



Summary



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"If I Wasn't Poor, I Wouldn't Be Unfit"

The Family Separation Crisis in the US Child Welfare System

Video

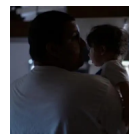
A mother from Connecticut helps her children, ages 8 and 6, get ready for school. Describing her experience with the child welfare system, she said, "I'm walking on eggshells. I don't think that is how you're supposed to live as a parent." © 2022 Human Rights Watch

Summary

If I wasn't poor, I wouldn't be unfit.

—Bobbie Butts, advocate, California,
April 15, 2022

It has been more than two years since Adaline Stephens' six children were removed from her care and placed in the foster system. Her nightmare began on a night like any other. Her 9-year-old son, Elijah, was dancing in the kitchen



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and slipped on some water, injuring his hip. "I rushed him to the emergency room when he got hurt," Adaline said. "The doctors asked me questions, and I told them everything. I trusted them to help him." Adaline was shocked when she learned that her son's medical providers reported her to child protective services for suspected abuse, triggering a cascade of state interventions that irreparably harmed her children and their family bond.

The Los Angeles County Department of Children and Family Services (DCFS) launched an investigation. A caseworker visited the children's school and pulled them from class to question them, came to the home unannounced, and randomly strip searched the children, ages 1, 4, 7, 9, and 10, to check their bodies for signs of abuse. Adaline said these visits were so frightening for her children that her youngest child began screaming every time she saw anyone with a badge.

Adaline was required to take a drug test, a requirement often—and disproportionately—imposed on Black mothers. She has scoliosis and spina bifida. Her doctor prescribed Percocet for the pain, but it was damaging her liver and stomach lining. "I made the decision to change to medical marijuana, which was better for my health," she said. She tested positive for THC (the active substance in marijuana, and the chemical responsible for most of its psychological effects). "They stated that my marijuana usage rendered me incapable of providing 24-hour care to my children," she said.

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  county_gini = "processing/output/county_gini.csv"
) %>% map(here)
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See how we analyzed the data for this report

CODE AND METHODOLOGY

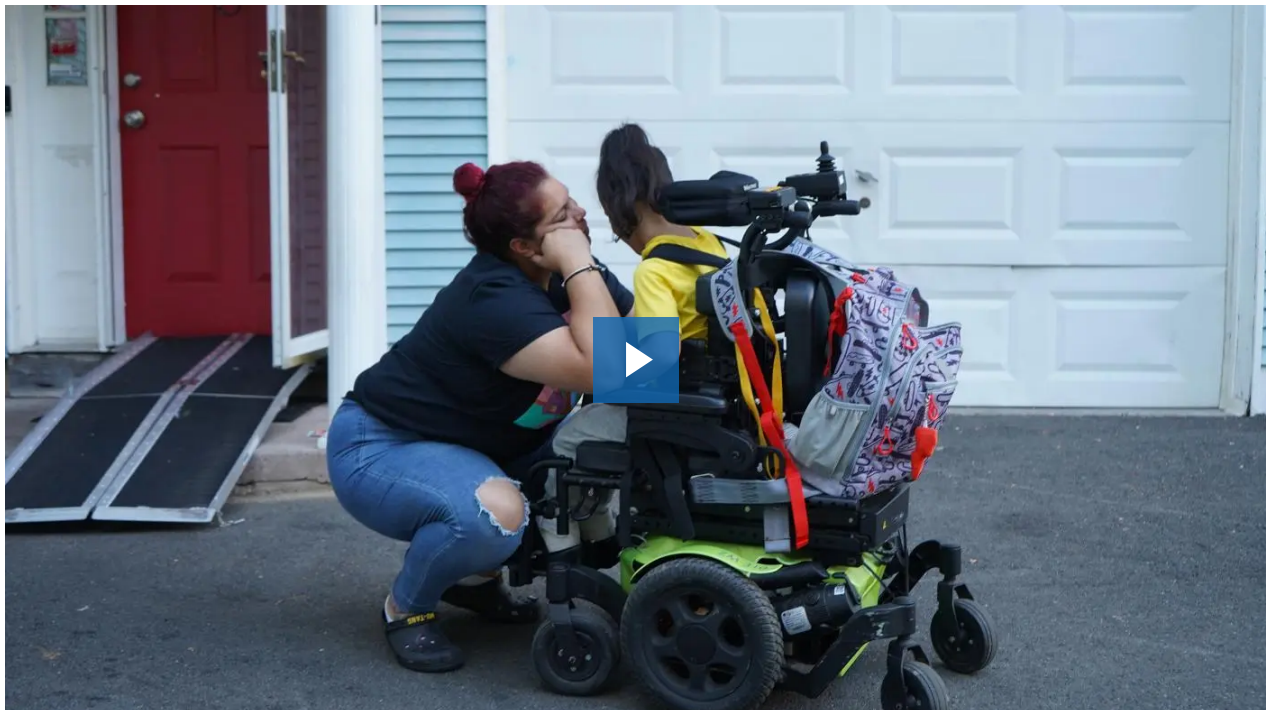
Adaline knew what was at stake. She was removed from her own parents' care as a child and grew up in the foster system. Afraid that her children would be taken from her, Adaline agreed to six months of follow-up with the caseworker, weekly drug testing, and parenting classes, in exchange for keeping her children home with her.

In the meantime, Adaline gave birth to her youngest child. The birth was complicated because of her spinal conditions, and she had to use a wheelchair and walker for two months. During that time, she rescheduled one of Elijah's follow-up appointments. Adaline said DCFS told her they found bed bugs in a couch and holes in the walls in of her home.

Days before her case was set to be reviewed, Adaline was informed that a judge had ordered the children be removed from her custody due to the condition of the home and because she rescheduled her son's appointment.

Her children, including her infant son, were removed from her care, separated from each other, and placed in foster homes. Four of the six children have experienced abuse in the foster system and are coping with serious mental health impacts, Adaline said. One of her sons had to be admitted to a mental health facility for inpatient care. The children remain in the foster system at time of writing, and Adaline is fighting to get them back.

"This situation has caused me so much pain, anger, and trauma from the separation from my children," she said. "I just want my purpose back. I knew I wanted to be a mother and that's all I ever knew how to do. Please help me and my kids."



A National Problem

One in three children in the United States will be part of a child welfare investigation by age 18, as Adaline's children were. Every three minutes a child is removed from their home and placed in the foster system. Black children are almost twice as likely to experience investigations as white children and are more likely to be separated from their families. As a result, more than 200,000 children enter the foster system each year.

While the US child welfare system's stated purpose is to improve child safety, permanency and well-being, and child welfare workers believe they are defending children's rights to health and life, system interventions too often unnecessarily disrupt family integrity and cause harm to the very children they aim to protect.

As nearly all people involved in child welfare acknowledge, removing a child from their parents' care, even for a short period of time, is a drastic measure that can cause profound harm. Those impacted are disproportionately communities of color, especially Black and Indigenous families, and people living in poverty.

This report examines removals of children and termination of parental rights by state child welfare systems, focusing primarily on four states: California, New York, Oklahoma, and West Virginia. The number of children removed from their families, the too-often unjust circumstances of removal, and the disproportionate effects on Black and Indigenous families, and those living in poverty, make this a national family separation crisis warranting immediate attention and action.

The report finds that child welfare systems too often respond to circumstances of poverty with punishment. Parents too often face charges of neglect and see their children removed from their care instead of receiving support to keep families together. Black and Indigenous families disproportionately face neglect charges and removals. In fact, federal and state data show racial and ethnic disparities exist at every stage of involvement, with particular harm to Black families. As a result, many parents, advocates, and experts describe the system not as one primarily of child protection, but as family "regulation" and "policing."

Regulating Families

Child welfare involvement begins with a report to the state child protective services hotline for suspected child abuse or neglect. Millions of reports are made every year: In 2019, for example, 3 million reports were made about nearly 8 million children.

Reports can be made anonymously, with the intention of encouraging reporting and identification of children at risk. However, anonymous reporting can be ineffective in detecting maltreatment because public reporters may provide insufficient information to avoid disclosing their identity. Anonymous reporting also carries with it significant risks of misuse, in particular by perpetrators of domestic violence and others who see reporting as a means of retaliation for grievances.

Families with limited resources often have more exposure to mandated reporters because they have a greater need for, and use of, social services. This creates a dynamic where families living in poverty are surveilled, scrutinized, and reported more than those with greater resources. Black and Indigenous families are more likely to be reported for child abuse and neglect than white families, resulting in a racial and ethnic disproportionality of families surveilled and scrutinized. State officials review reports and refer about half for investigation or other child welfare

agency response.

Every year, child welfare agencies investigate millions of parents. In 2019, they investigated the parents of nearly 3.5 million children. Data analysis conducted for this report shows a correlation between poverty and the rate of maltreatment investigations: counties with higher numbers of families below the poverty line have a higher rate of maltreatment investigations, and counties with higher family incomes have lower rates of investigations.

Investigations are often highly stressful, and even traumatizing, for children and their families, involving unannounced home and school visits and body checks. Parents describe the investigation and monitoring period as "nerve-wracking," "invasive," and "humiliating." Angela Olivia Burton, former director of New York State Office of Indigent Legal Services, told Human Rights Watch that an investigation has the impact of "rupturing the village of the child's ecological system, which has ripple effects and brings not just stigma, but also fear and distrust, as it tears the fabric of a child's life and community."

Notoriously broad and malleable state definitions of abuse and neglect allow for significant subjectivity. As a result, determinations are susceptible to conscious and unconscious bias based on race, class, or other factors. If the caseworker or child welfare agency subjectively determines that abuse or neglect has occurred, the allegation is deemed substantiated, and the parents or other caregivers are listed on a state central registry for years, adversely affecting their access to employment and ability to foster other children, including their own relatives. In some states, parents are listed on the registry even without a substantiated allegation.

Many child welfare interventions happen without judicial oversight. In addition, many parents do not have legal support in the early stages of child welfare intervention. This in turn can limit parents' ability to respond to charges and their opportunity to appeal.

On average, across the United States, 700 children are removed from the custody of their parents every day based on allegations of abuse or neglect. Removing a child from their parents' care can have devastating consequences, even if the separation is for a short period of time. Parents say they feel "broken," "destroyed," and "completely shattered and in a perpetual state of grief, trauma and longing" at seeing their children placed in the foster system.

Whether to maintain their child at home or to reunify, most parents agree to complete "service plans" required by the child welfare agency, at times without judicial oversight. Parents seeking to reunite with their children may be allowed to visit their child, but even that might have to happen under supervision.

Daniella Serrano, a mother from California, described the pain of saying goodbye to her children after supervised visits:

It takes a toll on me every single time I leave my visit. I have to go to work right after that. I'm praying and praising God on the drive to give me strength to continue the rest of the day because it's hard to see my baby and leave him every single time.

Caseworkers are responsible for referring parents to services, supporting them toward achieving reunification, and providing them with timely updates on their children's well-being in the foster system. In parallel, caseworkers monitor children in foster homes, connect them to health services and, in compliance with federal requirements when circumstances warrant, make plans for their adoption.

Chris Gottlieb, a law professor and child welfare expert at New York University, said these combined responsibilities creates a conflict of interest:

Social workers play a dual role with opposing goals—they are expected to support the same parents they are charged with investigating and prosecuting. That creates a conflict that is not resolvable. If we want social workers to actually be helpful to families, the roles must be separated.

Judges review case reports and agency recommendations on whether the family should be reunified or the parents' rights terminated. If a parent completes the service plan in a timely and satisfactory manner, the agency may recommend reunification. If the court agrees, the child returns to the family, initially on a trial basis and then permanently. Alternatively, the agency may recommend termination of parental rights, which a court may order if it finds termination to be in the child's best interests and if other legal requirements are met. In 2019, the parents of about 62,000 children had their parental rights terminated, with devastating consequences for families.

Punishing Poverty

The most common reason why child welfare agencies become involved with families is neglect, followed by parental substance use. Most child removals by the US child welfare system do not involve physical abuse: only 13 percent of all child removals in 2019 occurred due to physical abuse. While definitions can vary from one state to the next, neglect is generally defined as a parent or caregiver failing to provide adequate food, clothing, hygiene, nutrition, shelter, medical care, or supervision in ways that threaten the well-being of the child. This definition is

inextricably linked to poverty.

Many people we interviewed described how circumstances related to poverty, including housing instability and inadequate resources, were used as evidence of parental unfitness—either to support neglect allegations or justify family separation or termination of parental rights.

For example, Amelia Smith, a 52-year-old woman from Oklahoma, was the primary caregiver for her 8-year-old son, her aunt with Down Syndrome, and her 40-year-old husband, who had lupus. The demands of caring for her husband, aunt, and son left her unable to maintain paid employment, so she relied on public benefits for support. The family lived together in a modest mobile home without running water, but bought and stored water in large containers.

Child Protective Services (CPS) came to their home for reasons Amelia still does not understand, but the condition of the home was a factor in the investigation. "They said [one reason] was because we had no running water, but I had like 12 gallons in my camper. Water wasn't the problem," Amelia told Human Rights Watch. She explained that they were looking for a bigger home to accommodate the family more comfortably, but they had not found a place they could afford.

