t*

are valid and therefore lead to unnecessary scrutiny on families with no safety concerns.³⁰ Further, there is little to no room for nuance as the statutes compel reporting and fear of penalties for failure to report coupled with institutional encouragement to “err on the side of caution”³¹ deters many reporters from weighing the potential harms and benefits of making a report.³²

Experts and impacted parents also bemoan the overreporting of under-resourced families due to the system’s conflation of poverty and neglect.³³ As legal scholar and justice advocate Dorothy Roberts has suggested, “[t]he main reason child protective services deal primarily with poor families is because of the way child maltreatment is defined.”³⁴ Under current legal standards, parents may be considered guilty of neglect because they are unable to provide food, clothing, shelter, medical care, or supervision for their children.³⁵ It defies logic that most parents would deny their children basic necessities, such as food and housing if they were able to afford them. Yet, while the system does little to address the deeply entrenched structural, economic, and racial inequities that leave families without basic necessities, it readily punishes parents for poverty-based neglect.³⁶

There is no shortage of stories highlighting how the family regulation system conflates poverty and neglect. In Pennsylvania, public school district officials threatened to report families whose children had outstanding breakfast and/or lunch debts.³⁷ In their letter to about 40 families, officials wrote, “[y]our child has been sent to school every day without money and without a breakfast and/or lunch. This is a failure to provide your child with proper nutrition and you can be sent to Dependency Court for neglecting your child’s right to food.”³⁸ In another devastating example, the system separated a Black mother from her son because she was unable to secure stable housing, even though she made numerous requests for housing assistance.³⁹ More recently, school administrators in the Bronx threatened to report another Black mother in the midst of the pandemic because her two children, who were sharing a single laptop,

³⁰ Ryan C. F. Shellady, *Martinis, Manhattans, and Maltreatment Investigations: When Safety Plans Are a False Choice and What Procedural Protections Parents Are Due*, 104 Iowa L. Rev. 1613, 1619 n.30 (2019) (citing Bob Lonne, Mandatory Reporting and the Difficulties Identifying and Responding to Risk of Severe Neglect: A Response Requiring a Rethink, in *Mandatory Reporting Laws and the Identification of Severe Child Abuse and Neglect 245* (Ben Mathews & Donald C. Bross Eds., 2015)).

³¹ See e.g. *Reporting Child Abuse and Neglect: What School Personnel Need to Do, Module III: How to Report*, N.J. Dep’t of Educ. & N.J. Dep’t of Child. & Families <https://www.state.nj.us/education/students/safety/socservices/abuse/training/mod3/>; Jill Patterson, *Mandated Reporting*, Mo. State Univ. (2019), <https://www.mercy.net/content/dam/mercy/en/pdf/springfield-tdo/mandated-reporting.pdf>.

³² McKoin, *supra* note 26.

³³ See e.g. Jerry Milner & David Kelly, *It’s Time to Stop Confusing Poverty With Neglect*, *The Imprint* (Jan. 17, 2020), <https://imprintnews.org/child-welfare-2/time-for-child-welfare-system-to-stop-confusing-poverty-with-neglect/40222> (noting that “[m]ore times than not, poverty and struggles to meet the basic, concrete needs of a family are a part of the equation in all types of neglect.”); Elizabeth Brico, *Poverty Isn’t Neglect, But the State Took My Children Anyway*, *TalkPoverty.org* (Nov. 16, 2018), <https://talkpoverty.org/2018/11/16/poverty-neglect-state-took-children/> (explaining that the state often separates families in cases “where parents do their very best but still come up short on money for the heat, or the rent, or a licensed babysitter,” and that “a little more cash and sympathy” would have prevented her own family’s separation); Pimentel, *supra* note 25, at 895–906 (asserting that some of the legal standards that define neglect appear skewed to characterize poverty as neglect, which suggests that “investigations and interventions are merely reacting to and treating the symptoms of poverty rather than the root causes of abuse and neglect,” a type of victim blaming that “punish[es] parents already oppressed by poverty for their circumstances and the hardships their kids suffer . . .”).

³⁴ Dorothy Roberts, *Shattered Bonds: The Color of Child Welfare 33* (2002).

³⁵ Pimentel, *supra* note 25, at 895 (noting that some of the legal standards that define neglect appear skewed to characterize poverty as neglect); *Definitions of Child Abuse and Neglect*, Child Welfare Info. Gateway (2019), <https://www.childwelfare.gov/pubpdfs/define.pdf>.

³⁶ Wendy A. Bach, *The Hyperregulatory State: Women, Race, Poverty, and Support*, 25 Yale J. L. & Feminism 317, 325–26 (2014); Burton & Montauban, *supra* note 21, at 667.

³⁷ Bobby Allyn, *Don’t Have Lunch Money? A Pennsylvania School District Threatens Foster Care*, NPR (July 22, 2019), <https://www.npr.org/2019/07/22/744005587/dont-have-your-lunch-money-one-pennsylvania-school-district-threatening-foster-c>.

³⁸ *Id.*

³⁹ *When the Bough Breaks on Motherhood*, YouTube (Oct. 16, 2020), https://www.youtube.com/watch?v=a-sa8B0OuOw&list=PLdf1tpNUoh_2DMb1YP-LIWdgqhzCkWC5.

missed class whenever their schedules overlapped.⁴⁰

Importantly, as a consequence of current and historical racism, Black families are disproportionately represented in under-invested communities, which have historically been targeted by the family regulation system.⁴¹ Thus, the problematic nature of the system is revealed by the way it punishes parents for societal failures and structural racism and treats an inability to provide for their children as personal shortcomings.⁴²

Unsubstantiated Reports Lead to Unnecessary Trauma & Diversion of Resources

Overreporting of cases that do not warrant government involvement often floods the system with unfounded reports and diverts resources away from cases involving actual safety risks to children. This is not a recent phenomenon. Advocates began voicing concerns about these outcomes as early as 1978, barely a decade after the mandated reporting regime was first conceived. That year, psychoanalyst Albert Solnit observed that more than a third of referrals to agencies did not involve physical or sexual abuse, or the imminent risk of serious harm.⁴³ He argued that unnecessary reports increased the risk of overlooking children at serious risk of harm and often led to unwarranted, coercive interventions.⁴⁴ At a hearing before the House Committee on Children, Youth, and Families in 1987, Douglas Besharov, the first director of the U.S. National Center on Child Abuse and Neglect, echoed these concerns. Besharov suggested that the roughly 65 percent of unsubstantiated reports were evidence of “unavoidably traumatic investigation[s]” that inherently constituted a breach of family privacy.⁴⁵ The Senate Committee on Labor and Human Resources also took issue with the flood of unsubstantiated reports overwhelming agencies.⁴⁶ Like Solnit and Besharov, the Committee recognized that unsubstantiated reports were endangering children who were abused and in need of protection, jeopardizing the civil liberties of families in some cases, and likely over-extending the system “beyond anything reasonably needed.”⁴⁷

Unsubstantiated reports remain a problem today, particularly for Black families. Educators, who disproportionately report Black children, are also responsible for a great deal of reports

⁴⁰ Noah Goldberg & Michael Elsen-Rooney, *NYC Families Unable to Have Kids Log Into Online Classes Fear Being Reported to Child Services for Truancy*, NY Daily News (Oct. 25 2020), <https://www.nydailynews.com/new-york/ny-homeless-mother-nyc-truancy-school-doe-shelter-wifi-remote-learning-20201026-jl55pntulfefjbfwt3etgxyfsm-story.html>.

⁴¹ Alan J. Dettlaff & Reiko Boyd, *Racial Disproportionality and Disparities in the Child Welfare System: Why Do They Exist and What Can Be Done to Address Them?*, *The Annals. Am. Acad. Pol. & Soc. Sci.* 253, 260 (2020), <https://doi.org/10.1177/0002716220980329> (“Enduring consequences of racism, including residential segregation, discrimination in labor markets, unequal access to quality education, and implicit and explicit biases perpetuate the disproportionate concentration of Black families among the poor.”); Dorothy E. Roberts, *Child Welfare and Civil Rights*, 2003 U. Ill. L. Rev. 171, 175 (2003) (“The child welfare system is designed to address mainly the problems of poor families. Because black children are disproportionately poor, we would expect a corresponding racial disparity in the child welfare caseload.”); Baughman et al., *supra* note 4, at 506 (explaining that mandated reporters—“like law enforcement, social services, shelters, and public schools—are entrenched in low-income communities of color by design.”); Stephanie Clifford & Jessica Silver-Greenberg, *Foster Care as Punishment: The Reality of ‘Jane Crow’*, N.Y. Times (July 21, 2017), <https://www.nytimes.com/2017/07/21/nyregion/foster-care-nyc-jane-crow.html> (observing that “[i]n interviews, dozens of lawyers working on [removal] cases say the removals punish parents who have few resources. Their clients are predominantly poor black and Hispanic women . . .”).

