

Examining the New York Child Welfare System and Its Impact on Black Children and Families



A Report of the
New York Advisory Committee to the
U.S. Commission on Civil Rights

May 2024

Advisory Committees to the U.S. Commission on Civil Rights

By law, the U.S. Commission on Civil Rights has established an advisory committee in each of the 50 states, several U.S. territories, and the District of Columbia. The committees are composed of state citizens who serve without compensation. The committees advise the Commission of civil rights issues in their states that are within the Commission's jurisdiction. They are authorized to advise the Commission in writing of any knowledge or information they have of any alleged deprivation of voting rights and alleged discrimination based on race, color, religion, sex, age, disability, national origin, or in the administration of justice; advise the Commission on matters of their state's concern in the preparation of Commission reports to the President and the Congress; receive reports, suggestions, and recommendations from individuals, public officials, and representatives of public and private organizations to committee inquiries; forward advice and recommendations to the Commission, as requested; and observe any open hearing or conference conducted by the Commission in their states.

Acknowledgments

The New York Advisory Committee (Committee) deeply appreciates the contributions of each of the speakers who spoke to the Committee during its briefings in connection with this topic, and those who shared testimony in writing. The Committee is especially grateful to those who contributed to this work during its public forum and public comment sessions.

Letter of Transmittal to the U.S. Commission on Civil Rights

New York Advisory Committee to the U.S. Commission on Civil Rights

The New York Advisory Committee to the U.S. Commission on Civil Rights submits this report regarding New York’s child welfare system and its impact on Black Children and Families. The Committee submits this report as part of its responsibility to study and report on civil rights issues in the state of New York. The contents of this report are primarily based on testimony the Committee heard during public meetings held via videoconference on November 18, 2022; February 15, 2023; February 17, 2023; April 19, 2023; April 21, 2023; May 19, 2023; and July 21, 2023. The Committee also includes related testimony submitted in writing during the relevant period of public comment.

This report begins with a brief background of the issues to be considered by the Committee. It then presents primary findings as they emerged from this testimony, as well as recommendations for addressing areas of civil rights concerns. This report is intended to focus on civil rights concerns regarding Black children and families impacted by New York’s child welfare system. While additional important topics may have surfaced throughout the Committee’s inquiry, those matters that are outside the scope of this specific civil rights mandate are left for another discussion.

New York Advisory Committee to the U.S. Commission on Civil Rights

Athena Mutua, Vice Chair, New York Advisory Committee, Buffalo

Iris Chen, New York City

Mat Kladney, New York City

Jamil Dakwar, New York City

Steven Raga, Woodside

Tiffany Graham, South Beach

Michal Rosenn, New York City

Contents

Letter of Transmittal to the U.S. Commission on Civil Rights.....	1
Project Overview	5
Background.....	5
Methodology.....	28
Findings	29
Child Welfare System Overview	30
Finding I: The modern child welfare system was formed and exists within the context of America’s history of racial bias.	32
Finding II: Systemic racism impacts and exists in the current child welfare system.....	33
Finding III: New York’s child welfare system prioritizes cultural practices often embodied in White families over cultural practices often embodied in Black families without assessing for objective standards regarding appropriate care for children.	36
Finding IV: Black families and their children are disproportionately represented at every stage of decision making and intervention in the child welfare system.	38
Reporting	43
Finding V: Black families are reported to the hotline at higher rates than White families, raising concerns about bias in mandated reporters.	43
Finding VI: Black parents are disproportionately listed on New York’s State Central Register and experience immediate and long-term harms.	46
Finding VII: Individuals who use publicly funded social services are at higher risk of being reported for child abuse and neglect than affluent individuals, raising questions about mandated reporting standards.....	47
Finding VIII: Black families are reported to the hotline by healthcare professionals for abuse and neglect at higher rates than White families experiencing the same issues, raising concerns about racial bias in healthcare settings.....	48
Finding IX: Black, low-income families are reported to the hotline for educational neglect at higher rates than White, affluent families for the same issues, raising concerns about racial bias in educational neglect reports.	50
Investigations	53
Finding X: Child welfare system investigation practices reveal concerns about due process, privacy, dignity, and trauma for families under investigation.	53
Finding XI: Allegations of abuse and neglect against Black families are more likely to be investigated than allegations against White families.	55
Finding XII: Poverty is conflated with neglect in the child welfare system.	58
Finding XIII: Nonwhite, low-income families are more likely to be investigated for child abuse and neglect than White families.....	63

Finding XIV: Wealth does not protect Black families from disproportionately high rates of investigation..... 64

Finding XV: There is significant tension between the government’s obligations to protect children from physical and sexual abuse and neglect in their homes and avoiding further trauma by supporting parental rights and family autonomy and integrity. 67

Finding XVI: Child welfare investigation practices have detrimental impacts on the overall well-being and mental health of Black children and families..... 70

Finding XVII: An overwhelming majority of reports against families are unsubstantiated upon investigation, indicating that Black families are being needlessly surveilled, investigated, and monitored. 72

Family Court 74

 Finding XVIII: Black individuals face degrading treatment and disproportionately severe outcomes in Family Court..... 74

 Finding XIX: The New York State Family Court procedures and policies perpetuate racism and deny Black families due process, respect, and justice..... 76

 Finding XX: Lacking adequate judicial and attorney resources necessary to afford due process to Black parents and children in the New York City Family Court during the pendency of child welfare proceedings, the New York City Family Court violates their constitutional, civil and statutory rights resulting in unconscionably long delays, unnecessary family separation, and immeasurable harm and trauma to Black families. 78

Removals 81

 Finding XXI: Federal, state, and local funding significantly incentivizes family separation through child removals from families rather than prioritizing prevention, direct family support and family integrity keeping families together. 82

 Finding XXII: Black children are disproportionately removed from their families, disrupting entire families and their communities. 83

 Finding XXIII: Tremendous trauma and harm are caused to New York's Black children and families from the unnecessary removal and separation of Black children from their families.. 85

Foster Care 86

 Finding XXIV: Black children are placed into foster care at higher rates than White children and are likely to experience poor outcomes from their time in foster care..... 86

 Finding XXV: Child removals from parents and families disrupt trust between parents and their children, with lasting negative consequences on children and their families. 89

 Finding XXVI: There are damaging and often intergenerational impacts of involvement with the foster system. 91

Kinship Care 93

 Finding XXVII: Kinship care is important for maintaining family bonds when child removals and family separations occur, but Black family members are often not approved as kinship options..... 93

Congregate Care..... 94

Finding XXVIII: Black children are disproportionately placed in group home settings that more closely mimic prison conditions than family conditions, effectively punishing children, who have been harmed themselves but who do not have a criminal record, for being Black.	94
Adoption	98
Finding XXIX: There are severely negative consequences and challenges faced by Black children who are removed from their families and after their parents’ rights are terminated are made available for adoption by the child welfare agencies.	98
Committee Recommendations	100
1. The U.S. Commission on Civil Rights should:	100
2. The U.S. Commission on Civil Rights should issue the following recommendations to the U.S. Congress and the President:	104
3. The U.S. Commission on Civil Rights should issue the following recommendations to the U. S. Department of Health and Human Services, Children’s Bureau:	111
4. The U.S. Commission on Civil Rights should issue the following recommendations to the New York State Governor, Legislature, and the Committee on Children & Families within the New York State Assembly:	112
5. The U.S. Commission on Civil Rights should issue the following recommendations to the New York Office of Children and Family Services:	120
6. The U.S. Commission on Civil Rights should issue the following recommendations to the New York State Family Courts and Office of Court Administration:	122
7. The U.S. Commission on Civil Rights should issue the following recommendations to the local Child Protective Services offices throughout New York State and New York City’s Administration for Children’s Services:	125
8. The U.S. Commission on Civil Rights should issue the following recommendations to New York City’s Mayor and City Council:.....	130
Appendix.....	134

Project Overview

On August 19, 2022, the New York Advisory Committee (Committee) to the U.S. Commission on Civil Rights (Commission) adopted a proposal to undertake a study of New York’s child welfare system and its impact on Black Children and Families. As part of this inquiry the Committee heard testimony via videoconference held on November 18, 2022; February 15, 2023; February 17, 2023; April 19, 2023; April 21, 2023; May 19, 2023; and July 21, 2023.¹

The following report results from a review of testimony provided at these meetings, combined with written testimony submitted during this timeframe. It begins with a brief background of the issues to be considered by the Committee. It then identifies primary findings as they emerged from this testimony. Finally, it makes recommendations for addressing related civil rights concerns. This report is intended to focus on civil rights concerns regarding Black children and families impacted by New York’s child welfare system. While other important topics may have surfaced throughout the Committee’s inquiry, matters that are outside the scope of this specific civil rights mandate are left for another discussion. This report and the recommendations included within it were adopted by a unanimous vote of the Committee on April 19, 2024.²

Background

The Committee sought to examine whether the child welfare system in New York state violates the civil and Constitutional rights of its residents in enacting and enforcing federal, state, or local laws, policies and practices that may be racially discriminatory. The breadth and complexity of the child welfare system, and the number of children and families implicated,

¹ Meeting records and transcripts are available in Appendix.

Briefing before the New York Advisory Committee to the U.S. Commission on Civil Rights, November 18, 2022, (web-based), Transcript (hereinafter cited as “Nov. 18, 2023 Briefing”).

Briefing before the New York Advisory Committee to the U.S. Commission on Civil Rights, February 15, 2023, (web-based), Transcript (hereinafter cited as “Feb. 15, 2023 Briefing”).

Briefing before the New York Advisory Committee to the U.S. Commission on Civil Rights, February 17, 2023, (web-based), Transcript (hereinafter cited as “Feb. 17, 2023 Briefing”).

Briefing before the New York Advisory Committee to the U.S. Commission on Civil Rights, April 19, 2023, (web-based), Transcript (hereinafter cited as “Apr. 19, 2023 Briefing”).

Briefing before the New York Advisory Committee to the U.S. Commission on Civil Rights, April 21, 2023, (web-based), Transcript (hereinafter cited as “Apr. 21, 2023 Briefing”).

Briefing before the New York Advisory Committee to the U.S. Commission on Civil Rights, May 19, 2023, (web-based), Transcript (hereinafter cited as “May 19, 2023 Briefing”).

Briefing before the New York Advisory Committee to the U.S. Commission on Civil Rights, July 21, 2023, (web-based), Transcript (hereinafter cited as “Jul. 21, 2023 Briefing”).

² See Appendix for Committee Member Statements.

merits context-setting for this Report's focus and the manner in which the Committee conducted its investigation and recommendation processes.

Focus on Black Families and Children

We decided to focus on Black families and their children, in order to narrow the scope of our study for the greatest impact. We recognize that the disparities we found may apply to other racial groups, and indeed, other protected classes (e.g., children and/or parents with disabilities). The child welfare system spans all levels and branches of government, involves a multitude of stakeholders, and impacts children and families in nearly all communities and of all backgrounds. As such, it was necessary to narrow the scope of our study. We considered honing in on just one aspect of the child welfare system (e.g., focusing on simply reporting, surveillance, and/or separations), while including all children and families of color. But we ultimately decided to narrow our focus to Black families and children, across the entire system, when it became apparent that the racial disparities, disproportionalities, and harm caused by the system are notably more severe and pervasive across the state than for any other racial group, and exist at every stage of the system.

That said, it is important to understand that children and families of all races may be potentially involved in the child welfare system, with other racial and ethnic groups and protected classes facing varying levels of discrimination and disparities. However, our preliminary research demonstrated structural racism causing more severe and persistent harms to Black children and families that warranted our targeted attention.

In some instances, we cite research and policy recommendations that apply not just to Black families, but to other racial groups and/or to families of color in general. Sometimes the research and data that were presented to us only existed in these broader categories or at this broader level. We included such research, even if generalized or expanded beyond Black families, where they clearly applied specifically to Black families.

In some cases, we were presented with broad policy recommendations that would impact all communities involved in the child welfare system that merit further exploration, but we did not ultimately adopt them as our own recommendation, because we had not studied the impact of such policy changes on these other groups, were concerned about potential unintended consequences, and agreed not to exceed the scope of our study.

Our Investigation and Recommendation Processes

Before turning to racial disparities within New York's system, we grounded our investigation in the recognition that the cardinal purpose of any child welfare system must be just that: child welfare. Accordingly, we set out to examine the different ways children are harmed: whether by parental abuse or neglect; by separation from their families; or by abuse or neglect in foster

homes. Our investigation revealed that what is often framed as a binary choice between protecting children and preserving family integrity is often a false dichotomy. Involvement in the child welfare system as it currently operates has been shown to inflict its own harms on children, and separation from family and placement in foster care generally has a profound, long-term negative impact on the child that can follow them for life. We considered these impacts alongside the evidence of consequences of actual abuse and neglect—including those instances with the most tragic outcomes.

And, in examining racial disparities within New York’s child welfare system, we sought to understand whether those uncontested disparities could be attributed simply to racial disparities in actual rates of abuse or neglect, or whether other factors might be in play. Extensive testimony and data presented to the Committee revealed that higher rates of maltreatment of children by Black parents simply cannot account for Black families’ overrepresentation at every stage of the child welfare process — from reporting, to investigation, to removal, to termination of parental rights. Similarly, nationwide, Black children are more likely to be in foster care placement than receive in-home services than their similarly situated White counterparts, are separated from their families at higher rates, remain in foster care longer, are moved more often, receive fewer services, and are less likely to be either returned home or adopted than any other children.³

For even substantiated cases of abuse and neglect, we sought to understand the nature of the findings and their underlying causes. For example: a nationwide study found greater substantiated investigations of malnourishment among Black children than among other races or ethnicities.⁴ Our current child welfare system does not, however, differentiate between malnourishment caused by intentional parental abuse or neglect and that caused by poverty.

Finally, we found that poverty alone cannot account for these racial disparities. As stated in the report, *Narrowing the Front Door to NYC’s Child Welfare System*, “[It is] the confluence of poverty, family regulation system policy and racism —not poverty alone—that aims . . . intrusive and destructive practices almost exclusively at [New York City’s] Black and Latinx families. While Latinx and Black youth are 3-4 times more likely to be in poverty or come from a single parent household than white peers, they are 5 to 13 times more likely to be in state “protective” custody than white peers in NYC.”⁵

³ Roberts, D. Race and Class in the Child Welfare System, Frontline, 2014. Available online at <https://www.pbs.org/wgbh/pages/frontline/shows/fostercare/caseworker/roberts.html>.

⁴ Yi Y, Edwards FR, Wildeman C. Cumulative Prevalence of Confirmed Maltreatment and Foster Care Placement for US Children by Race/Ethnicity, 2011-2016. *Am J Public Health*. May 2020. Available online at <https://pubmed.ncbi.nlm.nih.gov/32191517/>.

⁵ See, e.g., New York City Narrowing the Front Door Work Group, *Narrowing the Front Door to NYC’s Child Welfare System: Report and Community Recommendations*, at 6 (December 2022), https://www.narrowingthefrontdoor.org/_files/ugd/9c5953_2a2cf809f5d34d989b7ec4459e72930a.pdf

Within this context, we crafted recommendations aimed at achieving the fundamental goal of equitably ensuring the health and safety of children and families. In so doing, we focused primarily on steps we consider to be actionable in the near and medium term. We believe these steps will not merely preserve but enhance safety for New York’s children, and will start to remedy the unjustifiable and harmful disparities faced by Black children and families. We also, however, included some longer-term recommendations that address the systemic context in which our child welfare system operates. The scope of this study does not permit an adequate examination of this systemic context, but it is this Committee’s belief that such an examination is necessary if real equity for Black children and families is to be sought and achieved.

Topic Overview

Families of color in New York state, like in much of the nation, are disproportionately involved in the child welfare system. Further, the disparities between families of color and White families involved in the system are significant; families of color are more likely to experience negative outcomes. Racial disproportionalities and disparities exist at every stage of child welfare involvement. Despite the federal government’s efforts to reduce the disproportionate overrepresentation of Black children (and other children of color) for over two decades,⁶ Black families are more likely to be reported⁷ and investigated⁸ for child abuse and neglect. Additionally, their children are removed and placed in foster care at higher rates,⁹ and their parental rights are terminated more frequently.¹⁰ Once in foster care, Black children receive

⁶ Racial and Ethnic Disparity and Disproportionality in Child Welfare and Juvenile Justice: A Compendium, January 2009. Available online at <https://ocfs.ny.gov/main/recc/documents/CJJR-Disparity-in-CW-JJ.pdf>.

⁷ Kruse, KS. *Differences in Racially Disproportionate Reporting of Child Maltreatment Across Report Sources*, Journal of Public Child Welfare, 2013. Available online at

<https://www.tandfonline.com/doi/abs/10.1080/15548732.2013.798763>; Inguanta, G., & Sciolla, C. (2021). *Time Doesn’t Heal All Wounds: A Call to End Mandated Reporting Laws*. Columbia Social Work Review, 19(1), 116–137. Available online at <https://journals.library.columbia.edu/index.php/cswr/article/view/7403>; Mical Raz,

Calling child protectives services is a form of community policing that should be used appropriately: Time to engage mandatory reporters as to the harmful effects of unnecessary reports, Children and Youth Services Review, Volume 110, 2020, Available online at

<https://www.sciencedirect.com/science/article/pii/S0190740919312940>; *Our Systems Meant to Help Are Hurting Black Families*, National Institute for Children’s Health Quality, Available online at

<https://www.nichq.org/insight/our-systems-meant-help-are-hurting-black-families>; Fitzgerald, M. *Too Many Black Families Get Caught in Child Welfare’s ‘Front Door,’ Advocates and System Leaders in New York Agree*, The Imprint, October 28, 2020. Available online at <https://imprintnews.org/child-welfare-2/too-many-black-families-get-caught-in-child-welfares-front-door-advocates-and-system-leaders-in-new-york-agree/48843>.

⁸ Hyunil Kim, Christopher Wildeman, Melissa Jonson-Reid, and Brett Drake, 2017: *Lifetime Prevalence of Investigating Child Maltreatment Among US Children*, American Journal of Public Health 107, 274-280, <https://doi.org/10.2105/AJPH.2016.303545>

⁹ Ibid.

¹⁰ Song, Minkyung, "Termination of parental rights and adoption in foster care" (2006). Available online at <https://repository.upenn.edu/dissertations/AAI3225547/>; Wildeman, C., Edwards, F. R., & Wakefield, S. (2020). *The Cumulative Prevalence of Termination of Parental Rights for U.S. Children, 2000-2016*. Child maltreatment, 25(1), 32–42. Available online at <https://doi.org/10.1177/1077559519848499>.

fewer and poorer quality services,¹¹ are separated from their families for longer periods,¹² are less likely to be reunified,¹³ and are significantly less likely to be adopted when reunification is unlikely.¹⁴

Federal and State officials have recognized these racial disproportionalities and disparities. In 2019, according to the New York Office of Children and Family Services (OCFS), the state agency responsible for overseeing and monitoring New York’s child welfare system, Black children were 3.7 times more likely to enter foster care than White children, representing 52 percent of children in foster care in New York.¹⁵ The OCFS produces the Disproportionate Minority Representation Report to examine the issue of overrepresentation of Black, Hispanic, and Native American children and their families in the state’s child welfare and juvenile justice systems.¹⁶ The OCFS measures disparity by the “disparity index” which represents the ratio of rate per 1000 for Black (or Hispanic, or Native American) children relative to the rate for White children, which is based on a scale from no or little, moderate, high, and extreme disparity.¹⁷

In its 2019 report, the OCFS report indicated that five New York counties had extreme disparity, five had high disparity, and 15 had moderate disparity in reporting Black families to the Statewide Central Register.¹⁸ For Hispanic families, the report indicated that three counties had extreme disparity, six had high disparity, and 25 had moderate disparity.¹⁹ For Native American families, the report indicated that one county had high disparity and three counties had moderate disparity.²⁰ As it relates to disparity for the placement of Black children in foster care, 14 counties had extreme disparity, eight had high disparity, and four had moderate disparity.²¹ For the placement of Hispanic children placed into foster care, there were five counties that had

¹¹ Rodenborg, Nancy. (2004). Services to African American Children in Poverty: Institutional Discrimination in Child Welfare? *Journal of Poverty*. Available online at https://www.tandfonline.com/doi/abs/10.1300/J134v08n03_06.

¹² *Multithnic Placement Act: Minorities in Foster Care and Adoption Briefing Report*, July 2010. Available online at https://www.usccr.gov/files/pubs/docs/MEPABriefingFinal_07-01-10.pdf

¹³ Roberts, D. *Race and Class in the Child Welfare System*, Frontline, 2014. Available online at <https://www.pbs.org/wgbh/pages/frontline/shows/fostercare/caseworker/roberts.html>.

¹⁴ Cloud, E.; Oyama, R.; Teichner, L. *Family Defense in the Age of Black Lives Matter*, City University of New York Law Review, 2017. Available online at <https://academicworks.cuny.edu/cgi/viewcontent.cgi?article=1424&context=clr>.

¹⁵ New York Assembly Standing Committee on Children and Families, Assembly Subcommittee on Foster Care. “The Child Welfare System and the Mandatory Reporting of Child Abuse of Maltreatment in New York State.” Sep. 27, 2023, at 1. <https://nyassembly.gov/write/upload/publichearing/20230831.pdf>

¹⁶ New York Office of Child and Family Services. “Disproportionate Minority Representation 2019” at 1. <https://ocfs.ny.gov/reports/sppd/dmr/DMR-County-Comparison-2019.pdf>.

¹⁷ *Ibid.*

¹⁸ *Ibid.*

¹⁹ New York Office of Child and Family Services. “Disproportionate Minority Representation 2019” at 5. <https://ocfs.ny.gov/reports/sppd/dmr/DMR-County-Comparison-2019.pdf>.

²⁰ New York Office of Child and Family Services. “Disproportionate Minority Representation 2019” at 9. <https://ocfs.ny.gov/reports/sppd/dmr/DMR-County-Comparison-2019.pdf>.

²¹ New York Office of Child and Family Services. “Disproportionate Minority Representation 2019” at 3. <https://ocfs.ny.gov/reports/sppd/dmr/DMR-County-Comparison-2019.pdf>.

extreme disparity, six had high disparity, and six had moderate disparity.²² One New York County had an extreme disparity of Native American children placed into foster care.²³ The Committee has focused its current investigation on Black families, given they are the most impacted racial group and the disparities impacting them are widely distributed across the state.²⁴ That said, these disparities affect other children and families of color, and we encourage the Commission and policymakers to consider our recommendations for other racial groups where they might be relevant.

The child welfare system generally refers to the collection of child protection, child abuse prevention, and family support laws; that exist at each level of government; along with the various governmental and nonprofit entities that have been charged with enforcing and/or implementing those laws. These entities, which are meant to ensure the safety and wellbeing of children and achieve stability and ‘permanency’ for those engaged in the system, carry out a wide range of functions that fall into four main service areas, including child protection investigation, family-centered services and supports, foster care, and adoption.²⁵ These entities and the system at large are funded by a combination of local, state, and federal dollars as well as philanthropic donations.

A family’s involvement with the child welfare system typically starts with a report to Child Protective Services (CPS) regarding suspected child abuse and/or neglect. In each state, the definitions of abuse and neglect vary²⁶ as do regulations regarding which individuals are legally required to report suspected maltreatment to the local CPS agency. In New York state, more than four dozen designated professional titles are mandated by law as mandated reporters to report reasonable suspicions of abuse, as defined in the Social Service Law and Family Court Act, the Statewide Central Register (SCR), which is also known as the state hotline.²⁷ Failure to do so potentially subjects them to a Class A misdemeanor prosecution.²⁸ Interviewers at the SCR screen each hotline call to determine if the situation could reasonably constitute child abuse or neglect, and immediately transmit the information to the local county CPS.²⁹ This information is then permanently included in the SCR records if the case is ultimately indicated (i.e., the allegations in the report are supported by credible evidence and therefore deemed to

²² New York Office of Child and Family Services. “Disproportionate Minority Representation 2019” at 7. <https://ocfs.ny.gov/reports/sppd/dmr/DMR-County-Comparison-2019.pdf>.

²³ *Id* at 11.

²⁴ The Committee recognizes there are civil rights concerns with other communities that are impacted by the child welfare system that would warrant further study.

²⁵ See N.Y. Soc. SERV. LAW § 384-b[1][a][iii] (McKinney 1998) (“[T]he state’s first obligation is to help the family with services to prevent its break-up or to reunite it if the child has already left home.”).

²⁶ NY CLS Soc Serv § 371; N.Y. Family Court Act § 1012.

²⁷ NY CLS Soc. Serv. § 413(1)(a).

²⁸ NY CLS Soc. Serv. § 420.

²⁹ NY CLS Soc. Serv. § 422(2)(a).

be true), unless expunged.³⁰ The public is permitted to report suspected child abuse, including anonymously.³¹ Good faith reporting is shielded from liability.³²

CPS is then required to open an investigation. During the investigation, CPS caseworkers respond shortly after a report is made.³³ The timing of a response depends on the type of alleged maltreatment, the potential severity of the incident, and the specific requirements under a state's law. In New York, an investigation must be started within 24 hours of receiving the report.³⁴ To conduct this investigation, the CPS caseworker may speak to teachers, neighbors, medical providers, and other individuals who may know the child and/or family. The caseworker also meets with the family at home, where they question the child, the parent(s) and other children.³⁵ Included in the investigation is an evaluation of the environment of the child named in the report; an evaluation of the environment of any other children in the same home; a determination of the risk to the child if they continue to remain in the existing home environment; a determination of the nature, extent and cause of any condition enumerated in such report; a determination of the name, age and condition of the children in the home; seeing to the safety of the child or children; and notification in writing to the subject of the report and other persons named in the report.³⁶

Depending on the allegation, the CPS caseworker may also assess the child's safety and check for signs of physical abuse.³⁷ When checking for physical abuse, the caseworker must determine if it is necessary to observe normally clothed areas of the child's body by considering specific questions such as "do the case circumstances or history indicate that observation of the clothed part(s) of the child's body is required to determine whether the child is in imminent danger or harm?"³⁸

The caseworker is expected to minimize any potential negative impact of a visual inspection on the child, CPS is encouraged to consider an environment that supports the child's privacy and dignity along with the appropriate personnel such as a physician or school nurse to conduct the

³⁰ NY CLS Soc. Serv. § 420.

³¹ See NY CLS Soc. Serv. § 422-a(4).

³² NY CLS Soc. Serv. § 419.

³³ Administration for Children's Services, *A Parent's Guide to Children Protective Service in New York City*, available at https://www1.nyc.gov/assets/acs/pdf/child_welfare/ACS_Parents_Guide_to_the_Child_Protective_Investigation.pdf

³⁴ Administration for Children's Services, *A Parent's Guide to Children Protective Service in New York City*, available at https://www1.nyc.gov/assets/acs/pdf/child_welfare/ACS_Parents_Guide_to_the_Child_Protective_Investigation.pdf

³⁵ NY CLS Soc. Serv. § 424(6)(a).

³⁶ *Id.*

³⁷ New York State Child Protective Services Manual, Chapter 6, Page G-2. Obtaining information about physical injuries and health, <https://ocfs.ny.gov/programs/cps/manual/2020/2020-CPS-Manual.pdf>.

³⁸ *Ibid.*

observation, following consent from the parents.³⁹ It is important to note that CPS caseworkers are not advised to seek a parent’s consent for a visual inspection of the child’s body if there is reason to believe that the child is in imminent danger of abuse or maltreatment.⁴⁰ This part of the investigation, which is completed within 60 calendar days, allows CPS to collect evidence to determine if the claim of abuse or neglect is “indicated” or “unfounded.”⁴¹

The five counties of New York City constitute one local district for purposes of administering the child welfare system, and is known as the Administration for Children’s Services (ACS). If ACS finds that the child has been harmed and/or is at risk of future maltreatment, or ongoing safety concerns are otherwise present, a meeting will be called with family members (the “Child Safety Conference”).⁴² During this meeting, a decision is made whether the child will be temporarily removed and placed in foster care or with another custodian, pending the filing of a court petition and a court order.⁴³ The court has the authority to issue temporary orders to secure the safety of the child, such as placing the child in protective custody during the investigation, ordering family services, or forbidding certain individuals from being in contact with the child.⁴⁴

At an adjudicatory hearing, a family court judge hears evidence and determines whether the child has been abused or neglected. Thereafter, at a disposition hearing, the judge determines the child’s immediate future, which includes placement and any mandatory family services. The following are potential outcomes depending on the judge’s determination: the child is placed into foster care; the child is reunified with the family, at times under a period of supervision by the child welfare agency; custody is granted to a relative; or older youth may leave care for independent living arrangements.⁴⁵

Serious questions and concerns have been raised about the child welfare system and prompted research and investigations by both state entities and third parties. In several states across the nation, including New York, issues where child welfare systems have come under scrutiny include issues related to: the failure to provide proper medical care; the failure to track abuse and neglect cases;⁴⁶ allegations regarding systemic racism aimed at the improper separation of Black and Brown families due to broad and discriminatorily applied definitions of neglect and

³⁹ Ibid, G-1 – G-3.

⁴⁰ Ibid, G-3.

⁴¹ Ibid, O-1 – O-3. (Note: Another term used in other states is “substantiated”).

⁴² <https://www.nyc.gov/site/acs/child-welfare/conceptpaper.page>

⁴³ Administration for Children and Families, *Factsheet: How the Child Welfare System Works*, October 2020, available at <https://www.childwelfare.gov/resources/how-child-welfare-system-works/>

⁴⁴ Administration for Children and Families, *Factsheet: How the Child Welfare System Works*, at 4, October 2020, available at <https://www.childwelfare.gov/resources/how-child-welfare-system-works/>

⁴⁵ Ibid.

⁴⁶ Dan Petrella & Clare Spaulding, “Audit of DCFS finds failure to provide proper medical care, track abuse and neglect cases,” *Chicago Tribune*, May 12, 2022, available at <https://www.chicagotribune.com/politics/ct-dcfs-auditor-illinois-pritzker-20220512-2yatgclhzhz3fgsddntgdop6e-story.html>.

harm;⁴⁷ the improper use of state-run child abuse registries that have collateral consequences for Black and Brown parents;⁴⁸ the mismanagement of child welfare agencies and rapid shuffling of children in various foster care placements;⁴⁹ and the failure to keep children from harm and/or death even after multiple home visits.⁵⁰ In other words, there have been serious concerns raised about both the effectiveness of the child welfare system, and the harms that the system has inflicted on children and families involved in the system, with disproportionate impacts on Black children and families and other children and families of color.

The OCFS previously acknowledged the racial disproportionality that exists in child welfare and juvenile justice systems and, for a decade, stated that it has engaged in efforts to address these problems.⁵¹ During his tenure, former Governor Cuomo outlined several new policies for the child welfare system that included: calling for child welfare agencies to use race-blind removal to determine whether children should be removed from their homes,⁵² forbidding the labeling of young people as “incorrigible,”⁵³ and requiring statewide child welfare workers to

⁴⁷ New York State Bar Association, “Report and recommendations of the Committee on Families and the Law Racial Justice and Child Welfare,” April 2022, available at <https://nysba.org/new-york-state-bar-association-finds-child-welfare-system-replete-with-systemic-racism-pushes-for-reforms/>; *Children of Color in the Child Welfare System: Perspectives from the Child Welfare Community*, Child Welfare Information Gateway, Children’s Bureau, 2003, available at <https://www.childwelfare.gov/pubs/otherpubs/children/implications/>; Diane Redleaf, “The Challenge of Changing America’s Amorphous, Limitless Neglect Laws,” *Imprint News*, May 16, 2022, available at <https://imprintnews.org/opinion/challenge-changing-americas-amorphous-limitless-neglect-laws/65055>.

⁴⁸ Scott Pham, “‘It’s Like a Leech On Me’: Child Abuse Registries Punish Suspecting Parents of Color,” *BuzzFeed News*, Apr. 27, 2022, available at <https://www.buzzfeednews.com/article/scottpham/child-abuse-and-neglect-registries-punish-parents-of-color>.

⁴⁹ Michelle Theriault Boots, “Class-action lawsuit calls for major reform in Alaska’s ‘failing, dangerous’ foster care system,” *Anchorage Daily News*, May 19, 2022, available at <https://www.adn.com/alaska-news/2022/05/19/class-action-lawsuit-calls-for-major-reform-in-alaskas-failing-dangerous-foster-care-system/>.

⁵⁰ Tina Moore, Rich Calder, Kevin Sheehan, and Natalie Musumeci, “ACS visited parents of tragic 5-year old boy multiple times,” *New York Post*, Jan. 23, 2017, available at <https://nypost.com/2017/01/23/acs-visited-parents-of-tragic-5-year-old-boy-multiple-times/amp/>; Beth Hundsdorfer, “After five deaths, GOP seeks performance audit for state child-protection agency,” *The News-Gazette*, Apr. 6, 2022, available at https://www.news-gazette.com/news/local/politics/after-five-deaths-gop-seeks-performance-audit-for-state-s-child-protection-agency/article_79eb7e04-b6aa-5e41-87fd-50c01e3a8d6a.html.

⁵¹ *The OCFS Initiative to Address Racial Disproportionality in Child Welfare and Juvenile Child Welfare and Juvenile Justice*, N.Y. State Off. of Children & Family Servs. (Jan. 19, 2011), <http://ww2.nycourts.gov/sites/default/files/document/files/2018-09/ocfs-disproportionality.pdf>.

⁵² New York State Office of Children and Family Services, Administrative Directive, 20-OCFS-ADM-19, October 14, 2020, The Blind Removal Process, https://ocfs.ny.gov/main/policies/external/ocfs_2020/ADM/20-OCFS-ADM-19.docx.

⁵³ Michael Fitzgerald, “New York Moves to Eliminate in State Law Labeling Youth ‘Incorrigible,’” *The Imprint*, Jul. 23, 2020, available at <https://imprintnews.org/child-welfare-2/new-york-state-law-labeling-youth-incorrigible-fitzgerald/45525>.

take implicit bias training among other reforms.⁵⁴ With respect to race-blind removals, several counties in New York are implementing a race-blind process.⁵⁵

The current administration under Governor Hochul has focused on strengthening families and enhancing the well-being of children by investing \$11 million in evidence-based programs that provide direct support to children and families.⁵⁶ Former OCFS Commissioner Sheila J. Poole noted at the time that this funding would allow her agency “to bolster and support families and help those in greatest need before there is any need for child welfare programs to step in or when a family may be receiving preventive services. Through this [funding], even more families can access these vital services, which are culturally and linguistically competent and support our youngest families.”⁵⁷

In addition to these efforts, in the last legislative session, state legislators proposed three bills that aimed to address issues raised by stakeholders about the state’s child welfare system and parents’ rights: Senate Bill S5572⁵⁸ required that anyone making a report to the Statewide Central Register of Child Abuse and Maltreatment (SCR, also known as the “hotline”) provide their contact information; Senate Bill S7553A⁵⁹, which required that parents be informed of their rights at the start of a CPS investigation; and Senate Bill 4821⁶⁰, which required health care providers to obtain verbal consent from pregnant and postpartum mothers before administering drug tests on women and their newborns that may be reported to CPS. As of June 6, 2022, all three bills were rejected.⁶¹

Apart from the concern of racial disproportionality in the child welfare system, we are concerned about the impact on children of color of being involved in the child welfare system. Such impacts include: children of color are more likely to experience multiple placements, less likely to be reunited with their birth families, more likely to experience group care, less likely to be permanently placed, and more likely to experience poor social, behavioral, and educational outcomes.⁶² It is these impacts that raise concern for the Committee as children of color are

⁵⁴ State of New York, State of the State 2021 Reimagine, Rebuild, Renew, Governor Andrew M. Cuomo, https://www.governor.ny.gov/sites/default/files/atoms/files/SOTS2021Book_Final.pdf, pp. 271-274.

⁵⁵ Jeremy Loudback, “Color-Blind Ambition,” *The Imprint*, Apr. 1, 2021, available at: <https://imprintnews.org/los-angeles/color-blind-ambition-removals/52958>.

⁵⁶ Office of Governor Kathy Hochul, “Governor Hochul Announces \$11 Million to Expand Proven Healthy Families New York Prevention Program to Every County,” May 4, 2022, available at <https://www.governor.ny.gov/news/governor-hochul-announces-11-million-expand-proven-healthy-families-new-york-prevention>.

⁵⁷ *Ibid.*

⁵⁸ N.Y. S.B. 5572, 2019-2020 Leg. Sess.

⁵⁹ N.Y. S.B. 7553A, 2019-2020 Leg. Sess.

⁶⁰ N.Y. S.B. 4821, 2021-2022 Leg. Sess.

⁶¹ Madison Hunt, “New York Lawmakers Reject Parents’ Rights Bills,” *The Imprint*, Jun 2, 2022, available at <https://imprintnews.org/child-welfare-2/new-york-lawmakers-reject-parents-rights-bills/65587>.

⁶² <https://www.ncsl.org/research/human-services/disproportionality-and-race-equity-in-child-welfare.aspx>.

disproportionately represented in the child welfare system and warrant further discussion and inquiry.

The following section briefly outlines relevant statutory and case law authority for this topic.

Federal Legislation and Court Rulings That Influence the New York State Child Welfare System:

The Child Abuse Prevention and Treatment Act (CAPTA)⁶³ provides federal funding to states for the prevention, assessment, investigation, prosecution, and treatment of child neglect and abuse. CAPTA sets the minimum standards for child abuse and neglect and requires states to implement “mandated reporter laws,” which entail provisions or procedures for requiring certain individuals to report known or suspected instances of child abuse and neglect. To be eligible to receive a grant under CAPTA, individual states are required to submit a state plan which addresses policies and procedures for mandatory reporting, screening, and protecting victims, as well as procedures for investigating reports of child neglect and abuse.⁶⁴ States have the authority to adopt their own definitions of what constitutes child abuse and neglect, so long as it complies with these minimum standards.⁶⁵ As a result, state’s definitions of child abuse and neglect differ.

Congress passed the Adoption Assistance and Child Welfare Act of 1980 (AACWA), amending the Social Security Act to enable “each State to provide, in appropriate cases, foster care and adoption assistance for children who otherwise would be eligible for assistance under the State’s plan.”⁶⁶ AACWA stated that prior to the placement of a child in foster care “reasonable efforts” would be made “to prevent or eliminate the need for removal of the child from his home” and “to make it possible for the child to return to his home.”⁶⁷ AACWA did not provide a definition or minimum standard of what acts constitute “reasonable efforts.”

In 1997, Congress passed the Adoption and Safe Families Act (ASFA), further amending the Social Security Act.⁶⁸ ASFA aims to promote permanency for children and prioritizes permanency plans for reunification with parents, as well as “to promote the adoption of children in foster care.”⁶⁹ It included a wide array of changes to child welfare law.⁷⁰

ASFA provided clarification of AACWA’s “reasonable efforts” requirement, stating that “reasonable efforts shall be made to preserve and reunify families (i) prior to the placement of

⁶³ Child Abuse Prevention and Treatment Act of 1974, Pub. L. 93-247, 88 Stat. 4 (1974).

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ Adoption Assistance and Child Welfare Act of 1980, Pub. L. 96-272, 94 Stat. 500 (1980).

⁶⁷ Pub. L. 96-272, 94 Stat. 503 (1980).

⁶⁸ Adoption and Safe Families Act of 1997, Pub. L. 105-89, 111 Stat. 2115 (1997).

⁶⁹ *Id.*

⁷⁰ *Id.*

a child in foster care, to prevent or eliminate the need for removing the child from the child's home; and (ii) to make it possible for a child to safely return to the child's home.”⁷¹

Notably, ASFA requires states to file for termination of parental rights for states to free children for adoption who have been in foster care “for 15 of the most recent 22 months.”⁷² However, in cases of serious abuse, it authorizes states to waive the time requirement and to file a petition for termination of parental rights.⁷³ ASFA also requires states to engage in concurrent planning, by planning for adoption alongside reunification efforts during the 15 months to promote quicker permanency for children.⁷⁴

The Family First Prevention Services Act of 2018 (FFPSA) is the most recently enacted federal child welfare legislation.⁷⁵ The goals of FFPSA are to help keep children safely with their families and avoid the traumatic experience of entering foster care. It emphasizes the importance of children growing up in families and seeks to ensure children are placed in the least restrictive, most family-like setting appropriate to their needs when foster care is needed.

Congress stated that the purpose of FFPSA was “to provide enhanced support to children and families and prevent foster care placements through the provision of mental health and substance abuse prevention and treatment services, in-home parent skill-based programs, and kinship navigator services.”⁷⁶ Further, it expanded the programs and services for which states can use Title IV-E funds.⁷⁷ Prior to FFPSA, Title IV-E funds could only be used to pay for the costs of foster care maintenance for eligible children; administrative expenses to manage the program; training for staff, foster parents, and certain private agency staff; adoption assistance; and kinship guardianship assistance. The law created the Title IV-E Prevention Services Clearinghouse, which consists of a continuously updated comprehensive list of evaluated and tested prevention services and programs that states can use title IV-E funds toward to prevent disruption within families.⁷⁸

Accordingly, FFPSA provides states with the opportunity to receive federal funding for mental health, substance abuse prevention and treatment services, and in-home parent skill-based programs by submitting a state prevention services and programs plan.⁷⁹

With respect to federal case law, the U.S. Supreme Court and federal courts have addressed the constitutional rights of parents to the care, custody, and control of their children. For instance,

⁷¹ 42 U.S.C § 671(a)(15)

⁷² 42 U.S.C § 675.