Instead of providing support and referrals for improving the condition of their home or addressing disruptions in their access to water, CPS removed James, their 8-year-old son, from their care—a loss, Amelia said, she grapples with daily: "I have no idea where he is. I look for him every time I go out." Amelia's husband passed away without seeing their son James again.

Joshua Michtom, a Connecticut public defender who represents parents in child welfare proceedings, discussed the ways class differences between investigators and parents play a role in child welfare determinations:

If a social worker doesn't know what it's like to be poor and doesn't know what it's like to make the compromises poor people have to make, they may describe a messy or cluttered house as deplorable or filthy, increasing the likelihood that the child will be removed.

Parents living in poverty described how their lack of access to reliable information, services, or support was interpreted as parental unfitness. For some parents, this lack of resources was used as evidence to remove their children; for others, it prevented them from reuniting. Housing instability or other difficulties in meeting the child welfare system's housing-related requirements, or the inability to take off work or pay for travel and other costs associated with required classes or drug testing, makes it difficult for parents living in poverty to meet the

requirements of their service plans. As a result, conditions of poverty can prevent family reunification.

Punishing Substance Use

This report also documents how parental substance use is too often punished by the child welfare system without consideration of the ability to parent or without clear evidence of harm or risk of imminent harm to the child.

The Movement for Family Power, a non-profit organization working to end the foster system's policing and punishment of families, has reported on the child welfare system's indiscriminate conflation of substance use with abuse or neglect, with families sundered as a consequence. Many system-involved parents, like Adaline, whose story opened this report, are required to undergo drug testing. Any parental substance use can be deemed without further evidence to interfere with the ability to parent and can be the basis of an abuse or neglect finding. In some cases, parents in recovery from substance use disorders said their adherence to medically indicated treatment plans was used against them.

Over the last two decades, the number of children removed from their families and placed in the foster system due to parental alcohol or drug use has more than doubled. Nearly 80,000 children, more than one-third of all removals, were placed in foster homes due to parental drug use in 2019, and an estimated 80 percent of all foster system cases involve parental drug use allegations at some point in the case.

Due Process Concerns

Despite the often-profound consequences of child welfare involvement—including family separation, termination of parental rights, and in some cases criminal charges—parents have fewer due process protections in child welfare cases than individuals facing similarly serious consequences in the criminal legal system. One parent said: "As many issues as there are in the criminal justice system, I wish all of this happened in criminal court. At least we would get a jury trial."

This report highlights a range of due process concerns, including lack of information on rights and problems with legal representation and support.

International Legal Standards

International human rights standards call on authorities to ensure that "a child

shall not be separated from his or her parents against their will, except when ... such separation is necessary for the best interests of the child."

The United Nations Committee on the Rights of the Child, which monitors the implementation of the Convention on the Rights of the Child, has stressed that family separation should be "a last resort":

Given the gravity of the impact on the child of separation from his or her parents, such separation should only occur as a last resort measure, as when the child is in danger of experiencing imminent harm or when otherwise necessary; separation should not take place if less intrusive measures could protect the child.

The committee has made clear that poverty does not justify separating children from their parents, adding:

Before resorting to separation, the State should provide support to the parents in assuming their parental responsibilities and restore or enhance the family's capacity to take care of the child, unless separation is necessary to protect the child. Economic reasons cannot be a justification for separating a child from his or her parents.

Reimagining Child Welfare

The harms caused by the child welfare system are so severe that a long-term reduction in the system's footprint and a reimagining of a non-coercive, rights-respecting child protection approach are needed.

The child welfare system's purpose is often described as promoting the well-being of children and strengthening families to support children's development. However, the system's interventions too often undercut its goals—failing to adequately address the needs of the family, and in some cases exacerbating the problems it intended to remedy.

Families we interviewed described how system involvement exacerbated poverty and economic hardship, leading to loss of employment, housing, and benefits. Some parents said child welfare intervention interfered with their recovery from a substance use disorder.

Despite 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.

Foster parents are entitled to monthly payments ranging from US\$500 to \$750 per child. Those who adopt children from the foster system continue receiving these payments until the child turns 18. In some cases, adoptive families also receive health insurance for the child until they reach adulthood. Financial support and health insurance coverage help to strengthen foster and adoptive families. If these same benefits were offered to the families separated by the child welfare system, it could have a similarly positive effect.

Sixto Cancel, CEO and founder of the non-profit Think of Us, an organization committed to transforming the child welfare system, described the need for a system that is responsive to actual needs:

What we need is a system where people who are dealing with poverty issues get the support to be able to have the breathing room to meet their basic needs and learn whatever they need to learn in order to be self-sufficient. And sometimes that means uptraining, skill training, retraining, whatever it might be, and children need to be in a family setting where they can get the support and the healing that they need and to be able to also develop at the same time.

Some system partners recognize that reforms are needed. In its response to Human Rights Watch during the research phase that led to this report, New York City's Administration for Children's Services (ACS) stated:

ACS believes that the best way to keep children safe is to provide families with the supports and resources they need, well before there is any interaction with the traditional child protection system.

It detailed steps it was taking "to reduce families' interaction with the traditional child protection system" including the creation of "a new division, the Division of Child and Family Well-Being, dedicated to providing critical supports and drawing on communities' and families' strengths to help families and children thrive and, as a result, mitigate factors that can lead to child welfare involvement ... educating professionals working with children and families on the many ways to provide support without the need for a report to the child abuse hotline ... [and] expanding [an] alternative-track approach that focuses on family support and does not require a traditional investigation in cases where there is no indication of significant safety risk or physical abuse to a child."

Human Rights Watch and the American Civil Liberties Union call on federal, state, and local policymakers to take urgent steps to reduce the harmful impact of child welfare interventions and strengthen and support families and communities to combat child maltreatment.

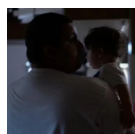
These urgently needed measures include replacing anonymous reporting with secure confidential reporting, reducing unnecessary child welfare interventions, expanding the role of parent advocates, giving parents more support and time to complete service plans, and increasing due process protections for parents. These steps could mitigate some of the harms documented in this report.

Long-term change requires addressing the extreme economic hardship at the heart of many child welfare cases and the corrosive impact of systemic racism. A meaningful solution requires focused attention by the federal government on relevant measures to address that hardship. Meaningful structural change also requires the US to decriminalize the possession of drugs for personal use and fund development and provision of non-punitive, supportive approaches to assist people with problematic drug use.

In short, as the US continues to grapple with systemic racism and policies and practices that hurt Black families and communities, lawmakers should rethink the existing approach to child protection and look for ways to expand social safety nets and strengthen families.

It is time to reimagine the child welfare system.

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Families Need Support, Not Punishment

Key Recommendations

Human Rights Watch and the American Civil Liberties Union call on federal, state, and local governments to take the following steps to reduce the harmful impact of child welfare interventions and strengthen and support families and communities to prevent child maltreatment:

- **Hold public hearings**, including congressional hearings, to hear from families who are affected by the child welfare system.
- **Narrow the definition of child abuse and neglect.** Prohibit the treatment of poverty-related circumstances, lack of financial resources, or substance use by parents or during pregnancy, without actual or imminent risk of harm, as factors that can trigger child welfare interventions.
- **Eliminate mandatory reporting requirements.** Replace universal, centralized, and anonymous mandatory reporting with permissive, confidential, and decentralized reporting; give reporters and responding agencies the option to refer families directly to services in lieu of the government child welfare agency; and maintain records about the administration of this direct referral process separate from agencies responsible for investigating and evaluating allegations of child abuse or neglect.
- **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.
- **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 an emergency or court order.
- **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. Prohibit a parent's drug treatment plans from being used against them in child welfare proceedings.

- **Require states to engage in “active efforts” to maintain family unity.** In particular, require that child welfare agencies meaningfully assess and address:
 - Poverty-related barriers to reunification for child-welfare-involved parents, including the provision of financial support for transportation and costs associated with visitation, court hearings, mandated services, and other meetings.
 - Barriers to reunification for child-welfare-involved parents with problematic substance use. Refer parents to supportive, non-coercive, evidence-based services focused on harm reduction for substance use disorders, ensure parents have unimpeded access to quality substance use disorder treatment, and allow adequate time for relapse.
- **Improve data collection at federal, state, and local levels.** Regularly publish data that can be disaggregated and commission expert studies on intersectional, persistent racial disparities in the child welfare system.
- **Acknowledge and meaningfully redress institutionalized racism and settler colonialism in child welfare policies and practices.**

Methodology

This report is the product of a joint initiative—the Aryeh Neier Fellowship—between Human Rights Watch and the American Civil Liberties Union (ACLU) to strengthen respect for human rights in the United States.

The report is based on extensive desk research on the human rights impacts of the US child welfare system, 138 in-depth interviews, and analysis of national and state data provided to Human Rights Watch in response to information requests or obtained through publicly available sources.

In-Depth Interviews

We conducted interviews for this report between September 2021 and June 2022. We interviewed 68 parents or caregivers who experienced child welfare system interventions due to allegations of neglect. We used 64 of the 68 interviews with directly impacted parents or caregivers because 4 withdrew their consent due to

litigation or fear of retaliation.

We also interviewed 70 attorneys; service providers; government workers; local, state, national advocates; and other experts. Among the other experts were a few children's rights advocates and attorneys with experience working within the system.

Human Rights Watch identified interviewees through outreach to local advocates, service providers, advocacy organizations, and social media posts in relevant Facebook groups. We also used an online survey tool to identify system-impacted parents to participate in interviews. The link to the survey was shared in social media posts in relevant Facebook groups, in emails with advocates including a request to share widely with interested participants, and in text messages upon request by parents affected by the system. In some cases, we have cited information shared in survey responses.

Some interviews were conducted in person in Los Angeles, California, in October 2021 and in Oakland and Sacramento, California, in January 2022. We visited these locations because they have a significant number of system-involved families, or because impacted families were gathering there, as discussed in further detail below. All other interviews were conducted by phone or virtually through online applications, including Microsoft Teams, Zoom, Facebook, and WhatsApp.

All interviews were conducted in English. In all cases, we sought to ensure privacy and comfort of the interviewee. We conducted most interviews individually and in private, though in some cases interviewees invited an advocate to join the interview.

All individuals interviewed provided verbal informed consent to participate. Researchers informed potential interviewees that they were under no obligation to speak with us, that they could decline to answer questions at any point, or terminate the interview at any time, without any negative consequences. We explained the purpose of our research, our intention to publish a report, and measures we take to protect confidentiality. Interviewees did not receive any incentive or remuneration for participation.

When interviewing parents or caregivers, we followed an interview guide and asked a series of questions regarding the circumstances surrounding child welfare system intervention, their experience with the system, services ordered, and whether their circumstances improved. We also asked about the general well-being of the family and any harms experienced following system intervention or involvement, and recommendations for reform. When interviewing other experts, we asked a series of questions regarding their scholarship; the systemic challenges and opportunities they identified within the child welfare system, including the

reasons for racial, ethnic, and socioeconomic disproportionalities; the disparate outcomes; and the short- and long-term effects of child welfare interventions on children, families, and communities. We also asked about the child welfare system's response to families living in poverty and parents with substance use-related concerns, and the efficacy of its interventions in addressing families' needs and meeting the system's stated goals of ensuring children's safety, permanency, and well-being.

Interviews lasted between 30 minutes and three hours. Researchers took notes during interviews, recorded interviews with consent where the setting permitted recordings, and conducted content and thematic analysis of notes.

To protect the privacy and security of interviewees, a substantial number of whom had an ongoing case and expressed considerable fear of retaliation, we have chosen to use pseudonyms in all cases. In some cases, we have also withheld certain other identifying information. Wherever possible we corroborated interviewees' accounts. Because of the risk of jeopardizing confidentiality or exposing a family to retaliation, as well as limited public access to case information in some jurisdictions, we were not able to review case information for all interviewees. We also could not seek comments on specific cases because of confidentiality concerns and the possibility of retaliation. We therefore present people's stories mostly as they were told to us.

Human Rights Watch reached out to local and county child welfare agencies in New York City; New York State; Los Angeles, California; West Virginia; and Oklahoma to request interviews.

New York Office of Children and Family Services and California Department of Social Services provided on-background interviews. We posed questions regarding agency policies and practices on assessing and addressing the role of poverty in child welfare decision making, the complex needs of parents with substance use disorders, and the racial disparities and disproportionalities within their state's child welfare system.

Los Angeles County Department of Children and Family Services and New York City Administration for Children's Services responded in writing, and their responses are included in full in the appendix. Oklahoma Human Services declined our request to interview a child welfare system representative, directing Human Rights Watch to their website instead. West Virginia Department of Health and Human Resources did not respond to requests for interviews.

Data Analysis

We also analyzed relevant laws and policies available online through national, state, and county databases and websites,^[1] and conducted an extensive review of secondary sources, including public health studies, law reviews, reports and other publications by nongovernmental organizations, experts, and advocates.

This report also includes extensive independent analysis of data available online through the National Data Archive on Child Abuse and Neglect,^[2] and through state and county child welfare agencies.^[3] Federally collected data sets include information from all states on child abuse and neglect, maltreatment, and the foster system. This includes demographic and situational data on the children and families investigated by each state as well as the outcome of the investigation and has more detailed information on the children who enter the foster system and their families.