⁴² Roberts, *supra* note 41, at 176–77.

⁴³ Raz, *supra* note 3, at 62–63.

⁴⁴ *Id.*

⁴⁵ *Child Abuse and Neglect in America: The Problem and the Response, Hearing Before the Select H. Comm. on Child., Youth and Families*, 100th Cong. 33 (1987) (statement of Douglas J. Besharov). *Decision-Making in Unsubstantiated Child Protective Services Cases*, Child Welfare Info. Gateway (June 2003), <https://www.childwelfare.gov/pubpdfs/decisionmaking.pdf> (explaining that an “unsubstantiated” report is one where “an investigation determined no maltreatment occurred, or there was insufficient evidence under State law or agency policy to conclude that the child was maltreated.”).

⁴⁶ S. Rep. No. 104–117, at 12–13 (1995).

⁴⁷ *Id.* at 12.

that the system ultimately does not substantiate.⁴⁸ While educational personnel are responsible for 21 percent of reports made by professionals annually, data shows their reports are 1.84 times more likely to be unsubstantiated than reports from other professionals.⁴⁹ Unsurprisingly, the problem of misplaced allegations extends far beyond reports by educational professionals. For example, of the 4.4 million referrals received in 2019, 2 million were screened-out, or did not warrant investigation.⁵⁰ As earlier advocates observed, the influx of reports that are ultimately screened out or unsubstantiated overwhelms caseworkers with unmanageable caseloads and overburdens an already beleaguered system, diverting resources from cases involving severe abuse and actual safety risks to children.⁵¹ When the system is inundated with baseless reports, even fewer cases are substantiated.⁵² This results in a never-ending cycle that undermines the goal of child protection and instead inflicts greater harm on families.

Even if reports are ultimately unsubstantiated, in the interim families are subjected to invasive scrutiny⁵³ and children and their parents may face the traumatic effects of removal.⁵⁴ Because broad reporting requirements encourage professionals to call in anything they find suspicious, even though not everything that may draw suspicion is indicative of maltreatment, mandated reporting often places unnecessary scrutiny on safe, healthy, and functional families.⁵⁵ This experience imposes profound trauma on children and parents alike and seldom improves family stability.⁵⁶ Families have testified that being subjected to investigations and interventions violated their privacy and autonomy, disrupted family relationships, harmed their children, failed to address their needs, and had a long-lasting adverse impact on their lives.⁵⁷

Severing Communities from Authentic Supports and Services

Beyond the negative impacts to families, mandated reporting of neglect weakens communities by creating barriers to authentic supports and services. The “surveillance tentacles” of the system intentionally run deep into marginalized communities⁵⁸

⁴⁸ Kathryn Suzanne Krase, *Child Maltreatment Reporting by Educational Personnel: Implications for Racial Disproportionality in the Child Welfare System*, 37 *Child. & Schools* 89 (2015), <https://doi.org/10.1093/cs/cdv005>; Colin B. King & Katreena L. Scott, *Why Are Suspected Cases of Child Maltreatment Referred by Educators So Often Unsubstantiated*, 38 *Child Abuse & Neglect* 1, 1–2; Child Maltreatment 2019, U.S. Dep’t of Health & Hum. Servs., Children’s Bureau (2021), at 9, <https://www.acf.hhs.gov/sites/default/files/documents/cb/cm2019.pdf>.

⁴⁹ This translates into schools, which were supposed to be the “great equalizer” in our society, functioning as the largest source of reports to child protective services that are least likely to be substantiated. Brianna Harvey et. al., *Reimagining Schools’ Role Outside the Family Regulation System*, 11 *Colum. J. Race & L.* 575, 581–84 (2021), <https://journals.library.columbia.edu/index.php/cjrl/article/view/8745/4500>; *Child Maltreatment 2019*, U.S. Dep’t of Health & Hum. Servs., Admin. for Child. & Families, Children’s Bureau (2021), <https://www.acf.hhs.gov/sites/default/files/documents/cb/cm2019.pdf>; King & Scott, *supra* note 48, at 1–2.

⁵⁰ In 2019, the Department of Health and Human Services reported that approximately 4.3 million children were the subject of reports. Of these cases, roughly 16.7 percent were substantiated or indicated and the remaining 83.3 percent were unsubstantiated or received an alternative response to removal. *Child Maltreatment 2019*, U.S. Dep’t of Health & Hum. Servs., Admin. for Child. & Families, Children’s Bureau (2021), <https://www.acf.hhs.gov/sites/default/files/documents/cb/cm2019.pdf>.

⁵¹ Gupta–Kagan, *supra* note 23, at 933.

⁵² Mical Raz, *Preventing Child Abuse: Is More Reporting Better?*, *Univ. of Penn., Leonard Davis Inst. of Health Econ.* (Apr. 10, 2017), <https://ldi.upenn.edu/our-work/research-updates/preventing-child-abuse-is-more-reporting-better/>.

⁵³ Shellady, *supra* note 30, at 1619 n.30; Mical Raz, *Unintended Consequences of Expanded Mandatory Reporting Laws*, 139 *Pediatrics* 1, 2 (2017) (warning that “as we increase the rate of reports in a system already underfunded and overburdened, we may be reducing the ability to detect and subsequently intervene on behalf of children in danger.”).

⁵⁴ See generally, Vivek S. Sankaran & Christopher Church, *Easy Come, Easy Go: The Plight of Children Who Spend Less Than Thirty Days in Foster Care*, 19 *U. Pa. J. L. & Soc. Change* 207 (2016).

⁵⁵ Shellady, *supra* note 30, at 1619 n.30.

⁵⁶ Washington et al., *supra* note 2, at 12–15; Kristine A. Campbell et al., *Household, Family, and Child Risk Factors After an Investigation for Suspected Child Maltreatment: A Missed Opportunity for Prevention*, 164 *Archives Pediatric & Adolescent Med.* 943 (2010) (suggesting that “[i]t is not clear that we are taking advantage of [investigations] to help families,” especially considering that only 38 percent of children investigated for maltreatment receive any post-investigative services.).

⁵⁷ Washington et al., *supra* note 2, at 12–15.

⁵⁸ Baughman et al., *supra* note 4, at 506.

whose parenting abilities have always been questioned.⁵⁹ Low-income and primarily Black parents are subject to the relentless scrutiny of mandated reporters.⁶⁰ As advocates for parents from the Center for Family Representation in Queens, New York noted, most of their clients' family regulation system involvement is due to poverty-based allegations that could easily be remedied with money, such as food and housing instability and unaffordable childcare.⁶¹ As such, many indigent parents live in fear of having their children removed.⁶² Ms. Paige resided in a shelter with her three children and was pregnant with her fourth. She ran out of food stamps, leaving nothing but peanut butter for the family to eat for six days. On top of the anxiety of being unable to secure food for her family, she feared being caught by shelter staff and reported to New York's Administration for Children's Services (ACS). Ms. Paige and her kids spent their days sitting in the park to avoid shelter staff. Because she did not want to be reported, she did not ask for help.

Under the current system, instead of providing resources to support struggling families, children are removed from their parents and foster parents—strangers—are paid to care for them.⁶³ Mandated reporting prevents people with the ability to help families in distress from doing so because their options are to either involve the family regulation system and initiate a punitive response or violate the mandated reporting statute and face criminal or civil penalties (or both).⁶⁴

Research indicates that reporting requirements also engender distrust between families and “helping professions” such as teachers, health care providers, and social service workers.⁶⁵ While the threat of being reported does not cause parents to avoid services altogether, it does constrain their participation.⁶⁶ For instance, one Black mother described the need to be cautious when speaking with professionals, warning, “just be careful when you're mentioning things about your kids... Don't say too much 'cause you never know what's gonna happen.”⁶⁷ These information management practices might allow parents to avoid undue intervention, but they ultimately isolate families from institutional resources and supports that they may benefit from.⁶⁸

Instead of allowing parents to seek the assistance they need to prevent discomfort or harm to their children, they feel that they must hide their struggles because the risk of losing their children is too high. In this way, the surveillance state limits engagement with community networks that families should be able to rely on.

