

# THE HIDDEN PAIN OF FAMILY POLICING

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## ABSTRACT

*The child welfare system ostensibly exists to protect children. However, its methods—investigating allegations of abuse and neglect, filing cases against parents in court, removing children from their parents, and, in thousands of cases each year, permanently severing the legal relationship between children and their parents—have been shown to inflict great harm on children, despite the system’s stated goal. This Article looks at the system’s impact from a different angle: the harm to parents. It is both common sense and a proven fact that a child’s well-being depends in large part on the health and well-being of their parents. Yet the law fails to account for—or even permit consideration of—the harms parents experience during these legal proceedings.*

*This Article argues that the reason the law fails to acknowledge or account for the grave harms inflicted on parents is because of a false perception that some parents are “bad” and therefore deserve to be punished. By combining legal analysis and social science research with the words of impacted parents, this Article situates the harm that parents experience within the larger structure of the system. It catalogues the behavioral, social health, emotional, mental, and physical harms parents endure throughout the various family policing stages including surveillance, investigation, the threat of child removal, actual family separation, and termination of parental rights. In doing so, it illustrates that the health, well-being, and dignity of parents—and therefore, their children and their communities—is attacked when the state intervenes and takes control of their parenting.*

*To meet the stated goal of the “child welfare” system—ensuring children’s well-being—this Article concludes that the law must acknowledge and honor parents’ dignity. Accordingly, it recommends a two-step process. First, it proposes policy changes that would reduce harm to parents and children in the long and*

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*short term. Second, contributing to the crucial work already begun by parent activists and scholars, this Article details how, and the extent to which, the child welfare narrative must shift to create empathy towards parents and recognize their dignity.*

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## INTRODUCTION

*“No one wanted to see that I was in pain. No one wanted to see that I’m a human being. They just think that you’re some kind of monster. When you are in the child welfare system, you’re guilty until proven innocent—and you’re never really proven innocent. You’re just branded for the rest of your life as a bad parent.”<sup>1</sup>*

The “child welfare” or family policing system<sup>2</sup> purports to exist to keep children safe and ensure their well-being. However, numerous impacted parents, scholars, advocates, and foster children have detailed the harms that this system causes to children, families, and communities due to its punitive nature.<sup>3</sup> To date, most of the scholarly focus, including my own, has been on the harms that children experience when they are involved in the system and ultimately removed from

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1. Alison Greer, *A Life Changing Visitor: When Children’s Services Knocks*, VIMEO (July 26, 2013), <https://vimeo.com/71127830> [<https://perma.cc/93E2-G5VC>].

2. This Article refers to the child welfare system as the “family policing system,” a phrase coined by Victoria Copeland and Brianna Harvey, to use language that aligns with the realities faced by families targeted by the system. Proponents of the term believe it “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.” See *Why We’re Using the Term ‘Family Policing System’*, RISE MAG. (May 7, 2021), <https://www.risemagazine.org/2021/05/why-were-using-the-term-family-policing-system/> [<https://perma.cc/6DQL-CD6U>]; see also ALAN J. DETTLAFF, *CONFRONTING THE RACIST LEGACY OF THE AMERICAN CHILD WELFARE SYSTEM: THE CASE FOR ABOLITION* 13 (2023).

3. See generally DOROTHY ROBERTS, *TORN APART: HOW THE CHILD WELFARE SYSTEM DESTROYS BLACK FAMILIES—AND HOW ABOLITION CAN BUILD A SAFER WORLD* (2022) (arguing that the family policing system was designed to surveil, control, and destroy Black families and therefore must be abolished); Shanta Trivedi, *The Harm of Child Removal*, 43 N.Y.U. REV. L. & SOC. CHANGE 523 (2019) (highlighting the physical, emotional, psychological, and societal harms associated with child removal); Angela Olivia Burton & Joyce McMillan, *How Judges Can Use their Discretion to Combat Anti-Black Racism in the United States Family Policing System*, 61 FAM. CT. REV. 265 (2023) (exploring the effects of recent judicial decision-making on Black families within the context of chattel slavery and anti-Black racism); Sarah H. Lorr, *Unaccommodated: How the ADA Fails Parents*, 110 CALIF. L. REV. 1315 (2023) (documenting the history of discrimination against parents with intellectual disabilities by the family regulation system); Eliana Schachter & Elizabeth Kroll, *The Intergenerational Effects of the Child Welfare System and the Legal Obligation to Rectify Them*, 19 RUTGERS J. L. & PUB. POL’Y 211 (2022) (identifying a heightened need to address the effects of the child welfare system on foster alumni who become parents because of the impacts on a second generation of children).

their parents.<sup>4</sup> Until recently, far less attention has been paid to the negative effects that family policing has on parents.<sup>5</sup>

Harms to parents are grave and plentiful. Parents face psychological harms, assaults on their dignity, and violations of their constitutional rights. Marginalized parents face additional racial and class-based harms. Further, involvement in the family policing system inflicts multiple overlapping harms at each stage of the proceedings and through interactions with different system actors, including mandated reporters, caseworkers, lawyers, and judges.

To start, Child Protective Services (CPS)<sup>6</sup> investigations alone can be incredibly invasive and traumatizing. Once enmeshed in the family policing system, parents live in fear of CPS workers rummaging through their personal belongings and coercing cooperation, using their children as bargaining chips, and threatening to take the children if their parents do not comply.<sup>7</sup>

If parents ultimately lose their children after an investigation, their pain and suffering is magnified. In other contexts, such as when losing a child to death, parents are generally met with empathy and care, surrounded by loved ones who want to support them. Society rallies to their side. However, when parents involuntarily lose their children to the state after allegations of abuse or neglect, the response is typically the polar opposite. Many Americans believe that child abuse and neglect is “typically intentional.”<sup>8</sup> Parents are often blamed, stigmatized, and isolated—left to deal with their grief alone.<sup>9</sup> While some may be fortunate enough

4. See generally Trivedi, *supra* note 3 (highlighting the physical, emotional, psychological, and societal harms to children who are removed from their parents by the family policing system); Vivek Sankaran, Christopher Church & Monique Mitchell, *A Cure Worse than the Disease? The Impact of Removal on Children and Their Families*, 102 MARQ. L. REV. 1161 (2019) (arguing that inconsistencies within the legal and administrative aspects of the family policing system do more harm than good for the children the system targets).

5. This is not to suggest that no scholarly attention has been focused on parents, simply that most of this work has been developing over the last few years. See, e.g., ROBERTS, *supra* note 3; Martin Guggenheim, *How Racial Politics Led Directly to the Enactment of the Adoption and Safe Families Act of 1997—The Worst Law Affecting Families Ever Enacted by Congress*, 11 COLUM. J. RACE & L. 711, 723 (2021); Robyn Powell, *Achieving Justice for Disabled Parents and Their Children: An Abolitionist Approach*, 33 YALE J. L. & FEMINISM 37 (2022). Many of the legal scholars cited throughout including, but not limited to, Tarek Z. Ismail, Julia Hernandez, S. Lisa Washington, Sarah H. Lorr, Stephanie K. Glaberson, Tara Urs, Amy Mulzer, Josh Gupta-Kagan, Sarah Katz, Vivek Sankaran, Chris Gottlieb, Matthew I. Fraidin, Laura Matthews-Jolly, Clare Huntington, Anna Arons, Cynthia Godsoe, and Christopher Church have done important work on the harms that the family policing system inflicts on parents and this Article benefitted greatly from their insights.

6. This Article will use the term “CPS” generally to mean the state agency that investigates and responds to allegations of abuse and neglect.

7. See KELLEY FONG, INVESTIGATING FAMILIES: MOTHERHOOD IN THE SHADOW OF CHILD PROTECTIVE SERVICES 77–106 (2023).

8. Dee Bonnick & Sixto Cancel, *From Judgment to Empathy: Unveiling Truths in Child Welfare*, BIPARTISAN POL’Y CTR. (Mar. 11, 2024), <https://bipartisanpolicy.org/blog/judgment-to-empathy-unveiling-truths-in-child-welfare/> [<https://perma.cc/S8EW-YH8Y>].

9. Karen Broadhurst & Claire Mason, *Child Removal as the Gateway to Further Adversity: Birth Mother Accounts of the Immediate and Enduring Collateral Consequences of Child Removal*,

to have support, others are too ashamed to seek comfort or may become isolated from family and support networks due to the stress of state intervention.<sup>10</sup> Even if one is compelled to blame parents whose children are removed by the state, the pain they feel is still real, and we ignore it at our own peril.

Yet the law makes no provision to consider the harm to parents caused by family policing. Given that in most family policing cases the stated goal is rehabilitation—to address the identified problem through services and supports and either keep the family together or reunify the family after temporary separation—it is crucial that we focus on the health and well-being of the parent. Failing to do so increases the likelihood of family separation, reduces the likelihood of reunifying children with their parents, and leaves parents without support in the wake of their devastating loss.

Once their children are removed, many parents face the possibility of the permanent destruction of their parent-child relationship through termination of parental rights (TPR). If TPR does occur, parents face additional humiliation and shame. They also may experience the possible adoption of their children into new families.<sup>11</sup> Indeed, they must reckon with the fact that they have lost their children forever, while knowing their children are still alive—just somewhere else.<sup>12</sup>

Already marginalized groups suffer in distinct ways because of racism, classism, and negative stereotypes about their character. Black and Native parents, for example, suffer unique harms due to the history of child removal in the United States. To be sure, Black and Native parents are not the only groups subjected to discrimination by the family policing system, but these two groups are continuously overrepresented in the system and will therefore be the primary focus of this Article. The intergenerational and historical trauma of slavery and Native American boarding schools makes child removal today especially difficult for parents who are part of these groups. Furthermore, children who grow up in the foster system, disproportionately Black and Native, face heightened risks of having their own children enter the system—clear evidence that CPS intervention is not helping the children it targets.<sup>13</sup>

Throughout these proceedings, the family policing system encroaches on parents' dignity because it intervenes in families' most basic decisions—what children should eat, what their bedtimes should be, who should be around them, and, in many cases, where they should live. Because “[a] person has liberty as dignity

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19 QUALITATIVE SOC. WORK 15, 32 (2019); Emma Geddes, “Some Days It’s like She Has Died.” *A Qualitative Exploration of First Mothers’ Utilisation of Artefacts Associated with Now-Adopted Children in Coping with Grief and Loss*, 21 QUALITATIVE SOC. WORK 811, 814 (2022).

10. Broadhurst & Mason, *supra* note 9, at 28–30; Geddes, *supra* note 9, at 814.

11. See Karen Broadhurst & Claire Mason, *Maternal Outcasts: Raising the Profile of Women Who Are Vulnerable to Successive, Compulsory Removals of Their Children – a plea for preventative action*, 35 J. SOC. WELFARE & FAM. L. 291, 292 (2013).

12. Geddes, *supra* note 9, at 814–15.

13. Schachter & Kroll, *supra* note 3, at 212.

only insofar as [they] can make autonomous choices,”<sup>14</sup> family policing assails parents’ dignity by undermining parents as capable decisionmakers for their children.

It is crucial to understand that “a person does not lack capacity because [they] make[] decisions that people disagree with or do not understand or because [they] make[] risky decisions.”<sup>15</sup> Many of the choices parents make are simply choices that the family policing system may not agree with, but they are not inherently dangerous or harmful to their children.<sup>16</sup> Some decisions are not even choices, but rather circumstances thrust upon parents by systemic forces such as racism and poverty.<sup>17</sup> Many poor, single, and non-white parents are stereotyped as monsters, “drug addicts,” or welfare queens. They are scorned because they are minorities, destitute or single mothers. These marginalizing labels make parents easy targets for the family policing system. The system’s lack of empathy for parents and its constant assaults on their dignity underly the harms that it perpetrates against them.

Many parents have powerfully told their stories through their own writing<sup>18</sup> or to journalists,<sup>19</sup> and numerous scholars have relayed the stories of individual parents who have lost their children through extensive social science research.<sup>20</sup>

14. Leslie Meltzer Henry, *The Jurisprudence of Dignity*, 160 U. PA. L. REV. 169, 208 (2011).

15. Margaret E. Johnson, *Balancing Liberty, Dignity, and Safety: The Impact of Domestic Violence Lethality Screening*, 32 CARDOZO L. REV. 519, 554 (2010).

16. See Anita Ortiz Maddali, *The Immigrant “Other”: Racialized Identity and the Devaluation of Immigrant Family Relations*, 89 IND. L. J. 643, 684–89 (2014) (recounting a termination case in which a CPS caseworker did not consider a child’s cultural background when indicating that a child was malnourished because his immigrant parents fed him “milk, tortillas, sopas, eggs, and beans”).

17. See HINA NAVEED, HUM. RTS. WATCH, IF I WASN’T POOR, I WOULDN’T BE UNFIT: THE FAMILY SEPARATION CRISIS IN THE US CHILD WELFARE SYSTEM 38, 44, 89–100 (2022), <https://www.hrw.org/report/2022/11/17/if-i-wasnt-poor-i-wouldnt-be-unfit/family-separation-crisis-us-child-welfare> [<https://perma.cc/4Q3Q-RU7U>].

18. See, e.g., Elizabeth Brico, *Poverty Isn’t Neglect, But the State Took My Children Anyway*, TALK POVERTY (Nov. 16, 2018), <https://talkpoverty.org/2018/11/16/poverty-neglect-state-took-children> [<https://perma.cc/P37P-U5CH>]; Latagia Copeland-Tyrone, *I Wrongly Lost Seven of My Children to the White Supremacist Child Welfare System and Five to Transracial Adoption: Damn NAAM!*, MEDIUM (Nov. 11, 2019), <https://medium.com/latagia-copeland-tyronces-tagi-s-world/i-wrongly-lost-seven-of-my-children-to-the-white-supremacist-child-welfare-system-and-five-to-566103aeeb44> [<https://perma.cc/ZR5A-APGZ>].

19. See, e.g., Caitlin Gibson, *They Brought Their Sick Baby to the Hospital. Three Days Later, the State Took Their Kids Away.*, WASH. POST (Dec. 7, 2022, 8:00 AM), <https://www.washingtonpost.com/lifestyle/2022/12/07/josh-sabey-sarah-perkins-abuse-investigation/> [<https://perma.cc/ARN8-V77R>]; Kelley Fong, ‘No Matter What I Do, I’m Not in Control’: What Happens When the State Takes Your Child, THE GUARDIAN (Oct. 11, 2023, 9:00 AM), <https://www.theguardian.com/us-news/2023/oct/11/us-child-protective-services-family-mother> [<https://perma.cc/89Z9-SEXR>]; Agnel Philip, Eli Hager & Suzy Khimm, *The “Death Penalty” of Child Welfare: In Six Months or Less, Some Parents Lose Their Kids Forever*, PROPUBLICA & NBC NEWS (Dec. 20, 2022, 8:30 AM), <https://www.propublica.org/article/six-months-or-less-parents-lose-kids-forever> [<https://perma.cc/4FXS-U8LY>].

20. Broadhurst & Mason, *supra* note 9, at 24–32; Geddes, *supra* note 9, at 818–25; NAVEED, *supra* note 17.

These impactful stories have already begun to offer a different perspective of family policing than has been traditionally explored.

This shifting perspective allows those who have never had contact with the family policing system to understand how parents feel when they are under constant surveillance and accused of abuse or neglect. It also educates outsiders on how the system disproportionately targets racially marginalized and impoverished families. In this way, more people will hopefully be able to empathize with accused parents and understand that the narrative that surrounds them is not always accurate and, at the very least, is usually incomplete.

This Article examines the wide-ranging effects that family policing intervention can have on the behavioral, emotional, mental, physical, and social health of parents, while incorporating parents' experiences in the family policing system.

Part I of this Article explores the detrimental effects that each distinct stage of a family policing case has on parents: when the state surveils them, investigates them, forces them to participate in court proceedings, removes their children from their care, and, in some cases, permanently terminates their parental rights. Part II probes why both the law and our society fail to acknowledge the harms that the family policing system inflicts on parents and why we focus almost singularly on children. Part III explains how reducing harm to parents is a two-step process: first, implementing policy changes that address some of the greatest harms that the system inflicts on parents, and second, changing the narrative that surrounds parents who are forced into the system. It explains that the only way to create real change is to center the dignity and humanity of parents and show them empathy. It explores how agents of the family policing system can cultivate empathy within themselves to eventually increase systemic empathy. It suggests that in addition to reducing the harms of family policing on parents, these measures will also better meet the stated goal of the "child welfare" system: ensuring children's well-being.

## I.

### HOW FAMILY POLICING HARMS PARENTS<sup>21</sup>

To understand the different ways that family policing hurts parents, it is helpful to understand how one becomes entangled in the system, who the different system actors are, and how a case proceeds.

Most family policing investigations begin with a call to a hotline and an allegation that a parent has committed an act of abuse or neglect. While these calls can come from anyone, approximately two-thirds of the reports come from mandated reporters—individuals with a legal obligation to report suspected abuse or neglect.<sup>22</sup>

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21. This is a greatly simplified explanation of how family policing cases work. For a more thorough exploration of the stages and mechanisms of these cases, see Trivedi, *supra* note 3.

22. Kelley Fong, *Getting Eyes in the Home: Child Protective Services Investigations and State Surveillance of Family Life*, 85 AM. SOCIO. REV. 610, 616 (2020).



Once CPS receives a complaint, a caseworker decides whether the facts require further investigation or if the call will be “screened out” because there is either insufficient information to rely on or the allegations fail to meet the state’s definition of abuse or neglect.<sup>23</sup>

If a case is “screened in,” the CPS agency investigates the family and determines whether the reported allegation is substantiated or unsubstantiated.<sup>24</sup> If the agency does not find sufficient evidence to corroborate the allegation or what they found does not rise to the level of abuse or neglect then the report is unsubstantiated. If the investigator finds enough evidence to support the allegation of abuse or neglect, they will substantiate the report, and the agency will take further action.<sup>25</sup>

While CPS responses vary by jurisdiction, if the risk to the child is perceived as sufficiently low, many families will receive referrals to services that seek to address identified risks. If a family refuses to accept a CPS referral, the agency may file a case in court to force a family to choose between accepting the services or the possibility of their children being temporarily removed. In cases that the agency perceives to be high-risk, it will immediately file a case in court seeking an order to remove the children or affirm a removal that has already occurred.<sup>26</sup>

For a temporary removal<sup>27</sup> to occur, the court must find that the state has made “reasonable efforts” to prevent the removal.<sup>28</sup> If the court permits removal, the state may place the child in a kinship home, with a relative or friend, or in a foster placement, such as a non-relative home or institutional setting. During this period, the state must continue to make reasonable efforts to try to reunite the

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23. CHILD WELFARE INFO. GATEWAY, HOW THE CHILD WELFARE SYSTEM WORKS: FACTSHEET OCTOBER 2020 3 (2020), <https://www.childwelfare.gov/resources/how-child-welfare-system-works/> [<https://perma.cc/J3M4-QCLZ>].

24. *Id.* at 4.

25. *Id.*

26. *Id.* at 5. Although court orders are usually required before removing a child, in many cases, children are removed prior to a court order based on a perceived emergency because statutory language permits removals when there are exigent circumstances. For a detailed discussion, see 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, 208, 214 (2016).

27. This paper will use the phrase “temporary removal” to describe an initial removal of a child from their parent as opposed to the permanent severing of the familial relationship (termination of parental rights).

28. Adoption and Safe Families Act (“ASFA”) of 1997, 42 U.S.C. § 671 (a)(15)(B)(i) (1997). Despite its focus on the subject, the ASFA does not define “reasonable efforts” except to say that “in making such reasonable efforts, the child’s health and safety shall be the paramount concern.” See 42 U.S.C. § 671(a)(15)(A) (1997). Most states have adopted the ASFA’s language verbatim rather than define “reasonable efforts,” which offers little to no guidance to determine whether the state made reasonable efforts toward family reunification. Will L. Crossley, *Defining Reasonable Efforts: Demystifying the State’s Burden Under Federal Child Protection Legislation*, 12 B.U. PUB. INT. L. J. 259, 282, 293–95 (2003). As a result, in most states, individual agencies, caseworkers, and judges have leeway to determine what efforts are reasonable. *Id.* at 295–97.

family.<sup>29</sup> If a child remains in the foster system for fifteen out of twenty-two months, the law generally requires that the state initiate a TPR proceeding to permanently sever the legal relationship between parents and their children.<sup>30</sup>

Nowhere in these proceedings do courts consider the parent's well-being. At removal, in most jurisdictions, all that matters is the perceived risk to the child. At other stages, the court contemplates only the child's "best interests" separate and apart from that of their parents. During a TPR proceeding, the court determines whether a parent is deserving of that title.

At each stage of a family policing case, the system harms Black families, LGBTQ+ families, survivors of intimate partner violence, disabled parents, parents who use substances, Latinx families, and many other communities who have faced historical discrimination, including family separation, in distinct and compounding ways. Implicit bias and overt racism produce additional challenges and harms for parents who hold marginalized identities, rooted in the racist roots of the family policing system. This Part details the harm that occurs at each stage of a family policing case and the particular harms suffered by marginalized parents and communities.

#### *A. The Harms of Mandated Reporting, Surveillance, and Investigation*

Even in cases where their children are not removed, the threat of removal hangs over parents like a dark cloud. Mandated reporting, surveillance by the family policing system, and resulting investigations, separate and apart from removals, can be detrimental to parents. While "[t]he power of surveillance 'touches everyone . . . its hand is heaviest in communities already disadvantaged by their poverty, race, religion, ethnicity, and immigration status.'"<sup>31</sup> Especially in communities where CPS presence is strong, parents are always aware of the threat of family policing intervention, intrusions into their privacy, and the removal of their children.

Most family policing cases begin with a call from a mandated reporter. Mandated reporters in the United States generally engage in professions that have significant contact with children; they include doctors, teachers, law enforcement,

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29. 42 U.S.C. §671(a)(15)(B) ("reasonable efforts shall be made to preserve and reunify families prior to the placement of a child in foster care, to prevent or eliminate the need for removing the child from the child's home.").

30. Katherine A. Hort, *Is Twenty-Two Months Beyond the Best Interest of the Child? ASFA's Guidelines for the Termination of Parental Rights*, 28 FORDHAM URB. L.J. 1879, 1881 (2001) ("There are three exceptions to this [15/22] provision: (1) if the child is living with a relative ('kinship placement'); (2) if the state agency has documented a compelling reason why filing is not in the best interest of the child; and (3) if the state has failed to provide the family with the services necessary to safely reunite the child with her parents.").

31. Charlotte Baughman, Tehra Coles, Jennifer Feinberg & Hope Newton, *The Surveillance Tentacles of the Child Welfare System*, 11 COLUM. J. RACE & L. 501, 506 (2021) (quoting Barton Gellman & Sam Adler-Bell, *The Disparate Impact of Surveillance*, CENTURY FOUND (Dec. 21, 2017), <https://tcf.org/content/report/disparate-impact-surveillance/?session=1&session=1> [<https://perma.cc/28H4-KLPH>]).

social workers, etc.<sup>32</sup> Mandated reporters are more likely to interact with people living in poverty<sup>33</sup> because “[u]sing 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.”<sup>34</sup> And since children and families of color in the United States are more likely to live in poverty, they also face a higher risk of coming into contact with mandated reporters.<sup>35</sup>

For low-income parents, “the system turns the blame on the individual for lack of resources instead of acknowledging the structural barriers families confront, turning sites that purport to offer help into sites of surveillance, coercion, and danger.”<sup>36</sup> When they police families, mandated reporters “become complicit in the state control of [parents and] disproportionately expos[e] mothers of color to investigations.”<sup>37</sup>

Parents with less means also tend to face greater scrutiny than other parents, as their lives are largely lived in public.<sup>38</sup> They are more likely to live in public housing, use public transportation, and access healthcare at public hospitals rather than primary care providers.<sup>39</sup> As a result, they are constantly exposed to mandated reporters.<sup>40</sup> Needless to say, much of the same conduct that results in mandated reporting likely happens all the time in more affluent homes—but it happens behind closed doors.<sup>41</sup>

Even though some reports are “screened out,” CPS still investigates over *three million* children a year.<sup>42</sup> Damningly, *eighty percent* of these cases are not substantiated, meaning that there is not enough evidence to support the

32. CHILD WELFARE INFO. GATEWAY, MANDATORY REPORTING OF CHILD ABUSE AND NEGLECT: STATE STATUTES CURRENT THROUGH MAY 2023 2 (2023), <https://www.childwelfare.gov/resources/mandatory-reporting-child-abuse-and-neglect/> [<https://perma.cc/DTF8-3WL5>].

33. Dorothy E. Roberts, *Why End Mandated Reporting*, 1 FAM. INTEGRITY & JUST. Q. 10, 12 (2022).

34. *Id.* at 10.

35. *Id.*

36. Stephanie K. Glaberson, *The Epistemic Injustice of Algorithmic Family Policing*, 14 U.C. IRVINE L. REV. 404, 427 (2024).

37. JANET GARCIA-HALLET, INVISIBLE MOTHERS: UNSEEN YET HYPERVISIBLE AFTER INCARCERATION 70 (2022).

38. Roberts, *supra* note 33, at 10–12.

39. *Id.* at 12.

40. See Asher Lehrer-Small, *Exclusive Data: Educators’ ‘Careless’ Child Abuse Reports Devastate Thousands of NYC Families*, THE 74 (Oct. 6, 2022), <https://www.the74million.org/article/exclusive-data-educators-careless-child-abuse-reports-devastate-thousands-of-nyc-families/> [<https://perma.cc/P2E4-X6MK>].