The two main national level datasets we analyzed are the Adoption and Foster Care Analysis and Reporting System (AFCARS) Foster Care File and the National Child Care and Neglect Data System (NCANDS) Child File.^[4]

For both datasets, we analyzed the fiscal year 2019 file because it was the most recent file with a full year of pre-Covid-19 pandemic data. Fiscal year 2019 covered the period from October 2018 through September 2019. The NCANDS data file includes information on the over 4.2 million reports of maltreatment that were investigated by child welfare agencies during the year and the AFCARS file includes data on over 672,000 children who were under the responsibility of state child welfare agencies at some point during the year. Data from Puerto Rico was not included in the analysis. For clarity and readability, we do not use the term "fiscal year" each time we refer to data from a particular year. References to a particular year's data in our analysis should be understood as covering that fiscal year.

Depending on the variable analyzed, there can be wide variation in the completeness of data. For certain data points, states that provided incomplete data or outlier data were removed when computing totals or rates.

All rates were computed using data from the US Census Bureau's five-year American Community Survey (ACS) 2016-2020 as the denominator. All child rates used population estimates of the under-18 population. Race-specific rates for the white population used the non-Hispanic/Latino white population. Rates for the Latinx population used the Census Bureau's Hispanic/Latino ethnicity categorization, regardless of race. This methodology matches the methodology used in the AFCARS and NCANDS datasets on the derived "RaceEthn" variable. Data on income and poverty levels is from the same ACS survey. It is important to note that, as a social construct, race is recorded in different datasets in ways that may differ from how individuals self-identify and may be recorded differently in

different datasets. These rates therefore are best estimates given the complexity of examining race using multiple data sources.

Processing and analysis code is publicly available on Human Rights Watch's Github site.^[5]

Note on the Scope of this Report

At the outset of this project, we consulted a wide range of secondary sources and external experts to define our research design and scope. We chose to focus on four states with high numbers and proportions of system-impacted families and racial and/or socioeconomic disparities in their data. Los Angeles County in California has the largest local child welfare system in the US, and along with New York City, has high rates of poverty, income inequality, and housing insecurity in a densely populated area. Families in West Virginia experience high rates of outcomes connected to substance use, and those in Oklahoma experience high rates of outcomes connected to incarceration. Both Oklahoma and West Virginia have rural populations experiencing significant economic insecurity, inadequate infrastructure, and a dearth of available services.

As described below, most child welfare cases do not involve abuse but rather neglect, which is when a parent or caregiver is unable to provide adequate food, clothing, shelter, medical care, or supervision for the child.

Neglect statutes and child welfare interventions look similar in every state. Based on our research, we believe families in other states, beyond the four examined in this report, likely experience many of the problems documented in this report. Where possible, we included data and examples from other states and the national level.

A Note on Terminology

State agencies provide child welfare services or child protective services (CPS) in each of the states examined in this report. In New York and California, county agencies are also involved. The agencies are as follows: California Department of Social Services (CDSS), Los Angeles County Department of Children and Family Services (DCFS), New York Office of Children and Family Services (OCFS), NYC Administration for Children's Services (ACS), Oklahoma Department of Human Services (OKDHS), and West Virginia Department of Health and Human Services (DHS).

This report uses the terms "child welfare services," "child welfare system," or "CPS" to refer to these systems. Some quotes from interviewees refer to local

agencies by their abbreviations, "ACS," "DCFS," "DHS," "OKDHS," or generically as "CPS."

Many parents and advocates contest the use of these terms and describe the system as "family regulation" or "family policing."^[6] For clarity and readability, we use the more commonly understood term "child welfare."

We use the term "caregiver" to describe non-parent caretakers of children prior to child welfare system involvement and "foster parent" to describe non-parent caretakers of children who have been removed from their parent or caregiver by child welfare authorities. A foster parent is typically an individual who may or may not be related to the child but is licensed to take foster children into their home. We use the term "foster system" to describe an array of living situations for children removed from their parents by child welfare authorities.

This report uses the term "caseworker" rather than "social worker" to describe the agency staff member responsible for working with the parents and children after system involvement. Many agency staff do not have advanced social work degrees or mental health training.

This report uses the term "child welfare proceedings" to refer to all court proceedings related to child welfare involvement. "Removal proceedings" describe situations where the court is deciding on removal of a child. "Termination proceedings" or a "termination hearing" describe situations where the court is deciding on termination of parental rights (or "TPR").

We use the term "reunification" to describe situations when a child is reunited with their family of origin. This is the initial case goal for all families and typically occurs if a parent completes a service plan in a timely and satisfactory manner and the agency makes a positive recommendation to the court.

In this report, the word "child" refers to anyone under the age of 18, consistent with the use of this term in the United Nations Convention on the Rights of the Child.^[7]

Throughout the report, we use "people of color" when describing individuals and communities who may identify as Black or African American; Hispanic, Latino/a, or Latinx of any race or ethnicity; Asian or Pacific Islander; North African or Middle Eastern; Indigenous; multiracial; or multiethnic. We use the terminology "Black" in reference to individuals of African descent or those who identify as such.

The term "Indigenous" refers to those peoples with pre-existing sovereignty who were living together as a community prior to contact with settler populations, and

includes American Indian, Alaska Native, Native Hawaiian, and other Indigenous populations. In this report, we also use the terms "Native American," "Indian," and "American Indian." "Native American," in this context, refers to the people Indigenous to what is now known as the continental United States, and includes Alaska Native and American Indian peoples. "Indian" is used in its specific context, to refer to federal legislation, policies, and programs, especially given the specific, limited, political application of the Indian Child Welfare Act (ICWA) and the history of federal Indian boarding schools.

We use the term "substance use" to describe drug and alcohol use. Not all substance use is criminalized: many substances, such as alcohol, are regulated by the US Food and Drug Administration (FDA) but are not considered "controlled substances," the use of which can potentially lead to criminal charges.

Some substances are criminalized in some contexts and not in others. For example, marijuana use is criminalized in some states but not others. This report discusses the child welfare system's response to parental substance use, without specific regard to legality. For simplicity, we use the term substance use to describe criminalized and non-criminalized drug and alcohol use.

Many advocates and people who use drugs told us that the language of addiction and harm were stigmatizing and inaccurate to describe their use, particularly in cases where the substance use addressed physical and mental health needs. To avoid stigmatizing language, we use the terms "substance use disorder" or "problematic substance use" to describe interviewees' self-identified conditions. In so doing, we relied upon the definition of substance use disorders as laid out in the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (also known as DSM-5). A diagnosis of substance use disorder under DSM-5 is based on a pattern of behaviors, including an individual's loss of ability to control their substance use.^[8]

When quoting interviewees or other sources directly, we have not changed terms to conform to the language used elsewhere in this report.

I. Background: Key Developments in the US Child Welfare System

Family separation justified by a perception of parental “unfitness” or “deviance” is deeply rooted in United States history. For centuries under chattel enslavement, white enslavers routinely removed Black children from their enslaved families as a form of social control and exploitation.^[9] Starting in the late 1800s, children of families living in poverty, including European Catholic immigrant families, were boarded on trains and sent across the country under the pretext of being adopted.^[10] Around the same time period, Indigenous children were forcibly separated^[11] from their families under the pretense of child safety.^[12] Several key developments paved the way for the child welfare system as it exists today.

Chattel Enslavement, 1619-1865

In the US, white enslavers routinely separated enslaved children from their families, sometimes to sell them for profit, and other times to keep enslaved parents compliant. White enslavers also weaponized the threat of family separation to coerce compliance, traumatizing enslaved children and families.^[13]

The tragic US history of enslaved children being separated from their enslaved parents is documented by the Smithsonian National Museum of African American History and Culture. Its “Weeping Time” exhibit on the largest auction of enslaved people in US history includes an 1849 narrative by Henry Bibb, a former enslaved person:

A mother unleashed a piercing scream as her baby was ripped from her arms during a slave auction. Even as a lash cut her back, she refused to put her baby down and climb atop an auction block. The woman pleaded for God’s mercy ... “[b]ut the child was torn from the arms of its mother amid the most heart-rending shrieks from the mother and child on the one hand, and the bitter oaths and cruel lashes from the tyrants on the other.”^[14]

Enslaved children lived in constant fear of removal, writes Wilma King in her book *Stolen Childhood: Slave Youth in Nineteenth-Century America*:

Children who were afraid that they would be separated from family members often hid themselves, particularly in the presence of whites they did not know. They feared that the white strangers were traders who had come to take them or their loved ones away.

Ratification of the Thirteenth amendment in 1865 ended chattel slavery. But racial inequalities and disparities persist, in part because of the US failure to adequately account for and address the harm caused by slavery and its enduring impact. Child

welfare systems reflect these continuing racial disparities, as discussed in Section IV of this report.

Children's Aid Society, Orphan Train Movement, 1850s

As New York City's population ballooned in the 1850s, in part due to an influx of Catholic immigrant families, so did numbers of orphaned and unhoused children living in poverty.^[15] In response to this perceived crisis of destitute children destined to become criminals without intervention, Charles Loring Brace, a local minister, founded the Children's Aid Society, which initiated the Orphan Train Movement.^[16] Widely considered the first foster system in the US, the program primarily placed Catholic children with adoptive Protestant families in the western US, in most cases through a model of indentured servitude.^[17]

Over the next 75 years, around 250,000 children were placed in homes across 48 states, most of these placements facilitated by the Children's Aid Society and nearly all grounded in the assumption that the child would work in return for care.^[18] The movement was plagued by concerns about and lawsuits alleging, sibling separations, children being forcibly separated from parents, forced child labor, inadequate follow-up, and missing children.^[19] Black and Indigenous children were excluded from this system.

Other Early Systems

Child protection efforts expanded in the 1870s with the formation of nongovernmental societies for prevention of cruelty to children. As researchers Ethan G. Sribnick and Sara Johnsen from the Institute for Children, Poverty, and Homelessness described in a 2013 article, the societies intervened in the lives of families based on conditions of poverty and imposed middle-class norms on working-class families:

"Urban middle-class families had become focused on creating homes that were distinctly separate from the world of work. In these homes children would live sheltered lives free from the stresses of the adult world.... Based on these standards many less-privileged households in New York and other cities—where mothers and older children were often sent out to work—failed to meet the middle-class definition of a proper home. These poor children were, according to middle-class standards, missing out on a proper childhood."^[20]

These privately funded and independent societies facilitated extensive family policing by working with family members, neighbors, police, and the courts to intervene in the lives of families whose children were perceived to be abused or neglected.^[21] In addition, these societies excluded Black families and targeted Indigenous families.^[22]

The US government inflicted extensive harm on Indigenous children and families, under the guise of child protection, through Indian boarding schools and the Indian Adoption Project. These, along with the Indian Child Welfare Act (ICWA) of 1978, are discussed in Section III of this report.

Maternal welfare programs established in the early 1900s, known as mothers' pensions, provided financial support to unmarried and widowed mothers to allow them to maintain a "suitable home."^[23] During the late 1950s, as more Black mothers began receiving welfare benefits, states expanded "suitable home" requirements to drop Black children from welfare rolls if they or a sibling were born out of wedlock.^[24]

States were told by the federal government that "they could not deny [financial support] based on suitable-home tests unless they took steps to rehabilitate the family," and for families deemed by the state to be incapable of rehabilitation, Congress amended Title IV of the Social Security Act to provide federal funding to place their children in the foster system.^[25]

Soon after, welfare workers began separating families. As child welfare expert Dorothy Roberts writes in her book *Torn Apart*, "local child welfare agencies had license to escalate the removal of Black children ... welfare workers began snatching Black children away from mothers deemed unsuitable instead of simply denying benefits."^[26]

These events coincided with the rise of mandatory reporting laws in the 1960s which created systems for medical professionals to report certain childhood injuries that may have been caused by abuse.^[27] As a result, the foster system population ballooned, compelling federal and state governments to take responsibility for the safety and well-being of children and families in a meaningful way.^[28]

Punishment Over Support: Child Abuse Prevention and Treatment Act, 1974

The Child Abuse Prevention and Treatment Act of 1974 (CAPTA) provided federal funding to states for prevention, assessment, investigation, prosecution, and treatment of child neglect and abuse and let states expand the professions

considered mandated reporters.^[29] CAPTA was the first legislative effort to establish minimum standards for child neglect and abuse, and to provide states with funding to support child welfare agencies and programs at the local level.

Around the time of CAPTA's passage, some experts were identifying correlations between child abuse, race, and socioeconomic status, and highlighting the importance of addressing structural risk factors, such as poverty and racism, to combat and prevent child abuse.

CAPTA formalized the nevertheless prevalent belief that child abuse was an individual, psychological problem and that abusive parents must take personal responsibility.^[30] Additionally, accepting CAPTA came with conditions, including that states add "neglect" to the conditions that triggered the reporting requirements for mandatory reporters, and focus state resources on investigation and reporting.