⁷³ 42 U.S.C.. § 671.

⁷⁴ 42 U.S.C § 675.

⁷⁵ Bipartisan Budget Act of 2018, Pub. L. 115-123, § 50702, 132 Stat 64, 232 (2018).

⁷⁶ *Id.* at 232.

⁷⁷ *Id.* at 237.

⁷⁸ *Id.* at 242.

⁷⁹ *Id.* at 236.

in *Meyer v. Nebraska*, the court held that a statute forbidding the teaching of the German language impermissibly encroached on the liberty interests parents possess.⁸⁰ The court explained that the Due Process Clause of the Fourteenth Amendment protects this liberty interest, incorporating “the right to marry, establish a home, and bring up children.”⁸¹ Similarly, in *Troxel v. Granville*, the court held that the state visitation statute was unconstitutional, infringing on parents' fundamental right to rear their children,⁸² because parents have a liberty interest in making decisions regarding the care, custody, and control of their children.⁸³

In *Santosky v. Kramer*, the court declared unconstitutional a New York statute that authorized termination of parental rights based on a preponderance of the evidence.⁸⁴ This was the first U.S. Supreme Court case to hold that even after parents are found unfit in a contested court proceeding, they retain constitutionally protected parental rights.⁸⁵ In fact, the court held that due process is required at a termination of parental rights proceeding because the fundamental liberty interest that parents have in the care, custody, and management of their child remains even when they “have not been model parents or have lost temporary custody of their child to the state.”⁸⁶

In *Duchesne v. Sugarman*, the Second Circuit Court of Appeals held “[t]he right of the family to remain together without the coercive interference of the awesome power of the state... encompasses the reciprocal rights of both parent and child.”⁸⁷ Thus, the court cannot deprive a parent of their right to live together as a family with their children without due process of law.⁸⁸ The court explained that children have the constitutional right to avoid “dislocat[ion] from the emotional attachments that derive from the intimacy of daily association with the parent.”⁸⁹

In *Nicholson v. Williams*,⁹⁰ a federal class action lawsuit was brought on behalf of domestically abused mothers and their children who were separated because the New York City Administration for Children (ACS) deemed those mothers, by virtue of being a victim of domestic abuse in front of their children, neglectful.⁹¹ The court found, by clear and convincing evidence, that ACS unnecessarily and routinely prosecutes domestically abused mothers for neglect, removing their children, without having previously ensured access to appropriate services to protect herself and her children.⁹² The court determined ACS caseworkers and

⁸⁰ *Meyer v. Nebraska*, 262 U.S. 390 (1923).

⁸¹ *Id.* at 399.

⁸² *Troxel v. Granville*, 530 U.S. 57 (2000).

⁸³ *Id.* at 62.

⁸⁴ *Santosky v. Kramer*, 455 U.S. 745, 752 (1982).

⁸⁵ *Id.* at 745.

⁸⁶ *Id.*

⁸⁷ *Duchesne v. Sugarman*, 566 F.2d 817, 825 (2d Cir. 1977).

⁸⁸ *Id.* at 824.

⁸⁹ *Id.*

⁹⁰ *Nicholson v. Williams*, 203 F. Supp. 2d 153 (E.D.N.Y. 2002).

⁹¹ *Id.* at 209.

⁹² *Id.* at 228.

managers to be inadequately trained to work with victims of domestic abuse, inappropriately separating children from their mothers when less harmful non-separation alternatives were available.⁹³ Further, the court found that ACS routinely removed children without a court order and failed to return children promptly to their mothers after a court ordered it.⁹⁴

The *Nicholson* federal court held these ACS's practices and policies violated the constitutional rights of parents and their children, constituting violations of federal law, pursuant to 42 USC §1983.⁹⁵ In their ruling, the court upheld the preliminary injunction requiring ACS to assess their removal process, address prior injustices, and assess compensation for parents' attorneys.⁹⁶

Lastly, the Biden Administration recently announced a combination of final and proposed child welfare rules that the Department of Health and Human Services Secretary Xavier Becerra called an "historic package that underlines the Biden-Harris Administration's steadfast commitment to putting children's well-being first."⁹⁷

This includes a final rule that permits states to allow agencies to "waive non-safety related licensing and approval standards for relative foster family homes on a case-by-case basis"⁹⁸ and requires agencies to provide periodic review of licensing or approval standards and amounts paid as foster care minimum payments.⁹⁹ This rule is intended to expand the qualifications of kinship foster home eligibility, especially supporting low-income relative caregivers.¹⁰⁰

One proposed rule seeks to expand access to independent legal counsel, permitting federal funding to extend to pre-petition support to mitigate the need for child removal and family separation.¹⁰¹ According to the rule proposal, "access to independent legal representation can help stabilize families and reduce the need for more formal child welfare system involvement, including foster care."¹⁰²

The other proposed rule would provide protections for LGBTQIA+ foster youth, as a result of "a meaningful body of research [that] demonstrates that LGBTQI+ children in foster care face disproportionately worse outcomes and experiences than other children in foster care due to

⁹³ *Id.* at 217-218.

⁹⁴ *Id.* at 229.

⁹⁵ *Id.* at 249-233.

⁹⁶ *Id.* at 299-258.

⁹⁷ See *infra* notes 94-101; John Kelly, White House Announces Slate of Actions on Child Welfare, The Imprint (September 27, 2023, 3:33PM), <https://imprintnews.org/youth-services-insider/biden-administration-announces-slate-actions-child-welfare/244951>.

⁹⁸ Separate Licensing Standards for Relative or Kinship Foster Family Homes, 88 Fed. Reg. 9411 (proposed Feb. 14, 2023) (to be codified at 45 C.F.R. § 1355).

⁹⁹ *Id.*

¹⁰⁰ *Id.*

¹⁰¹ Foster Care Legal Representation, 88 Fed. Reg. 66769 (proposed Sept. 28, 2023) (to be codified at 45 C.F.R. § 1356).

¹⁰² *Id.*

[the fact that] their specific health and well-being needs are often unmet.”¹⁰³ Currently, federal law requires that agencies “ensure that each child in foster care receives safe and proper care” and that their case plan addresses their specific needs.¹⁰⁴ The proposed rule would “specify the steps agencies must take when implementing the case plan and case review requirements for children in foster care who identify as lesbian, gay, bisexual, transgender, queer or questioning, intersex, as well as children who are non-binary, or have non-conforming gender identity or expression (all of whom are referred to under the umbrella term LGBTQI+ for purposes of this regulation).”¹⁰⁵

State Legislation and Court Rulings That Influence the New York State Child Welfare System:

State laws define child abuse and neglect in civil statutes which govern the child welfare system, provide the conduct, acts, and omissions that must be reported, and mandate policies and procedures for responding to child maltreatment. Criminal statutes contain definitions of child maltreatment or endangerment that allow for criminal prosecution. These definitions are often broad and differ from state to state, and as a result, conduct that constitutes abuse and neglect in one state, may not be actionable in another. The two bodies of law in New York State that deal with child abuse and maltreatment in a familial context are the Social Services Law¹⁰⁶ (SSL) and the Family Court Act¹⁰⁷ (FCA).

The Child Protective Services Act of 1973¹⁰⁸ established child protective services (CPS) in each county in New York. Each CPS is required to investigate child abuse and maltreatment reports, protect children under 18 years of age from further abuse or maltreatment, and provide rehabilitative services to children, parents, and other family members involved.¹⁰⁹

Article 6 of the New York Social Services Laws (SSL) outlines the role and responsibilities of the Office of Children and Family Services (OCFS) and Local Departments of Social Services (DSS) regarding investigations, outcomes, and records. Section 413 of the SSL outlines the individuals who are required to report cases of suspected child abuse or maltreatment, a procedure which is commonly referred to as “mandatory reporting.”¹¹⁰ Section 420 of the SSL outlines the consequences for a mandatory reporter’s willful failure to report, including being

¹⁰³ Safe and Appropriate Foster Care Placement Requirements for Titles IV-E and IV-B, 88 Fed. Reg. 66752 (proposed Sept. 28, 2023) (to be codified at 45 C.F.R. § 1355).

¹⁰⁴ *Id.*

¹⁰⁵ *Id.*

¹⁰⁶ N.Y. Soc. Serv. Law (McKinney 1976).

¹⁰⁷ N.Y. Family Court Act. (McKinney).

¹⁰⁸ N.Y. Soc. Serv. Law § 411 (McKinney).

¹⁰⁹ *Id.*

¹¹⁰ N.Y. Soc. Serv. Law § 413 (McKinney).

guilty of a class A misdemeanor and being “civilly liable for the damages proximately caused by such failure.”¹¹¹

Article 10 of the Family Court Act (FCA) is designed to establish procedures and due process of law “for determining when the state, through its family court, may intervene against the wishes of a parent on behalf of a child so that his needs are properly met.”¹¹² This includes the Family Court requirements and procedures for ordering the removal of a child from their parents.¹¹³ Section 1021 of the FCA outlines the authority and procedures for the temporary removal of a child from the place where they are residing “with the written consent of his or her parent or other person legally responsible for his or her care, if the child is suspected to be an abused or neglected child” as defined under Article 10 of the FCA.¹¹⁴ Section 1024 of the FCA outlines the authority and procedures for the emergency removal without a court order of a child when there is “(i) reasonable cause to believe that the child is in such circumstance or condition that his or her continuing in said place of residence or in the care and custody of the parent or person legally responsible for the child’s care presents an imminent danger to the child’s life or health; and (ii) there is not time enough to apply for an order under Section 1022” of Article 10 of the FCA.¹¹⁵

The FCA authorizes the Family Court to order the removal of a child after the filing of a child protection petition, pursuant to FCA section 1027.¹¹⁶ When a child has been removed without a court order or there has been a hearing in which the respondent was not present or represented by counsel, the Family Court shall hold a hearing upon application of the child welfare agency, parent, child, or its own motion, no later than the next day, and continuing on successive court days until the court’s decision, to determine whether the child requires continuing removal and protection or should and could be safely returned to their parent.¹¹⁷ However, if the child has not been removed from their parents, the child welfare agency, the child's attorney, or the court on its own motion, may seek a hearing to determine if the child's interests require protection, including whether removal is necessary, scheduled no later than the next day.¹¹⁸ In either case, the court shall immediately inquire of the local social services agency’s efforts to locate relatives of the child for potential placement.¹¹⁹

Section 1028¹²⁰ of the FCA authorizes the parent or child to apply to the Family Court to return a child temporarily removed to the parent, requiring a hearing within three days of the

¹¹¹ N.Y. Soc. Serv. Law, Title 6, § 420 (McKinney).

¹¹² N.Y. Fam. Ct. Act, Article 10, § 1011 (McKinney).

¹¹³ *Id.*

¹¹⁴ *Id.* Article 10, § 1021 (McKinney).

¹¹⁵ *Id.* § 1024 (McKinney).

¹¹⁶ *Id.* § 1027 (McKinney)

¹¹⁷ *Id.* § 1027(a)(i) (McKinney).

¹¹⁸ *Id.* § 1027(a)(iii)

¹¹⁹ *Id.* § 1027 (iv)(b)(i)(McKinney).

¹²⁰ N.Y. Fam. Ct. Act § 1028 (McKinney)

application unless good cause is shown or there has already been a contested 1027 hearing.¹²¹ If a parent waives their right to a hearing at the inception of the case, they may apply at any time during the pendency of their proceedings.¹²²

In *Nicholson v. Scopetta*,¹²³ the landmark New York Court of Appeals decision, the court enunciated and clarified these child removal standards, “recognizing that ‘in many instances removal may do more harm to the child than good,’”¹²⁴ and thus, authorizing the state to remove a child only if there are no reasonable efforts the state could make nor any orders that the court could issue to mitigate risk to the child.¹²⁵ “Moreover, the New York Court of Appeals held that to remove a child, the state must prove that the child would be at *imminent* risk of physical or emotional harm if they were to remain in the parent’s care,”¹²⁶ notwithstanding appropriate reasonable efforts, including exclusionary orders that the court could order, to mitigate the risk.¹²⁷ Notably, this *Nicholson* court held that “the state must demonstrate that the risk of harm to the child in a parent’s care outweighs the considerable harm of removal,”¹²⁸ and thus, ultimately determine that it is contrary to the best interest of the child to remain in the home to justify the child’s removal.

Notably, with respect to pre-petition powers of the family court, according to §1034 of the New York Family Court Act,¹²⁹ a family court judge “may order the child protective service of the appropriate social services district to conduct a child protective investigation as described by the social services law and report its findings to the court: (a) in any proceeding under this article, or (b) in order to determine whether a proceeding under the article should be initiated.”¹³⁰

Before a petition is filed, where there is “reasonable cause to suspect that a child or children’s life or health may be in danger,”¹³¹ child protective services may seek a court order based upon:

¹²¹ *Id.* § 1028(a)(ii) (McKinney).

¹²² *Id.*

¹²³ *Nicholson v. Scopetta*, 3 N.Y.3d 357, 375 (2004).

¹²⁴ *Id.*

¹²⁵ *Id.* at 378.

¹²⁶ N.Y. Fam. Ct Act § 1027[b][i]; Melissa Friedman & Daniella Rohr, *Reducing Family Separation in New York City: The COVID-19 Experiment and a Call for Change*, 123 COLUM. L. REV. FORUM 52, 56-57 (2023), https://columbialawreview.org/wp-content/uploads/2023/03/Friedman-Rohr-Reducing_family_separations_in_new_york_city.pdf.

¹²⁷ Melissa Friedman & Daniella Rohr, *Reducing Family Separation in New York City: The COVID-19 Experiment and a Call for Change*, 123 COLUM. L. REV. FORUM 52, 56-57 (2023), https://columbialawreview.org/wp-content/uploads/2023/03/Friedman-Rohr-Reducing_family_separations_in_new_york_city.pdf.

¹²⁸ N.Y. Fam. Ct. Act § 1027[b][iii], [iv]; See 820 N.E.2d 852 (N.Y. 2004); Melissa Friedman & Daniella Rohr, *Reducing Family Separation in New York City: The COVID-19 Experiment and a Call for Change*, 123 COLUM. L. REV. FORUM 52, 56-57 (2023), https://columbialawreview.org/wp-content/uploads/2023/03/Friedman-Rohr-Reducing_family_separations_in_new_york_city.pdf.

¹²⁹ N.Y. Fam. Ct. Act § 1034 (McKinney).

¹³⁰ N.Y. Fam. Ct. Act § 1034 (1)(a)(v) (McKinney).

¹³¹ N.Y. Fam. Ct. Act § 1034(2)(a)(i) (McKinney).

a report of suspected abused or maltreatment and any information the investigator learns during the investigation,¹³² if the investigator is “unable to locate the child” or has been denied access to the child or household,¹³³ and the parent has been informed by the investigator that when “denied sufficient access to the child or other children in the household, the child protective investigator may consider seeking an immediate court order to gain access to the child or children without further notice to the parent or other persons legally responsible.”¹³⁴

The procedures for granting these orders are the same as a search warrant under article six hundred and ninety of the New York Criminal Procedure Law.¹³⁵ Upon considering all relevant information, the court shall decide what actions are necessary “[that] will be the least intrusive to the family.”¹³⁶ Importantly, the court must be “available at all hours to hear such requests.”¹³⁷ And, if the court grants the order, the child protective investigator must prepare a report for the court, including their findings and any action that taken within three business days.¹³⁸

Article 10 of the FCA further defines child abuse, neglect, and other key terms commonly used in investigations, reports, and Family Court child protection petitions,¹³⁹ while mandating New York’s procedural and substantive law for the adjudication of Family Court child protection petitions filed by child welfare agencies.¹⁴⁰ The FCA further provides the options for permanency planning required when children are removed from their homes.¹⁴¹ Possible permanency plans for children include return to parent(s); placement for adoption with the local social services official filing a petition for termination of parental rights; referral for legal guardianship as a permanent placement with a fit and willing relative; or placement in another planned permanent living arrangement.¹⁴²

Section 1012 of the FCA provides definitions for the terms used in the Act.¹⁴³ Section 1012(e) defines an “abused child” as “a child, less than eighteen years of age, whose parents or other person legally responsible for their care inflicts, or allows to be inflicted, or creates or allows to be created, a physical injury, by other than accidental means.”¹⁴⁴ The injury must create a substantial risk of death, serious disfigurement, or protracted impairment of physical or emotional health.¹⁴⁵ This definition extends to children whose parent, or person legally

¹³² N.Y. Fam. Ct. Act § 1034(2)(A)(McKinney).

¹³³ N.Y. Fam. Ct. Act § 1034 (2)(b)(McKinney).

¹³⁴ N.Y. Fam. Ct. Act § 1034(2)(c) (McKinney).

¹³⁵ N.Y. Fam. Ct. Act § 1034(c) (McKinney).

¹³⁶ N.Y. Fam. Ct. Act § 1034(e)(McKinney).

¹³⁷ N.Y. Fam. Ct. Act § 1034(f) (McKinney).

¹³⁸ N.Y. Fam. Ct. Act § 1034(g) (McKinney).

¹³⁹ N.Y. Fam. Ct. Act § 1012.

¹⁴⁰ *Id.*, Articles 10-10-A.

¹⁴¹ N.Y. Fam. Court Act § 1089; 18 NYCRR § 430.12.

¹⁴² *Id.*

¹⁴³ N.Y. Fam. Ct. Act § 1012 (McKinney).

¹⁴⁴ *Id.* at § 1012(e) (McKinney).

¹⁴⁵ *Id.* at § 1012(e) (McKinney).

responsible for their care, allows or permits a child to engage in criminal acts (specified in the statute) or permits the child to engage in activities that render the child a victim of sex or person trafficking.¹⁴⁶

Section 1012(f) of the FCA defines a “neglected child” as “a child, less than eighteen years of age, whose physical, mental, or emotional condition has been impaired or is in imminent danger of becoming impaired because of their parent or person legally responsible for their care,”¹⁴⁷ “failing to exercise a minimum degree of care,”¹⁴⁸ or abandoning the child, as defined further by statute.¹⁴⁹ Failure to exercise a minimum degree of care can take the form of failing to supply the child with adequate food, clothing, shelter, education, or medical, dental, optometric, or surgical care, though financially able to or offered financial or other reasonable means to do so.¹⁵⁰ Failure to exercise a minimum degree of care can be demonstrated by failing to provide the child proper supervision or guardianship, by unreasonably inflicting or allowing harm to be inflicted, when inflicting excessive corporal punishment, misusing drugs, misusing alcohol, or by other serious nature requiring aid of the court.¹⁵¹

In *Nicholson v. Scoppetta*,¹⁵² the New York Court of Appeals held that a party seeking to establish neglect of a child must show, by a preponderance of the evidence, that the child's physical, mental, or emotional condition has been impaired or is in imminent danger of becoming impaired and that the actual or threatened harm is a consequence of the parent or caretaker failure to exercise a minimum degree of care in providing the child with supervision or guardianship.¹⁵³ The element of the proof of actual or imminent danger of physical, emotional, or mental impairment requires serious or potentially serious harm, not just undesirable parent behavior. Imminent danger must be near or impending, not merely possible.¹⁵⁴ There must be a link or causal connection between the factual basis for the neglect petition and the circumstances causing the child's impairment or imminent danger of impairment.¹⁵⁵ Furthermore, such impairment must be clearly attributable to the unwillingness or inability of the respondent to exercise a minimum degree of care towards the child, and that “the failure must be actual, not threatened.”¹⁵⁶ Applying these rules to the facts in *Nicholson*, the court held that evidence that a caretaker allowed a child to witness domestic abuse was insufficient, without more, to satisfy the statutory definition of neglected child.¹⁵⁷ Although

¹⁴⁶ *Id.* at §1012(e)(iii)(a) (McKinney).

¹⁴⁷ *Id.* at § 1012(f)(i)(McKinney).

¹⁴⁸ *Id.* at §1012(f)(i)(McKinney).

¹⁴⁹ *Id.* at § 1012(f)(ii)(McKinney).

¹⁵⁰ *Id.* at § 1012(f)(i)(A) (McKinney).

¹⁵¹ *Id.* at § 1012(f)(i)(B) (McKinney).

¹⁵² *Nicholson v. Scoppetta*, 3 N.Y.3d 357, (2004).

¹⁵³ *Id.* at 368.

¹⁵⁴ *Id.* at 369.

¹⁵⁵ *Id.*

¹⁵⁶ *Id.* at 370.

¹⁵⁷ *Id.* at 368.

emotional injury from witnessing domestic abuse can rise to the level of neglect and justify removal, witnessing domestic abuse alone does not give rise to any presumption of injury.¹⁵⁸

Lastly, section 262 of the FCA outlines the right to counsel for indigent persons in Family Court proceedings,¹⁵⁹ including Article 10 of the FCA, if financially unable to obtain counsel.¹⁶⁰

International Human Rights Law:

On November 20, 1989 the United Nations General Assembly (UN) adopted the Convention on the Rights of the Child.¹⁶¹ The Convention contains 54 articles, including articles recognizing the right of the child to “know and be cared for by his or her parents,”¹⁶² the right of a child “who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child’s best interests,”¹⁶³ and the duty of states to “render appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities.”¹⁶⁴ Currently, every member of the UN except the United States has ratified the convention.¹⁶⁵ Despite playing an active role in drafting the convention and signing it in 1995, the United States has yet to ratify the convention.¹⁶⁶

The International Covenant on Civil and Political Rights (ICCPR) and the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), both ratified by the United States, guarantee the right to equal treatment and protection under law, without discrimination along race, gender, and other lines.¹⁶⁷ The Committee on the Elimination of Racial Discrimination, which interprets and monitors compliance with the ICERD, has specifically stated that “indirect—or de facto—discrimination occurs where an apparently neutral provision, criterion or practice would put persons of a particular racial, ethnic or national origin at a disadvantage compared with other persons, unless that provision, criterion or practice

¹⁵⁸ *Id.* at 381.

¹⁵⁹ N.Y. Fam. Ct. Act § 262 (McKinney).

¹⁶⁰ *Id.* § 262(a)(i) (McKinney).

¹⁶¹ United Nations Convention on the Rights of the Child, Nov. 20, 1989, 1577 U.N.T.S. 3, <https://treaties.un.org/doc/Publication/MTDGS/Volume%20I/Chapter%20IV/IV-11.en.pdf>.

¹⁶² *Id.* at Art. 8(1).

¹⁶³ *Id.* at Art. 9(3).

¹⁶⁴ *Id.* at Art. 18(2).

¹⁶⁵ United Nations Convention on the Rights of the Child, Nov. 20, 1989, 1577 U.N.T.S. 3, <https://treaties.un.org/doc/Publication/MTDGS/Volume%20I/Chapter%20IV/IV-11.en.pdf>.

¹⁶⁶ *Ibid.*

¹⁶⁷ International Covenant on Civil and Political Rights, arts. 2(1), 26; International Convention on the Elimination of All Forms of Racial Discrimination, adopted December 21, 1965, G.A. Res. 2106 (XX), annex, 20 U.N. GAOR Supp. (No. 14) at 47, U.N. Doc. A/6014 (1966), 660 U.N.T.S. 195, entered into force January 4, 1969, ratified by the United States on October 21, 1994, art. 1; US Const. amend. XIV.

is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary.”¹⁶⁸

The ICCPR and the Universal Declaration of Human Rights (UDHR) both recognize the family as “the natural and fundamental group unit of society” entitled to state protection and assistance.¹⁶⁹ International human rights law protects everyone, including children, from arbitrary interference in the family or home.¹⁷⁰ Under the ICCPR, children have the right to “such measures of protection as are required by [their] status as a minor, on the part of [their] family, society and the State.”¹⁷¹ Families are “entitled to protection by society and the State.”¹⁷²

The Committee on the Elimination of Racial Discrimination commented specifically on racial discrimination in the US child welfare system in its 2022 Concluding Observations after reviewing the United States’ periodic compliance report. The committee expressed concern with “disproportionate number of children of racial and ethnic minorities removed from their families and placed in foster care, in particular children of African descent and Indigenous children ... [and] that families of racial and ethnic minorities are subjected to disproportionately high levels of surveillance and investigation and are less likely to be reunified with their children,” and urged the US to “take all appropriate measures to eliminate racial discrimination in the child welfare system, including by amending or repealing laws, policies and practices that have a disparate impact on families of racial and ethnic minorities, such as the Child Abuse Prevention and Treatment Act, the Adoption and Safe Families Act and the Adoption Assistance and Child Welfare Act ... [and] to hold hearings, including congressional hearings, to hear from families who are affected by the child welfare system.”¹⁷³

Similarly, the UN Human Rights Committee which monitors the implementation of the ICCPR commented on the racial discrimination in the US child welfare system in its 2023 concluding observations after reviewing the United States’ compliance report. The Committee expressed

¹⁶⁸ Committee on the Elimination of Racial Discrimination, “Consideration of Reports Submitted by States Parties Under Article 9 of the Convention, Concluding Observations, United States of America,” U.N. Doc. CERD/C/USA/CO/6, May 8, 2008, <http://www2.ohchr.org/english/bodies/cerd/docs/co/CERD-C-USA-CO-6.pdf> (accessed October 21, 2022), para. 10.

¹⁶⁹ International Covenant on Civil and Political Rights, art. 23(1); Universal Declaration of Human Rights, adopted December 10, 1948, G.A. Res. 217A(III), U.N. Doc. A/810 at 71 (1948), art. 16(3). See also International Covenant on Economic, Social and Cultural Rights (ICESCR), adopted December 16, 1966, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 49, U.N. Doc. A/6316 (1966), 993 U.N.T.S. 3, entered into force January 3, 1976, art. 10(1); CRC, pmb. (Family is “the fundamental group of society.”).

¹⁷⁰ Universal Declaration of Human Rights, art. 12; ICCPR, art. 17; CRC, art. 16.

¹⁷¹ International Covenant on Civil and Political Rights, adopted December 16, 1966, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force March 23, 1976, ratified by the United States on June 8, 1992, art. 24(1).

¹⁷² International Covenant on Civil and Political Rights, art. 23(1).

¹⁷³ Committee on the Elimination 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, September 21, 2022, https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CERD%2fC%2fUSA%2fCO%2f10-12&Lang=en (accessed October 28, 2022), paras. 43-44.

concern “at reports of the high number of children who are separated from their families and placed in the child welfare facilities...[and] at the overrepresentation of children belonging to racial and ethnic minorities in the child welfare system, in particular children of African descent and indigenous children.” The Committee echoed recommendations made by the Committee on the Elimination of Racial Discrimination and urged the US to “adopt measures to reduce the harmful impact of child welfare interventions, increase due process protections for parents, and review poverty-related circumstances or lack of financial resources as factors that can trigger child welfare interventions, including by amending or repealing the Child Abuse Prevention and Treatment Act, the Adoption and Safe Families Act and the Adoption Assistance and Child Welfare Act.”¹⁷⁴

Purpose and Scope:

The purpose of this project is to allow the Committee to advise the Commission regarding the New York child welfare system and its impact on Black children and families. The Committee intended to examine this topic broadly. At the outset, the Committee was interested in examining these areas:

- (i) the extent and nature of racial disproportionalities and disparities in the New York child welfare system; particularly as they impact Black children and families;
- (ii) the extent and nature of immediate, long-term, and inter-generational impacts of the New York welfare system on Black children and families;
- (iii) the outcomes and effectiveness of the administration and enforcement of the New York child welfare system in the protection of Black children, including its safety results, family reunification and efficacy in achieving permanency outcomes; and
- (iv) potential solutions and reforms for addressing racially disparate impacts and outcomes in the New York child welfare system.

The following are initial questions the Committee proposed, related to the Committee’s inquiry by category:

Protected Class and Impact-Related Questions

1. To what extent are Black children disproportionately impacted or unequally treated in the child welfare system?

¹⁷⁴ Committee on the Covenant on Civil and Political Rights, “Concluding observations on the fifth periodic report of the United States of America,” U.N. Doc. CCPR/C/USA/CO/5, November 3, 2023, https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2FC%2FUSA%2FCO%2F5&Lang=en

2. What are the nature and extent of any immediate, long-term, and intergenerational impacts, unintended consequences, and outcomes of New York state's child welfare system on Black children?
3. What root causes and other factors substantially impact disparities and disproportionalities in New York's child welfare system.
4. What role, if any, does structural racism play in the child welfare system, including in the reporting, investigation, removal, and initial Family Court phase of a child protection case?

Enforcement-Related Questions

5. How might the current structure and design of the child protective system contribute to disparities?
6. What is the status of parental right to counsel state-wide and how might it be improved? At what point should this right to counsel attach?
7. To what degree do new, existing and/or targeted policies fail to address the potential intersections between structural racism, cross-system impacts, over-criminalization of Black children, and child welfare system interventions?

Family Court-Related Questions

8. How might the Family Court more effectively address the racial disparities and harmful impacts of removal on Black children, and families? Specifically, what reforms to the Family Court and child welfare agencies are recommended to reduce the number of Black children from entering the foster care system?

Solutions-Related Questions

9. What are the solutions and reforms for addressing the problems of disparate impact and outcomes identified within the New York child welfare system? How effective are they?
10. Are there effective alternatives for addressing child safety and protection other than New York child welfare system intervention to minimize harm to the family?
11. What new, existing, or targeted policies, government intervention, or laws, including those in other jurisdictions, are most promising in addressing any disparate impact or unequal treatment of Black children and youth in the child welfare system?
12. What child welfare interventions occur without judicial oversight?

13. More broadly, how might any identified problems be effectively addressed, and potential harms mitigated?

State Central Register Questions

14. To what degree are Black children and families disproportionately listed on the State Central Register? What steps have been taken to mitigate the harms?
15. What are the various impacts of a State Central Register report on the subject of the report? What are the immediate and long-term impacts of the State Central Register on Black children and families?

Methodology

As a matter of historical precedent, and in order to achieve transparency, Committee studies involve a collection of public, testimonial evidence and written comments from individuals directly impacted by the civil rights topic at hand; researchers and experts that have rigorously studied and reported on the topic; community organizations and advocates representing a broad range of backgrounds and perspectives related to the topic; and government officials tasked with related policy decisions and the administration of those policies.

Committee studies require Committee members to utilize their expertise in selecting a sample of panelists that is the most useful to the purposes of the study and will result in a broad and diverse understanding of the issue. This method of (non-probability) judgment sampling requires Committee members to draw from their own experiences, knowledge, opinions, and views to gain understanding of the issue and possible policy solutions. Committees are composed of volunteer professionals that are familiar with civil rights issues in their state or territory. Members represent a variety of political viewpoints, occupations, races, ages, and gender identities, as well as a variety of background, skills, and experiences. The intentional diversity of each Committee promotes vigorous debate and full exploration of the issues. It also serves to assist in offsetting biases that can result in oversight of nuances in the testimony.

In fulfillment of Committees' responsibility to advise the Commission of civil rights matters in their locales, Committees conduct an in-depth review and thematic analysis of the testimony received and other data gathered throughout the course of their inquiry. Committee members use this publicly collected information, often from those directly impacted by the civil rights topic of study, or others with direct expert knowledge of such matters, to identify findings and recommendations to report to the Commission. Drafts of the Committee's report are publicly available and shared with panelists and other contributors to ensure that their testimony was

accurately captured. Reports are also shared with affected agencies to request for clarification regarding allegations noted in testimony.

For the purposes of this study, **Findings** are defined as what the testimony and other data *suggested, revealed, or indicated* based upon the data collected by the Committee. Findings refer to a synthesis of observations confirmed by majority vote of members, rather than conclusions drawn by any one member. **Recommendations** are specific actions or proposed policy interventions intended to address or alleviate the civil rights concerns raised in the related finding(s). Where findings indicate a lack of sufficient knowledge or available data to fully understand the civil rights issues at hand, recommendations may also target specific directed areas in need of further, more rigorous study. Recommendations are directed to the Commission; they request that the Commission itself take a specific action, or that the Commission forward recommendations to other federal or state agencies, policy makers, or stakeholders.

Findings

In keeping with their duty to inform the Commission of (1) matters related to discrimination or a denial of equal protection of the laws; and (2) matters of mutual concern in the preparation of reports of the Commission to the President and the Congress,¹⁷⁵ the New York Advisory Committee submits the following findings to the Commission regarding New York’s child welfare system and its impact on Black children and families. This report seeks to highlight the most salient civil-rights themes as they emerged from the Committee’s inquiry. A link to the complete meeting transcripts and written testimony received is included in the Appendix for further reference.

Definitions

For this study, the Committee received information from many individuals who were invited to share testimony on New York’s child welfare system and its impact on Black children and families. In this report’s Introduction, Background, and Recommendations sections, the term, “child welfare system,” is used generally to refer to the agencies, courts, organizations, and individuals who respond to claims of child abuse and neglect. To be consistent with terminology speakers used themselves in their remarks and their research, information relating to the child welfare system in this report’s Findings section generally reflect the terms used by the cited contributors, including the “family regulation system,” “family policing system,” “family surveillance system,” and “family destructive system.” Although testimony refers to the “child welfare system” broadly, the focus of this report’s recommendations will be on governmental

¹⁷⁵ 45 C.F.R. § 703..

agencies, as this Committee’s work focuses on policy, practices, and legal changes regarding New York’s child welfare system at the federal, state, and local government levels.

Child Welfare System Overview

The federal Child Abuse Prevention and Treatment Act of 1974 (CAPTA)¹⁷⁶ created the child welfare system as it is generally known today. The system’s goals are children’s safety, permanency, and wellbeing. However, Angela Olivia Burton, Esq. highlighted for the Committee that there is a fundamental mismatch between the system’s stated objectives to support children and the methods of surveillance, regulation, and punishment of parents it uses to achieve those objectives.¹⁷⁷ Ms. Burton noted that these methods are not working nationally or in New York, as documented by the federal government’s own monitoring of progress against goals including safety outcomes, permanency outcomes, and family and child well-being outcomes.¹⁷⁸ Ms. Burton notes that there is broad, bi-partisan agreement that the majority of current requirements and activities in CAPTA “do not and have not had the effect of preventing or treating child abuse.”¹⁷⁹

In order to receive federal funds under CAPTA, states use mandatory reporting, investigation, prosecution, and treatment to address child abuse and neglect concerns, which Ms. Burton noted is an adversarial, prosecutorial, and punitive framework that incentivizes family disruption and “is a primary contributor to traumatic experiences and devastating outcomes documented by people impacted by the system.”¹⁸⁰ She shared that additional federal laws, including the Adoption Assistance and Child Welfare Act of 1980,¹⁸¹ the Multi-Ethnic Placement Act of 1994,¹⁸² the Adoption and Safe Families Act of 1996,¹⁸³ and the Family First Prevention Services Act of 2018¹⁸⁴ have added to the policies, practices, and funding streams created by CAPTA that have resulted in great harm to families, particularly Black families and children in New York.¹⁸⁵

¹⁷⁶ Child Abuse Prevention and Treatment Act of 1974, Pub. L. 93-247, 88 Stat. 4 (1974).

¹⁷⁷ Burton Aug. 20, 2023 Statement, at 1.

¹⁷⁸ Burton Aug. 20, 2023 Statement, at 1, referring to Children’s Bureau, Child and Family Services Review Factsheet, <https://www.acf.hhs.gov/cb/fact-sheet/child-and-family-services-reviews-fact-sheet>, CFSR Aggregate Report, Round 3 Fiscal Years 2015-2018, https://www.acf.hhs.gov/sites/default/files/documents/cb/cfsr_aggregate_report_2020.pdf); see also Children’s Bureau, CFSR Round 3 Report for Legal and Judicial Communities (2021), <https://www.cfsrportal.acf.hhs.gov/resources/round-3-resources/cfsr-round-3-findings#:~:text=CFSR%20Round%203%20Report%20for%20Legal%20and%20Judicial,welfare%20agencies%20and%20the%20legal%20and%20judicial%20communities>.

¹⁷⁹ Burton Aug. 20, 2023 Statement, at 7.

¹⁸⁰ *Ibid.*, at 1, 5.

¹⁸¹ Adoption Assistance and Child Welfare Act of 1980, Pub. L. 96-272, 94 Stat. 500 (1980).

¹⁸² Multi-Ethnic Placement Act of 1994 (P.L. 103-382)

¹⁸³ Adoption and Safe Families Act of 1997, Pub. L. 105-89, 111 Stat. 2115 (1997).

¹⁸⁴ Bipartisan Budget Act of 2018, Pub. L. 115-123, § 50702, 132 Stat 64, 232 (2018).

¹⁸⁵ *Ibid.*, at 1.

The New York State Child Protective Services Act of 1973¹⁸⁶ was established to protect children from harm and/or death in the context of child abuse or sexual abuse and neglect.¹⁸⁷ The Child Protective Services Act created the NY Statewide Register of Child Abuse and Maltreatment (SCR), also commonly referred to as the “hotline,” to coordinate referrals for investigations to counties across New York state.¹⁸⁸ In New York, the New York State Office of Child and Family Services (OCFS) is the state agency responsible for operating the hotline and overseeing a range of programs and services, including childcare and juvenile justice programming in addition to child welfare.

When child abuse or neglect is suspected, an individual calls the hotline, OCFS staff screen the report for abuse and/or neglect, and then direct accepted reports to local counties to respond.¹⁸⁹ OCFS is charged with promoting the safety and well-being of children, families, and communities.¹⁹⁰ OCFS supervises 58 local departments of social services (LDSSs), including child protective services (CPS) offices in each county. The five counties or boroughs in New York City form one CPS office, which is the New York City Administration for Children’s Services (ACS).¹⁹¹

Nationally, child welfare is a multi-billion-dollar industry, with President Biden’s 2024 budget projected to include new funding of 19 billion dollars over 10 years, and, locally, in 2023, New York City projected 637 million dollars for the foster care budget.¹⁹² In 2018, the federal government supplied \$12.8 billion in addition to the \$18.2 billion spent in state and local funds on the child welfare system, in which 65% of all federal, state, and local funds were spent on family separation: 45% on out-of-home placement, and 19% on adoption and guardianship.¹⁹³ In 2021, 80% of federal funding to states went towards family separation, (\$5.796 billion for foster care and \$4.073 billion for adoption), and 20% of federal funds went to child and family

¹⁸⁶ New York State Child Protective Services Act of 1973

¹⁸⁷ Brettschneider Testimony, Nov. 18, 2022 Briefing p. 15; Brettschneider Nov. 18, 2022 Statement, at 1.

¹⁸⁸ Brettschneider Nov. 18, 2022 Statement, at 2.

¹⁸⁹ Dannhauser Testimony, May 19, 2023 Briefing, p. 10.

¹⁹⁰ Miles-Gustave Testimony, May 19, 2023 Briefing, p. 6.

¹⁹¹ Miles-Gustave Testimony, May 19, 2023 Briefing, pp. 6-7; Dannhauser Testimony, May 19, 2023 Briefing, p. 10.

¹⁹² Charles Testimony, July 21, 2022 Briefing, p. 12.

¹⁹³ Burton Aug. 20, 2023 Statement, at 5, referring to data outlined in Angela Olivia Burton and Angeline Montauban, Toward Community Control of Child Welfare Funding: Repeal the Child Abuse Prevention and Treatment Act and Delink Child Protection from Family Well-Being, *Columbia Journal of Race and Law* (2021), <https://journals.library.columbia.edu/index.php/cjrl/article/view/8747>; Angela Olivia Burton and Joyce McMillan, Liberate the Black Family from the Family Policing: A Reparations Perspective on Ending Anti-Black Racism in “Child Welfare” (2022), <https://publications.pubknow.com/view/288644440/36/>; and Angela Olivia Burton and Joyce McMillan, How judges can use their discretion to combat anti-black racism in the United States family policing system, *Family Court Review* (2023), <https://onlinelibrary.wiley.com/doi/epdf/10.1111/fcre.12706>.

services (\$1.252 billion), services to older and former foster youth programs (\$586 million), and grants, research and technical assistance (\$253 million).¹⁹⁴

Finding I: The modern child welfare system was formed and exists within the context of America's history of racial bias.

The Committee received testimony from multiple contributors who shared that the foundation of the current child welfare system has links to slavery, when children were routinely separated from their families.¹⁹⁵ Dāi, a parent who shared her experiences with the Committee for this study, noted: “[w]e know slave masters ripped children away from their mothers spitefully, and history is repeating itself. It's becoming apparent every day that American parents are facing civil rights violations, especially parents of color or parents who are financially inconvenienced.”¹⁹⁶

Separating Black children from their families during the slave trade, the War on Drugs targeting Black people,¹⁹⁷ inequitable school discipline rules and the resulting school to prison pipeline have disproportionately impacted Black families and contributed to their higher involvement in the child welfare system than White families.¹⁹⁸ Ms. Day noted that New York State specifically has extensive ties to colonization, human trafficking and enslavement of African people, and the State has benefitted economically from practices that facilitated the trade of Black individuals regardless of family ties and basic humanity.¹⁹⁹

Emma Ketteringham, managing director of the Family Defense Practice at the Bronx Defenders, highlighted that centuries of racism have perpetuated malignant myths and stereotypes about Black parenthood, leading to today's reality where, even according to the Administration of Children's Services, “Blackness is an indicator of risk at every stage” of reporting, investigating, and removing Black children from their families.²⁰⁰

Historical constructions of race have shaped societal attitudes and perceptions that permit the acceptance of racial inequities within society, which is persistent today.²⁰¹ Ronald E. Richter,

¹⁹⁴ Ibid.