41. See generally KHIARA BRIDGES, THE POVERTY OF PRIVACY RIGHTS 117–18 (2017).

42. Eli Hager, *CPS Workers Search Millions of Homes a Year. A Mom Who Resisted Paid a Price.*, NBC NEWS (Oct. 13, 2022, 8:00 AM), <https://www.nbcnews.com/news/us-news/child-abuse-welfare-home-searches-warrant-rcna50716> [<https://perma.cc/89HM-QHK6>].

allegation.<sup>43</sup> But the damage to families is already done. The investigation alone can be “nerve-wracking,” “invasive,” and “humiliating.”<sup>44</sup> Black and Native families are disproportionately targeted by the family policing system.<sup>45</sup> One study estimated that about a third of Black families will be investigated by CPS, and, in one county, the estimate was as high as 63.3 percent.<sup>46</sup>

If CPS receives a report of abuse or neglect, CPS workers must investigate the allegation by entering the home. Investigations often entail going through cabinets and bedrooms, examining the children’s naked or partially naked bodies, interviewing the children outside of their parents’ presence, and asking parents invasive questions<sup>47</sup> without any requirement to inform parents of their rights.<sup>48</sup> CPS workers may also question friends, family members, neighbors, and teachers. They may interview children outside of the presence of their parents, causing parents to feel ashamed that they are being investigated and creating major concerns for the reliability of the interrogations.<sup>49</sup> CPS workers also often coax parents into signing Health Insurance Portability and Accountability (HIPAA) release forms in order to obtain medical information not only about the child, but also about the parents themselves.<sup>50</sup>

For many, the investigation is an experience of being “guilty until proven innocent.”<sup>51</sup> Scholars have observed that investigations often try to gain evidence against the family to support the allegation, rather than actually try to determine whether the allegation is true.<sup>52</sup> For example, a 1986 study that surveyed 50 parents falsely accused of sexual abuse found that:

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43. CHILD.’S BUREAU, U.S. DEP’T OF HEALTH AND HUM. SERV., THE AFCARS REPORT – No. 27 (2020), <https://www.acf.hhs.gov/sites/default/files/documents/cb/afcarsreport27.pdf> [https://perma.cc/388D-5XT4].

44. NAVEED, *supra* note 17, at 63.

45. ROBERTS, *supra* note 3, at 23; Chris Gottlieb, *Black Families Are Outraged About Family Separation Within the U.S. It’s Time to Listen to Them*, TIME MAG. (March 17, 2021, 9:00 AM), <https://time.com/5946929/child-welfare-black-families/> [https://perma.cc/R4LB-56TA]; Peggy C. Davis & Richard G. Dudley, Jr., *The Black Family in Modern Slavery*, 4 HARV. BLACKLETTER J. 9, 14–15 (1987).

46. Frank Edwards, Sara Wakefield, Kieran Healy & Christopher Wildeman, *Contact with Child Protective Services is Pervasive but Unequally Distributed by Race and Ethnicity in Large US Counties*, 118 PROC. NAT’L ACAD. SCIS. 1, 1–2 (2021).

47. NAVEED, *supra* note 17, at 63–64.

48. See *Why a Child Welfare ‘Miranda Rights’ Law is Essential | A Q&A with Advocate and Organizer Joyce McMillan*, CTR. N.Y.C. AFF., URBAN MATTERS (June 2, 2021), <https://www.centrernyc.org/urban-matters-2/2021/6/2/why-a-child-welfare-miranda-rights-law-is-essential-a-q&a-with-advocate-and-organizer-joyce-mcmillan> [https://perma.cc/E57X-LRHC].

49. Julia Hernandez & Tarek Z. Ismail, *Radical Early Defense Against Family Policing*, 132 YALE L.J.F. 659, 661, 665–67 (2022).

50. *Id.* at 665–66.

51. Sabrina Luza & Enrique Ortiz, *The Dynamics of Shame in Interactions Between Child Protective Services and Families Falsely Accused of Sexual Abuse*, 3 INST. FOR PSYCH. THERAPIES J. 1, 6 (1991).

52. *Id.* at 5.

16% felt the CP worker was biased toward supporting the charge prior to the investigation, 64% felt there was a lack of skill in gathering legal evidence, thus, the innocent were caught in the system rather than being quickly exonerated, and 34% felt there was not enough training for the CPS workers in protecting all clients' rights, especially the parents' rights.<sup>53</sup>

The assumption of guilt during investigations leads to over-pathologizing of potentially innocuous behaviors as “neglect” or “abuse,” which keeps innocent parents trapped in the family policing system.<sup>54</sup> Furthermore, if a parent objects to accusations or presents an alternate explanation, it may be treated as further evidence of guilt, leading to understandable frustration and feelings of powerlessness.<sup>55</sup>

A commonplace CPS investigation can cause real trauma to parents.<sup>56</sup> As Professor Dorothy Roberts explains: “even when its agents don’t remove children, they *can* take children and that threat is how they impose their power and terror. It is a form of punishment, harm, and oppression.”<sup>57</sup> One mother described the anxiety and fear they experience surrounding CPS investigations, saying “It turns you into a paranoid nut, I turned into a paranoid person for a while. I thought everybody was [CPS].”<sup>58</sup> Another mother confirmed her paranoia, explaining “The fact is, [t]hey watch you like a hawk—they don’t just have [CPS] workers watching, they have others that aren’t from [CPS] because I know, they drive around and watch people that have had their children taken away, I know.”<sup>59</sup>

Parents, particularly those who are economically disadvantaged and are racially marginalized, live knowing that their parenting is always being judged “against an ideal that fails to account for the systemic challenges they face.”<sup>60</sup> Vague definitions of neglect allow for racist stereotypes and particular ideals of parenting to permeate the family policing system and create unrealistic standards against which caseworkers judge parents. In one case, for example, a caseworker chastised a Latinx family for feeding their baby milk, tortillas, sopas, eggs, and beans.<sup>61</sup> The prioritization of white parenting norms in the family policing system exemplifies the “invisibility thesis” whereby the law “effectively encode[s] or

53. *Id.*

54. *Id.* at 5–6 (explaining that investigations foster “frequent misidentification of individuals as abnormal”).

55. *Id.* at 6.

56. Hernandez & Ismail, *supra* note 49, at 676; *see generally* Luza & Ortiz, *supra* note 51.

57. ‘Abolition Is the Only Answer’: A Conversation with Dorothy Roberts, *RISE* (Oct. 20, 2020), <https://www.risemagazine.org/2020/10/conversation-with-dorothy-roberts/> [<https://perma.cc/P6UM-ZT8K>].

58. Sherrie McKegney, *Silenced Suffering: The Disenfranchised Grief of Birthmothers Compulsorily Separated from Their Children* 56 (August 2003) (Master of Social Work Thesis, McGill University) (on file with eScholarship@McGill).

59. *Id.*

60. Fong, *supra* note 22, at 7.

61. Ortiz Maddali, *supra* note 16, at 689.

protect[s] a default ‘white’ normative perspective, making whites’ interests seem invisible or natural.”<sup>62</sup>

Parents of color are particularly attuned to the stigma that parents face once CPS is involved in their lives. As one Latina woman put it “I just think if you’re a minority and you have [a family policing case], they have a certain perception of you. It’s like a stereotype. . . . If you already have a [family policing] case, they think in their mind, y’all are the worst type of parent.”<sup>63</sup>

Parents of color also face both overt racism and microaggressions<sup>64</sup> in their interactions with caseworkers. This is true even when caseworkers are people of color.<sup>65</sup> Caseworkers may be dismissive of a parent’s racial and ethnic background or recommend services that are based upon stereotypes and condescension.<sup>66</sup> As anthropologist Tina Lee has written:

The leeway that caseworkers and others have in making decisions . . . allows space for racial stereotypes to affect decision making and for problems associated with poverty to be recast as individual failures and labeled neglect. . . . Caseworkers sometimes assume that the women of color they see are irresponsible, unable to learn from past mistakes, and unwilling to put their children’s safety above their own desires and sexual needs. In this way, it becomes easy for caseworkers to see them as unacceptable risks to their children rather than as struggling mothers. Although most caseworkers are also [B]lack and Latino, they draw, probably unconsciously, on larger stereotypes about poor, [B]lack mothers, and these preconceptions affect how the caseworkers see their clients and understand their lives. Moreover, caseworkers, as middle-class professionals, are likely to judge parents using middle-class parenting standards.<sup>67</sup>

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62. Latoya Baldwin Clark, *The Critical Racialization of Parents’ Rights*, 132 YALE L.J. 2139, 2158 (2023) (quoting Camille Gear Rich, *Marginal Whiteness*, 98 CALIF. L. REV. 1497, 1511 (2010)). According to Clark, “the parents’ rights and anti-CRT movement do this work of Whiteness by positioning colorblindness and innocence as superior values. Yet those values provide little relief to non-Whites while buttressing White racial power.” *Id.* at 2158–59.

63. Darcey Merritt, *How Do Families Experience and Interact with CPS?*, 692 ANNALS AM. ACAD. POL. & SOC. SCI. 203, 217 (2020).

64. Microaggressions are “[B]rief, everyday exchanges that send denigrating messages to people of color because they belong to a racial minority group.’ Racial microaggressions are usually unconscious and automatic gestures, tones, looks, or exchanges that are often invisible and easily dismissed as being harmless and innocent.” Suzie S. Weng & Lisa Gray, *Racial Microaggressions Within Social Work: Perceptions of Providers*, 34 J. SOC. WORK PRAC. 67, 68, 72 (2020) (citations omitted); see also Robert B. Hill, *Institutional Racism in Child Welfare*, 7 RACE & SOC’Y 17, 19–20 (2004).

65. *Id.*

66. See Weng & Gray, *supra* note 64, at 72.

67. TINA LEE, CATCHING A CASE: INEQUALITY AND FEAR IN NEW YORK CITY’S CHILD WELFARE SYSTEM 121 (2016).

While, as discussed, most cases do not end up in court, those that do compound the harms already inflicted by reporting, surveillance, and investigation. The next section highlights how the court process and continued interactions with family policing caseworkers hurt parents.

### *B. The Harms of Court Involvement and Supervision*

CPS involvement can be incredibly embarrassing for families, causing them to feel shame. This shame is compounded by stigmatization and affronts to their humanity because many parents face negative stereotypes about their character.<sup>68</sup> CPS workers have labeled parents as “bad” or “sick” before they even have a chance to prove their innocence.<sup>69</sup> Such shaming can ultimately be counterproductive as it has a “profoundly negative impact on a person's view of his worthiness, dignity, or sense of ability to change.”<sup>70</sup>

In the family court system, fathers may face different challenges than mothers as the system barely recognizes them. Family policing agencies generally focus on families where the mother is the primary caregiver, even where their fathers and other male caregivers are present in the children’s lives.<sup>71</sup> When CPS opens cases only in the mother’s name, courts may not even mention the father in the record. This leaves the father unable to access support provided by the state or even participate in the proceedings, making reunification difficult if not impossible.<sup>72</sup>

For parents with open court cases, supervision by family policing agencies can also cause harm and infringe on a parent’s ability to raise their child with dignity.<sup>73</sup> After CPS removes children from their parents, caseworkers often observe visitation appointments.<sup>74</sup> One mother described how strange it was to be supervised while visiting her own child:

Why is the stranger watching me feed my daughter yogurt? . . .  
It’s a level of surveillance that makes you feel so uncomfortable.  
And it damages the bond that you’ve built, of trust between a

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68. Nina Memarnia, Lizette Nolte, Clare Norris & Alex Harborne, *‘It Felt Like it Was Night All the Time’: Listening to the Experiences of Birth Mothers Whose Children Have Been Taken into Care or Adopted*, 39 ADOPTION & FOSTERING 303 (2015); see also Odeana R. Neal, *Myths and Moms: Images of Women and Termination of Parental Rights*, 5 KANS. J.L. & PUBLIC POL’Y 61 (1995) (describing how judges rely upon mythical notions of good motherhood to determine whether a mother’s parental rights should be terminated).

69. Luza & Ortiz, *supra* note 51.

70. A. Rachel Camp, *Pursuing Accountability for Perpetrators of Intimate Partner Violence: The Peril (and Utility?) of Shame*, 98 B.U. L. REV. 1677, 1683–84 (2018).

71. Amy E. Heberle, Elsie A. Obus & Sarah A. O. Gray, *An Intersectional Perspective on the Intergenerational Transmission of Trauma and State-Perpetrated Violence*, 76 J. SOC. ISSUES 814, 825–26 (2020).

72. *Id.*

73. Marie-Fatima Hyacinthe, *Child Care and Carcerality: Reviewing Dorothy Roberts’ “Torn Apart,”* 7.1 HEALTH EQUITY 713, 714 (2023).

74. Laura Matthews-Jolly, *Visitation as Family Regulation*, 103 N.C. L. REV. 521 (2025).

parent and child, that the parent has to listen to the stranger berate them.<sup>75</sup>

Court proceedings are also extremely distressing for parents because they experience public shaming by judges and attorneys for the state as their parenting is dissected in the most degrading manner.<sup>76</sup> One mother recalls the traumatic experience of not only having her baby removed, but also listening to the judge say, “I don’t think she’s fit to be a mother. She doesn’t deserve her baby back. I’ll have to see. He needs to be with his father. I don’t care who he is with as long as he’s not with her.”<sup>77</sup>

The state subjects the judgment of parents to constant questioning, even when their decision-making does not result in serious harm to their child. Parents have been reported and questioned for letting their children be naked in their own homes, for using marijuana outside of the presence of their children, and for dirty dishes in the sink and clutter on the floor.<sup>78</sup>

Parents of color express hopelessness at the realization that most parents in the system are not white and feeling like they don’t stand a chance during proceedings.<sup>79</sup> As one put it, “I think the judge is like, oh, another Black child in foster care, or another Black parent, or another Spanish parent in front of me, like you’re bad. I think that’s the reputation that’s going around.”<sup>80</sup>

Even the parents’ attorneys, charged with protecting their clients’ interests during these proceedings, can affront parental dignity by silencing them and questioning their truthfulness.<sup>81</sup> Many parents report that they feel that their attorneys didn’t fight for them or tell their story in the way they wanted during court proceedings.<sup>82</sup>

One example of how court proceedings subject parenting choices to judgment and racialized scrutiny comes from my own practice. I once represented a Black, immigrant, single mother who was accused of neglecting her children because CPS alleged she had waited too long to take her child to the doctor for severe

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75. Daniel Moritz-Rabson, *‘Never Designed to Help’: How New York’s ‘Child Welfare’ System Preys on Families*, NYCLU: COMMENTARY (May 16, 2023), <https://www.nyclu.org/en/publications/never-designed-help-how-new-yorks-child-welfare-system-preys-families> [<https://perma.cc/3NNA-8TAE>].

76. Tricia N. Stephens, Colleen Cary Katz, Caterina Pisciotto & Vicki Lens, *The View from the Other Side: How Parents and Their Representatives View Family Court*, 59 FAM. CT. REV. 491, 499–502 (2021).

77. *Id.* at 499.

78. Chris Gottlieb, *Reflections on Judging Motherhood*, 39 U. BALT. L. REV. 371, 386 (2010).

79. Stephens, Katz, Pisciotto & Lens, *supra* note 76, at 500 (“[Y]ou walk in and you see maybe two families that are White and the rest are all like you, you’re like, crap. I’m fucked. What else can you say about it? . . . You’re like, this is not gonna go well.”).

80. *Id.*

81. See Jessica López-Espino, *Giving and Taking Voice: Metapragmatic Dismissals of Parents in Child Welfare Court Cases*, 49 L. SOC. INQUIRY 1453, 1455 (2023) (describing how attorneys and judges in the family policing context positioned parents’ language practices and overall personhood as “suspect” for example by labelling parents’ speech as “lies” and “excuses”).

82. *Id.* at 1462–65.



eczema. The allegation was not that she never sought medical care, simply that she should have gone one day prior. My client explained that she had medication that had previously been prescribed to her and she wanted to see if it worked before taking her child to the hospital. In response, the caseworker, who was also Black, accused my client of “catching an attitude” with her. The caseworker’s ultimate recommendation was to remove my client’s six children from her care based solely on this minor allegation.

Around the same time, my white friend (who also happened to be a parent defender) took her child to the emergency room with suspected croup. My friend’s child had croup multiple times before, and my friend believed she could treat it since she had confirmed the diagnosis and received treatment. She decided to take her child home against medical advice. No one called CPS on her.

The difference here is that my white colleague’s parenting ability and knowledge of her child was not questioned, whereas my Black client’s reasonable choice was treated as neglect. By having her parental decision-making interrogated in this way, my client faced “epistemic injustice”<sup>83</sup> and was therefore “harmed in [her] capacity as a knower.”<sup>84</sup> Put simply, the family policing system over-polices parents from marginalized groups because, as a society, we do not trust their knowledge or capacity as parents.

As scholar Stephanie K. Glaberson has described it: “[Parents’] accounts are systematically disbelieved in favor of crediting other epistemic authorities, such as case workers and service providers. And their experiences of a harsh and abusive system are largely unintelligible to the general public, who see the system as a benevolent presence.”<sup>85</sup>

On a recent podcast, parent advocate Joyce McMillan, founder of JMAC for Families, recounted her own experience of the family policing system, which exemplified Glaberson’s description. She explained how isolated she felt while fighting CPS because no one believed her except for the attorneys and social workers at her parent defense office. Her friends and family could not reconcile the truth that she offered them with the explanations being provided by caseworkers for New York City’s CPS agency, the Administration for Children’s Services.<sup>86</sup>

Epistemic injustice contributes to disproportionate numbers of Black and Native families being ensnared at each stage of family policing proceedings. Despite

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83. MIRANDA FRICKER, *EPISTEMIC INJUSTICE: POWER AND THE ETHICS OF KNOWING* (2009). Miranda Fricker coined the term “epistemic injustice.” The concept, however, was developed by Black feminists and other feminists of color who have “remark[ed] upon the kind of silencing that follows from not gaining the appropriate recognition” as a holder of knowledge. Kristie Dotson, *Tracking Epistemic Violence, Tracking Practices of Silencing*, 26 *HYPATIA* 236, 252 n.5 (2011). For a thorough discussion of the concept of epistemic injustice as applied to family policing, see Glaberson, *supra* note 36, and S. Lisa Washington, *Survived & Coerced: Epistemic Injustice in the Family Regulation System*, 122 *COLUM. L. REV.* 1097, 1108 (2022).

84. Washington, *supra* note 83, at 1108.

85. Glaberson, *supra* note 36, at 425.

86. The UpEND Podcast, *Family Defenders*, UpEND (Nov. 21, 2023), <https://upendmovement.org/episode1-5/> [<https://perma.cc/7AYL-6RRM>].

the fact that “being Black is not an inherent risk factor,” Black parents are more likely to be reported to CPS initially, have the allegations against them substantiated, and have their children removed. And they are less likely to have their children returned to them.<sup>87</sup> Native parents have their children removed at up to four times the rate of their peers.<sup>88</sup>

Beyond being disproportionately targeted by the family policing system, Black families face coded and pathologizing language at every stage of the proceedings, being labeled “angry,” “aggressive,” “hostile,” and “loud.”<sup>89</sup> Black people with histories of trauma may legitimately feel angry, not only because of the individual trauma that they have faced, but because Black people generally face persistent racism and microaggressions.<sup>90</sup> As a result, they experience negative impacts as a result of overt racism such as stress, anger, shame, and depression and self-doubt, isolation, and pain in response to microaggressions.<sup>91</sup>

Racism may also be “aversive,” referring to “prejudicial attitudes and discriminatory behavior that may be exhibited unconsciously or unintentionally by persons with liberal views and tolerant predispositions.”<sup>92</sup> Parents experience aversive racism when system actors judge them or treat them differently on grounds that do not seem to be directly connected to race, such as poverty or “aggressive” behavior.<sup>93</sup> Enduring racism can cause depression, anxiety, and low self-esteem among other effects that can then impact their ability to parent effectively or meet the requirements placed on them by the system.<sup>94</sup>

In court, family policing actors often fail to refer to parents by their names, instead referring to them as “the mother” or “respondent mother”—an incredibly dehumanizing practice that is pervasive in family policing proceedings.<sup>95</sup> Parents must listen to caseworkers and other witnesses talk about the intimate details of their lives, endure judgments on the day-to-day parenting choices that they make, and respond with little to no emotion for fear of it being used against them.

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87. See Emily Berkman, Emily Brown, Maya Scott & Alicia Adiele, *Racism in Child Welfare: Ethical Considerations of Harm*, 36 *BIOETHICS* 298, 298 (2022).

88. *Disproportionate Representation of Native Americans in Foster Care across United States*, CITIZEN POTAWATOMI NATION (Apr. 6, 2021), <https://www.potawatomi.org/blog/2021/04/06/disproportionate-representation-of-native-americans-in-foster-care-across-united-states/> [<https://perma.cc/7A6E-TMVR>]; Debra Utacia Krol, *Inside the Native American Foster Care Crisis Tearing Families Apart*, VICE (Feb. 8, 2018, 1:00 AM), [https://www.vice.com/en\\_us/article/a34g8j/inside-the-native-american-foster-care-crisis-tearing-families-apart](https://www.vice.com/en_us/article/a34g8j/inside-the-native-american-foster-care-crisis-tearing-families-apart) [<https://perma.cc/B7WJ-V349>].

89. S. Lisa Washington, *Pathology Logics*, 117 *NW. U. L. REV.* 1523, 1543–44 (2023).

90. See Hill, *supra* note 64, at 21–23.

91. Weng & Gray, *supra* note 64, at 69.

92. Hill, *supra* note 64, at 21.

93. *Id.*

94. Weng & Gray, *supra* note 64, at 69.

95. Vivek Sankaran, *My Name Is Not “Respondent Mother,”* AM. BAR ASS’N CHILD L. PRAC. TODAY (June 5, 2018), [https://www.americanbar.org/groups/public\\_interest/child\\_law/resources/child\\_law\\_practiceonline/january-december-2018/my-name-is-not-\\_respondent-mother/](https://www.americanbar.org/groups/public_interest/child_law/resources/child_law_practiceonline/january-december-2018/my-name-is-not-_respondent-mother/) [<https://perma.cc/WX69-MRU2>].

Moreover, the government's burden of proof in family policing cases is so low that after a parent endures numerous court appearances and months or even years of court intervention, the parent's likelihood of winning is incredibly low.<sup>96</sup> If a parent does lose, the child can be out of the parent's care for weeks, months, or even permanently. The next section describes the devastating effects of losing your child to the system.

### *C. The Harms of Losing your Child*

Very little research speaks to the immense toll that losing a child to the family policing system takes on a parent. Within that limited universe, most research is focused on mothers and little attention is paid to fathers.

Most people would agree that the death of a child is perhaps the most unspeakably devastating experience a person can have. When a parent has their child removed due to allegations of abuse or neglect, the feelings are even more complex. In addition to the grief that parents who have lost their children to death face, mothers who have been separated from their children described feelings of trauma, shame, and guilt, and total aloneness in their experience.<sup>97</sup>

Studies note the physical, emotional, and psychological consequences of losing one's child to death, including psychiatric symptoms, psychiatric hospitalizations, and cardiovascular problems.<sup>98</sup> Some fathers described the loss of their children as analogous to losing a limb or an organ.<sup>99</sup> Others describe feeling like they had been sentenced to death or murdered.<sup>100</sup> Other parents who have lost their children to CPS compare the loss to the death of a child and experience similar symptoms.<sup>101</sup>

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96. The standard in child removal cases is the "preponderance of the evidence," the lowest evidentiary standard. *See, e.g.,* MD. CODE ANN., CTS. & JUD. PROC. § 3-817 (West 2024).

97. Broadhurst & Mason, *supra* note 9, at 24–32; NAVEED, *supra* note 17, at 64.

98. Kathleen S. Kenny, Clare Barrington & Sherri L. Green, "I Felt for a Long Time like Everything Beautiful in Me Had Been Taken Out": Women's Suffering, Remembering, and Survival Following the Loss of Child Custody, 26 INT'L J. DRUG POL'Y 1158, 1163 (2014).

99. Nehami Baum & Irit Negbi, *Children Removed from Home by Court Order: Fathers' Disenfranchised Grief and Reclamation of Paternal Functions*, 35 CHILD. & YOUTH SERVS. REV. 1679, 1681 (2013).

100. *Id.*

101. Kenny, Barrington & Green, *supra* note 98, at 1162.

As one mother described it:

I went insane. I broke down, nearly died. I couldn't stay in my house. I couldn't be around their clothes . . . I found myself just wandering around looking for them. Even though, you know, they are not there. It's just—it's traumatizing. It's awful. [sobbing] . . . It's as if the three of them died. One day just died. That's the grief that I went through. That's the pain that I went through. But meanwhile they didn't [die]. Somebody's got them. Somebody's keeping them from me.<sup>102</sup>

One particular population provides a relevant, but devastating sample set: parents who have already experienced the death of a child and then had a living child removed. These mothers found losing a child to CPS to be even worse than losing a child to death. As one mother said, “Losing my son through SIDS was not as bad as this because I know where he is—he's up in heaven with God where he belongs. I don't know where my children are. I don't know if the system's doing them right or doing them wrong.”<sup>103</sup>

The uncertainty can also lead other mothers to struggle with “ambiguous loss,” which occurs when people do not know whether the loss is permanent or not.<sup>104</sup> Ambiguous loss “creates confusion when people cannot make sense of the situation and if they do not know if their loved one will return.” This experience is characterized as the “most difficult” form of loss because of the indeterminacy.<sup>105</sup> It forces mothers to grieve a child that someone else is parenting.<sup>106</sup> And for these mothers, perhaps most difficult is that they do not know whether they will ever parent again.