In so doing, CAPTA shaped the child welfare system into one that prioritizes punishment over support, with particular harm to Black families who were disproportionately experiencing economic insecurity and poverty at higher rates due to underinvestment in social protections, in part because of racial animus.^[31]

CAPTA established an inflexible approach to child welfare. Increased surveillance and interventions due to child abuse reporting laws led to high rates of children entering the foster system and languishing in the custody of child welfare authorities. Black children were disproportionately impacted as they were more likely to be reported and less likely to be reunified with parents or get adopted than white peers.^[32]

Prioritizing Family Preservation: The Adoption Assistance and Child Welfare Act, 1980

The Adoption Assistance and Child Welfare Act of 1980 (AACWA) implemented a significant, albeit short-lived, shift in child welfare practice.^[33] For the first time, child welfare agencies were tasked with prioritizing family preservation and demonstrating that the state had expended "reasonable efforts" to preserve or reunify the family, including by providing social supports for families' needs.^[34]

For any child removed from their home, AACWA required that the state either create a permanency plan with reunification being the result or move toward termination of parental rights. The legislation also provided financial incentives to potential adoptive parents and child welfare agencies for adopting children who could not go home.^[35] AACWA was effective, more than halving the foster system

population in the next two years.^[36]

However, this reduction was temporary, in part due to the inefficacy of family preservation programs, which were "time limited ... focused on changing family dynamics and ... did little to address the [families'] material need[s]."^[37]

In addition, an increase in the number of people who became unhoused in the US, more reporting connecting alleged neglect to substance use, and an increase in the rates of HIV infections, along with punitive child welfare policies, converged in the 1980s.^[38]

These factors, along with an ineffective government response, which included policing and reporting of families in lieu of support, resulted in a drastic increase in the foster system population and related expenditures.^[39] Critics of AACWA challenged its foundational presumption that all parents can become fit with appropriate and sufficient support, arguing it was futile to try to balance the goals of protecting children and preserving families.^[40]

Undermining Family Reunification: Adoption and Safe Families Act, 1997

Backlash against family preservation and a harmful and racist focus on individual responsibility and personal failures rather than social protection prompted Congress to pass the Adoption and Safe Families Act (ASFA) in 1997.^[41] It prioritized child safety and adoption over family preservation, required states to file for termination of parental rights for children who had been in care for 15 months in a 22-month period (the "15/22 rule"), and in cases of serious abuse, authorized states to forego all family reunification efforts.^[42]

ASFA also required states to engage in concurrent planning, planning for adoption alongside reunification ostensibly to achieve permanency more quickly for children in the foster system. Instead, this approach compromised family preservation goals, as adoptions were incentivized over reunifications.^[43]

"Emphasizing" Prevention: Family First Prevention Services Act, 2018

The Family First Prevention Services Act (FFPSA), which Congress adopted in 2018, was another shift in child welfare practice.^[44]

The law shifted fiscal incentives toward services to *prevent* maltreatment and removal and allowed states to access federal funds for some prevention services—mental health, substance use disorder treatment, and in-home parenting training

programs—without first removing the child. It also sought to reduce the number of children in the foster system in group homes and other congregate care facilities by limiting funds for those placements.^[45]

This indirectly incentivized placements in a home setting, including with extended family members. Some advocates have argued that the law will not effectively prevent child abuse and neglect because “eligible services will be limited in most states due to lack of availability,” and states may exclude many families in need because only a small subset of children would fall under the narrow federal definition of “candidates for foster care.”^[46]

System Today: Federal and State Roles and Responsibilities

Every state has its own child welfare system that investigates reports of child abuse and neglect, determines whether children should be removed from their parents or supervised at home, and provides foster placement services when needed.

Federal laws mentioned above, specifically CAPTA and ASFA, set the minimum requirements for state and local child welfare systems. In addition, each state has specific laws that define abuse and neglect, establish the mandatory reporting requirements, and delineate required child protective service interventions.^[47]

Some states have partially privatized child welfare systems by outsourcing foster case management and services to private companies vested with case planning and decision-making authority.^[48] Other states provide all child welfare services via state agencies.

In most states, family courts oversee child welfare proceedings. However, some states have established specific courts for these cases, typically called juvenile or dependency courts.^[49] The stages of child welfare involvement are explained in detail in Section IV of this report.

II. The US Child Welfare System’s National Impact

The child welfare system in the United States disproportionately investigates and removes children from over-policed, underserved communities, especially Black and Indigenous children and those living in poverty.^[50] One in three children in the US will be subjected to a child welfare investigation by age 18, and every three minutes a child is removed from their home and placed in the foster system.^[51] Black children are almost twice as likely to be investigated as white children and are more likely to be separated from their families.^[52]

Neglect, as defined by the child welfare system, is often a proxy for poverty-related circumstances and is the primary reason for child welfare involvement in the overwhelming majority of cases.^[53]

Nationwide, nearly 75 percent of confirmed child maltreatment cases in 2019 involved neglect as defined by state statutes.^[54] Parental substance use is the second most common reason, alleged in around 34 percent of child removal cases in 2019.^[55] Serious forms of abuse, like physical and sexual abuse, are associated with a smaller portion of cases. More than four-fifths of all child removal cases were not based on physical abuse. Fewer than one out of ten involved sexual abuse.

Child Welfare Involvement by the Numbers

Nearly 8 million children were referred to a child maltreatment hotline in 2019.^[56] Nearly half of these reports were not selected for investigation or assessment by child protective services because they did not meet the requirements for a child maltreatment investigation.^[57]

Of the 3 million children whose cases were investigated, more than 80 percent were found not to have been abused or neglected.^[58]

More than 250,000 children entered the foster system each year from 2016 to 2019.^[59] In 2019, there were nearly 61,000 children whose parents had their parental rights terminated. At the end of each year from 2016 to 2019, between 65,000 and 72,000 children whose parents' rights were terminated, also known as "legal orphans," were awaiting adoption, resulting in tens of thousands of children with severed family bonds and no permanency.^[60]

Table 1. Summary of Foster System During Fiscal Year 2019

Summary of Foster System During Fiscal Year 2019	
Number of children impacted by investigation	3,461,394
Number of children with substantiated allegations	651,513

Number of children with substantiated "neglect only" allegations	352,198
Number of children in the foster system	672,687
Number of children who entered foster system in 2019	251,359
Number of children whose parents' rights were terminated in 2019	60,873
Number of children with parents' rights terminated awaiting adoption at the end of 2019	71,335
Number of children adopted in 2019	66,035
Number of children reunited with parent(s)/caretaker	118,564
Number of children reunited with parent(s)/caretaker in <6 months	39,102
Number of children legally emancipated	20,816
<p>Source: Human Rights Watch analysis of Adoption and Foster Care Analysis and Reporting System (AFCARS) FY 2019 data and National Child Abuse and Neglect Data System (NCANDS) Child File, FY 2019, Children's Bureau, Administration on Children, Youth and Families, Administration for Children And Families, US Department Of Health And Human Services, 2019.</p>	

Most Reported Cases Involve Neglect, Not Abuse

Most child removals for maltreatment by the US child welfare system do not involve acts of physical abuse. More than 80 percent of the children who were removed from their families between 2015 and 2019 were due to other reasons.^[61] Instead, the primary reason child welfare agencies remove children is neglect, followed by substance use, subjectively deemed to place the child at risk of harm.^[62]

In public health terms, neglect is often characterized as the persistent absence of responsive caregiving that threatens development and well-being, especially in young children.^[63] The legal definition of neglect used in the child welfare context is much broader. Child welfare laws typically define neglect as the failure by a parent or caregiver to provide adequate food, clothing, shelter, medical care, or supervision for the child in ways that threaten the child's well-being. This definition is inextricably linked to poverty, and in practice opens the door to unjustified system intrusion by penalizing the kinds of compromises people living in poverty often must make,^[64] as described further in this report.

In 2019, states reported nearly 75 percent of confirmed child maltreatment cases

involved neglect as defined by state statutes.^[65] Just under 18 percent involved physical abuse, and around 9 percent involved sexual abuse.^[66] Some cases involved more than one factor.^[67]

There is substantial variation among the states examined in this report regarding neglect findings. Neglect was a factor for 95.5 percent of the children for whom child welfare agencies substantiated maltreatment findings in New York, 88.9 percent of children in California, 74.8 percent of children in Oklahoma, and 39.5 percent of children in West Virginia.^[68] These differences are in part due to the lack of standardization in the definitions of abuse or neglect (both as written and as applied), in states' methods for coding maltreatment types, and in reporting and coding in the national database.^[69]

Table 2. Percentage of Maltreatment Allegations Coded as Neglect, by State

Variation in State Coding of Maltreatment Allegations

Top and bottom 10 states according to the percentage of allegations coded as neglect, FY 2019. Percentage of all maltreatment allegations within state.

State	Neglect or Deprivation of Necessities	Physical Abuse	Sexual Abuse
Montana	98.1%	0.8%	0.5%
Kentucky	91.5%	5.0%	1.4%
New York	90.9%	1.1%	0.8%
Massachusetts	87.9%	8.8%	2.4%
South Dakota	87.7%	8.7%	2.5%
Indiana	83.6%	9.3%	7.1%
Idaho	83.3%	16.6%	0.1%
North Carolina	82.9%	7.1%	4.2%
Arizona	82.0%	15.1%	2.4%
Georgia	81.5%	7.5%	1.6%
Delaware	45.3%	32.7%	11.4%
Ohio	15.8%	11.8%	8.5%

Overall	45.2%	41.4%	9.5%
Oregon	44.4%	14.5%	3.4%
Kansas	40.4%	27.1%	8.4%
South Carolina	39.3%	28.3%	3.3%
Alabama	37.6%	48.8%	12.5%
Tennessee	35.4%	43.9%	11.5%
Utah	23.2%	45.1%	15.5%
Pennsylvania *	4.8%	68.3%	20.7%
Vermont	3.8%	66.6%	26.2%

* Pennsylvania lists most neglect allegations in a separate category known as "General Protective Services." These allegations are not reported to the federal NCANDS database and so are not included here.
 Note: Columns may not add up to 100 percent because the table only includes these three maltreatment types and excludes any others. Hawaii, Missouri, and Iowa excluded due to reporting anomalies.
 Source: Human Rights Watch analysis of National Child Abuse and Neglect Data System (NCANDS) Child File, FY 2019.



Defining Neglect

Legal definitions of neglect in federal and state laws and regulations are broad and often vague, and do not require establishing that a child has suffered physical or emotional harm.^[70]

Federal laws provide the minimum standards for child abuse and neglect. The Child Abuse Prevention and Treatment Act defines child abuse and neglect as “any recent act or failure to act on the part of a parent or caregiver that results in death, serious physical or emotional harm, sexual abuse, or exploitation, or an act or failure to act which presents an imminent risk of serious harm.”^[71]

States have the authority and discretion to further define child abuse and neglect in civil statutes governing the child welfare system. States specify the conduct and omissions that must be reported and mandate policies and procedures for responding to allegations of child maltreatment. Criminal statutes define types of child maltreatment subject to criminal prosecution.^[72] Due to differences between states, conduct defined as abuse and neglect in one state may not be actionable in another.^[73]

All states include at least one poverty-related factor in their legal definition of child maltreatment.^[74] These factors include inadequate food, clothing, shelter, medical care, hygiene, nutrition, and supervision. For example, California, New

York, Oklahoma, and West Virginia all include failure to provide food, clothing, shelter, or supervision in their definition of neglect.^[75] Caseworkers have broad discretion to interpret whether these factors present a risk to children that meets the state-defined threshold, leading to unnecessary family separation, as described below.

Harm to 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.^[76] Due to systemic racism and other factors, families of color disproportionately face economic hardships.^[77] In 2018, Black children were more than three times as likely to be living in poverty as white children.^[78]

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.^[79]

An extensive body of research has examined the factors contributing to these disparities.^[80] 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.^[81] Legal discrimination has been further aggravated by disparate surveillance, punitive interventions, and incarceration of Black families, resulting in increased economic and social fragility.^[82]

Table 3. Racial Disparities in the Foster System

Racial Disparities in the Foster System

2019 Data

Race	Percentage of US Child Population	Percentage of All Maltreatment Reports	Percentage of Neglect Reports Substantiated by CPS	Percentage of Foster Care Entries
White	50%	46%	43%	46%
Black	13%	24%	20%	21%

Source: Human Rights Watch analysis of National Child Abuse and Neglect Data System (NCANDS) Child File and US Census Bureau Data.



Black children are overrepresented in the child welfare system when compared with their percentage in the total population.^[83] Whereas Black children make up just 14 percent of the US child population, they make up 24 percent of child abuse or neglect reports and 21 percent of children entering the foster system. In contrast, white children make up 50 percent of the US child population, and only 46 percent of the children represented in abuse or neglect reports and children entering the foster system.

Black families are more likely to be reported for maltreatment due to ongoing surveillance of their families and communities by social services and law enforcement.^[84] Structural racism and lack of investment in community supports mean these parents also often lack access to the services and supports they need to help their children thrive.^[85] Child welfare authorities intervene even when children are not in danger of any abuse or neglect and punish parents when they need greater support.