These demonstrably harmful outcomes are inconsistent with goals to both promote child welfare and strengthen communities, necessitating the removal of poverty-based neglect from the purview of what mandated reporters are required to report. This would not only enable caseworkers to focus on reports of genuine abuse but begin to allow “helping” professionals to actually help. What Ms. Paige needed was financial support and food for herself and her children, what she got was surveillance and a constant fear of ACS involvement.

⁵⁹ Chris Gottlieb, *Black Families Are Outraged About Family Separation Within the U.S. It's Time to Listen to Them*, Time (Mar. 17, 2021), <https://time.com/5946929/child-welfare-black-families/>.

⁶⁰ Baughman et al., *supra* note 4, at 512–15.

⁶¹ *Id.* at 507.

⁶² *Id.* at 513.

⁶³ Raz, *supra* note 3, at 70–71.

⁶⁴ *Penalties for Failure to Report and False Reporting of Child Abuse and Neglect*, Child Welfare Info. Gateway (2019), <https://www.childwelfare.gov/pubpdfs/report.pdf> (reporting that approximately 49 states, D.C., and the five major territories “impose penalties on mandatory reporters who knowingly or willfully fail to make a report when they suspect that a child is being abused or neglected.”); Shanta Trivedi, Abuse Reporting Bills Would Criminalize Teachers, Baltimore Sun (Mar. 12, 2018), <https://www.baltimoresun.com/opinion/op-ed/bs-ed-op-0313-mandatory-reporting-20180312-story.html> (cautioning that with the imposition of new criminal penalties on mandatory reporters in Maryland, “[f]or fear of serious jail time and fines, mandatory reporters would be stripped of their well-earned discretion and would be forced to err on the side of reporting, even at the slightest suspicion of child abuse or neglect.”).

⁶⁵ Kelley Fong, *Concealment and Constraint: Child Protective Services Fears and Poor Mothers' Institutional Engagement*, 97 *Social Forces* 1785 (2018) (finding that concerns about reporting prompted mothers to engage in a “selective or constrained visibility, concealing their hardships, homelife, and parenting behavior from potential reporters.”).

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ *Id.* at 1806; Lynn Falletta et al., *Perceptions of Child Protective Services Among Pregnant or Recently Pregnant, Opioid-Using Women in Substance Abuse Treatment*, 79 *Child Abuse & Neglect* 125 (2018) (observing that fear of CPS can present a barrier to care for pregnant women who use opioids).

Replacement Approach

Responding to children and families in need with surveillance, policing, and punitive measures that strip them of their humanity is a misuse of public funds and a wholly inappropriate government response. Instead of utilizing mandated reporters to feed under-resourced families into the family regulation system, where their needs are often unmet, we must find meaningful ways to address the economic risk factors that contribute to family instability.

At present, the provision of resources and services within the system is coercive, often of poor quality, and misaligned with family needs. Agencies, not the families themselves, determine what services families need, with little consideration to issues of accessibility, transportation, childcare, or job responsibilities.⁶⁹ Even when characterized as “voluntary,” these services are ultimately provided by a coercive system, and the threat of removal hangs over a family’s participation.⁷⁰ Moreover, families too often feel the need to become entangled with the system to receive services that should be available through community organizations or other agencies.⁷¹ A way forward is to decouple mandated reporting from cases of neglect based on lack of resources, including lack of or inability to access needed services. Families should never have to get involved with the system to access help. Increasing the potential of economic and concrete supports requires policies that shift from surveillance to support, expansion of programmatic capacity, analysis of service needs, and power-sharing to ensure system changes are community-driven.⁷² Here, we offer several models for change that center around communities.

First, we can leverage existing relationships to create new pathways to services without involving the family regulation system. Schools account for the largest single source of allegations of child abuse and neglect, and a larger proportion of unsubstantiated claims, including the disproportionate reporting of low-income and Black children.⁷³ However, teachers also hold great potential for forming trusted relationships with families, given that children spend most of their day in school.

Educational personnel should have the ability to fulfill their mandated reporting responsibilities by referring families directly to services over making a report.⁷⁴ Investment in schools as a community resource could open avenues for educational personnel to assist families in applying and accessing critical benefits such as Special Supplemental Nutrition Program for Women, Infants, and Children (WIC), Temporary Aid to Needy Families (TANF), Medicaid, Supplemental Security Income (SSI), housing assistance, and legal services. School-Based Health Centers (SBHCs) are a well-documented tool to combat health inequities.⁷⁵ SBHCs serve as a provider of preventative health, like primary medical care and nutrition. Taken a step further, they could be hubs for delivering social services to families that face barriers to access. This requires expanding our vision of what “health” means as well as the investment that we put into schools as a community asset.

If we look beyond these services, another way to serve families requires changing the way we think about traditional government programs, which often have eligibility requirements and limits to how benefits are used. A monumental change in this arena is the expansion of the Child Tax Credit. In 2021, the government increased this benefit, closed loopholes that

⁶⁹ Alan Dettlaff et al., *How We endUP: A Future Without Family Policing*, [upEND Movement](http://upendmovement.org/wp-content/uploads/2021/06/How-We-endUP-6.18.21.pdf) (June 18, 2021), at 8, <http://upendmovement.org/wp-content/uploads/2021/06/How-We-endUP-6.18.21.pdf>.

⁷⁰ *Id.* at 8–9.

⁷¹ Harvey et al., *supra* note 49, at 16–22.

⁷² Dana Weiner et al., *System Transformation to Support Child & Family Well-Being: The Central Role of Economic & Concrete Supports*, Chapin Hall (July 2021), at 7–9, https://mcusercontent.com/99b002fd19862c29f6ff5815b/files/6ad95f49-c153-b0df-589c-b14f7e10f1bc/Chapin_Hall_Policy_Brief.pdf.

⁷³ See *supra* notes 48–49.

⁷⁴ Shanta Trivedi & Matthew Fraidin, *A Role for Communities in Reasonable Efforts to Prevent Removal*, 12 Colum. J. Race & L. ___ (forthcoming 2022) (arguing that “[r]einvesting in community-based prevention efforts would mean that families have places right in their backyards to go when they’re struggling, without relying directly on children’s services.”).

⁷⁵ Harvey et al., *supra* note 49, at 30–31 (explaining that SBHCs “are often composed of a collaborative team of professionals . . . who work together to meet the needs of the youth and families they serve,” and “serve an integral role in addressing health disparities for youth and families from medically underserved communities which historically are more likely to engage with the family regulation system. . .”).

previously prevented families from making too little money from qualifying, and disbursed the payments monthly to lift millions of children out of poverty.⁷⁶ Additionally, some cities and nonprofits are exploring guaranteed income pilot programs to provide families with more flexibility and agency. The Bridge Project, a New York-based pilot run by the Monarch Foundation, provides unconditional, direct cash assistance to new mothers as part of a study that tracks the participant's economic and housing stability, physical and mental health, and their children's developmental progress.⁷⁷ Similarly, a recently formed public-private partnership in Maryland's Montgomery County is also distributing no-strings-attached payments to families living in poverty.⁷⁸ Bureaucracy often gets in the way of what families really need, stipulating how income is used and putting families living in poverty under unfair scrutiny. These programs are an example of how to make economic supports more accessible to families.

Beyond economic and material supports, research shows that using models that allow families to have a platform for advocating for their needs prevents removals. Child Trends evaluated the Team Decision Making (TDM) model through a randomized control trial.⁷⁹ TDM invites families and supportive individuals to discuss with a trained facilitator what services they might need and to come to a consensus on the least restrictive way to keep the child safe.⁸⁰ The study showed that for families involved in this process, children were less likely to face removal.⁸¹ This makes a strong argument for establishing similar teams or networks outside of the family regulation system to support families that might be struggling. It also offers an important lesson for changing the way we think about mandated reporting. While this intervention takes place after a report or hotline call, there is no reason that families must be involved in the system in order to have these important discussions or connections to community resources.