Parents who have lost their children to CPS may also experience “disenfranchised grief,” in which they endure a loss “that is not openly acknowledged, sanctioned or supported within wider society.”<sup>107</sup> Grief can be disenfranchised for a number of reasons, based on how society views the grieving person, their relationship to the loved one lost, and the circumstances of that loss.<sup>108</sup> These mourners are often unable to openly grieve in a way that society deems legitimate, because

102. Kendra L. Nixon, H. L. Radtke & Leslie M. Tutty, “Every Day It Takes a Piece of You Away”: Experiences of Grief and Loss Among Abused Mothers Involved with Child Protective Services, 7 J. PUB. CHILD WELFARE 172, 180–81 (2013).

103. *Id.* at 181.

104. Monique Mitchell, “No One Acknowledged My Loss and Hurt”: Non-death Loss, Grief, and Trauma in Foster Care, 35 CHILD ADOLESCENT SOC. WORK J. 1, 2 (2017); see also PAULINE BOSS, AMBIGUOUS LOSS: LEARNING TO LIVE WITH UNRESOLVED GRIEF (1999).

105. Laura Dreuth Zeman, *Etiology of Loss Among Parents Falsely Accused of Abuse or Neglect*, 10 J. LOSS & TRAUMA 19, 22 (2005).

106. Lydia Moran, *After Parental Rights Are Terminated, Mothers Find Support in One Another*, MINN. WOMEN'S PRESS (May 28, 2022), <https://www.womenspress.com/after-parental-rights-are-terminated-mothers-find-support-in-one-another> [<https://perma.cc/W9JC-SJER>].

107. Geddes, *supra* note 9, at 814.

108. Thomas Attig, *Disenfranchised Grief Revisited: Discounting Hope and Love*, 49 OMEGA 197, 199–200 (2004).

they are seen as somehow to blame for the loss. This type of loss is often seen in families of death row inmates,<sup>109</sup> families of individuals killed by the police,<sup>110</sup> or partners who have lost their loved ones to AIDS.<sup>111</sup> Parents who lose their children to the family policing system are no different.

For many, losing their children creates deep, deep shame because of a perceived “failure in a role that society holds in high esteem.”<sup>112</sup> One mother described feeling “illegitimate.”<sup>113</sup> She explained that it feels “like . . . you’re not capable of anything. . . . ‘I lost hope in myself, faith in myself. Like, I don’t know . . . I don’t even care about life.’”<sup>114</sup> Many fathers shared that they blamed themselves and felt they could have done things differently.<sup>115</sup> Some wondered if they would have kept their children if they hugged them more, spent more time together, drank less, or worked less.<sup>116</sup> Those that didn’t blame themselves were blamed by others. They faced painful accusations from friends and family that they allowed their children to be removed and didn’t fight hard enough for them.<sup>117</sup> As one father relayed, “My sister tells me, ‘You’re a disgrace to the family. Even being a drug addict would be better [than being] a father whose children are taken away.’”<sup>118</sup>

While dealing with these feelings, mothers who lose their children may also feel alienated from their support networks and mistrustful of professionals like therapists.<sup>119</sup> Even those who sought help felt that their trauma and related mental health struggles were not recognized or appreciated by service providers, which made isolation even worse.<sup>120</sup> Further, it exacerbated existing trauma and mental health issues, such as anxiety and depression, leading to post-traumatic stress disorder (PTSD) in some parents.<sup>121</sup>

Many mothers described severe depression, particularly around the physical absence of their children in their homes.<sup>122</sup> One mother could not bear to be in her own home or even close to her children’s belongings.<sup>123</sup> Another mother

109. Sandra J. Jones & Elizabeth Beck, *Disenfranchised Grief and Nonfinite Loss as Experienced by the Families of Death Row Inmates*, 54 OMEGA 281 (2006).

110. David Baker, Dana Norris & Veroniki Cherneva, *Disenfranchised Grief and Families’ Experiences of Death After Police Contact in the United States*, 83 OMEGA 239 (2019).

111. See generally KENNETH J. DOKA, *DISENFRANCHISED GRIEF: RECOGNIZING HIDDEN SORROW* (1989).

112. Broadhurst & Mason, *supra* note 11, at 295.

113. Kenny, Barrington & Green, *supra* note 98, at 1662.

114. *Id.*

115. Baum & Negbi, *supra* note 99, at 1683.

116. *Id.*

117. *Id.* at 1682.

118. *Id.*

119. Broadhurst & Mason, *supra* note 9, at 32.

120. See generally Kathleen S. Kenny, *Mental Health Harm to Mothers When a Child Is Taken by Child Protective Services: Health Equity Considerations*, 63 CAN. J. PSYCHIATRY 304 (2017).

121. *Id.* at 305.

122. See Broadhurst & Mason, *supra* note 9, at 24–25.

123. Kenny, *supra* note 120, at 1162.

lamented, “I couldn’t even go back into my house after that, I’d have panic attacks. So I made myself homeless . . . I couldn’t even go into my own house. I couldn’t. Physically, every time I’d go in, I’d just drop, so I had to go outside . . . I’m like, just do what you want to me.”<sup>124</sup>

In one study, the women who lost custody of their children experienced a loss of identity because they considered motherhood a defining characteristic.<sup>125</sup> As such, the loss of their children was even more traumatizing because they also felt the loss of who they were as people.<sup>126</sup> One woman explained, “We may not get [my daughter] back and, and then what’s gonna happen? My whole life has been about raising these kids and being there for my kids.”<sup>127</sup> Another said “Those kids are the only thing I have. They’re the ones that I’ve lived my life for every day, ever since I was seventeen. I wake up for them, I do the things I do today for them.”<sup>128</sup> This is worsened by the fact that their children are alive, but they are not able to exist in their roles as parents.<sup>129</sup>

One mother asked:

Am I still a parent? Sometimes I ask myself that . . . People that don’t know the situation are like, ‘have you got any children?’ Sometimes I choose to say no, I don’t have any children because then I don’t have to go into details . . . I feel like I’m a mum deep down but then when I go out, just generally, day-to-day in the streets, I don’t feel like a mum because I don’t have a child with me.<sup>130</sup>

Fathers face a similar loss of identity and self-worth. As one father put it, “They come and say to me, you’re not fit to be a father. . . . I’m a lousy father. . . . I don’t know how to be a father.”<sup>131</sup> Many felt that the removal of their children was a statement of their unfitness as parents in the past, present, and future. The removal led to feelings of unworthiness and self-doubt. One father asked “Like what was I till now? Crap? It’s like you’re unfit, worthless.”<sup>132</sup>

For parents who already struggled with substance use disorder or alcohol dependency, the adversarial nature of family court involvement alone can exacerbate

124. Broadhurst & Mason, *supra* note 9, at 25.

125. *Id.* at 26–27.

126. Kenny, *supra* note 120, at 1162; Broadhurst & Mason, *supra* note 9, at 26–27.

127. Nixon, Radtke & Tutty, *supra* note 102, at 183.

128. *Id.*

129. Erin Carrington Smith & Shanta Trivedi, “How Will I Get Back?”, 1 FAM. JUST. J. 26, 30 (2025).

130. Nina Memarnia, Listening to the Experiences of Birth Mothers Whose Children Have Been Taken into Care or Adopted 52, 308 (June 2014) (Ph.D. dissertation, University of Hertfordshire) (on file with the University of Hertfordshire Research Archive).

131. Baum & Negbi, *supra* note 99, at 1681.

132. *Id.*

these conditions.<sup>133</sup> Understandably, for many of those who ultimately have their children removed, the only way to cope is to escape through substance use. One mother said, “I couldn’t you know forget that they took my kids away from me and I just, I tried so hard to numb those feelings, they couldn’t be numbed. There’s no way, no drug or no drink that can make that feeling go away. Ever.”<sup>134</sup>

Mothers who were grieving the loss of their children described survival strategies ranging from wrapping and setting aside birthday presents for their children each year to turning their child’s bed into a garden.<sup>135</sup> Others simply said they could not survive; they could not take care of themselves or their health, describing “that feeling where you’re not existing . . . you kind of feel like you’re not there.”<sup>136</sup>

The combination of these experiences can lead to social isolation and feelings of total aloneness.<sup>137</sup> Grieving can ultimately negatively affect a parent’s ability to maintain meaningful contact with their children and hinder their ability to reunite, which is harmful for both parents and their children.<sup>138</sup>

Losing a child to the system can even increase the risk of death. One study demonstrated that mothers whose children were in the foster system were 3.5 times more likely to die from avoidable causes such as intentional injury and suicide and 2.9 times more likely to die from unavoidable causes like heart disease.<sup>139</sup> Another study showed that “the rate of suicide attempts was 2.82 times higher, and the rate of death by suicide was more than four times higher for mothers whose children were not in their custody.”<sup>140</sup>

Losing children can have more intense effects on some low-income women who may already feel like their lives and opportunities are limited.<sup>141</sup> For these women, it may be even more devastating to lose their identities as mothers and the

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133. Broadhurst & Mason, *supra* note 9, at 24 (“Family court involvement, which is typically adversarial can compound parents’ difficulties, exacerbate mental health difficulties and prompt a return to coping strategies such as misuse of drugs and alcohol which undermine recovery”); Lisa Morriss, *Haunted Futures: The Stigma of Being a Mother Living Apart from Her Child(ren) as a Result of State-Ordered Court Removal*, 66 SOCIO. REV. 816 (2018)).

134. Kenny, *supra* note 120, at 1162.

135. *Id.* at 1163.

136. *Id.*

137. *Id.* at 1162.

138. See Memarnia, Nolte, Norris & Harborne, *supra* note 68, at 313.

139. Elizabeth Wall-Wieler, *Losing Children to Foster Care Endangers Mothers’ Lives*, THE CONVERSATION (Mar. 29, 2018, 2:28 PM), <https://theconversation.com/losing-children-to-foster-care-endangers-mothers-lives-93618> [<https://perma.cc/447Y-RLPC>] (comparing sisters after one lost her children to the family policing system and the other still had her children in her care) (citing Elizabeth Wall-Wieler, Leslie L. Roos, Marni Brownell, Nathan Nickel, Dan Chateau & Deepa Singal, *Suicide Attempts and Completions Among Mothers Whose Children Were Taken into Care by Child Protection Services: A Cohort Study Using Linkable Administrative Data*, 63 CAN. J. PSYCHIATRY 170 (2018); Elizabeth Wall-Wieler, Leslie L. Roos, Nathan C. Nickel, Dan Chateau & Marni Brownell, *Mortality Among Mothers Whose Children Were Taken into Care by Child Protection Services: A Discordant Sibling Analysis*, 187 AM. J. EPIDEMIOLOGY 1182 (2018)).

140. *Id.*

141. Broadhurst & Mason, *supra* note 9, at 26–27, 32.

feeling that “nothing” is left behind can be significantly more pronounced.<sup>142</sup> As one mother expressed it, “They took my life the day they took my girls.”<sup>143</sup>

For parents who are experiencing poverty, losing their children can also be incredibly destabilizing. They can lose shelter placements and cash assistance benefits because of changes in their family composition<sup>144</sup> and employment due to missing work for court or court-ordered services and visits with their children.<sup>145</sup> Complying with the services that the court prescribes can be a totally overwhelming experience.<sup>146</sup> As one mother described it:

I got stressed out . . . I couldn’t take it no more. I started feeling closed in. I started feeling too much pressure. I’m not good under pressure. You making me do all these things and I’m bringing in week-by-week certificates, papers, doing this, reports, no drug testing—everything, everything, everything. I did everything for her.<sup>147</sup>

The irony is that the system requires proof that parents are living “stable” lives when the system is what created or exacerbated the instability, making it impossible for parents to focus on anything besides their missing children.<sup>148</sup> In this way, the measures put into place by the family policing system supposedly to “help” the family, create impossible conditions for parents to succeed, thereby undermining the system’s own stated goal of family preservation.<sup>149</sup> As one mother put it, “Who can really function or focus in a situation where everything around you is on fire?”<sup>150</sup>

In a minority of cases, children do need real protection from their parents who are causing them harm. But even parents who cause their children harm experience pain and grief when they lose their children. Though parents who cause harm might be less sympathetic than others, their pain is just as real. There is little compassion or understanding, however, for a parent who harms their child.

At her sentencing, one mother who was accused of murdering her child said that she “hope[d] someday to help others so they don’t have to be filled with the

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142. *Id.* at 31–33.

143. NAVEED, *supra* note 17, at 82.

144. Sarah Lorr, *Disabling Families*, 76 STAN. L. REV. 1255, 1295–96 (2024); Baughman, Coles, & Newton, *supra* note 31, at 527.

145. LEE, *supra* note 67, at 15.

146. *See, e.g.*, GARCIA-HALLET, *supra* note 37, at 74.

147. *Id.*

148. Stephannie Stokes, *When Families Need Housing, Georgia Will Pay for Foster Care Rather Than Provide Assistance*, PROPUBLICA (Jan. 18, 2024), <https://www.propublica.org/article/georgia-housing-assistance-foster-care> [<https://perma.cc/P9MJ-BNBM>].

149. *See* CHILD. WELFARE INFO. GATEWAY, *supra* note 23, at 6 (“Family reunification, except in unusual and extreme circumstances, is the permanency plan for most children.”).

150. Stokes, *supra* note 148.



sadness and grief of causing something so horrible to their own child.”<sup>151</sup> Pearl Fernandez, a mother convicted of abusing and killing her son Gabriel (despite continuous CPS intervention) in a high-profile case in Los Angeles, expressed sorrow. She lamented that she “wish[ed] Gabriel was alive” and that she’d “made better choices.”<sup>152</sup> A chaplain who prayed with her expressed that “she [would] have a void in her heart for the rest of her life.”<sup>153</sup> In response, her sentencing judge said that her actions were “horrendous and inhumane and nothing short of evil. It’s beyond animalistic because animals know how to take care of their young.”<sup>154</sup>

Though the pain a parent faces when their child is removed from their care is devastating, they must also contend with the knowledge that the worst may be yet to come—termination of their parental rights. If reunification does not occur, and a child remains in the foster system for too long, the system will terminate the parents’ legal rights to the child.<sup>155</sup> The next section explains the harms that occur when a parent permanently loses their relationship with their child.

#### *D. The Harms of Termination of Parental Rights*

For many parents, only the hope of one day reuniting with their children keeps them going.<sup>156</sup> Therefore, once the state terminates their rights and that possibility no longer exists, they are devastated. For some, the loss of control can lead to a sense of hopelessness and compound existing grief with symptoms of PTSD.<sup>157</sup> This can result in “nightmares, emotional numbness, and an inability to stop reliving the separation over and over.”<sup>158</sup> And, because of the blame and isolation that follows, most parents are left without support or resources to help them process the grief.<sup>159</sup>

For mothers whose children are adopted following termination of their parental rights, the pain is even worse. They describe a life of constant wondering about

151. Chris Harris, ‘Monster Mom’ Sentenced to 43 Years in Prison for Killing Her 11-Year-Old Daughter, PEOPLE (Jan. 18, 2017, 4:19 PM), <https://people.com/crime/monster-mom-illinois-daughter-abuse-murder/> [<https://perma.cc/LCU9-MK6L>].

152. Carissa Chesanek, *The Crimes of Pearl Fernandez, The California Mom Who Openly Abused Her Son for Months Before Killing Him*, ALL THAT’S INTERESTING (Sept. 27, 2022), <https://allthatsinteresting.com/pearl-fernandez> [<https://perma.cc/KY85-UCEL>].

153. Marisa Gerber, ‘Nothing Short of Evil’: Judge Sentences Mother to Life in Prison and Her Boyfriend to Death in Gabriel Fernandez Murder Case, L.A. TIMES (June 7, 2018, 2:45 PM), <https://www.latimes.com/local/lanow/la-me-ln-gabriel-fernandez-sentencing-20180607-story.html> [<https://perma.cc/HLK5-L5HX>].

154. Chesanek, *supra* note 152.

155. See CHILD WELFARE INFO. GATEWAY, *supra* note 23, at 3.

156. Kenny, *supra* note 120, at 1163.

157. See *id.* at 1161–62.

158. Cari Romm, *The Psychological Effects of Being Separated from Your Child*, THE CUT (June 7, 2018), <https://www.thecut.com/2018/06/the-psychological-effects-of-being-separated-from-your-child.html> [<https://perma.cc/KQ45-D8DY>].

159. Carrington Smith & Trivedi, *supra* note 129, at 30–31.

how their children are doing and searching for them everywhere they go.<sup>160</sup> Losing a child to adoption leads to long-term physical and emotional effects.<sup>161</sup> Mothers described being unable to resolve their grief and feeling like they will never recover from the loss.<sup>162</sup> They expressed feelings of guilt, shame, and anger, and being able to cope only by disassociating or self-medicating with drugs and alcohol to numb the pain.<sup>163</sup> Suzanne Sellers, Executive Director of the nonprofit Families Organizing for Child Welfare Justice and a mother whose rights to her two children were terminated, explained:

Once adopted, the law says that . . . all of the rights and care transfers to the adopted parents, and the mothers—the birth mothers—are expected to just disappear, just go away. . . . And that’s very difficult to do, emotionally, spiritually, physically. We still do exist.”<sup>164</sup>

In the most extreme cases, adoption can lead to the worst kind of loss. In *We Were Once a Family*, journalist Roxanna Asgarian tells a tragic story in which adoptive parents abused and ultimately murdered their adopted children. The children’s birth mother fell into a deep depression following removal and adoption of her children, but stayed hopeful that she would be able to tell them that she loved them and explain why they were removed once they were older.<sup>165</sup> This day never came. And, because her rights had been terminated, no one called her to let her know that her children had been murdered. To add insult to this incredible injury, the mother was forbidden from retrieving her children’s bodies, as she was no longer next of kin.<sup>166</sup>

These parents are part of larger families and communities. Thus, when they suffer harm, both those families and the communities they are a part of also suffer harm. The next section details the effects of this on future generations and our communities-at-large.

#### *E. Community and Inter-Generational Harms of Family Policing*

Because parents and their children are part of our communities, the consequences of family policing are greater than its effects on one family. Angela Burton, a long-time former director of New York State Office of Indigent Legal Services and advocate to end family policing, has stated that CPS investigations,

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160. Ashley L. Landers, Sharon M. Danes, Domenica H. Carrese, Evdoxia Mpras, Avery R. Campbell & Sandy White Hawk, *I Can Still Hear My Baby Crying: The Ambiguous Loss of American Indian/Alaska Native Birthmothers*, 62 FAM. PROCESS 702, 712–13 (2023).

161. *See id.* at 714–15.

162. *Id.*

163. *Id.* at 713–15.

164. ROXANNA ASGARIAN, *WE WERE ONCE A FAMILY: A STORY OF LOVE, DEATH, AND CHILD REMOVAL IN AMERICA* 184 (2023).

165. *Id.* at 180.

166. *Id.* at 183.

“ruptur[e] the village of the child’s ecological system, which has ripple effects and brings not just stigma, but also fear and distrust, as it tears the fabric of a child’s life and community.”<sup>167</sup> As Alexandria Ware, an advocate formerly placed in the foster system, explained:

We’re generational products of the family policing system . . . My mother’s rights were taken. My grandmother’s rights were taken. And whatever they did, whether it’s good or bad, at the end of the day, they had the right to have their children. . . . My mother didn’t need the foster care system to come in and take us away. What she needed was a community around her. She needed family. She needed people to understand that she was ripped from her community and she never got the chance to be a part of that community.<sup>168</sup>

Black and Native parents in particular may suffer from inter-generational and historical trauma. Historical trauma occurs when historical experiences are passed from generation to generation, making later generations vulnerable to similar issues or concerns.<sup>169</sup> Historical trauma is distinct from intergenerational trauma, which refers to the occurrence of trauma across generations of a particular family that may not be based on a shared experience.<sup>170</sup>

For Black families, “under the institution of slavery, fracture within Black families became so normalized that contemporary family fracture, via the child welfare system, the criminal justice system, and various other mechanisms, may seem natural and intrinsic to Black family life within a context that is amnesic towards historical atrocities.”<sup>171</sup> Black parents’ experience of CPS intervention cannot be understood in isolation, therefore, as it is exacerbated by the effects of race and gender and by “historical and intergenerational racism, classism and sexism.”<sup>172</sup> Black families are not only overrepresented in the family policing system,

167. NAVEED, *supra* note 17, at 65.

168. Shereen A. White, *We Must Demand the Recognition and Protection of the Sanctity of Black Families*, CHILD.’S RTS. (June 2, 2023), <https://www.childrensrights.org/news-voices/we-must-demand-the-sanctity-of-black-families> [<https://perma.cc/2YS3-YHX6>].

169. See Carly Gillespie, *Columbus’s Legacy: Trafficking of Native American Women in the 21st Century*, 71 S.C. L. REV. 685, 695 (2020); see also Nathaniel Vincent Mohatt, Azure B. Thompson, Nghi D. Thai & Jacob Kraemer Tebes, *Historical Trauma as Public Narrative: A Conceptual Review of How History Impacts Present-Day Health*, 106 SOC. SCI. MED. 128, 129 (2014) (“Historical trauma refers to a complex and collective trauma experienced over time and across generations by a group of people who share an identity, affiliation, or circumstance.”).

170. Mohatt, Thompson, Thai & Tebes, *supra* note 169.

171. Lani V. Jones, Sarah E. Mountz, Jeff Trant & Nelia M. Quezada, *A Black Feminist Approach for Caseworkers Intervening with Black Female Caregivers*, 14 J. PUB. CHILD WELFARE 395, 397 (2020).

172. Joan Marie Blakey & Schnavia Smith Hatcher, *Trauma and Substance Abuse Among Child Welfare Involved African American Mothers: A Case Study*, 7 J. P. CHILD WELFARE 194, 208 (2013).

but Black children are also most likely to endure a cross-racial, ethnic, or cultural adoption.<sup>173</sup>

One mother who put her pain into poetry, explicitly drew on the historical separation of Black families, writing:

*Being called everything, except my name  
Walking, smiling, yet in pain  
But you don't acknowledge. You changed the game  
Changing rules, like a child made to behave  
Gaining monetary, my child on the slave trade  
Running in circles, forced to obey  
The future, my life, will never be the same*<sup>174</sup>

In many Native American families, children separated from their families and housed in boarding schools became parents during the era of the Indian Adoption Project—a concerted governmental effort to have Indian children adopted into white homes.<sup>175</sup> As one Native mother who had lost her child explained, “Grandma was in the system and now Mom is in the system and now the child is in the system. . . . How can we expect our community members to even start healing?”<sup>176</sup> She explained how she has “child protection PTSD, that they’re just gonna one day knock on my door.”<sup>177</sup>

Many parents have also had extensive trauma in their own lives,<sup>178</sup> often because of CPS involvement as children and separation from their own parents.<sup>179</sup> Children who grow up in the foster system are more likely to have their own children removed when they become parents despite their best efforts.<sup>180</sup> Many

173. Jones, Mountz, Trant & Quezada, *supra* note 171, at 397.

174. Sawara Robinson, *Can I Just Be Myself?*, 1 FAM. JUST. J. 61 (2023).

175. See Landers, Danes, Carrese, Mpras, Campbell & White Hawk, *supra* note 160, at 705.

176. Jessica Washington, *Minnesota's Foster Care System Perpetuates the Legacy of Racist Boarding Schools, Native Mothers and Experts Say*, THE FULLER PROJECT (Dec. 21, 2021), <https://fullerproject.org/story/minnesotas-foster-care-system-perpetuates-the-legacy-of-racist-boarding-schools-native-mothers-and-experts-say> [<https://perma.cc/496H-BG6P>].

177. *Id.*

178. See Blakey & Hatcher, *supra* note 172, at 195 (“Only a handful of studies have looked at the trauma histories of child welfare- involved parents. These studies have found high rates of trauma exposure. Where studied, between 91% and 100% of mothers reported experiencing at least one traumatic event . . . 73% to 85% of the women reported exposure to multiple traumas with 19% to 42% of them experiencing five or more traumatic events . . .”).

179. See Schachter & Kroll, *supra* note 3, at 212 (“[O]f the children who experience foster care, about forty percent of their mothers have a personal history of child welfare involvement.”).

180. See Stephanie Haupt, *Fight and Flight – Will My Family Ever be Safe from Child Welfare's Reach?*, RISE (Sept. 1, 2015), <https://www.risemagazine.org/2015/09/fight-and-flight/> [<https://perma.cc/5NSN-6TSU>] (“As soon as she learned I had previously been in state custody, I could almost feel her mood perk up. At 26 days old, my son was taken into protective custody from the NICU because ‘the environment he would be in was injurious to his welfare.’ Nothing more

reckon with the fact that their own experiences as children may negatively affect their parenting.<sup>181</sup> Others feel like they had a target on their back having grown up in the system.<sup>182</sup> For parents who experienced the foster system as children, losing their own children to the system as parents can be devastating. As one mother lamented, “If you grew up in foster care, your mission when you have a baby is to never repeat that. You have this fantasy of how things are going to be. Then when you see your own children’s lives unravel the way yours did, you feel so helpless.”<sup>183</sup>

Given that the goal of CPS is to keep children safe, the fact that the children that it “raises” in the foster system become parents who lose their own children to the system, demonstrates that the system does not actually help. Instead, it creates an inter-generational cycle of fear, loss, and trauma, particularly in communities that have faced state-sanctioned separation since this country’s origins.