III. Harm to Indigenous Communities

For centuries, Indigenous^[85a] families and communities have endured egregious abuse and harm through child welfare interventions. The 1978 Indian Child

Welfare Act (ICWA) sought to remedy some of those harms. In early November 2022, the US Supreme Court heard *Brackeen v. Haaland*, a case challenging that law as unconstitutional. A decision is expected by June 2023. The American Civil Liberties Union (ACLU), along with 14 ACLU state affiliates, submitted an amicus brief in support of the law's constitutionality.^[86]

Indian Boarding Schools, 1810s-1969

In Indian boarding schools, child welfare authorities violently indoctrinated Indigenous children with white Western culture and stripped them of their cultural practices and beliefs to force assimilation.^[87] The influential headmaster of one such school, Richard Henry Pratt, described his philosophy of assimilation through the schools as, "Kill the Indian in him, and save the man."^[88]

There were 408 institutions across 37 states, each of which was highly regimented and militarized.^[89] Students endured malnutrition and shockingly inhumane living conditions at these institutions, and faced rampant physical, sexual, and emotional abuse.^[90] The schools focused on "vocational training" and provided limited academic instruction, in part on the premise that Indigenous children would most benefit from "practical" education and also, as government-commissioned reports made clear, to minimize costs.^[91] Indigenous children at boarding schools were also exploited: Children were "rented out" to labor on farms or as domestic servants during summers or other breaks.^[92]

Indian boarding schools were not simply places where Indigenous youth were stripped of their cultural identities; the Federal Indian Boarding School Initiative Investigative Report has found over 50 marked and unmarked graves on these school sites so far in its investigation^[93] and notes that some 19 boarding schools accounted for over 500 recorded student deaths.^[94] The boarding schools finally closed in the late 1960s.^[95]

Indian Adoption Project, 1958-1967

Following the atrocities of the Boarding School era, the Bureau of Indian Affairs created the Indian Adoption Project, administered by the Child Welfare League of America, to promote and facilitate the adoption of Indigenous children by white families.^[96]

Agencies operating under the premise that Indigenous children were better off living with white families continued to unjustly separate Indigenous children from "unfit" parents who were considered financially unstable due to reliance on public welfare and inability to provide adequate housing, or because their reservations

were considered unsafe for child-rearing.^[97]

During this time, the US placed nearly 13,000 Indigenous children with white families nationwide for adoption.^[98] Approximately 80 percent of Native American families living on reservations lost at least one child to the foster system, according to data compiled by the National Indian Child Welfare Association.^[99]

Indian Child Welfare Act (ICWA), 1978

Spurred by decades of Indigenous-led advocacy, a congressional investigation in the mid-1970s determined that many removals were unwarranted and unnecessary.^[100] In one state, the adoption rate for Indigenous children was eight times higher than that of non-Indigenous children. In another state, Indigenous children were 13 times more likely than non-Indigenous children to be placed in the foster system. These alarming numbers were the result of more than a century of egregious policy, in which state officials could not or would not respect Indigenous communities' cultural and social standards.

As a part of this inquiry, Congress found that state officials, including judges and social workers, often removed Indigenous children based on biased and culturally insensitive grounds, many times misinterpreted as neglect. For example, officials often viewed the common practice within many Indigenous communities of having a grandparent or other relative care for a child for extended periods of time as an indication of abandonment.

In 1978, after decades of Indigenous-led activism and recognition of harms caused to Indigenous children and Tribes, Congress passed the Indian Child Welfare Act (ICWA),^[101] which applied narrowly to a specific subset of children that it refers to as Indian children, effectively excluding children from more than 400 Tribes without federal recognition and Native Hawaiians.^[102] ICWA established federal standards for removal and placement of "Indian children" to promote stability and restore families, culture, and autonomy of tribes.

However, ICWA has not been implemented uniformly, in part due to the refusal of state judges to recognize tribal sovereignty and the jurisdiction ICWA granted tribal courts over child welfare decisions involving tribal members.^[103]

Disproportionate Harm to Indigenous Families

During the Indian Adoption Project era and continuing today, child protection practices result in the disproportionate and needless removal of countless

Indigenous children from their families. Removals are too often based on racist stereotypes about Indigenous people and the unavoidable consequences of poverty, a condition thrust upon tribal communities after the seizure of their lands and violent interruption of traditional ways of life caused by colonization and system racism that resulted from it.

Native American parents are up to four times more likely to have their children taken and placed into foster homes than their non-Indigenous counterparts.^[104] Native American children are still overrepresented among those entering the foster system, at nearly double the nationwide rate.^[105]

In Oklahoma, Native American children “represented more than 35 percent of those in foster care, yet Native Americans make up only around 9 percent of Oklahoma’s population” as of 2017.^[106] In Alaska, 65 percent of the total number of children in out-of-home care are Alaska Native/American Indian, far more than their 19 percent of the population.^[107] In Nebraska, the percentage of children in the foster system who are Native American is four times greater than their percentage of the state population.^[108] And in South Dakota, “52 percent of the children in the state’s foster care system are American Indians,” and “[a]n Indian child is 11 times more likely to be placed in foster care than a white child” as of 2017.^[109]

Supreme Court’s Review of ICWA: *Brackeen v. Haaland*

On November 9, 2022, the Supreme Court heard *Brackeen v. Haaland*, No. 21-376, four consolidated cases challenging the Indian Child Welfare Act (ICWA) as unconstitutional.

The Brackeens, a white, Evangelical, upper-middle class family in Texas, filed suit in federal court in 2017 challenging ICWA while suing for custody of a Native American child in family court, against the Navajo Nation and a relative of the child who wanted to adopt him.

Even though the Brackeens eventually prevailed in family court and were able to adopt the boy, and later his little sister, they claim that the law is unconstitutional because its placement preferences “impermissibly discriminate on the basis of race, exceed Congress’s power over Indian affairs, and impermissibly commandeer state judges.”^[110]

Despite evidence that being removed from family and disconnected from culture, tradition, and identity is deeply harmful to Native children, Texas joined the Brackeens in their effort to overturn the ICWA, and two other states—Oklahoma

and Ohio—as well as adoption groups, the Christian Alliance for Indian Child Welfare, and some conservative think tanks have supported the challenge. Those fighting to uphold ICWA include at least 497 Tribal Nations, 62 Native organizations, 27 child welfare organizations, 20 states and the District of Columbia, 87 members of Congress, and numerous legal scholars and nonprofit organizations.^[111]

The case has potentially significant consequences for the protection of Native children and families, tribal sovereignty, and tribal self-determination.

IV. The Experience of “Family Regulation”

It feels like we are crucified for making mistakes as parents, and the system keeps hurting our families and getting away with it.

—Violet Sanchez, parent, California, October 22, 2021

The child welfare system was established to combat and prevent child maltreatment and ensure the safety, well-being, and permanency of children.^[112] By law, decisions on the custody or placement of a child should serve the child’s best interests.^[113]

But research shows that in practice, involvement often harms the children it aims to protect, in some cases more significantly than if it had never intervened.^[114] Like the criminal legal system, the child welfare system is organized around surveillance, monitoring, compliance, and control.^[115] For these reasons, many parents, advocates, and experts describe it as one of “family regulation or policing.”^[116] Dorothy Roberts, a leading scholar on the US child welfare system, explained in a 2020 interview:

We’ve challenged terms that give a false impression of what the system does. Now, we are exploring different descriptions of it. One is ‘family regulation’ because the government is regulating families through laws and policies that address families’ needs by

threatening to take children away. Even when they don't take children away, they impose all sorts of requirements on families instead of supporting and providing for families. Another term is 'family destruction system' because these policies and practices destroy many families. To me, the most accurate term is 'family policing system.' ... It polices families with the threat of taking children away. Even when its agents don't remove children, they can take children and that threat is how they impose their power and terror. It is a form of punishment, harm and oppression.^[117]

Federal and state data show racial disparities exist at every stage of involvement, with particular harm to Black families.^[118]

For example, in California, Black children represent 5 percent of the state population but 16 percent of foster system entries. In fact, a recent study found that child protective services investigate nearly half of all Black children in California.^[119]

In New York, where Black children represent 15 percent of the state population but 38 percent of foster system entries, the New York State Bar Association reported that the state's child welfare system is "replete with systemic bias" and "inherently stacked against families of color."^[120]

In Oklahoma, multiracial children are over 26 percent of foster system entries but less than 10 percent of the state population. In West Virginia they represent over 7 percent of foster system entries but only 4 percent of children in the state.

All states examined for this report had an overrepresentation of Indigenous children, with greater disparities in Oklahoma and West Virginia.

Reporting Not Supporting: How Child Welfare Involvement Begins

Generally, children and families come to the child welfare system's attention through confidential reports of suspected abuse or neglect to a state or county hotline, mostly from mandated reporters, who are required to report suspected maltreatment.^[121]

Education personnel and law enforcement personnel are the most common reporters of maltreatment, each responsible for about 20 percent of all reports in the US. Medical personnel and social services personnel are each responsible for about 10 percent of reports. Parents or other relatives are each the source for 6 percent of reports. The remaining proportion are assorted other reporting

sources.

Table 4. Race, Ethnicity, and Child Welfare Involvement, by State

Race, Ethnicity, and Foster Care Systems at the State Level

FY 2019 Data

California

	Percentage of State Child Population	Percentage of Investigations	Percentage of Foster System Entries	Percentage Served by the Foster System
Latinx	47.8%	53.1%	55.0%	53.9%
White	23.1%	18.8%	19.7%	19.4%
Multiple Race/Ethnicity	12.2%	1.8%	4.2%	4.6%
Asian	11.3%	3.3%	1.7%	1.4%
Black	4.9%	12.2%	16.2%	17.9%
Indigenous	0.7%	0.7%	0.8%	0.7%

New York

	Percentage of State Child Population	Percentage of Investigations	Percentage of Foster System Entries	Percentage Served by the Foster System
White	45.4%	36.5%	28.4%	25.7%
Latinx	23.2%	27.1%	24.1%	25.1%
Black	15.6%	26.0%	38.2%	40.2%
Multiple Race/Ethnicity	7.8%	4.1%	7.3%	7.0%
Asian	7.6%	2.6%	1.4%	1.2%
Indigenous	0.4%	0.4%	0.3%	0.3%

Oklahoma

	Percentage of State Child Population	Percentage of Investigations	Percentage of Foster System Entries	Percentage Served by the Foster System
White	50.1%	40.1%	36.8%	36.9%
Latinx	17.1%	16.8%	17.3%	17.8%
Multiple Race/Ethnicity	14.3%	24.8%	26.6%	27.2%
Indigenous	9.0%	6.6%	10.1%	9.4%
Black	7.6%	10.9%	9.1%	8.6%
Asian	1.9%	0.3%	0.0%	0.0%

West Virginia

	Percentage of State Child Population	Percentage of Investigations	Percentage of Foster System Entries	Percentage Served by the Foster System
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	Child Population	Investigations	System Entries	the Foster System
White	88.1%	83.2%	87.0%	87.8%
Multiple Race/ Ethnicity	5.3%	5.5%	7.5%	7.2%
Black	3.5%	4.2%	4.0%	3.5%
Latinx	2.4%	0.9%	1.2%	1.1%
Asian	0.6%	0.0%	0.1%	0.1%
Indigenous	0.1%	0.0%		0.0%

Some disparities may be due to coding of race. For example, children coded "two or more races" or "multiple race" in the census data may have been coded in a single race group in foster system data.

Source: Human Rights Watch analysis of National Child Abuse and Neglect Data System (NCANDS) Child File, FY 2019, Foster Care File FY 2019, and US Census Bureau Data.



Most jurisdictions allow people to make reports anonymously. Anonymous reporting is intended to increase identification of children at risk but is largely ineffective at detecting maltreatment because anonymous reporters may provide insufficient information to avoid disclosing their identity.^[122]

Anonymous reporting also carries the risk of misuse with potentially serious consequences. There are no reliable nationwide statistics on intentional false reporting, but some prosecutors have said that intentional false reporting is common.^[123] There is a particular risk that anonymous reporting can be maliciously employed by perpetrators of domestic violence or others as a form of retaliation for grievances, overburdening an unregulated hotline system.^[124]

An alternative approach to ensuring child safety is confidential reporting, where an individual would provide their name confidentially when filing a report.^[125]

States vary in how they designate mandated reporters, define maltreatment, and screen reports.^[126] Mandatory reporting requirements impose harsh criminal penalties for failure to report suspected child maltreatment and contribute to overreporting.^[127] These variations create inconsistencies in how similarly situated families are treated.

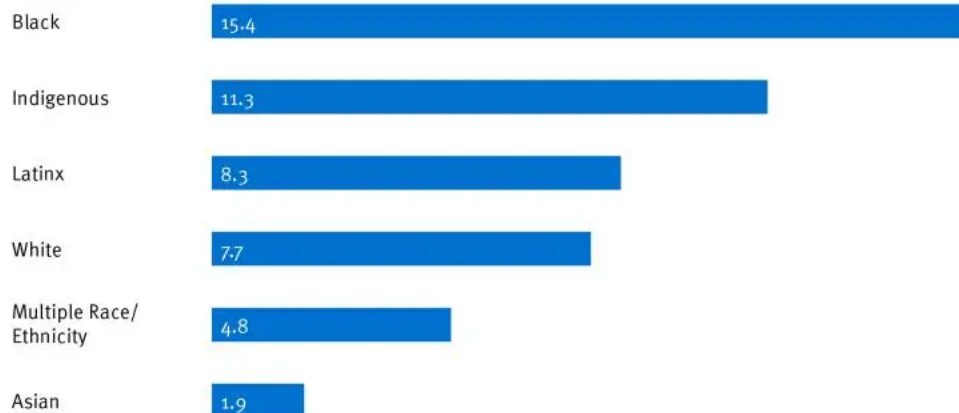
Families with limited resources often have more exposure to mandated reporters because they have a greater need for, and use of, social services.^[128] This creates a dynamic where families living in poverty are surveilled, scrutinized, and reported more than those with greater resources.^[129]

Table 5. Racial and Ethnic Disparities in Rates of Reporting from Education and Law Enforcement Sources

Racial and Ethnic Disparities in Rates of Reporting from Education and Law Enforcement Sources

Reports per 1,000 children, FY 2019

Law Enforcement Personnel



Education Personnel



Source: Human Rights Watch analysis of National Child Abuse and Neglect Data System (NCANDS) Child File, FY 2019.