Rise, a New York City based organization led by impacted parents, believes in increasing access to "informal" support, such as mutual aid, which is less intrusive and more effective than other forms of support in order to reduce isolation, heal, and build within communities.⁸²

The Peer Model Program relies on two roles, Peer Supporters and Community Supporters, neither of which are mandated reporters.⁸³ Both roles have training in trauma and stress impacts, active listening, crisis de-escalation, boundaries, and self-care.⁸⁴ Peer Supporters are parents impacted by the family regulation system who can be a safe, non-judgmental resource for other parents who are facing challenges or system involvement.⁸⁵ They help parents form connections to community organizations and neighbors who can provide help.⁸⁶ Community Supporters work within community organizations that are trusted by parents and help them navigate systems.⁸⁷ Overall, this model focuses on the assets and networks communities do have, not what they don't. The Peer Model Program centers on trust, respect, empathy, and love.

Finally, implementation of any of these models requires a radical shift in funding priorities. The family regulation system prioritizes foster care and adoption, whereas taking a public health approach to child maltreatment means

⁷⁶ Letter from AIDS Alabama et al. to President Biden and Members of Congress (Aug. 4, 2021), <https://www.childrensdefense.org/wp-content/uploads/2021/08/ABC-Coalition-State-and-Local-Community-Organizations-Letter-to-Congress-to-Make-the-Child-Tax-Credit-Expansions-Permanent-August-4-2021.pdf>

⁷⁷ *How \$1,000 a Month in Guaranteed Income Is Helping N.Y.C. Mothers*, N.Y. Times (Jan. 18, 2022), <https://www.nytimes.com/2022/01/18/nyregion/guaranteed-income-nyc-bridge-project.html>.

⁷⁸ *Montgomery County Council Approves Special Appropriation to Provide \$800 Per Month for Selected Households in Need Through Guaranteed Income Pilot Program*, Montgomery Cnty. Council (Dec. 14, 2021), https://www2.montgomerycountymd.gov/mcgportalapps/Press_Detail.aspx?Item_ID=39676#:~:text=Guaranteed%20income%20is%20a%20direct,to%20improve%20their%20economic%20position.

[79] Berenice Rushovich & Allison Hebert, *Team Decision Making May Empower Child Welfare Decision Making and Improve Outcomes for Families*, Child Trends (Oct. 13, 2021), <https://www.childtrends.org/publications/team-decision-making-may-empower-child-welfare-decision-making-and-improve-outcomes-for-families>.

[80] *Id.* at 1.

[81] *Id.* at 2, 4.

[82] Washington et al., *supra* note 2, at 8, 30.

[83] *Id.* at 19.

[84] *Id.* at 13.

[85] *Id.*

[86] *Id.*

[87] *Id.*

investing in the least invasive, most effective measures.⁸⁸ We must decrease reliance on investigation, removal, and foster care and invest in comprehensive services. By centering communities in this way, families will be more equipped to access services before they are in crisis, rather than facing punishment because they asked for help.

Conclusion

Overreliance on an ineffective, inequitable, and weaponized mandated reporting system destroys children, families, and communities by unnecessarily enmeshing them with the family regulation system. Critically, change requires limiting the power and scope of the system by narrowing definitions of neglect or removing neglect related to lack of resources and poverty from the purview of mandatory reporters. If we want helping professionals to be a truly trusted resource, our policies cannot use the need for services as evidence of child maltreatment or reporting as a prerequisite for accessing them. At the same time, we acknowledge that the models laid out in the previous section are in tension with the perception that mandated reporters, particularly teachers and social workers, are the first line of defense against child maltreatment.

Therefore, without a cultural shift in the way we view communities and mandatory reporting, there is a risk that even if laws are amended to exclude certain allegations of neglect, mandated reporters will continue to err on the side of reporting and families will continue to be unnecessarily surveilled and regulated. Only as the scope of the system changes and investment in community well-being becomes reality will there be an opportunity for genuine transformation.

[88] Gupta-Kagan, *supra* note 23, at 949–53.

Shereen A. White is a Director of Advocacy & Policy at Children's Rights.

Shanta Trivedi is an Assistant Professor of Law and Faculty Director, Sayra and Neil Meyerhoff Center for Families, Children and the Courts, The University of Baltimore School of Law.

Shakira Paige is a Peer Trainer for the Peer Model Project at RISE.

Meredith Giovanelli is a Policy Analyst at Children's Rights.

Makena Mugambi is a Paralegal at Children's Rights.

A Better Way

NEEDED: A Different Path for Child Welfare

Judge William Thorne and Karan D. Kolb

Introduction

When I started as a judge in 1979, the child welfare system was in the midst of placing “our” judgment about the fitness of parents as the ultimate measure of accountability. I don’t believe that my experience was unique among decision-makers, and I have seen no evidence that my mistakes were out of the mainstream of child welfare practice at the time. As a judge, I didn’t understand enough about families and the issues they struggled with, and I didn’t understand enough about what children actually needed, and maybe most importantly, I didn’t ask enough questions about what really worked, so I too often acquiesced in a system that failed so many of the families swept up unwillingly into its embrace. When in doubt about the situation of children, we, the child welfare professionals charged with helping as well as the attorneys and the judges who were supposed to act as safeguards, removed them to a place of perceived safety. Our distrust of families, particularly when they didn’t look or act like our own, was palpable, particularly when their childcare practices didn’t measure up to our own. We, as professionals, comforted ourselves that we had just “saved” a child as we justified removing them from the tearful embrace of their parents. We utilized the “expert” opinions available to us to shield us from too closely examining both our decisions and our inability to successfully help solve the problems. And when questions did arise, we revisited the worst-case horror stories of maltreatment to divert attention away from ‘those’ families in crisis and need our help. Afterward, we slept better at night, believing that we had acted in the best interests of those children. But did we really make the correct decisions? Did we consider the right factors?

Safety risks have always clouded the picture for child welfare. It can truthfully be said that

safety risks are in the eye of the beholder. Everywhere in life, there are risks. Those that are perceived and those that are deemed unacceptable have unfairly resulted in the removal of too many children into foster care, with the resultant lifelong traumatic outcomes lingering into succeeding generations. A good many of these problems could be alleviated with the application of clear tools such as the American Bar Association’s Safety Assessment tool and training. Assessing concrete safety issues, rather than the vaguer notion of risks, would permit decision-makers to more uniformly and fairly assess families’ issues and then make better decisions about the necessity of removals into foster care. In addition, assessing resilience and cataloging strengths would allow us to better focus on equipping families with the tools they needed at that time and for the future.

Looking back regretfully over the 40 years since I began making decisions for other people’s children, I see so much lost opportunity to help, to do better. Both research and my own experience have now taught me that children do better when they can safely grow up in their own families and not with strangers. We now know that children are safer with unlicensed kin care than licensed stranger care. We believed that foster care was a safe alternative when we didn’t understand or approve of how parents were raising their children. We now know that growing up in foster care is most often a recipe for continuing lifelong struggles whose effects last for generations and that foster care is not a safe, neutral alternative. We now know that the vast majority of children we placed into foster care were not there because they had been physically or sexually abused. They were there because, in our judgment, their parents had been neglectful and were



My Two Aunties

© Anthony Hurtado | *My Two Aunties*

not “good enough” as caretakers. I began my career willingly accepting that the best method of providing for children of families in crises was to remove them until their families ‘proved’ they could meet our standards of child-rearing. I utilized visitation as a reward for compliance instead of seeing it as a basic need/right of the child, as well as a strategy for keeping parents engaged during the pursuit of change. I followed the rules and approaches, as well as advice, that worked best [if they worked at all] for situations where children were badly abused and injured. The same approaches and rules that were utilized for those horrible abusive situations were applied to families that simply needed help. Mistakenly we believed one size fits all while we applied the best interest standards. If families had a problem, that became an opportunity for us to demand they become better versions of themselves in order to get their kids back. I wish I knew “then” what I know now. I might have successfully helped more children and their families.

What I should have been doing, instead of removing children and ordering compliance with a one size fits all case plan, was to work toward understanding the unique situation and history of each family—focusing on their strengths, not just their weaknesses. Acknowledging their love for their children, not just their failings. I should have been learning about their family history, not just the “event” that brought them to court. I should have made a concerted effort to understand the context of their struggles and traumas, not just conduct a hypothetical best interest analysis. I should have been listening to and engaging families, not just issuing orders and judging compliance with cookie-cutter plans. I should have been insisting that the caseworkers and attorneys assigned to the case engage in a similar approach.