Even if the state does not separate families, it subjects parents in low-income communities and communities of color to surveillance and control by multiple systems, simultaneously. Coupling stressful investigations and demands by the family policing system with any criminal system involvement, for example, makes it virtually impossible for families to reunify.<sup>184</sup> Attempting to balance service requirements imposed by the family policing system alone can create or exacerbate instability in the family by forcing parents to choose between meeting the system’s demands, such as attending classes or counseling, and dealing with their own poverty or other needs that might have led to family policing.<sup>185</sup> This constant hamster wheel isolates families from non-punitive supports, contributing to reduced community power.<sup>186</sup>

The established negative impacts of family policing on parents often translate into broader community harms because CPS-involved parents and their children do not exist in isolation—they are part of larger communities. While much has

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specific.”); Melissa Landrau, *Mommy Time — I Had to Change for my Children’s Sake*, RISE (May 2, 2018), <https://www.risemagazine.org/2018/05/mommy-time-i-had-to-change-for-my-childrens-sake/> [<https://perma.cc/H8YR-22HY>]; Piaadora Footman, *The Fear Stays with Me – Living My Life Right Hasn’t Made Me Feel Safe from an Investigation*, RISE (Oct. 18, 2016), <https://www.risemagazine.org/2016/10/the-fear-stays-with-me/> [<https://perma.cc/V9QY-F33S>].

181. See *‘When Someone Takes Care of Us, It’s Easier for Us to Take Care of Our Children’ – Recommendations from Young Mothers Who Grew Up in Foster Care*, RISE (Sept. 1, 2015), <https://www.risemagazine.org/2015/09/when-someone-takes-care-of-us-its-easier-for-us-to-take-care-of-our-children/> [<https://perma.cc/3RHJ-TYNK>] (detailing first-person accounts of parents formerly in the foster system); Blakey & Hatcher, *supra* note 172, at 196–97 (“Trauma has been found to influence mothers’ parenting. Studies have shown that women’s histories of trauma adversely affected their ability to act in warm and loving ways toward their children.”).

182. See Schachter & Kroll, *supra* note 3; see also Haupt, *supra* note 180.

183. *‘I Made a Mistake’ Not ‘I Am a Mistake’ – How Parents—and the Child Welfare System—Can Stand Up to Shame*, RISE (Sept. 1, 2015), <https://www.risemagazine.org/2015/09/i-made-a-mistake-not-i-am-a-mistake/> [<https://perma.cc/AU6Y-92YX>].

184. Baughman, Coles, Feinberg & Newton, *supra* note 31, at 523.

185. See *id.* at 527, 523.

186. *Id.* at 515–16.

been written on the harms that individuals and communities face from over policing, less attention has been paid to the harms of excessive family policing and surveillance.<sup>187</sup>

In her book *Torn Apart*, Professor Dorothy Roberts explains how, similar to mass imprisonment, family policing has its own community effects.<sup>188</sup> She documents how the family policing system created wide mistrust within the community, as people were afraid that their friends and neighbors would call CPS on them.<sup>189</sup> This mistrust was compounded by fear and suspicion that members of the community were using CPS as a tool for revenge, sometimes falsely accusing each other.<sup>190</sup> Further, mothers lived in fear of everyone from abusive partners to landlords threatening to report them to CPS to coerce or punish them.<sup>191</sup>

Put simply by one woman:

When you are taken away from your family, that is a form of separation, and they learn from that, growing up to be separated. It's not really set in them to be united, or to be one, or to come together to do anything. . . . We can never come together to do anything over here.<sup>192</sup>

Despite the crushing effects of family policing on parents and their communities, little attention has been paid to parents or the wounds that they suffer. The next section explores possible explanations for why we fail to focus on impacted parents.

## II.

### WHY SOCIETY FAILS TO FOCUS ON THE HARM TO PARENTS

It is striking how little research exists on the topic of parents' health and well-being after family policing intervention—and particularly once their children are removed.<sup>193</sup>

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187. See generally Michael Esposito, Savannah Larimore & Hedwig Lee, *Aggressive Policing, Health, and Health Equity*, HEALTH AFFS. HEALTH POL'Y BRIEF (April 2021), <https://www.healthaffairs.org/doi/10.1377/hpb20210412.997570/> [<https://perma.cc/UN54-9QUC>] (discussing aggressive policing and its impact on population health); Jordan DeVlyder, Lisa Fedina & Bruce Link, *Impact of Police Violence on Mental Health: A Theoretical Framework*, 110 AM. J. PUB. HEALTH 1704 (2020) (exploring police violence as a factor for mental health conditions); Amanda Geller, Jeffrey Fagan, Tom Tyler & Bruce G. Link, *Aggressive Policing and the Mental Health of Young Urban Men*, 104 AM. J. PUB. HEALTH 2321 (2014) (conducting a survey of young men in New York, the nature of their experiences with police, and their mental health); Nia Heard-Garris, Tiffani J. Johnson & Rachel Hardeman, *The Harmful Effects of Policing—From the Neighborhood to the Hospital*, 176 J. AM. MED. ASS'N. PEDIATRICS 23 (2022) (exploring the effect of policing within healthcare systems).

188. ROBERTS, *supra* note 3, at 53–54.

189. *Id.* at 58–59.

190. *Id.*

191. *Id.* at 59.

192. *Id.* at 60.

193. See Blakey & Hatcher, *supra* note 172, at 197–98.

One possible explanation is that society does not focus on impacted parents because they are perceived to be undeserving of their status as parents. Many parents involved in the family policing system are socially stigmatized and judged harshly for “failing” as parents.<sup>194</sup> Many are of limited means and have been excluded from opportunities that would allow them to improve their financial health.<sup>195</sup> Many are single mothers raising their children with limited support.<sup>196</sup> Impacted parents who are also racially marginalized, or white parents who have been racialized,<sup>197</sup> may face additional racism or stereotypes in a world obsessed with white, middle-class notions of parenting.<sup>198</sup> Some parents who suffer from substance use disorder are viewed as selfish, putting their need for drugs above their children. Some who have harmed their children are branded as “monsters,” unworthy of dignity and empathy.<sup>199</sup> The reality is that many of the parents in the family policing system are the least powerful people in society.

Another potential reason that the focus is not on parents is because the supposed goal of the “child welfare” system is protecting the child, not the parents.<sup>200</sup> Many truly believe that “saving” children is the most important outcome and as a result, the consequences to the parents are irrelevant.<sup>201</sup> For actors within the system, the fear of personal and professional consequences that would follow if a child were harmed, or even worse, killed, creates a “better safe than sorry” mentality.<sup>202</sup>

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194. Kenny, *supra* note 120, at 304.

195. FONG, *supra* note 7, at 27.

196. *Id.* at 158.

197. Tina Lee, *The Deep Roots Linking Help and Punishment*, L. & POL. ECON. PROJECT (Jul. 26, 2023), <https://lpeproject.org/blog/the-deep-roots-linking-help-and-punishment/> [<https://perma.cc/T92U-TDDB>].

198. Ortiz Maddali, *supra* note 16.

199. See discussion *infra* Section II(A)(1).

200. “Children are seen as ‘innocent’ victims, whereas the parents are the ones deemed responsible for the abuse and, thus, less worthy of help, assistance, or compassion.” Blakey & Hatcher, *supra* note 172, at 210–11.

201. See Stokes, *supra* note 148.

202. See Sam Harrell & Stéphanie Wahab, *The Case for Mandatory Reporting as an Ethical Dilemma for Social Workers*, 22 ADVANCES SOC. WORK 818, 822 (“[W]hen facilitating violence prevention workshops with youth, Sam was encouraged by supervisors to always report suspected abuse; to be ‘better safe than sorry.’”); Arielle Schecter, *How Should We Respond When Clinicians’ Calls to CPS Are Punitively Weaponized Against Families?*, AM. MED. ASS’N J. ETHICS (Feb. 2023) (“We were taught that we cannot always be sure if what we are seeing is child abuse but that, in such circumstances, we are never to hesitate to make a report if we have even the slightest suspicion. ‘It’s better to be safe than sorry,’ we were counseled by the more experienced members of the treatment team.”).

A. “Some Parents Don’t Deserve Their Children”

I. “They’re Monsters”

Undoubtedly, some parents cause real harm to their children. Some commit acts of physical harm or severe neglect. And tragically, in some cases, parents may even cause the death of their child.<sup>203</sup> It is hard for most people to comprehend violence against a child. In response to allegations of abuse or neglect people wonder, “how could anyone hurt their own child?”<sup>204</sup> Yet this question is almost always stated rhetorically, without a meaningful effort to understand.

Parents who cause harm to their children are met with judgment and vitriol. The news labels them “monster mom(s),”<sup>205</sup> “cruel,”<sup>206</sup> and “despicable.”<sup>207</sup> Many consider child abuse to be worse than rape or murder.<sup>208</sup> As one law enforcement officer put it, “This is something whether you are a parent or not, this is pure disgust. For a human being let alone this [child’s] mother to do something like this to an innocent child who can not defend himself, I find this totally despicable.”<sup>209</sup>

Some have proposed that “child abusers” should be sterilized, “not as a form of punishment or as a condition of probation, but rather as a measure to protect children from future abuse in the same manner as permanent termination of parental rights.”<sup>210</sup> In 2024, Louisiana passed a bill that would allow castration of

203. Tori Gaines, *Unmasking the Unthinkable: Why Do Some Parents Kill Their Kids?*, KRON 4 (May 24, 2023, 1:11 PM), <https://www.kron4.com/news/bay-area/unmasking-the-unthinkable-parents-who-kill-kids/> [<https://perma.cc/YE6N-45EZ>] (“Child murder by parents, otherwise known as filicide, occurs in hundreds of cases each year in the United States . . .”).

204. See, e.g., Kp01, discussion post *How Could Anyone Hurt a Child?*, WHAT TO EXPECT (Oct. 12, 2010, 10:08 AM), <https://community.whattoexpect.com/forums/hot-topics-1/topic/how-could-anyone-hurt-a-child.html> [<https://perma.cc/AQ5Z-N4PN>].

205. Harris, *supra* note 151.

206. George Martin, ‘Evil’ Mother Who Subjected Her Three Boys to Years of Abuse—from Beating Them with Belts to Holding Their Heads Underwater—Is Jailed for Five Years After the Grown-Up Sons Expose Her, DAILY MAIL (May 26, 2019, 10:58 AM), <https://www.dailymail.co.uk/news/article-7072221/Evil-mother-jailed-five-years-abusing-three-sons.html> [<https://perma.cc/9CJZ-FSDR>].

207. Alfred Charles & Peter D’Oench, *South Florida Mom Arrested, Accused of Throwing, Kicking 3-Year-Old Son, Incident Was Caught on Camera*, CBS NEWS MIAMI (Nov. 1, 2023 11:23 PM), <https://www.cbsnews.com/miami/news/south-florida-mom-arrested-accused-of-throwing-kicking-3-year-old-son-incident-was-caught-on-camera/> [<https://perma.cc/689F-GLN9>].

208. See, e.g., Alex Strangwayes-Booth & Rob England, *Child Abuse Less ‘Forgivable’ Than Murder and Rape*, BBC NEWS (Apr. 13, 2019), <https://www.bbc.com/news/uk-england-47652050> [<https://perma.cc/LX9P-JT4M>] (“Child abuse is considered ‘impossible to forgive’ by nearly nine out of 10 British adults - more than murder and rape - a poll for the BBC suggests.”)

209. Charles & D’Oench, *supra* note 207.

210. Erika T. Blum, *When Terminating Parental Rights Is Not Enough: A New Look at Compulsory Sterilization*, 28 GA. L. REV. 977, 982 (1994).



people convicted of certain sexual crimes against children.<sup>211</sup> And multiple judges have stopped just short of sterilization when handing down rulings, instead forcing mothers to use contraception or abstain from getting pregnant to protect their future children. As one judge who ordered this stated:

It is painfully obvious that a parent who has already lost to foster care all four of her children born over a six-year period, with the last one having been taken from her even before she could leave the hospital, should not get pregnant again soon, if ever . . . This is a practical, social, economic, and moral reality.<sup>212</sup>

## 2. “*They’re Poor, Lazy, and Selfish*”

The family policing system was borne of the idea that children needed to be saved; as such, poverty and “child welfare” are inextricably linked. In the nineteenth century, industrialization and immigration led to poor living conditions for many families.<sup>213</sup> This resulted in widespread concern about the children of these families, with many believing it was their duty to rescue children both from their poverty and from their parents.<sup>214</sup>

The first inklings of a family policing system focused exclusively on poor children.<sup>215</sup> Charles Loring Brace, a missionary who founded the New York Children’s Aid Society, was disturbed by the number of young children living in poverty in New York City.<sup>216</sup> Among other efforts to “save” these children, Brace’s “orphan trains” took poor children out of urban settings and sent them to farms<sup>217</sup> even though many of them were not in fact orphans.<sup>218</sup> And today still, “[p]overty is key to explaining why almost any child gets in the system.”<sup>219</sup>

As the “child welfare” system evolved from Brace’s orphan trains to more formal measures, the rhetoric around child saving continued. The initial family policing agencies, called Societies for the Prevention of Cruelty to Children (SPCCs), emerged to “identify child maltreatment and rescue children—

211. Sara Cline, *Louisiana Lawmakers Approve Surgical Castration Option for Those Guilty of Sex Crimes Against Kids*, AP (June 3, 2024, 9:22 PM), <https://apnews.com/article/louisiana-surgical-castration-sex-crime-offender-234cdd9da804382d90dec409756dc445> [<https://perma.cc/4hxf-64dg>].

212. Sara C. Busch, *Conditional Liberty: Restricting Procreation of Convicted Child Abusers and Dead Beat Dads*, 56 CASE W. RES. L. REV. 479, 494 (2005).

213. Karl Hanson, *Separate Childhood Laws and the Future of Society*, 12 L., CULTURE & HUMANS. 195 (2016).

214. See generally Kari E. Hong, *Parens Patri[archy]: Adoption, Eugenics, and Same-Sex Couples*, 40 CAL. W. L. REV. 1, 14–15 (2003).

215. PEGGY COOPER DAVIS, *NEGLECTED STORIES: THE CONSTITUTION AND FAMILY VALUES* 114 (1998).

216. Hong, *supra* note 214, at 14.

217. *Id.* at 14–15.

218. *Id.* at 16–19.

219. Dorothy E. Roberts, *Child Welfare and Civil Rights*, 2003 U. ILL. L. REV. 171, 174 (2003).

specifically, poor and working-class immigrant children—from their families.”<sup>220</sup> Certainly, physical and sexual abuse was occurring in some cases, as it does today. However, other cases charged the results of poverty, including poor housing and insufficient food, as “cruelty.”<sup>221</sup>

There is a pervasive belief that if one is poor, it is because they “are undisciplined, unmotivated, and lack the work ethic necessary to succeed financially in the wage labor market.”<sup>222</sup> According to Professor Bill Quigley, “American stereotypes of the poor start with laziness and lack of morals, add irresponsible sexuality, crime, and substance abuse, mix in dependency on the public dole and bad parenting, and always end in the confirmation of the fact that the poor are still undeserving of our support.”<sup>223</sup> These same stereotypes surface in family policing.

Poor parents are usually blamed for their own poverty because “[i]f they could run their lives properly, the logic goes, they would not be poor in the first place.”<sup>224</sup> A founding document of the Federal Children’s Bureau states that “Children are not safe and happy if their parents are miserable, and parents must be miserable if they cannot protect their home against poverty.”<sup>225</sup> Many believe that to be poor and then bring a child into the world is a selfish, irresponsible act. Compounding this is the idea that poor people are a monolithic group of substandard parents.<sup>226</sup> Some have gone as far as to say that impoverished people should not even be allowed to have children.<sup>227</sup>

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220. Amy Mulzer & Tara Urs, *However Kindly Intentioned: Structural Racism and Volunteer Casa Programs*, 20 CUNY L. REV. 23, 49 (2016).

221. *Id.* at 49–50.

222. Ndjuoh MehChu, *Neither Cops nor Caseworkers: Transforming Family Policing Through Participatory Budgeting*, 104 B.U. L. REV. 73, 87 (2024).

223. William P. Quigley, *War of the Words*, 1996 DET. COLL. L. REV. 17, 18 (1996) (reviewing HERBERT J. GANS, *THE WAR AGAINST THE POOR: THE UNDERCLASS AND ANTIPOVERTY POLICY* (1995)).

224. Tina Lee, *The Deep Roots and Wide Reach of Combining Punishment and Care*, 53 SW. L. REV. 266, 268 (2025).

225. DOROTHY A. BRADBURY & MARTHA ELLIOT, *FOUR DECADES OF ACTION FOR CHILDREN, A SHORT HISTORY OF THE CHILDREN’S BUREAU* 7 (2011).

226. BRIDGES, *supra* note 41, at 117.

227. See Dr. Phil, *Procreation Debate: Is it Smart to Have Children?* (CBS television broadcast, aired Nov. 29, 2022), <https://www.yahoo.com/video/father-youth-mentor-says-poor-091651059.html> [<https://perma.cc/P5P3-VYHT>].

Simply stated by scholar Khiara Bridges:

If[] parents have *chosen* to be poor, then they have also *chosen* to be neglectful to their children. The state and state actors need not lament having to make interventions that hurt parents when the parents are responsible for the circumstances that lead to the state's need to make the intervention. In those cases, the parents *deserve* to be hurt.<sup>228</sup>

Even family policing caseworkers recognize the effects of poverty and race: “[These parents] are so poor that by society’s standards—just because they don’t have enough—they’re neglecting their children. Only the poor wind up in the foster system . . . overwhelmingly, it is [B]lack and Hispanic.”<sup>229</sup> While there are many posited explanations for why these populations are disproportionately represented in the family policing system,<sup>230</sup> as will be discussed below, the fact itself is undisputed.<sup>231</sup>

### 3. “They Don’t Look Like Us”

Loring Brace and other “child saviors” intervened not only when parents demonstrated signs of poverty, but also based on suspected cultural inferiority or immorality. “‘Cultural inferiority’ was charged whenever families failed to resemble the ‘American’ values of temperance, wealth, and whiteness.”<sup>232</sup> Today, parents in the family policing system are judged harshly against a white, middle class parenting standard.<sup>233</sup> This problem is so pervasive that parenting advice often assumes that all parents are white and middle class.<sup>234</sup>

228. BRIDGES, *supra* note 41, at 117.

229. LOUISE ARMSTRONG, OF SLUTS AND BASTARDS: A FEMINIST DECODES THE CHILD WELFARE DEBATE 98–99 (2002).

230. See Bridges, *supra* note 41. Professor Khiara Bridges summarizes the leading arguments: 1) the confusion of poverty with neglect, 2) poverty makes it harder to avoid negative consequences of parental misbehavior, 3) the actual rates of abuse are higher among the poor; and 4) the poor are more visible. See also Josh Gupta-Kagan, *Distinguishing Family Poverty from Child Neglect*, 109 IOWA L. REV. 1541 (2024); CHILD WELFARE INFO. GATEWAY, ISSUE BRIEF: SEPARATING POVERTY FROM NEGLECT IN CHILD WELFARE (2023), <https://www.childwelfare.gov/pubPDFs/bulletinspovertyneglect.pdf>; Child Welfare Monitor, *Neglect as Poverty, the Myth that Won’t Go Away*, CHILD WELFARE MONITOR (Feb. 2, 2023) <https://childwelfaremonitor.org/2023/02/02/neglect-aspoverty-the-myth-that-wont-go-away> [<https://perma.cc/U6K6-2PEV>]; Baughman, Coles, Feinberg & Newton, *supra* note 31.

231. Leroy H. Pelton, *The Continuing Role of Material Factors in Child Maltreatment and Placement*, 41 CHILD ABUSE & NEGLECT 30, 31–32 (2016) (finding that approximately 85 percent of CPS investigations occur in families whose incomes are three times below the federal poverty line).

232. See generally Hong, *supra* note 214, at 17–18.

233. DETTLAFF, *supra* note 2, at 4.

234. Mark Nielsen, *How Parenting Advice Assumes You’re White and Middle Class*, THE CONVERSATION (June 27, 2017), <https://theconversation.com/how-parenting-advice-assumes-youre-white-and-middle-class-79333> [<https://perma.cc/F5GK-6PJ4>].

In *Caste: The Lies that Divide Us*, Isabel Wilkerson recounts the story of a Black father who was eating with his child in a restaurant. The father had told his son that he could have his juice only after finishing his vegetables. The little boy began to cry. A white woman in a nearby booth walked over to the table and told the boy, without acknowledging the father, “You drink your juice if you want to. It’s ok to drink your juice.”<sup>235</sup> As Wilkerson puts it, “A perfect stranger had gotten up, disregarded a parent, and told a child to disobey the parent right in the parent’s face.”<sup>236</sup>

Black parents have always faced an uphill battle. Stereotypes of Black women include the “[j]ezebel and the immoral Black mother,” “mammy and the negligent Black mother,” “matriarch and the Black unwed mother,” and “welfare queen and devious Black mother.”<sup>237</sup> As Professor Patricia Hill Collins writes, “Portraying African American women as stereotypical mummies, matriarchs, welfare recipients, and hot mommas helps justify U.S. Black women’s oppression.”<sup>238</sup>

Black fathers face their own stereotypes. Black men as a whole are often stereotyped as “dumb, violent, dangerous criminals.”<sup>239</sup> On top of that, Black fathers may be labeled “deadbeat” and absent; “great at making kids, but horrible at taking care of them.”<sup>240</sup>

As summarized by Omarr Rambert:

Here, the ideology surrounding fatherlessness is that absent fathers voluntarily leave their children and are lazy, irresponsible, inconsiderate, and incompetent. This ideology is linked to race by media portrayals and other socializing mechanisms that blend these characteristics with common Black stereotypes. Thus, when people see a Black man, they associate his Blackness and maleness with absent fatherhood. Likewise, when people think of the generic absent father, they link that concept to Blackness. The relationship between fatherlessness and Blackness, then, becomes inextricable. Furthermore, that experience is not a neutral experience. Fatherlessness is not simply the objective “absence” from a child’s life. It is associated with a moral failing, a voluntary, conscious, and selfish choice that men make with regard to their

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235. ISABEL WILKERSON, *CASTE: THE ORIGINS OF OUR DISCONTENT* 183–84 (2020).

236. *Id.*

237. Glaberson, *supra* note 36, at 421 (citing DOROTHY ROBERTS, *KILLING THE BLACK BODY: RACE, REPRODUCTION, AND THE MEANING OF LIBERTY* 10–19 (1997)); *see also* MELISSA V. HARRIS-PERRY, *SISTER CITIZEN: SHAME, STEREOTYPES, AND BLACK WOMEN IN AMERICA* 53–79 (2011).

238. PATRICIA HILL COLLINS, *BLACK FEMINIST THOUGHT* 69 (Taylor & Francis e-Library ed., 2002).

239. Evi Taylor, Patricia Guy-Walls, Patricia Wilkerson & Rejoice Addae, *The Historical Perspectives of Stereotypes on African-American Males*, 4 J. HUM. RTS. & SOC. WORK 213, 213 (2019).

240. Doyin Richards, *My Rude Introduction to Black Fatherhood*, FATHERLY (Dec. 3, 2021), <https://www.fatherly.com/love-money/my-rude-introduction-to-black-fatherhood> [<https://perma.cc/V4ZL-VWPB>].

children. This trope is easy to associate with Blackness given that Blackness itself is associated with conscious moral depravity.<sup>241</sup>

Thus, despite the fact that these racist stereotypes about absent fathers are inaccurate,<sup>242</sup> they become part of our individual and collective belief systems.<sup>243</sup> In so doing, they impact society's perception of Black parents' ability to parent and lead people to question Black parents' knowledge of their own children.<sup>244</sup>

In addition to poverty, child saving has always been closely connected to white saviorism.<sup>245</sup> When Native American children were removed from their families, the explicit goal of boarding schools was to "save" them by erasing their language and culture and bringing them closer to whiteness. The oft repeated (and vile) slogan "Kill the Indian, Save the Man" expressed the ideal that through erasure of Native American culture and language, Native American children could become "civilized."<sup>246</sup> Children were forced to cut their hair and change their names, and they were forbidden from observing their spiritual or cultural practices.<sup>247</sup> If they disobeyed these rules, they were beaten.<sup>248</sup> "[R]ampant physical, sexual, and emotional abuse; disease; malnourishment; overcrowding; and lack of health care in Indian boarding schools are well-documented."<sup>249</sup>

241. Omarr Rambert, *The Absent Black Father: Race, the Welfare-Child Support System, and the Cyclical Nature of Fatherlessness*, 68 UCLA L. REV. 324, 341 (2021).

242. See Jo Jones & William Mosher, FATHERS' INVOLVEMENT WITH THEIR CHILDREN: UNITED STATES, 2006–2010, NAT'L HEALTH STAT., Vol. 71 (Dec. 2013), at 6, <https://www.cdc.gov/nchs/data/nhsr/nhsr071.pdf> [<https://perma.cc/DE7J-JZSG>] ("Black fathers (70%) were most likely to have bathed, dressed, diapered, or helped their children use the toilet every day compared with white (60%) and Hispanic fathers (45%)."); Josh Levs, *No, Most Black Kids Are Not Fatherless*, HUFFPOST (July 27, 2017), [https://www.huffpost.com/entry/no-most-black-kids-are-no\\_b\\_11109876](https://www.huffpost.com/entry/no-most-black-kids-are-no_b_11109876) [<https://perma.cc/237P-G7KK>] ("The myth is that most black fathers are absent from their homes — or that most black children grow up without their fathers. Both of these claims are false. . . . Most black fathers live with their children. There are about 2.5 million who live with their children, and 1.7 million who don't, according to the CDC. Black dads who live with their children are actually the most involved fathers of all, on average, a CDC study found.").

243. Taylor, Guy-Walls, Wilkerson, & Addae, *supra* note 239, at 213 ("Regardless of the accuracy of the stereotype, it is incorporated into the individual's belief system. These fixed impressions of the shared attributes of a group of people are broadly held by society and 'often aid people in making sense of social settings, situations, and interactions with others.'" (citations omitted)).