In addition, there are significant disparities in reporting rates. Black and Indigenous families are more likely to be reported for child abuse and neglect than white families.^[130] For example, law enforcement and education personnel report Black children at twice the rate of white children, as shown in the figure on the following page.

There are also large geographic differences in reporting sources. Nationwide, about 7 percent of reports in 2019 were anonymous, but in Mississippi and New Mexico, anonymous sources accounted for over 30 percent of reports. In the same year, law enforcement was responsible for 48 percent of reports in South Dakota but less than 10 percent in four other states. Even states that border each other

had significant differences. For example, social services were responsible for 19 percent of reports in New York but less than 5 percent in neighboring New Jersey in 2019.

In the states on which we focused, the source of the reports varied greatly. Although social services personnel made a large percentage of reports in New York, mental health personnel were sources for reports much more frequently in California, and anonymous reporters were more common in West Virginia. Meanwhile, medical personnel accounted for twice the proportion of reports in Oklahoma and West Virginia as compared to California or New York. Whether these differences are due to state-level policies and practices versus differences in data reporting quality and standards is impossible to determine.

Research shows that overreporting as a precaution does not improve maltreatment detection or outcomes for children.^[131] Instead, it strains the child welfare system and unnecessarily traumatizes children and families.^[132]

Parents interviewed for this report described a range of circumstances that led to being reported to child welfare authorities.

Adaline Stephens, a 34-year-old mother from California, told Human Rights Watch that her son injured his hip when he was dancing in the kitchen and slipped on some water.^[133] "I rushed him to the emergency room when he got hurt. The doctors asked me questions, and I told them everything. I trusted them to help him. I didn't know they were going to report me for abuse." Adaline was shocked when she learned that her son's medical providers reported her to child protective services for suspected abuse, triggering a cascade of state interventions that she said deeply harmed her children and damaged their relationship.

Public health studies have found that medical providers are more likely to report people of color and children experiencing poverty for suspected abuse or neglect.^[134] For example, Black children presenting at medical facilities with fractures are reported to child welfare authorities far more frequently than white children with similar injuries.^[135]

Table 6. Reporting Source, by State

Reporting Sources Differ by State

Percentage of State Maltreatment Reports by Source of Report, FY 2019

Social Services Personnel



Oklahoma 10.6%

West Virginia 10.6%

Medical Personnel

California 6.4%

New York 5.6%

Oklahoma 12.3%

West Virginia 12.1%

Mental Health Personnel

California 13.0%

New York 5.4%

Oklahoma 6.7%

West Virginia 3.9%

Law Enforcement Personnel

California 19.8%

New York 13.2%

Oklahoma 18.5%

West Virginia 9.9%

Education Personnel

California 21.3%

New York 17.6%

Oklahoma 15.2%

West Virginia 22.5%

Anonymous Reporter

California 6.5%

New York 8.4%

Oklahoma 2.3%



Source: Human Rights Watch analysis of National Child Abuse and Neglect Data System (NCANDS) Child File, FY 2019 and US Census Bureau Data.

Parents told Human Rights Watch they felt like they were “living under a microscope,” and that their appearance, mannerisms, or tone of voice could be used against them in a child welfare report.^[136] Evelyn Perez, a former parent advocate in New York with lived experience as a parent whose children were removed by the child welfare system, told Human Rights Watch that many mandated reporters do not understand the ramifications of making a report:

This is not in the trainings.... They don't understand the ripple effect once they make that call. They don't understand that they have now invited these strangers to intrude and invade on the population, on our communities' privacy, and do with them what they will and take their children and have the power to do all of this for years to come.^[137]

“Rupturing the Village”: Investigations

Your whole life you tell your kids not to talk to strangers, then when the workers want to take them to a separate room to question them, and they see you allow it, this traumatizes your children.

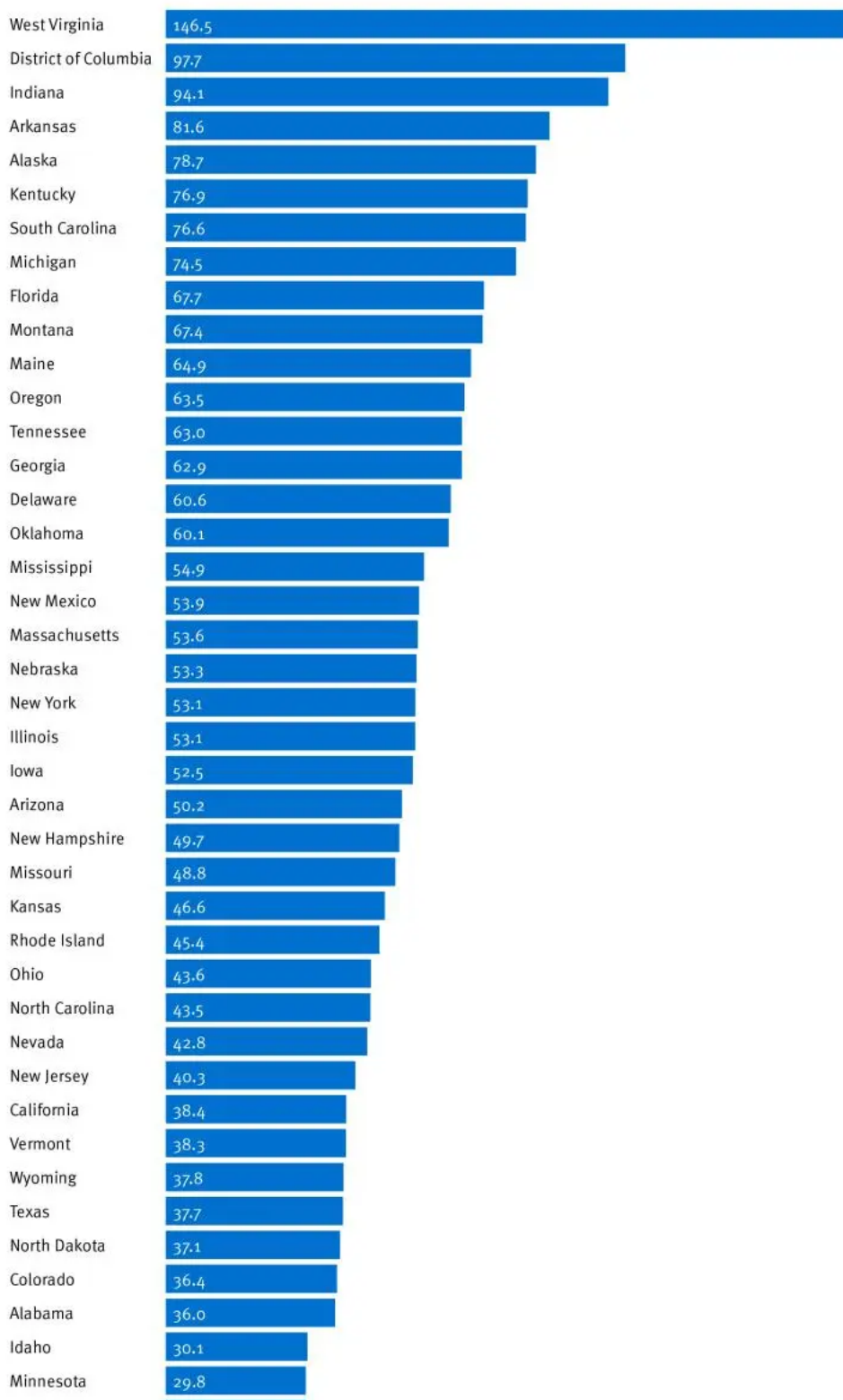
—Violet Sanchez, parent, California, October 22, 2021

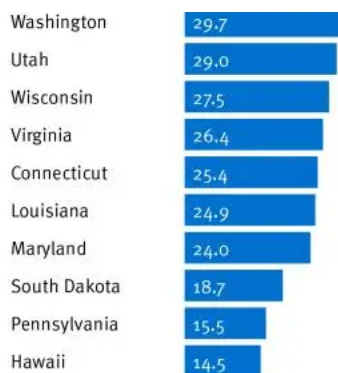
Every year, more than 3 million children experience a child welfare investigation related to an allegation of child abuse and neglect.^[138] Investigations can be highly stressful, and even traumatizing, for children and their families.^[139]

Table 7. Investigation Rate per 1,000 Children, by State

Rate of Investigations per 1,000 Children

Investigations with disposition, FY 2019





Source: Human Rights Watch analysis of National Child Abuse and Neglect Data System (NCANDS) Child File, FFY 2019 and US Census Bureau data.



State officials review reports received and refer about half for investigation.^[140] Generally, reports from mandated reporters and those concerning younger children are more likely to be investigated.^[141] Additional factors that influence whether an investigation happens include the nature and extent of the allegation, surrounding circumstances, a safety assessment, and the reporter's qualifications.^[142]

If officials believe the child is not at great risk of harm, some counties may respond initially by assigning a caseworker and offering services to support the family's needs.^[143] Most jurisdictions review reports using structured decision-making tools, which have been criticized by researchers as being ineffective at reducing racial disparities due to their failure to account for structural risk factors.^[144]

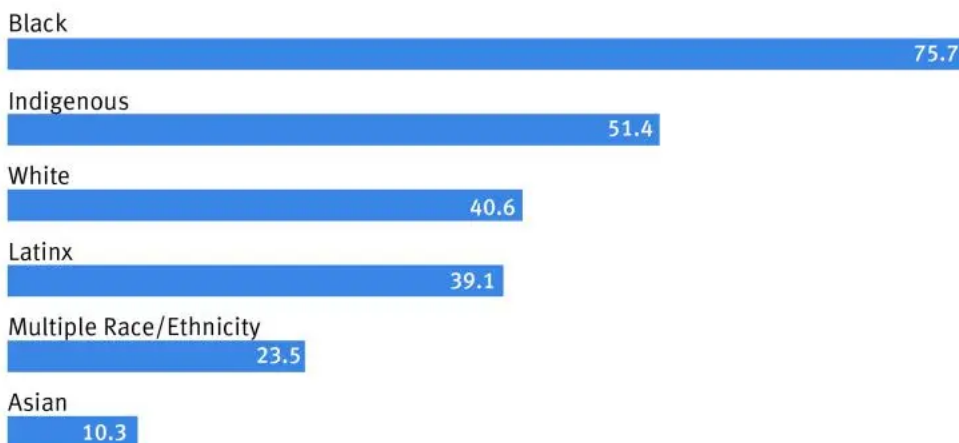
These screening tools identify response pathways and timelines based on the individual factors in and related to the report.^[145] For example, in California, state law and regulations specify that neglect allegations should be investigated within 10 days unless extenuating circumstances apply, in which case they must be investigated within 24 hours.^[146]

The rate of investigations varies widely by jurisdiction, in part due to differing reporting requirements, screening criteria, and caseworker decision making.^[147]

Table 8. Investigation Rate per 1,000 Children, by Race/Ethnicity

Investigation Rate per 1,000 Children, FY 2019

National disposition rate (children subjected to an investigation or alternative response)



Source: Human Rights Watch analysis of National Child Abuse and Neglect Data System (NCANDS) Child file, FFY 2019, and US Census Bureau data.