No one likes being told what to do. Why should we expect these families to be any different? I should have been focused on building resilience into and around the families instead of demanding compliance with a plan. A resilience that is based on healthy relationships where individuals and families are interdependent and mutually supporting. A network of relationships where families have

their own support systems to help in times of future crises and where the “system” is only an emergency backstop. All of us will go through times of crisis and what differentiates many of us from those in the system is we have a system of relationships we can call upon for different types of help. I should have been ensuring that each family left “our care” with a resilient support system in place, not just a “plan” that had been complied with.

If I had done those things, I would have been more successful in helping the children and their families. The failings listed below, mine as a decision-maker as well as the system’s, are instructive concerning an alternative approach.

Plans

People and families are composed of people who are not subject to the certainties of mathematics or the other hard sciences. One formula, one approach, one equation, one action does not always produce the same result for different people. By the time families reach court, most are not strangers to the child welfare system. Context matters for these families. They have stories and experiences that color their willingness and ability to “trust us” and “do what we tell them.” And yet we persist in requiring parents and caregivers who get swept up into our system to follow a plan we impose upon them. And when that approach doesn’t end well, we adopt the comforting idea that it is ‘their own fault’ when *our* plan doesn’t fit *their* situation. The lessons that we should have learned from being unable to design a plan where the parents will succeed is that we should have been listening to the families. They are the lived experience experts in their own lives. When asked, they often recognize the inadequacies of their caregiving, even when their perception doesn’t exactly match ours. Most often, they want to be ‘good’ parents but have barriers to getting there. We should be setting goals *with* the families, not just setting them ourselves.

Even medicine now recognizes that treatment outcomes are generally more successful when patients are engaged in both goal setting and decisions about treatment plans. Too often, today’s “family group conferences” or “team decision meetings” or such are the product

of the professionals agreeing ahead of time to the vast majority of the plan's contents and presenting it to the family for their acceptance. As Karan puts it, she wouldn't show up to those meetings either if all they did was bash her parenting or look down their noses at her. Rarely is the family able to actually change direction, modify priorities, or suggest a different approach for these plans, notwithstanding the names we give the process. Sometimes parental resistance to a particular plan is even considered to be evidence of unfitness itself. Too often, imposed plans are complicated, have multiple parts, offer little real assistance for accomplishment, and carry harsh penalties for failure (in some jurisdictions failure to succeed at any portion of a plan is a separate and sufficient ground for terminating parental rights).

And when the plan as initially conceived doesn't work perfectly, and it will rarely work perfectly, we should have been willing to make adjustments to the plan and try different modifications to refine or redirect it. This again should have been a time to engage the caregivers and parents in an effort to improve upon the plan based upon their real-life trial and error. Too often, though, we have used this as a time to 'judge' families for their inability to follow our plan instead of an opportunity to learn along with the family what works and doesn't for them.

Systematic Design Problems

Below are a few examples of where the specific design of the system actually interfered with opportunities for success.

1. Decision-makers have defaulted to utilizing foster care removal as the first step in intervening in a family crisis because so much of our service array is tied to removal. The majority of federal funding in child welfare is made available through Title IV-E, which is directly tied to foster care as a placement prerequisite. Well-meaning decision-makers are using foster care in order to get access to services that may help families. Our systems are built around that federal funding and therefore prioritize foster care, not prevention.

Even the small piece of funding newly allocated for prevention in the Family First Prevention Services Act (FFPSA) is tied to large-scale replicable programs that have been rigorously reviewed with little to no support or recognition for smaller grassroots prevention programs that have, in fact, been successful. We now operate in an arena that is called 'evidence based' where success is not valued unless it is tested, validated by academics, and faithfully replicated with little room for adaptation to different communities or family situations. (Yet again, an example of hard science approaches being problematic when applied to real people in real-world situations.)

2. The timelines imposed by the Adoption and Safe Families Act¹ and related state statutes upon efforts of parents to remedy problems were created to prevent foster care drift; when foster care became the intervention itself as well as a long-term solution all in one. Those deadlines, however, don't permit a realistic option for success when utilizing current treatment modalities and programs to respond to problematic substance abuse situations. Recovery is a long-term (forever?) process that recognizes relapse as an expected occurrence on the road to recovery. The realities of accepting the need for a program, waiting lists to get into a program, the occurrence of relapse, waiting for re-admission, and eventual graduation are almost impossible to align with the timelines as currently applied. The abolition of the unswerving application of draconian timelines and instead focusing on the creation of realistic treatment options that allow continuing parenting while remedying "issues" would be major improvements.

3. The timelines also play into another type of problem. Understandably the families are angry and/or embarrassed about having their children removed. It is not unusual that families recognize shortcomings and would like to 'do better' by their children. That is, however, not the same as willingly surrendering custody of their children, particularly in the context of the

¹ The **Adoption and Safe Families Act (ASFA)**, Public Law 105-89) was signed into law by President [Bill Clinton](#) on November 19, 1997 requires a petition to terminate parental rights be filed when a child has been in foster care for 15 out of 22 months. The exceptions build into the law were most often ignored or forgotten.

current child welfare system, where they are essentially powerless. The families' lack of trust in the system is mirrored by the professionals' lack of understanding of the family context, their history and their experiences. It is so much easier to sit in judgment when you view the situation from the vantage point of 'child savers' who have not personally struggled with the same setbacks and obstacles as the families they work with. Months can pass, where little progress is made because of the animosity the situation has created; the anger and helplessness at having your children taken facing the judgmental views of professional and seemingly privileged outsiders who are doing their job but appear uncaring. A ready tool is at hand to help resolve this impasse but is rarely utilized—possibly because it is not a 'service plan' to be delivered by accredited professionals. Peer parents and programs such as Parent 4 Parent utilize the skill and experience of those parents who have successfully navigated the child welfare system when their own family was swept into it, are unfortunately a rarity instead of a staple. People with lived experience, and success, would go a long way to bridging the gap between untrusting parents and unmindful service providers.

4. Given how foster care providers are recruited, utilized, and supported, there is a prevailing shortage of placement options. Historically our system has not trusted extended family to function as substitute caregivers, believing the apple doesn't fall far from the tree. Or the system was unwilling to trust that relatives could keep the children safe and away from their parents without the watchful eye of a social worker in the unnatural setting of a supervised visit where the parents were being 'scored' on a clipboard. Our system has attempted to fill that gap by fostering adults whose motives and goals are directly opposed to the success of the birth families. We have created a system where we recruit foster parents whose professed desire to adopt the infants that they are caring for is therefore diametrically opposed to actually helping the parents succeed in regaining their children.² Several cases where parents and foster parents are fighting each other for custody, have found their way to the U.S. Supreme Court and state supreme courts in recent years demonstrating

this very flaw. Those fights often devolve into answering the question of who can provide the best placement for the children and not on the real issue: who do the children need most? And we have persisted in ignoring that a large number of "terminated" children return to their birth families, the same families most systems give up on and for whom services are no longer available.

5. Somewhere along the way, we have lost track of what should have been the real goal of the system...to help. Most people employed in the child welfare system entered wanting to 'help,' to make things better. The system, however, has developed different priorities. We have gone astray in the pursuit of federal funding, which is now most often tied to the removal of children into foster care. It is no coincidence that most prevention programs (such as there are) are funded with mostly local funds, while uncapped federal funding is tied to removal into foster care. As programs are designed by states and local jurisdictions, the sustainability of jobs and programs is linked directly to federal funding and thus to foster care removal. It is a short step from there to where we are today, where most programs and services are available only where foster care is utilized. I have had numerous discussions with judicial colleagues over the years who insisted that a particular child needed to be placed in foster care so they could access "services." Additionally, the restrictions on funding have exacerbated the caseworkers' focus on simply checking the box rather than focusing on how to help a particular family.