¹⁹⁵ NY State Bar Association Dec. 7, 2022 Statement, at 8; Children's Rights. *Fighting Institutional Racism at the Front End of the Child Welfare Systems: A Call to Action*. May 15, 2021, at 7, Apr. 11, 2023 Submission by Emma Ketteringham; Roberts Testimony, Feb. 17, 2023 Briefing, p. 5; Day Testimony, Apr. 21, 2023 Briefing, pp. 13-14; Richter Testimony, May. 19, 2023 Briefing, p. 13; Ketteringham Testimony, Apr. 21, 2023 Briefing, p. 10; Dorantes Testimony, May 19, 2023 Briefing, p. 5; Grant Testimony, Apr. 19, 2023 Briefing, p. 7; New York City Article 10 Family Defense Organizations Aug. 19, 2023 Statement, at 2.

¹⁹⁶ Dāi April 26, 2023 Statement, at 1.

¹⁹⁷ Children's Rights. *Fighting Institutional Racism at the Front End of Child Welfare Systems: A Call to Action*. May 15, 2021, at 11, Apr. 11, 2023 Submission by Emma Ketteringham; Pregnancy Justice August 19, 2023 Statement, at 2.

¹⁹⁸ Miles-Gustave Testimony, May 19, 2023 Briefing, p. 7.

¹⁹⁹ Day Testimony, Apr. 21, 2023 Briefing, p. 14.

²⁰⁰ Ketteringham Testimony, Apr. 21, 2023 Briefing, p. 10.

²⁰¹ Day Testimony, Apr. 21, 2023 Briefing, p. 14.

CEO and executive director of JCCA and a former New York City Family Court judge and commissioner of New York City’s Administration for Children’s Services, stated:

Since our founding, we have been undermined by our history of enslaving Black people and massacring Indigenous people, we cannot overstate how much this context matters and must be rectified. For many of us who have spent our lives working in this system, our motivation to protect children and support families originates in our strong belief in equity and in fighting racism.²⁰²

Vannessa Dorantes, commissioner, Connecticut State Department of Children and Families, and Suzanne Miles-Gustave, acting commissioner, New York State Office of Children and Family Services, both acknowledged that historically, racism has played a role in the child welfare system and in society.²⁰³ Acting Commissioner Miles-Gustave stated, “the research presented before this Committee details the long and painful history of the child welfare system built on racist principles, and their continuing negative impact on Black communities.”²⁰⁴

Finding II: Systemic racism impacts and exists in the current child welfare system.

Black people in the United States have faced intentional exclusion from employment, union membership, mortgages, and homeownership, preventing Black families from building wealth²⁰⁵ and contributing to incarceration rates, unemployment, and mental health issues.²⁰⁶ The Committee received testimony that racism across these systems continues to impact New York’s child welfare system and forms the foundation for how it functions.²⁰⁷ Tim Ross, managing partner at Action Research, noted that biases are persistent across the labor, education, criminal justice, and housing sectors, which widen the gap of disparities between Black individuals and other racial groups in the child welfare system:

There’s rigorous research conducted in New York City that shows persistent bias against Black people in social and economic life, including in hiring and employment practices, education, criminal justice, and more. Disparities between Black people and other groups in New York City are present in poverty, unemployment, high school graduation, juvenile criminal justice, and more, and often appear at a young age. Discrimination and disparities lessen opportunities to earn income and build wealth, which help families avoid contact with the child welfare system.²⁰⁸

²⁰² Richter Testimony, May 19, 2023 Briefing, p. 13.

²⁰³ Dorantes Testimony, May 19, 2023 Briefing, p. 5; Miles-Gustave Testimony, May 19, 2023 Briefing, p. 7.

²⁰⁴ Miles-Gustave Testimony, May 19, 2023 Briefing, p. 7.

²⁰⁵ Montauban Testimony, Apr. 19, 2023 Briefing, p. 20; Charles Aug. 20, 2023 Statement, at 2.

²⁰⁶ Charles Testimony, July 21, 2023 Briefing, p. 13; Montauban Testimony, Apr. 19, 2023 Briefing, pp. 20-21.

²⁰⁷ New York City Article 10 Family Defense Organizations Aug. 19, 2023 Statement, at 3; Wexler Testimony, Apr. 21, 2023 Briefing, p. 4; Children’s Rights. *Fighting Institutional Racism at the Front End of Child Welfare Systems: A Call to Action*. May 15, 2021, at 11, Apr. 11, 2023 Submission by Emma Ketteringham; Charles Testimony, July 21, 2023 Briefing, p. 13; Wexler August 18, 2023 Statement, at 13; Charles Aug. 20, 2023 Statement, at 2.

²⁰⁸ Ross Testimony, Feb. 15, 2023 Briefing, p. 9.

Ms. Maxwell, a member of the public, also commented,

Systemic racism is still very much at play in New York City and New York state at large, but particularly in New York City where you see segregation not only in the school system but in the neighborhoods and access to opportunity.²⁰⁹

Dominique Day with the United Nations Working Group of Experts on People of African Descent and attorney and executive director at DAYLIGHT, explained how systemic racism becomes a part of society. She noted that systemic racism becomes prevalent due to cultural conditioning that serves to reinforce and strengthen implicit biases in assuming culpability of Black families, and failing to acknowledge this background skirts accountability and true reform:

We are left with a question of how family policing systems are interrogating their own reinforcement of systemic racism and white supremacy in the name of the best interest of the child's standard. And the answer overwhelmingly is that they are not or that they pay lip service to this at best.²¹⁰

Ms. Day asserted that denying racism's existence contributes to the continuation of racial disparities and unequal outcomes in the child welfare system.²¹¹ Shereen White, director of advocacy & policy at Children's Rights, Org., cited a report by the International Convention on the Elimination of All Forms of Racial Discrimination that found that systemic and structural racism exist in the U.S. child welfare system which disproportionately harms Black children and families.²¹²

Hina Naveed, Aryeh Neier fellow at the American Civil Liberties Union and Human Rights Watch, highlighted that international law protects people from arbitrary interference in the family or home, with both the International Covenant on Civil and Political Rights (ICCPR),²¹³ ratified by the United States, and the Universal Declaration of Human Rights (UDHR)²¹⁴ recognizing the family to state protection and assistance.²¹⁵ “[W]e are cognizant of the inherent

²⁰⁹ Maxwell Testimony, May 19, 2023 Briefing, p. 32.

²¹⁰ Day Testimony, Apr. 21, 2023 Briefing, p. 14.

²¹¹ Ibid., pp. 14-15.

²¹² White Testimony, Apr. 21, 2023 Briefing, p. 21, referring to International Convention on the Elimination of All Forms of Racial Discrimination report “*Concluding observations on the combined tenth to twelfth reports of the United States of America.*” Sept, 21, 2022.

<https://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6OkG1d%2FPPrICAqhKb7yhspzO19YwTXeABruAM8pBAK1xYN2wdGpGmJxT4qZ%2B%2Fzhl9s68flbQK27IwmDC1j6l212QsTq%2B%2FgbOEik44QIDIYZdvGiNLspvbKJ1mADJtn5a1Ojg9FFaST8zoSIBL%2FEgHQ%3D%3D>

²¹³ International Covenant on Civil and Political Rights (ICCPR), adopted December 16, 1966, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force March 23, 1976, ratified by the United States on June 8, 1992, art. 23(1).

²¹⁴ Universal Declaration of Human Rights (UDHR), adopted December 10, 1948, G.A. Res. 217A(III), U.N. Doc. A/810 at 71 (1948), art. 16(3). See also International Covenant on Economic, Social and Cultural Rights (ICESCR), adopted December 16, 1966, G.A. Res. 2200A.

²¹⁵ Naveed Aug. 19, 2023 Statement, at 7.

racism in the system, and we'll be working as best as we can to ameliorate the trauma that is imposed by the government response to these cases,"²¹⁶ added Assemblyman Hevesi.

YouthNPower: Transforming Care, a collaboration of the Children's Defense Fund-New York, the Public Science Project at the CUNY Graduate Center, the Center for the Study of Social Policy, and New Yorkers for Children, cautioned the Committee against viewing child welfare system in a vacuum separate from other systems when developing findings and recommendations:

What our collective experience at YouthNPower shows is that we need to be thinking about the harms – and the future – in much bigger ways that address how child welfare funnels young people into *other failing systems*: criminal legal, mental health, as well as public housing and shelters. Once we widen our lens, we have room for our collective vision and recommendations.²¹⁷

The New York City Article 10 Family Defense Organizations, which include The Bronx Defenders, Brooklyn Defender Services, Center for Family Representation, and Neighborhood Defender Service of Harlem also stressed the importance of understanding systemic impacts on the child policing system:

Black parents face the loss of their children for reasons of poverty or because they are experiencing a condition created and/or exacerbated by multigenerational poverty and structural inequality, such as a lack of stable and adequate housing or income, lack of access to medical or child care, a substance use disorder, or a mental health condition. Rather than addressing the social deficits, economic inequality, and structural racism that plagues families targeted by the family policing system, the system leans on racist narratives about Black parenthood and familial bonds, and responds with child removal, family separation and behavior modification services. What is more, Black parents are not given the benefit of the doubt and are rarely believed by the caseworkers, their supervisors, social service providers and court-system prosecutors that purportedly represent the interests of the family but who actually treat these cases more like criminal prosecutions.²¹⁸

The Family Policy Project also stressed the importance of considering multi-system approaches to addressing child welfare, noting that all forms of child welfare interventions greatly decreased during COVID-19 while simultaneously economic and housing supports became more accessible were provided, with no indication that NYC children were less safe:²¹⁹

Even as the COVID-19 shutdown inflicted incredible stress on families, it led to unusual generosity and innovation in moving resources directly to people in need. Evictions were banned. Food stamp regulations were changed so that children's lunches became available through EBT cards and families were able to use SNAP for prepared foods. Major economic relief came through unemployment benefits, the federal stimulus, the child tax credit and the excluded workers fund.

²¹⁶ Hevesi Testimony, July 21, 2023 Briefing, p. 8.

²¹⁷ YouthNPower: Transforming Care, Children's Defense Fund-New York August 18, 2023 Statement, at 8.

²¹⁸ New York City Article 10 Family Defense Organizations Aug. 19, 2023 Statement, at 9.

²¹⁹ NYC Family Policy Project August 20, 2023 Statement, at 13.

Foundations and nonprofits gave away millions in direct cash assistance with few strings attached.²²⁰

Finding III: New York’s child welfare system prioritizes cultural practices often embodied in White families over cultural practices often embodied in Black families without assessing for objective standards regarding appropriate care for children.

The Committee received testimony noting that flawed standards are founded on racial norms relating to White nuclear, middle class family structures rather than objective standards for assessing imminent risk, which unfairly denigrate Black families who often rely on extended kinship networks for multiple reasons, including economic support.²²¹ Ericka Brewington, a parent who shared her experience with the Committee, shared how Black and White families are viewed differently:

ACS comes into the lives of families and wants to police how we parent our children. They want to tell us we're parenting wrong. They fail to recognize that we are all different nationalities with different values. This doesn't mean we're parenting wrong, it means we were all raised differently. I've always done things to make sure my children are happy and healthy, but that did not matter to them. According to this system, if you have money, that means you're a better parent. According to this system, if you're white, that means you're a better parent. Everything I do is for the betterment of my children. But if you're Black or Brown, once ACS knock[s] on your door, you are already guilty.²²²

The avoidance or denial of addressing race allows decisionmakers to make “race-based decisions” [in the child welfare system] instead of assessing imminent risks.²²³ Ms. Day highlighted the importance of reviewing the standards for what “best interests of the child” actually means, stressing that this term should not be used as a justification to deny children access to their families and cultures unless there is truly imminent harm.²²⁴

Resources are allocated to a system that fails to adequately protect children, disregarding various intersecting factors that actually harm children, according to Ms. Ketteringham.²²⁵ These factors include underfunded schools, daily police violence, unsafe and unstable housing, inadequate access to quality healthcare and childcare, family poverty which includes insufficient access to food, and exposure to polluted air and water.²²⁶ The intersections and accumulation of these factors impact children’s well-being and development and need to be

²²⁰ NYC Family Policy Project August 20, 2023 Statement, at 13.

²²¹ Day Testimony, Apr. 21, 2023 Briefing, p. 15; Mitchell Testimony, Apr. 21, 2023 Briefing, p. 3.

²²² Brewington Testimony, Apr. 19, 2023 Briefing, p. 24.

²²³ Day Testimony, Apr. 21, 2023 Briefing, p. 15.

²²⁴ Ibid., p. 13.

²²⁵ Ketteringham Testimony, Apr. 21, 2023 Briefing, p. 22.

²²⁶ Ibid., p. 22.

seriously considered by a child welfare system that is designed to provide protection for children.²²⁷

Ms. Day stated that Black families' cultures and family structure are erased while White norms and values are prioritized without recognizing and valuing the diverse experiences and practices within Black families.²²⁸ Dawne Mitchell, chief attorney, Juvenile Rights Practice, of the Legal Aid Society in New York City, also highlighted that child welfare system workers tend to view the nuclear family structure, which is common among White middle class families, as the norm for healthy family structures.²²⁹ However, extended family household structures that are common among Black families are seen as unfamiliar and in need of being corrected.²³⁰ The RISE Participatory Action Research Project, led by six parents directly impacted by the family policing system, found that 74% of parents surveyed felt their cultural practices and values were not respected by ACS,²³¹ with 88% of parents noting they did not trust the child welfare system to support the best interests of their family.²³² They note:

Research participants, like parents involved with Rise more broadly, could not have been clearer that they wanted support and resources to come from people, networks and organizations outside of ACS, an agency they don't trust to provide family support.²³³

Failing to respect how Black families and communities support each other adversely impacts Black children's feelings of self-worth and value across generations.²³⁴ The Committee received testimony to abolish the current child welfare system,²³⁵ replacing it with financial investments alongside childcare, workforce, and housing supports in under-resourced communities, and support for community care networks.²³⁶ Impacted parents identified community care networks that include neighbors, friends, family, and faith leaders, along with places that include faith-based groups, community centers, and online groups as meaningful and impactful sources of support through challenges.²³⁷

²²⁷ Ibid., p. 22.

²²⁸ Day Testimony, Apr. 21, 2023 Briefing, p. 15.

²²⁹ Mitchell Testimony, Apr. 21, 2023 Briefing, p. 3.

²³⁰ Ibid., pp. 3-4.

²³¹ RISE and Takeroot Justice. *An Unavoidable System: The Harms of Family Policing and Parents' Vision for Investing in Community Care*. Fall 2021, at 14, Available at <https://takerootjustice.org/wp-content/uploads/2021/09/AnUnavoidableSystem.pdf>, Aug. 20, 2023 Submission by Jeannette Vega.

²³² Ibid., at 16.

²³³ Ibid.

²³⁴ Mitchell Testimony, Apr. 21, 2023 Briefing, p. 4; RISE and Takeroot Justice. *An Unavoidable System: The Harms of Family Policing and Parents' Vision for Investing in Community Care*. Fall 2021, at 14-15, Available at <https://takerootjustice.org/wp-content/uploads/2021/09/AnUnavoidableSystem.pdf>, Aug. 20, 2023 Submission by Jeannette Vega.

²³⁵ RISE and Takeroot Justice. *An Unavoidable System: The Harms of Family Policing and Parents' Vision for Investing in Community Care*. Fall 2021, at 35, Available at <https://takerootjustice.org/wp-content/uploads/2021/09/AnUnavoidableSystem.pdf>, Aug. 20, 2023 Submission by Jeannette Vega.

²³⁶ Ibid., at 3, 16.

²³⁷ Ibid., at 17.

Finding IV: Black families and their children are disproportionately represented at every stage of decision making and intervention in the child welfare system.

Black children and families are more likely to be reported, investigated, and separated by New York’s child welfare system than any other racial or ethnic group, with the disproportionate representation of Black families increasing the longer a family is involved with the child welfare system.²³⁸ Black families experience harsher outcomes than other racial groups from the moment when the first report is filed, and those impacts become more severe at every stage of involvement in the system.²³⁹ Black children and their families are also more likely than other racial or ethnic groups to have ongoing contact with the child welfare system.²⁴⁰

The Committee received extensive testimony that these disparities are due to ongoing racial biases.²⁴¹ Black and Indigenous families are more likely to be reported for child abuse and neglect than white families.²⁴² For example, Black children presenting at medical facilities with fractures are reported to child protection services (CPS) far more frequently than white children with similar injuries.²⁴³ Naomi Schaefer Riley, senior fellow at the American Enterprise Institute, disagreed, noting that the child welfare system is not biased nor racist, but it is instead doing its job as a government agency charged with protecting children, noting, “the truth is that Black children disproportionately need the help of our agencies and telling agency workers that investigating or removing Black children is a sign of bias is encouraging them to leave Black children in dangerous situations.”²⁴⁴

The graph below shows the disproportionate representation of Black families compared to Latino families at each stage of the child welfare system in New York State and in New York City in 2021, and also highlights how the disparities increase with further involvement in the system:

²³⁸ NY State Bar Association Dec. 7, 2022 Statement, at 13; Ross Testimony, Feb. 15, 2023 Briefing, p. 9; Miles-Gustave Testimony, May 19, 2023 Briefing, pp. 7-8; Article 10 Family Defense Organizations in New York City August 19, 2023 Written Statement, at 4; New York Civil Liberties Union, ACLU of New York August 18, 2023 Statement, at 2; NYC Family Policy Project August 20, 2023 Statement, at 2; Naveed Aug. 19, 2023 Statement, at 1.

²³⁹ NY State Bar Association Dec. 7, 2022 Statement, at 13.

²⁴⁰ Children’s Rights. *Are You Listening? Youth Accounts of Congregate Placements in New York State*. January 2023, at 15, Feb. 15, 2023 Submission by Shereen White.

²⁴¹ Lansner Nov. 11, 2022 Statement, at 1; Wallach Dec. 7, 2022 Statement, at 1, referring to NY State Bar Association. Report and recommendations of the Committee on Families and the *Law Racial Justice and Child Welfare*, 2022 NY State Bar Association Dec. 7, 2022 Statement, at 13; Ross Testimony, Feb. 15, 2023 Briefing, p. 9; Roberts Testimony, Feb. 17, 2023; Briefing, p. 5. Miles-Gustave Testimony, May 19, 2023 Briefing, p. 7.

²⁴² Naveed Aug. 19, 2023 Statement, at 2.

²⁴³

²⁴⁴ Riley Testimony, Feb. 15, 2023 Briefing, p. 16.

Disproportionate Impact of the Child Welfare System on Black and Latinx Families in New York City and the Rest of New York State (ROS) in 2021

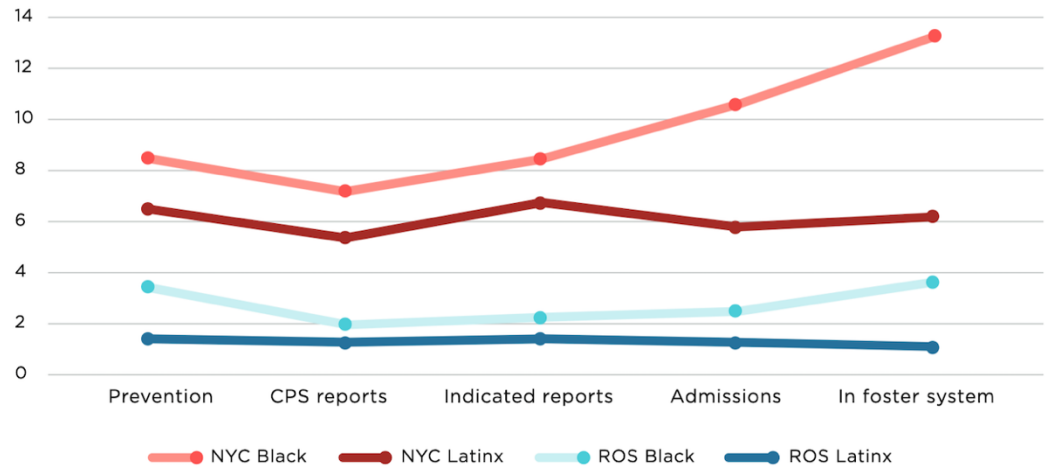
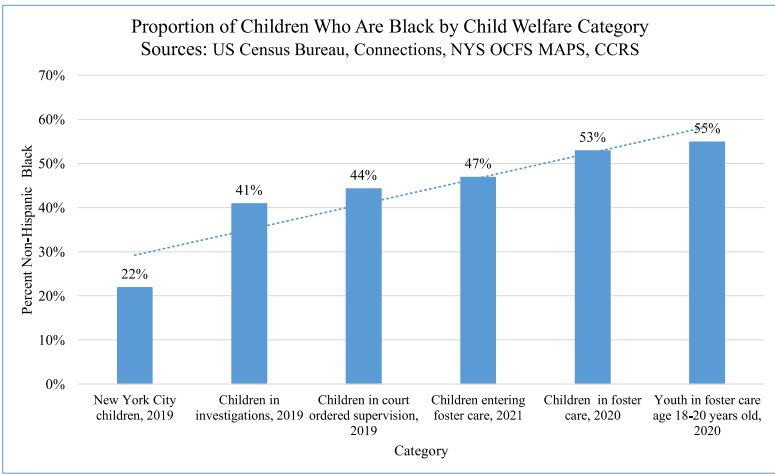


Figure 1: Children’s Rights. Are You Listening? Youth Accounts of Congregate Placements in New York State. January 2023, at 15, Feb. 15, 2023 Submission by Shereen White

Dr. Ross highlighted how the disproportionate representation of Black children in the system increases with the level of involvement in the system.²⁴⁵ In 2019, only 22% of New York’s City children were Black, however, 41% of children involved in investigations in 2019 were Black, and over 53% of children in foster care in 2020 were Black:

²⁴⁵ Ross Testimony, Feb. 15, 2023, Briefing Slides, at 16.

Disproportionality increases with the level of involvement in New York City's child welfare system



- Though only 22 percent of New York City children are Black, Black children are 41 percent of children in investigations.
- 53 percent of children in foster care are Black
- 55 percent of those at risk of the worst long term outcomes, youth likely to age out of foster care, are Black



Figure 2: Ross Testimony, Feb. 15, 2023, Briefing Slides, at 16

The NYC Family Policy Project provided data showing that Black and Latino children are over-represented in investigations and foster care, while White and Asian children are under-represented:

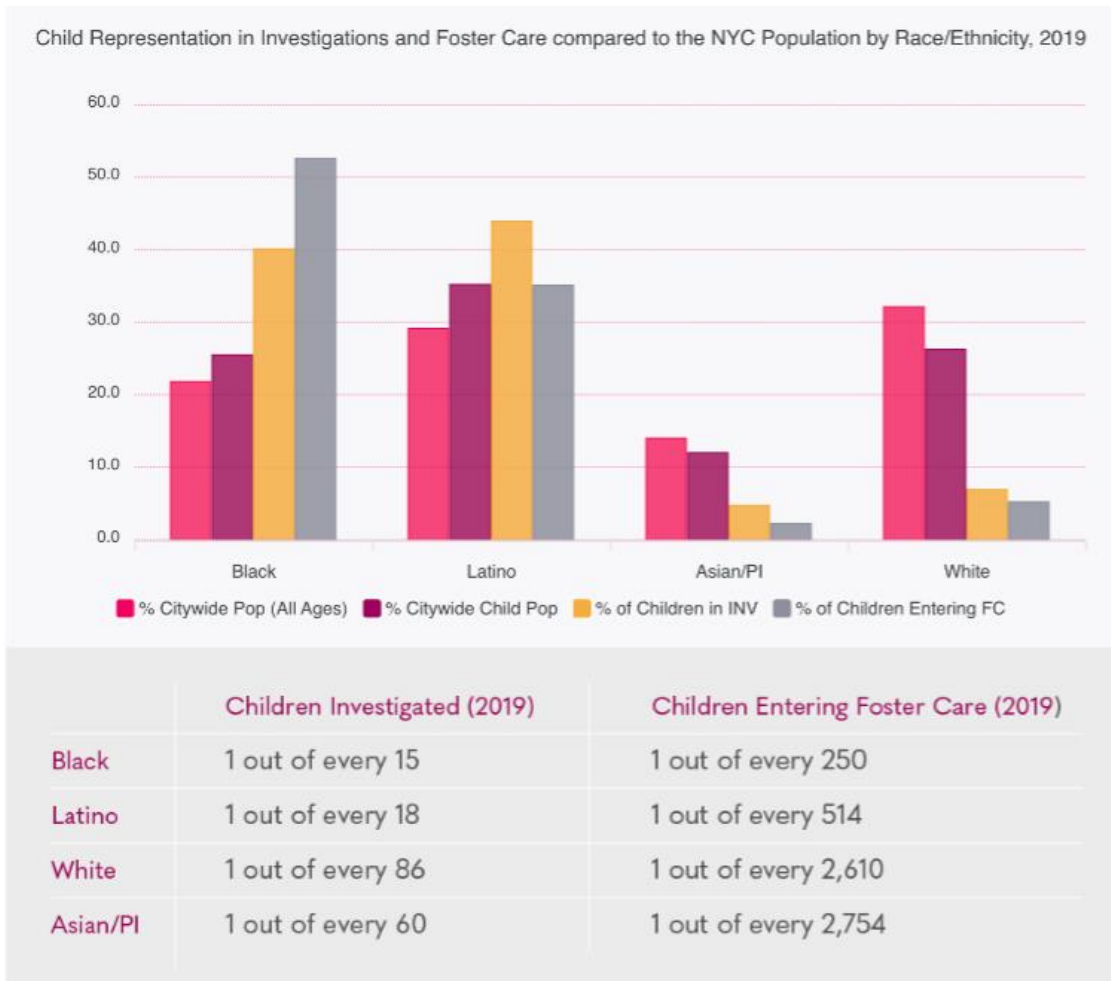


Figure 3: NYC Family Policy Project August 20, 2023 Statement, at 2

Data revealing racial disparities in New York mirrors national trends. In federal fiscal year 2021, Black children were 1.6 times more likely than White children to be placed in foster care, comprising 14% of the general population, but 22% of children in foster care.²⁴⁶ Black children are more likely than White children to be placed in foster care only due to neglect, at 29% and 20%, respectively, but are 1.5 times more likely to exit foster care within seven days or less.²⁴⁷ This raises questions about perceptions of poverty and how decisions to separate families are made, according to Aysha E. Schomburg, associate commissioner of the United States

²⁴⁶ Schomburg July 28, 2023 Statement, at 2; referring to: Children’s Bureau (2020). National Child Abuse and Neglect Data Systems (NCANDS) child and agency files, FFY 2020, and Adoption and Foster Care Analysis and Reporting System (AFCARS) Files 15A through 21A [Dataset]. Children’s Bureau, Administration for Children, Youth, and Families (ACYF), U.S. Department of Health and Human Services; U.S. Census Bureau, Population Division. (June 2020). Annual resident population estimates for 6 race groups (5 race alone groups and two or more races) by age, sex, Hispanic origin for states and the District of Columbia: April 1, 2010 to July 1, 2019; April 1, 2020; and July 1, 2020 [Data file]. Retrieved from <https://www2.census.gov/programs-surveys/popest/datasets/2010-2020/state/asrh/>.

²⁴⁷ Ibid.

Children’s Bureau.²⁴⁸ There are disparities found at the national level regarding time-in-care over longer periods of time, where 5% of Black children are still in care after 5 years compared to 3% of White children, and 9% of Black children age out of care compared to 6% of White children.²⁴⁹ Finally, White children in foster care are more likely than Black children to exit care to a permanent setting, at 90% and 84%, respectively.²⁵⁰

Recommendation highlights from testimony

- Request the U.S. Commission on Civil Rights and its Advisory Committees conduct national and local studies, respectively, on the disproportionate impact of the child welfare system.²⁵¹
- Implement social and economic policies and programs to reduce income and wealth inequality.²⁵²
- Engage impacted individuals in informing policy development.²⁵³
- Provide meaningful and concrete supports to parents in their communities, from entities outside of government child welfare agencies so that families feel safe and are protected from the trauma the child welfare system has inflicted.²⁵⁴
- Assign a multidisciplinary team to families to protect parents’ rights at the initial stages of child welfare involvement.²⁵⁵
- Develop “deliberate, conscious, intentional efforts” in government programs and policies to address the longstanding history of separating and degrading Black families.²⁵⁶

²⁴⁸ Ibid.

²⁴⁹ Ibid.

²⁵⁰ Ibid.

²⁵¹ Naveed Aug. 19, 2023 Statement, at 9.

²⁵² Ross Testimony, Feb. 15, 2023 Briefing, p. 10; Burton Aug. 20, 2023 Statement, at 7.

²⁵³ Charles Aug. 20, 2023 Statement, at 8; YouthNPower: Transforming Care, Children’s Defense Fund-New York August 18, 2023 Statement, at 8; Legal Aid Society May 19, 2023 Written Statement, at 4-5; NYC Family Policy Project August 20, 2023 Statement, at 16.

²⁵⁴ Ross Testimony, Feb. 15, 2023 Briefing, p. 10; Lansner Nov. 11, 2022 Statement, at 4; NYC Family Policy Project August 20, 2023 Statement, at 16; RISE and Takeroot Justice. *An Unavoidable System: The Harms of Family Policing and Parents’ Vision for Investing in Community Care*. Fall 2021, at 16, 23, Available at <https://takerootjustice.org/wp-content/uploads/2021/09/AnUnavoidableSystem.pdf>, Aug. 20, 2023 Submission by Jeannette Vega; Charles Aug. 20, 2023 Statement, at 8; Angela Olivia Burton and Angeline Montauban, Toward Community Control of Child Welfare Funding: Repeal the Child Abuse Prevention and Treatment Act and Delink Child Protection from Family Well-Being, *Columbia Journal of Race and Law* (2021), at 40, <https://journals.library.columbia.edu/index.php/cjrl/article/view/8747>, Aug. 20, 2023 by Angela Olivia Burton.

²⁵⁵ Ross Testimony, Feb. 15, 2023 Briefing, p. 10.

²⁵⁶ Dorantes Testimony, May 19, 2023 Briefing, p. 4.

- Require New York’s child welfare system to hold public hearings.²⁵⁷
- Adopt the United Nations Committee on the Elimination of Racial Discrimination (CERD) recommendations²⁵⁸ to eliminate racial discrimination in repeal or amend federal policies that have a disparate impact on Black families, including CAPTA²⁵⁹ and ASFA.²⁶⁰
- Provide direct cash transfers to impacted children and families.²⁶¹
- Require federal, state, and local governments to acknowledge and meaningfully redress racism in child welfare system policies and practices.²⁶²

Reporting

Finding V: Black families are reported to the hotline at higher rates than White families, raising concerns about bias in mandated reporters.

Multiple panelists highlighted the fact that suspected abuse of Black children is reported to the hotline at far higher rates than White children.²⁶³ In 2022, ACS responded to nearly 59,000 reports to the hotline.²⁶⁴ Dr. Ross provided data showing that for the last 20 years, there have been 50,000 to 60,000 reports that have impacted 80,000 to 100,000 children annually.²⁶⁵ He stated that "about two thirds of those reports to the SCR [hotline] come from mandated reporters."²⁶⁶ He also highlighted that maltreatment reports declined during COVID-19.²⁶⁷

²⁵⁷ Naveed Testimony, Feb. 15, 2023 Briefing, p. 20.

²⁵⁸ United Nations Comm. On the Elimination of Racial Discrimination, Concluding Observations on the Combined Tenth to Twelfth Reports of the United States of America, United Nations (Sept. 21, 2022), <https://ccrjustice.org/sites/default/files/attach/2023/06/CERD%20August%202022%20Concluding%20Observations.pdf>.

²⁵⁹ Child Abuse Prevention and Treatment and Adoption Reform Act, 42 U.S.C. §§ 5101–5102, 5104, 5105(a), 5105I, 5106(a) (2010); 124 U.S.C. § 3459 (2010); Pregnancy Justice August 19, 2023 Statement, at 10.

²⁶⁰ Adoption and Safe Families Act of 1997, 42 U.S.C. § 670; Pregnancy Justice August 19, 2023 Statement, at 10.

²⁶¹ Pregnancy Justice August 19, 2023 Statement, at 11; Charles Aug. 20, 2023 Statement, at 8.

²⁶² Naveed Aug. 19, 2023 Statement, at 8.

²⁶³ Ketteringham Testimony, Apr. 21, 2023 Briefing, p. 11; Miles-Gustave Testimony, May 19, 2023 Briefing, p. 8; Dannhauser Testimony, May 19, 2023 Briefing, p. 11; New York Civil Liberties Union, ACLU of New York August 18, 2023 Statement, at 2; New York City Article 10 Family Defense Organizations Aug. 19, 2023 Statement, at 3.

²⁶⁴ Dannhauser Testimony, May 19, 2023 Briefing, p. 10.

²⁶⁵ Ross Testimony, Feb. 15, 2023 Briefing, p. 9.

²⁶⁶ Ross Testimony, Feb. 15, 2023 Briefing, p. 9.

²⁶⁷ Ibid.

Ms. Ketteringham shared that hotline calls are concentrated in marginalized communities, and 44% of Black children in New York will experience a hotline call before age 18.²⁶⁸ Acting Commissioner Miles-Gustave stated that statewide, Black children are twice as likely to be reported to the hotline than White children, with data showing that out of nearly 216,000 CPS reports, nearly 25%, or 51,000 of all children reported to CPS were Black.²⁶⁹ Jess Dannhauser, commissioner at the New York City Administration for Children and Families, provided data that within New York City, a Black child’s family is 6.7 times as likely as a White child’s family to be reported to CPS, which is between 40% to 50% of all Black families in New York City.²⁷⁰

The definitions of abuse and neglect are broad, leaving many situations open to subjective interpretation based on the individual’s perception of risk.²⁷¹ It is often individual caseworkers who have the ability to determine whether a report is substantiated,²⁷² and the Committee received testimony expressing serious concerns about ACS caseworkers’ motivations, accountability, and performance.²⁷³ Shanetta Parker, a Registered Nurse who works for an agency subcontracted by ACS, said, “I have yet, in my seven years, to meet an ACS worker who went above and beyond or just did their job in its totality for any children that have come across my desk.”²⁷⁴ Mr. Wexler, executive director of the National Coalition for Child Protection Reform, notes that “[w]orkers are so deluged with false allegations, trivial cases, and cases of poverty confused with neglect – all of it compounded by racial bias – that they have no time to investigate any case carefully.”²⁷⁵

Being reported to the hotline and placed on the Statewide Central Register has negative implications for employment and damages parents’ reputations, which consequently exempts them from fostering children, including kin.²⁷⁶ Being listed on the Statewide Central Register can prevent individuals from regaining custody of their children, becoming foster parents, and obtaining employment.²⁷⁷ Attorney David Lansner explained that families of color suffer the consequences of an unfair system where they have no rights and are socially stigmatized and traumatized²⁷⁸ for being reported for alleged neglect or abuse.²⁷⁹

²⁶⁸ Ketteringham Testimony, Apr. 21, 2023 Briefing, p. 11.

²⁶⁹ Miles-Gustave Testimony, May 19, 2023 Briefing, p. 8.

²⁷⁰ Dannhauser Testimony, May 19, 2023 Briefing, p. 19.

²⁷¹ Naveed Testimony, Feb. 15, 2023 Briefing, p. 6.

²⁷² Naveed Testimony, Feb. 15, 2023 Briefing, p. 6; Saxe Testimony, Feb. 17, 2023 Briefing, p. 15.

²⁷³ Parker Testimony, Apr. 19, 2023 Briefing, pp. 31-32.

²⁷⁴ *Ibid.*, p. 32.

²⁷⁵ Wexler August 18, 2023 Statement, at 4.

²⁷⁶ Brettschneider Nov. 18, 2022 Statement, at 4; Naveed Testimony, Feb. 15, 2023 Briefing, p. 5.

²⁷⁷ New York Civil Liberties Union, ACLU of New York August 18, 2023 Statement, at 2.

²⁷⁸ Ismail Testimony, Feb. 17, 2023 Briefing, p. 10.

²⁷⁹ Lansner Nov. 11, 2022 Statement, at 4.

The ability to report concerns anonymously to the hotline raises concerns around bias, threats, and false reports, particularly for Black families.²⁸⁰ Assemblyman Hevesi shared that more than 10,000 families face intrusive investigations every year, possibly due to false anonymous reporting.²⁸¹ These families are later found to be innocent of any maltreatment allegations.²⁸² Such false reports can initiate a lengthy and burdensome process that can significantly impact individuals and families for a lifetime.²⁸³ He stated, “[s]o, that’s the government traumatizing tens of thousands of children unnecessarily.”²⁸⁴ New York City is implementing strategic goals to reduce unnecessary calls to the hotline in an effort to narrow child welfare involvement.²⁸⁵

Commissioner Dannhauser noted that “CPS responses have a disproportionate impact on Black children and families. ACS is very concerned about the impact these calls and subsequent investigations are having on Black families.”²⁸⁶ When reports appear to pose no imminent risk or danger, ACS uses a Collaborative Assessment, Response, Engagement and Support (CARES) approach to partner with families to identify community resources, which can also include 45 contracted prevention providers in the communities to provide resources and support.²⁸⁷ Commissioner Dannhauser added that initiatives like Family Enrichment Centers aim to reduce family involvement in the child welfare system by providing nurturing environments, social connections, and concrete resources for parents in marginalized communities.²⁸⁸ ACS and OCFS have increased their preventive services to provide evidence-based interventions for families.²⁸⁹ Commissioner Dannhauser noted that ACS-funded providers may understand how to support families better, rather than reporting them to the hotline, as hotline reports from ACS-funded providers comprised fewer than 2% of calls, while nearly 20% of calls are from non-ACS-funded social service organizations.²⁹⁰

YouthNPower notes:

We need to stop thinking that a CPS investigation links families with resources. As an example, a new report from the New York City Center for Innovation through Data Intelligence speaks to the extreme vulnerability that families experience even after they encounter CPS. The study includes findings that show families who received child welfare prevention services were twice as likely to enter the homeless shelter system than those who had not received services.²⁹¹

²⁸⁰ NY State Bar Association Dec. 7, 2022 Statement, at 14; Ambroise-Smith Testimony, Apr. 19, 2023 Briefing, p. 16.

²⁸¹ Hevesi Testimony, July 21, 2023 Briefing, p. 8.

²⁸² Ibid.

²⁸³ Ambroise-Smith Testimony, Apr. 19, 2023 Briefing, p. 16.

²⁸⁴ Hevesi Testimony, July 21, 2023 Briefing, p. 8.

²⁸⁵ Dannhauser Testimony, May 19, 2023 Briefing, p. 11.

²⁸⁶ Ibid.

²⁸⁷ Ibid., p. 11-12.

²⁸⁸ Ibid., p. 12.

²⁸⁹ Havens Testimony, July 21, 2023 Briefing, p. 10.

²⁹⁰ Dannhauser Testimony, May 19, 2023 Briefing, p. 12.

²⁹¹ NYC CIDI, Homeless Prevention: At-Risk Students in New York City Schools, July 2023 at 17, available at: <https://www.nyc.gov/site/cidi/projects/homeless-prevention-at-risk-students-in-NYC-schools.page>.

Child welfare services, which are not designed to address housing instability, often fail to meet the basic needs of families to remain safe in communities.²⁹²

Finding VI: Black parents are disproportionately listed on New York’s State Central Register and experience immediate and long-term harms.

Within New York City, a Black child was 6.7 times more likely than a white child to be the subject of a child protection investigation, and once subjected to an investigation, was 1.24 times more likely than a white child to be in an indicated investigation, according to data provided by Jess Dannhauser, commissioner at the New York City Administration for Children’s Services.²⁹³

The Legal Aid Society described the devastating consequences of having a record in New York’s Statewide Central Register, despite recent reforms in New York:

Historically, a child protective investigator needed only to find "some credible evidence" to support allegations of neglect and/or abuse and "indicate" the report made to the SCR. An indicated report would remain on a person's record until ten years after the youngest child named in the report turned eighteen. Although recent reforms to the SCR have raised the standard to "preponderance of the evidence" and provide for sealing of some SCR records after eight years, many indicated reports may still be disclosed in employment and licensing background checks, regardless of whether that report is the result of allegations for poverty-related neglect or for the "most egregious types of physical and sexual abuse."²⁹⁴

The New York City Article 10 Family Defense Organizations, which include The Bronx Defenders, Brooklyn Defender Services, Center for Family Representation, and Neighborhood Defender Service of Harlem raised alarm over the number of families impacted and the racially disproportionate harms of the Statewide Central Register:

New York City’s Administration for Children’s Services has readily acknowledged that there are “dramatic racial and ethnic disparities” in SCR reports, and that the lion’s share of cases called into the SCR result in unnecessary family policing intervention into the lives of New York City’s families.²⁹⁵

...In 2022, New York’s State Central Register of Child Abuse and Maltreatment accepted 148,087 reports of suspected child abuse or neglect. Of those reports, more than 75% were determined to be unfounded following invasive and traumatic investigations. Thirty-nine percent of investigations in New York City involved Black children, even though Black children comprise less than 22% of the city’s child population. In contrast, white children comprise 26% of the child population whereas they are 6% of the children investigated. In 2019, 1 of every

²⁹² YouthNPower: Transforming Care, Children’s Defense Fund-New York August 18, 2023 Statement, at 3.

²⁹³ Dannhauser Testimony, May 19, 2023 Briefing, p. 10.

²⁹⁴ The Legal Aid Society April 21, 2023 Statement, at 10.