Black families are more likely to be investigated than white families.^[148]

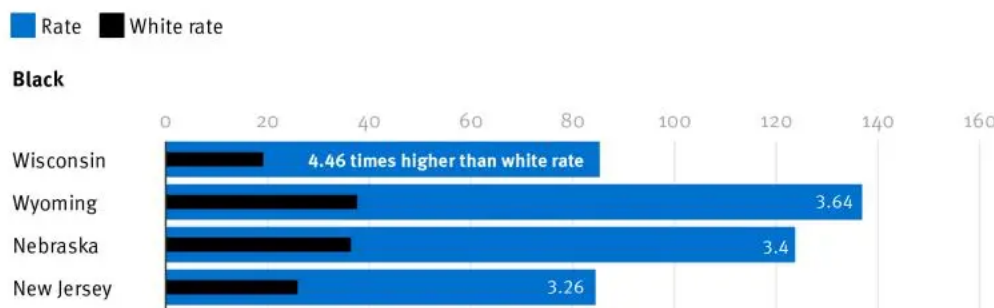
Nationwide, Black children are on average subject to investigations at nearly twice (1.9 times) the rate of white children and at 1.3 times the rate of Indigenous children. Black children are also more likely to be removed from their families, and remain separated for longer periods, than children and their families of other racial or ethnic groups.^[149]

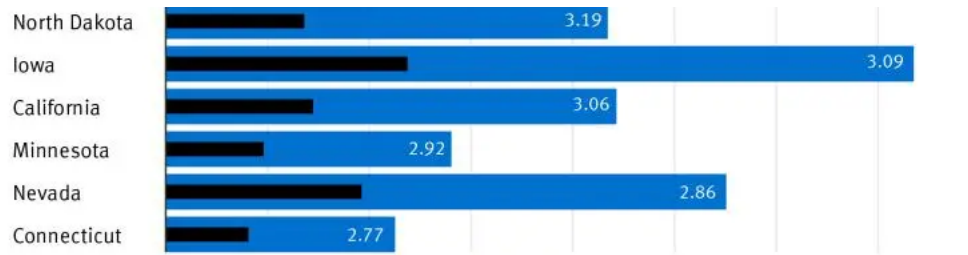
However, the magnitude of racial and ethnic disparities varies widely among states. The below figures display the 10 states with the highest investigation rate disparities between Black, Indigenous, and Latinx children and white children.^[150]

Table 9. State-Level Racial and Ethnic Disparities in Investigation Rates

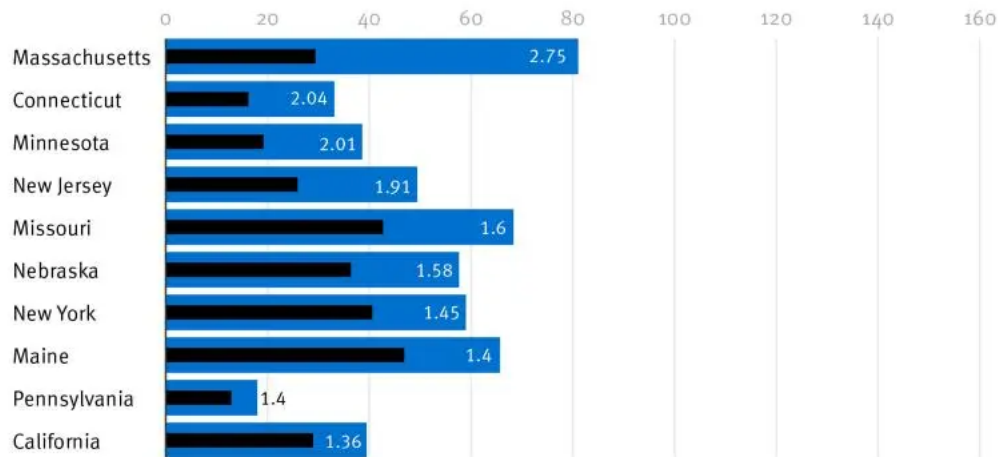
State-Level Racial and Ethnic Disparities in Investigation Rates

Ten states with the highest disparity ratios with white children. Bars are sorted by ratio of race/ethnicity-specific rate to white rate. Rate per 1,000 children.

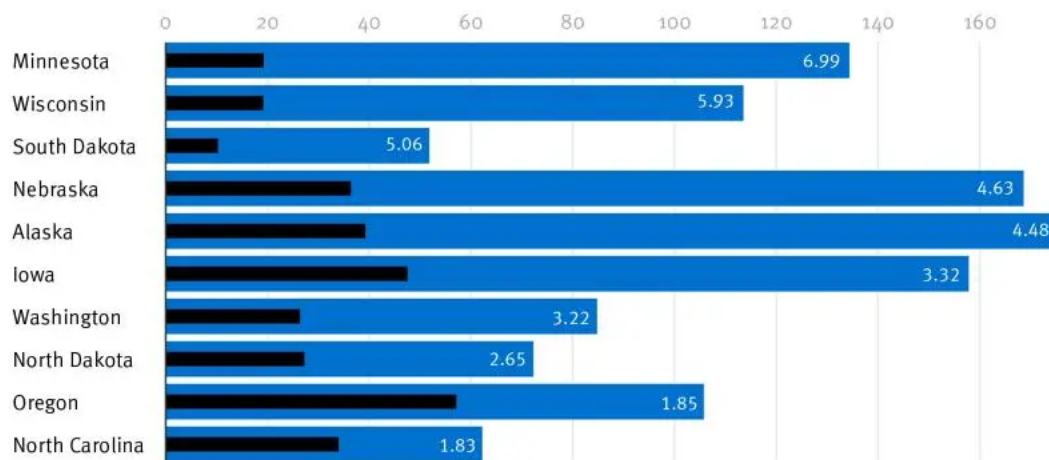




Latinx



Indigenous



Source: Human Rights Watch analysis of National Child Abuse and Neglect Data System (NCANDS) Child File and US Census Bureau Data.



The national dataset on the foster system does not include income data on individual children and their families, but the relationship between poverty, income, and the child welfare system can be explored in the aggregate by examining county-level data.

Human Rights Watch analyzed data from 824 counties and found moderate correlations between maltreatment investigation rates and median family income,

as well as the poverty rate for families with children under 18.^[151] Counties with higher numbers of families below the poverty line have a higher rate of maltreatment investigations. Conversely, counties with higher family incomes have lower rates of investigations.

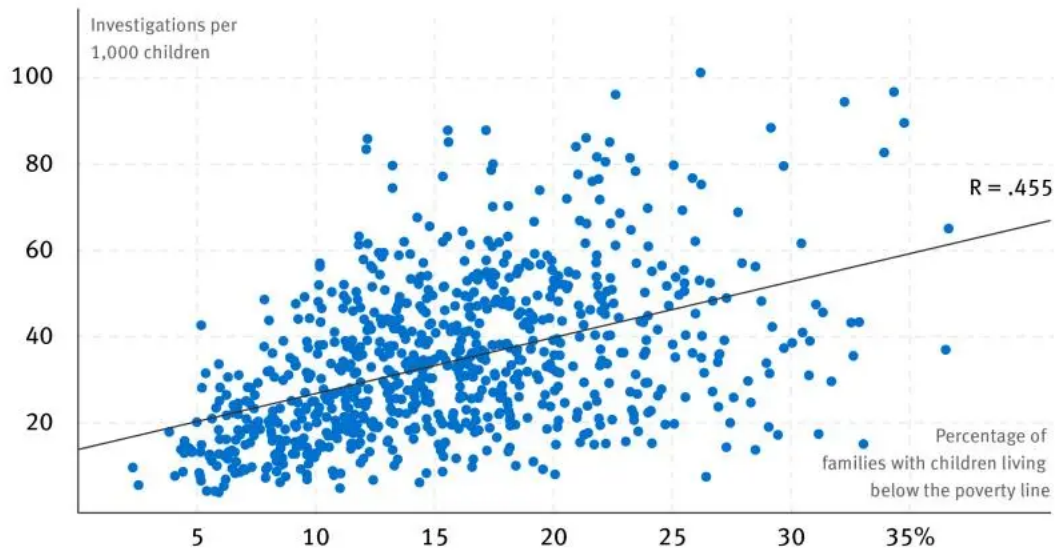
At each step along the foster system process, from allegation substantiation rates to foster system entrance rates to parental rights termination rates, this correlation with income and poverty remains, though at lower levels than with initial investigation rates.^[152]

However, these correlations do not appear to be the same for children of all races. When we examined race-specific rates, incomes, and poverty levels, the results indicated race-specific differences in the strength of poverty-foster system relationship. The relationships are much stronger when using white rates ($r = .704$) than for Black rates ($r = .465$).^[153] In other words, the more impoverished white families in a county are, the higher the investigation rates of white families in a county tend to be. While that trend persists for Black families, the relationship is much weaker, suggesting that in many counties, Black investigation rates remain high even when Black poverty is low.^[154] This finding corroborates qualitative testimony suggesting heightened surveillance and reporting of Black families.

Table 10. Relationship Between Child Welfare Investigations and Poverty

Relationship Between Child Welfare Investigations and Poverty

Each dot represents one county. FY2019 data.



Note: N = 824 counties.

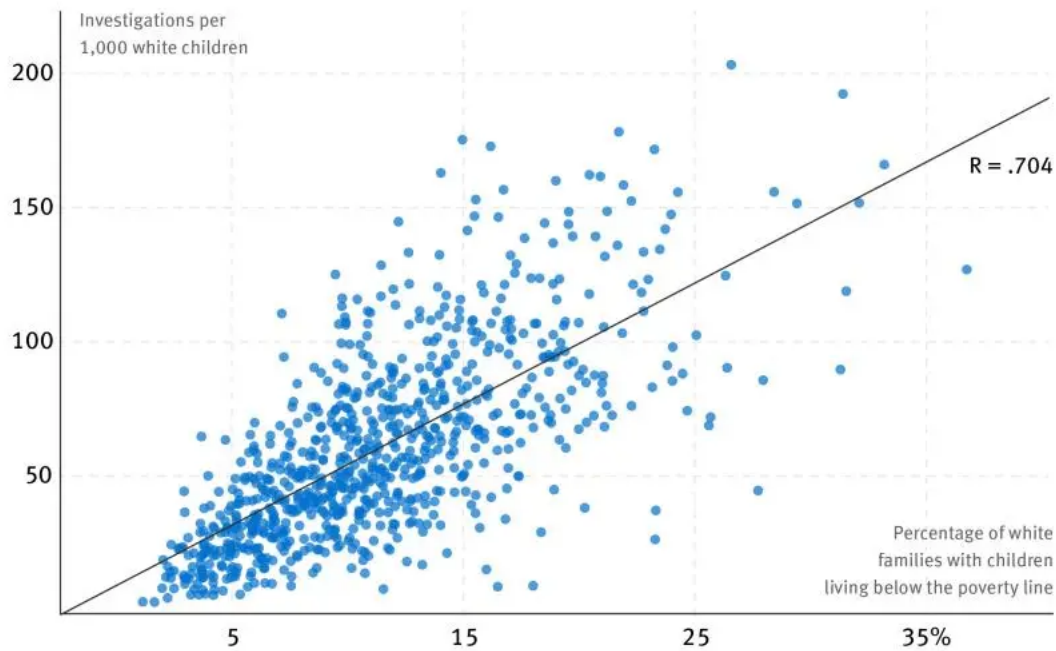
Source: Human Rights Watch analysis of National Child Abuse and Neglect Data System (NCANDS) Child File, FY 2019 and US Census Bureau data.



Table 11. Investigations of White Children Have a Strong Correlation with White Family Poverty Rates

Investigations of White Children Have a Strong Correlation with White Family Poverty Rates

Each dot represents one county. FY2019 data.



Note: N = 822 counties. Each county has a white child population greater than 1,000 children and had at least 30 investigations into white children in 2019.

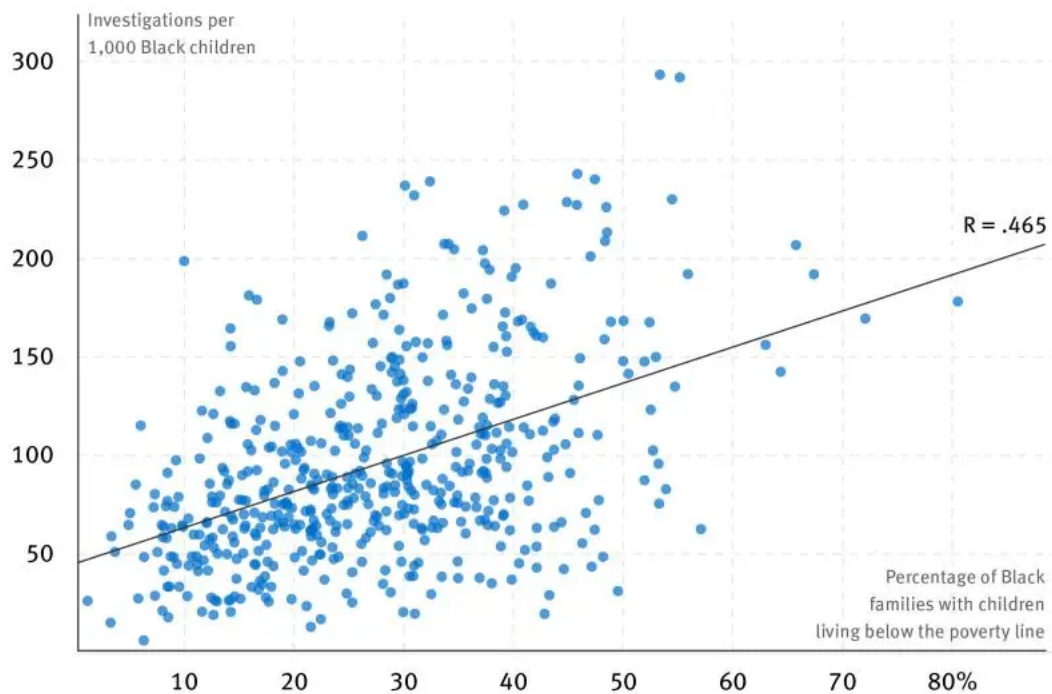
Source: Human Rights Watch analysis of National Child Abuse and Neglect Data System (NCANDS) Child File, FY 2019 and US Census Bureau data.



Table 12. Investigations of Black Children Have a Moderate Correlation with Black Family Poverty Rates

Investigations of Black Children Have a Moderate Correlation with Black Family Poverty Rates

Each dot represents one county. FY2019 data.



Note: N = 522 counties. Each county has a Black child population greater than 1,000 children and had at least 30 investigations into Black children in 2019.

Source: Human Rights Watch analysis of National Child Abuse and Neglect Data System (NCANDS) Child File, FFY 2019 and US Census Bureau data.