From there, the system issues contracts of adherence, where there is little real negotiation or joint planning, to parents requiring near-perfection before they can get their children back. Compliance has become a preemptive goal, where failure to accomplish all the

²This doesn't have to be the only option. Tyler Goddard, health director of Four Points Health, serving the Paiute Tribes of southwestern Utah has successfully engaged the community in a foster care placement rate of over 95 percent within the Paiute tribal community for a number of years, while focusing primarily on the prevention of situations needing removal. They did this by recruiting differently, utilizing their volunteers differently, and supporting the foster placements differently. There is more than one way to fill a need.

elements of a parenting plan can justify the permanent removal of children, rather than focusing on successfully helping parents do better. As a state appeals court judge, I have had two different scenarios land on my desk on the same day where termination of parental rights had been granted. First, where the “plan” was accomplished or complied with, but no real changes occurred, and second, where the plan was not fully met, but real change had occurred. It is as if the system is looking for a way to “rescue” children from their parents through any “legal” means available. Both resulted in terminations of parental rights.

Plans can morph over time, as well, with increasing hurdles placed in front of the family, in the name of ‘just in case’ or ‘it can’t hurt.’ And it is not uncommon for a judge to be uncertain of lasting change and thereby discount any change or improvement that has occurred in the name of not being certain about what the future holds for the family. I have seen situations where even if parents managed to comply with essential elements of the case plan and achieve actual change—a judge may simply declare that he/she is unconvinced of “real” and lasting change and thereby justify permanently depriving the child of his/her family. It is virtually impossible for a parent to prove to such a decision-maker, whether judge, lawyer, or caseworker, that there will never be another similar problem. Knowing that predicting the future is wrought with peril, too many child welfare professionals opt for the flawed safety option of strangers.

6. Mandatory reporting has been cited by some as a flaw in the child welfare system that should be eliminated. I disagree. While the reporting was intended to “catch” situations where children are being mistreated, it has been misdirected. First, it waits until there is a crisis and triggers a response only where a child has already been harmed. Second, the flaw is in our response to reports. Instead of separating reports into substantiated and unsubstantiated (I have never really understood how each is defined or distinguished) or as either a threat to child’s safety or not, we ought to approach the reports as an opportunity to assess real safety threats and everything else as an opportunity to offer help or encouragement, without either the coercive intrusion or blind eye that seem to

be the only options available today. Wouldn’t a better response to reports be to consider them as part of an early warning system dedicated to alerting those interested in helping and healing? In my experience, family members and friends, those closest to the child, are much more likely to report concerns if they know the response will be real help rather than struggle with a sense of betrayal “turning in” the parents resulting in a likelihood of removal. Teachers, daycare workers, and others would also be more willing to report “early” if they thought their report would bring help rather than trouble to the family. We need to redirect our response to the reports rather than eliminate the reporting. The last portion of this article addresses what a better response would be and how it can accomplish the goal of preventing, not just reporting harm.

7. Instead of removing children “just in case” or until the parents proved they could provide a good home for their children, as a judge, I should have been trying to strengthen or build resilience and relationships into families I encountered in the system. Resilience would have allowed the families to not only better meet the current challenges facing them, sometimes with needed assistance, but would also have been an inoculation against future crises. And we know that another crisis is just around the corner for most of us. What sets us apart is that we have the resources, the relationships, to help us weather the current crisis. Most of the families in the system don’t have that support system to fall back upon. We now know what builds resilience; relationships build resilience.

Dr. Robert Sege³ utilizes the analogy of a grass fire approaching a house, with a water

³ Robert Sege, MD, PhD is a Professor of Medicine at Tufts University School of Medicine, where he directs a new Center for Community-engaged Medicine. Dr. Sege is nationally known for his research on effective health systems approaches that directly address the social determinants of health. He is a Senior Fellow at the Center for the Study of Social Policy in Washington and serves on the boards of the Massachusetts Children’s Trust and Prevent Child Abuse America. He has served on the American Academy of Pediatrics’ Committee on Child Abuse and Neglect, and on its Committee on Injury, Violence, and Poisoning Prevention. He is a graduate of Yale College and received his PhD in Biology from MIT and his MD from Harvard Medical School.

tank on the hill and a hose that runs from the tank to the homeowner's hands. The fire is the crisis that has arisen, the tank filled with good experiences, the hose is compromised with holes caused by a lifetime of traumas resulting in leaks, and reduced water pressure and relationships are the patches on the hose to remedy the loss of water pressure. Training may still be necessary to best utilize the water from the tank and to strategically fight the fire in the best way possible. Still, the good experiences in the tank and relationship patches on the hose are the necessary raw materials to fight the fire. As a judge, I should have been ensuring that families had those raw materials, not just the "training" offered by the traditional menu of court or system services. I missed that opportunity when I focused on plans and services while ignoring the "human" side of the problem.

Lest you think that this is pie in the sky and some dreamer's fantasy, there is a program that has done exactly what Dr. Sege was talking about...and has the results to show for it.

A Better Approach: My Two Aunties

The Tribal Family Service Program (TFS) of the Indian Health Council, located in Valley Center, CA, is a consortium of seven small Indian tribes in northeastern San Diego County. California being a P.L. 280 state, all the child welfare court cases were heard in the courts of San Diego County, where county prosecutors oversaw the cases and county social workers were charged with case management. Fifteen years ago, those seven tribes had 487 children in foster care, the vast majority in non-tribal settings. At the end of 2021, for those same seven tribes, there were fewer than 10 children in foster care. What was different? The TFS had embarked on a new path, one centered around a tribal values-focused approach to helping families as early in the process as possible to build supports around them. They called the homegrown approach My Two Aunties, or the aunties program.

In tribal communities, your aunties are your safe place. Many of us grew up with 'aunties' that were not really related to us, but nevertheless

were family. Whatever else was going on in your life, your auntie would feed you, make sure you had clothes to wear, and a place to sleep. They had your back. You knew you were loved and that you belonged. They were also not afraid to yank your ear and "talk" to you if that was needed, too. Your aunties rarely did things exactly the same way as your parents, but you knew they were watching out "for you," not just watching you. For the originators of the program, the whole approach was backed by a firm belief that all the families in the community were their relatives and that they had a stake in the successful outcome of any crises the family encountered. This change of direction didn't happen overnight but was the product of many years of effort, of engaging the community, engaging the families, of earning their trust, of "being there" for families and the children whenever they were needed.

It was also the product of years of work building trust with the partners outside the tribal community by building competence and transparency into each new effort at creating partnerships. Not every step was a permanent step forward, but the story is one of continuous effort and progress.

And today, there are fewer than 10 tribal children in foster care, instead of the 487 from 15 years ago.

Differences

So, what does this different approach look like in the real world?

First, this is a family success-focused effort along with a recognition that each family's success affects the community, and the tribe, as a whole. Everyone benefits from a family's success. The goals include both prevention and long-term success, not just short-term monitoring and supervision. It is centered around healing the underlying causes, not just the symptoms. It is success supporting, not a compliance/punitive focus. The goal is that these kids become good parents in their turn, and an ancillary benefit is that these parents will be ready to be good grandparents in their turn. Another way to put it, these are my people, my relatives, that I am helping—not policing. How would you treat your relatives if

you desperately wanted them to succeed and you needed them to trust you?

No one is ever turned away or postponed when they walk in. They are WELCOMED! TFS is eager for their 'relatives' to visit the office and excited to help. Whenever the 'relatives' return, which happens surprisingly often, they are welcomed back for any future contact, help, or just to say hello. Their strategy is to meet people where they are, not where you want them to be. Help now and help more later whenever given the chance. No sticky flypaper to entangle or quicksand to pull you under when a request for help is made.

Another motto of the TFS is to never give up. One story that exemplifies this involves a mother who tearfully walked out of a hearing where her parental rights had just been terminated. She was consoled by the TFS director, who included a reminder that these children usually find their way home when they become adults and that she, therefore, needed to get herself together and be ready when the child returned. Fifteen years later, the director got a call from the same woman: "Karan, you were right. She has come home. AND I WAS READY!" Never giving up is what you do for your own family. Even if not successful today, there is always tomorrow or another day. Family members are too important to give up on, ever.

Being available to the community, and gaining their trust, requires more than simple office hours. Someone from TFS is available 24/7/365 with a small staff of cross-trained people who genuinely care. If someone in the community needs help, they are not told to wait until the "specialist" is back in the office or from vacation. Instead, someone else steps in to help, even if the problem is not their specialty. Earning trust is about being there when needed, not just during business hours. It is about being seen to care and being seen to be working at helping. And that trust is earned not all at once, and it is never unanimous but is earned every day, every case.