²⁹⁵ New York City Article 10 Family Defense Organizations Aug. 19, 2023 Statement, at 6.

15 Black children experienced a family policing investigation, compared with 1 of 86 white children.²⁹⁶

The organizations also emphasized the immediate and long-term harms inflicted upon parents who are listed on the Statewide Central Register:

[H]aving an indicated report in the SCR can seriously limit a parent’s employment prospects, further destabilizing families often already struggling with poverty. Certain employers who work with children, such as schools, daycare centers, and some medical providers, are required to run an applicant’s name through the SCR before hiring them. Indicated reports of neglect remain in the SCR for eight years from the time the report was made. Indicated reports of abuse remain in the SCR until the youngest child named in the report turns 28. As a result, parents may be denied employment years after the allegations were made against them, even if the allegations were never heard by a judge, are unrelated to employment, and/or they have ameliorated the alleged concerns that led to an initial report. Additionally, an indicated report may prevent or delay a person from serving as a foster or adoptive parent, limiting their ability to be critical resources for their family and community members.²⁹⁷

Finding VII: Individuals who use publicly funded social services are at higher risk of being reported for child abuse and neglect than affluent individuals, raising questions about mandated reporting standards.

There are significant racial disparities at the “front door” or reporting stage of the child welfare system.²⁹⁸ The inclusion of “neglect” as a mandated reporting requirement in the Child Abuse Prevention and Treatment Act (CAPTA) has led to a significant increase in reports of abuse and neglect.²⁹⁹ By including “neglect” in the mandated reporting requirement, there is high child welfare involvement in communities with high rates of poverty, per a report by New York State Bar Association.³⁰⁰ This increase has raised concerns about the negative consequences of mandated reporting, particularly for Black and Brown families, because mandated reporting creates harm as it acts as a form of family policing, surveilling, and uses the threat of separation as a means of coercive compliance, perpetuating the subjugation of marginalized communities.³⁰¹ Further, it results in overreporting as a precaution which does not improve maltreatment detection or contribute to positive outcomes for children. Instead, it strains the child welfare system and unnecessarily traumatizes children and families.³⁰²

²⁹⁶ New York City Article 10 Family Defense Organizations Aug. 19, 2023 Statement, at 26.

²⁹⁷ *Ibid.*, at 26-27.

²⁹⁸ Naveed Testimony, Feb. 15, 2023 Briefing, p. 5.

²⁹⁹ NY State Bar Association. Dec. 7, 2022 Statement, at 9.

³⁰⁰ *Ibid.*, at 10.

³⁰¹ Ketteringham Testimony, Apr. 21, 2023 Briefing, p. 11.

³⁰² Naveed August 19, 2023 Statement, at 2.

Disparities in over-reporting Black families to the hotline are influenced by families in poverty who rely more on publicly funded social services.³⁰³ Mandated reporters who staff public assistance agencies and educational systems are more likely to call the hotline than mandated reporters who staff private medical and education facilities.³⁰⁴ Families in poverty use more publicly funded social services, so they are surveilled, scrutinized and at greater risk of being reported by mandated reporters than families who can afford to pay for services.³⁰⁵ Mr. Richter noted that “families that are dependent on public services and assistan[ce] are under the radar of mandated reporters in ways that material resourced families are not.”³⁰⁶ Low-income families are thus more susceptible to being reported when they need to access public assistance services.³⁰⁷

Melanie Harris, a parent who shared her experiences with the Committee, noted that “oftentimes Black and Brown people are not afforded the same freedom to seek mental health services without blowback or consequences as their White counterparts are able to do.”³⁰⁸ Because of the high probability of being caught in a system that will police and intrusively investigate them, individuals and families become reluctant to seek assistance with drug treatment programs, mental health services, or other supports when staff are mandated reporters.³⁰⁹ The government’s reliance on mandated reporters to gain access to families’ personal lives is criticized as an invasion of privacy and exploitation of private information.³¹⁰

Finding VIII: Black families are reported to the hotline by healthcare professionals for abuse and neglect at higher rates than White families experiencing the same issues, raising concerns about racial bias in healthcare settings.

When interacting with the healthcare system, Black families are disproportionately reported to the hotline for child abuse and neglect compared to white families, even when the injuries are sustained by Black and white children are similar.³¹¹ Emergency rooms continuously screen Black children for child abuse compared to white children with similar injuries.³¹² The Committee received testimony noting that being Black and low-income increases the level of

³⁰³ NY State Bar Association. Dec. 7, 2022 Statement, at 10; Naveed Testimony, Feb. 15, 2023 Briefing, p. 5; Richter Testimony, May 19, 2023 Briefing, p. 13; Brady-Stepien Council of Family and Child Caring Agencies August 15, 2023 Statement, at 5.

³⁰⁴ Brettschneider Nov. 18, 2022 Statement, at 5; Brettschneider Testimony, Nov. 18, 2022 Briefing pp. 20, 22.

³⁰⁵ Naveed Testimony, Feb. 15, 2023 Briefing, p. 5; Roberts Testimony, Feb. 17, 2023 Briefing, p. 5; Hevesi Testimony, July 21, 2023 Briefing, p. 6.

³⁰⁶ Richter Testimony, May 19, 2023 Briefing, p. 13.

³⁰⁷ Roberts Testimony, Feb. 17, 2023 Briefing, p. 5.

³⁰⁸ Harris Testimony, Apr. 19, 2023 Briefing, p. 17.

³⁰⁹ McMillan Testimony, Nov. 18, 2022 Briefing p. 12; McMillan Nov. 18, 2022 Written Statement, at 3; Ketteringham Testimony, Apr. 21, 2023 Briefing, p. 11.

³¹⁰ Roberts Testimony, Feb. 17, 2023 Briefing, p. 5.

³¹¹ NY State Bar Association Dec. 7, 2022 Statement, at 16; Naveed Testimony, Feb. 15, 2023 Briefing, p. 5; Roberts Testimony, Feb. 17, 2023 Briefing, p. 5; Ketteringham Testimony, Apr. 21, 2023 Briefing, p. 11; Charles Testimony, July 21, 2023 Briefing, p. 13; Naveed Testimony, Feb. 15, 2023 Briefing, p. 5.

³¹² Ketteringham Testimony, Apr. 21, 2023 Briefing, p. 11.

suspected culpability.³¹³ Pregnancy Justice, a nonpartisan, legal advocacy group, noted that drug testing and subsequent reporting are major contributors to racial disparities in the family regulation system.³¹⁴ Although the New York State Department of Health notes that evidence of substance use alone should not be used for making a report to the hotline,³¹⁵ Black people who are pregnant are drug tested and reported to CPS at higher rates than White people who are pregnant, despite higher rates of drug use among White people who are pregnant.³¹⁶ Disproportionate drug screening of Black mothers and newborns, without consent, adds to the excessive surveillance of Black families,³¹⁷ and leads to an increase in foster care placements.³¹⁸

Because of mandated reporting, 165,000 families in NYS are involved in investigations per year, yet in May 2022, 75% of the investigations ended up not being indicated for abuse or neglect.³¹⁹ Extensive reporting does not necessarily protect children from actual abuse,³²⁰ as evidenced by the highest number of reports coinciding with the highest number of child fatalities.³²¹ Mandated reporters will also overreport concerns due to the threat of penalty for failing to report suspected abuse or neglect,³²² while those who do make a report are shielded from liability, which incentivizes overreporting.³²³ Mr. Richter explained,

With penalties for failure to report, the system is set up to incentivize erring on the side of calling without providing adequate information to reporters about the consequences of reporting, not to mention resources that may address the basis of the report in the first place.³²⁴

Commissioner Dannhauser shared that efforts are being made to address issues around mandated reporting, such as providing education and training to mandated reporters on how to provide support to families without making unnecessary reports.³²⁵ Yet, Ms. Ketteringham stated that anti-bias training will not mitigate the harm and trauma associated with the mandated reporting laws.³²⁶

³¹³ Day Testimony, Apr. 21, 2023 Briefing, p. 13.

³¹⁴ Pregnancy Justice August 19, 2023 Statement, at 4

³¹⁵ New York Civil Liberties Union, ACLU of New York August 18, 2023 Statement, at 6, referring to Marilyn Kacica, MD, MPH and Stephanie Shulman, DrPH, MS, CAPTA CARA Dear Colleague (Provider) Letter, New York Department of Health (Nov. 23, 2021) at 4, https://health.ny.gov/prevention/captacara/docs/dear_provider_letter.pdf.

³¹⁶ Ketteringham Testimony, Apr. 21, 2023 Briefing, pp. 11, 18.

³¹⁷ Brewington Testimony, Apr. 19, 2023 Briefing, p. 24; NY State Bar Association Dec. 7, 2022 Statement, at 16.

³¹⁸ Pregnancy Justice August 19, 2023 Statement, at 2.

³¹⁹ Ketteringham Testimony, Apr. 21, 2023 Briefing, p. 11.

³²⁰ Ibid.

³²¹ Ibid., p. 11.

³²² Brettschneider Testimony, Nov. 18, 2022 Briefing, p. 15; Ketteringham Testimony, Apr. 21, 2023 Briefing, p. 11; Richter Testimony, May 19, 2023 Briefing, p. 14; Wexler Testimony, July 21, 2023 Briefing, p. 20.

³²³ New York Civil Liberties Union, ACLU of New York August 18, 2023 Statement, at 8.

³²⁴ Richter Testimony, May 19, 2023 Briefing, p. 14.

³²⁵ Dannhauser Testimony, May 19, 2023 Briefing, p. 11.

³²⁶ Ketteringham Testimony, Apr. 21, 2023 Briefing, p. 11.

The New York Civil Liberties Union cautioned the Committee:

Compelling professionals to initiate government intervention against their clients and patients promotes a rigid and adversarial approach to family well-being that undermines more holistic and collaborative solutions. Rather than keeping children safe, mandated reporting laws deter families from seeking professionals' support and lead to a glut of unjustified reports.³²⁷

Finding IX: Black, low-income families are reported to the hotline for educational neglect at higher rates than White, affluent families for the same issues, raising concerns about racial bias in educational neglect reports.

Mandated reporters that make the most unfounded reports are educators,³²⁸ who often wait until the end of the school year to file educational neglect complaints.³²⁹ Educators report Black children to CPS at higher rates than White children for the same issues, such as missing school, or exhibiting mental health or learning challenges.³³⁰

ACS primarily targets Black families for educational neglect related to absenteeism while failing to consider targeting White families who also meet the definition of neglect, according to testimony from Attorney David Lansner.³³¹ To illustrate this point, Mr. Lansner shared that the definition of educational neglect includes neglect due to failure to supply the child with adequate education:³³²

Educational Neglect is defined in Family Court Act §1012(f), which reads, in applicable part,

Neglected child means a child less than eighteen years of age

(i) whose physical, mental or emotional condition has been impaired or is in imminent danger of becoming impaired as a result of the failure of his parent or other person legally responsible for his care to exercise a minimum degree of care

(A) in supplying the child with adequate . . . education in accordance with the provisions of part one of article sixty-five of the education law.

³²⁷ New York Civil Liberties Union, ACLU of New York August 18, 2023 Statement, at 8, *see* Kelley Fong, Concealment and Constraint: Child Protective Services Fears and Poor Mothers' Institutional Engagement, 97 Social Forces 1785 (2019), <https://doi.org/10.1093/sf/soy093> (finding that low-income mothers concealed hardships from potential institutional reporters, such as healthcare, educational, and social service systems, potentially precluding opportunities for assistance).

³²⁸ Richter Testimony, May 19, 2023 Briefing, p. 14, referring to Chapin Hall study *Covid and Child Welfare Brief*, Sept. 2020. <https://www.chapinhall.org/wp-content/uploads/Covid-and-Child-Welfare-brief.pdf>.

³²⁹ Charles Testimony, July 21, 2023 Briefing, p. 14.

³³⁰ Kaylah McMillan, Apr. 19, 2023 Briefing, p. 11; Ketteringham Testimony, Apr. 21, 2023 Briefing, p. 11.

³³¹ Lansner Nov. 11, 2022 Statement, at 1.

³³² *Ibid.*, at 1.

Mr. Lansner noted that White families who send their children to Yeshivas, which have been recently reported on in a series by the New York Times as not providing adequate education to their students, are not targeted by the child welfare system due to their political power.³³³

Mr. Brettschneider commented that educational neglect is a child abuse category that includes penalties for parents who do not send their children to school.³³⁴ He explained that student absenteeism may be attributed to children struggling to read, being bullied at school, or parents struggling with health, poverty, lack of childcare, or unemployment.³³⁵ Mr. Brettschneider added,

I want to refer to the COVID pandemic and what we've learned. We learned about what it was like when a child did not have not have a working computer or help in using it and then being called into the registry as an educationally neglected child. Too many children, despite education policies to the contrary were wrongly reported because they weren't online for class during COVID.³³⁶

Carlos Perez, a parent who shared his experiences with the Committee, provided testimony that he has been charged with educational neglect for homeschooling his two children,

I decided to homeschool my daughter and they decided to try to charge me with educational neglect. . . . without a hearing, without a court, and guilty... ACS is now charging me with educational neglect with [my second daughter] because she is not going back to high school because she's hadn't been educated properly. She's at a fourth-grade level, but somehow managed to get to ninth grade in ELA [English Language Arts] and other subjects.³³⁷

Recommendation highlights from testimony

- Evaluate mandated reporting requirements and penalties associated with failure to report.³³⁸
- Eliminate anonymous reporting and replace it with confidential reporting to reduce the incidence of false reports.³³⁹

³³³ Lansner Nov. 11, 2022 Statement, at 1, referring to *A Closer Look at The Times's Report on Hasidic Schools*. Sept. 15, 2022. New York Times, <https://www.nytimes.com/2022/09/15/nyregion/a-closer-look-at-the-times-report-on-hasidic-schools.html>.

³³⁴ Brettschneider Testimony, Nov. 18, 2022 Briefing, p. 16.

³³⁵ Brettschneider Testimony Nov. 18, 2022 Statement, at. 7.

³³⁶ Brettschneider Testimony, Nov. 18, 2022 Briefing, p. 23.

³³⁷ Perez Testimony, Apr. 19, 2023 Briefing, p. 28.

³³⁸ Brady-Stepien Council of Family and Child Caring Agencies August 15, 2023 Statement, at 6; New York Civil Liberties Union, ACLU of New York August 18, 2023 Statement, at 8.

³³⁹ Hevesi Testimony, July 21, 2023 Briefing, pp. 8, 21; New York Civil Liberties Union, ACLU of New York August 18, 2023 Statement, at 6.

- Eliminate mandated reporting³⁴⁰ through amending federal CAPTA legislation and repealing the NY Social Services Law section 413.³⁴¹
- Expand New York’s Family Assessment Response (FAR) system to allow families to receive assistance without being reported to the State Central Registry.³⁴²
- Require written informed consent for drug testing,³⁴³ including during the perinatal period,³⁴⁴ such as New York State Senate Bill S320B which prohibits drug, cannabis or alcohol testing and screening of pregnant or postpartum individuals and newborns, which has been endorsed by the American Academy of Pediatrics.³⁴⁵
- Require child protective agencies to work with schools to incentivize solutions-based alternative approaches to reporting families for educational neglect.³⁴⁶
- Eliminate educational neglect under NYS law.³⁴⁷
- Amend New York State’s Family Court Act to narrow the definition of “neglect” so that the term is not associated with poverty, which on its own is not abusive.³⁴⁸
- Support New York legislation that helps reduce unnecessary involvement in the child welfare system, specifically The Family Miranda Rights Act A1980/S901 and The Anti-

³⁴⁰ RISE and Takeroot Justice. *An Unavoidable System: The Harms of Family Policing and Parents’ Vision for Investing in Community Care*. Fall 2021, at 22, Available at <https://takerootjustice.org/wp-content/uploads/2021/09/AnUnavoidableSystem.pdf>, Aug. 20, 2023 Submission by Jeannette Vega.

³⁴¹ Article 10 Family Defense Organizations in New York City August 19, 2023 Written Statement, at 27.

³⁴² Brettschneider Testimony, Nov. 18, 2022 Briefing, p. 16.

³⁴³ NY State Bar Association Dec. 7, 2022 Statement, at 28; Pregnancy Justice August 19, 2023 Statement, at 9; Wallach Dec. 7, 2022 Statement, at 2 referring to NY State Bar Association, Report and recommendations of the Committee on Families and the *Law Racial Justice and Child Welfare*, 2022; New York Civil Liberties Union, ACLU of New York August 18, 2023 Statement, at 6.

³⁴⁴ Wallach Dec. 7, 2022 Statement, at 2 referring to NY State Bar Association, Report and recommendations of the Committee on Families and the *Law Racial Justice and Child Welfare*, 2022; New York Civil Liberties Union, ACLU of New York August 18, 2023 Statement, at 6.

³⁴⁵ Legal Aid Society May 19, 2023 Written Statement, at 4; Article 10 Family Defense Organizations in New York City August 19, 2023 Written Statement, at 28, 29, 32; Pregnancy Justice August 19, 2023 Statement, at 9, referring to Memorandum from New York State American Acad. of Pediatrics on Informed Consent Act A. 109 / S. 320 (May 15, 2023) (on file with Pregnancy Justice); RISE and Takeroot Justice. *An Unavoidable System: The Harms of Family Policing and Parents’ Vision for Investing in Community Care*. Fall 2021, at 26, Available at <https://takerootjustice.org/wp-content/uploads/2021/09/AnUnavoidableSystem.pdf>, Aug. 20, 2023 Submission by Jeannette Vega.

³⁴⁶ Richter Testimony, May 19, 2023 Briefing, p. 13.

³⁴⁷ Brettschneider, Nov. 18, 2022 Briefing, p. 16.

³⁴⁸ Wallach Dec. 7, 2022 Statement, at 2 referring to NY State Bar Association, Report and recommendations of the Committee on Families and the *Law Racial Justice and Child Welfare*, 2022; Lansner Nov. 11, 2022 Statement, at 10, referring to NY State Citizen Review Panel, *Child Protection in New York State: A New Paradigm-From Mandated Supporters*, 2022; Naveed Testimony, Feb. 15, 2023 Briefing, pp. 7-8; Article 10 Family Defense Organizations in New York City August 19, 2023 Written Statement, at 24.

Harassment in Reporting Act A2479, S902.³⁴⁹ Require localities to screen referrals from the hotline before starting an investigation.³⁵⁰

- Revise the NYS Office of Children and Family Services' Safety Factors Assessment Tool with clear definitions of neglect that remove discretion and subjectivity, with a specific focus on clarifying risk between the terms “unable” and “unwilling.”³⁵¹
- Implement neighborhood based, integrated, anti-poverty efforts of a variety of kinds, including the basics of housing, food, shelter, clothing, health and mental health.³⁵²

Investigations

Finding X: Child welfare system investigation practices reveal concerns about due process, privacy, dignity, and trauma for families under investigation.

Once allegations of child abuse or neglect are reported to the Statewide Central Register, local CPS agencies start the process of a 60-day investigation to substantiate those allegations.³⁵³ Tarek Z. Ismail, associate professor of Law at the City University of New York School of Law, noted that investigations are intrusive, traumatic, and involve staff gathering as much evidence against a family as possible, irrespective of the specific allegations against that family or individual.³⁵⁴ Dāī shared what the ACS investigation process has looked like for her:

From the start of my experience with ACS, they did not treat me like a parent. They treated me like a surrogate womb and or babysitter they were trying to fire. During ACS investigations, I felt like there was nothing I could do to defend myself. When I tried to comply, I was seen as not doing enough. When I tried to file grievances, I was seen as complaining. Everything was weaponized against me. It has now been one year since I have seen my children again. ACS's own internal report shows that they are biased. They assume that being wealthy makes you a better parent. This bias is reflected in my case. They assume that my child's foster parents were better parents because they had a certain level of financial security.

But in reality, my child experienced abuse while residing in that very foster home. Not only has the system minimized my voice, it has minimized my children's voices. I came into these experiences proactively securing positive counseling, but in these ACS investigations, disclosing HIPAA protected mental health information under duress has been almost always maliciously weaponized against me, rarely supported realistically. That is the problem. People need to be able to

³⁴⁹ Legal Aid Society May 19, 2023 Written Statement, at 4; Article 10 Family Defense Organizations in New York City August 19, 2023 Written Statement, at 28, 29, 32.

³⁵⁰ Wexler August 18, 2023 Statement, at 20.

³⁵¹ Charles Aug. 20, 2023 Statement, at 8.

³⁵² Brettschneider, Nov 18, 2022 Briefing, p. 16.

³⁵³ Ismail Testimony, Feb. 17, 2023 Briefing, pp. 8-9.

³⁵⁴ Ismail Testimony, Feb. 17, 2023 Briefing, pp. 9, 11, 24; McMillan Testimony, Nov. 18, 2022 Briefing, pp. 11-12; Naveed Testimony, Feb. 15, 2023 Briefing, pp. 5-7; Charles Testimony, July 21, 2023 Briefing, p. 14.

seek support, but they can't do so without being criminalized. People need to be able to talk about their experiences, but they can't because ACS destroys safe spaces. ACS proactively destroys the spaces that we have to receive care. ACS made me too scared to even hug my children within their offices. This experience has been so hard on my mental health. The last time I went to family court I had panic attacks. I couldn't even get through a sentence without hyperventilating.³⁵⁵

In order to conduct an investigation of the family, CPS requires entry to the residence, however, multiple panelists provided testimony that CPS obtains entry to the household through methods of coercion.³⁵⁶ Parents do not know their rights and often have no legal support when an investigation first begins, putting them at a disadvantage when interacting with CPS.³⁵⁷ CPS may gain entry into families' homes without properly informing parents of their rights to refuse entry, thereby potentially violating parents' Fourth Amendment rights.³⁵⁸ Commissioner Schomburg noted that the U.S. Children's Bureau is intending to issue a Notice of Proposed Rulemaking to provide federal child welfare funding for independent civil legal representation to parents, caregivers, children at risk of entering foster care, and children and young people in foster care.³⁵⁹

CPS workers often do not inform parents of their rights before investigations begin, therefore, families comply out of fear with intrusive investigations which can include parental drug tests and forced strip searches of children.³⁶⁰ When families refuse to let CPS in their homes, CPS alleges that the child is in imminent danger in order to justify involving the police to gain access to the home.³⁶¹ Investigations are stressful and humiliating as caseworkers publicly announce child abuse and neglect investigations by questioning everyone whom the families associate with, gaining access to children's doctors and schools, and even requiring parents to take drug tests.³⁶²

Once CPS gains entry to the home, CPS caseworkers separate children and parents and ask intrusive questions of each, which are at times unrelated to the allegations, such as inquiring about prescribed medications and rating the quality of the parent-child relationship.³⁶³

³⁵⁵ Dāi Testimony, April 19, 2023, p. 26.

³⁵⁶ Ismail Testimony, Feb. 17, 2023 Briefing, pp. 9, 24; McMillan Testimony, Nov. 18, 2022 Briefing, p. 12.

³⁵⁷ Naveed Testimony, Feb. 15, 2023 Briefing, p. 7.

³⁵⁸ Ismail Testimony, Feb. 17, 2023 Briefing, p. 11; McMillan Testimony, Nov. 18, 2022 Briefing, p. 11; Naveed Testimony, Feb. 15, 2023 Briefing, p. 7.

³⁵⁹ Schomburg July 28, 2023 Statement, at 4.

³⁶⁰ McMillan Testimony, Nov. 18, 2022 Briefing p. 11; Naveed Testimony, Feb. 15, 2023 Briefing, p. 6; Ismail Testimony, Feb. 17, 2023 Briefing, p. 8; White Testimony, Apr. 21, 2023 Briefing, p. 8; Naveed Aug. 19, 2023 Statement, at 2.

³⁶¹ McMillan Testimony, Nov. 18, 2022 Briefing p. 12.

³⁶² Naveed Testimony, Feb. 15, 2023 Briefing, p. 6; Ismail Testimony, Feb. 17, 2023 Briefing, p. 8.

³⁶³ Ismail Testimony, Feb. 17, 2023 Briefing, p. 9.

Caseworkers often strip-search children without advance notice and without the parents' presence or consent.³⁶⁴ Strip searches often traumatize children which leaves longstanding impact; including posttraumatic stress disorder symptoms, anxiety, depression, difficulty concentrating, difficulty with sleep, difficulty with academic achievement, and lasting emotional scars.³⁶⁵ Richard Wexler, noted that strip searches often severely negatively impact children, as they become hypervigilant, "hid[ing] in closets, div[ing] under beds when there is a loud knock on the door."³⁶⁶

Caseworkers search the family's home thoroughly, throughout the 60-day investigation period, including going through refrigerators, kitchen pantry, bathrooms, and bedrooms, noted Professor Ismail.³⁶⁷ Families are coerced to comply to the invasive investigations due to the fear of having a negative record for employment prospects and may adversely impact the possibility of fostering kin,³⁶⁸ police involvement, court involvement, and the potential removal of their children, stated Professor Ismail.³⁶⁹

Investigations are conducted without judicial oversight and are intrusive, humiliating, and traumatic for children and their parents.³⁷⁰ Joyce McMillan, founder and executive director of JMACforFamilies, noted that in 2019, ACS obtained a warrant to inspect homes less than 0.2% of the time.³⁷¹

Finding XI: Allegations of abuse and neglect against Black families are more likely to be investigated than allegations against White families.

Black families experience a disproportionately higher rate of investigations for child abuse claims as compared to White families.³⁷² Nationally, Black children are disproportionately represented in child welfare investigations, where by the age of 18, 53% of Black children in the U.S. will have been subjected to at least one child welfare investigation, as opposed to 28%

³⁶⁴ NY State Bar Association. Dec. 7, 2022 Statement, at 16; Naveed Testimony, Feb. 15, 2023 Briefing, p. 6; Ismail Testimony, Feb. 17, 2023 Briefing, p. 8.

³⁶⁵ NY State Bar Association. Dec. 7, 2022 Statement, at 16.

³⁶⁶ Wexler Testimony, July 21, 2023 Briefing, p. 3.

³⁶⁷ Ismail Testimony, Feb. 17, 2023 Briefing, p. 8.

³⁶⁸ Naveed Testimony, Feb. 15, 2023 Briefing, p. 6; Ismail Testimony, Feb. 17, 2023 Briefing, p. 9.

³⁶⁹ Ismail Testimony, Feb. 17, 2023 Briefing, p. 9.

³⁷⁰ Naveed Testimony, Feb. 15, 2023 Briefing, pp. 5-6.

³⁷¹ McMillan Testimony, Nov. 18, 2022 Briefing p. 12 referring to Eli Hager, "CPS workers search millions of homes a year. A mom who resisted paid a price." NBC News and ProPublica, Oct. 13, 2022; <https://www.nbcnews.com/news/us-news/child-abuse-welfare-home-searches-warrant-rcna50716>.

³⁷² Ketteringham Testimony, Apr. 21, 2023 Briefing, p. 11; Miles-Gustave Testimony, May 19, 2023 Briefing, p. 8; Dannhauser Testimony, May 19, 2023 Briefing, p. 11; Wexler Testimony, July 21, 2023; Children's Rights. *Fighting Institutional Racism at the Front End of Child Welfare Systems: A Call to Action*. May 15, 2021, at 14, Apr. 11, 2023 Submission by Emma Ketteringham; NYC Family Policy Project August 20, 2023 Statement, at 1-5; New York City Article 10 Family Defense Organizations Aug. 19, 2023 Statement, at 3.

of White children³⁷³ and 37% of all children.³⁷⁴ Black families are investigated at twice the rate as white families.³⁷⁵ Multiple contributors shared that Black children, families, and their neighbors live in constant fear of the government disrupting their lives at any time.³⁷⁶

In New York City, Black and Latinx children are disproportionately represented in investigations as well.³⁷⁷ In 2019, Black children in New York City were 22% of the child population, however, Black children were 41% of children in investigations.³⁷⁸ In 2019, 1 out of every 15 Black children in New York City experienced a CPS investigation,³⁷⁹ 1 out of every 5 families in Brownsville Brooklyn faced the threat of a CPS investigation through a hotline call,³⁸⁰ and 1 out of every 7 families in Hunts Point in the Bronx faced the threat of a CPS investigation through a hotline call,³⁸¹ both of which are Black and Brown communities.³⁸²

In 2022, Black families in New York City were 6.7 times more likely than white families to be the subject of a child protection investigation, and a Black child was 1.24 times more likely than a White child to be in an indicated investigation.³⁸³

Commissioner Dannhauser shared the disparities in investigations between Black and White children within the New York City child welfare system in the slide below:

³⁷³ NY State Bar Association Dec. 7, 2022 Statement, at 9; Hevesi Testimony, July 21, 2023 Briefing pp. 5-6.

³⁷⁴ Hyunil Kim et al., Lifetime Prevalence of Investigating Child Maltreatment Among US Children, 107 Am. J. Pub. Health 274, 278 (2017) <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5227926/>; New York State Bar Association Dec. 7, 2022 Statement; Richter Testimony, May 19, 2023 Briefing, pp. 13-14.

³⁷⁵ Children's Rights. *Fighting Institutional Racism at the Front End of Child Welfare Systems: A Call to Action*. May 15, 2021, at 14, Apr 11, 2023 Submission by Emma Ketteringham; Naveed Testimony, Feb. 15, 2023 Briefing, p. 4; Roberts Testimony, Feb. 17, 2023 Briefing, p. 4; Ismail Testimony, Feb. 17, 2023 Briefing, p. 7; Ross Testimony, Feb. 15, 2023 Briefing, p. 9.

³⁷⁶ Bryson Testimony, Apr. 19, 2023 Briefing, p. 27; Ismail Testimony, Feb. 17, 2023 Briefing, p. 10.

³⁷⁷ Wallach Dec. 7, 2022 Statement, at 1, referring to NY State Bar Association, report and recommendations of the Committee on Families and the *Law Racial Justice and Child Welfare*, 2022; White Testimony, Apr. 21, 2023 Briefing, p. 8.

³⁷⁸ Ross Testimony, Feb. 15, 2023 Briefing, p. 9.

³⁷⁹ YouthNPower: Transforming Care, Children's Defense Fund-New York August 18, 2023 Statement, at 2, referring to NYC Family Policy Project, Hotline Calls (2019), available at: <https://familypolicynyc.org/data-brief/hotline-calls/>.

³⁸⁰ *Ibid.*, at 4.

³⁸¹ *Ibid.*

³⁸² *Ibid.*

³⁸³ Dannhauser Testimony, May 19, 2023 Briefing, p. 10.

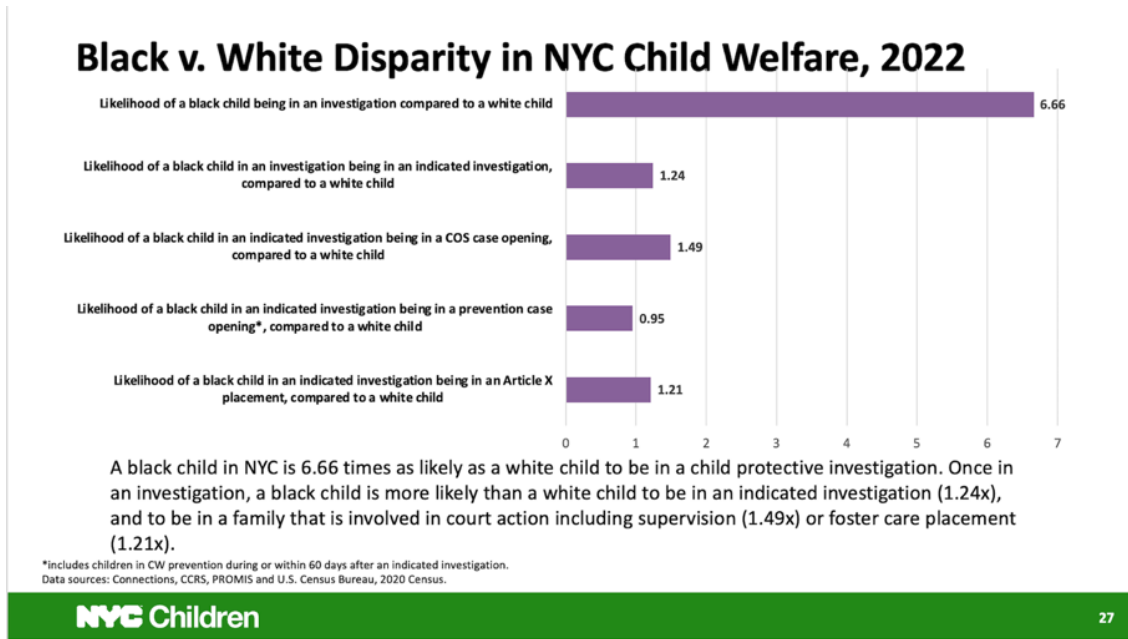


Figure 4: Dannhauser Testimony, May 19, 2023, Briefing Slides, at 27

The NYC Family Policy Project provided the Committee with rates of child welfare investigations using NYC zip code-level data for 2019 to examine racial disparities as well as the intersection between race and child poverty:

Investigation rates of Black children by zip code make clear that:

- Black children are extraordinarily vulnerable to investigations no matter how rich or poor the neighborhood they live in.
- Black families in 68% of NYC zip codes live with investigation rates above the national average.
- While only 8 zip codes in the city had overall investigation rates of 1 in 10 children or higher in a 2019, 50 zip codes had these staggering investigation rates for Black children. That’s almost one-third of all zip codes.

384

³⁸⁴ NYC Family Policy Project August 20, 2023 Statement, at 1-3.

Finding XII: Poverty is conflated with neglect in the child welfare system.

The Committee received extensive testimony that the child welfare system in effect criminalizes poverty.³⁸⁵ Ever since CAPTA included “neglect” as a mandated reporting requirement, the number of reports of abuse and neglect have increased significantly.³⁸⁶ Due to the term “neglect” in the mandated reporting requirement, there has been high child welfare involvement in communities with high rates of poverty.³⁸⁷ Families who have low income and other “material hardship” which accounts for factors such as “wealth, cost of living, and family size” have a higher risk of being involved with the child welfare system because maltreatment is defined as poverty and poverty related factors, noted Dr. Ross.³⁸⁸

Martin Guggenheim, Fiorello LaGuardia Professor of Clinical Law Emeritus, NYU School of Law stressed this point:

Being poor means one is inadequate and less deserving of raising one's children. This is the country's deepest flaw. We know how to reduce poverty and we know the fabulous things that follow from doing so, but we refuse to go there. Above all else, we need to radically redesign and reimagine how to offer assistance to families living in poverty. Whatever we end up creating, it will only work if it ends up with a line of parents and families waiting to benefit from its assistance. It has to become a non-punitive system and not as is currently true something that the community desperately fears. This requires ceasing to confuse the conditions in which the families live with some kind of failure in the home. The failure is outside the home.³⁸⁹

Dorothy Roberts, George A. Weiss University Professor of Law & Sociology; Raymond Pace & Sadie Tanner Mossell Alexander Professor of Civil Rights; professor of Africana Studies; director, Penn Program on Race, Science & Society at the University of Pennsylvania, provided context on race and poverty. When low-income parents cannot adequately provide for their children, even when children have never been abused and are not in immediate danger, CPS may remove them and place them in the foster care system citing neglect.³⁹⁰ She stated that CPS primarily targets families in poverty, by equating poverty with neglect:

...[I]mpoverished parents are frequently accused of neglecting their children for the same behavior that doesn't trigger or ever trigger an investigation when

³⁸⁵ McMillan Testimony, Nov. 18, 2022 Briefing p. 12; Däi April 26, 2023 Statement, at 1; Brettschneider Nov. 18, 2022 Statement, at 4; Wallach Dec. 7, 2022 Statement, at 2, referring to NY State Bar Association, Report and recommendations of the Committee on Families and the *Law Racial Justice and Child Welfare*, 2022; NY State Bar Association. Dec. 7, 2022 Statement, at 10; Naveed Testimony, Feb. 15, 2023 Briefing, p. 7; Ross Testimony, Feb. 15, 2023 Briefing, p. 9; Guggenheim Testimony, Feb. 17, 2023 Briefing, p. 12; White Testimony Apr. 21, 2023 Briefing, p. 8; Brady-Stepien Council of Family and Child Caring Agencies August 15, 2023 Statement, at 3.

³⁸⁶ NY State Bar Association Dec. 7, 2022 Statement, at 9; Ketteringham Testimony, Apr. 21, 2023 Briefing, p. 12.

³⁸⁷ NY State Bar Association Dec. 7, 2022 Statement, at 10.

³⁸⁸ Ross Testimony, Feb. 15, 2023 Briefing, p. 9.

³⁸⁹ Guggenheim Testimony, Feb. 17, 2023 Briefing, p. 12.

³⁹⁰ Roberts Testimony, Feb. 17, 2023 Briefing, p. 5.

wealthier parents engage in it, such as using drugs, leaving children unattended or failing to address children's mental health problems. Affluence protects families with these problems from the trauma of Child Protective Services.³⁹¹

Ms. Burton highlighted that substantive legal indeterminacy in crucial concepts such as “neglect” allows for both explicit and implicit bias and prejudice to impact decision making at every decision point in the child policing system.³⁹²

As Professor Roberts notes, the intrusive actions of ACS do not provide assistance and instead serve to incriminate parents.³⁹³ By criminalizing poverty, CPS has altered families’ lives through the trauma of investigations and the placement on the Statewide Central Register, explained Professor Ismail.³⁹⁴ He noted that Black children, families, and their neighbors live in constant fear of the government disrupting their lives due to the threat of family separations from abuse reports which are largely unsubstantiated.³⁹⁵ The trauma of investigations and fear of future disruption spans generations.³⁹⁶ Mr. Richter further stated, “[t]he conflation of the symptoms of poverty with child neglect disproportionately impacts families of color. Black New Yorkers are nearly twice as likely as white residents to live in poverty.”³⁹⁷ Most parents the Bronx Defenders represent are charged with abuse because they are not able to provide for their children due to poverty.³⁹⁸

Ms. Naveed submitted her Human Rights Watch/ACLU report on the family separation crisis in the US child welfare system to the Committee in which she provided context for the disproportionate rates of poverty experienced by Black families:

The child welfare system exists at the cross-section of entrenched economic inequality and systemic racism in the US. Income and wealth inequality in the US has steadily worsened since 1980. In 2018, Black children were more than three times as likely to be living in poverty as white children. The wealth gap between Black and white families in the US was the same in 2016 as it was in 1968, and data suggests that it has increased since the start of the Covid-19 pandemic. Due to systemic racism and other factors, families of color disproportionately face economic hardships. An extensive body of research has examined the factors contributing to these disparities. Discriminatory and racist policies and practices rooted in the legacy of enslavement have subjected Black families to residential segregation, housing discrimination, discriminatory exclusion from employment opportunities, and limitations to social benefits and safety nets, limiting their ability to accumulate wealth. Legal discrimination has been further aggravated by

³⁹¹ Ibid.

³⁹² Burton Aug. 20, 2023 Statement, at 6.

³⁹³ Roberts Testimony, Feb. 17, 2023 Briefing, p. 6.

³⁹⁴ Ismail Testimony, Feb. 17, 2023 Briefing, p. 10.

³⁹⁵ Ibid.

³⁹⁶ Jones Testimony, Apr. 19, 2023 Briefing, p. 19; Joseph Testimony, Apr. 19, 2023 Briefing, p. 24.

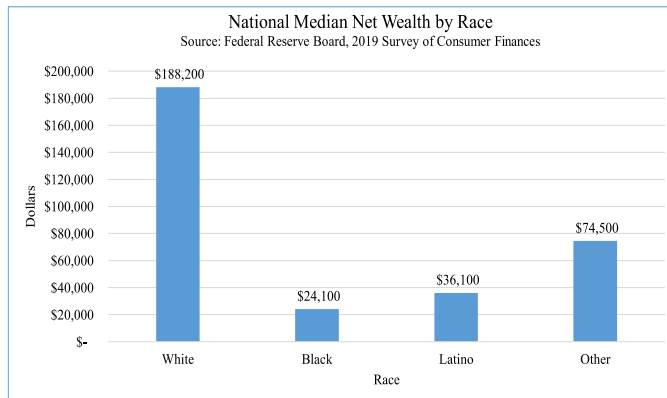
³⁹⁷ Richter Testimony, May. 19, 2023 Briefing, p. 15.

³⁹⁸ Ketteringham Testimony, Apr. 21, 2023 Briefing, p. 12.

disparate surveillance, punitive interventions, and incarceration of Black families, resulting in increased economic and social fragility.³⁹⁹

Dr. Ross provided a graph below to illustrate the correlation between poverty and high risk of involvement with CPS:

There is a strong connection between economic measures and contact with child protection services



*See [New York City Government Poverty measure 2019](#), p. 10.

** See Margaret M.C. Thomas and Jane Waldfogel, "What kind of "poverty" predicts CPS contact: Income, material hardship, and differences among racialized groups." *Children and Youth Services Review*. 136 (2022).