244. See Glaberson, *supra* note 36, at 421–22 (citing ROBERTS, *supra* note 237).

245. Cynthia Godsoe, *Disrupting Carceral Logic in Family Policing*, 121 MICH. L. REV. 939, 955–56 (2023).

246. Sarah Krakoff, *They Were Here First: American Indian Tribes, Race, and the Constitutional Minimum*, 69 STAN. L. REV. 491, 544 (2017).

247. Addison Kliewer, Miranda Mahmud & Brooklyn Wayland, 'Kill the Indian Save the Man': Remembering the Stories of Indian Board Schools, GAYLORD NEWS, <https://www.ou.edu/gaylord/exiled-to-indian-country/content/remembering-the-stories-of-indian-boarding-schools> [<https://perma.cc/9ABW-KHHK>] (last accessed Sept. 26, 2025); BRYAN NEWLAND, FEDERAL INDIAN BOARDING SCHOOL INITIATIVE INVESTIGATIVE REPORT 53 (2022), [https://www.bia.gov/sites/default/files/dup/inline-files/bsi\\_investigative\\_report\\_may\\_2022\\_508.pdf](https://www.bia.gov/sites/default/files/dup/inline-files/bsi_investigative_report_may_2022_508.pdf) [<https://perma.cc/Z6NA-KDED>].

248. Gillespie, *supra* note 169, at 693; Krakoff, *supra* note 246.

249. Rebecca Tsosie, *Accountability for the Harms of Indigenous Boarding Schools: The Challenge of "Healing the Persisting Wounds" of "Historic Injustice"*, 52 SW. L. REV. 20, 33 (2023).

The driving force behind removing children from their tribes can therefore be summed up as: “Extract the Indian to save the child.”<sup>250</sup> “Children were not just taken from their homes, they were encouraged to completely repudiate their parents’ ways . . . their parents’ principles, religion, and way of life.”<sup>251</sup> The government viewed “[t]he love of home and the warm reciprocal affection existing between parents and children [as] among the strongest characteristics of the Indian nature.”<sup>252</sup> Disrupting this was key to ensuring the goals of assimilation and erasure were met.<sup>253</sup> One estimate suggests that between 1941 and 1978, sixty percent of Native children were removed from their parents and tribes and placed with white families or, even worse, in orphanages.<sup>254</sup>

Given the racist stereotypes around Black parents, child-saving and white saviorism are also often directed at these families. Despite evidence from studies,<sup>255</sup> people with lived experience,<sup>256</sup> statements from the Biden Administration,<sup>257</sup> the United Nations Committee on the Elimination of Racial Discrimination,<sup>258</sup> the NY Advisory Committee to the U.S. Commission on Civil Rights,<sup>259</sup> and even

250. Krakoff, *supra* note 246, at 507.

251. Ann Piccard, *Death by Boarding School: “The Last Acceptable Racism” and the United States’ Genocide of Native Americans*, 49 GONZ. L. REV. 137, 153 (2014) (citing Linda J. Lacey, *The White Man’s Law and the American Indian Family in the Assimilation Era*, 40 ARK. L. REV. 327, 360-61 (1986)); TIM GIAGO, CHILDREN LEFT BEHIND: THE DARK LEGACY OF INDIAN MISSION BOARDING SCHOOLS 134 (2006) (“The shortest road to assimilation is through the children. If they are removed from the influence of their parents and grandparents, indoctrinated into a new religion, denied their own language, and then made over into the image of the white people while isolated from their traditions, culture, and spirituality, they will be effectively assimilated into another culture.”).

252. NEWLAND, *supra* note 247, at 38.

253. *Id.* (“[O]n the whole government practices may be said to have operated against the development of wholesome [Indian] family life. Chief of these is the long continued policy of educating the [Indian] children in boarding schools far from their homes, taking them from their parents when small and keeping them away until parents and children become strangers to each other.”).

254. Ortiz Maddali, *supra* note 16, at 672.

255. See, e.g., Stephanie L. Rivaux, Joyce James, Kim Wittenstrom, Donald Baumann, Janess Sheets, Judith Henry & Victoria Jeffries, *The Intersection of Race, Poverty, and Risk: Understanding the Decision to Provide Services to Clients and to Remove Children*, 87 CHILD WELFARE 151 (2008).

256. Syesha Mercado was Targeted by the Hospital and CPS – A Common Experience for Black Women, RISE (Aug. 20, 2021), <https://www.risemagazine.org/2021/08/syesha-mercado-was-targeted/> [https://perma.cc/SSA9-RVYR].

257. A Proclamation on National Foster Care Month, 2021, BIDEN WHITE HOUSE ARCHIVES (Apr. 30, 2021), <https://bidenwhitehouse.archives.gov/briefing-room/presidential-actions/2021/04/30/a-proclamation-on-national-foster-care-month-2021/> [https://perma.cc/57ZX-PMJY].

258. Comm. on the Elimination of all Forms of Racial Discrimination, *Concluding Observations on the Combined Tenth to Twelfth Reports of the United States of America*, U.N. Doc. CERD/C/USA/CO/10-12, ¶¶ 43–44 (Sept. 21, 2022).

259. NEW YORK ADVISORY COMM. TO THE U.S. COMMISSION ON CIVIL RTS., EXAMINING THE NEW YORK CHILD WELFARE SYSTEM AND ITS IMPACT ON BLACK CHILDREN AND FAMILIES 24 (2024), [https://www.usccr.gov/files/2024-05/ny-child-welfare-system-sac-report\\_0.pdf](https://www.usccr.gov/files/2024-05/ny-child-welfare-system-sac-report_0.pdf) [https://perma.cc/REM7-5AFF].

family policing workers<sup>260</sup> confirming racism in the family policing system, prominent white commentators and scholars continue to deny it. Instead, these scholars point to limited studies which suggest Black parents are more neglectful and abusive,<sup>261</sup> failing to take into account the vague definitions of neglect, bias against Black parents, systemic factors that lead to poverty, and a host of other reasons that may account for these numbers.<sup>262</sup> As such, they advocate for more removals of Black children, rather than supports for Black families.

Some believe that it is simply better for Black children to grow up with white families. For example, Professor Elizabeth Bartholet explains that, rather than learning how to cope with the realities of racism in Black families, Black children should be adopted by white families who can teach them to:

[M]aneuver in the white worlds of power and privilege. Indeed, it seems clear that for black children growing up in a white-dominated world, there . . . [are] material advantages associated with having white parents and living in the largely white and relatively privileged world that such parents tend to frequent.<sup>263</sup>

As Erin Flowers, a former social worker in the family policing system, explains, “white saviorism” describes:

[T]he idea that white people often believe that they know best and fail to really consider what the people they believe they are saving actually want and need. In the child welfare context, this translates to making decisions for families of color without understanding or taking into account their race, culture, and the systemic racism they’ve already faced in this country, which may have led to many of the issues they are struggling with when they come into contact with the child welfare system.<sup>264</sup>

These twin ideals of child-saving and white saviorism are present from top to bottom in family policing law and proceedings. The Adoption and Safe Families Act of 1997 (ASFA) states that “the child’s health and safety will be

260. Andy Newman, *Is N.Y.’s Welfare System Racist? Some of Its Own Workers Say Yes.*, N.Y. TIMES (June 20, 2023), <https://www.nytimes.com/2022/11/22/nyregion/nyc-acf-racism-abuse-neglect.html> [https://perma.cc/S5NP-MFAW].

261. See, e.g., Brett Drake, Jennifer M. Jolley, Paul Lanier, John Fluke, Richard P. Barth & Melissa Jonson-Reid, *Racial Bias in Child Protection? A Comparison of Competing Explanations Using National Data*, 127 PEDIATRICS 471 (2011).

262. See generally 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?*, 692 ANNALS AM. ACAD. POL. & SOC. SCI. 253 (2020).

263. Elizabeth Bartholet, *Where Do Black Children Belong? The Politics of Race Matching in Adoption*, 139 U. PA. L. REV. 1163, 1222 (1991).

264. Erin Flowers, *White Saviors are Not Saving Children*, CRIM. L. & POL. BLOG (April. 22, 2019), <https://crimlawandpolicy.wordpress.com/2019/04/22/white-saviors-are-not-saving-children/> [https://perma.cc/AN62-YCAT].

paramount”<sup>265</sup> without making it clear that the law presumes that parents act in the child’s best interest.<sup>266</sup> When Congress passed ASFA, its lead sponsor, Senator John Chafee, proclaimed, “We will not continue the current system of always putting the needs and rights of the biological parents first . . . it’s time we recognize that some families simply cannot and should not be kept together.”<sup>267</sup> Put another way, if we cannot (or will not) save parents, we will save their children.<sup>268</sup>

The child-saving mentality often shows up in courtroom. One lawyer for children repeatedly referred to her clients as “my children” while their actual parents stood in the courtrooms.<sup>269</sup> In my own experience representing parents, this is not uncommon. Thus, the idea that children need to be saved from their parents in child welfare proceedings is in direct conflict with the fundamental legal and social premise that parents are in the best position to know what is in their children’s best interests,<sup>270</sup> and that parents and children share an interest in—and a constitutional right to—their shared relationship.<sup>271</sup>

On top of contending with racism, some parents are also trying to raise children on their own. The next section discusses our historical and continuous disdain of single parents, made worse when they hold intersectional identities.

#### 4. “They’re Immoral”

Throughout history, perhaps no parent is more scorned than the single mother.<sup>272</sup> Single mothers were considered “feeble-minded” and “near-morons,” and perceived as having a “biological flaw such as mental deficiency, which, in turn, created a propensity to moral weakness.”<sup>273</sup> These stereotypes persist to this day.

As Professor Nancy Dowd has written, single-parent families are considered “part of the ‘underclass,’ broken and deviant, as compared to the nuclear,

265. Adoption and Safe Families Act of 1997, Pub. L. 105–89, 11 Stat. 2115, 2116 (codified as amended in scattered sections of 42 U.S.C.).

266. *Troxel v. Granville*, 530 U.S. 57, 68 (2000).

267. Katherine Q. Seelye, *Clinton to Approve Sweeping Shift in Adoption*, N.Y. TIMES (Nov. 17, 1997), <https://www.nytimes.com/1997/11/17/us/clinton-to-approve-sweeping-shift-in-adoption.html> [<https://perma.cc/42TV-JLQB>]; Shanta Trivedi, *The Adoption and Safe Families Act Is Not Worth Saving: The Case for Repeal*, 61 FAM. CT. REV. 1, at 5–9 (2023).

268. See Guggenheim, *supra* note 5, at 723; 25 YEARS LATER: TIME FOR REPEAL, CTR. FOR STUDY SOC. POL’Y (Nov. 15, 2022), <https://cssp.org/2022/11/asfa-25-years-later-time-for-repeal/> [<https://perma.cc/7JBE-B45P>].

269. Godsoe, *supra* note 245, 955–56 (2023).

270. See *Parham v. J. R.*, 442 U.S. 584, 602 (1979) (“[H]istorically [the law] has recognized that natural bonds of affection lead parents to act in the best interests of their children”).

271. See *Santosky v. Kramer*, 455 U.S. 745, 760 (1982) (“The child and his parents share a vital interest in preventing erroneous termination of their natural relationship.”).

272. See Glaberson, *supra* note 36, at 24 n.107.

273. *Id.* at 24–25 (internal quotations omitted).



traditional, patriarchal family.”<sup>274</sup> Single mothers are perceived as “sluts”<sup>275</sup> who “have the nerve to be economically disadvantaged” and therefore deserve “social contempt, social opprobrium, and a social blind eye.”<sup>276</sup> The most destitute ones are simply the easiest target.”<sup>277</sup> And single mothers are seen as responsible not only for their own poverty, but for creating a “culture of poverty” because of their moral turpitude.<sup>278</sup> They are therefore deemed responsible for any problems that their children face, in part because they “transmit” this culture to their children.<sup>279</sup>

There is a spectrum of attitudes towards single mothers, with white widows receiving the most sympathy and Black, single mothers being the objects of disdain and derision.<sup>280</sup> Epitomized by Reagan’s “welfare queens,” society has been led to believe that the typical “welfare recipient is a black woman who has children in order to live a life of leisure on the taxpayer’s money.”<sup>281</sup> Taken together, “facets of the ‘welfare queen’ image become fused together so that poor always means Black, Black always means poor, and these characteristics attached to ‘woman’ symbolize sexual irresponsibility, defective parenthood, and deviancy.”<sup>282</sup>

Social policy has always responded to these stereotypes. In the mid-1990s, then-Speaker of the House Newt Gingrich, in conjunction with President Bill Clinton, introduced legislation ending unrestricted cash assistance to single mothers.<sup>283</sup> Gingrich’s goal was to “take the children of welfare mothers and put them in orphanages.”<sup>284</sup> As Dr. Robert Rector of the Heritage Foundation so subtly put it, this legislation would mean that single mothers “would have no walking-around money for cigarettes, booze, clothes. . . . They would have to take parenting classes, finish high school and have a curfew. The bottom line is, this would be the only option for these women.”<sup>285</sup>

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274. NANCY E. DOWD, IN DEFENSE OF SINGLE-PARENT FAMILIES 3 (1997).

275. ARMSTRONG, *supra* note 229, at 11.

276. *Id.* at 15.

277. *Id.*

278. DOWD, *supra* note 274, at 18.

279. *Id.*

280. Michele Estrin Gilman, *Welfare, Privacy, and Feminism*, 39 U. BAL. L. F. 1, 4 (2008).

281. Catherine R. Albiston & Laura Beth Nielsen, *Welfare Queens and Other Fairy Tales: Welfare Reform and Unconstitutional Reproductive Controls*, 38 HOW. L.J. 473, 515 (1995); Josh Levin, *The Welfare Queen*, SLATE (Dec. 19, 2013, 12:41 AM), [https://www.slate.com/articles/news\\_and\\_politics/history/2013/12/linda\\_taylor\\_welfare\\_queen\\_ronald\\_reagan\\_made\\_her\\_a\\_notorious\\_american\\_villain.html](https://www.slate.com/articles/news_and_politics/history/2013/12/linda_taylor_welfare_queen_ronald_reagan_made_her_a_notorious_american_villain.html) [https://perma.cc/AG35-C49B] (recounting the origin of the term “welfare queen,” coined by Ronald Reagan).

282. Albiston & Nielsen, *supra* note 281, at 477.

283. See Personal Responsibility and Work Opportunity Reconciliation Act of 1996, H.R. 3734, 110 Stat. 2105 (codified as amended in scattered sections of 42 U.S.C.).

284. See LAURA BRIGGS, TAKING CHILDREN: A HISTORY OF AMERICAN TERROR 122 (2020).

285. *Are Orphanages Better for Kids Than Welfare?*, BAL. SUN (Oct. 24, 2018, 9:46 AM), <https://www.baltimoresun.com/news/bs-xpm-1994-11-27-1994331010-story.html> [https://perma.cc/L6D6-BPSC].

Today, Black, single mothers have among the highest poverty rates in the United States.<sup>286</sup> Given this combination of historical and societal factors, it should come as no surprise that single mothers also report bias from family policing caseworkers<sup>287</sup> and are the largest group of parents represented in the family policing system.<sup>288</sup>

### 5. “They’re Drug Addicts”

People who use illegal substances are subject to a host of negative stereotypes. They are feared as dangerous and unpredictable.<sup>289</sup> Society views them as weak, selfish, and criminal.<sup>290</sup> As with the other marginalized groups outlined above, these stereotypes bleed into the family policing system.

A concerning example of this type of judgment occurred when an attorney who works in the family policing system asked a researcher to answer a riddle: “How do you know if a drug addict is lying to you?” The answer: “Are their lips moving?”<sup>291</sup> Most people believe that people who use substances have control over their addiction<sup>292</sup> and can choose to stop using at any time, despite mountains of evidence demonstrating that addiction is a disease.<sup>293</sup> Because of this belief, parents who use substances are presumed to be selfish.<sup>294</sup> As one news article put it, substance users are “coddled and infantilized, compared to sufferers of cancer or diabetes, not [treated like] narcissistic fools with zero regard for innocents.”<sup>295</sup>

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286. See Regina S. Baker & Heather A. O’Connell, *Structural Racism, Family Structure, and Black–White Inequality: The Differential Impact of the Legacy of Slavery on Poverty Among Single Mother and Married Parent Households*, 84 J. MARRIAGE & FAM. 1341 (2022).

287. See Paul Melbourne, *Exploring African American Single Mothers’ Experiences with the Child Welfare System* 89 (2022) (Ph.D. dissertation, Walden University) (ProQuest).

288. NAVEED, *supra* note 17, at 68 (“The majority (62 percent) of parents identified as culpable for neglect were women.”).

289. See Lawrence Yang, Liang Y. Wong, Margaux M. Grivel & Deborah S. Hasin, *Stigma and Substance Use Disorders: An International Phenomenon*, 30 CURRENT OP. PSYCHIATRY 378 (2017).

290. Marycarmen Bustos-Gamiño, Jazmín Mora-Ríos, Jorge Villatoro-Velázquez, Clara Fleiz-Bautista, Alejandro Molina-López & María Elena Medina-Mora, *Changes in Attitudes Toward People with Substance Use Disorder: A Comparative Study of the General Population in Mexico*, 19 INT’L J. ENV’T RSCH. PUB. HEALTH (2022).

291. López-Espino, *supra* note 81, at 1469.

292. See Erika Derkas, “Don’t Let Your Pregnancy Get in the Way of Your Drug Addiction”: CRACK and the Ideological Construction of Addicted Women, 38 SOC. JUST. 125, 136 (2011).

293. Sonja B. Starr, *Simple Fairness: Ending Discrimination in Health Insurance Coverage of Addiction Treatment*, 111 YALE L.J. 2321, 2325–26 (2002).

294. See, e.g., Hilary Klee, *Drug-using parents: analysing the stereotypes*, 9 INT’L J. OF DRUG POL’Y 437, 439 (1998); Poppy Kennedy, *Sobbing Drug Addict Parents Locked Up After “Selfish” Cannabis Use Left Baby in Hospital*, TEESSIDE LIVE (Aug. 12, 2023, 6:00 AM), <https://www.gazetelive.co.uk/news/teesside-news/sobbing-drug-addict-parents-locked-27500811> [https://perma.cc/L8VK-NSKT].

295. Andrea Peyser, *Drug Addicts Are Being Coddled as Kids Are Neglected*, N.Y. POST (Sept. 26, 2016, 12:58 AM), <https://nypost.com/2016/09/26/drug-addicts-are-being-coddled-as-kids-are-neglected> [https://perma.cc/8QSP-N69G].

Although using drugs does not make someone a bad parent, and research demonstrates that it is possible to both use illegal substances and be a fit parent,<sup>296</sup> the state routinely removes children from their parents due to substance use.<sup>297</sup> This is often true regardless of whether there is any evidence of harm to the child, as required by law. Many laws create a presumption of unfitness based solely on substance use while pregnant or a positive toxicology at birth.<sup>298</sup>

During the moral panic over crack cocaine in the 80's and 90's, the portrayal of parents who used substances was particularly racialized.<sup>299</sup> This was fueled by media coverage that was so racist, news organizations apologized for their coverage decades later.<sup>300</sup> As a result of the media coverage and general animosity and reprobation towards Black people who use substances, as I have written elsewhere, lawmakers enacted policies used to reinforce stereotypes about “selfish” Black mothers who used crack cocaine and separate these mothers from their children.<sup>301</sup>

The moral panic over the crack epidemic stands in sharp contrast to the compassionate treatment of the mostly white people affected by the recent opioid crisis, where lawmakers called for a public health response instead of criminalization.<sup>302</sup> Many politicians relayed stories of loved ones who struggled with addiction, highlighting the importance of personal connection in engendering empathy.<sup>303</sup> And since, generally, people are more likely to interact with people of their own race and find common ground, these officials had ties to white people who had faced substance use disorder, making it easier for them to approach the issue with kindness<sup>304</sup> and to pass legislation meant to keep families together by

296. Ian Vandewalker, *Taking the Baby Before It's Born: Termination of the Parental Rights of Women Who Use Illegal Drugs While Pregnant*, 32 N.Y.U. REV. L. & SOC. CHANGE 423, 439 (2008) (citing SUSAN C. BOYD, *MOTHERS AND ILLICIT DRUGS: TRANSCENDING THE MYTHS* 14–16 (1999) (multiple studies demonstrate that substance-using mothers can also be fit parents)).

297. Susie Nielsen, *More Kids Are Getting Placed in Foster Care Because Of Parents' Drug Use*, NPR (July 15, 2019, 11:27 AM), <https://www.npr.org/sections/health-shots/2019/07/15/741790195/more-kids-are-getting-placed-in-foster-care-because-of-parents-drug-use> [https://perma.cc/TCQ4-6B3V].

298. Vandewalker, *supra* note 296, at 425–29, 439.

299. See generally Trivedi, *supra* note 267; see also Derkas, *supra* note 292.

300. N.Y. Times Editorial Board, Opinion, *Slandering the Unborn*, N.Y. TIMES (Dec. 28, 2018), <https://www.nytimes.com/interactive/2018/12/28/opinion/crack-babies-racism.html> [https://perma.cc/2RU8-6BNH].

301. Trivedi, *supra* note 267; see also Lynn M. Paltrow, *The War on Drugs and the War on Abortion: Some Initial Thoughts on the Connections, Intersections and the Effects*, 28 SEATTLE UNIV. L. REV. 201, 209 (2001).

302. German Lopez, *When a Drug Epidemic's Victims are White*, VOX (Apr. 4, 2017, 8:00 AM), <https://www.vox.com/identities/2017/4/4/15098746/opioid-heroin-epidemic-race> [https://perma.cc/2JKH-XFNN].

303. *Id.*

304. *Id.*

“help[ing] parents who suffer from mental or substance abuse”<sup>305</sup> instead of punishing them.

Stereotypes of people who use drugs in the media exacerbate the racialized treatment of people who use substances. For example, one study that examined the portrayal of Black and white people who use substances on *Law and Order* and other popular television shows, observed that:

[D]rug addiction involving White people is not a crime but a misfortune. White women involved with drugs are also portrayed as having failed the standards of White femininity, and thus, the social order. Therefore, they can and must be redeemed to restore the social order, and with it, White dominance.<sup>306</sup>

Black people, in particular mothers, on the other hand are portrayed by the media as “dirty,” “hypersexualized,” “crazy,” “neglectful,” and deserving of blame.<sup>307</sup> Professor Allison E. Korn offers several examples of pop culture’s portrayal of Black drug users in the late 90s:

In *Sugar Hill*, the protagonist Roemello Skuggs’ mother is introduced to heroin, and soon becomes an addict and a neglectful mother. Roemello and his brother Raynathan suggest that her drug use has made them “crazy.” *Boyz in the Hood* includes a scene where a baby is nearly hit by a car. When a male character, Tre, saves the child and brings him to the mother’s door, she is dirty and unkempt. As she takes the baby from Tre, she asks, “[y]ou got some blow?” And the movie *Losing Isaiah*, which documents an adoption struggle between a poor African-American mother and a well-to-do white nurse, opens with a scene in which the mother puts her young son in a dumpster and leaves to solicit someone for crack. Through each of these scenes, drug-using, hyper-sexualized mothers are held to blame for their communities’ woes.”<sup>308</sup>

In *Losing Isaiah*, even after Berry’s character overcomes her substance use disorder, the movie ends with Lange remaining involved in Isaiah’s life, reenforcing patterns of white saviorism and the devaluation of Black motherhood.<sup>309</sup>

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305. Press Release, U.S. S. Comm. Fin., Finance Senators Introduce Family First Prevention Services Act (June 16, 2016), <https://www.finance.senate.gov/chairmans-news/finance-senators-introduce-family-first-prevention-services-act> [https://perma.cc/6C9P-HX3X].

306. Jessie Daniels, Julie C. Netherland & Alyssa Patricia Lyons, *White Women, U.S. Popular Culture, and Narratives of Addiction*, 45 CONTEMP. DRUG PROBS. 329, 342 (2018).

307. Allison E. Korn, *Detoxing the Child Welfare System*, 23 VA. J. SOC. POL’Y & L. 293, 333–34 (2016).

308. *Id.* at 333 (citations omitted).

309. Christa J. Richer, *Fetal Abuse Law: Punitive Approach and the Honorable Status of Motherhood*, 50 SYRACUSE L. REV. 1127, 1146 (2000) (“*Losing Isaiah*, dealt with a white ‘ideal’ adopting mother and a black cocaine addict who had given birth to a baby addicted to crack. A theme that was

Exacerbating the racialized treatment of people who use substances, the law is designed to punish parents for substance use, rather than allow them to seek care in a safe and compassionate way. The federal Child Abuse Prevention and Treatment Act of 1974 (CAPTA) requires medical professionals to report any parent who tests positive for substances at birth to CPS.<sup>310</sup> This is part of a long history of vilifying pregnant women who use substances as “the exact opposite of a mother: . . . promiscuous, uncaring and self-indulgent.”<sup>311</sup> Solely blaming a pregnant person’s substance use for the ill-health of a child ignores all the societal factors that also influence a child’s health before and after pregnancy.<sup>312</sup> As Dorothy Roberts has argued, laws that target mothers for substance use allow society to place the blame on individual “depraved” mothers rather than acknowledge that systemic poverty, not parental substance use, is the gravest threat to the health of Black children.<sup>313</sup>

More recently, a spate of “fetal assault laws” were introduced that would criminally charge pregnant people who use certain controlled substances.<sup>314</sup> The rhetoric surrounding these laws shed light on how we view mothers who have used drugs. For example, when Tennessee was considering a fetal assault law in 2014, the mothers targeted by the law were portrayed as intentionally harming their children with no desire to stop their substance use.<sup>315</sup> As the bill’s sponsor put it, these mothers are “[t]he worst of the worst. These ladies are not those who would consider going to prenatal care.”<sup>316</sup>

Many substance-using pregnant people *do* seek prenatal care but report discrimination and stigmatization when they try.<sup>317</sup> Discriminatory treatment, combined with the fear of legal repercussions, prevents many others from seeking medical care.<sup>318</sup> As one Black mother explained:

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initially played upon by the media in framing this issue was the contention that ‘the use of crack cocaine destroyed women’s ‘maternal instinct’.’” (citations omitted)).