Earning trust with the family and the community is also about listening, about jointly figuring out a path forward. It is not about covering for the mistakes of a parent

or giving them a free pass. It is not a cookie-cutter plan from an expert for "these" kind of situations, but it is about walking together toward an individual solution. Not one size fits all/most case plans. The plan builds on the perceptions and the strengths of the entire extended family, not just the parents. And then it is about adjusting the plan when it doesn't work or something else needs to be tried. It is about securing real buy-in, not just reluctant acceptance of a plan created by an agency or court. The director (someone with power...and who listens) of TFS will reach out individually to have a conversation with clients. Are you getting what you need? Is your worker working respectfully with you? What are your dreams and your hopes? What are the barriers in your way preventing success? Included in the conversation is a realistic but respectful analysis of the situation and the likely decision points to be made by the judge. The client knows that the worker cares and that someone in charge cares. That knowing, that caring, makes a huge difference in how a client responds.

TFS doesn't just focus on "at-risk" families or families in crisis but engages the larger community in family-friendly events and then reaches out to make sure the problematic family members are encouraged to join in. There is no stigma of "special" events for at-risk families, but instead, there are community-wide events where extra efforts are made to include everyone. There the families see healthy families participating and begin to form their own networks. Relationships grounded in the community are built upon. Future relationships with successful clients are also begun that bear fruit years later when they bring in their own relatives having problems to "talk with Karan" about what kind of help might prevent a crisis in their lives. TFS constantly has previous clients dragging a niece or nephew in to get the same kind of pep talk they received from one of their aunties on staff. This is the complete opposite of "normal" social service systems that are avoided at all costs by people having troubles or their caring relatives that are afraid of 'turning in' their family members.

Staffing

The training of staff also follows a different model. Instead of ‘these are the rules,’ the staff is hired with the plainly stated announcement that staff is individually and jointly responsible for helping and healing, not simply surveilling and case managing. They are required to assess what is needed and then take the extra step to help instead of doing the minimum and handing the problem off to someone else. Those extra steps to help are available while a case is active as well as after the case has been closed out. A new case need not be opened when someone asks for follow-up help. The goal is to find what works for the family and then become a real family advocate to help the family get what they need. There is no room for: not my job, not my grant, not my wheelhouse. The focus is on what is needed, not what can be or is usually done. It is not unheard of for staff to arrive at a family’s home early in the morning hours to help establish a routine that will get kids ready for school that day. Workers are encouraged to share in (not create) a vision for the family—next week and 10 years from now. Workers are encouraged to be willing to learn about and immerse themselves in the community. If they can’t do these things, they are offered help or encouraged to find a different job. *Thick skin and a caring heart are job requirements.* As the director sometimes reminds people, there are no tiaras in child welfare—no judgments of other people, no self-righteous attitudes, no blaming the clients. The only success is the success of the clients.

The cross-training of staff permits leadership development, better staff succession, and better client coverage as well as better recognition of potential sources of assistance for the client families. The program directors are continually asking ‘who’s going to do it when you are unavailable or gone?’

Cooperative Approach

TFS does not rely upon experts with solutions. Rather, parents, children, extended family, and service providers all hold a piece of the solution. Staff is intended to be the bridge supporting both families and providers as they identify and implement those solutions.

Ties to the outside community are important, and TFS regularly searches for ways to create alliances and partnerships. A ‘place at the table’ where decisions are made is expected and offered in return. Training is provided to county social workers and administrators, county counsel (attorneys), judges, and law enforcement. Relationships are even cultivated with local grocery store clerks, state adult probation officers, local political leaders, DV, and other service providers (both in the county and in other counties), and other siloed state/county/tribal programs. All are a part of an “early warning” system where non-coercive help and assistance are offered to families *before* the actual crisis occurs. Part of creating these partnering relationships is a recognition that these arrangements are reciprocal, that TFS is willing to support them even when not directly linked to a TFS client. An example of this kind of training and partnerships producing real results is the story the director tells about a “rogue” state caseworker. The worker did not want to cooperate with TFS and arranged to do a home visit after normal working hours. She had already predetermined that she would remove the young children, secured the right sized car seats, and had made reservations for them in a shelter/assessment center a couple of hours away. Because it was after hours on a Friday night, and it was dark, she sought the assistance of the local sheriff’s office to accompany her on her visit. When the deputy arrived to meet the “rogue worker” he inquired about the absence of a TFS worker or representative. He had previously been trained by TFS about the protocol that existed between the Tribes and the County, which required notification of TFS for visits. The rogue worker indicated that it was after hours, and she could not reach anyone at the TFS office. The deputy proceeded to take out his own cell phone, found the personal cell number for the TFS director and called. Within 10 minutes, the director joined them for the visit and then spent several hours that night doing the legwork necessary to place the children with their grandfather, who lived next door rather than at the shelter. Over the weekend, the director and her staff cleared obstacles that allowed the children to stay with grandparents until the matter was resolved by the court. That deputy is considered a hero at the TFS offices and is an example of how a

'whole community' can share responsibility for doing what is best for its children.

TFS has also worked hard to develop its reputation and ties within the local tribal communities. Staff, both those who have roots in tribal communities and those who do not, are reminded that "professional distance" is not appropriate when dealing with families. Body language, attitude, word choice, even tone of voice is important. Staff are reminded that a smile can be heard over the phone and how you talk to someone is the first clue given about whether you are there as a threat or to help.

Strategy

The priority of TFS is to first help to lessen the trauma experienced by the whole family. This begins as early as the first hotline report. TFS attends county hotline staff conferences and combines the information provided there with their own community sources to identify families in need or crisis *early* and then to respond not with trauma and threats but instead with offers of help and assistance. In addition, as part of a written protocol negotiated between tribes and the county, tandem investigations are conducted with a county worker or investigator during the initial stages of a case. A TFS staffer who accompanies the county worker can help to ease tensions, give context to inquiries and responses that might be perplexing, and explain what local resources and TFS can do to help, including helping to identify and expedite extended family support options. In addition, TFS reaches out to potential partners and hosts "meet and greets" and training for hotline workers, front line workers, adoption workers, as well as child and family team meeting facilitators, college students, and first responders. The belief is that the more information shared and the fewer misperceptions allowed to persist, the better the result for children and their families.

While doing its work, the long-term effects upon the family are viewed through an Adverse Childhood Experiences perspective with a conscious effort to mitigate not aggravate the trauma that is occurring during this crisis. As an example of how TFS has worked to create a "no trauma zone" for their work, they listened

to a 6-year-old boy 15 years ago as he told the county worker that he didn't want to go to a live-in assessment center with strangers that was hours from home. In his words, "why can't I do that here?" As a result, TFS teamed with the medical clinic side of the Indian Health Council, secured the necessary grant support, and created a fully licensed "assessment center" onsite where all needed assessments are being done at the same time TFS staff are scrambling to find, background check and provisionally license extended family to take the child home after the assessments. If necessary, the center is minutes from the homes of relatives for continuing assessments, so the child can stay with family while still completing any further checkups.

TFS worked with the parents. Active efforts are key to ensuring safety, preventing unnecessary removal, and coordinating so that everyone is working together to mostly avoid the necessity of foster care placement. The short-term goal is to fix the immediate safety problem, not seek to solve everything at once or demand perfection. Once the immediate problem has been addressed, then efforts can begin to assist with longer-term issues. This may involve coordinated case management with other departments and jurisdictions as additional issues are identified. The creation of partnerships in advance of the crisis is extremely helpful.

The role of TFS goes beyond just the typical child welfare services. It offers help in almost every conceivable situation a family may find itself. Domestic violence, TFS will help. Mental health issues, TFS will help. Substance abuse issues, TFS will help. Murdered or missing indigenous women, TFS stands ready to help. Commercial sexual exploitation of children and women, TFS is ready to help. While continually upgrading and developing staff skills, TFS has built real partnerships with other service providers and healers. If TFS doesn't have available what is needed to help, they utilize the partnerships that have been painstakingly built over time. And when others are pulled in to help, TFS doesn't "transfer the case" and walk away. They walk beside the client for as long as needed.