*** See [Federal Reserve Board, 2019 Survey of Consumer Finances](#).

- Black children in NYC are more likely than White children to live in families that have incomes below the poverty level as defined by New York City*
- "Material hardship," which takes into account differences in wealth, cost of living, family size, and other factors has a stronger relationship with CPS involvement than income**
- Nationally, Black families have less wealth than other groups***



17

Figure 5: Ross Testimony, Feb. 15, 2023, Briefing Slides, at 17

Dr. Ross elaborated that low-income Black families are at higher risk of involvement with CPS at a higher rate than white families.⁴⁰⁰ He stated,

The research literature finds a strong connection between economic measures and contact with child protection. And this is not just income, this is material hardship, which takes into account differences in wealth, cost of living, family size, and other factors that have a strong relationship with CPS involvement. Indeed, the definition of child maltreatment in New York includes income and wealth related factors. Almost by definition, [families] struggling economically are at higher risk of contact with child protection.⁴⁰¹

Mr. Brettschneider agreed: “[i]f you look at the hospital system and the disparities about health resources or you look at housing in every one of those communities, I think we can talk all you

³⁹⁹ Naveed 12.20.2022 submission of the Human Rights Watch & American Civil Liberties Union report ‘*If I Wasn’t Poor, I Wouldn’t Be Unfit: The Family Separation Crisis In The US Child Welfare System*’ Nov. 17, 2022. p.38, <https://www.aclu.org/report/if-i-wasnt-poor-i-wouldnt-be-unfit-family-separation-crisis-us-child-welfare-system>

⁴⁰⁰ Ross Testimony, Feb. 15, 2023 Briefing, p. 9.

⁴⁰¹ Ibid.

want about child welfare, but child welfare is a part of all those things, and it's a part of poverty.”⁴⁰²

Black families living in poor communities who may struggle to maintain households and have sufficient food in the home are reported instead of being supported.⁴⁰³ Ms. McMillan noted that over 60,000 homes per year are investigated when citizens report neglect, citing that a home is dirty, there is lack of food in the home, or a child’s hair is in dreadlocks, implying cultural incompetence and racial biases rather than assessing for actual risk.⁴⁰⁴

Ms. Naveed further explained:

Here are conditions of poverty which are charged as neglect. Families that struggle to pay rent or maintain housing are misconstrued as neglect and interpreted as evidence of inability or lack of fitness to parent despite the poverty exemption in New York's definition of neglect, neither the State Child abuse hotline or CPS agencies nor courts follow the law, which is FCA 1012.⁴⁰⁵

CPS does not provide resources or services to address the economic status of Black families, instead its practices are punitive to families in poverty, noted Ms. White and New York State Assemblyman Andrew Hevesi, who is also chair of the New York State Children and Families Committee.⁴⁰⁶ Ms. White shared that CPS criminalizes poverty through the removal of 70% of Black children from their families for neglect and 7.2% for inadequate housing, which equated to 709 Black children in New York State in 2021.⁴⁰⁷ Assemblyman Hevesi concurred that 60% to 70% of the neglect cases are poverty related.⁴⁰⁸

When examining CPS investigation practices from 2021, 72% of the more than 145,000 reports investigated were unsubstantiated, and the majority of cases that were indicated were for poverty-related neglect only.⁴⁰⁹ CPS primarily targets families living in poverty, in effect, criminalizing poverty.⁴¹⁰ For example, when wealthy parents use drugs, leave children unattended, or fail to address mental health issues with their children, CPS does not intervene; however, CPS will intervene with low-income parents for the same behaviors as affluent parents, noted Professor Roberts.⁴¹¹

⁴⁰² Brettschneider Testimony, Nov. 18, 2022 Briefing, p. 23.

⁴⁰³ Naveed Testimony, Feb. 15, 2023 Briefing, p. 5; Brettschneider Nov. 18, 2022 Statement, at 6; Naveed Testimony, Feb. 15, 2023 Briefing, p. 5; Ross Testimony, Feb. 15, 2023 Briefing, p. 9; White Testimony, Apr. 21, 2023 Briefing, p. 8.

⁴⁰⁴ McMillan Testimony, Nov. 18, 2022 Briefing, p. 12.

⁴⁰⁵ Naveed Testimony, Feb. 15, 2023 Briefing, p. 7.

⁴⁰⁶ White Testimony Apr. 21, 2023 Briefing, p. 8; Hevesi Testimony, July 21, 2023 Briefing, p. 8.

⁴⁰⁷ White Testimony, Apr. 21, 2023 Briefing, p. 8.

⁴⁰⁸ Hevesi Testimony, July 21, 2021 Briefing, p. 8.

⁴⁰⁹ Ismail Testimony, Feb. 17, 2023 Briefing, p. 10.

⁴¹⁰ Roberts Testimony, Feb. 17, 2023 Briefing, p. 4.

⁴¹¹ *Ibid.*, p. 5.

Caseworkers have broad discretion in cases due to broad definitions of neglect, opening the window for race and class-based biases.⁴¹² Dr. Glenn N. Saxe, director, Trauma Systems Therapy Training Center; director, Center for Child Welfare Practice Innovation; professor of Child & Adolescent Psychiatry, Hassenfeld Children’s Hospital at NYU Langone, noted that bias among caseworkers regarding poverty and neglect are among many factors that may cause racial disparities in the system, especially when biased attitudes towards race cause workers to subjectively assume greater risk and push for removal.⁴¹³ However, Dr. Saxe cautioned against the Committee recommending policy changes that are non-causal of racial disparities, noting those policies cannot result in reductions in racial disparities.⁴¹⁴

Ms. Ketteringham noted that COVID-19 reduced reports and investigations while at the same time, “direct cash assistance, eviction moratoriums, and access to food increased,” which assisted families to provide for their children, and in turn helped to decrease rates of substantiated abuse.⁴¹⁵

Melissa Friedman and Daniella Rohr submitted their paper and an article to the Committee regarding Covid-19’s impact on New York City’s child welfare system.⁴¹⁶ Specifically, when the schools closed, child welfare workers limited home visits, and New York City’s family courts closed except for emergency operations, the number of children removed from their homes fell by 50%, and there was no increase in child deaths, abuse or neglect.⁴¹⁷

Dr. Jennifer Havens, Arnold Simon Professor and Chair, Department of Child and Adolescent Psychiatry, NYU Grossman School of Medicine; director of Child and Adolescent Behavioral Health, Office of Behavioral Health, NYC Health and Hospitals, noted that intergenerational trauma and racism also have a high correlation with “highest level of risk to healthy child development and safety,” which contributes to increased involvement with the child welfare system.⁴¹⁸ Supportive services, such as evidence-based mental health programs, may help reduce racial disparities in the child welfare system.⁴¹⁹ However, Dr. Havens also emphasized that caseworkers or individuals charged with investigating a family are inherently unfit for

⁴¹² Hevesi Testimony, July 21, 2023 Briefing, p. 6; Naveed Testimony, Feb. 15, 2023 Briefing, p. 6; Saxe Testimony, Feb. 17, 2023 Briefing, p. 15; Burton Aug. 20, 2023 Statement, at 6-7.

⁴¹³ Saxe Testimony, Feb. 17, 2023 Briefing, p. 15.

⁴¹⁴ Saxe Testimony, Feb. 17, 2023, Briefing Slides, at 13.

⁴¹⁵ Ketteringham Testimony, Apr. 21, 2023 Briefing, p. 12.

⁴¹⁶ Melissa Friedman and Daniella Rohr. *Reducing Family Separations in New York City: The Covid-19 Experiment and a Call for Change*. Columbia Law Review Vol. 123 No. 2. Submitted June 27, 2023 by Melissa Friedman and Daniella Rohr; Andy Newman. *Pandemic Shows New York is Too Quick to Split Families*, Advocates Say. New York Times, March 15, 2023. Submitted June 27, 2023 by Melissa Friedman and Daniella Rohr.

⁴¹⁷ Melissa Friedman and Daniella Rohr. *Reducing Family Separations in New York City: The Covid-19 Experiment and a Call for Change*. Columbia Law Review Vol. 123 No. 2. Submitted June 27, 2023 by Melissa Friedman and Daniella Rohr.

⁴¹⁸ Havens Testimony, July 21, 2023, Briefing, p. 10.

⁴¹⁹ Saxe, Feb. 17, 2023 Briefing, p. 15; Saxe Testimony, Feb. 17, 2023, Briefing Slides, at 13; Havens Testimony, July 21, 2023, Briefing, p. 10.

providing mental health services themselves, since they are in a position of power regarding child removals and family separation.⁴²⁰

Ms. Riley shared that poverty is correlated, but not causal, with child maltreatment, noting that Black families are disproportionately likely to experience poverty,⁴²¹ and being poor does not mean someone will abuse or neglect their children.⁴²² She explained that substance use issues and mental health issues are often underlying allegations of neglect, as these issues make it challenging to maintain employment and care for children.⁴²³ Mr. Wexler highlighted that not only do the vast majority of poor people not neglect their children, but the vast majority of poor people accused of neglect also are found not to have neglected their children, which is where the disparities in assuming culpability by Black families arise.⁴²⁴

In her work as a psychiatrist, the “most severe neglect cases are associated with parental substance use disorder, which is also closely associated with parent’s own childhood adverse experience,” stated Dr. Havens.⁴²⁵ However, she noted that the majority of parents she encounters through her work do not have serious and persistent mental illness.⁴²⁶

Finding XIII: Nonwhite, low-income families are more likely to be investigated for child abuse and neglect than White families.

Many speakers noted that the intersection of race and poverty leads to disproportionate rates of surveillance and investigation by the child welfare system.⁴²⁷ Speakers shared that child welfare agency locations are strategically located in marginalized communities with the objective of targeting, surveilling, and investigating Black, Brown, and low-income neighborhoods.⁴²⁸ Per Mr. Brettschneider, 60% of child welfare investigations specifically occur within these

⁴²⁰ Havens Testimony, July 21, 2023, Briefing, p. 11.

⁴²¹ Riley Testimony, Feb. 15, 2023 Briefing, p. 15.

⁴²² Riley August 18, 2023 Statement, at 9, referring to Naomi Schaefer Riley. *Child Welfare and the Cash Panacea, Poverty is not the Cause of Abuse and Neglect*. January 24, 2023. <https://quilllette.com/2023/01/24/child-welfare-and-the-cash-panacea/>

⁴²³ Riley Testimony, Feb. 15, 2023 Briefing, p. 15.

⁴²⁴ Wexler August 18, 2023 Statement, at 10.

⁴²⁵ Havens Testimony, July 21, 2023, Briefing, p. 31.

⁴²⁶ *Ibid.*, p. 11.

⁴²⁷ Burton Aug. 30, 2022 Statement, at 1; McMillan Testimony, Nov. 18, 2022 Briefing p. 12; Brettschneider Testimony, Nov. 18, 2022 Briefing p. 23; Naveed Testimony, Feb. 15, 2023 Briefing, p. 5; Ross Testimony, Feb. 15, 2023 Briefing, p. 9; Ismail Testimony, Feb. 17, 2023 Briefing, p. 7; Wexler Testimony, July 21, 2023 Briefing, p. 4.

⁴²⁸ McMillan Testimony, Nov. 18, 2022 Briefing p. 12; Brettschneider Nov. 18, 2022 Statement, at 5; Naveed Testimony, Nov. 18, 2022 Briefing, p. 33, referring to Human Rights Watch & American Civil Liberties Union report ‘*If I Wasn’t Poor, I Wouldn’t Be Unfit*’ *The Family Separation Crisis In The US Child Welfare System*: “ Dec. 20, 2022. <https://www.aclu.org/report/if-i-wasnt-poor-i-wouldnt-be-unfit-family-separation-crisis-us-child-welfare-system>; Ismail Testimony, Feb. 17, 2023 Briefing, p. 7, referring to The New School study *Child Welfare Investigations and New York City Neighborhoods*. June, 2010. <http://www.centernyc.org/data-brief-child-welfare-investigations>

communities.⁴²⁹ In addition, Professor Ismail noted that a [2019] study found that CPS investigations were four times more prominent in the 10 community districts in New York City composed of Black and Latinx families with the highest rates of child poverty, than in locations with the lowest rates of child poverty.⁴³⁰

Finding XIV: Wealth does not protect Black families from disproportionately high rates of investigation.

Living in an affluent neighborhood does not protect Black families from the risk of investigation by the child welfare system. Ms. Naveed noted that the investigation rates for Black and White families was high in counties with high poverty rates; however, in counties with low poverty rates, Black families still experienced high rates of investigations.⁴³¹ Black children in affluent neighborhoods disproportionately face higher rates of investigations compared to White children.⁴³²

The Family Policy Project provided data to the Committee that New York City child poverty rates do not correlate with child welfare investigation rates.⁴³³ Latino, White, and Asian children in neighborhoods where child poverty is low also experience lower investigation rates, however, the same is not true for Black children.⁴³⁴ Black children in the majority White, affluent neighborhoods of Brooklyn Heights or Boerum Hill face extremely high child welfare investigation rates.⁴³⁵

⁴²⁹ Brettschneider Nov. 18, 2022 Statement, at 5.

⁴³⁰ Ismail Testimony, Feb. 17, 2023 Briefing, p. 7, referring to The New School, Center for New York City Affairs study, *Child Welfare Investigations and New York City Neighborhoods*. June 2019. <http://www.centrernyc.org/data-brief-child-welfare-investigations>

⁴³¹ Naveed Testimony, Nov. 18, 2022 Briefing, p. 33, referring to Human Rights Watch & American Civil Liberties Union report ‘*If I Wasn’t Poor, I Wouldn’t Be Unfit*’ *The Family Separation Crisis In The US Child Welfare System*” Dec. 20, 2022. <https://www.aclu.org/publications/if-i-wasnt-poor-i-wouldnt-be-unfit-family-separation-crisis-us-child-welfare-system>

⁴³² NYC Family Policy Project August 20, 2023 Statement, at 1, 6; Wexler Testimony, July 21, 2023 Briefing, p. 4.

⁴³³ NYC Family Policy Project August 20, 2023 Statement, at 6.

⁴³⁴ *Ibid.*, at 2.

⁴³⁵ *Ibid.*

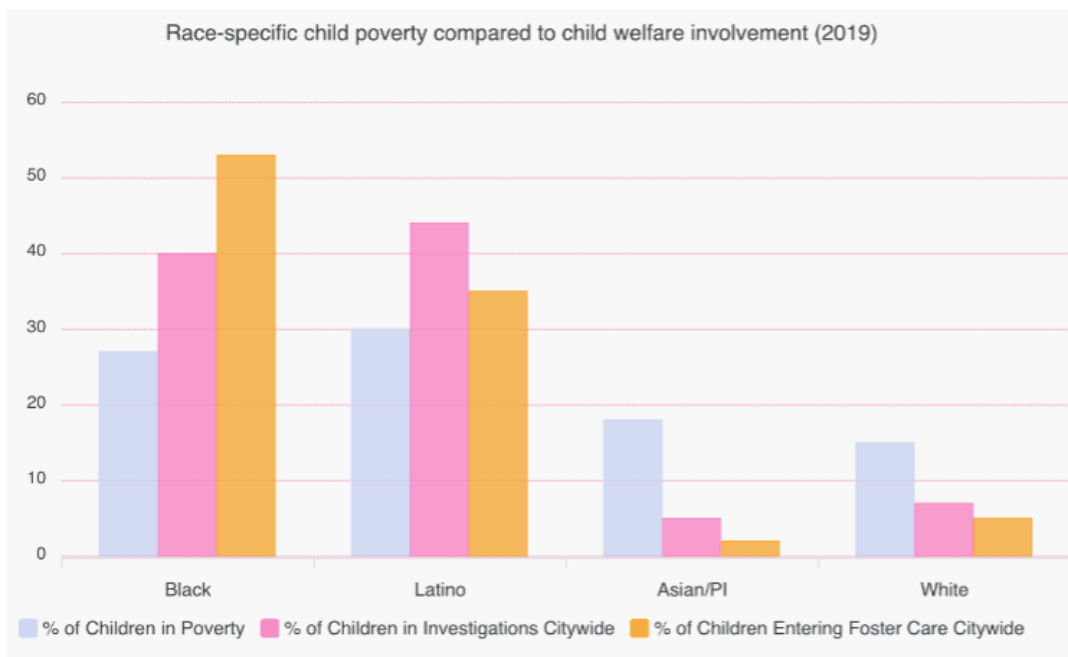


Figure 6: NYC Family Policy Project August 20, 2023 Statement, at 6

Around 10% of Black children in New York City are likely to experience an ACS investigation annually, regardless of the poverty levels of Black children in their neighborhood.⁴³⁶ In White, low-poverty neighborhoods, the risk of an investigation increases to 15% for Black children living in that zip code.⁴³⁷ In contrast, in high White poverty neighborhoods, there are far fewer levels of ACS investigations for White children as compared to levels for Black children in neighborhoods with comparably high Black poverty.⁴³⁸

⁴³⁶ Ibid., at 6-7.

⁴³⁷ Ibid., at 9.

⁴³⁸ Ibid., at 7.

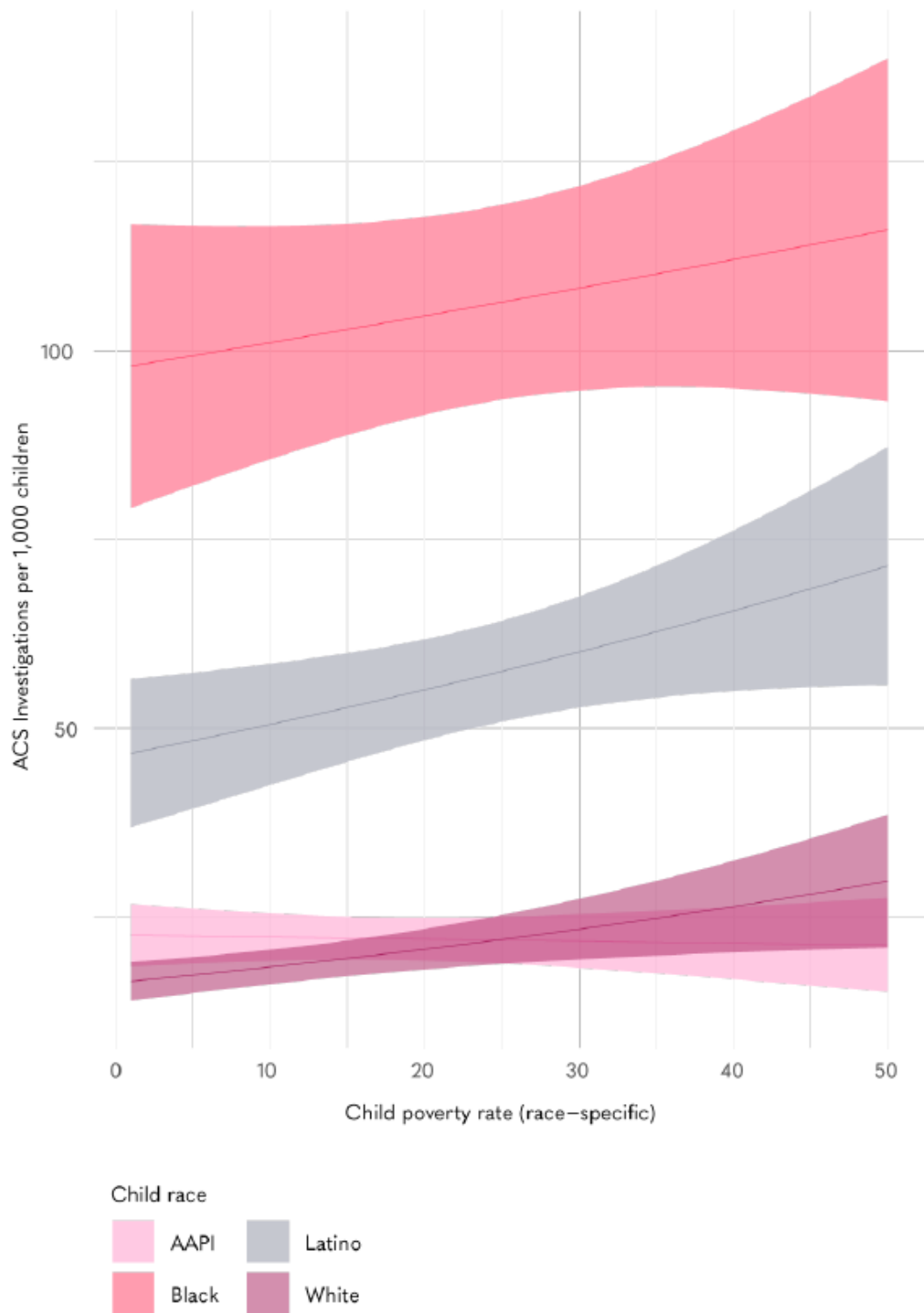


Figure 7: NYC Family Policy Project August 20, 2023 Statement, at 7

Finding XV: There is significant tension between the government’s obligations to protect children from physical and sexual abuse and neglect in their homes and avoiding further trauma by supporting parental rights and family autonomy and integrity.

The majority of child welfare cases, around 87%, are investigated for neglect, and a much smaller number of cases, likely less than 13% of cases, are investigated for abuse.⁴³⁹ Many panelists agreed that there must be prevention and intervention measures to ensure children are not severely harmed.⁴⁴⁰

Professor Martin Guggenheim testified as a child protectionist that only the children at risk for serious abuse or “suffering the risk of serious harm” should be the subjects of the child welfare system, and the rest, about 85%, should not be in the system.⁴⁴¹ Professor Shanta Trivedi noted that “in New York in 2020, only around 12% of the cases... in the system were due to abuse.”⁴⁴²

According to Dr. Sophine Charles, a Black child welfare professional, and associate executive director, Downstate, Council of Families and Child Caring Services; assistant professor, Police Executive Leadership Studies Program at John Jay College of Criminal Justice, speaking in a personal capacity, “[t]he truth is that too many Black children are harmed in their homes AND in foster homes. They are beaten, sexually molested, starved, excessively punished, left unsupervised, denied medical care, and emotionally and psychologically abused. Much of this unimaginable conduct happens at the hands of parents, caregivers, and others – including foster parents. Whether the harm occurs intentionally or accidentally, it is happening and we have a duty to protect children, not by transferring them from one hazardous environment to another.”⁴⁴³

As a former police officer, Dr. Charles witnessed first-hand the evidence of abuse and neglect of children when responding to calls for police. She stressed that all parents should be treated fairly whether maltreatment claims are substantiated or unsubstantiated.⁴⁴⁴ Relatedly, she emphasized the extensive challenges facing NYS child welfare workers, most of whom are Black, when trying to carry out their responsibilities, including the increased risks of personal violence.⁴⁴⁵

⁴³⁹ McMillan Testimony, Nov. 18, 2022 Briefing p. 12; Ketteringham Testimony, Apr. 21, 2023 Briefing, p. 24.

⁴⁴⁰ McMillan Testimony, Nov. 18, 2022 Briefing p. 12; Ross Testimony, Feb. 15, 2023 Briefing, p. 21; Ketteringham Testimony, Apr. 21, 2023 Briefing, p. 24; Day Testimony, Apr. 21, 2023 Briefing, pp. 21; Charles Testimony, July 21, 2023 Briefing, p. 13.

⁴⁴¹ Guggenheim Testimony, Feb. 17, 2023 Briefing, p.20.

⁴⁴² Trivedi Testimony, Feb 17, 2023 Briefing, p. 27.

⁴⁴³ Charles Statement, at 3.

⁴⁴⁴ Charles Testimony, July 21, 2023 Briefing, p. 14.

⁴⁴⁵ Charles Statement, at 6.

According to Dr. Havens, "...it is rare that parents expose their children to adverse experience from a position of strength. Most commonly, they're replicating patterns of adversity they have... experienced in childhood. Parent training and anger management, which are common interventions, may be helpful, but they do not help parents understand and decrease behaviors that are rooted in their own trauma..."⁴⁴⁶ She states that the greater risk to children can arise from untreated intergenerational trauma, the stressors and consequences of racism and poverty, substance abuse, mental health conditions like anxiety, depression and post-traumatic stress disorder, and domestic violence.⁴⁴⁷ She recommends a holistic mental health approach to keep the most challenged families together to avoid further trauma and support these families with "mental health service programs with expertise in family-based care, inter-familial trauma, early childhood and maternal child services, and appropriate interventions for managing domestic violence, understanding the consequences of racism and have integrated case management services."⁴⁴⁸

In discussing the significant harms of, and tensions in, the current child welfare system, Professor Roberts stressed that we "need a replacement for it because we don't want to look away either from the harm that the state inflicts on families or the needs of children either to be protected from violence or to be protected from unmet needs."⁴⁴⁹ Shanta Trivedi likewise noted "in the cases where there have been abuse and neglect in the home, we are further compounding whatever trauma exists by subjecting these kids to the harm of removal instead of giving them services to help their families heal."⁴⁵⁰

Professor Roberts agreed, "why can't there be trauma informed care for children, ways of healing families, of preventing violence in families and other kinds of abuse in families that isn't linked to a violent system that traumatizes even more... and has poor outcomes for children because we want to protect children. Let's figure out better ways."⁴⁵¹

However, Mr. Richter advised the Committee, "notwithstanding the stigma and trauma associated with being a foster youth and fair criticism of the system, when necessary, foster placement can and does protect children from harm. Studies show that when families of origin successfully engage in reunification efforts, young people have better long-term outcomes. Importantly, young people often agree with the decision to remove them from difficult situations. We need to get it right when it comes to engaging families in the child welfare system."⁴⁵²

⁴⁴⁶ Havens Testimony, July 21, 2023, Briefing p.10.

⁴⁴⁷ Ibid., pp. 10-12.

⁴⁴⁸ Havens Testimony, July 21, 2023, Briefing, p.11.

⁴⁴⁹ Roberts, Briefing Feb. 17, 2023 p 21.

⁴⁵⁰ Trivedi, Briefing Feb. 17, 2023, p. 28.

⁴⁵¹ Roberts Testimony, Feb. 17, 2023 Briefing, pp. 21-22.

⁴⁵² Richter Testimony, May 19, 2023 Briefing, p 15.

Dr. Saxe emphasized that there must be a balance of protecting children from unwarranted removals from their families and protecting children in real abuse cases.⁴⁵³ “There is... true abuse and neglect that has massive effect on children and they need protection...And this balance is obviously excruciating...So obviously we must decrease unnecessary removal...But we also can't leave children unprotected. And there are children who are being abused and neglected, and the magnitude of the problem is significant...And if we are not able to protect children, we increase maltreatment of Black kids.”⁴⁵⁴ He stated that in cases of abuse and neglect, children need protection, and the child welfare system is their last hope to have that protection.⁴⁵⁵

Dr. Ross agreed that “there are genuine concerns for child safety and wellbeing in New York City and there are children in danger who need help,”⁴⁵⁶ but stressed that “...fatalities are a very, very, very, very small percentage of the children involved in the system.”⁴⁵⁷ Ms. Mitchell stressed that children with higher needs often come into foster care because quality mental health services, which their families are requesting, are not available in their communities.⁴⁵⁸

Ms. Riley shared that domestic violence in the home and family structure are factors that are correlated with higher rates of Black children being seriously harmed than white children.⁴⁵⁹ Ms. Riley explained that the incidence of physical abuse increases with the presence of a non-relative adult in the home, in which the incidence of physical harm is twice as high as children living with unmarried biological parents, and 10 times as high for married biological parents.⁴⁶⁰ Public agencies have access to information about these correlated risk factors, and need to share information in order to better understand where to direct investigations.⁴⁶¹

Eric Brettschneider Senior Fellow at CUNY Institute for State and Local Governance, retired First Deputy Commissioner of NYC ACS, and former chief of staff at New York State Office of Children and Family Services, noted that the most severe cases of child abuse are typically the cases that are reported on in the media, which can skew public perception towards the most extreme kinds of child abuse and neglect cases while the majority of cases are not substantiated.⁴⁶² Ms. Riley noted that policy makers need to be smart consumers of narratives

⁴⁵³ Saxe Testimony, Feb. 17, 2023 Briefing, p. 15.

⁴⁵⁴ Ibid., p.16.

⁴⁵⁵ Ibid., pp. 15-16.

⁴⁵⁶ Ross Testimony, Feb. 15, 2023 Briefing, p 8.

⁴⁵⁷ Ibid., p. 21.

⁴⁵⁸ Mitchell Testimony, April 21, 2023 Briefing, p 23.

⁴⁵⁹ Riley Testimony, Feb. 15, 2023 Briefing, p. 15.

⁴⁶⁰ Riley Testimony, Feb. 15, 2023 Briefing, p. 15; Riley Testimony, Feb. 15, 2023, Briefing Slides, at 29.

⁴⁶¹ Riley Testimony, Feb. 15, 2023 Briefing, pp. 16-17.

⁴⁶² Brettschneider Testimony, Nov. 18, 2022 Briefing p. 15; Brettschneider Nov. 18, 2022 Statement, at 4.

about child abuse in order to assess representativeness for developing targeted policies that will not cause harm.⁴⁶³

ACS Commissioner Dannhauser acknowledged that “if we can get smarter and smarter about identifying danger where it exists and we can take action there, and build trust with communities because we're not acting in situations that aren't dangerous, we will be able to protect children better.”⁴⁶⁴

Ms. Day noted that “must arrest policies” and interventions over the past three decades have not decreased rates of child sexual abuse,⁴⁶⁵ and Ms. Ketteringham, consistent with many other panelists, noted that the current child welfare system is not only not preventing serious physical harm from occurring but is causing widespread harm to many families through its current practices.⁴⁶⁶ The child welfare system is also causing harm to the children it claims to protect: children who are removed from their homes experience poorer outcomes compared to their peers who do not experience system involvement.⁴⁶⁷ Specifically, they are more likely to be incarcerated; become teen mothers; experience poor outcomes related to cognitive development, education, and employment; and have a higher likelihood of having mental health conditions and substance use disorders.⁴⁶⁸ Foster youth who age out disproportionately experience high rates of homelessness, incarceration, unemployment, and lack of access to health care, resulting in great personal and emotional costs, as well as billions in societal costs.⁴⁶⁹

Finding XVI: Child welfare investigation practices have detrimental impacts on the overall well-being and mental health of Black children and families.

Many contributors provided testimony that investigations are incredibly traumatic, stressful, and intrusive to children and families.⁴⁷⁰ Professor Ismail noted that current child welfare

⁴⁶³ Riley, N. S. & Font, S. The Problem with Lived Experience. Quillette. July 17, 2023, at 1. <https://www.aei.org/op-eds/the-problem-with-lived-experience/#:~:text=The%20irony%20of%20elevating%20lived,or%20otherwise%20disseminate%20their%20story>. Aug. 18, 2023 submission by Naomi Schaefer Riley.

⁴⁶⁴ Dannhauser Testimony, May 19, 2023 Briefing, p. 17.

⁴⁶⁵ Day Testimony, Apr. 21, 2023, Briefing, pp. 21.

⁴⁶⁶ Ketteringham Testimony, Apr. 21, 2023 Briefing, p. 22; Wexler Testimony, July 21, 2023, Briefing, p. 3.

⁴⁶⁷ Naveed Aug. 19, 2023 Statement, at 5.

⁴⁶⁸ Ibid.

⁴⁶⁹ Ibid.

⁴⁷⁰ Lansner Nov. 11, 2022 Statement, at 7-8, referring to NY State Citizen Review Panel, *Child Protection in New York State: A New Paradigm-From Mandated Supporters*, 2022; Naveed Testimony, Feb. 15, 2023 Briefing, pp. 5-6; Ross Testimony, Feb. 15, 2023 Briefing, p. 8; Ismail Testimony, Feb. 17, 2023 Briefing, p. 8; Roberts Testimony, Feb. 17, 2023 Briefing, p. 6; Tatom Testimony, Apr. 19, 2023 Briefing, p. 14; Harris Testimony, Apr. 19, 2023 Briefing, p. 17; Dāi Testimony, Apr. 19, 2023 Briefing, p. 26; White Testimony, Apr. 21, 2023 Briefing, p. 8; Ketteringham Testimony, Apr. 21, 2023 Briefing, p. 11; Dannhauser Testimony, May 19, 2023 Briefing, p. 11; Richter Testimony, May 19, 2023 Briefing, p. 14; Wexler Testimony, July 21, 2023 Briefing, p. 3; Hevesi Testimony, July 21, 2023 Briefing, p. 7; YouthNPower: Transforming Care, Children's Defense Fund-New York August 18, 2023 Statement, at 5.

investigation practices are biased and perpetuate trauma.⁴⁷¹ Ms. Naveed noted that parents report that interviews are often conducted with teachers, neighbors, medical providers, and other individuals before they even know an allegation has been made against them.⁴⁷² She continued:

When questioning children, caseworkers often take children and siblings to a separate room. Children are required to remove as much of their clothing as the caseworker deems necessary up to including their underwear and allow their bodies to be examined by total strangers, often with no advanced notice to the parent or request for permission or consent. This practice has been condemned by the American Bar Association, which passed a resolution in 2021, urging governments to prohibit conducting strip searches of children and youth except in exceptional circumstances.⁴⁷³

Ms. Naveed described parents using words such as “nerve-wracking, invasive, humiliating, causing anxiety, full of judgment and reported feeling of pit in their stomach” during investigations.⁴⁷⁴

Investigations against families have lasting impacts.⁴⁷⁵ Professor Ismail noted that CPS investigations weaken the parent-child bond and families develop depression, anxiety, and stress due to the fear of separation and the parents’ inability to protect and provide for their children.⁴⁷⁶ Dāi, an impacted parent, highlighted the adversarial nature of investigations, where her efforts to comply were not seen as sufficient and her efforts to file grievances to defend herself were used against her.⁴⁷⁷

Grace Tatom, a former foster youth who shared her experiences with the Committee, stated:

[W]hether it's dealing with an investigation or having an experience in the child welfare system, many families and youth are stuck, feeling confused, unaware of what may be useful to them, isolated, ashamed, traumatized, and honestly stuck living in survival mode with their broken relationships and trust between communities, families, and systems.⁴⁷⁸

⁴⁷¹ Ismail Testimony, Feb. 17, 2023 Briefing, pp. 7-8.

⁴⁷² Naveed Testimony, Feb. 15, 2023 Briefing, p. 5.

⁴⁷³ *Ibid.*, p. 6.

⁴⁷⁴ *Ibid.*, p. 5.

⁴⁷⁵ Lansner Nov. 11, 2022 Statement, at 10, referring to NY State Citizen Review Panel, *Child Protection in New York State: A New Paradigm-From Mandated Supporters*, 2022.

⁴⁷⁶ Ismail Testimony, Feb. 17, 2023 Briefing, pp. 9-10.

⁴⁷⁷ Dāi Testimony, Apr. 19, 2023 Briefing, p. 26.

⁴⁷⁸ Tatom Testimony, Apr. 19, 2023 Briefing, p. 14.

Finding XVII: An overwhelming majority of reports against families are unsubstantiated upon investigation, indicating that Black families are being needlessly surveilled, investigated, and monitored.

The vast majority of reports to the hotline are found to be unsubstantiated during investigations,⁴⁷⁹ and the investigations themselves cause serious harm and trauma to Black children and their families.⁴⁸⁰ In May 2022, 75% of the investigations resulted in no indication of abuse and neglect.⁴⁸¹ Commissioner Dannhauser noted that in 2022, of the 92% of investigation cases, ACS did not file a court case, while only 3% of cases led to removals.⁴⁸² Mr. Wexler emphasized that since 92% of cases are not filed in court, that means 92% of families needlessly endured the trauma of CPS investigations.⁴⁸³

Recommendation highlights from testimony

- Require sufficient evidence for claims of neglect or abuse in order to start an investigation.⁴⁸⁴
- Ensure families have access to quality legal representation as soon as CPS starts an investigation, and during court proceedings⁴⁸⁵ through supporting the right to counsel in CAPTA and related federal legislation.⁴⁸⁶
- Require transparency and accountability for anyone who is part of a child welfare investigation with children and families.⁴⁸⁷ Use predictive risk modeling to help determine serious risk of abuse.⁴⁸⁸

⁴⁷⁹ Ismail Testimony, Feb. 17, 2023 Briefing, p. 10; White Testimony, Apr. 21, 2023 Briefing, p. 9;

Ketteringham Testimony, Apr. 21, 2023 Briefing, p. 11; Richter Testimony, May 19, 2023 Briefing, p. 14.

⁴⁸⁰ Ismail Testimony, Feb. 17, 2023 Briefing, p. 8; Lansner Nov. 11, 2022 Statement, at 7-8; Naveed Testimony, Feb. 15, 2023 Briefing, pp. 5-6; Roberts Testimony, Feb. 17, 2023 Briefing, p. 6; White Testimony Apr. 21, 2023 Briefing, p. 8; Wexler Testimony, July 21, 2023 Briefing, p. 3; Dāi Testimony, April 19, 2023, pp. 26-27.

⁴⁸¹ Ketteringham Testimony, Apr. 21, 2023 Briefing, p. 11.

⁴⁸² Dannhauser Testimony, May 19, 2023 Briefing, p. 10.

⁴⁸³ Wexler Testimony, July 21, 2023 Briefing, p. 3.

⁴⁸⁴ White Jan. 20, 2023 Statement, at 1.

⁴⁸⁵ Naveed Testimony, Feb. 15, 2023 Briefing, pp. 7-8; NY State Bar Association Dec. 7, 2022 Statement, at 26; Article 10 Family Defense Organizations in New York City August 19, 2023 Written Statement, at 30; Lansner Nov. 11, 2022 Statement, at 9, referring to NY State Citizen Review Panel, *Child Protection in New York State: A New Paradigm-From Mandated Supporters*, 2022; NY State Bar Association Dec. 7, 2022 Statement, at 28; New York Civil Liberties Union, ACLU of New York August 18, 2023 Statement, at 7.

⁴⁸⁶ Naveed Testimony, Feb. 15, 2023 Briefing, pp. 7-8; NY State Bar Association Dec. 7, 2022 Statement, at 26; Article 10 Family Defense Organizations in New York City August 19, 2023 Written Statement, at 30; Lansner Nov. 11, 2022 Statement, at 9, referring to NY State Citizen Review Panel, *Child Protection in New York State: A New Paradigm-From Mandated Supporters*, 2022; NY State Bar Association Dec. 7, 2022 Statement, at 28.

⁴⁸⁶ White Jan. 20, 2023 Statement, at 1.

⁴⁸⁷ Ibid.

⁴⁸⁸ Riley Testimony, Feb. 15, 2023 Briefing, pp. 16-17.

- Require that public agencies collaborate to share information about history of abuse, educational neglect, and unsafe living conditions to better predict risk of imminent harm.⁴⁸⁹
- Prohibit caseworkers from conducting strip searches.⁴⁹⁰
- Prohibit child welfare workers from interviewing children at school without a court order and notice to the parents.⁴⁹¹
- Pay child welfare staff a living wage so they can appropriately deliver the services they are charged with providing.⁴⁹²
- Support organizations outside of the formal child welfare system in providing services and resources related to better housing, safer neighborhoods, financial stability, and home visiting.⁴⁹³
- Increase funding for resources to support families to reduce CPS involvement.⁴⁹⁴
- Reorient federal funding under CAPTA to prioritize anti-poverty approaches as outlined in the Family Poverty is Not Neglect Bill (H.R. 573).⁴⁹⁵
- Require informed consent for drug testing of perinatal individuals.⁴⁹⁶
- Require child welfare workers to inform parents of their rights upon first contact, similar to Miranda rights.⁴⁹⁷

⁴⁸⁹ Riley Testimony, Feb. 15, 2023 Briefing, pp. 16-17.

⁴⁹⁰ Lansner Nov. 11, 2022 Statement, at 10, referring to NY State Citizen Review Panel, *Child Protection in New York State: A New Paradigm-From Mandated Supporters*, 2022.

⁴⁹¹ Ibid.

⁴⁹² Charles Aug. 20, 2023 Statement, at 8.

⁴⁹³ Lansner Nov. 11, 2022 Statement, at 7, referring to NY State Citizen Review Panel, *Child Protection in New York State: A New Paradigm-From Mandated Supporters*, 2022; Lansner Nov. 11, 2022 Statement, at 7, referring to NY State Citizen Review Panel, *Child Protection in New York State: A New Paradigm-From Mandated Supporters*, 2022; Brettschneider Testimony, Nov. 18, 2022 Briefing p. 16; Brettschneider Nov. 18, 2022 Statement, at 6; Naveed Testimony, Feb. 15, 2023 Briefing, pp. 7-8.

⁴⁹⁴ Wallach Dec. 7, 2022 Statement, at 2 referring to NY State Bar Association, Report and recommendations of the Committee on Families and the *Law Racial Justice and Child Welfare*, 2022; Ross Testimony, Feb. 15, 2023 Briefing, p. 10; Naveed Testimony, Feb. 15, 2023 Briefing, pp. 7-8.

⁴⁹⁵ Burton Aug. 20, 2023 Statement, at 7.

⁴⁹⁶ Wallach Dec. 7, 2022 Statement, at 2 referring to NY State Bar Association, Report and recommendations of the Committee on Families and the *Law Racial Justice and Child Welfare*, 2022.

⁴⁹⁷ Wallach Dec. 7, 2022 Statement, at 2 referring to NY State Bar Association, Report and recommendations of the Committee on Families and the *Law Racial Justice and Child Welfare*, 2022; Naveed Testimony, Feb. 15, 2023 Briefing, pp. 7-8; Article 10 Family Defense Organizations in New York City August 19, 2023 Written Statement, at 29; Lansner Nov. 11, 2022 Statement, at 9, referring to NY State Citizen Review Panel, *Child*

- Support highly challenged families, by keeping the family together, with mental health service programs with expertise in family-based care, inter-familial trauma, early childhood and maternal child services, and appropriate interventions for managing domestic violence, understanding the consequences of racism and poverty, and have integrated case management services.⁴⁹⁸ Identify danger to children where it exists, taking targeted action to sufficiently mitigate the risk; and simultaneously build trust with communities where children are not in dangerous situations.⁴⁹⁹

Family Court

Finding XVIII: Black individuals face degrading treatment and disproportionately severe outcomes in Family Court.