310. Child Abuse Prevention and Treatment Act of 1974, 42 U.S.C. § 5101 (1996).

311. ROBERTS, *supra* note 237.

312. MOVEMENT FOR FAMILY POWER, INFORMED CONSENT CAMPAIGN NYC, BLOOM COLLECTIVE, INDRA LUSERO, REIMAGINE CHILD SAFETY CALIFORNIA, MARYLAND OFFICE OF THE PUBLIC DEFENDER, JORDAN DYETT, SARAH MERING, TRISTAN HEART-MEYERS, ELEPHANT CIRCLE & DRUG POLICY ALLIANCE, DRUG TESTS ARE NOT PARENTING TESTS: THE FIGHT TO REIMAGINE SUPPORT FOR PREGNANT PEOPLE WHO USE DRUGS 17 (2023), [https://issuu.com/movfamilypower/docs/rs\\_draft\\_2023](https://issuu.com/movfamilypower/docs/rs_draft_2023) [<https://perma.cc/Q379-DQRG>].

313. ROBERTS, *supra* note 237, at 188.

314. Meghan Boone & Benjamin J. McMichael, *State-Created Fetal Harm*, 109 GEO. L.J. 475, 478–84 (2021).

315. Vanessa Soderberg, *More Than Receptacles: An International Human Rights Analysis of Criminalizing Pregnancy in the United States*, 31 BERKELEY J. GENDER L. & JUST. 299, 329 (2016); see also WENDY BACH, PROSECUTING POVERTY CRIMINALIZING CARE 11 (2022).

316. Soderberg, *supra* note 315, at 329–30.

317. Marc Canellas, *Abolish and Reimagine: The Pseudoscience and Mythology of Substance Use in the Family Regulation System*, 30 GEO. J. POVERTY L. & POL’Y 169, 230 (2023).

318. *Id.*

I know a lot of mothers say that they don't get prenatal care 'cause they feel like as soon as they walk through the door, they will be judged. "Oh you're a crack head. Why . . . did you get pregnant anyway?" So they don't get prenatal care . . . they are thinking how they gonna be looked at when they walk in the hospital door, like they not good enough to be pregnant.<sup>319</sup>

Despite popular opinion based on harmful stereotypes about people who use substances, substance use during pregnancy is not an indication of a pregnant person's desire to harm their fetus. As such, a pregnant person's medical treatment should not be tied to punishment.<sup>320</sup>

Further, when pregnant people want to access substance use treatment, it can be incredibly difficult. For example, "in 2021, only 19 states had drug treatment programs that were 'specifically targeted to those who are pregnant' and only 17 states and the District of Columbia gave pregnant people priority on the wait-list."<sup>321</sup> Even if a pregnant person is able to get into a program, the programs are expensive and generally do not provide childcare for their other children.<sup>322</sup> People who use substances face judgment and "even disgust" when interacting with medical care professionals, which can not only impact their health, but may contribute to further substance use or other harmful behaviors.<sup>323</sup> When the person who uses substances is a parent or caregiver, they face additional judgment and reprobation.

### B. "Better Safe than Sorry"

The stated goal of the family policing system is to protect children from harm. Everyone who has a role in the family policing system ostensibly cares about children's safety. But there is no magic formula to determine how to protect children, and decisions about how to handle allegations of abuse and neglect are not an "exact science."<sup>324</sup> The worst-case scenario for everyone involved is when a child who is known to CPS is killed by a caregiver, and therefore the entire system contorts against this risk, and therefore against parents. This intensified response

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319. *Id.*; see also, Parker Perry, *Half of Clark County Kids in Foster Care Have Parents on Drugs*, SPRINGFIELD NEWS-SUN (Apr. 7, 2019), <https://www.springfieldnewssun.com/news/local/half-clark-county-kids-foster-care-have-parents-drugs/X5C2duMpYUUGNRmqISvJWI/> [<https://perma.cc/MJY7-5EXE>].

320. Canellas, *supra* note 317, at 190–237.

321. Amy Reavis, *Better Together: Toward Ending State Removal of Substance-Exposed Newborns from Their Parents*, 46 N.Y.U. REV. L. & SOC. CHANGE 362, 413 (2022).

322. *Id.*

323. R. Hammarlund, K. A. Crapanzano, L. Luce, L. Mulligan & K. M. Ward, *Review of the Effects of Self-Stigma and Perceived Social Stigma on the Treatment-Seeking Decisions of Individuals with Drug- and Alcohol-Use Disorders*, 9 SUBSTANCE ABUSE REHAB. 115 (2018).

324. Claire Fahy & Andy Newman, *Judge Let Abusive Parents Keep Daughter. Days Later, She Was Dead*, N.Y. TIMES (Oct. 4, 2023), <https://www.nytimes.com/2023/10/03/nyregion/dead-baby-brooklyn-abuse.html> [<https://perma.cc/S9N5-LXRZ>].

often occurs despite the facts on the ground and always in disregard of the harm inflicted on parents.

Fear of these rare results leads to system-wide, fear-based decision-making. It even has a name: “New York Post Law.”<sup>325</sup> One example of this is, after the death of a child in New York, allegedly at the hands of her parents, for example, a New York Times headline proclaimed “*Judge Let Abusive Parents Keep Daughter. Days Later, She Was Dead.*”<sup>326</sup> People Magazine picked up the story, stating “*Baby Dies of Brain Bleed Days After Judge Rules She Could Stay in Abusive Parents’ Home: Reports.*”<sup>327</sup> A frequent child welfare commentator and critic of family preservation efforts wrote an opinion piece in the New York Post declaring that the judge’s “warped mindset” led to the baby’s death.<sup>328</sup>

Caseworkers express similar fears regarding their decision-making:

Workers are afraid that they’re going to be disciplined if anything goes wrong on a case. So their thing is, Well, I’m just going to take the kid out of the home and put them in care. That way, I don’t have to worry about being written up or disciplined because I left the children in the home and something happened to them. . . . You place that kid outside of that home, because you do not want to be in a situation where you left a child in a home and something happened to them.<sup>329</sup>

Thus, family policing actors often follow a “better safe than sorry,” or “err on the side of caution” mentality,<sup>330</sup> removing children based not on the facts, but on fear and personal cover.<sup>331</sup> And of course, in addition to children, parents are left to suffer as a result. But that fact never makes the New York Post.

325. LEE, *supra* note 67, at 57–58 (2016); *see also* David Michael Jaros, *Unfettered Discretion: Criminal Orders of Protection and Their Impact on Parent Defendants*, 85 IND. L. J. 1445, 1458 (2010) (quoting a criminal court judge who stated, “[l]ike they tell you in judge school, no one ever wound up on the front page of The New York Post for setting high bail.”).

326. *Id.*

327. Ingrid Vasquez, *Baby Dies of Brain Bleed Days After Judge Rules She Could Stay in Abusive Parents’ Home: Reports*, PEOPLE MAG. (Oct. 4, 2023), <https://people.com/baby-dies-days-after-judge-rules-she-could-stay-with-abusive-parents-8347334> [<https://perma.cc/D84U-2HNE>].

328. Naomi Schaefer Riley, *Judge Erik Pitchal’s Warped Mindset Led to Baby Ella Vitalis’s Death*, N.Y. POST (Oct. 6, 2023), <https://nypost.com/2023/10/06/judge-erik-pitchals-warped-mindset-led-to-baby-ella-vitalis-death/> [<https://perma.cc/88QQ-G99R>].

329. Richard Wexler, *Confessions of a Caseworker: We Remove Kids to Protect Ourselves*, YOUTH TODAY (Feb. 22, 2017), <https://youthtoday.org/2017/02/confessions-of-a-caseworker-we-remove-kids-to-protect-ourselves/> [<https://perma.cc/6PYT-UNGJ>].

330. Clare Huntington, *Rights Myopia in Child Welfare*, 53 UCLA L. REV. 637, 658 (2006) (“State agencies also are more likely to err on the side of caution when determining if abuse or neglect has occurred . . .”); *see also* N.J. DEP’T CHILD. & FAM. POL’Y MANUAL, *REMOVAL OF A CHILD* (Sept. 26, 2011), [https://dcfpolicy.nj.gov/api/policy/download/\\_CPP-II-C-2-700.pdf](https://dcfpolicy.nj.gov/api/policy/download/_CPP-II-C-2-700.pdf) [<https://perma.cc/5ZZX-PVCS>] (last visited Aug. 8, 2024) (listing examples of when to consider removal).

331. *See* Jane Brennan, *Emergency Removals Without a Court Order: Using the Language of Emergency to Duck Due Process*, 29 J. L. & POL’Y 121, 150 (2020).

Part I described the harms that family policing exacts on parents and this Part explained the negative assumptions and narratives that prevent people from taking the harms that parents experience in the family policing system seriously. As described, one view explaining why society fails to focus on the harm to parents is that poor parents, racially marginalized parents, single parents, and parents who use substances are judged harshly by the system, leading to greater family policing intervention into these families. Another is that system actors are scared of what would happen to them if harm were to befall a child. Regardless of why the harm occurs, as explained by parents themselves throughout this paper, it exists. The question remains, then, what we want to do about it.

The final Part of this Article describes immediate steps we can take to reduce the harms identified as well as long-term measures we can implement to change the narratives driving family policing.

### III.

#### HOW WE REDUCE THE HARM TO PARENTS (AND THEIR CHILDREN)

*“If a community values its children, it must cherish their  
parents.”*<sup>332</sup>

As described, family policing proceedings cause immense harm to parents and make assumptions about who they are based on stereotypes and bias. When the family policing system intervenes, it investigates families, separates them, and in some cases permanently ends their legal relationship. In these ways (and others), Professor Sarah H. Lorr argues that involvement in the family policing system and the resulting separation from one’s children literally creates disability in parents by creating new impairments or exacerbating them in the ways described above.<sup>333</sup>

Through these practices, the family policing system inflicts trauma that is so pronounced that neither parents nor their children will ever be able to fully escape it. Many of the parents involved in the system will have more children. If parents are not healthy, thriving and supported, we cannot expect their children to be. This is perhaps one explanation for why foster children have a high likelihood of losing their own children to the system as parents.<sup>334</sup>

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332. See Inge Bretherton, *The Origins of Attachment Theory: John Bowlby and Mary Ainsworth*, 28 DEVELOPMENTAL PSYCH. 759, 762 (1992); see also GREG MORAN, ATTACHMENT IN EARLY CHILDHOOD: COMMENTS ON VAN IJENDOORN, AND GROSSMANN AND GROSSMANN, ENCYC. ON EARLY CHILDHOOD DEV. (2020), <https://www.child-encyclopedia.com/attachment/according-experts/attachment-early-childhood-comments-van-ijendoorn-and-grossmann-and> [<https://perma.cc/KJK8-GXKE>].

333. Lorr, *supra* note 144, at 1296.

334. Schachter & Kroll, *supra* note 3, at 212.



Many who work in the system believe that their only responsibility is to the child—it is, after all the *child* welfare system. But this approach is short-sighted. It is common sense that children thrive when their parents are happy and healthy.

In the words of the former Surgeon General, Dr. Vivek Murthy, “The work of parenting is essential not only for the health of children but also for the health of society. Additionally, we know that the well-being of parents and caregivers is directly linked to the well-being of their children.”<sup>335</sup> For example, the strongest indicator of a child’s health, greater than income or family structure, is a parent’s health.<sup>336</sup> High levels of stress or mental health disorders can have impacts on children.<sup>337</sup> People who have low incomes, face job instability, are racially and ethnically marginalized, experience violence, face insecurity, and have intersectional identities (among others) are most at risk for mental health struggles.<sup>338</sup> As explained, these are, of course, the populations most vulnerable to family policing intervention in the first place. Thus, it is imperative that “child welfare” policy and the people who work in the system adopt a different approach that is mindful of and compassionate towards parents.

This final Part posits that there are immediate actions that could reduce the harms to parents described in Part II, including poverty reduction measures, eliminating mandated reporting, and ending the practice of TPR. However, it concludes that neither policy change nor legislative reform or even reducing the footprint of the family policing system will reduce the harms that family policing inflicts on parents unless there is a fundamental shift in our attitudes towards parents. This section humbly suggests that a necessary step towards keeping children safe is to respect the dignity of their parents and to treat parents with empathy. To do this, family policing actors and the rest of our society must do the difficult work of cultivating empathy within themselves to change the degrading narrative that surrounds parents trapped in the family policing system.

#### *A. Changing the Law: Policy Changes That Would Reduce Harm to Parents (and Children)*

Many parents report that the presence of family policing itself is harmful. As such, a growing movement, led by impacted parents and youth, has called for complete abolition of the family policing system, citing the harm that it causes to

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335. OFF. SURGEON GEN., PARENTS UNDER PRESSURE 3 (2024), <https://www.hhs.gov/sites/default/files/parents-under-pressure.pdf> [<https://perma.cc/R2ZC-RPRF>].

336. David Murphey & Samuel Beckwith, *A Parent’s Health is One of the Strongest Predictors of a Child’s Health*, CHILD TRENDS (Jan. 9, 2019), <https://www.childtrends.org/publications/a-parents-health-is-one-of-the-strongest-predictors-of-a-childs-health> [<https://perma.cc/YZT6-UTNN>].

337. Kenneth E. Miller, *Why Parents’ Mental Health Matters So Much to Their Children*, PSYCH. TODAY (Dec. 4, 2023), <https://www.psychologytoday.com/us/blog/the-refugee-experience/202312/5-reasons-your-mental-health-matters-a-lot-to-your-children> [<https://perma.cc/69MQ-3DW6>].

338. OFF. SURGEON GEN., *supra* note 335, at 17.

families, particularly families of color.<sup>339</sup> As one group of parents who were subjected to family policing intervention explain, “We do not believe that the system exists to help us. We believe that the system targets, surveils and punishes Black and brown families. We do not believe the system can be reformed or fixed.”<sup>340</sup>

Abolition and related principles, including transformative justice<sup>341</sup> and community accountability,<sup>342</sup> offer important lessons<sup>343</sup> such as meeting material basic needs as a form of harm reduction<sup>344</sup> and focusing our response not only on the child who suffered harm, but also the parent who has caused harm.<sup>345</sup>

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339. See *Who We Are*, JMAC, <https://jmacforfamilies.org/who-we-are> [<https://perma.cc/9FBB-JR7H>] (last visited Aug. 8, 2024).

340. HALIMAH WASHINGTON, NAASHIA B., SHAMARA KELLY, MELISSA LANDRAU, YVONNE SMITH, IMANI WORTHY, ERIN MARKMAN, IRENE LINARES, TRACY SERDJENIAN & NORA MCCARTHY, AN UNAVOIDABLE SYSTEM: THE HARMS OF FAMILY POLICING AND PARENTS’ VISION FOR INVESTING IN COMMUNITY CARE 3 (2021), <https://www.risemagazine.org/wp-content/uploads/2021/09/AnUnavoidableSystem.pdf> [<https://perma.cc/6Y4U-HCMW>].

341. Transformative justice “is a community process developed by anti-violence activists of color” as a response to violence that “build[s] support and more safety for the person harmed” and identifies “the broader context” that allowed “this harm to happen, and how that context can be changed so that this harm is less likely to happen again.” Kelly Hayes & Mariame Kaba, *The Sentencing of Larry Nassar Was Not “Transformative Justice.” Here’s Why*, THE APPEAL (Feb. 5, 2018), reprinted in MARIAME KABA, WE DO THIS ‘TIL WE FREE US 58, 59 (Tamara K. Nopper ed., 2021).

342. See generally Ann Russo, *10 Strategies for Cultivating Community Accountability*, TRANSFORM HARM (Sept. 9, 2013), [https://transformharm.org/ca\\_resource/10-strategies-for-cultivating-community-accountability/](https://transformharm.org/ca_resource/10-strategies-for-cultivating-community-accountability/) [<https://perma.cc/CX8L-XGHS>].

343. See M. Eve Hanan & Lydia Nussbaum, *Community Accountability*, 34 HASTINGS J. ON GENDER & L. 5, 20–21 (2023) (describing the “staircase of accountability”).

344. Roxanna Asgarian, *The Case for Child Welfare Abolition*, IN THESE TIMES (Oct. 3, 2023), <https://inthesetimes.com/article/child-welfare-abolition-cps-reform-family-separation> [<https://perma.cc/78VX-35SR>]. This approach is not fantasy, it is supported by an immense amount of data. See PAUL BYWATERS, GUY SKINNER, AIMEE COOPER, ELIS KENNEDY & AFRA MALIK, THE RELATIONSHIP BETWEEN POVERTY AND CHILD ABUSE AND NEGLECT: NEW EVIDENCE 7 (2022), <https://www.nuffieldfoundation.org/wp-content/uploads/2022/03/Full-report-relationship-between-poverty-child-abuse-and-neglect.pdf> [<https://perma.cc/RE7Q-9NAS>] (reviewing over 90 international studies confirming that “changes in the economic conditions of family life alone . . . impact [] rates of abuse and neglect. Increases in income reduced [abuse] rates significantly.”); LINDSEY R. BULLINGER, ANALISA PACKHAM & KERRI M. RAISSIAN, WORKING PAPER No. 31733, EFFECTS OF UNIVERSAL AND UNCONDITIONAL CASH TRANSFERS ON CHILD ABUSE AND NEGLECT 2–4 (2023), <https://www.nber.org/papers/w31733> [<https://perma.cc/HP5W-WQQJ>]; Lindsay Rose Bullinger, *Opinion: One Way to Help Prevent Child Abuse? Give Parents Cash*, UNDARK (Apr. 27, 2023), <https://undark.org/2023/04/27/one-way-to-help-prevent-child-abuse-give-parents-cash/> [<https://perma.cc/Z7PB-X5U9>] (analyzing the correlation between 2021 monthly child tax credit payments and decreased child abuse cases in Atlanta to support an expanded child tax credit); ADITI SHRIVASTAVA & URVI PATEL, RESEARCH REINFORCES: PROVIDING CASH TO FAMILIES IN POVERTY REDUCES RISK OF FAMILY INVOLVEMENT IN CHILD WELFARE 2 (May 1, 2023), <https://www.cbpp.org/sites/default/files/4-28-23tanf.pdf> [<https://perma.cc/Z4RP-N57H>] (“Poverty . . . can attract the attention of child welfare agencies. Giving families cash assistance reduces these problems.”).

345. Hayes & Kaba, *supra* note 341.

Many have provided policy recommendations and “non-reformist reforms”<sup>346</sup> that could reduce the harm caused by the system. These changes include repealing ASFA,<sup>347</sup> eliminating mandated reporting,<sup>348</sup> requiring CPS to inform parents of their rights during an investigation,<sup>349</sup> and providing counsel at the investigation stage and beyond.<sup>350</sup>

Others call for the staggering amount of money invested in the family policing system<sup>351</sup> to instead be invested in the supports that parents need to be healthy,<sup>352</sup> including but not limited to universal basic income, safe and affordable subsidized housing,<sup>353</sup> high-quality mental health care<sup>354</sup> and substance use disorder treatment that is decoupled from carceral state intervention,<sup>355</sup> affordable childcare,<sup>356</sup> and non-punitive parenting support or mentorship.<sup>357</sup> This Article agrees that meeting these basic human needs would address the majority of cases where poverty is simply conflated with neglect—and even the more serious cases, where a parent’s trauma and stress related to poverty creates harmful situations. This section addresses a few immediate actions that could greatly reduce the identified harms to parents and improve their overall health and well-being.

346. Amna Akbar, *A Horizon Beyond Legalism: On Non-Reformist Reforms*, L. & POL. ECON. PROJECT (Nov. 11, 2023), <https://lpeproject.org/blog/a-horizon-beyond-legalism-on-non-reformist-reforms/> [https://perma.cc/KQJ5-FJPP] (“[N]on-reformist reforms seek to redistribute power and reconstitute who governs and how.”).

347. See generally Trivedi, *supra* note 267; see also Guggenheim, *supra* note 5.

348. See *The Campaign*, REPEAL CAPTA, <https://www.repealcapta.org/the-campaign> [https://perma.cc/CA4G-8YY7] (last visited Sept. 27, 2025); Carrington Smith & Trivedi, *supra* note 129; Lisa Kelly, *Abolition or Reform: Confronting the Symbiotic Relationship Between “Child Welfare” and the Carceral State*, 17 STAN. J. CIV. RTS. & CIV. LIBERTIES 255, 314–15 (2021).

349. See *Why a Child Welfare ‘Miranda Rights’ Law is Essential*, *supra* note 48.

350. See Hernandez & Ismail, *supra* note 49, at 675; Melissa D. Carter, *An Ounce of Prevention Is Worth a Pound of Cure: Why Children’s Lawyers Must Champion Preventive Legal Advocacy*, 42 CHILD.’S LEGAL RTS. J. 1 (2021).

351. One estimate suggests that the national cost of child maltreatment to society was \$104 billion annually, another estimated the cost was \$87 billion, and another calculated it at \$124 billion when untimely death and the resulting loss of people’s potential work productivity was factored in. See Tricia Stephens, *Traumatic Experiences and Perceptions of Parenting Self-Efficacy* 5–6 (May 2015) (Ph.D. dissertation, New York University) (ProQuest).

352. Caitlyn Garcia & Cynthia Godsoe, *Divest, Invest, & Mutual Aid*, 12 COLUM. J. RACE & L. 1, 627–28 (2022) (echoing the #DefundPolice movement’s call to “[f]ully invest in . . . healthcare . . . neighborhood-based trauma centers, non-coercive drug and alcohol treatment . . . teachers and counselors, universal childcare[.]”).

353. See Stokes, *supra* note 148.

354. See Kristine Campbell, *Prevention of Child Maltreatment as an Unexpected Benefit of Social Policies*, 2 JAMA Network Open 6 (2019).

355. See BACH, *supra* note 315, at 31.

356. See *US: Child Welfare System Harms Families*, HUM. RTS. WATCH (Nov. 17, 2022, 12:01 am), <https://www.hrw.org/news/2022/11/17/us-child-welfare-system-harms-families> [https://perma.cc/CF5Q-TXE4].

357. Shanta Trivedi & Matthew Fraidin, *A Role for Communities in Reasonable Efforts to Prevent Removal*, 12 COLUM. J. RACE & L. 29, 40-43 (2022).

*1. Provide Material Support and High-Quality Services to Reduce Poverty*

In the vast majority of cases, the allegations of neglect are simply circumstances related to poverty and could therefore be alleviated with concrete, material supports.<sup>358</sup> The U.S. spends a staggering amount of money on the family policing system. One estimate suggests that the national cost of child maltreatment to society (including mental health and medical care) as well as the cost of the family policing system and criminal legal system involvement was \$104 billion, annually.<sup>359</sup> Another estimate that includes people being unhoused and the price of early intervention services was \$87 billion.<sup>360</sup> When the loss of people's potential resulting from untimely death and unrealized productivity is factored in, the cost to society is estimated at \$124 billion.<sup>361</sup> On the implementation of the system alone, we spend roughly \$10 billion.<sup>362</sup> Of this \$10 billion, we spend 10 times more on services related to the foster system and adoption than we do on family preservation and reunification.<sup>363</sup>

A review of multiple studies showed that “[a] lack of recognition of parents’ difficulties in meeting children’s basic needs compounds parents’ feelings of shame and stigma. In turn, this reduces the chances of [CPS] establishing effective relationships with families under pressure.”<sup>364</sup> As a result, the billions of dollars currently spent on separating parents from their children is simply a bad investment, especially given that children still fall through the cracks. Even when CPS intervenes, children continue to suffer harm in the custody of the government. This money could be invested in the supports that parents need to be healthy,<sup>365</sup> including but not limited to universal basic income, safe and affordable subsidized

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358. Jerry Milner & David Kelly, *It's Time to Stop Conflating Poverty with Neglect*, THE IMPRINT (Jan. 17, 2020, 5:12 AM), <https://imprintnews.org/child-welfare-2/time-for-child-welfare-system-to-stop-confusing-poverty-with-neglect/40222> [<https://perma.cc/75X4-J6EY>].

359. Stephens, *supra* note 351, at 5 (citing CHING-TUNG WANG & JOHN K. HOLTON, TOTAL ESTIMATED COST OF CHILD ABUSE AND NEGLECT IN THE UNITED STATES (2007)).

360. *Id.* (citing RICHARD J. GELLES & STACI PERLMAN, ESTIMATED ANNUAL COST OF CHILD ABUSE AND NEGLECT, PREVENT CHILD ABUSE AM. (2012)).

361. *Id.* at 5–6 (citing Xiangming Fang, Derek S. Brown, Curtis S. Florence & James A. Mercy, *The Economic Burden of Child Maltreatment in the United States and Implications for Prevention*, 36 CHILD ABUSE & NEGLECT 156 (2012)).

362. *See e.g.* 2021 Consolidated Appropriations Act, P.L. 116–260, 134 Stat. 1182, 1585 (codified as amended in scattered sections of 42 U.S.C.).

363. Elizabeth Brico, *The Government Spends 10 Times More on Foster Care and Adoption Than Reuniting Families*, TALK POVERTY (Aug. 23, 2019), <https://talkpoverty.org/2019/08/23/government-more-foster-adoption-reuniting/> [<https://perma.cc/JCS3-DTWN>].