Among TFS priorities is keeping a pulse on the community. Informal networks of community people are willing to alert TFS that a parent or family may be struggling. That enables TFS to offer assistance before a crisis erupts. To be ready to respond, concerted efforts are made to minimize staff turnover through continual development of staff abilities and skills, as well as cross-training. This also permits longer-term relationships with clients and their families. This cross-training and continual upgrading of skills enable staff to do more individualized planning with clients (instead of just picking services off a menu.) Staff, as well as service providers, are continually taught about the community they are serving and reminded not to let their own standards and perceptions interfere with helping the clients. The insider assessment for a new staffer or service provider is trying to determine whether the newbies are committed staff or a “visitor.” And finally, the staff is reminded to work with both parents, and their extended families, in building upon strengths and abilities to problem solve.

Administrative

Of course, it is necessary to acknowledge that all these efforts do not occur within an administrative vacuum. The program recognizes that so-called common sense and/or management skills are not particularly productive for meeting the needs of clients. Bean counters and administrators who have not served in the family service trenches don't do well when confronted with trauma and drama, which is where many clients find themselves when they encounter the system. To preserve the freedom to do what is necessary and not be tied to simply business as usual, a strategy evolved over time to keep the ‘higher ups’ out of the work. This involved a conscious effort to gain the respect and confidence of “leaders” in order to do the work that is needed to truly help—not just service the clients. The managers of the program committed to give early heads-up notifications to higher-ups of potential problems. This turned out to be an unexpected time saver by both avoiding micromanaging and by short circuiting client misperceptions from becoming locked into the agency or political leadership's assessments.

The TFS staffing 15 years ago was supported on a shoestring budget that permitted two full time employees while serving 487 children in care together with their families and community. Grants and partnerships were pursued and secured that permitted doing things ‘the right way.’ A conscious effort was made NOT to pursue just any funding, as too often happens with small programs, but to only spend the effort of grant writing and seeking partnerships when those efforts could support appropriate ways of helping their ‘relatives.’ Instead of building a service array around available funding tied to foster care placement, TFS sought out partners and organizations who supported their vision of the work – of helping families heal and take care of each other.

This is, of course, an abbreviated summary of the actual work that was necessary to go from 487 children in foster care 15 years ago to fewer than 10 now. Much more can be learned from looking more closely at the My Two Aunties approach as developed and implemented by the Tribal Family Service Program at Indian Health Council. But it does demonstrate first that **SUCCESS IS ACHIEVABLE**, and second, that similar models need to be supported and made available to other communities so that they can adapt it to their own situations.

Will this approach work in every situation to prevent the removal of children? No! Especially when there are substantial mental health disorders and long-term substance abuse issues that are debilitating. But the results are better than what we, as a child welfare system, are currently doing...at least for the families we are not successfully helping now. We could go on and on about the failings in the system we have encountered and those we participated in. But the most important focus should be on ‘what would we do differently NOW?’ What would a better response look like as ‘a system’? How would it act? What would be the goals? How would we measure success?

We believe the aunties approach is part of the solution.

William A. Thorne, J.D. from Stanford Law School, is a retired judge having served in tribal courts, as a Utah state trial judge, and as a member of the Utah Court of Appeals. Judge Thorne is a Pomo/Coast Miwok tribal member enrolled at the Graton Rancheria.

Karan D. Kolb, M.A. from the University of the Rockies, is currently serving as the Director of Tribal Family Services for Indian Health Council located in Valley Center, CA. Ms. Kolb is a Luiseno tribal member enrolled at the Rincon Band of Luiseno Indians.



Karan D. Kolb

I AM

By C.G.

I AM the kid who grew up on the
pothole street down from the abandon houses
I AM the kid that every loud noise you heard is when you
drop to the ground
I AM the kid who will not wear shorts because
of bruises
I AM the kid who thinks that it is powerful
I scream MY THOUGHTS COUNT but it is just a quiet
noise no one heard
you can't control me you can't hold
MY heart and my head hold so many thoughts but my
mouth is like a jailer that wants to release
or would say the right words
I need you to hear my voice but
you will not listen I need help
you say my job is to keep all kids safe but it is easier said than done
Sometimes I think could life be better? I know it could be worse
WE all want more right?
WE all deserve more right?
WE we we um
I WANT MORE THAN THE DAILY HOPE, I NEED TO SEE A
CHANGE
A FLICKER FOR THE MEN WHO LOST HIS DAUGHTER & THE
MOTHER WHO SON DIE AND DAUGHTER RAN AWAY
A DROP FOR THE GIRL WHO BOYFRIEND COMMITTED
SUICIDE
A BUCKET FOR THE BOY WHO Jumps OFF THE Cliff
We ALL DESERVE, WANT & NEED more.



© Andrei310 | iStock.com

Reflections

A Call for Inspired Thinking

Victor Sims and Julie Breedlove

Introduction

In training thousands of new and excited child welfare frontline staff, we ask, “Why did you want to work in child welfare?” The response that we hear is that they are hoping to improve the lives of children, youth, and families. We hear the passion, dedication, and determination from young child welfare frontline staff about making a real difference in peoples’ lives. People are excited to build relationships with families and are anxious to get into the field and help others!

Fast forward eight months into the job—new child welfare frontline staff ask supervisors creative questions, but their creativity is often shut down. Why? Rules. So many rules. Policies, procedures, forms, and red tape. Rules, policies, procedures, and other processes do have a place in child welfare as they provide support in some aspects of our work. Laws and policies provide boundaries for our work, sometimes provide a mechanism for providing justification for decisions we make or do not make or give guidance on best practices. But rules often take away the creativity it takes to help families solve problems.

We sometimes create rules that are counterintuitive, including case plans requiring parents to secure a job, when parents have met their family's needs in the past with government assistance, because day care costs too much. Or rules requiring agencies to fingerprint parents before placing the child back home when we know the parent's background.

Laws and policies are not what make us successful in achieving families’ goals. We are successful with families because we truly and creatively engage and partner with them to understand what hurts, is broken, or needs a helping hand. We individualize our support based on what families need and what support systems they have in place.

Our work is constantly being scrutinized by the media, lawmakers, researchers, agency leaders, families, and the public. If the laws, policies, and procedures we have created to help us do our work better are not helping, isn't it time to ask why we have these rules? Often, child welfare professionals talk about the pendulum swing in child welfare. One side of the pendulum is keeping kids safe at all costs, no matter what unintended, traumatic consequences may occur with separating families. The opposite side of the pendulum is keeping families together, despite what may happen within families. Unfortunately, the swing often occurs when tragic incidents are publicized by the media. We then tend to implement restrictive laws, policies, and procedures that do not always allow us to think about what is best for families. Lawmakers can become reactive to one instance, creating additional rules that may have many unintended consequences for generations to come. It is time to get off this pendulum and try something new.

We must now ask ourselves how we can do less harm to families. We can all evaluate policies and procedures and think critically about what is best for families. We are sure there is a middle ground between following the rules and meeting the needs of families. Model using data and evaluation techniques and tools to mentor new staff in how to think critically and creatively and be passionate about the work. New child welfare frontline staff do not yet understand how to navigate all of the red tape and rules to best serve families. Let's show new child welfare staff how to do this work while engaging families at the same time.

Are we getting in our own way with supporting children, youth, and families because we

are so focused on the rules? Our decisions impact the lives of families and communities in ways that we do not always intend. Those unintended consequences will continue throughout a lifetime.

Unintended consequences impact every state child welfare system at one point or another; they create questions for us all about if what we are doing is enough. We all have a duty every day to ask why we created a policy and if it prevents families from being successful or how it prevents our workers from connecting. Let's commit to taking time and thinking about how we can do whatever it takes to

help families. Let's be bold in our critical thinking and support caregivers and children in overcoming obstacles and meeting goals. Let's celebrate successes of all shapes and sizes. Sometimes taking small steps in thinking creatively can make big impacts for families and give them hope.

Victor E. Sims, BA, is a Management Consultant at Public Knowledge® with lived expertise in foster care.

Julie Breedlove, MBA, PMP, is a Management Consultant at Public Knowledge®.



© Tom Branting | Dreamstime.com

More than a partner.

We are a management consulting firm with a vision.



**PUBLIC
KNOWLEDGE®**

YOUR CATALYST FOR POSITIVE OUTCOMES



We created a Community of Practice specifically to develop an overarching child welfare vision and plans for improvement.

To help drive this vision nationally is the Family Integrity & Justice Works at Public Knowledge®



27 years
of Firm Experience



29 states
have collaborated with Public Knowledge®



CWLS
Applicable Certifications



(800) 776-4229 | info@pubknow.com | pubknow.com