The Committee received testimony that Black individuals are degraded and receive more severe outcomes than White individuals in Family Court proceedings.⁵⁰⁰ Judges are more likely to terminate the parental rights of Black parents than white parents.⁵⁰¹ Although there is evidence noting the Black mothers are no more likely than White mothers to abuse their children, Black mothers are deemed unfit to parent their children at higher rates than White mothers.⁵⁰² Black families are 1.49 times more likely than White families to be the recipients of court-ordered surveillance.⁵⁰³ Black children are 35% more likely to be placed in group homes or residential treatment facilities, compared to White children.⁵⁰⁴ Judges are more likely to favor congregate care placements based on assumptions that Black family living arrangements are too small or inappropriate.⁵⁰⁵ Case plans for families of removed children are generic and inadequate to the

Protection in New York State: A New Paradigm-From Mandated Supporters, 2022; NY State Bar Association Dec. 7, 2022 Statement, at 28; New York Civil Liberties Union, ACLU of New York August 18, 2023 Statement, at 4.

⁴⁹⁸ Dr. Havens, July 21, 2023 Briefing, pp. 10-12.

⁴⁹⁹ Dannhauser Testimony, Briefing May 19, 2023.

⁵⁰⁰ Lansner Nov. 11, 2022 Statement, at 1; NY State Bar Association. Nov. 18, 2022 Statement, at 11; Day Testimony, Apr. 21, 2023 Briefing, p. 14; Ketteringham Testimony, Apr. 21, 2023 Briefing, p. 10; Melissa Friedman and Daniella Rohr. *Reducing Family Separations in New York City: The Covid-19 Experiment and a Call for Change*. Columbia Law Review Vol. 123 No. 2. Submitted June 27, 2023 by Melissa Friedman and Daniella Rohr; New York City Article 10 Family Defense Organizations Aug. 19, 2023 Statement, at 3, 13; Ketteringham Testimony, Apr. 21, 2023 Briefing, pp. 10-11, referring to Report from the Special Adviser on Equal Justice in the New York State Courts. Oct. 1. 2020.

<https://www.nycourts.gov/whatsnew/pdf/SpecialAdviserEqualJusticeReport.pdf>; Angela Olivia Burton and Joyce McMillan, How judges can use their discretion to combat anti-black racism in the United States family policing system, *Family Court Review* (2023), at 9-10, <https://onlinelibrary.wiley.com/doi/epdf/10.1111/fcre.12706>.

⁵⁰¹ NY State Bar Association Dec. 7, 2022 Statement, at 18.

⁵⁰² *Ibid.*, at 17.

⁵⁰³ Article 10 Family Defense Organizations in New York City August 19, 2023 Written Statement, at 4.

⁵⁰⁴ NY State Bar Association Dec. 7, 2022 Statement, at 18.

⁵⁰⁵ *Ibid.*, at 18.

specific needs of the parents in order to support true efforts at reunification.⁵⁰⁶ Case plans also may not be culturally appropriate or accessible to the families.⁵⁰⁷

The New York City Article 10 Family Defense Organizations highlighted their concerns about family court to the Committee:

The culture of racism is pervasive to all those who appear in family court. As the Franklin H. Williams Commission of the New York State Courts highlighted, a common complaint about the New York City family court was its “dehumanizing” culture and treatment of litigants and counsel, that ranged from disrespectful and discourteous to outright discriminatory.⁵⁰⁸ Our experience representing parents in family court confirms this. Our clients and staff are routinely faced with implicit and explicit racism, classism, sexism, heterosexism, xenophobia, and ableism from judges and court staff alike. On a regular basis our clients face the following harms and disregard for their humanity and dignity in family court:

1. Being called by generic labels like “mom,” “birth mom,” “dad,” and “paramour,” instead of by their actual names, and the use of other dehumanizing language;
2. Having cases scheduled and called with no regard whatsoever of the parent’s schedule, obligations, or the arduous demands of court ordered services;
3. Experiencing the other players in the system insensitively laughing, joking, rolling their eyes, and making light of the proceedings in total disregard for the profound impact the proceeding is having on them and their family; and
4. Being subjected to the reliance on tropes and narratives deeply rooted in this country’s history of anti-Black racism, classism, and other forms of structural oppression.⁵⁰⁹

There is also a lack of consideration for different family structures and cultures in the Family Court specifically.⁵¹⁰ Vanessa Cobbs shared her experience as an impacted parent with the Committee: “[t]he trauma of going to court every month for five years and hear negative things about being a parent from people who were not parents themselves was stress, anxiety and depression.... they never considered the cultural differences or have training experience with different cultures.”⁵¹¹

⁵⁰⁶ Elkins Aug. 20, 2023 Statement, at 2.

⁵⁰⁷ Naveed Aug. 19, 2023 Statement, at 8-9.

⁵⁰⁸ The Franklin H. Williams Commission of the New York State Courts, Report on New York City Family Courts (2019), <https://www.nycourts.gov/LegacyPDFS/IP/ethnic-fairness/pdfs/FHW%20-%20Report%20on%20the%20NYC%20Family%20Courts%20-%20Final%20Report.pdf>, Aug. 19, 2023 submission by Article 10 Family Defense Organizations.

⁵⁰⁹ Article 10 Family Defense Organizations in New York City August 19, 2023 Written Statement, at 14.

⁵¹⁰ Ketteringham Testimony, Apr. 21, 2023 Briefing, p. 12; Schomburg July 28, 2023 Statement, at 3.

⁵¹¹ Cobbs Apr. 24, 2023 Statement, at 1.

Finding XIX: The New York State Family Court procedures and policies perpetuate racism and deny Black families due process, respect, and justice.

Mr. Richter noted that the structure of the New York State Family Court process—particularly its adversarial character—breeds mistrust: “The government, relying on the CPS for information, is pitted against the parents, creating a defensive posture that is akin to a criminal proceeding, deepening dysfunction and thwarting efforts to support families.”⁵¹² Parents are silenced⁵¹³ and do not receive basic due process protections when cases are filed in Family Court.⁵¹⁴ Jusinta Jaggassar-Ernul, a parent who shared her experience with the Committee, asked the Committee to seriously question how the court system could be considered fair when families are not afforded due process protections in their cases.⁵¹⁵ Ms. McMillan and Ms. Burton noted, “Disregarding or discrediting parental knowledge not only violates parents’ right to be heard as a matter of due process; it is disempowering and can also be harmful to a child’s development, care, and safety. Judges should allow parents to speak directly on all issues and decisions affecting their family.”⁵¹⁶

Judges have discretion to interpret vague language in the laws, including “reasonable efforts,” “imminent risk,” “permanency,” “best interest,” “neglect” and “minimum degree of care,” based on their own potential biases of what constitutes appropriate child rearing practices.⁵¹⁷ Ms. McMillan explained that “there’s often no recourse to hold judges accountable, so they act like the law is not relevant to their responsibilities in the courtroom where they are assigned to make decisions within the boundaries of the law. They therefore can and do make decisions based on their own opinions, their implicit and explicit biases.”⁵¹⁸ Ms. Burton noted that “unchecked discretion allows Anti-Black discrimination to manifest at every decision-making

⁵¹² Richter May 19, 2023 Talking Points, p. 3.

⁵¹³ Angela Olivia Burton and Joyce McMillan, How judges can use their discretion to combat anti-black racism in the United States family policing system, Family Court Review (2023), at 15, <https://onlinelibrary.wiley.com/doi/epdf/10.1111/fcre.12706>, Aug. 20, 2023 Submission by Angela Olivia Burton.

⁵¹⁴ Ketteringham Testimony, Apr. 21, 2023 Briefing, p. 10; Burton Aug. 20, 2023 Statement, at 6.

⁵¹⁵ Jaggassar-Ernul, Apr. 19, 2023 Briefing, p. 22.

⁵¹⁶ Angela Olivia Burton and Joyce McMillan, How judges can use their discretion to combat anti-black racism in the United States family policing system, Family Court Review (2023), at 15, <https://onlinelibrary.wiley.com/doi/epdf/10.1111/fcre.12706>, Aug. 20, 2023 Submission by Angela Olivia Burton.

⁵¹⁷ Ketteringham Testimony, Apr. 21, 2023 Briefing, p. 10; Burton Aug. 20, 2023 Statement, at 6-7; Angela Olivia Burton and Joyce McMillan, How judges can use their discretion to combat anti-black racism in the United States family policing system, Family Court Review (2023), at 9, <https://onlinelibrary.wiley.com/doi/epdf/10.1111/fcre.12706>.

⁵¹⁸ Angela Olivia Burton and Joyce McMillan, How judges can use their discretion to combat anti-black racism in the United States family policing system, Family Court Review (2023), <https://onlinelibrary.wiley.com/doi/epdf/10.1111/fcre.12706>.

point of contact with the system and is a tool that empowers state authorities to exercise control of Black families.”⁵¹⁹

Retired Family Court Judge Lee Elkins shared his experience as a judge:

In my experience the court as an institution failed to protect the statutory and constitutional civil rights of parents, in particular. The local child protective agency removed children before petitioning the court in most cases. Very often orders to return children to their families after post removal hearing would be overturned by appellate courts which showed little of the deference generally accorded trial judges as finders of fact. A statistical analysis of appellate rulings on such orders will show that orders to return children are much more likely to be reversed than most other lower court orders. A review of the scholarly literature on child protection proceedings will reveal extensive criticism of the Family Court’s failure to enforce the so called “reasonable efforts” requirement of services to prevent removal of children from their homes. It was an open secret that the judges would make such findings without any basis in the record so as to protect agency funding, as a contrary finding potentially resulted in the agency receiving no further federal funds for that case.⁵²⁰

There are biased assumptions that Black children or adults are more guilty.⁵²¹ Assemblyman Hevesi noted that this “presumption of dangerousness, and guilt is racist, and rooted in a racist system.”⁵²² Cases involving injury to infants and children are particularly subject to implicit biases within the courts as there are often no eyewitnesses, and parents may be unable to explain how an injury occurred.⁵²³ Similarly, racial biases concerning culpability can impact outcomes of sexual abuse cases which tend to have a lack of physical evidence.⁵²⁴ Commissioner Schomburg noted, “Black families are more likely to have their parental rights terminated leading to a range of consequences including trauma for children and parents, the disruption of family bonds and relationships, and the perpetuation of systematic racism.”⁵²⁵

Multiple contributors raised concerns over court mandated mental health evaluations, termed “mental hazing” by an impacted parent,⁵²⁶ that are highly intrusive, often ordered absent prior history of mental health concern, lack consideration for determining whether concerns are situationally triggered by the investigation, and lack a reliable basis for determining child and

⁵¹⁹ Burton Aug. 20, 2023 Statement, at 7.

⁵²⁰ Elkins Aug. 20, 2023 Statement, at 2.

⁵²¹ Day Testimony, Apr. 21, 2023 Briefing, p. 14.

⁵²² Hevesi Testimony, July 21, 2023 Briefing, p. 6.

⁵²³ Lansner Nov. 11, 2022 Statement, at 1.

⁵²⁴ *Ibid.*, at 2.

⁵²⁵ Schomburg July 28, 2023 Statement, at 3.

⁵²⁶ Angela Olivia Burton and Joyce McMillan, How judges can use their discretion to combat anti-black racism in the United States family policing system, *Family Court Review* (2023), at 11, <https://onlinelibrary.wiley.com/doi/epdf/10.1111/fcre.12706>, Aug. 20, 2023 Submission by Angela Olivia Burton.

family needs.⁵²⁷ Court mandated supervision, in which the court orders mandated treatment or services to a family, is also often ordered without consideration for what an individual family needs and further exposes families to intense surveillance, disrupting relationships and further traumatizing families in the process.⁵²⁸

Finding XX: Lacking adequate judicial and attorney resources necessary to afford due process to Black parents and children in the New York City Family Court during the pendency of child welfare proceedings, the New York City Family Court violates their constitutional, civil and statutory rights resulting in unconscionably long delays, unnecessary family separation, and immeasurable harm and trauma to Black families.

“State intervention in family life...[is] a core civil liberties issue that implicates families’ fundamental rights to privacy, due process, and family integrity.”⁵²⁹

“Family Courts are currently in crisis, which negatively impacts families, particularly children, who are the most vulnerable...[with] unconscionable delays in resolving cases.”⁵³⁰ “It is well-documented that New York City Family Courts are over-burdened and under-resourced. Over thirty years ago, the Commission’s namesake, Ambassador Franklin H. Williams, in his 1991 report noted that ‘there are two justice systems at work in the courts of New York State, one for Whites, and a very different one for minorities and the poor.’”⁵³¹ According to the 2022 Williams Commission’s report on the NYC Family Court, significant issues remain.⁵³²

Retired Family Court Judge Lee Elkins agrees, stating: “In my experience the court as an institution failed to protect the statutory and constitutional civil rights of parents, in

⁵²⁷ Angela Olivia Burton and Joyce McMillan, How judges can use their discretion to combat anti-black racism in the United States family policing system, *Family Court Review* (2023), at 11, <https://onlinelibrary.wiley.com/doi/epdf/10.1111/fcre.12706>, Aug. 20, 2023 Submission by Angela Olivia Burton; Angela Olivia Burton and Angeline Montauban, Toward Community Control of Child Welfare Funding: Repeal the Child Abuse Prevention and Treatment Act and Delink Child Protection from Family Well-Being, *Columbia Journal of Race and Law* (2021), at 19, <https://journals.library.columbia.edu/index.php/cjrl/article/view/8747>, Aug. 20, 2023 Submission by Angela Olivia Burton.

⁵²⁸ Angela Olivia Burton and Joyce McMillan, How judges can use their discretion to combat anti-black racism in the United States family policing system, *Family Court Review* (2023), at 11, <https://onlinelibrary.wiley.com/doi/epdf/10.1111/fcre.12706>, Aug. 20, 2023 Submission by Angela Olivia Burton.

⁵²⁹ New York Civil Liberties Union, August 18, 2023, Written Testimony, at 1.

⁵³⁰ Franklin H. Williams Judicial Commission of the New York State Courts. Report on New York City Family Courts. Dec. 19, 2022, at 7, <https://www.nycourts.gov/LegacyPDFS/IP/ethnic-fairness/pdfs/FHW%20-%20Report%20on%20the%20NYC%20Family%20Courts%20-%20Final%20Report.pdf>. Apr 11, 2023 Submission by Emma Ketteringham.

⁵³¹ *Ibid.*

⁵³² Franklin H. Williams Judicial Commission of the New York State Courts. Report on New York City Family Courts. Dec. 19, 2022, at 3, 5; <https://www.nycourts.gov/LegacyPDFS/IP/ethnic-fairness/pdfs/FHW%20-%20Report%20on%20the%20NYC%20Family%20Courts%20-%20Final%20Report.pdf>. Apr 11, 2023 Submission by Emma Ketteringham.

particular.”⁵³³ “Child protection proceedings were notoriously protracted, with fact-finding proceedings in neglect and abuse cases continued over months while children remained in temporary foster care. This was due to the under resourcing of the court relative to the numbers of petitions filed by the child protection agency. The result was that parents waited months to be heard by a judge. Moreover, no effort was made by the court to prioritize cases where the child had been removed from the home over cases where the family was being supervised with the child remaining in the home. Termination of parental rights trials were similarly interminable.”⁵³⁴

The Article 10 Family Defense Organizations also agree, stating “[t]he family courts are plagued by unacceptable delays, which reveal a disregard for the families the court claims to serve.”⁵³⁵ Further, they revealed “when a court temporarily separates children from their families in Article 10 cases, parents may request the return of their children under §§ 1027 and 1028 of the Family Court Act. Because of the universally understood harm that is caused by family separation, there are strict timelines under which these hearings must commence according to the statute; once a parent requests a § 1028 hearing, the law requires that ‘such hearing shall be held within three court days’ and may not be adjourned ‘except upon good cause shown.’ Likewise, a hearing under Family Court Act § 1027 must commence the next day after the filing of the Article 10 petition, and the hearing must continue on successive court dates thereafter. The purpose of these provisions is to ensure that determinations to take the extreme step of separating a family are reviewed expeditiously and made with a complete record. Yet the family court routinely fails to prioritize these hearings over other matters, often scheduling them for such short increments of time that no substantive evidence can be entered, and scheduling them weeks into the future or with weeks-long gaps between dates, leaving families needlessly separated. Deprioritizing emergency hearings violates the law, denies justice for families, and needlessly prolongs separation and court involvement.”⁵³⁶

Family Court officials exercise discretion concerning which cases to prioritize, irrespective of what the law prioritizes.⁵³⁷ Emergency hearings to end family separations are not prioritized but are scheduled weeks later, even though the law states that hearings must be scheduled within three days of a parent’s request, stated Ms. Ketteringham.⁵³⁸ Mr. Richter stated that lack of funds to Family Courts and excessive caseloads add to the negative impacts for the families who are involved.⁵³⁹ He noted, “judges are making child removal decisions in minutes based on incomplete information.”⁵⁴⁰ Mr. Richter also quoted former Secretary of Homeland Security,

⁵³³ Elkins Aug. 20, 2023 Statement, at 2.

⁵³⁴ Ibid.

⁵³⁵ Article 10 Family Defense Organizations in New York City Aug. 19, 2023 Statement, at 17.

⁵³⁶ Ibid., at 19.

⁵³⁷ Ketteringham Testimony, Apr. 21, 2023 Briefing, p. 10.

⁵³⁸ Ibid., pp. 10-11.

⁵³⁹ Richter Testimony, May 19, 2023 Briefing, p. 14.

⁵⁴⁰ Ibid.

Jeh Johnson, that Family Court in New York is one of the "... worst offenders in offering a fair and equitable forum to litigants."⁵⁴¹ In New York, Black children's parents' rights are terminated at 2.6 times the rate that White children's parents' rights are terminated.⁵⁴² Termination of parental rights is often referred to as the "civil death penalty" or "death penalty"⁵⁴³ within Family Court, yet the process occurs without a jury's involvement in deliberating a decision of such severity.⁵⁴⁴

The New York State Bar Association's Committee on Families and the Law, along with many others, recently advocated successfully for an increase in the number of Family Court judges, rates of pay for Attorneys for the Child and 18(b) Parent Attorneys, and an increase in state funding for parent representation through the state's Office of Indigent Legal Services, with a goal of equal justice through timely resolution of child welfare cases and providing more qualified attorneys to represent parents and children.⁵⁴⁵ Notwithstanding the challenges, the New York State Office of Court Administration and New York City Family Court are obligated to provide due process and protect the constitutional, civil and statutory rights of every individual before it.

Recommendation highlights from testimony:

- Eliminate the termination of parental rights.⁵⁴⁶
- Require a jury for Family Court proceedings regarding termination of parental rights.⁵⁴⁷
- Require family court judges and staff to be trained and held accountable for ongoing acts of racism and bias in their words and actions towards Black families.⁵⁴⁸

⁵⁴¹ Richter Testimony, May 19, 2023 Briefing, p. 15, referring to Johnson quote, Report from the Special Adviser on Equal Justice in the New York State Courts. Oct. 1. 2020.

<https://www.nycourts.gov/whatsnew/pdf/SpecialAdviserEqualJusticeReport.pdf>.

⁵⁴² Naveed Aug. 19, 2023 Statement, at 2.

⁵⁴³ Naveed Aug. 19, 2023 Statement, at 5; Richter Testimony, Apr. 21, 2023 Briefing, p. 14.

⁵⁴⁴ Richter Testimony, Apr. 21, 2023 Briefing, p. 14.

⁵⁴⁵ New York State Bar Association Committee on Families and the Law July 28, 2023 Statement, at 2-3.

⁵⁴⁶ Article 10 Family Defense Organizations in New York City Aug. 19, 2023 Statement, at 25.

⁵⁴⁷ Richter Testimony, Apr. 21, 2023 Briefing, p. 14.

⁵⁴⁸ Article 10 Family Defense Organizations in New York City Aug. 19, 2023 Statement, at 32; Burton, A. O., & McMillan, J. (2023). How judges can use their discretion to combat Anti-Black racism in the United States family policing system. *Family Court Review*, at 19. <https://doi.org/10.1111/fcre.12706>, Aug. 20, 2023 Submission by Angela Olivia Burton.

- Listen to, and ensure impacted individuals are involved in informing policy and decision-making.⁵⁴⁹
- Require judicial education that includes training on the historical and ongoing treatment of Black families and children and normalization of Black family separation in order to actively challenge personal biases in decision-making, laws, policies, and practices.⁵⁵⁰
- Enforce the legal requirements surrounding “reasonable efforts” to avoid family separation, and, if a child is removed, enforce “reasonable efforts” towards family reunification.⁵⁵¹Increase the number of NYC Family Court Judges and address vacancies.⁵⁵²
- Address and eliminate the “dehumanizing” culture in the NYC Family Court.⁵⁵³
- Provide mandatory annual anti-bias training for all judges and court personnel.⁵⁵⁴
- Provide for observation and feedback for judges and non-judicial court personnel by colleagues, supervising judges and independent court watchers.⁵⁵⁵
- Ensure judicial accountability and transparency.⁵⁵⁶
- Increase diversity on the Family Court bench.⁵⁵⁷

Removals

⁵⁴⁹ YouthNPower: Transforming Care, Children’s Defense Fund-New York August 18, 2023 Statement, at 8; Burton, A. O., & McMillan, J. (2023). How judges can use their discretion to combat Anti-Black racism in the United States family policing system. *Family Court Review*, at 15. <https://doi.org/10.1111/fcre.12706>, Aug. 20, 2023 Submission by Angela Olivia Burton.

⁵⁵⁰ *Ibid.*, at 18.

⁵⁵¹ *Ibid.*, at 19.

⁵⁵² Franklin H. Williams Judicial Commission of the New York State Courts. Report on New York City Family Courts. Dec. 19, 2022, at 7, <https://www.nycourts.gov/LegacyPDFS/IP/ethnic-fairness/pdfs/FHW%20-%20Report%20on%20the%20NYC%20Family%20Courts%20-%20Final%20Report.pdf>. Apr 11, 2023 Submission by Emma Ketteringham.

⁵⁵³ *Ibid.*, at 9.

⁵⁵⁴ *Ibid.* at 10.

⁵⁵⁵ *Ibid.*, at 11.

⁵⁵⁶ *Ibid.*

⁵⁵⁷ *Ibid.*, at 8.

Finding XXI: Federal, state, and local funding significantly incentivizes family separation through child removals from families rather than prioritizing prevention, direct family support and family integrity keeping families together.

Ms. Burton emphasized that “[t]he ‘child welfare’ system is a multi-billion-dollar industry. According to Child Trends, in 2018, state and local child welfare agencies spent \$33.0 billion using a combination of federal, state, local, and other funds. States collectively spent \$18.2 billion in state and local funds, with the remaining \$12.8 billion supplied by the federal government. Child welfare agencies used nearly 65% of all federal and state/local expenditures on family separation: 45% on out-of-home placement and 19% on adoption and guardianship.”⁵⁵⁸

Further, she noted that “[a]ccording to the Congressional Research Service, in 2021, almost 80% of the federal government’s funding to states for child welfare specific programs was spent on family separation (\$5.796 for foster care and \$4.073 billion for adoption). The remaining 20% was designated for ‘child and family services’ (\$1.252 billion); ‘services to older and former foster youth programs’ (\$586 million); and ‘competitive grants, research, technical assistance, and incentives’ (\$253 million).”⁵⁵⁹

Many other panelists agreed and highlighted that child welfare funding incentivizes harmful family separation over the more effective and appropriate direct investment in families and targeted services.⁵⁶⁰ New York State’s OCFS Acting Commissioner Miles-Gustave highlighted the disparity in, with her recommendations for, federal funding: “Casey Family Programs has noted that the federal government spent approximately 5.3 billion in fiscal year 2020 on foster care services, while spending only 559 million on prevention and permanency. So increasing flexibility for the use of funding for primary prevention aligns with the federal and New York state’s goals, of keeping families together and supported in their communities. Additionally, flexibility in the standards of evidence-based programs selected for payment under Title IV-E can allow states to use these culturally competent evidence-based programming of their choosing, and really target family supported and specific services.”⁵⁶¹

⁵⁵⁸ Burton Aug. 20, 2023 Statement, at 5.

⁵⁵⁹ Ibid., p.6.

⁵⁶⁰ Miles-Gustave Testimony, May 19, 2023 Briefing, p. 9; Charles July 21, 2023 Statement, p. 5; Ms. Naveed stated, “[d]espite recognizing that access to resources and social supports are protective factors that may prevent unintended neglect and protect children from maltreatment, state and local agencies within the child welfare system spend nearly 10 times more on the foster system than on services that would support families in reunifying with their children. System interventions fail to adequately address the needs of the family, and in some cases exacerbate the problems that they intend to remedy. For example, loss and reduction of income and an increase in material hardships can adversely impact a family’s overall well-being. However, current child welfare system interventions do not effectively address these factors, strengthen families, or protect children’s health. In some cases, child welfare involvement exacerbates financial hardships, with some states requiring families with children in the foster system to pay child support.” Naveed Aug. 19, 2023 Statement, at 6.

⁵⁶¹ Miles-Gustave Testimony, May 19, 2023 Briefing, p. 9.

Dr. Charles also agrees, stating “[i]t is imperative that we figure out a way to shift some of the monies from foster care to directly compensate families that show up in the system when they are ‘unable’ to provide for their children. Alternative and direct funding streams are needed as supportive options to removing children from their families due to poverty-related neglect allegations.”⁵⁶²

New York State’s Council of Family and Child Caring Agencies (COFFCA) recommends that the federal government evaluate funding streams that would promote increased flexibility to support primary prevention services. While the Federal Family First Prevention Services Act provided states with the ability to access Title IV-E funding for prevention services, the reality is that the funding is still tied to children meeting a definition of candidacy for entry into foster care.⁵⁶³

Ms. Mitchell, whose organization, Juvenile Rights Division of the Legal Aid Society, provides most of the legal representation for children in the NYC Family Court, highlighted the magnitude of the misplaced funding priorities for one child in the foster system: “in 2022, one foster care agency received approximately \$770 from the state per day, per child to be placed in a QRTP [Qualified Residential Treatment Program] placement. That’s a startling \$280,320 cost per year, per child. If all that money was invested either in the child’s family, community, or with the child directly, the results would be astonishing.”⁵⁶⁴

Finding XXII: Black children are disproportionately removed from their families, disrupting entire families and their communities.

Black children are more likely than other children to be removed from their families,⁵⁶⁵ and are also less likely to be reunified with their families.⁵⁶⁶ Black families are 13 times more likely than White families to have their children removed from their care.⁵⁶⁷ Half of the children who are removed are under 5 years old, which Dr. Havens notes is the definition of experiencing “complex trauma.”⁵⁶⁸ The incidence of removals is low compared to the number of reports filed: in 2022, only 3% of cases led to removals.⁵⁶⁹ In 2019, 18.2% of Black children were removed because of claims of physical or sexual abuse, whereas 63.1% of removals were due to

⁵⁶² Charles July 21, 2023 Statement, p 5.

⁵⁶³ Brady-Stepien Aug. 15, 2023 Statement, p 6.

⁵⁶⁴ Mitchell Testimony, Briefing April 21, 2023, p 5.

⁵⁶⁵ Saxe Testimony, Feb. 17, 2023 Briefing, p. 15; Hevesi Testimony, July 21, 2023 Briefing, p. 6; Burton Aug. 30, 2022 Statement, at 1; Schomburg July 28, 2023 Statement, at 2; New York City Article 10 Family Defense Organizations Aug. 19, 2023 Statement, at 3.

⁵⁶⁶ Hevesi Testimony, July 21, 2023 Briefing, p. 6; Schomburg July 28, 2023 Statement, at 2.

⁵⁶⁷ Richter Testimony, May 19, 2023 Briefing, p. 13, referring to New York Times report *Is N.Y.’s Child Welfare System Racist? Some of Its Own Say Yes*. Nov. 22, 2022. <https://www.nytimes.com/2022/11/22/nyregion/nyc-acs-racism-abuse-neglect.html>; Charles Testimony, July 21, 2023 Briefing, p. 12.

⁵⁶⁸ Havens Testimony, July 21, 2023 Briefing, p.12.

⁵⁶⁹ Dannhauser Testimony, May 19, 2023 Briefing, p. 10.

neglect.⁵⁷⁰ The New York State Bar Association found that when it comes to Black children and children of color, “reasonable efforts” to preserve and unify families are not applied, creating further disproportionalities.⁵⁷¹

ACS removes Black children from their families almost twice as often as Latino or White children.⁵⁷²

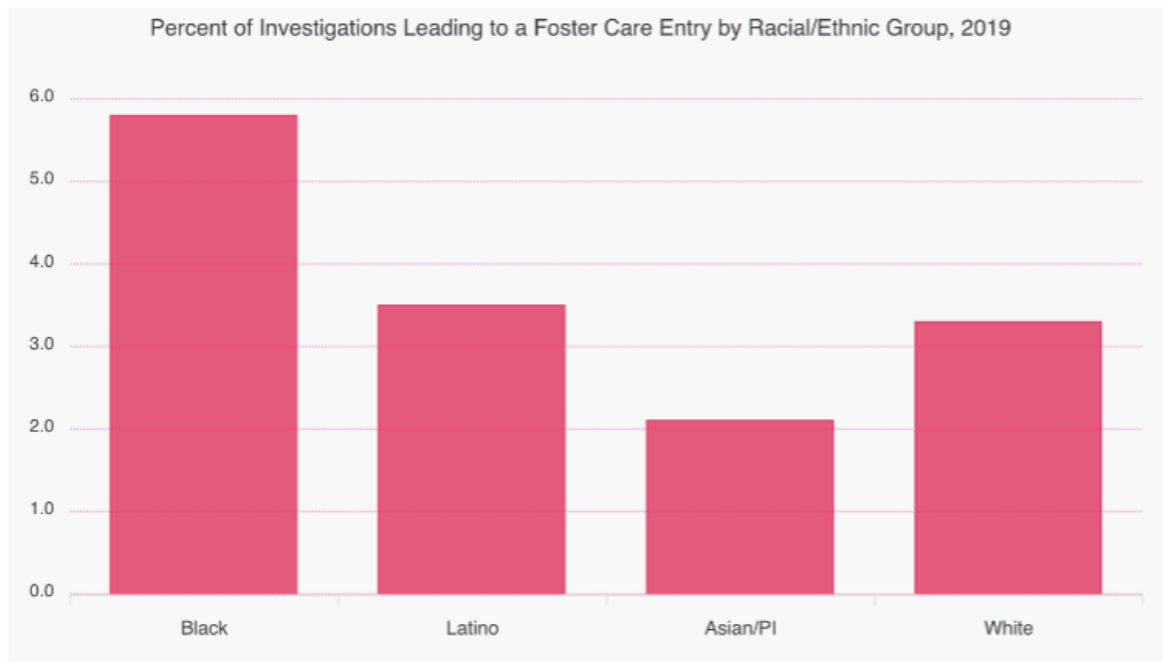


Figure 8: NYC Family Policy Project Aug. 20, 2023 Statement, at 9

Children can be removed from their families before allegations of maltreatment are proved.⁵⁷³ Furthermore, caseworkers have enormous discretion to remove children from their families, without judicial oversight.⁵⁷⁴ With a goal of creating a more equitable system, OCFS has implemented a blind removal process that requires local district partners to examine a set of circumstances “without identifiable information that might trigger some county employees’ implicit bias, stated Acting Commissioner Miles-Gustave.”⁵⁷⁵ However, according to the New York Bar Association report, blind removal does not take poverty related factors into consideration in cases of maltreatment.⁵⁷⁶

⁵⁷⁰ Children’s Rights *A Call to Action* Feb. 15, 2023 Statement, at 4.

⁵⁷¹ NY State Bar Association Dec. 7, 2022 Statement, at 10.

⁵⁷² NYC Family Policy Project August 20, 2023 Statement, at 9.

⁵⁷³ Trivedi Mar. 5, 2023 Statement, at 2.

⁵⁷⁴ Ketteringham Testimony, Apr. 21, 2023 Briefing, p. 10.

⁵⁷⁵ Miles-Gustave Testimony, May 19, 2023 Briefing, p. 24.

⁵⁷⁶ NY State Bar Association Dec. 7, 2022 Statement, at 16.

Finding XXIII: Tremendous trauma and harm are caused to New York's Black children and families from the unnecessary removal and separation of Black children from their families.

Family separations inflict trauma on Black children and families,⁵⁷⁷ and New York data does not depict an increase in child fatalities when there are fewer child removals.⁵⁷⁸ Referring to a 2009 study in Texas, Professor Roberts shared findings that showed that there is no relationship between state intervention, service rates, or removal rates and child abuse and neglect death rates.⁵⁷⁹ That study's recommendations include reducing poverty and developing child abuse and neglect prevention programs rather than "surveilling and separating families."⁵⁸⁰

In their paper on Covid-19's impact on the child welfare system, Ms. Friedman and Ms. Rohr noted the many studies documenting the health impacts of a removal on a child's body, including a flood of cortisol that can cause long term brain damage, cancer, sleep difficulties, developmental regression, heart disease, hypertension, obesity, diabetes, and decreased length of life.⁵⁸¹

Assemblyman Hevesi shared that children are "put in a car with strangers, dropped off most times in a holding cell at night, until their removal is approved by a court, and then they're taken to a stranger's home."⁵⁸² In one instance shared with the Committee, two caseworkers arrived in the middle of the night at the residence of a Black mother to remove her children.⁵⁸³ The children were woken up and strip searched to locate evidence of bruising due to alleged physical abuse. The caseworkers did not find evidence of physical abuse and so were unable to remove the children, but their actions left deep marks of fear and trauma for the children and family members involved.⁵⁸⁴ Dr. Saxe also emphasized that racial biases that lead to substantiation is particularly harmful as it contributes to removing children from their parents without evidence of maltreatment.⁵⁸⁵

⁵⁷⁷ Roberts Testimony, Feb. 17, 2023 Briefing, p. 6; Pregnancy Justice August 19, 2023 Statement, at 7; Angela Olivia Burton and Joyce McMillan, How judges can use their discretion to combat anti-black racism in the United States family policing system, *Family Court Review* (2023), at 17, <https://onlinelibrary.wiley.com/doi/epdf/10.1111/fcre.12706>, Aug. 20, 2023 Submission by Angela Olivia Burton.

⁵⁷⁸ Roberts Testimony, Feb. 17, 2023 Briefing, p. 6.

⁵⁷⁹ Roberts Testimony, Feb. 17, 2023 Briefing, p. 6, referring to Texas Study *Child Abuse and Neglect Deaths in Texas*. Dec. 16, 2009. http://library.cppp.org/files/4/427_Child_Deaths.pdf.

⁵⁸⁰ *Ibid.*

⁵⁸¹ Melissa Friedman and Daniella Rohr. *Reducing Family Separations in New York City: The Covid-19 Experiment and a Call for Change*. *Columbia Law Review* Vol. 123 No. 2. Submitted June 27, 2023 by Melissa Friedman and Daniella Rohr.

⁵⁸² Hevesi Testimony, July 21, 2023 Briefing, p. 7.

⁵⁸³ Children's Rights. *Fighting Institutional Racism at the Front End of Child Welfare Systems: A Call to Action*. May 15, 2021, at 15, Apr 11, 2023 Submission by Emma Ketteringham.

⁵⁸⁴ *Ibid.*, at 15-16.

⁵⁸⁵ Saxe Testimony, Feb. 17, 2023 Briefing, p.15.

Foster Care

Finding XXIV: Black children are placed into foster care at higher rates than White children and are likely to experience poor outcomes from their time in foster care.

Black children are disproportionately placed into foster care,⁵⁸⁶ increasing the likelihood of experiencing severe trauma and of generational involvement in the child welfare system.⁵⁸⁷ Black children spend more time in foster care and are less likely to be reunified with their parents than White children.⁵⁸⁸ Black children are 10 times as likely as White or Asian children, and twice as likely as Latino children, to enter foster care.⁵⁸⁹

Black children spend an average of 29 months in institutions, whereas White children spend an average of 18 months in institutions.⁵⁹⁰ Time away from families of origin is important to consider. The NY State Bar Association quoted Professor Guggenheim stressing the implications of time away from families of origin:

With certain exceptions that states too often ignore, ASFA [the federal Adoption and Safe Families Act] requires that child welfare agencies seek to terminate the parental rights of children whenever they have been in foster care for 15 of the most recent 22 months...The law has been responsible for the massive destruction of Black and brown families. More than two million children's parents' rights have been terminated by American courts since ASFA was enacted.⁵⁹¹

Fewer children are unified with their parents or adopted in New York, with more children aging out than the national statistics.⁵⁹² Acting Commissioner Miles-Gustave noted: "Of the approximately 6,000 children admitted into foster care [in 2022], 38% or 2,319 were Black...Black children are over three times more likely than white children to enter foster care.

⁵⁸⁶ Miles-Gustave Testimony, May 19, 2023 Briefing, p. 8.

⁵⁸⁷ Burton Aug. 30, 2022 Statement, at 1; Brettschneider Testimony, Nov. 18, 2022 Briefing p. 16; NY State Bar Association Dec. 7, 2022 Statement, at 12, 17; Naveed Testimony, Feb. 15, 2023 Briefing, pp. 4-5; Ross Testimony, Feb. 15, 2023 Briefing, p. 9; Napolitano Testimony, Apr. 19, 2023 Briefing, p. 5; Article 10 Family Defense Organizations in New York City Aug. 19, 2023 Statement, at 4; Däi Testimony, April 19, 2023 Briefing, pp. 26-27; NYC Family Policy Project August 20, 2023 Statement, at 1.

⁵⁸⁸ Napolitano Testimony, Apr. 19, 2023 Briefing, p. 5; Charles Testimony, July 21, 2023 Briefing, p. 12.

⁵⁸⁹ NYC Family Policy Project August 20, 2023 Statement, at 1.

⁵⁹⁰ NY State Bar Association Dec. 7, 2022 Statement, at 18, referring to Think of Us, Away from Home: Youth Experiences of Institutional Placements in Foster Care, (July 21, 2021), https://assets.website-files.com/60a6942819ce8053cefd0947/60f6b1eba474362514093f96_Away%20From%20Home%20-%20Report.pdf.

⁵⁹¹ NY State Bar Association Dec. 7, 2022 Statement, at 18.

⁵⁹² Naveed Testimony, Feb. 15, 2023 Briefing, p. 5.

Then once in care, they have longer lengths of stay.”⁵⁹³ A majority of children and their families involved in foster care are low-income.⁵⁹⁴

There have been significant improvements in the child welfare foster care system practices in New York State that have resulted in a significant decrease of foster care placements.⁵⁹⁵ Foster care placements in New York City have decreased 78% between 2020 and 2023.⁵⁹⁶ Specifically, there were 55,000 children in the foster care system in the 1990s,⁵⁹⁷ 30,000 children in 2000, and approximately 7,000 children⁵⁹⁸ in 2023.⁵⁹⁹

Black children are disproportionately represented in the New York’s foster care system.⁶⁰⁰ Black children comprise 15% of the New York State’s population, and 41% of foster system entries, whereas White children comprise 48% of the state’s population, but 25% of the state’s foster care population.⁶⁰¹ In 2019, 22% of New York City’s child population was Black, in 2020, 53% of children in foster care were Black.⁶⁰² Mr. Lansner noted that there are almost no White children in foster care in New York City,⁶⁰³ where White children comprise 26% of New York City’s child population, yet make up less than 6% of the foster care population.⁶⁰⁴

Children in the foster care system face numerous challenges, including higher rates of juvenile delinquency, teenage pregnancies, lower income, potential involvement in the adult criminal justice system, and short- and long-term mental health issues.⁶⁰⁵ Foster children are also more likely to experience substance use and mental health issues.⁶⁰⁶ Assemblyman Hevesi explained that “family separation raises the risks for poor school performance, homelessness, arrests, and mental and physical illnesses.”⁶⁰⁷

Demetrius Napolitano shared his experience as a former foster youth with the Committee, noting that he spent about 22 years in the foster care system, lived in nearly 30 different foster homes, was adopted twice, and was prescribed multiple medications to address his mental health

⁵⁹³ Miles-Gustave Testimony, May 19, 2023 Briefing, p. 8.

⁵⁹⁴ NY State Bar Association Dec. 7, 2022 Statement, at 12.

⁵⁹⁵ Brettschneider Testimony, Nov. 18, 2022 Briefing p. 16; Ross Testimony, Feb. 15, 2023 Briefing, pp. 8-9.

⁵⁹⁶ Ross Testimony, Feb. 15, 2023 Briefing, p. 8.

⁵⁹⁷ Brettschneider Testimony, Nov. 18, 2022 Briefing, p. 16.

⁵⁹⁸ Ross Testimony, Feb. 15, 2023 Briefing, p. 8.

⁵⁹⁹ Brettschneider Testimony, Nov. 18, 2022 Briefing, p. 16.

⁶⁰⁰ NY State Bar Association Dec. 7, 2022 Statement, at 12; Hevesi Testimony, July 21, 2023 Briefing, p. 6; Brettschneider Testimony, Nov. 18, 2022 Briefing p. 16; Ross Testimony, Feb. 15, 2023 Briefing, p. 9; Lansner Nov. 11, 2022 Statement, at 2; Article 10 Family Defense Organizations in New York City Aug. 19, 2023 Statement, at 25.