364. BYWATERS, SKINNER, COOPER, KENNEDY & MALIK, *supra* note 344, at 7.

365. Garcia & Godsoe, *supra* note 352, at 627–28.

housing,<sup>366</sup> high-quality mental health<sup>367</sup> and substance use disorder treatment,<sup>368</sup> affordable childcare,<sup>369</sup> and non-punitive parenting support.<sup>370</sup>

Research demonstrates that cash transfers or “universal basic income” (UBI) of as little as \$1,000 a month can drastically reduce the likelihood of a referral to CPS.<sup>371</sup> One study suggests that it can even reduce child mortality.<sup>372</sup> Such transfers allow mothers to spend more quality time with their children reading, playing, and telling stories.<sup>373</sup> Overall, UBI schemes reduce financial stress that might contribute to behaviors that might lead to CPS intervention.<sup>374</sup> Despite the fact that most families who suffer CPS involvement are poor, CPS does not provide financial assistance.<sup>375</sup>

A review of over 90 studies from across the world led researchers to the conclusion that “changes in the economic conditions of family life alone—without any other factors—impact rates of abuse and neglect. Increases in income reduced rates significantly.”<sup>376</sup> This is not to suggest that poor people are more likely to abuse or neglect their children,<sup>377</sup> but that wealthy people can more easily afford to meet their material needs, afford childcare to ease the burdens and stressors of parenting, privately enroll in services to assist in situations where there are difficulties, and afford counsel if CPS ever does intervene.<sup>378</sup>

Additionally, for any approach to be successful, we must ensure affordable services are available within the community.<sup>379</sup> Currently, most mental health and substance use treatment are connected to carceral state intervention, making it impossible to receive the benefit of such services without legal system involvement and the threat of going to prison or having your children taken.<sup>380</sup> In her book *Prosecuting Poverty, Criminalizing Care*, Professor Wendy Bach notes how community providers advised pregnant women seeking substance use treatment to shoplift or commit other low-level crimes, as it would be easier for them to receive

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366. Stokes, *supra* note 148.

367. Campbell, *supra* note 354, at 2.

368. BACH, *supra* note 315, at 22.

369. See Human Rights Watch, *US: Child Welfare System Harms Families*, HUM. RTS. WATCH (Nov. 17, 2022, 12:01 AM), <https://www.hrw.org/news/2022/11/17/us-child-welfare-system-harms-families> [https://perma.cc/WAQ4-TJQD].

370. See, e.g., Robin J. Kimbrough-Melton & Gary B. Melton, “Someone Will Notice, and Someone Will Care”: *How to Build Strong Communities for Children*, 41 CHILD ABUSE & NEGLECT 67, 68–70 (2015).

371. See generally sources cited *supra* note 344.

372. See Bullinger, Packham & Raissian, *supra* note 344, at 2.

373. *Id.* at 4.

374. *Id.* at 14.

375. *Id.* at 5; cf. BYWATERS, SKINNER, COOPER, KENNEDY & MALIK, *supra* note 344, at 16.

376. BYWATERS, SKINNER, COOPER, KENNEDY & MALIK, *supra* note 344, at 7.

377. *Id.* at 78.

378. *Id.*

379. See BACH, *supra* note 315, at 205–06.

380. See *id.* at 19, 146.

treatment if they had an open case.<sup>381</sup> Funding these services in the community would make it easier for parents to access important healthcare and reduce their contact with the family policing system.

## 2. Replace Mandated Reporting with Mandated Supporting

As discussed in Part I, mandated reporting instills fear in parents who may need assistance meeting their basic needs or who may otherwise be in crisis. Professor Kelley Fong spoke with mothers about their involvement with CPS, to learn more about their experiences. Professor Fong relayed that:

Time and again, mothers told me how hurt and betrayed they felt by the schools, hospitals, and other service providers that had accused them of child abuse or neglect. These feelings are important in themselves, exacerbating a sense of exclusion. By fueling distrust and disengagement, they also distance families from the very systems tasked with assisting them.<sup>382</sup>

If parents cannot seek assistance in their times of need from the very people in our society who are supposed to provide help without risking losing their children, they will simply withdraw and live in the “shadows” of our society.<sup>383</sup> This fear of mandated reporting prevents providers from creating relationships of trust with the people they serve and limits their discretion in deciding what should and should not be reported.<sup>384</sup> The combination of distrust and curtailed discretion undermines their ability to provide what people may actually need. As a result, both parents and children will suffer, and the goal of mandated reporting—keeping children safe—will be undermined rather than fulfilled.

Many advocates, including the Repeal CAPTA Coalition,<sup>385</sup> Mandated Reporters Against Mandated Reporting,<sup>386</sup> and individual impacted parents,<sup>387</sup> have called for the abolition of mandated reporting. They argue that there is no evidence

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381. *See id.* at 146, 152.

382. Kelley Fong, *The Cascading Consequences of a Child Protective Services Call*, PRINCETON U. PRESS (Oct. 13, 2023), <https://press.princeton.edu/ideas/the-cascading-consequences-of-a-child-protective-services-call> [https://perma.cc/6F8M-2S6J].

383. *See generally* FONG, *supra* 7, at 45.

384. *See* Schechter, *supra* note 202 (describing difficulties in providing ethical medical care as both a physician and mandated reporter).

385. Repeal CAPTA, *supra* note 348.

386. Mandated Reporters Against Mandated Reporting (@beyondreporting), INSTAGRAM, <https://www.instagram.com/beyondreporting/> [https://perma.cc/GQR3-LCGH] (last visited July 30, 2024).

387. *Policy and Advocacy*, RISE, <https://www.risemagazine.org/policy-and-advocacy/> [https://perma.cc/DVJ3-NFCV] (last visited July 30, 2024).

that mandated reporting keeps children safer,<sup>388</sup> and instead it isolates families by creating a surveillance state.<sup>389</sup>

Abolishing mandated reporting would not prohibit people from reporting in situations where they truly suspected that a child would be at risk of harm. Rather, it would allow professionals to use their expertise and judgment to decide whether CPS intervention is warranted or whether a need could be addressed with more support and less intrusion.<sup>390</sup> As parent advocate Joyce McMillan describes it, we should replace mandated reporting with “mandated supporting.”<sup>391</sup> Put simply, rather than involving the family policing system, “[f]or a child regularly arriving at school without a coat, find him a coat. For a pregnant teenager without medical care, make a doctor’s appointment.”<sup>392</sup>

### 3. Eliminate Termination of Parental Rights

As detailed *supra* in Part I, TPR is devastating to parents. When a parent loses their legal relationship to their children, they are literally erased from their children’s lives like they have never existed. In most states, TPR is a permanent severance of the parent-child relationship and parents cannot have any contact with their children during their separation.<sup>393</sup> However, “legal termination of parental rights cannot sever the psychological bond between a parent and a child,” and the family policing system does nothing to address the immense harms that TPR creates.<sup>394</sup>

A large movement and a growing body of scholarship has called for the repeal of ASFA, primarily citing the disproportionate impact on Black families and the inequity of the timeline requiring states to initiate TPR if a child is in the foster

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388. See Mical Raz, *Unintended Consequences of Expanded Mandatory Reporting Laws*, 139 PEDIATRICS PERSPECTIVES 4 (2017); Jill R. McTavish, Melissa Kimber, Karen Devries, Manuela Colombini, Jennifer C. D. MacGregor, C. Nadine Wathen, Arnav Agarwal & Harriet L. MacMillan, *Mandated Reporters’ Experiences with Reporting Child Maltreatment: A Meta-Synthesis of Qualitative Studies*, BMJ OPEN (Oct. 2017); Mical Raz, *More Mandatory Reporting Won’t Keep Children Safe from Predators*, WASH. POST (May 1, 2018, 7:00 PM), <https://www.washingtonpost.com/news/made-by-history/wp/2018/05/01/more-mandatory-reporting-wont-keep-children-safe-from-predators/> [<https://perma.cc/RD4N-NLV2>].

389. See Katie Louras, *The Runaway Train of Mandated Reporting*, 61 SAN DIEGO L. REV. 137, 173–74 (2024).

390. *Id.* at 163–73.

391. See *Education, Mandated Supporting*, JMAC, <https://jmacforfamilies.org/mandated-supporting> [<https://perma.cc/5ZC3-ZZEE>] (last visited Sept. 27, 2025); Emily Cooke, *Defund Social Workers*, NEW REPUBLIC (Sept. 23, 2024), <https://newrepublic.com/article/167627/defund-social-workers> [<https://perma.cc/QM57-NWUQ>].

392. Cooke, *supra* note 391.

393. Colum. J. Race & L., *A Conversation on An Abolitionist Approach to Reimagine Child Welfare*, YOUTUBE (Jul. 13, 2021), [https://www.youtube.com/watch?v=aHXEQpU8EGY&ab\\_channel=ColumbiaJournalofRaceandLaw](https://www.youtube.com/watch?v=aHXEQpU8EGY&ab_channel=ColumbiaJournalofRaceandLaw) [<https://perma.cc/TJB5-89Q6>].

394. Carrington Smith & Trivedi, *supra* note 129, at 29 (citing Monique Mitchell, “No One Acknowledged My Loss and Hurt”: Non-Death Loss, Grief, and Trauma in the Foster System, 35 CHILD ADOLESCENT SOC. WORK J. 1, 2 (2017)).

system for fifteen out of twenty-two months.<sup>395</sup> This timeline was ostensibly created out of a desire to create “permanency” for children who were languishing in the foster system (although as discussed in this Article, some motives were less pure). It represented a policy shift away from family preservation and was seen as a way to prioritize the needs of the child. After ASFA’s implementation, the number of terminations doubled, leading to over a million parent-child relationships being severed. Additionally, ASFA had a horrific unintended consequence: creating hundreds of thousands of “legal orphans”—children whose parents’ rights to them have been terminated yet they are not likely to be adopted.<sup>396</sup>

As law professor and longtime family defense attorney Chris Gottlieb has argued, the existence of TPR is relatively recent in the law and originally only existed within adoption proceedings such that parental rights were transferred, rather than extinguished.<sup>397</sup> TPR was reserved primarily for cases where the parent had abandoned the child or voluntarily consented to the adoption—a far cry from the way that TPR is used today, with roughly 70,000 parent-children relationships involuntarily and legally severed over the last several years.<sup>398</sup>

Gottlieb advocates for returning to the transfer of rights model, only at adoption. In practical terms, this would mean that a parent would lose the right to veto an adoption but retain rights to visitation and to petition to reinstate their parental rights if in the best interests of the child.<sup>399</sup> Further, the agency would retain authority over day-to-day decisions as they do while the child is in the foster system, and the parent would retain authority over major decisions. In addition to reducing the harms to parents, as Gottlieb argues, this approach is supported by social science, which finds that children benefit from relationships with their parents even after adoption and “[t]he literature supports widening, not narrowing the number of adults with whom a child has meaningful relationships.”<sup>400</sup> Importantly, it would eliminate the terrible unintended consequence of TPR—creating legal orphans.

These policy changes would go a long way in reducing the harms of family policing. But to truly effect change, our society must fundamentally change the way we treat parents in our society. To do this, we need to find empathy for parents

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395. Trivedi, *supra* note 267, at 335, 337; Latagia Copeland Tyronce, *Yes, the Adoption and Safe Families Act (ASFA) Can and Should Be Repealed!*, MEDIUM (Dec. 24, 2018), <https://medium.com/latagia-copeland-tyronces-tagi-s-world/yes-the-adoption-and-safe-families-act-asfa-can-and-should-be-repealed-9c18ac391997> [<https://perma.cc/S5AD-GP3Q>]; Victoria Copeland, *Centering Unacknowledged Histories: Revisiting NABSW Demands to Repeal ASFA*, 16 J. PUB. FAM. REGUL. 1, 1–6 (2021).

396. Kim Phagan-Hansel, *One Million Adoptions Later: Adoption and Safe Families Act at 20*, IMPRINT (Nov. 28, 2018), <https://imprintnews.org/adoption/onemillion-adoptions-later-adoption-safe-families-act-at-20/32582> [<https://perma.cc/9QH6-9UMN>].

397. See Chris Gottlieb, *A Path to Eliminating the Civil Death Penalty: Unbundling and Transferring Parental Rights*, 19 HARV. L. & POL’Y REV. 43, 50 (2024).

398. *Id.* at 51–52.

399. *Id.* at 81.

400. *Id.* at 78–79.



who might be struggling, recognize their dignity, and change the narrative of “child welfare” and the parents that become enmeshed in it.

*B. Changing Hearts and Minds: Creating Empathy, Recognizing Dignity, & Shifting the Narrative of Child Welfare*

Family policing cases consist of multiple actors, including caseworkers, lawyers for the state, the lawyers of children and parents, and judges. Each actor comes to this work with a different lens and a different view of their role with respect to parents. Caseworkers are trying to investigate allegations, collect evidence for litigation, and put a plan in place to address identified concerns. Attorneys for the state are trying to prove that the allegations against the parent are true. Children’s attorneys are trying to advocate for their child clients’ goals, their best interests, or both. Parents’ attorneys are defending against allegations, trying to humanize their clients, and demonstrate that children are not at risk with their parents. Judges must determine which version of the facts to believe and what measures are appropriate to ensure child safety.

As will be discussed, none of these actors are immune from bias or judgment.<sup>401</sup> Every human being has their own experience of family—their own views of what family means, how parents should act, and what good parenting looks like. Their views are influenced by their own upbringing, culture, religion, morals, political beliefs, and economic status. Given that families enmeshed in the family policing system are disproportionately low-income and racially marginalized, and the majority of system actors, especially the lawyers and judges are not,<sup>402</sup> differences in attitudes towards parenting are inevitable. This can be problematic in the family policing context because research demonstrates that we are most likely to feel empathy for people with whom we can relate—particularly those from the same racial groups.<sup>403</sup>

It may seem outlandish for a law review article to recommend empathy to fix a broken legal system, but empathy is a necessary ingredient to narrative shift, and narrative shift is a necessary component of any comprehensive and significant change.<sup>404</sup> Approaching “child welfare” from a more empathetic place requires us to imagine what it might be like to exist in a similar situation as another person.

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401. See discussion *infra* Part III(B)(1).

402. *Report of the Working Group on the Role of Race, Ethnicity, and Class*, 6 NEV. L. J. 634, 634–35 (2006) (“Participants recognize that, in American society, children in the child welfare and juvenile justice systems are disproportionately poor and of color while the lawyers for those children and the decision makers are overwhelmingly white and middle class”).

403. RACHEL GODSIL, LINDA R. TROPP, PHILLIP GOFF & JOHN A. POWELL, *THE SCIENCE OF EQUALITY, VOLUME 1: ADDRESSING IMPLICIT BIAS, RACIAL ANXIETY, AND STEREOTYPE THREAT IN EDUCATION AND HEALTHCARE* (2014).

404. See Matthew I. Fraidin, *Changing the Narrative of Child Welfare*, 19 GEO. J. ON POVERTY L. & POL’Y 97 (2012).

By increasing our individual empathy, we can create “systemic empathy” or a “general concern for those who have been treated the worst over time.”<sup>405</sup>

In the words of Sixto Cancel and Dee Bonnick, an impacted youth and impacted parent respectively, who are now doing national advocacy work to shift our perception of those who have been trapped by the family policing system, “it is essential that we collectively reassess and realign our views to foster a system driven not by misconceptions and biases, but by empathy, understanding, and a steadfast commitment to real, positive change.”<sup>406</sup> This allows us to bring those who have been most isolated and marginalized into a more cohesive community, empowering our society overall.<sup>407</sup>

As discussed in Part I, family policing is profoundly detrimental to parents: it takes away their independence, reinforces racist and classist stereotypes, and can be extremely damaging to their mental, social, and physical well-being. One of the overarching effects of the family policing system on parents is that it prevents them from being able to raise their children with dignity.<sup>408</sup> And, “[w]hen we treat people like dirt, we can’t expect them to build rapport with professionals or to engage in their progress.”<sup>409</sup> Thus, treating people with compassion and empathy is crucial for their health and well-being.

The Supreme Court has repeatedly relied on the concept of dignity to explain why differential treatment of certain classes of people violates the Equal Protection and Due Processes Clauses, as well as in understanding what constitutes “cruel and unusual punishment” under the Eighth Amendment.<sup>410</sup> The Court has recognized the dignity harms incurred by people who experience racial discrimination<sup>411</sup> and people who are prevented from making decisions concerning their families.<sup>412</sup> As discussed, these dignity harms pervade the family policing system. This is one reason many parents who have been impacted by the system are calling for its abolition.

Short of abolition, keeping children safe and helping them reach their full potential requires a focus on their caregivers. A parent’s health is more directly

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405. Michael J. Zimmer, *Systemic Empathy*, 34 COLUM. HUM. RTS. L. REV. 575, 593–94 (2003).

406. See Bonnick & Cancel, *supra* note 8.

407. *Id.* at 594.

408. Hyacinthe, *supra* note 73, at 714.

409. Katrine Markey & Vivek Sankaran, *Compassion: The Necessary Foundation to Reunify Families Involved in the Foster Care System*, 58 FAM. CT. REV. 908, 909 (2020).

410. Marcy L. Karin, Margaret E. Johnson & Elizabeth B. Cooper, *Menstrual Dignity and the Bar Exam*, 55 U.C. DAVIS L. REV. 1, 28 (“Although the legal principle of dignity often is seen as underdeveloped, the Supreme Court has mentioned it over 1,000 times in its opinions.”).

411. *Heart of Atlanta Motel, Inc. v. United States*, 379 U.S. 241, 250 (1964) (observing that the intent of Title II of the Civil Rights Act of 1964 was to “vindicate ‘the deprivation of personal dignity that surely accompanies denials of equal access to public establishments.’”).

412. *Planned Parenthood of Se. Pa. v. Casey*, 505 U.S. 833, 851 (1992) (“These matters, involving the most intimate and personal choices a person may make in a lifetime, choices central to personal dignity and autonomy, are central to the liberty protected by the Fourteenth Amendment.”).

co-related with a child's health and well-being than many other socioeconomic and demographic factors.<sup>413</sup> With the shared goal of family well-being, this Article urges system actors to work together to create empathy and deeper understanding of the humans who get entangled in the family policing system. As suggested by Professor Matthew I. Fraidin over a decade ago, to do this, we must change the narrative of "child welfare."<sup>414</sup>

### *1. Strategies for Developing Empathy-Focused Narratives*

Depending on who is telling the story, the same person can be a neglectful mother who makes bad decisions or a mother with limited options working hard to ensure her family's basic needs are met.<sup>415</sup> Professors Carolyn Grose and Margaret E. Johnson explain: "Narrative theory tells us that a 'story' is *what* happened, the events that occurred. And 'narrative' is *how* the story is transmitted."<sup>416</sup> Narrative and empathy are intertwined because often, the goal of narrative in lawyering is to allow others to identify with the accused and to highlight different viewpoints.<sup>417</sup>

Parents in the family policing system are often victims of single-story narratives—stories that reduce people to a solitary (usually negative) portrayal of who they are perceived to be.<sup>418</sup> In this context, single-story narratives reflect thinking of parents only in terms of the allegations against them, rather than who they are as people and parents and what might have led to a particular behavior or act, or whether the allegation is even true.

System actors can think about the ways in which parents are portrayed in court filings, investigation notes, and legal proceedings. One crucial change that all actors can implement is to choose their language carefully. For example, referring to someone with substance use disorder as an "addict" or someone who fails a

413. David Murphey & Samuel Beckwith, *A Parent's Health is One of the Strongest Predictors of a Child's Health*, CHILD TRENDS (Jan. 9, 2019), <https://www.childtrends.org/publications/a-parents-health-is-one-of-the-strongest-predictors-of-a-childs-health> [https://perma.cc/92ZM-Z9J2].

414. Fraidin, *supra* note 404, at 98.

415. Compare Ray Stern, *Shanesha Taylor's Crybaby Interview with New York Times Reveals Bad Decision-Making*, PHX. NEW TIMES (June 23, 2014), <http://www.phoenixnewtimes.com/news/shanesha-taylors-crybaby-interview-with-new-york-times-reveals-bad-decision-making-6629926> [https://perma.cc/F5JF-47L8], with Andres Jauregui, *Shanesha Taylor, Homeless Single Mom, Arrested After Leaving Kids in Car While on Job Interview*, HUFFPOST (Dec. 6, 2017), [https://www.huffpost.com/entry/shanesha-taylor-homeless-mom-arrested\\_n\\_5050356](https://www.huffpost.com/entry/shanesha-taylor-homeless-mom-arrested_n_5050356) [https://perma.cc/QYX7-Y6KR].

416. Carolyn Grose & Margaret E. Johnson, *Braiding the Strands of Narrative and Critical Reflection with Critical Theory and Lawyering Practice*, 26 CLINICAL L. REV. 203, 207 (2019) (internal citations omitted).

417. See Steven Lubet, *Being Atticus Finch: The Professional Role of Empathy in To Kill a Mockingbird*, 117 HARV. L. REV. 1682, 1684 (2004).

418. See Chimamanda Ngozi Adichie, *The Danger of a Single Story*, TED (July 2009), [https://www.ted.com/talks/chimamanda\\_ngozi\\_adichie\\_the\\_danger\\_of\\_a\\_single\\_story#t-1101088](https://www.ted.com/talks/chimamanda_ngozi_adichie_the_danger_of_a_single_story#t-1101088) [https://perma.cc/W44A-TBU8].

drug test as “dirty” is stigmatizing and can even impact their ability to recover.<sup>419</sup> At a minimum, all participants should commit to referring to parents respectfully, by their names, rather than “respondents” or “the mother/father” to convey recognition of their individuality and humanity.<sup>420</sup>

Additionally, each family policing actor has a role to play in changing the narrative surrounding parents impacted by the system. Many of the suggestions made here can be used by all system actors. If each of us expands our capacity for empathy, we can create systemic empathy for parents and work on solutions that help parents rather than punish them, benefitting families and our larger communities.

*a. Compassionate CPS Workers*

The importance of empathy among caseworkers cannot be overstated, as caseworkers are usually the first and most frequent contact that a parent has with the family policing system.<sup>421</sup> Empathy between caseworkers and parents is imperative for a successful working relationship.<sup>422</sup> Caseworkers therefore have an opportunity to build a collaborative relationship with parents by treating them with respect, dignity, and compassion.

The family policing system traditionally focuses on deficits: perceived failures or poor choices on the part of the parent. CPS workers are in a unique and counterintuitive role as both the person who is supposed to support the parent and provide resources to help keep the family together, and simultaneously as the investigator gathering evidence that can be used against the parent in court.<sup>423</sup> The conflict between these roles is self-evident. As such, one important change to the system would be to make the role of caseworkers distinct from investigators so that caseworkers could focus on actually helping the family.

For the time being, however, rather than tallying shortcomings, as Professor Fraidin writes, caseworkers should:

[F]ocus on [parents'] abilities, not the shortcomings over which we often obsess—like drug addiction, impatience, illiteracy, poverty. We can start from a premise that families involved with child welfare bundles of assets, rather than collections of problems. If we can do all this, we can help families build, rather than watch them fall.<sup>424</sup>

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419. See Markey & Sankaran, *supra* note 409, at 915–16.

420. *Id.*

421. See CHILD. WELFARE INFO. GATEWAY, *supra* note 23.

422. Karen E. Gerdes, Elizabeth A. Segal, Kelly F. Jackson & Jennifer L. Mullins, *Teaching Empathy: A Framework Rooted in Social Cognitive Neuroscience and Social Justice*, 47 J. SOC. WORK EDUC. 109, 110 (2011).

423. See Washington, *supra* note 89, at 1545–48.

424. Fraidin, *supra* note 404, at 99.

A strengths-based approach has positive outcomes for both caseworkers and parents. Caseworkers report that this approach improved trust, created more open and honest relationships, and allowed caseworkers to be more creative in problem-solving.<sup>425</sup> It also encourages the use of community-based resources and hubs, rather than more traditional “services.”<sup>426</sup>

To develop more empathy, caseworkers can be trained through role play exercises, including watching movies where characters experience highly emotional events or engage in difficult parenting choices. They could then write down what they think the character might be feeling, what challenges they faced, or what motivated their behavior.<sup>427</sup> Putting themselves in the position of the characters can help them to assess problems from a different perspective.

Caseworkers could also borrow a tool from clinical legal education: “parallel universe” thinking.<sup>428</sup> Under this approach, we are invited to look for multiple interpretations of a person’s behavior, especially when judgment is high.<sup>429</sup> For example, a parent may be labeled as “lazy” because they missed a meeting or court appearance. Parallel universe thinking invites us to think of the many reasons a parent may miss a meeting, ranging from lack of childcare, poor transportation options, or even crippling anxiety about what would happen. Consideration of those burdens would lead to different and better outcomes and help caseworkers to figure out creative ways to help parents.

To demonstrate empathy, caseworkers could also include parents in their own case-planning. Parents express that caseworkers have completed the service plan before even meeting the parent. Many parents feel that this approach relies on assumptions and stereotypes about them, leaving them powerless and unsupported.<sup>430</sup> Collaborative case planning can increase empathy in caseworkers as parents can explain the challenges they face in trying to access certain services including work schedules, insurance issues, and trauma. Like with parallel universe thinking, caseworkers will gain a deeper understanding of the barriers to success, rather than assuming parents do not want to comply. In these ways, parents will be empowered to explain what they need to be successful, rather than being told what they must do.<sup>431</sup> This can encourage parents to engage and help them to meet their goals.