⁶⁰¹ Naveed Testimony, Feb. 15, 2023 Briefing, pp. 4-5.

⁶⁰² Ross Testimony, Feb. 15, 2023 Briefing, p. 9.

⁶⁰³ Lansner Nov. 11, 2022 Statement, at 2.

⁶⁰⁴ Article 10 Family Defense Organizations in New York City Aug. 19, 2023 Statement, at 4.

⁶⁰⁵ Ketteringham Testimony, Apr. 21, 2023 Briefing, p. 12.

⁶⁰⁶ Hevesi Testimony, July 21, 2023 Briefing, p. 7.

⁶⁰⁷ Ibid.

issues.⁶⁰⁸ He was incarcerated, yet he obtained a college degree, and has since founded a mental health non-profit agency that supports youth in foster care.⁶⁰⁹ He highlighted the disparities in medication management of health issues where Black children are 3 to 11 times more likely to be prescribed medication than White children.⁶¹⁰

Mr. Matthews stated that during eight years of being in the foster system, he had many different case workers without case coordination to ensure appropriate continuity of care, which required him to repeat his story and advocate for himself frequently.⁶¹¹ He also shared that he was not provided with access to appropriate services, such as not being referred to see a therapist in order to understand and manage his mental health issues, despite being diagnosed with ADHD.⁶¹²

Multiple speakers shared that CPS acts as a policing system to funnel children in foster care, which serves as a pipeline into the prison industrial complex.⁶¹³ Ms. McMillan highlighted the similarities between the child welfare and criminal justice systems:

They built this system to look like the prison industrial complex, not to pipeline children, but as a prerequisite training. Doing the exact same thing to children and families that they do to prisoners. Strip searching them, separating them from everyone and everything they know and love, feeding them what they want to feed them, having them change homes using garbage bags and pillowcases. Having them change those locations regularly, having set visit days and set visit times and oversight during the visit period, even utilizing the same language of promoting the child and the person who's been incarcerated back to either the community and to or their family and having oversight during that parole period.”⁶¹⁴

Mr. Napolitano described the transition between foster homes: “[pu]t him in handcuff[s] first and then [I was] asked questions after. Let’s bag his clothes up in garbage bags and then we ask questions.”⁶¹⁵

Jamilah White, a parent who shared her experiences with the Committee, noted that when her three children were placed in foster care, they were subjected to physical, emotional, and sexual abuse.⁶¹⁶ Her children’s spiritual beliefs and eating habits were disregarded as well in foster

⁶⁰⁸ Napolitano Testimony, Apr. 19, 2023 Briefing, p. 6.

⁶⁰⁹ Ibid., pp. 5-6.

⁶¹⁰ Napolitano Testimony, Apr. 19, 2023 Briefing, p. 6.

⁶¹¹ Matthews Testimony, Apr. 19, 2023 Briefing, p. 10.

⁶¹² Ibid.

⁶¹³ McMillan Testimony, Nov. 18, 2022 Briefing, p. 11; Martinez Testimony, Apr. 19, 2023 Briefing, p. 15.

⁶¹⁴ McMillan Testimony, Nov. 18, 2022 Briefing p. 11.

⁶¹⁵ Napolitano Testimony, Apr. 19, 2023 Briefing p. 5.

⁶¹⁶ White Jan. 30, 2023 Statement, at 2.

care.⁶¹⁷ Ms. White was not permitted to have contact with her eldest child for about 5 years.⁶¹⁸ At 17, her son left the foster parent's home because he was suffering from physical abuse, leading to hopelessness and long-term trauma.⁶¹⁹

Finding XXV: Child removals from parents and families disrupt trust between parents and their children, with lasting negative consequences on children and their families.

The current child removal process and foster care system itself perpetuates significant generational harm⁶²⁰ and impacts the natural bonds of the parent/child relationship.⁶²¹ Kmea Jones, a parent and former foster youth, highlighted how challenging supervised visits are for the Committee's attention:

I love my children and I want to see them, but the foster care agencies often take away my in-person visits. They're often canceled last minute or turned into phone calls. I don't want to keep doing telephone visits. It feels like the foster care workers are repeatedly controlling the visits. It feels disruptive from the foster parents when they come late or when they want to leave early or right on time. It's unfair to the parents who come on time and want to see their children. When the time is over, the parents don't get make up visits and makes parents feel upset. How would you feel if someone was limiting the amount of time you got to see your children? How would you feel if someone was listening or watching the whole time during these precious times? It makes parents like myself feel less than a human. It makes children feel like they can't trust their parent.

...Why does this system that claims to protect children, refuse to let me show my love for them?⁶²²

Ms. Cobbs also commented on visitation:

...[C]riminals get better treatment than families. Criminals are still able to write, email and make phone calls. They are still able to get visitors and some get interviewed to become famous on T.V. I have witnessed some having tablets and cell phones to make social media accounts....Especially for the parents who don't get along with the foster parents. I should be able to call my child and wish them a happy birthday as I could never forget that. I should be able to at least video call

⁶¹⁷ Ibid., at 1.

⁶¹⁸ Ibid.

⁶¹⁹ White Jan. 30, 2023 Statement, at 3.

⁶²⁰ McMillan Testimony, Nov. 18, 2022 Briefing, p. 11; Saxe Testimony, Feb. 17, 2023 Briefing, p. 15; Roberts Testimony, Feb. 17, 2023 Briefing, p. 6; Day Testimony, Apr. 21, 2023 Briefing, pp. 21; Richter Testimony, May 19, 2023 Briefing, p. 13, referring to New York Times report *Is N.Y.'s Child Welfare System Racist? Some of Its Own Say Yes*. Nov. 22, 2022. <https://www.nytimes.com/2022/11/22/nyregion/nyc-acs-racism-abuse-neglect.html>; Matthews Testimony, Apr. 19, 2023 Briefing, p. 9; Joseph Testimony, Apr. 19, 2023 Briefing, p. 12; Hevesi Testimony, July 21, 2023 Briefing, p. 6; Charles Testimony, July 21, 2023 Briefing, p. 13; Jones Testimony, Apr. 19, 2023 Briefing, p. 19; Joseph Testimony, Apr. 19, 2023 Briefing, p. 24.

⁶²¹ Grant Testimony, Apr. 19, 2023 Briefing, p. 9; Matthews Testimony, Apr. 19, 2023 Briefing, p. 9; McMillan Testimony, Apr. 19, 2023 Briefing, p. 10; Joseph Testimony, Apr. 19, 2023 Briefing, p. 12; Hevesi Testimony, July 21, 2023 Briefing, p. 7; McMillan Testimony, Nov. 18, 2022 Briefing, p. 11.

⁶²² Jones Testimony, Apr. 19, 2023 Briefing, p. 19.

with them so I can see the changes in them growing up. So, my kids won't forget what I look like.⁶²³

Multiple panelists noted that children have harmful experiences when the State removes them from their families.⁶²⁴ Research indicates that children removed from their families and placed in foster care experience long-term trauma due to the separation and the elevated risk of abuse in foster care settings, per Shanta Trivedi, Assistant Professor of Law, Faculty Director, Sayra and Neil Meyerhoff Center for Families, Children, and the Courts, University of Baltimore School of Law.⁶²⁵ Mortality rates of children in foster care are 42% higher than the general population,⁶²⁶ children experience long-term trauma when removed from their families,⁶²⁷ and separation from parents contributes to children feeling “guilt, PTSD, isolation, substance abuse, anxiety, low self-esteem, and despair.”⁶²⁸

The Committee received testimony documenting serious abuse of children in foster care and residential treatment centers.⁶²⁹ Ms. McMillan highlighted that children are not necessarily safer when they are removed from the home, often experiencing sexual and physical abuse in foster care.⁶³⁰ Dr. Charles agreed that there are damaging homes which perpetuate detrimental outcomes for children, but shared that there are also good foster homes that are safe and provide good outcomes for children, highlighting the need for more rigorous foster home safety assessments.⁶³¹ She notes:

The truth is that too many Black children are harmed in their homes AND in foster homes.... Whether the harm occurs intentionally or accidentally, it is happening and we have a duty to protect children, not by transferring them from one hazardous environment to another. We have massive data that tells the story of the number of children who were harmed and traumatized during foster placements.⁶³² In NYS The Child Victims Act serves as a legal pathway for individuals alleging sexual abuse to sue foster agencies for incidents of alleged abuse while in foster placements.⁶³³

Ms. White noted that while the percentage of children who are abused in their homes is small, foster care is not the best solution.⁶³⁴ She noted that the system removes them from their families

⁶²³ Cobbs Apr. 24, 2023 Statement, at 1.

⁶²⁴ Day Testimony, Apr. 21, 2023 Briefing, p. 25; Charles Testimony, July 21, 2023 Briefing, p. 13; Wexler Testimony, July 21, 2023 Briefing, p. 3; Trivedi Mar. 5, 2023 Statement, at 1; Wexler Testimony, July 21, 2023 Briefing, p. 3; Dāi Testimony, April 19, 2023, pp. 26-27; Wexler August 18, 2023 Statement, at 2.

⁶²⁵ Trivedi Mar. 5, 2023 Statement, at 1.

⁶²⁶ Charles Testimony, July 21, 2023 Briefing, p. 13.

⁶²⁷ Wexler Testimony, July 21, 2023 Briefing, p. 3.

⁶²⁸ Children’s Rights. *Fighting Institutional Racism at the Front End of Child Welfare Systems: A Call to Action*. May 15, 2021, at 16, Apr 11, 2023 Submission by Emma Ketteringham.

⁶²⁹ Wexler Aug. 18, 2023 Statement, at 2.

⁶³⁰ McMillan Testimony, Nov. 18, 2022 Briefing, p. 11.

⁶³¹ Charles Testimony, July 21, 2023 Briefing, p. 13; Charles Aug. 20, 2023 Statement, at 4.

⁶³² U.S. Children’s Bureau. Child Maltreatment reports. <https://www.acf.hhs.gov/cb/data-research/child-maltreatment>.

⁶³³ Charles Aug. 20, 2023 Statement, at 3.

⁶³⁴ White Testimony, Apr. 21, 2023 Briefing, p. 9.

under the guise of protection, and places them in “harmful, unsafe, and scary” congregate placements similar to jails.⁶³⁵

Tariq Matthews, a former foster youth who shared his experiences with the Committee, stated,

[I]t's a misrepresentation to call this system, a child protective system, because it severely failed to protect these kids from harm and trauma caused by tearing families apart. I had to be removed from my home. I spent years wondering if I ever go back home, if I had to spend the rest of my childhood at foster care. During that time, that emotional time I was having my parents, grandparents, aunts, uncles, and cousins faded away, although I desperately needed them during that time.⁶³⁶

Christine Joseph, a former foster youth who shared her experiences with the Committee, commented, “[T]he system is negatively impacted on Black youth. It means, it is us who are suffering to find connections with our families, to know our identity and where we come from. It is us who are suffering with our mental health.”⁶³⁷

Finding XXVI: There are damaging and often intergenerational impacts of involvement with the foster system.

YouthNPower contributors shared that leaving foster care does not often end contact with the child welfare system, noting that “[t]he threat of intergenerational involvement with CPS is a very real likelihood. While NYC does not collect data about the number of youth who age-out and face CPS investigation as parents, our collective experience reveals the risk is high.”⁶³⁸ Ms. Ketteringham noted that the family regulation system maintains and sustains itself by perpetuating a cycle of generational involvement of Black families through foster system placement.⁶³⁹ Ms. Jones shared her experience with the Committee:

This system creates generational trauma and family disruption. Not only are my children currently in foster care, I was also in foster care. My mother was also in foster care. My grandmother was also in foster care. Clearly the system doesn't protect children or teens or promote child wellbeing. This system hasn't helped us. I'm hoping my testimony today can help to break the cycle.⁶⁴⁰

Davene Roseborough, a former foster youth, shared with the Committee that when she was placed in multiple homes, she endured sexual molestation, physical abuse, and was, at times, denied food and shelter.⁶⁴¹ Lacking support from her caseworkers, she remained in the system

⁶³⁵ Ibid.

⁶³⁶ Matthews Testimony, Apr. 19, 2023 Briefing p. 9.

⁶³⁷ Joseph Testimony, Apr. 19, 2023 Briefing p. 12.

⁶³⁸ YouthNPower: Transforming Care, Children's Defense Fund-New York August 18, 2023 Statement, at 3.

⁶³⁹ Ketteringham Testimony, Apr. 21, 2023 Briefing, p. 12.

⁶⁴⁰ Jones Testimony, Apr. 19, 2023 Briefing, p. 19.

⁶⁴¹ Roseborough Testimony, Apr. 19, 2023 Briefing, p. 23.

for 10 years.⁶⁴² She was arrested many times and incarcerated for four years.⁶⁴³ Her son has also been placed in the system, where he was abused as well.⁶⁴⁴ Ms. Roseborough stated, “ACS emotionally destroyed my family and there were so many nights that I cried myself to sleep asking what did I do wrong to be placed in a system that was supposed to protect me.”⁶⁴⁵

As noted previously, while acknowledging the trauma associated with being a foster youth, Mr. Richter highlighted there can be benefits of foster placement and family engagement with the agency’s efforts towards family reunification, resulting in better long-term outcomes for young people.⁶⁴⁶

Former foster youth, Mr. Matthews and Ms. Jones, indicated that members of their family across generations have been involved in the foster care system.⁶⁴⁷ Mr. Matthews shared with the Committee that not only he and his five siblings were removed and put into a foster home or a group home, but his niece and nephews are currently in foster care.⁶⁴⁸ Ms. Jones stated, “[t]his system creates generational trauma and family disruption. Not only are my children currently in foster care, I was also in foster care. My mother was also in foster care. My grandmother was also in foster care.”⁶⁴⁹ Furthermore, when young people leave foster care, they are unable to form attachments to adults, they do not have a place to live, and are indefinitely dependent on the State for survival, she shared.⁶⁵⁰ Ms. Mitchell’s clients have expressed that they feel despair, hopeless, and abandoned.⁶⁵¹

Caseworker turnover impacts permanency outcomes and increases length of stay for children and young people in foster care, yet turnover for direct care caseworkers is over 57% for certain positions, with overall caseworker position turnover at 42% compared to 24% in 2020.⁶⁵² Ms. Riley attributes high turnover rates to criticism that caseworkers receive for completing caseworker duties, in addition to low pay and poor training.⁶⁵³ Dr. Charles agreed that major changes are needed for training, and highlighted that administrative demands and regulations

⁶⁴² Ibid.

⁶⁴³ Ibid.

⁶⁴⁴ Ibid.

⁶⁴⁵ Ibid.

⁶⁴⁶ Richter Testimony, May 19, 2023 Briefing, p. 15.

⁶⁴⁷ Matthews Testimony, Apr. 19, 2023 Briefing, p. 9; Jones Testimony, Apr. 19, 2023 Briefing, p. 19.

⁶⁴⁸ Matthews Testimony, Apr. 19, 2023 Briefing, p. 9.

⁶⁴⁹ Jones Testimony, Apr. 19, 2023 Briefing, p. 19.

⁶⁵⁰ Mitchell Testimony, Apr. 21, 2023 Briefing, p. 5.

⁶⁵¹ Ibid.

⁶⁵² Brady-Stepien Council of Family and Child Caring Agencies Aug. 15, 2023 Statement, at 3.

⁶⁵³ Riley Aug. 18, 2023 Statement, at 10, referring to Naomi Schaefer Riley. *Why ending child services is the new Defund the Police*. August 12, 2023. <https://nypost.com/2023/08/12/ending-child-services-is-the-new-defund-the-police/>

limit the time caseworkers have with families.⁶⁵⁴ However, while they do make mistakes, she noted that caseworkers often come to the profession with a goal to serve families.⁶⁵⁵

Former foster youth Cynthia Duru shared her experiences in the foster system from ages 14 to 20, where she navigated multiple case planning teams and faced challenges with case planners who either got fired or mishandled her case, which left gaps that needed to be addressed by the next case planners:

I've been in the foster care system for as long as I can remember, and I had more than five case planning teams throughout my entire life, but two case planners were the ones that actually helped my case overall. While the other case planners either got fired or they misplaced everything or just messed up my whole case, where there's holes that need to be filled in with the next case planners. I feel like it's best as a foster youth to have only one or two case planners, stick with them, especially at my age, all the way up until they leave the foster care system.⁶⁵⁶

The foster care system does not set up participants for future success. Ms. Duru shared that she is nervous about being able to support herself when she ages out of the foster care system soon, particularly around her educational goals and housing.⁶⁵⁷ Ms. Mitchell agreed, noting:

The money goes towards institutions that do not provide long-term benefit to children, and young people often come out of foster care unable to form attachments, without strong ties to adults, without a house to live in, and this all but guarantees a lifetime of dependence on the state.⁶⁵⁸

Kinship Care

Finding XXVII: Kinship care is important for maintaining family bonds when child removals and family separations occur, but Black family members are often not approved as kinship options.

Kinship foster care is not prioritized by the child welfare system as an option for Black families.⁶⁵⁹ When Black parents and caregivers have prior contact with the child welfare system, it also impacts their future ability to foster kin.⁶⁶⁰ The Adoption and Safe Families Act currently restricts kinship care based on a long list of criminal history disqualifications that can include

⁶⁵⁴ Charles Aug. 20, 2023 Statement, at 6.

⁶⁵⁵ Ibid.

⁶⁵⁶ Duru Testimony, Apr. 19, 2023 Briefing, pp. 8-9.

⁶⁵⁷ Ibid.

⁶⁵⁸ Mitchell Testimony, Apr. 21, 2023 Briefing, p. 5.

⁶⁵⁹ Mitchell Testimony, Apr. 21, 2023 Briefing, p. 6; Harris Testimony, Apr. 19, 2023 Briefing, pp. 17-18; Lansner Nov. 11, 2022 Statement, at 2.

⁶⁶⁰ Brettschneider Nov. 18, 2022 Statement, at 4; Naveed Testimony, Feb. 15, 2023 Briefing, p. 5; Mitchell Testimony, Apr. 21, 2023 Briefing, p. 6; NY State Bar Association Dec. 7, 2022 Statement, at 18; New York Civil Liberties Union, ACLU of New York Aug. 18, 2023 Statement, at 2.

attempted felonies and also drug possession offenses, which specifically require a five-year mandatory disqualification from providing kinship care.⁶⁶¹

Ms. Harris attested that ACS rejected her parents as kinship foster parents and subsequent custody when her baby was removed.⁶⁶² She stated that her mother is a special education teacher and a mandated reporter, yet ACS opposed her custody request.⁶⁶³ Mr. Lansner stated, “[d]espite the knowledge that kinship foster care is almost always better for foster children, New York’s claim of efforts to increase that percentage are dubious.”⁶⁶⁴

Ms. Cobbs’ family was rejected as a kinship option for one child, despite another of her children living with her mother: “My family members would put in petitions for my kids and were never investigated. She [the caseworker] made sure my kids didn't go with my mom even though my mom had custody of one of my kids. My caseworker who targeted me and my family took away the child my mom had and put her up for adoption.”⁶⁶⁵

Family members have a similar hearing process towards approval to be foster parents as those with no relation to the child.⁶⁶⁶ Mr. Lansner notes these hearings are unfair and do not prioritize the child remaining with the family, and family members have no ability to challenge selection of adoptive parents if that avenue is pursued.⁶⁶⁷ Mr. Brettschneider agreed on the importance of prioritizing kinship care, and noted that over 40% of children who are separated from their primary parent or guardian are now placed with kin.⁶⁶⁸

Congregate Care

Finding XXVIII: Black children are disproportionately placed in group home settings that more closely mimic prison conditions than family conditions, effectively punishing children, who have been harmed themselves but who do not have a criminal record, for being Black.

Congregate placements include out-of-home foster placements in environments other than family homes, such as group homes and residential treatment centers.⁶⁶⁹ There are enormous racial disparities in child welfare placements in congregate care.⁶⁷⁰ In New York State, approximately 2,000 children lived in congregate placements in 2021, equating to 13% of the

⁶⁶¹ NY State Bar Association Dec. 7, 2022 Statement, at 18.

⁶⁶² Harris Testimony, Apr. 19, 2023 Briefing, pp. 17-18.

⁶⁶³ *Ibid.*, p. 18.

⁶⁶⁴ Lansner Nov. 11, 2022 Statement, at 2.

⁶⁶⁵ Cobbs Apr. 24, 2023 Statement, at 1.

⁶⁶⁶ Lansner Nov. 11, 2022 Statement, at 2.

⁶⁶⁷ *Ibid.*

⁶⁶⁸ Brettschneider Testimony, Nov. 18, 2022 Briefing, p. 16.

⁶⁶⁹ Children’s Rights. *Are You Listening? Youth Accounts of Congregate Placements in New York State*. January 2023, at 7, Feb. 15, 2023 Submission by Shereen White.

⁶⁷⁰ NY State Bar Association Dec. 7, 2022 Statement, at 18; Mitchell Testimony, Apr. 21, 2023 Briefing, p. 4; Hevesi Testimony, July 21, 2023 Briefing, p. 6.

foster population.⁶⁷¹ Black children are 35% more likely than White children to be placed in group homes or residential treatment facilities.⁶⁷² New York is consistently in the top 5 of all states in using congregate placements for out-of-home placements:

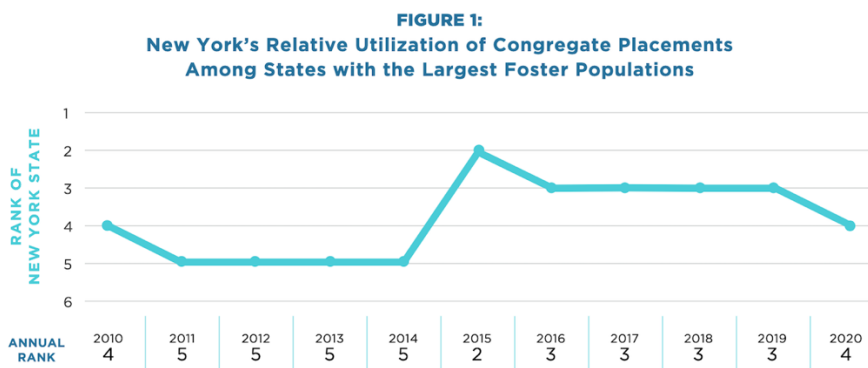


Figure 9: Children’s Rights. *Are You Listening? Youth Accounts of Congregate Placements in New York State.* January 2023, at 12, Feb. 15, 2023 Submission by Shereen White

In 2019, Black youth comprised 15% of New York’s child population but were 57% of the congregate settings population.⁶⁷³ In 2021, Black male youth aged 14 and older were disproportionately placed in congregate settings in New York:⁶⁷⁴

⁶⁷¹ Children’s Rights. *Are You Listening? Youth Accounts of Congregate Placements in New York State.* January 2023, at 12, Feb. 15, 2023 Submission by Shereen White.

⁶⁷² NY State Bar Association Dec. 7, 2022 Statement, at 18.

⁶⁷³ *Ibid.*, at 15.

⁶⁷⁴ *Ibid.*, at 14.

Race, Ethnicity, and Gender of Children in Congregate Placements in NY (2021)

Race	#	%
African-American	1210	54%
White	688	31%
Multiple	251	11%
Unknown	43	2%
Asian	41	2%
American Indian or Alaskan Native	5	0%
Nat Hawaii or Other Pacific Islander	0	0%
Other	0	0%
Latinx/Hispanic Origin		
No	1637	73%
Yes	601	27%
Gender		
Male	1288	58%
Female	950	42%

Age Distribution of Children in Congregate Placements in NY (2021)

Age	#	%
0 - 2	44	2%
3 - 5	58	3%
6 - 9	139	6%
10 - 12	217	10%
13	138	6%
14	183	8%
15	261	12%
16	286	13%
17	364	16%
18+	548	24%

Source: OCFS Children in Care and Custody by Setting Type as of December 2021

Figure 10: NY State Bar Association Dec. 7, 2022 Statement, at 14-15

There are concerns around appropriate medical care, food, and clothing, leading institutionalized children to feel unsafe, angry, and/or depressed, which often leads to poor academic outcomes and challenges in living independently.⁶⁷⁵ Ms. Mitchell explained that the family regulation system utilizes strategies that contribute to the perpetuation of institutionalization and the economic and social disadvantages faced by Black children and families.⁶⁷⁶ Research indicates that there are many benefits for children to be raised with their families with proper support rather than raised in institutions.⁶⁷⁷

Yet, the state offers agencies funding to place children in congregate care, as in the example previously noted by Ms. Mitchell, where a qualified residential treatment program receives about \$770 per day per child, equating to \$280,320 per year.⁶⁷⁸ Ms. Mitchell notes this funding could be better spent by directly investing in the child, their family, or the community.⁶⁷⁹ Katrice Bryson, a parent who shared her family’s experience with the Committee, stressed the importance of supporting community organizations with the Committee. She said, “I had no clue about my rights and if it wasn't for Tan[e]sha Grant from Parents Supporting Parents and referring me to an agency to help me navigate through this experience, there would've been a high probability that both of my child[ren] would've been in the system.”⁶⁸⁰

⁶⁷⁵ Kaylah McMillan Testimony, Apr. 19, 2023 Briefing, p. 11; Children’s Rights. *Are You Listening? Youth Accounts of Congregate Placements in New York State*. January 2023, at 8, Feb. 15, 2023 Submission by Shereen White; Charles Aug. 20, 2023 Statement, at 7.

⁶⁷⁶ Mitchell Testimony, Apr. 21, 2023 Briefing, p. 4.

⁶⁷⁷ *Ibid.*, p. 5.

⁶⁷⁸ *Ibid.*

⁶⁷⁹ *Ibid.*

⁶⁸⁰ Bryson Testimony, Apr. 19, 2023 Briefing, p. 27.

Commissioner Schomburg agreed that supporting communities is vital to addressing issues:

I have heard from parents and community support agencies of the need to put money directly into the community and let the community decide how funds should be spent. This demonstrates true belief that families and communities are the experts in understanding their needs. In the spirit of trusting a community to know what it needs, and for the first time in as many as 20 years, the Children’s Bureau published a Notice of Funding Opportunity (NOFO) in response to a request from impacted parents to “put the money in the community.” The purpose of this ‘Field-Initiated Approach to Addressing Racial Bias and Inequity in Child Welfare’ NOFO⁶⁸¹ is to fund grants that support the development, implementation, and evaluation of field-initiated approaches to addressing racial bias and inequity in child welfare; and improving the safety, stability, and well-being of families in traditionally underserved communities.⁶⁸²

Commissioner Schomburg noted that the U.S. Children’s Bureau is working to support states, territories, and tribes in implementing Title IV-E Prevention Program as part of the Family First Prevention Services Act (FFPSA) child abuse and neglect prevention services designed to keep families together.⁶⁸³ However, Ms. McMillan noted that the implementation of the federal Family First Prevention Act has not been successful in disincentivizing institutionalization, and as a result, children as young as six years old have continued to be institutionalized since the pandemic.⁶⁸⁴

Ms. Mitchell stressed that congregate institutional care settings are “horrific” and do not provide therapeutic care,⁶⁸⁵ and are similar to prison conditions with restrictions on free movement, bathroom, and phone use.⁶⁸⁶ Kaylah McMillan, daughter of Joyce McMillan and a representative of JMACforFamilies, highlighted the similarities for the Committee:

Because of ACS I experienced jail without ever being a criminal. At 14 ACS pulled me out of my home and community out of my school and locked me up in a group home with other Black and Latinx children. I never met a single white child when I was in that group home.

Everyone in the group home experienced unmet basic needs. God forbid you had a skin disorder like eczema. There was no ointment or special soap and lotion for them. Everyone used Irish Spring, doors were locked and school was with a white teacher who came into the facility and appeared afraid. School was onsite in the dingy basement.⁶⁸⁷

⁶⁸¹ U.S. Children’s Bureau. Field-Initiated Approach to Addressing Racial Bias and Inequity in Child Welfare. <https://www.grants.gov/web/grants/view-opportunity.html?oppId=343853>

⁶⁸² Schomburg July 28, 2023 Statement, at 3.

⁶⁸³ Ibid.

⁶⁸⁴ Mitchell Testimony, Apr. 21, 2023 Briefing, p. 5.

⁶⁸⁵ Ibid.

⁶⁸⁶ Children’s Rights. *Are You Listening? Youth Accounts of Congregate Placements in New York State*. January 2023, at 8, Feb. 15, 2023 Submission by Shereen White.

⁶⁸⁷ Kaylah McMillan Testimony, Apr. 19, 2023 Briefing, pp. 11-12.

Adoption

Finding XXIX: There are severely negative consequences and challenges faced by Black children who are removed from their families and after their parents' rights are terminated are made available for adoption by the child welfare agencies.

Mr. Brettschneider shared that the Adoption and Safe Families Act of 1997 incentivized states to minimize multiple foster care placements in favor of adoption to address concerns about providing stability and permanency to children.⁶⁸⁸ He noted that, however, the goal of seeking permanency overlooked that adoption, too, could fail, and the rush towards adoptions as a cure resulted in unintentionally further harming children.⁶⁸⁹ Ms. Ketteringham agreed, noting that the Adoption Safe Families Act accelerated the process of terminating parental rights.⁶⁹⁰

Ms. McMillan shared that when parental rights are terminated and children are separated from their families and potentially their culture, the cascading impacts on a child's life are too many to measure:

We have the Office of Family and Children Services posting children on their website for adoption, to be adopted after they have forcefully terminated the rights of their parents.⁶⁹¹ And when children are separated from their parents, I can't even explain to you the harm that causes. But they're not just separated from their parents, they're also separated from, like I said, everyone and everything they know and love. Their siblings, their grandparents, their aunts, their uncles, and every time they change homes, all five of their senses are touched. They eat different food, utilizing different seasoning, different smells in the home, different sounds in the home, different taste in the home. They hear different things, they receive different instructions. And then they want to know why children have the outcomes of utilizing a substance to mitigate some of the harm that they're feeling.⁶⁹²

Tanesha Grant, a system-impacted community organizer in Harlem and founder of the nonprofit Parents Supporting Parents who has lived experience as a child in the child welfare system, shared her experiences of being placed for adoption as soon as she was born.⁶⁹³ She was not treated well by her adoptive mother and had no contact with her birth mother or information about her birth parents and family.⁶⁹⁴ At 11 years old, Ms. Grant was then placed into the [foster care] system by her adoptive mother, and the negative effects of that experience continue to

⁶⁸⁸ Brettschneider Nov. 18, 2022 Statement, at 3.

⁶⁸⁹ Ibid.

⁶⁹⁰ Ketteringham Testimony, Apr. 21, 2023 Briefing, p. 19.

⁶⁹¹ Note: although postings for children freed for adoption are available on the OCFS website, OCFS has no involvement in proceedings to terminate parental rights; New York is a locally administered state and under NYS law these proceedings involve Local Departments of Social Services (LDSS).

⁶⁹² McMillan Testimony, Nov. 18, 2022 Briefing, p. 11.

⁶⁹³ Grant Testimony, Apr. 19, 2023 Briefing, p. 7.

⁶⁹⁴ Ibid.

affect her as an adult.⁶⁹⁵ She has sought information about her background her entire life, and now, in her 40s, only recently found out that she has siblings, and a father who is Jamaican.⁶⁹⁶

Recommendation highlights from testimony:

- Congress should reappropriation CAPTA funding to signal the federal government’s commitment to investment in family support and divestment from family policing.⁶⁹⁷
- CAPTA appropriations should be right-sized by reallocating funding from Title I (state grants) to Title II (Community-Based Child Abuse Prevention–CBCAP) and increasing funding for CBCAP grants to at least \$500 million.⁶⁹⁸
- Define federal definition of “reasonable efforts” to require active, effective efforts to avoid family separation and expeditious return of children who have been taken from their families.⁶⁹⁹
- Support legislation that helps children maintain ties with their families when parental rights are terminated, specifically, in New York: The Preserving Family Bonds Act A5394/S6720.⁷⁰⁰
- Require that ACS and OCFS prioritize kinship placements by reexamining the kin foster parent certification process and monitoring to ensure relatives are not unnecessarily denied.⁷⁰¹
- Support federal and state legislation to amend kinship certification requirements.⁷⁰²
- Eliminate institutionalization for children under 13 years old.⁷⁰³
- Engage people with lived experience to draft policies and provide trainings to reduce the number of institutionalized children.⁷⁰⁴

⁶⁹⁵ Ibid.

⁶⁹⁶ Ibid.

⁶⁹⁷ Burton Testimony, Aug 20, 2023, p.7.

⁶⁹⁸ Ibid.

⁶⁹⁹ Ibid., p. 8.

⁷⁰⁰ Legal Aid Society May 19, 2023 Written Statement, at 4.

⁷⁰¹ Ibid.

⁷⁰² Ibid.

⁷⁰³ Ibid.

⁷⁰⁴ Legal Aid Society May 19, 2023 Statement, at 4-5; YouthNPower: Transforming Care, Children’s Defense Fund-New York Aug. 18, 2023 Statement, at 8.

- Support better outcomes for youth who are placed in foster care by supporting legislation that protects their federal benefits, affordable housing options, and creates an economic safety net.⁷⁰⁵
- Repeal the federal Adoptions and Safe Families Act so adoptions are not prioritized over family integrity.⁷⁰⁶
- Ensure family separation is a last resort based on clear and convincing evidence of impaired ability to parent or provide for the child, following assessment for actual and imminent harm and consideration of whether supportive, non-coercive, and accessible services have been provided.⁷⁰⁷
- Federal, state and local authorities should heed and implement recommendations made by the UN Committee on the Elimination of Racial Discrimination (August 2022) and the UN Human Rights Committee (November 2023) concerning ending racial discrimination and disparities in the child welfare system and bring relevant laws and policies in line United States’ international human rights obligations and commitments.⁷⁰⁸

Committee Recommendations

Among their duties, Advisory Committees of the Commission are authorized to advise the Agency (1) concerning matters related to discrimination or a denial of equal protection of the laws under the Constitution and the effect of the laws and policies of the Federal Government with respect to equal protection of the laws, and (2) upon matters of mutual concern in the preparation of reports of the Commission to the President and the Congress.⁷⁰⁹ In keeping with these responsibilities, and given the testimony heard on this topic, the Committee submits the following recommendations to the Commission:

1. The U.S. Commission on Civil Rights should:

- a. Elevate the issue of persistent racial discrimination in our nation’s child welfare system at large and the disparate impact on Black families, capitalizing on the

⁷⁰⁵ Legal Aid Society May 19, 2023 Statement, at 5.

⁷⁰⁶ Article 10 Family Defense Organizations in New York City Aug. 19, 2023 Statement, at 25.

⁷⁰⁷ Naveed Aug. 19, 2023 Statement, at 8.

⁷⁰⁸ Dominique Day Testimony, April 21, 2023 Briefing, pp. 20-21; Shereen White Testimony, April 21, 2023 Briefing, pp. 20-21.

⁷⁰⁹ 45 C.F.R. § 703.2 (2018).

current focus and intense debate around this topic and the opportunity to influence and drive meaningful reforms.

- b. Conduct or commission a report or national study on the disproportionate impact of child welfare system practices on federally protected classes.
 - i. Issue a report evaluating the current state of the child welfare system across the nation, with a focus on the historic discrimination and disparities that persist at the federal, state, and local levels and highlighting both common challenges and promising reforms.
- c. Request Advisory Committees conduct studies on the disproportionate impact of child welfare system practices on federally protected classes in their respective states.
- d. Promote a new paradigm of child welfare that emphasizes prevention, direct subsidies, support, restorative measures and family integrity over reporting, investigating, surveillance, and family separation. Conduct studies on alternatives to investigatory and adversarial child welfare systems and court procedures.
- e. Recommend to Federal, State and Local government offices and agencies that they implement legislation, policies and practices for the protection and well-being of children consistent with the following values (as delineated in greater detail in the following sections):
 - i. Recognize that children are our future and their well-being and protection are our collective responsibility, to be ensured, in addition to parents and families, by our government with the enlisted assistance of professionals with duties of care and compassion, and communities.
 - ii. Implement policies consistent with children's rights to connections with their families; and parents' constitutional rights to raise and parent their children.
 - iii. Ensure the well-being of children by enacting and enforcing policies, legislation and practices that prioritize family integrity, preserve and support families of origin, and increase social and economic support for children and families in their homes and communities.
 1. Redirect funding and other incentives to align with the promotion of family integrity and support *over* surveillance and separation

(e.g., via child tax credits, social services, community-based solutions).

2. Invest in critical social safety nets delinked from the child welfare system, given the inter-relatedness of racial and wealth inequities in intersecting social systems, and reduce income and wealth inequality by expanding Tax Credits for families; increasing TANF, food stamps, WIC, SSI, and housing assistance so that families accessing cash assistance do not fall below the poverty line, among other things such as universal childcare.
 3. Prohibit the conflation of the consequences of poverty with child maltreatment. Prohibit treatment of poverty-related circumstances (lack of financial resources, or parental/pregnancy substance use as factors standing alone) as warranting child welfare interventions.
- iv. Ensure family separation is a last resort based on “clear and convincing evidence” of impaired ability of parents to parent or provide for the child, following assessment for “actual and imminent harm” and consideration of whether adequate supportive, non-coercive, and accessible services have been provided.
1. Reduce the institutionalization of children involved in the child welfare system and protect children from the negative impacts of family separation.
- v. Require harm-of-removal principles, analyses and considerations in policies, legislation, and practices in all assessments advocating child removals.
- vi. Shift the practice of protecting children from simply a punitive and prosecutorial framework, as is currently embraced by the Child Welfare System (including mandated reporting and criminal procedure-like processes of investigation, prosecution and punishment) to a broader framework that prioritizes essential preventive care and support, including community-based care and services with a commitment to build community-based infrastructure for both the provision of services and accountability, and embraces a range of alternative best practices and models, including restorative, mediation, health and sustainable community models, among others.

1. Employ mediation practices, where appropriate, that account for imbalances of power.
 2. Extend non-coercive physical and mental health services for children and families at risk.
 3. Develop community frameworks in partnership with local residents—especially families impacted by child welfare—that can be used in advocacy and planning.
 4. Streamline and strengthen child welfare administrative offices and courts enabling them to partner with organizations led by impacted parents and youth to develop family-supportive planning, and contract with entities outside of the state and city child welfare agencies that will have responsibility for participating in coordinating policy and investment in family life, particularly focusing on equitable investment in Black families and communities.
 5. Enact, implement, and fund accountability measures that establish community-run child welfare system accountability councils.
- vii. Promote racial equity. Recognize the persistent harm created by systemic racism and the downstream effects on children and their family’s economic and overall well-being.
- viii. Develop “deliberate, conscious, intentional efforts” in government programs and policies to address the longstanding history of separating Black children from their families, degrading Black families, and structuring the persistent outcomes of diminished well-being for Black children and their families. Engage impacted individuals, families, and communities in the development of these policies.
- ix. Implement the recommendations made by the UN Committee on the Elimination of Racial Discrimination (August 2022) and the UN Human Rights Committee (November 2023) concerning ending racial discrimination and disparities in the child welfare system and bring relevant laws and policies in line with the United States’ international human rights obligations and commitments.

2. The U.S. Commission on Civil Rights should issue the following recommendations to the U.S. Congress and the President:

- a. Recognize explicit, implicit, and systemic biases in the child welfare system and acknowledge our collective responsibility for challenging laws, policies, and practices that devalue Black children and their families and normalize systemic racism and family separation.
- b. Ensure all legal decisions, policies, and practices regarding children's well-being respect the value of Black children and families' racial, cultural, and ethnic identities and the connections, needs, and strengths that arise from those identities.
- c. Hold public hearings, including congressional hearings, to hear directly from families affected by the child welfare system.
 - i. Consult, listen to, and be led by Black parents, children, and kin with lived experience in the child welfare system to learn about the real-life impacts of current practices, particularly family separation, and develop learn how to support constructive steps to end the legacy of Black family separation under the law.
- d. Amend federal CAPTA legislation to meaningfully redress racism in child welfare system policies and procedures.
 - i. Amend CAPTA legislation on the issue of mandatory reporting.
 1. Revisit and reduce the classification of mandated reporters, limiting it to professionals that are best situated to make informed and appropriate judgments.
 - a. Reduce the severity of penalties for failing to report and consider accountability systems that will offset the current strong bias toward over-reporting by explicitly identifying both the grounds on which those reporters may file reports, as well as the kind of evidence that is necessary to file a report; and providing damage relief for children and parents who have been wrongfully separated through the reckless or intentional failure to follow those guidelines.

- b. Eliminate anonymous reporting and replace it with confidential reporting to reduce the incidence of false reports.
- c. Provide mandated reporters and agencies the option to refer families directly to support service organizations instead of government child protection agencies and maintain records about this direct referral process separate from the agencies responsible for investigating and evaluating allegations of child abuse and neglect.
- d. Strengthen training, guidance, feedback, and resources provided to mandated reporters, including mandatory annual training that is aligned to the narrowed definition of ‘abuse and neglect’ and addresses implicit bias and racism, case studies of both appropriate and inappropriate reporting and their impacts, education regarding the harmful, often permanent effects of a child’s and family’s engagement in the system, especially when unwarranted, and a channel to escalate cases to an experienced supervisor when there is any uncertainty regarding whether to report.
- e. Continue to refine the mandated reporting system, its processes, and its implementation via comprehensive data collection, analyses, and refined algorithms/pattern recognition (and in the case of individual agencies, regular spot-checking), with clear benchmarks to substantially reduce the incidents of inappropriate reporting and involvement in the system and the racial disparities.

2. In the alternative, eliminate mandatory reporting, in which a substantial number of reported cases are unsubstantiated resulting both in subjecting children and their families to the unnecessary trauma of state investigation and intervention, and crucially and substantially overburdening the system.

- a. Replace universal, centralized, and anonymous mandatory reporting with permissive, confidential, and decentralized reporting.

- f. Repeal the federal Adoptions and Safe Families Act (ASFA) to ensure that adoption is one of the last resorts, requiring clear and convincing evidence of the parent's prolonged and persistent impaired ability to parent or provide for the child, and following a thorough consideration of whether appropriate, supportive, non-coercive, and accessible services have been provided and/or would mitigate the risk.
 - i. If the Adoption and Safe Families Act is not repealed, curb unnecessary termination of parental rights. Remove those provisions that stress adoption and permanency over reunification and family integrity.
 - ii. Alternatively, eliminate the Adoption and Safe Families Act's effective presumption that separation is in the best interest of a child who has been in foster care for 15 of the previous 22 months and add provisions to establish sufficient safeguards against unnecessary termination of parental rights.
- g. Support better outcomes for youth who are placed in foster care by introducing and supporting legislation that protects their federal benefits, ensures they have affordable housing options, and creates an economic safety net, including during their transition out of foster care when they 'age out'.
 - i. Enact the Protecting Foster Youth Resources to Promote Self-Sufficiency Act (H.R.9654) – a federal bill that would protect benefits for youth in care across the country.
 - ii. Increase funding to expand access to Foster Youth College Success Initiative and The Center for Fair Futures, to support youth aging out of care.
- h. Take in the following actions to reduce the institutionalization of children involved in the child welfare system and protect children from the negative impacts of family separation:
 - i. Support federal and state legislation to amend kinship certifications requirements in order to prioritize kinship placements where a child's removal is deemed necessary.
 - ii. Limit the institutionalization of children under the age of 13 years old to when there is no other alternative available.

- iii. Engage people with lived experiences in the child welfare system to help draft policies and provide trainings, with the aim of reducing the number of institutionalized children.
- i. Implement the recommendations made by the UN Committee on the Elimination of Racial Discrimination (August 2022) and the UN Human Rights Committee (November 2023) concerning ending racial discrimination and disparities in the child welfare system and bring relevant laws and policies in line with the United States' international human rights obligations and commitments.
 - i. Take all appropriate measures to eliminate racial discrimination in the child welfare system, including by amending or repealing laws, policies, and practices, such as the Child Abuse Prevention and Treatment Act, the Adoption and Safe Families Act and the Adoption Assistance and Child Welfare Act, that have a disparate impact on families belonging to racial and ethnic minorities. Hold hearings, including congressional hearings, of families who are affected by the child welfare system.
 - ii. Adopt measures to reduce the harmful impact of child welfare interventions, increase due process protections for parents and review the factors that can trigger child welfare interventions, in particular poverty related circumstances and lack of financial resources including by amending or repealing the Child Abuse Prevention and Treatment Act, the Adoption and Safe Families Act and the Adoption Assistance and Child Welfare Act. Take active steps with a view to ending the permanent placement of police officers in schools and law enforcement involvement in student discipline and to preventing and eliminating discriminatory bias in the administration of student discipline.
- j. Shift the practice of protecting children from simply a punitive and prosecutorial framework, as is currently embraced by the child welfare system (including mandated reporting and criminal procedure-like processes of investigation, prosecution and punishment) to a broader framework that prioritizes essential preventive care and support, including community-based care and services with a commitment to build community-based infrastructure for both the provision of services and accountability, and embraces a range of alternative best practices and models, including restorative, mediation, health and sustainable community models, among others.
- k. Transition wisely from the current child welfare system to combat racism, bias and discrimination by creating a new, less intrusive, model: a) incorporating

proven evidence-based programs, b) that supports and funds nonbureaucratic comprehensive community based programs, c) with an array of resources that lies farther upstream, d) expanding the use of dual track child protective services and other diversion efforts, e) and addresses poverty, income and wealth disparity with direct support and housing and job opportunities. As results are achieved and adjustments made based on periodic (quarterly) outcome reviews, community driven accountability and governance structures will likely demonstrate reduced needs for our current child welfare system, limiting the need for such government intervention to the most serious neglect and abuse cases, reportedly consisting of about 15% of today's system.

- i. Develop “deliberate, conscious, intentional efforts” in government programs and policies to address the longstanding history of separating Black children from their families, degrading Black families, and structuring the persistent outcomes of diminished well-being for Black children and their families. Engage impacted individuals, families, and communities in the development of these policies.
- ii. Fund research and develop policies and programs that promote racial equity in the child welfare system.
- iii. Implement social and economic policies and programs to reduce income and wealth inequality, thereby supporting the wellbeing of children and families. Invest in critical social safety nets for children and families delinked from the child welfare system and implement social and economic policies to reduce income and wealth inequality.
 1. Expand Tax Credits for families.
 2. Increase TANF, food stamps, WIC, SSI, and housing assistance so that families accessing cash assistance do not fall below the poverty line.
 3. Establish and adequately fund universal basic income programs.
- iv. Preserve and support children and their families of origin. Make active efforts to keep children at home, prevent removals, and increase support for children and families in their homes and communities.

1. Clearly incorporate harm-of-removal principles into federal legislation, rulemaking, and appropriations.
 2. Eliminate the mandatory disqualification requirements that require individualized assessments of kin or relatives as foster/adoptive parents.
 3. Eliminate federal incentives for states to adopt a mandatory disqualification of prospective foster parents, including kin, based on any criminal history, other than for violent crimes. Revise federal law to end the mandatory bar and recognize that an individualized assessment of the prospective home should be conducted.
 4. Adopt policies and practices that increase financial and social support disentangled and delinked from the child welfare system to help families stay together in the first place.
 5. Adequately fund and expand the availability, affordability, and access to non-coercive social protection programs that address mental health needs, substance use disorders, and socioeconomic needs, without criminalizing them or linking them to the child welfare system.
 6. Provide for individual assessments and best interest exceptions to the prohibition against placing children with family members who have criminal records that do not pose a safety risk.
 7. Redirect funding and other incentives to state and local entities to align with the promotion of family integrity and support over surveillance and separation (e.g., via child tax credits, social services, community-based solutions).
- v. Enact legislation to prohibit drug testing of parents and pregnant people without prior written, voluntary, and informed consent or pursuant to court order and create a right to decline a drug test unless ordered by a court. Prohibit caseworkers or courts from drawing any adverse inferences from the exercise of the right.
- vi. Enact and fund universal Right to Counsel legislation:

1. Adopt a universal right for parents to quality, pre- and post-petition counsel. Ensure the right attaches upon first contact with child welfare authorities and support contemporaneous provision of social work and support services to address immediate and collateral issues prompting child welfare concerns.
 2. Appropriate, in legislation, adequate funding for legal service provision and sufficient outreach at the state and municipal levels to ensure parents and children are fully aware of this right and how to access.
 3. Encourage states to use federal relief funds to establish a Right to Counsel in all child welfare proceedings.
- vii. Enact legislation requiring child welfare agencies to inform parents and children of their rights upon first contact to remain silent, to speak to a lawyer, and to refuse entry into the home absent emergency or court order.
 - viii. Support the adoption and successful implementation of recommendations to NYS/NYC and other state and local entities below via standard-setting, guidelines, regulations, funding, and resource/best-practice sharing.

3. The U.S. Commission on Civil Rights should issue the following recommendations to the U. S. Department of Health and Human Services, Children’s Bureau:

- a. Conduct or commission a study to better understand the short- and long-term effects of family separation on families and children and the disparate impact on Black families and children, capitalizing on recent advancements in understanding trauma, child development, and brain health, and disseminate the findings to ensure they more widely and uniformly inform children welfare policies and practices.
- b. On an ongoing basis, collect and disseminate data on the child welfare system, practices, and impacts at the federal, state, and local levels to assess its current and ongoing state in terms of both discriminatory and disparate impacts, and the extent to which it is meeting the purpose of protecting children within the framework of prioritizing the preservation of family integrity.

- i. Commit to data transparency to support independent assessment of the disparities and disproportionalities in the child welfare system.
- ii. Standardize and expand federal data collection to include information needed to evaluate gender, race, income, and geographic disparities in referrals, screen-in/screen-out rates, investigation versus alternative response, child removal (temporary or long-term), investigation outcomes (e.g., un/substantiated, un/founded, etc.), maltreatment type, and termination of parental rights.
- iii. Regularly publish data that can be disaggregated (by gender, race, ethnicity, age, and maltreatment type) to enable external stakeholders to assess disparities and disproportionalities in the child welfare system. Commission expert studies on intersectional persistent racial disparities in the child welfare system.
- iv. Critically examine the use of risk assessment and other decision-making tools utilized in child welfare decision making and explore other methods to help guide caseworkers in assessing families on risk and safety issues to remove error related to bias.

4. The U.S. Commission on Civil Rights should issue the following recommendations to the New York State Governor, Legislature, and the Committee on Children & Families within the New York State Assembly:

- a. Recognize explicit, implicit, and systemic biases in the child welfare system and acknowledge our collective responsibility for challenging laws, policies, and practices that devalue Black children and their families and normalize systemic racism and family separation.
- b. Ensure all legal decisions, policies, and practices regarding children's well-being respect the value of Black children and their families' racial, cultural, and ethnic identities and the connections, needs, and strengths that arise from those identities.
- c. Hold public hearings to hear from families affected by the child welfare system. Consult, listen to, and be led by Black parents, children, and kin with lived

experience in child welfare to learn how to support constructive steps to end the legacy of Black family separation under the law.

- d. Develop “deliberate, conscious, intentional efforts” in government programs and policies to address the longstanding history of separating Black children from their families, degrading Black families, and structuring the persistent outcomes of diminished well-being for Black children and their families. Engage impacted individuals, families, and communities in the development of these policies.
 - i. Examine and redress inequitable conditions in the built environment of neighborhoods with high child welfare impacts, including tree cover, clean and safe parks, transportation access to reduce commute times, childcare access, supermarket and other access to affordable healthy foods, quality health and mental health care, and afterschool and summer programming for children and families.
 - ii. Develop community frameworks in partnership with local residents—especially families impacted by child welfare—that can be used in advocacy and planning.
 - iii. Partner with organizations led by impacted parents and youth to develop family-supportive planning and contracting entities outside of the state and city child welfare agencies particularly focusing on equitable investment in Black families and communities.
- e. Amend rules and regulations for mandated reporting, seeking and meaningfully incorporating independent feedback from advocates and lived experts, to safeguard against racially discriminatory practices and minimize the incidents of ‘false negatives’ and its severe long-term effects:
 - i. Revisit the classification of mandated reporters and limit it to professionals that are best situated to make informed and appropriate judgments.
 - ii. Reduce the severity of penalties for failing to report and consider accountability systems that will offset the current strong bias toward over-reporting.

- iii. Eliminate anonymous reporting and replace it with confidential reporting to reduce the incidence of false reports.
 - iv. Give mandated reporters and agencies the option to refer families directly to support service organizations instead of government child protection agencies and maintain records about this direct referral process separate from the agencies responsible for investigating and evaluating allegations of child abuse and neglect.
 - v. Strengthen training, guidance, feedback, and resources provided to mandated reporters, including mandatory annual training that is aligned to the narrowed definition of ‘abuse and neglect’ and addresses implicit bias and racism, case studies of both appropriate and inappropriate reporting and their impacts, education regarding the harmful, often permanent effects of a child’s and family’s engagement in the system, especially when unwarranted, and a channel to escalate cases to an experienced supervisor when there is any uncertainty regarding whether to report.
 - vi. Continue to refine the mandated reporting system, its processes, and its implementation via comprehensive data collection, analyses, and refined algorithms/pattern recognition (and in the case of individual agencies, regular spot-checking), with clear benchmarks to substantially reduce the incidents of inappropriate reporting and involvement in the system and the racial disparities.
 - vii. Reduce significantly the number of mandatory reporters and explicitly identify both the grounds on which those reporters may file reports, as well as the kind of evidence that is necessary to file a report. The reckless or intentional failure to follow those guidelines would provide grounds for damages relief for parents who have been wrongfully separated from their children or children who have been wrongfully separated from their parents.
- f. In the alternative, eliminate mandatory reporting, where approximately 75% of the New York reported cases in 2022 were unsubstantiated, and thus which results in both subjecting children and their families to the trauma of state investigation and intervention, and in needlessly and substantially overburdening the system.
- i. Replace universal, centralized, and anonymous mandatory reporting with permissive, confidential, and decentralized reporting.

- ii. Provide reporters and responding agencies the option to refer families directly to services in lieu of the government child welfare agency.
- iii. Maintain records about the administration of this direct referral process separate from agencies responsible for investigating and evaluating allegations of child abuse or neglect.
- iv. Alternatively, revisit the classification of mandated reporters and limit it to professionals that are best situated to make informed and appropriate judgments.
- v. Reduce the severity of penalties for failing to report and consider accountability systems that will offset the current strong bias toward over-reporting.
- vi. Eliminate anonymous reporting and replace it with confidential reporting to reduce the incidence of false reports.
- vii. Give mandated reporters and agencies the option to refer families directly to support service organizations instead of government child protection agencies and maintain records about this direct referral process separate from the agencies responsible for investigating and evaluating allegations of child abuse and neglect.
- viii. Strengthen training, guidance, feedback, and resources provided to mandated reporters, including mandatory annual training that is aligned to the narrowed definition of ‘abuse and neglect’ and addresses implicit bias and racism, case studies of both appropriate and inappropriate reporting and their impacts, education regarding the harmful, often permanent effects of a child’s and family’s engagement in the system, especially when unwarranted, and a channel to escalate cases to an experienced supervisor when there is any uncertainty regarding whether to report.
- ix. Continue to refine the mandated reporting system, its processes, and its implementation via comprehensive data collection, analyses, and refined algorithms/pattern recognition (and in the case of individual agencies, regular spot-checking), with clear benchmarks to substantially reduce the incidents of inappropriate reporting and involvement in the system and the racial disparities.

- x. Reduce significantly the number of mandatory reporters and explicitly identify both the grounds on which those reporters may file reports, as well as the kind of evidence that is necessary to file a report. The reckless or intentional failure to follow those guidelines would provide grounds for damages relief for parents who have been wrongfully separated from their children or children who have been wrongfully separated from their parents.
- g. Enact, fund, and implement The Informed Consent Act 2023-S320B / 2023-A109 which prohibits non-consensual drug and alcohol screening and reporting of pregnant and prenatal people and their newborns and requires health care providers to obtain written and verbal informed consent before drug testing or screening new parents and their newborns and that a drug test or screen be given only if it falls within the scope of medical care.
- h. Enact, fund, and implement New York legislation that helps reduce unnecessary involvement in the child welfare system, specifically The Family Miranda Rights Act 2023-A1980 / 2023-S901 and The Anti-Harassment in Reporting Act 2023-A2479 / 2023-S902.
- i. Enact, fund, and implement New York legislation that helps children maintain ties with their families when parental rights are terminated, specifically, The New York State Preserving Family Bonds Act 2023- A5394 / 2023-S6720.
- j. Amend New York State’s Family Court Act to narrow the definition of “neglect” to ensure the term is not associated with poverty.
 - i. Eliminate educational neglect under New York State law.
 - ii. Narrow the definition of ‘abuse and neglect’ that triggers the start of a family’s involvement in the child welfare system to address its demonstrated and persistent over-reach.
- k. Invest in critical social safety nets for children and families delinked from the child welfare system and implement social and economic policies to reduce income and wealth inequality.
 - i. Increase TANF, food stamps, WIC, SSI and housing assistance so that families accessing cash assistance do not fall below the poverty line.

- ii. Establish and adequately fund universal basic income programs. Reduce administrative burdens in applying for cash assistance.
 - iii. Expand access to emergency cash.
 - iv. Ensure affordable childcare access to all families.
 - v. Develop large-scale guaranteed income programs specifically targeted to parents with young children.
 - vi. Support the new state commission on reparations and call for including the child welfare system as part of its scope.
 - vii. Invest in Peer Support programs and community-based programs that can provide timely, informal, and supportive peer care to parents to keep challenges from becoming crises.
 - viii. Implement neighborhood based, integrated, anti-poverty efforts of a variety of kinds, including the basics of housing, food, shelter, clothing, health, and mental health.
1. Enact, adequately fund, and implement a state-wide Child and Family Wellbeing Fund to support children, youth, and families by investing resources de-linked from the child welfare system in communities that have been historically disenfranchised and targeted for government intervention.
- i. Increase the availability of essential preventive community-based services to preserve families, increase economic opportunity and ameliorate poverty without the threat of unnecessary family separation through the child welfare system.
 - ii. Fund independent mental health service programs with expertise in family-based care, interfamilial trauma, early childhood and maternal-child services and appropriate interventions for managing domestic violence, understanding the consequences of poverty and racism as well as integrated case management services.
- m. Narrow the reach of the State Central Registry of Child Abuse and Maltreatment.
- a. Enact state abuse and neglect registry reforms to shift the burden of proof to the state to demonstrate necessity of placing a person

on the registry and keeping them there, reduce the amount of time a parent is on the registry, establish fair hearing procedures for parents to demonstrate rehabilitation, pursue removal from the registry, request nondisclosure to employers in specific cases.

- n. Clearly incorporate harm-of-removal principles into legislation, rulemaking, and appropriations.
 - i. Clearly define “reasonable efforts” to incorporate consideration of the emotional and psychological harms of removal and list factors to be considered to address the specific harms identified.
 - ii. Establish clear criteria for determining whether the child protective agency made reasonable efforts.
 - iii. Require that reasonable efforts consist of the agency seeking removal explain what they believe the impact of removal will be on the child and how they plan to mitigate the traumatic effects.
 - iv. Enact legislation to require meaningful consideration and contemplation of the harms of removal by courts.
 - v. Enact legislation to mandate that courts grapple with the potential harm of removal by adding a required consideration of the harm of removal into statutes that govern removal hearings in abuse and neglect cases; thus codifying *Nicholson v. Scoppetta*, the landmark Court of Appeals decision.
- o. Create an effective, integrated, coordinated approach among the various state and local systems that interact with Black children and families to provide health services, mental health services, social services, education, housing, and limit child welfare involvement.
 - i. Allocate State funding for local supportive services.
- p. Preserve and support children and their families of origin. Make active efforts to keep children at home, prevent removals, and increase support for children and families in their homes and communities.
 - i. Adopt policies and practices that increase financial and social supports delinked from the child welfare system to help families stay together in the first place.

- ii. Adequately fund and expand the availability, affordability, and access to non-coercive social protection programs that address mental health needs, substance use disorders, and socioeconomic needs, without criminalizing them or linking them to the child welfare system.
- q. Revise New York State laws to limit direct government intervention into the family to cases in which imminent risk of harm and/or imminent danger to a child's life, health and wellbeing exist as a result of a parent's commission or omission to act.
- r. Implement the recommendations made by the UN Committee on the Elimination of Racial Discrimination (August 2022) and the UN Human Rights Committee (November 2023) concerning ending racial discrimination and disparities in the child welfare system and bring relevant laws and policies in line with the United States' international human rights obligations and commitments.
 - a. Take all appropriate measures to eliminate racial discrimination in the child welfare system, including by amending or repealing laws, policies, and practices, that have a disparate impact on families belonging to racial and ethnic minorities. Hold hearings of families who are affected by the child welfare system.
 - b. Adopt measures to reduce the harmful impact of child welfare interventions, increase due process protections for parents and review the factors that can trigger child welfare interventions, in particular poverty related circumstances and lack of financial resources. Take active steps with a view to ending the permanent placement of police officers in schools and law enforcement involvement in student discipline and to preventing and eliminating discriminatory bias in the administration of student discipline.
- s. Enact and fund universal Right to Counsel legislation.
 - i. Adopt a universal right for parents to quality, pre- and post-petition counsel. Ensure the right attaches upon first contact with child welfare authorities and support contemporaneous provision of social work and support services to address

immediate and collateral issues prompting child welfare concerns.

- ii. Appropriate, in legislation, adequate funding for legal service provision and sufficient outreach at the state and municipal levels to ensure parents and children are fully aware of this right and how to access.
- t. Repeal the Host Homes regulations, which may be used to separate families without providing them with any services or supports, access to counsel, or other due process rights.
- u. Require child welfare agencies to revise practices that effectively disqualify prospective kin foster parents based on the State Central Registry or criminal history (other than violent crimes) of the kin or household member over 18 to ensure that such history does not deprive children of safe homes.

5. The U.S. Commission on Civil Rights should issue the following recommendations to the New York Office of Children and Family Services:

- a. Shift from the current punitive and prosecutorial framework embraced by the child welfare system (including mandated reporting and criminal procedure-like processes of investigation, prosecution and punishment) to a broader framework to protect children that prioritizes essential preventive community-based care and services, builds community-based infrastructure for both the provision of services and accountability and embraces a range of alternative best practices and models including restorative and mediation practices, and health and sustainable community models, among others.
- b. Transition wisely from the current child welfare system to combat racism, bias and discrimination by creating a new, less intrusive, model: a) incorporating proven evidence-based programs, b) that supports and funds nonbureaucratic comprehensive community based programs, c) with an array of resources that lies farther upstream, d) expanding the use of dual track child protective services and other diversion efforts, e) and addresses poverty, income and wealth disparity with direct support and housing and job opportunities. As results are achieved and adjustments made based on periodic (quarterly) outcome reviews, community driven accountability and governance structures will likely

demonstrate reduced needs for our current child welfare system, limiting the need for such government intervention to the most serious neglect and abuse cases, reportedly consisting of about 15% of today's system.

- c. Provide meaningful and concrete supports to children and their parents in their communities, from entities outside of and delinked from government child welfare agencies, to ensure families feel safe and are protected from the trauma the child welfare system has inflicted.
- d. Prioritize kinship placements by reexamining the kin foster parent certification process and monitoring local child protective service office practices to ensure relatives are not unnecessarily denied custody or foster rights.
- e. Revise the New York State Office of Children and Family Services' Safety Factors Assessment Tool with clear definitions of neglect that remove discretion and subjectivity, with a specific focus on clarifying risk between the terms "unable" and "unwilling."
- f. Limit direct government intervention into the family to only those cases in which imminent risk of harm and/or imminent danger to a child's life, health and wellbeing exist as a result of a parent's commission or omission to act. Limit the role of CPS to assessing children for imminent risk/imminent danger, and where no imminent risk of harm/imminent danger exists, government should provide direct supports and services to the family without CPS involvement or intervention.
- g. Fund and require data collection to monitor for racial discrimination.
 - i. Commit to data transparency to support independent assessment of the disparities and disproportionalities in the child welfare system.
 - ii. Standardize and expand state data collection to include information needed to evaluate gender, race, income, and geographic disparities in referrals, screen-in/screen-out rates, investigation versus alternative response, child removal (temporary or long-term), investigation outcomes (e.g., un/substantiated, un/founded, etc.), maltreatment type, and termination of parental rights.
 - iii. Regularly publish data that can be disaggregated (by gender, race, ethnicity, age, and maltreatment type) to enable external stakeholders to assess disparities and disproportionalities in the child welfare system.

Commission expert studies on intersectional persistent racial disparities in the child welfare system.

- iv. Critically examine the use of risk assessment and other decision-making tools utilized in child welfare decision making and explore other methods to help guide caseworkers in assessing families on risk and safety issues to remove error related to bias.
- h. Support the adoption and successful implementation of recommendations to NYC agencies below via standard-setting, guidelines, regulations, funding, and resource/best-practice sharing.

6. The U.S. Commission on Civil Rights should issue the following recommendations to the New York State Family Courts and Office of Court Administration:

- a. Enforce the legal requirements surrounding “reasonable efforts” to avoid family separation, and, if a child is removed, enforce “reasonable efforts” towards family reunification.
- b. Ensure the Family Court has ready access to agencies and other entities to expand its set of options for resolving cases with the child’s and family’s best interest in mind and to reinforce the focus on prevention and family integrity/supports while preventing and limiting unnecessary separation and prolonged child welfare system involvement.
- c. Require court consideration of enumerated factors, including: (i) whether a kinship resource is available to take the children; (ii) if a foster home been identified; (iii) where the identified foster home is in relation to the child’s home; (iv) whether the foster parent can accommodate the proposed visitation schedule; (v) if siblings will be placed together; (vi) if the child will have to transfer schools; (vii) whether the child’s services or extra-curricular activities be disrupted; (viii) if the child has special needs and if so, whether the identified placement is able to accommodate those needs; and (ix) whether the child will be able to observe religious or cultural practices that are important to them in the identified placement.
- d. As per the Special Commission on the Future of the New York State Courts, commissioned by OCA and published in 2007, restructure New York’s superior

trial level courts by merging into its Supreme Court the current Family Court, Court of Claims, County Court, and Surrogate's Court.

- i. Until restructuring, require the NYS Family Court to assign trial judges to hear emergency child removal/return hearings day to day as required by NYS law, and to conduct child abuse, child neglect, and termination of parental rights petitions day to day until completed.
 - ii. Alternatively, the Family Court should be merged with the Supreme Court and granted general jurisdiction.
- e. Consider the following approaches to address parental rights termination in child welfare cases:
 - i. Require a jury for Family Court proceedings regarding termination of parental rights.
- f. Implement the following actions to prevent racial bias within the Family Court system:
 - i. Require Family Court judges and staff to receive ongoing training on racial bias and racism within the family court system.
 - ii. Require Family Court judges be held accountable for acts of racism and bias in their words and/or actions towards Black families.
 - iii. Listen to and ensure impacted individuals are involved in informing policy and decision-making processes within family courts.
 - iv. Require judicial education that includes training on the historical and ongoing treatment of Black families and children in the child welfare system, as well as the normalization of Black family separation, to actively challenge personal biases in decision-making, laws, policies, and practices.
- g. Increase the number of NYC Family Court judges to meet the demands on the NYC Family Court Judiciary and address judicial vacancies.
- h. Address and eliminate the “dehumanizing” culture that exists in Family Court.
 - i. Provide for observation and feedback for judges and non-judicial court personnel from colleagues and supervisors or independent court

watchers to ensure accountability and improvement in the treatment of court users.

- i. Prioritize children, parents, and families in scheduling court appearances.
- j. Create and implement uniform court rules for the NYS Family Court.
- k. Prioritize the children and families in NYS Family Court's child welfare cases by:
 - i. Assigning judges of other trial courts to timely hear and decide the child abuse and neglect, and termination of rights petitions to ensure speedy fact-findings and dispositions and avoid the unconscionably long delays which are harming children and families.
 - ii. Requiring judges to conduct child removal and child return hearings as well as child abuse and neglect and termination of parental rights petition fact-findings day to day to conclusion and judicial decision while ensuring meaningful due process protections for children and their families.
- l. Reduce the caseload of attorneys representing parents and children and provide those attorneys with proper support, oversight, supervision, management, and compensation to ensure effective representation of families.
- m. End the silencing, decentering, and other daily acts of racism in family court and create clear reporting and accountability mechanisms.
 - i. Require child protection court judges to promote due process, accountability, and justice for Black children and families through conscious and deliberative exercise of discretion in decision-making.
 - ii. When exercising discretion in child protection cases, require judges to mitigate the harms to Black children and families from the operation of bias and discrimination inherent in the legal and practice framework characterized by inter-determinacy and subjectivity.
 - iii. Require child protection judges to ensure that Black children and parents have sufficient notice and a meaningful opportunity to be heard and that their input about their families' needs and desires are listened to and acted upon.

- iv. Enact, implement, and fund accountability measures that establish community-run child welfare system accountability councils and provide for observation and feedback for judges and non-judicial court personnel from colleagues and supervisors or independent court watchers.
- v. Study and expand use of alternative dispute resolution systems in child welfare proceedings, including mediation, client-directed representation, and inquisitorial hearing structures.

7. The U.S. Commission on Civil Rights should issue the following recommendations to the local Child Protective Services offices throughout New York State and New York City's Administration for Children's Services:

- a. Reframe the purpose and goals of ACS to promote family integrity and prevention, support, and services over separation and a rush to permanence, and recalibrate its culture, values, personnel, training/professional development, accountability systems, and resources around this reorientation.
- b. Comply with the NYS Family Court Act's statutory requirements and caselaw for:
 - i. The removal of children from their parents or persons legally responsible, pursuant to FCA 1021, 1022, 1024, 1027; and for the return of children to their parents or persons legally responsible, pursuant to FCA 1028.
 - ii. Appropriate court orders, pursuant to Family Court Act section 1034, at any hour of the day or night, to gain entry to a child's home and/or inspect children.
- c. Integrate approaches that create transparency and accountability in child welfare investigations:
 - i. Require New York's child welfare system implementing agencies hold public hearings.
 - ii. Require screening of hotline referrals before starting an investigation.
 - iii. Require sufficient evidence for claims of neglect or abuse in order to start an investigation.

- iv. Establish guaranteed legal protections/due process to families and children in the system that starts with their first interaction with the system and ensure sufficient training, coaching, and accountability among caseworkers and all other personnel involved in executing the system, e.g. (not comprehensive):
 - 1. Reading of rights.
 - 2. Access to legal counsel.
 - 3. Search protections and privacy safeguards.
 - 4. Also consider remedies/damages/legal actions for families that have been wrongfully entrapped in the system.
 - 5. Every person who is investigated by ACS should receive a card/form that identifies key due process rights that parents have, including but not limited to the right to deny social workers consent to enter the home, as well as the right of a parent or his/her representative to be present when minor children are being interrogated.
- d. Engage the following multidisciplinary, holistic, and evidence-based interventions to address family needs and prioritize keeping families together when addressing CPS reports:
 - i. Support highly challenged families with mental health service programs that have expertise in family-based care, inter-familial trauma, and provide early childhood and maternal child services.
 - ii. Charge other agencies beyond ACS to support the well-being of children and families and empower them to act outside of ACS.
 - iii. Assign a multidisciplinary team to families involved in investigations to protect children and parents' rights at the initial and ongoing stages of child welfare involvement.
 - iv. Redirect funds from ACS investigations and monitoring/surveillance to preventative services and family financial and social supports, with recognition of the persistent harm created by systemic racism and the downstream effects on a family's economic and overall well-being.

- v. Build collaboration more broadly across the various city and state agencies, community based organizations, and other entities to support a child and family centered approach that will keep more families out of the system, ensure those that are in the system are well supported, minimize the time spent in the system, and expedite the return of any children separated from their families.
- e. Limit ‘abuse and neglect’ justifying child welfare system involvement to situations involving imminent and demonstrated risk of serious harm to the child; remove educational neglect from the definition and address the latter largely via the school system, which is best situated to handle such issues.
- f. Maintain records about the administration of this direct referral process separate from agencies responsible for investigating and evaluating allegations of child abuse or neglect.
- g. Pay child welfare staff a living wage so they can appropriately deliver the services they are tasked with providing and ensure leadership positions are held by Black and other persons of color.
- h. Mitigate harms to children and families caused by foster care via standards, resources, and independent oversight:
 - i. Increase consistency, quality, and reliability of foster parents via recruitment, selection, training, and ongoing support that emphasizes their role in supporting family reunification.
 - ii. Prioritize kinship placements and make the necessary investments to facilitate such placements.
 - iii. Bolster accountability systems and incentives to increase the well-being of children in foster care, reduce harm, and minimize length of stays.
- i. Transition wisely from the current child welfare system to combat racism, bias and discrimination by creating a new, less intrusive, model: a) incorporating proven evidence-based programs, b) that supports and funds nonbureaucratic comprehensive community based programs, c) with an array of resources that lies farther upstream, d) expanding the use of dual track child protective services and other diversion efforts, e) and addresses poverty, income and wealth disparity with direct support and housing and job opportunities. As results are achieved and adjustments made based on periodic (quarterly) outcome reviews, community driven accountability and governance structures will likely

demonstrate reduced needs for our current child welfare system, limiting the need for such government intervention to the most serious neglect and abuse cases, reportedly consisting of about 15% of today's system.

- j. Preserve and support children and their families of origin. Make active efforts to keep children at home, prevent removals, and increase supports for children and families in their homes and communities delinked from the child welfare system. Ensure removals are a last resort after all other interventions have been exhausted and are treated as such.
 - i. Prohibit the treatment of poverty-related circumstances, lack of financial resources, or parental/pregnancy substance use as factors that, standing alone, can trigger child welfare interventions.
 - ii. Require agencies to inform parents and children of their rights upon first contact to remain silent, to speak to a lawyer, and to refuse entry into the home absent emergency or court order.
 - iii. Prohibit drug testing of parents and pregnant people without prior written, voluntary, and informed consent or pursuant to court order. Legislatively create a right to decline a drug test unless ordered by a court. Prohibit caseworkers or courts from drawing any adverse inferences from the exercise of the right.
 - iv. Prohibit the practice of anonymously reporting families for suspected child maltreatment.
 - v. Require and enforce rules requiring parent's consent for service managers to physically search children.
 - vi. Prohibit caseworkers from conducting strip searches, as well as from interviewing children at school without a court order and notice to the parents.
 - vii. Ensure family separation is a last resort based on evidence of prolonged and persistent impaired ability to parent or provide for the child, following assessment for actual and imminent harm and consideration of whether supportive, non-coercive, and accessible services have been provided.
 - viii. Build awareness via training and education re: the harms of removal, the high incidences of unnecessary removals, and the racial bias often inherent in such removals.

- ix. Establish clear, uniform guidelines for removals, including the criteria justifying removal and the progression of steps that must be followed before any removal can be considered; immediate removal should only be done when the child is in imminent danger of grave harm and must be accompanied by court order and substantiating evidence.
 - x. Equip CPS workers to better identify and secure other options delinked from the child welfare system to support children and their families' needs instead of resorting to family separation, through training, joint problem-solving, and ongoing guidance, support, and professional development, and align incentives and accountability systems to this imperative.
 - xi. Offset the heightened pressure to remove children from their families that is triggered by periodic media reports of one-off child welfare related tragedies, via ongoing public education and proactive communications/media strategies.
 - xii. Diligently support courts' meaningful consideration and contemplation of the harms of removal by explaining the impact of removal on the child and providing a plan to mitigate the traumatic effects.
 - xiii. Adopt policies and practices that increase financial and social supports to help families stay together in the first place.
 - xiv. Adequately fund and expand the availability, affordability, and access to non-coercive social protection programs that address mental health needs, substance use disorders, and socioeconomic needs, without criminalizing them or linking them to the child welfare system.
- k. Ensure that ACS searches in the home are not presumptively wide-ranging.
- i. Limit searches to places where evidence of the specifically alleged wrongdoing can reasonably be gathered. This would not prohibit the collection of evidence that is in the plain view of an officer who has the right to be in the place where the evidence was observed; similarly, this would not prohibit the collection of evidence that arises or is revealed in the course of responding to an exigent circumstance.

8. The U.S. Commission on Civil Rights should issue the following recommendations to New York City’s Mayor and City Council:

- a. Recognize explicit, implicit, and systemic biases in the child welfare system and acknowledge our collective responsibility for challenging laws, policies, and practices that devalue Black children and their families and normalize systemic racism and family separation.
- b. Ensure all legal decisions, policies, and practices regarding children’s well-being respect the value of Black children and families’ racial, cultural, and ethnic identities and the connections, needs, and strengths that arise from those identities.
- c. Hold public hearings, to hear from families affected by the child welfare system.
 - i. Consult, listen to, and be led by Black parents, children, and kin with lived experience in child welfare to learn how to support constructive steps to end the legacy of Black family separation under the law.
- d. Develop “deliberate, conscious, intentional efforts” in government programs and policies to address the longstanding history of separating Black children from their families, degrading Black families, and structuring the persistent outcomes of diminished well-being for Black children and their families. Engage impacted individuals, families, and communities in the development of these policies.
 - i. Examine and redress inequitable conditions in the built environment of neighborhoods with high child welfare impacts, including tree cover, clean and safe parks, transportation access to reduce commute times, childcare access, supermarket and other access to affordable healthy foods, quality health and mental health care, and afterschool and summer programming for children and families.
 - ii. Develop community frameworks in partnership with local residents—especially families impacted by child welfare—that can be used in advocacy and planning.
 - iii. Partner with organizations led by impacted parents and youth to develop family-supportive planning and contracting entities outside of the state and city child welfare agencies particularly focusing on equitable investment in Black families and communities.

- iv. Eliminate approaches to housing, education, domestic violence, mental health, and addiction that drive ACS involvement. Disentangle ACS from important systems and structures of family support and end ACS resource gatekeeping.
 - 1. Develop a task force to evaluate family support services that are currently accessible only or primarily through ACS and create an action plan for separating them.
 - 2. Require city agencies to center the needs of parents in family-serving systems and public policy.
- v. Fund research, develop policies and programs that promote racial equity.
- e. Invest in critical social safety nets for children and families delinked from the child welfare system and implement social and economic policies to reduce income and wealth inequality. Increase TANF, food stamps, WIC, SSI and housing assistance so that families accessing cash assistance do not fall below the poverty line.
 - i. Establish and adequately fund universal basic income programs.
 - ii. Provide direct, unrestricted financial support to families disentangled and delinked from the child welfare system and ensure this support does not supplant other public benefits.
 - iii. Reduce administrative burdens in applying for cash assistance.
 - iv. Expand access to emergency cash.
 - v. Ensure affordable childcare access to all families.
 - vi. Develop large-scale guaranteed income programs specifically targeted to parents with young children.
 - vii. Invest in Peer Support programs that can provide timely, informal, and supportive peer care to parents to keep challenges from becoming crises.
 - viii. Implement neighborhood-based, integrated, anti-poverty efforts of a variety of kinds, including the basics of housing, food, shelter, clothing, health, and mental health.

- f. Clearly incorporate harm-of-removal principles into legislation, rulemaking, and appropriations.
 - i. Clearly define “reasonable efforts” to incorporate consideration of the emotional and psychological harms of removal and list factors to be considered to address the specific harms identified.
 - ii. Establish clear criteria for determining whether the child protective agency made reasonable efforts.
 - iii. Require that reasonable efforts consist of the agency seeking removal having to explain what they believe the impact of removal will be on the child and how they plan to mitigate the traumatic effects.
 - iv. Enact legislation to require meaningful consideration and contemplation of the harms of removal by courts.
 - v. Enact legislation to mandate that courts grapple with the potential harm of removal by adding a required consideration of the harm of removal into statutes that govern removal hearings in abuse and neglect cases.
- g. End the silencing, decentering, and other daily acts of racism in family court and create clear reporting and accountability mechanisms.
 - i. Require child protection court judges to promote due process, accountability, and justice for Black children and families through conscious and deliberative exercise of discretion in decision-making.
 - ii. When exercising discretion in child protection cases, require judges to mitigate the harms to Black children and families from the operation of bias and discrimination inherent in the legal and practice framework characterized by indeterminacy and subjectivity.
 - iii. Require child protection judges to ensure that Black children and parents have the opportunity to be heard and that their input about their families’ needs and desires are listened to and acted upon.
 - iv. Enact, implement, and fund accountability measures that establish community-run child welfare system accountability councils and provide for observation and feedback for judges and non-judicial court personnel from colleagues and supervisors or independent court watchers.

- v. Ensure timely, meaningful opportunities for judicial review of agency action. Require states to give parents procedural and substantive means to challenge in court safety plans, child removals, and reunification plans when they are presented or occur.
- h. Fund and require data collection to monitor for racial discrimination.
- i. Commit to data transparency to support independent assessment of the disparities and disproportionalities in the child welfare system.
 - ii. Standardize and expand state data collection to include information needed to evaluate gender, race, income, and geographic disparities in referrals, screen-in/screen-out rates, investigation versus alternative response, child removal (temporary or long-term), investigation outcomes (e.g., un/substantiated, un/founded, etc.), maltreatment type, and termination of parental rights.
 - iii. Regularly publish data that can be disaggregated (by gender, race, ethnicity, age, and maltreatment type) to enable external stakeholders to assess disparities and disproportionalities in the child welfare system. Commission expert studies on intersectional persistent racial disparities in the child welfare system.
 - iv. Critically examine the use of risk assessment and other decision-making tools utilized in child welfare decision making and explore other methods to help guide caseworkers in assessing families on risk and safety issues to remove error related to bias.
- i. Support the new state commission on reparations and call for including the child welfare system as part of its scope.

Appendix

Briefing materials related to this report can be found here:

<https://usccr.box.com/s/qb8g1i2fqhauirdg8gr1641fcml8bdd6>

A. Briefing materials

- a. Speakers
- b. Transcript
- c. Agenda
- d. Minutes
- e. Panelist Slides

B. Written Testimony

**New York Advisory Committee to the
United States Commission on Civil Rights**



U. S. Commission on Civil Rights Contact

USCCR Contact Regional Programs Unit

U.S. Commission on Civil Rights

230 S. Dearborn, Suite 2120

Chicago IL, 60604

(312) 353-8311

This report is the work of the New York Advisory Committee to the U.S. Commission on Civil Rights. The report, which may rely on studies and data generated by third parties, is not subject to an independent review by Commission staff. Advisory Committee reports to the Commission are wholly independent and reviewed by Commission staff only for legal and procedural compliance with Commission policies and procedures. Advisory Committee reports are not subject to Commission approval, fact-checking, or policy changes. The views expressed in this report and the findings and recommendations contained herein are those of a majority of the Advisory Committee members and do not necessarily represent the views of the Commission or its individual members, nor do they represent the policies of the U.S. Government.