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425. James Caiels, Barbora Silarova, Alisoun J. Milne & Julie Beadle-Brown, *Strengths-Based Approaches—Perspectives from Practitioners*, 54 BRIT. J. SOC. WORK 168, 178–79 (2024).

426. *Id.* at 183.

427. Gerdes, Segal, Jackson & Mullins, *supra* note 422, at 118–21.

428. “Parallel universe thinking” is one of the “Five Habits” developed by Professor Susan Bryant in teaching cultural competency. See Susan Bryant, *The Five Habits: Building Cross-Cultural Competence in Lawyers*, 8 CLINICAL L. REV. 33, 70–72 (2001).

429. *Id.* at 71.

430. Markey & Sankaran, *supra* note 409, at 910.

431. See *id.* at 916.

*b. Lawyers for the State Who Focus on Whole Family Well-Being*

For many parents, the family policing system feels very much like a criminal system of punishment and prosecution.<sup>432</sup> The first step towards a more empathetic approach to lawyering should be remembering the goals of the system. Ostensibly, the family policing system is meant to be a rehabilitative system which identifies perceived parental deficits and works with families to address them so that children can be safe.<sup>433</sup> The system is meant to be collaborative and supportive. Thus, all lawyers should be working together towards a common goal of ensuring families have what they need to be successful.

Lawyers for the state are like criminal prosecutors in that society tells them that they are “the good guys,”<sup>434</sup> saving children from evil parents. If attorneys for the state reframe their thinking using a compassionate lens to focus on relationship-building and what is best for the child, the community at large, and the parent, the adversarial nature of court proceedings could be abated.<sup>435</sup>

A government attorney once told me that they were trained not to view the parents in these cases as humans because otherwise the job would be too hard—a ghastly and shocking revelation. This training is often evident in dehumanizing language and treatment of parents by some attorneys. Given that the child welfare system should be about, rehabilitation, child safety, and trying to heal families, one cannot successfully reach these goals without understanding the humanity of all members of the family.

Lawyers for the state believe they have to tell a story of weaknesses and perceived failures to win their cases, but “[f]or every list of tactics on either side, it is possible to generate new ones [and] the creative possibilities for dismantling oppressive narratives and the construction of new possible identities is enormously rich.”<sup>436</sup>

Lawyers for the government may have empathy for children in these cases but see the parents as adversaries.<sup>437</sup> It is possible, however, to have empathy for both children and parents in challenging situations. Many attorneys for the state are themselves parents or can think of hardships the parents in their lives faced.

432. Fong, *supra* note 7, at 179 (“I’m calling them the prosecutors because they’re CPS, they’re the ones who are saying ‘she did this and she did that.’”).

433. CHILD WELFARE INFO. GATEWAY, *supra* note 23, at 7.

434. Melanie Reid, *The Joyful Prosecutor: A More Empathetic and Balanced Approach*, 63 SANTA CLARA L. REV. 251, 266 (2023) (quoting Ken White, *Confessions of an Ex-Prosecutor*, Reason) (June 23, 2016, 10:00 AM), <https://reason.com/2016/06/23/confessions-of-an-ex-prosecutor/> [<https://perma.cc/FR6Q-FU9Z>].

435. *Id.* at 282.

436. Mark Lance, *Counterstories, Stock Characters, and Varieties of Narrative Resistance Response to Lindemann*, 17 J. ETHICS & SOC. PHIL. 299, 308 (2020).

437. The role of the lawyer for the government in family policing cases is easily analogized to the role of the prosecutor in criminal cases. Both represent the government, likely empathize with the victim and see their role as promoting justice by holding offenders accountable. See Eric J. Miller, *Keeping It Real: Empathy and Heroism in the Work of Charles J. Ogletree, Jr.*, 22 HARV. BLACKLETTER L. J. 131, 133 (2006).

They may think that they would never do what the parent they are charging has done. But, by encouraging attorneys for the state to look at their cases through the lens of race, class, and gender, they too may be able to engage in “parallel universe” thinking and take a more empathetic, less carceral approach to their cases. Parenting is hard regardless of privilege, but it is infinitely more so when facing poverty, trauma, and a lack of access to supportive services.<sup>438</sup>

*c. Family Defenders*

Attorneys who represent parents, also known as “family defenders,” have a unique opportunity to use narrative at all stages of legal proceedings to create empathy for their clients. Professors Grose and Johnson explain that “lawyers with their clients are constructors of narratives, and, as such, need to make intentional choices about that construction.”<sup>439</sup>

Unlike the portrayal of lawyers as liars or using “spin” to tell a false story,<sup>440</sup> truth is an essential element (not to mention an ethical requirement) of good lawyering. Lawyers need to listen to their clients and ask “reporter questions” of “Who, What, Where, When, Why, How” to truly understand their clients as people and to uncover the nuances of their lives<sup>441</sup> to tell their “life stories.”<sup>442</sup>

Some describe lawyers who represent marginalized clients as “translators,” recognizing that there are stock legal narratives that permeate court proceedings that fail to consider the unique nature of individual stories.<sup>443</sup> As translators, lawyers understand that “in the process of representing a client to others, meaning is created and lost.”<sup>444</sup> Rather than attempting to speak with “one voice,” the lawyer should seek “to evoke rather than re-present the client’s narratives . . . [and] act as facilitator, one who enables dialogue across lines of social difference between the client, law, and legal decisionmaker.”<sup>445</sup> In this way, lawyers for parents can fulfill one of their most important obligations—highlighting their clients’ strengths.<sup>446</sup>

A difficult lesson for family defenders is that “winning the case” may mean different things to the client than the attorney. It may be more important for the client to control how their story is told and how the harm to them and their children

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438. *Id.* at 219.

439. Grose & Johnson, *supra* note 416, at 208.

440. David A. Skeel, Jr., *The Lawyer as Confidence-Man*, 101 COLUM. L. REV. 1750, 1760 (2001).

441. Grose & Johnson, *supra* note 416, at 208 (internal quotation marks omitted).

442. See Austin Sarat, *Narrative Strategy and Death Penalty Advocacy*, 31 HARV. C.R. C.L. L. REV. 353, 374 (1996).

443. Christopher P. Gilkerson, *Poverty Law Narratives: The Critical Practice and Theory of Receiving and Translating Client Stories*, 43 HASTINGS L. J. 861, 915 (1992).

444. *Id.*

445. *Id.* at 916–17.

446. Christine Gottlieb, *Children’s Attorneys’ Obligation to Turn to Parents to Assess Best Interests*, 6 NEV. L. J. 1263, 1273 (2006).

is expressed throughout legal proceedings.<sup>447</sup> Client-centered lawyering requires lawyers to prioritize the client's goals in making the choices necessary to represent a client well.<sup>448</sup> Research focused on individuals facing criminal charges demonstrates that even if a client "loses," if their autonomy over their case is respected, they are more satisfied with their representation.<sup>449</sup>

Defenders who use empathy as a core component of their lawyering are better lawyers. Empathy helps lawyers to improve negotiation and problem-solving, as they are better able to understand the client's goals and consider them when determining strategy. Empathy can engender more zealous advocacy when lawyers care about the client more deeply.<sup>450</sup>

Family defenders (and other lawyers in the system) can develop more empathy by imagining themselves in their client's position. In the criminal context, Professor Charles Ogletree asks students to share a fact about their lives so that the students can recognize commonalities between themselves and their counterparts. Students then do mock bail hearings, imagining themselves in the position of the defendant and using details from their own lives to argue for bail.<sup>451</sup>

In the family policing context, lawyers could put themselves in the position of their clients by thinking about their worst moments as parents or a terrible moment that their parents may have had when they were children. Lawyers could conceptualize arguments that the state would make to accuse them or their parents of neglect or abuse and try to defend the actions by explaining the motivations for the action or external factors at play.

Lawyers and law students representing parents often lose empathy for clients who they believe are not being honest with them. Law students especially may believe that the facts of a case are "objective, definite, unchanging, and knowable," so when conflicting information arises, they assume that their clients have lied.<sup>452</sup> Professors Rachel Camp and Andrew Budzinski have developed exercises for law students to challenge these assumptions that can be applied throughout a lawyer's career.<sup>453</sup>

For example, they ask students to think of a time they lied in the last week and identify the motivation behind the lie, such as trying to protect another person's feelings or being embarrassed by the truth.<sup>454</sup> Later in the class, the

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447. Gilkerson, *supra* note 443, at 916.

448. Monroe H. Freedman, *Client-Centered Lawyering—What It Isn't*, 40 HOFSTRA L. REV. 349, 354 (2011).

449. Jonah A. Siegel, Jeanette M. Hussemann & Dawn Van Hoek, *Client-Centered Lawyering and the Redefining of Professional Roles Among Appellate Public Defenders*, 14 OHIO ST. J. CRIM L. 579, 596 (2017).

450. Charles J. Ogletree, Jr., *Beyond Justifications: Seeking Motivations to Sustain Public Defenders*, 106 HARV. L. REV. 1239, 1274–75 (1993).

451. *Id.* at 1291.

452. Andrew C. Budzinski & A. Rachel Camp, *Centering Vantage Point in the Pedagogy of Family and Intimate Partner Violence*, 30 VA. J. SOC. POL'Y & L. 30, 37 (2023).

453. *Id.* at 37–40.

454. *Id.* at 38.



professors ask the students how they feel when they are lied to. Professors contrast the reasons the students identified earlier for their own lies, and the grace they extend themselves, with the more extreme reactions they have towards others who have lied.<sup>455</sup> Exercises like these demonstrate how lawyers can take a step back and challenge their assumptions, especially when they notice themselves drawing reflexive, negative conclusion against their clients. This approach allows lawyers to view the facts through a more benevolent lens.

*d. Lawyers for Children*

Similar to lawyers for parents, children's lawyers can play a crucial role in helping the court distinguish between poverty and neglect and educating the court on cultural or religious practices that may impact parental choices. Perhaps most importantly, they can help the court to see the parent through the child's eyes, rather than through the skeptical gaze of the court.

Lawyers for children should also engage in thoughtful analysis of a parents' actions through an empathetic lens. For example, a parent who appears angry that the attorney needs to speak to their child in private may be displaying protective capacity, rather than being "hostile." Therefore, it is crucial for children's lawyers to understand why a parent has a particular view or takes certain actions.<sup>456</sup> Rather than making an assumption about the parent's decision-making process, the lawyer can try to engage with them to get to the root of their concerns.

For example, I had a client who resisted her daughter taking psychotropic medication. My client had struggled with substance use disorder in her life and was proud of her sobriety. Her concern was that her daughter would develop dependence on substances as she had. By empathetically engaging with my client and trying to understand her perspective—rather than assuming my client was ignoring the doctor's advice or did not want what was best for her daughter—the lawyer for the child could have worked with my client and me to figure out a solution that made the most sense for the child and increased my client's comfort.

*e. Judges*

Judges can be resistant to narrative and perceived emotional appeal<sup>457</sup> because "law wants to believe that it is rooted in irrefutable principles and that it proceeds by reason alone."<sup>458</sup> Professor Alan M. Dershowitz suggests that storytelling and narrative in legal proceedings "blur the boundaries between fact and

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455. *Id.*

456. Gottlieb, *supra* note 446, at 1273–74.

457. See Anne E. Ralph, *Narrative-Erasing Procedure*, 18 NEV. L. J. 573, 589, 589 n.119 (2018).

458. *Id.* at 590.

fiction, and undermine the ability of the judicial process to uncover the truth.”<sup>459</sup> But elements of narrative are embedded in all legal practice.<sup>460</sup> Often what is considered “emotional” is simply a counter-narrative—another story of who a parent is and what their circumstances are.<sup>461</sup>

Judge Richard Posner has said that when it comes to judging, “the internal perspective—the putting oneself in the other person's shoes—that is achieved by the exercise of empathetic imagination lacks normative significance.”<sup>462</sup> Judge Posner has described empathy as a tool that judges should employ when the law is not clear.<sup>463</sup> Statutory definitions of neglect and abuse, as noted *supra*, are notoriously amorphous and vague. As such, they leave room for judges to engage in empathetic assessments of parents’ circumstances.

Employing empathy does not mean that judges cannot be fair and impartial, rather it simply allows judges to apply a different lens and context to the facts.<sup>464</sup> “Empathy, unlike sympathy, has no action tendency—it connotes the desire to stand in the shoes of another, not the desire to help another. Empathy is thus an essential capacity for judging whereas sympathy can be a problematic emotion for judging.”<sup>465</sup> In the words of Justice Elena Kagan, empathy simply requires judges to “try to see that case from each party's eyes, in some sense to think about the case in the best light for each party, and then to weigh those against each other.”<sup>466</sup>

Some judges believe that engaging with narrative in a way that engenders empathy may actually help judges to fulfill their responsibilities.<sup>467</sup> Judge Steve Leben has argued that empathy is also a required component of procedural fairness from judges.<sup>468</sup> The four components of procedural fairness that the public expects are that: (1) the litigants will have a voice, expressing their viewpoints directly when possible; (2) decision makers will be neutral and transparent; (3) the court system will treat litigants with dignity and protect their rights; and (4) authorities

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459. Shulamit Almog, *As I Read, I Weep: In Praise of Judicial Narrative*, 26 OKLA. CITY U. L. REV. 471, 489 (2001) (quoting ALLAN M. DERSHOWITZ, *Life Is Not a Dramatic Narrative*, in LAW'S STORIES: NARRATIVE AND RHETORIC IN THE LAW 99, 103 (Peter Brooks & Paul Gewirtz eds., 1996)).

460. Ralph, *supra* note 457, at 587, 591–607.

461. *See id.* at 606–07.

462. Thomas B. Colby, *In Defense of Judicial Empathy*, 96 MINN. L. REV. 1944, 1960 (2012) (citing RICHARD A. POSNER, *OVERCOMING LAW* 381 (1995)).

463. *Id.* at 1960 n.63 (citing RICHARD A. POSNER, *HOW JUDGES THINK* 117 (2008)).

464. *See* Arrie W. Davis, *The Richness of Experience, Empathy, and the Role of a Judge: The Senate Confirmation Hearings for Judge Sonia Sotomayor*, 40 U. BALT. L. F. 1, 36–37 (2009).

465. Susan A. Bandes, *Taz and Empathy*, 58 HOW. L. J. 397, 399 (2015).

466. *The Nomination of Elena Kagan to be an Associate Justice of the Supreme Court of the United States Confirmation Hearing Before the Comm. on the Judiciary*, 11<sup>th</sup> Congress (2010) (response of Elena Kagan, Nominee to the Supreme Court of the United States).

467. *See* Davis, *supra* note 464, at 38; *see generally* Steve Leben, *An Expectation of Empathy*, 51 WASHBURN L. J. 49 (2011).

468. Leben, *supra* note 467.

will be caring and sincere in their efforts to assist litigants.<sup>469</sup> Judge Leben argues that to fulfill this basic obligation, factfinders must have empathy.

Other judges have argued that the ability to render appropriate judgments, particularly when the accused is facing allegations that are considered “depraved or despicable,” is crucial to the judge’s role and requires the judge to be able to treat the accused the way that they would want to be treated.<sup>470</sup> If judges treated litigants with compassion, it would have trickle-down effects in the courtroom as compassion is contagious.<sup>471</sup>

To become more empathetic, judges need to expose themselves to the challenges that the litigants in family policing cases face. Judges could familiarize themselves with the neighborhoods that many litigants live in, transportation options that exist, opportunities for parents to get support, and places for parents to spend time with their children. This simple act could make it much easier for a judge to visualize the parent’s life and challenges that they face. As Bryan Stevenson has urged, proximity is crucial to empathetic understanding.<sup>472</sup>

One common pathway for enhancing empathy among judges is simply reading books to gain a deeper understanding of the struggles people with different life stories face.<sup>473</sup> Judges who oversee family policing cases could also read books and articles that critique of the system to understand why parents, advocates, and scholars feel that the system is racist, classist, and biased.

In determining whether a parent has met the necessary requirements to reunify with their children, judges should take into account the effects of separation on a parent that may have hindered their ability to comply.<sup>474</sup> As described in Part I, *supra*, the loss of one’s children can be paralyzing or exacerbate underlying mental health or substance use struggles. Further, in determining whether a parent poses a further risk to their child, a judge could put themselves in the position of the accused parent, consider why the parent made the choice they did, the circumstances that led to the alleged harmful behavior, and how to mitigate those circumstances to reduce the risk. Finally, in determining whether the state made “reasonable efforts” as required by law, the judge should also consider the parents’

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469. *Id.* at 50 (quoting Tom R. Tyler, *Procedural Justice and the Courts*, 44 CT. REV. 26, 30–31 (2007)).

470. Davis, *supra* note 464, at 38.

471. See Reid, *supra* note 434, at 282.

472. BRYAN STEVENSON, JUST MERCY: A STORY OF JUSTICE AND REDEMPTION (2014) (drawing on his grandmother’s wisdom that “[y]ou can’t understand most of the important things from a distance. . . . You have to get close.”); see also Fortune Magazine, *The Power of Proximity | CEO Initiative 2018*, YOUTUBE (June 27, 2018), <https://www.youtube.com/watch?v=1RyAwZIH04Y> [<https://perma.cc/F9WV-D6HP>].

473. See Rebecca K. Lee, *Judging Judges: Empathy as the Litmus Test for Impartiality*, 82 U. CIN. L. REV. 145, 168 (2013).

474. See Free Library Podcast, *Dorothy Roberts | Torn Apart: How the Child Welfare System Destroys Black Families-and How Abolition Can Build a Safer World*, FREE LIBR. OF PHILA. (Apr. 26, 2022), <https://libwww.freelibrary.org/podcast/episode/2135> [<https://perma.cc/S698-SN8S>].

condition after the removal of their children and what the state did to ameliorate the effects that the parents suffered.

## 2. *The Power of Narrative Change and Empathy*

Empathy has frequently been invoked to create social change. In the nineteenth century, abolitionists used personal stories of children being taken from their parents to allow people to see the horrors of slavery.<sup>475</sup> Through storytelling and narrative, abolitionists created important counter-narratives to those put forward by slaveholders to justify inhumane practices and dehumanize enslaved people.<sup>476</sup> For example, slaveholders frequently expressed that enslaved people could not feel love for their children in the way that white people did and downplayed the significance and reality of family separation to “dispel any concerns about the appropriateness of [] enslavement.”<sup>477</sup> In response, abolitionists told stories of how mothers had reacted to their children being taken from them, highlighting their pain and suffering.<sup>478</sup> They then used the outrage created by these strategies to create calls to action, asking those historically in favor of slavery to join in the fight against these barbaric practices.<sup>479</sup>

Similar approaches were used during the family separation crisis at the Southern Border during the first Trump administration. Media focused on pictures of children suffering the devastation of being away from their parents<sup>480</sup> and the sounds of children crying.<sup>481</sup> Immigrant rights’ groups created the slogan and hashtag, “families belong together,” which helped people think of separated migrants as families just like theirs.<sup>482</sup>

For families with family policing involvement, the problem is that many people *do not know* someone who has had contact with CPS. Thus, we must rely on other methods to allow more privileged members of our society to be able to relate to parents who have been impacted by family policing.

Current media gives an insight into the many dimensions of parents impacted by family policing. For example, the novel *The School for Good Mothers* portrays

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475. DETTLAFF, *supra* note 2, at 26.

476. *Id.* at 26–28.

477. *Id.* at 21–24.

478. *Id.* at 28–29.

479. *Id.* at 28.

480. Julie Hirschfeld Davis & Michael D. Shear, *How Trump Came to Enforce a Practice of Separating Migrant Families*, N.Y. TIMES (June 16, 2018), <https://www.nytimes.com/2018/06/16/us/politics/family-separation-trump.html> [<https://perma.cc/B35H-MG4B>].

481. Ginger Thompson, *Listen to Children Who’ve Just Been Separated from Their Parents at the Border*, PROPUBLICA (June 18, 2018, 3:51 PM), <https://www.propublica.org/article/children-separated-from-parents-border-patrol-cbp-trump-immigration-policy> [<https://perma.cc/PUA4-W3NV>].

482. Phil McCausland, Patricia Guadalupe & Kalhan Rosenblatt, *Thousands Across U.S. Join ‘Keep Families Together’ March to Protest Family Separation*, NBC NEWS (June 30, 2018, 11:01 AM), <https://www.nbcnews.com/news/us-news/thousands-across-u-s-join-keep-families-together-march-protest-n888006> [<https://perma.cc/523B-UGQ3>].

parents as complex people in difficult situations, rather than “bad” or “good.”<sup>483</sup> Although the protagonist, Frida, experiences numerous setbacks and makes choices most parents might not, the reader cannot help but root for her. Strikingly, Frida herself wonders why she didn’t know more about CPS before her own case, and her lawyer responds, “You probably didn’t pay attention, because it didn’t apply to you. Why would you? You were just living your life.”<sup>484</sup>

Similarly, the short documentary *To Be Invisible* showcases parents fighting for their children, focusing not on the allegations against them, but rather on the mothers themselves.<sup>485</sup> By not focusing on the allegations, we are able to focus on the mothers’ pain due to the separation from their children, the love the mothers have for their children, and their determination to continue to fight until they are reunified.<sup>486</sup> Many viewers likely do not care what the allegations are because they can identify with the emotion that the mothers display and can imagine the agony they would experience in a similar situation.<sup>487</sup>

To crystallize the perhaps amorphous and idealistic concepts of how narrative choices can stimulate empathy, consider the following story: There was a little girl whose father was repeatedly incarcerated. She lived with her mother who physically abused her and never demonstrated affection towards her or expressed love.<sup>488</sup> She suffered from an intellectual disability that made her “virtually unable to use thought to guide her behavior and temper her emotional reactions.”<sup>489</sup> At the age of nine, she began drinking and using methamphetamine to numb her pain.<sup>490</sup> By eleven, she had run away from home. As a teenager, her uncle attempted to rape her. Later, she was held hostage by a group of men and raped repeatedly for days. As an adult, she was in a physically abusive relationship and struggled with substance use disorder.<sup>491</sup> She was diagnosed with “depressive disorder, developmental disability, possible personality disorder, and possible post-traumatic stress disorder.”<sup>492</sup>

483. JESSAMINE CHAN, *THE SCHOOL FOR GOOD MOTHERS* (2022).

484. *Id.*

485. *TO BE INVISIBLE* (The New Yorker Documentary 2024), <https://www.newyorker.com/culture/the-new-yorker-documentary/the-black-mothers-fighting-to-get-their-kids-back-in-to-be-invisible> [<https://perma.cc/BBQ2-SGJL>].

486. CHAN, *supra* note 483, at 17.

487. *Id.*

488. See Seren Morris, *Who Is Pearl Fernandez in Netflix Show ‘The Trials of Gabriel Fernandez’ and Where Is She Now?*, *NEWSWEEK* (Feb. 27, 2020, 11:52 AM), <https://www.newsweek.com/trials-gabriel-fernandez-netflix-true-crime-documentary-series-who-where-pearl-1489503> [<https://perma.cc/764C-L8VA>]; Nicola Stow, *Who is Gabriel Fernandez’s Mother Pearl Fernandez?*, *U.S. SUN*, (Mar. 10, 2020, 12:08 PM), <https://www.the-sun.com/news/484031/what-happened-to-pearl-fernandez-and-isauro-aguirre-gabriel-fernandezs-killers-featured-in-netflix-documentary/> [<https://perma.cc/UF6H-NCED>].

489. Morris, *supra* note 488.

490. *Id.*

491. *Id.*

492. Stow, *supra* note 488.

Most people would have empathy for a person who had suffered so much trauma in their childhood and into adulthood. But this story describes Pearl Fernandez, a mother accused of abusing and eventually murdering her son Gabriel, despite the fact that the CPS repeatedly investigated the family.<sup>493</sup>

One view of Ms. Fernandez is that she is an evil person who intentionally and repeatedly hurt an innocent child, eventually leading to his death, and she should be locked away forever. Employing parallel universe thinking and a compassionate lens, however, an alternative explanation is that her intellectual disability and mental health struggles, combined with her extensive trauma history, led her to engage in harmful actions towards her child that she may not have been able to control or truly understand the consequences of. Perhaps in this way, one might be able to find empathy for Ms. Fernandez and respect her dignity as a person who had also suffered harm, even while recognizing that she committed the most unspeakable acts towards her child. In so doing, perhaps we could find solutions that might have saved Gabriel. Certainly, there is no guarantee that any intervention would have saved Gabriel; but neither did the family policing system.

This is an example of how an empathetic lens can portray a person as more than their worst actions. It allows outsiders to understand how a person may have come to be in a particular situation or engaged in a harmful act.

Perhaps the easiest example of how to create empathy is simply to imagine someone you love as the parent who is accused of abuse or neglect. What would you want if it were your brother or your sister? If they were struggling with substance use disorder, poverty, or a mental health concern? If they had done something truly terrible? What would you want the response to be? How would you want them to be treated? What intervention would you want to keep the children safe while simultaneously demonstrating care for their parent?

### CONCLUSION

Marginalized parents have long been the targets of blame, shame, and hatred. Our laws codify the idea that punishing parents is the best approach to child protection. This Article demonstrates that family policing interventions cause immense and overwhelming harm to parents that in turn reverberates through the community and across generations without accomplishing the purported goal of keeping children safe. Parents enmeshed in the family policing system deserve respect, support, and empathy. Changing the narrative surrounding parents impacted by the family policing system to one that centers their dignity and autonomy is a crucial component of any approach to child welfare. To ensure that children are safe, healthy, and well, we must first take care of their parents. What would you want if it were you?

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493. This exercise on empathy based on Pearl Fernandez's story was developed by Elizabeth Wendel, President and Founder of PaleBlue. It is included here with her permission. More information is available at <https://www.familyseeing.org/> [<https://perma.cc/NPC3-3FN9>].