Once allegations are referred for investigation, a child protective services caseworker is assigned to look into the allegations and decide whether the child should be removed or whether the family needs supportive services. To conduct this investigation, the caseworker speaks to teachers, neighbors, medical providers, and other individuals who may know the child and/or family. This often happens before the parent even knows an allegation has been made or that an investigation is underway.

When describing investigations, parents used words like “nerve-wracking,” “invasive,” “humiliating,” “causing anxiety,” “full of judgment,” and reported feeling “a pit in their stomach” and “dread” every time a caseworker showed up unannounced.^[155] In particular, the investigator’s conversations with neighbors, doctors, teachers, and other people in their community caused shame and embarrassment for families interviewed for this report, prompting parents to withdraw socially to avoid judgment and uncomfortable conversations.

Violet Sanchez, a 35-year-old mother from California, described the shame her children experienced when caseworkers visited their school:

They [my children] already have to deal with this [investigation] at home, and the school may have been the only safe space for my child. But the minute the social workers go there, they take that away from them. There is a level of shame that they start to carry, that my parents are going through this. They have to tell their friends: 'That's my social worker.' School faculty openly discuss it with each other. It makes [my children] very uncomfortable and like they are being looked at differently.

The caseworker also meets with the family at home, where they question the parent and all children, open the refrigerator and cabinets to check for food, check bedrooms to determine the adequacy of sleeping arrangements, and generally evaluate the home's overall conditions.

When questioning the children, the caseworker often takes the child and any siblings to a separate room to assess their safety and check for signs of physical abuse. The children are expected to remove as much of their clothing as the caseworker deems necessary, up to and including their underwear, and allow their bodies to be examined by total strangers, often with no advance notice to the parent.^[156] Understandably, many children experience significant fear and trauma because of this intrusion into their life, regardless of the outcome of the investigation.^[157]

Violet said her oldest daughter is still processing the trauma of the experience, years after the case was closed. "My oldest daughter experienced all of it, and she has difficulty trusting people. You can see that she carries it with her. My youngest son, who was born when my case was nearly closed, is so different and unencumbered compared to her."^[158]

Michelle Parker, a mother in New York, said:

My children were petrified [every time] ACS came out to my home; they would hide in the closet under the beds. [When the investigator started] asking questions [and saying], "Let me check your body," [my children would ask me], "Mommy, why are they checking our bodies?"^[159]

During the investigation, which typically takes 60 to 90 days, the caseworker arrives at the home multiple times, unannounced, and repeats this process. Angela Olivia Burton, former director of New York State Office of Indigent Legal Services,

described the impact of an investigation as, “rupturing the village of the child’s ecological system, which has ripple effects and brings not just stigma, but also fear and distrust, as it tears the fabric of a child’s life and community.”^[160]

Her conclusion is supported by public health research showing that children can perceive child welfare interventions as stressors,^[161] the cumulative effect of which leads to toxic stress and is associated with significant harms to health and development.^[162]

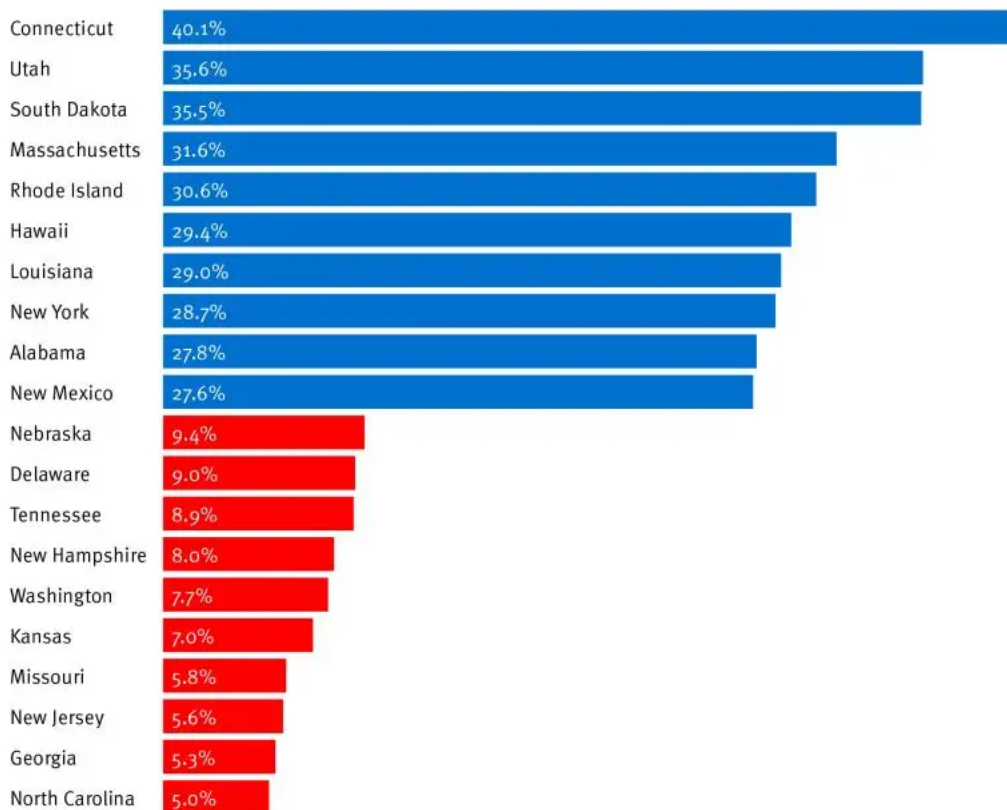
Outcomes of Investigations

If the caseworker subjectively determines the reported abuse or neglect occurred, the report is substantiated, and the relevant parent/s or caregivers are listed on their state’s central registry for child abuse and neglect reports.^[163]

Table 13. Percentage of Maltreatment Reports that are Substantiated, by State

Percentage of Substantiated Maltreatment Reports by State

The ten highest and lowest state percentages of substantiation, FY 2019



Source: Human Rights Watch analysis of National Child Abuse and Neglect Data System (NCANDS) Child File, FY 2019



About 17 percent of reports are substantiated nationwide, but there are large jurisdictional variations: The substantiation rate ranged from 40 percent of reports in Connecticut to only 5 percent in North Carolina. Rates of substantiation are likely related to both reporting policies—some may encourage overly broad reporting—and investigation practices that may be overly lenient or strict. However, understanding state-level variation requires further empirical research.

Nationally, the proportion of investigations that are substantiated did not vary significantly based on race: Between 15.5 and 20 percent of investigations are substantiated, no matter the race of the child involved.

But because a larger proportion of Black children are investigated in the first place, the overall rate of substantiated investigations per 1,000 Black children is nearly twice that of white children.^[164] Similarly, the rate of substantiated investigations of Indigenous children is 1.9 times the rate of white children.

It also means that a much higher proportion of Black and Indigenous children and their families go through investigations that are not substantiated. About 64 per 1,000 Black children go through an investigation, but the allegation is not substantiated. This is nearly double the rate of 33 per 1,000 white children.

A substantiated report can result in removing a child or implementing a safety plan and in-home support. Even when cases are not substantiated, the family may still be expected to complete services. The agency may decide to drop the case or assign a caseworker to monitor the family. This happens without any judicial oversight.

Profile of Parents Charged with Neglect

We examined 2019 data about substantiated neglect cases across the US, both where neglect was the only allegation and where neglect and another maltreatment type were alleged. Almost all of the people labelled as “perpetrators” of neglect are the biological parents of the child.^[165] Among this group, 73 percent of child reports had only one parent identified as liable for maltreatment, while the other 27 percent had more than one parent identified.^[166] Having a single parent labelled as a “perpetrator” of neglect does not necessarily indicate that the child lives in a single-parent household, but the rates of single and multiple parents charged with neglect are the inverse of what might be expected when compared to general trends in the country as only 23 percent of children under 18 in the US live in a single-parent household.^[167]

Table 14. Parents Identified as Culpable for Neglect, by Race and Ethnicity

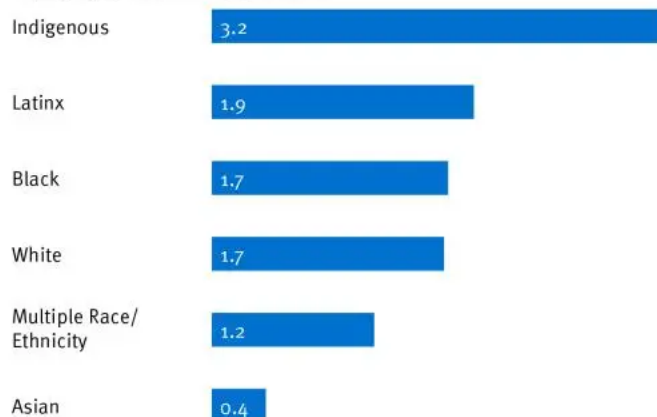
Parents Identified as Culpable for Neglect, by Race and Ethnicity

Substantiated neglect disposition rate per 1,000 children, FY 2019

Only mother found responsible



Multiple parents found responsible



Race is the race of the child. Includes neglect-only and neglect with other maltreatment types. Source: Human Rights Watch analysis of National Child Abuse and Neglect Data System (NCANDS) Child File and US Census Bureau data.



As in earlier stages of the child welfare process, gender and racial disparities characterize neglect dispositions. The majority (62 percent) of parents identified as culpable for neglect were women. Single mothers of every race and ethnicity were more often labeled offenders than multiple parents or single fathers of the same race and ethnicity. The rate of white single mothers identified as culpable of neglect was 1.7 times higher than for two white parents of children. For Black single mothers it was 3.3 times more frequent, 1.7 times more frequent for Indigenous mothers, and 1.6 times more frequent for Hispanic/Latinx mothers than the rate for two white parents.

Overall, mothers of color are labelled as the sole parent responsible for neglect at

Families Torn Apart: Removals

Overly broad and vague definitions of child abuse and neglect in state laws result in haphazard and inconsistent removal practices. Some removals happen without clear evidence the child is at risk of harm, or before a court has reviewed evidence surrounding an allegation.^[170]

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placements in West Virginia to 10.6 percent of such placements in New York. Of children who exited foster systems in FY 2019, over 20,000 were reunited with their families within a month with about 13,000 reunited within 10 days.^[171] The proportion of foster stays that are short-term is highly variable by jurisdiction due to policy differences and local decision-making.^[172]

The moment children and families are involuntarily separated is acutely distressing, and the circumstances of removal can magnify their trauma and suffering. Some parents described being placed in handcuffs and escorted away from their children by a police officer. Others described the look of confusion on their children's faces as they left with a caseworker. Many parents describe visiting their children's rooms in the immediate aftermath, holding their children's favorite toy, or trying to hold on to their smell. The profound loss and sheer helplessness of the moment was evident in every parent's story.

Testimony: Hannah Garcia

Hannah Garcia, an advocate, former foster youth, and parent whose child was taken from her by California child protective services, told us she knew that her 4-year-old daughter, Delilah, was going to be removed when the caseworker assigned to investigate a domestic violence allegation told her to bring Delilah to their office: "It's been 14 years since this has happened ... but it feels like yesterday."

As a former foster youth, Hannah knew what to expect and wanted to prepare her daughter.

Before meeting the social worker, I take her in the bathroom, and I get on my knees, and I said: "They [CPS] might take you today. If they do, don't worry, Mom is gonna come and get you. I'm gonna get you back." I said: "So just be strong, and you might be away for a little while, but I'm gonna get you back." And she said: "OK mom," which makes sense because that's reflective of the young, strong, confident, stable girl that I raised because she could trust Mom.

When they walked out of the bathroom together, the caseworker took Delilah's hand and led her into one room. Security officials escorted Hannah to another room.

"I just remember collapsing to my knees and not wanting to leave the office, and then security was trying to call the police as they dragged me out by my arms," Hannah said. Her friend, mother, and grandmother helped her leave the office before the police arrived.

Hannah spent all night seeking help, and her daughter was returned to her almost 26 hours later. She said she was charged with failure to protect for allowing her daughter to witness a verbal argument. The charges were dismissed after she completed parenting classes, submitted to drug testing, and provided proof of enrollment and attendance in therapy for six months. But she still carries the trauma of the separation. "It felt like my whole world had come up from underneath me. It was the most terrifying, most traumatic experience I've ever experienced in my life." ^[173]

Daniel Carter, a father from West Virginia, said police drew their weapons and handcuffed his 15-year-old daughter when they removed her and his five other

children. "They traumatized my kids really bad," he told Human Rights Watch.

Daniel said his 15-year-old daughter's mental health deteriorated significantly afterward:

[She] was put into a psychological institute.... She was depressed because of what was going on because she was trying to kill herself. She went to the point where she's suicidal. Now she cuts herself like self-induced injury.^[174]

Black and Indigenous children in the US are more likely to be removed from their parents than white children.^[175] Black children enter foster systems at 1.7 times the rate of white children, and Indigenous children enter at 2.5 times the rate of white children.

Emergency Removals

States have legal authority under their *parens patriae* authority to remove children from their homes immediately to keep them safe, a measure commonly referred to as emergency removals.^[176] There are differences among states in who can make the decision to remove the child and what circumstances permit an emergency removal.^[177] Each of the four states examined in this report permit emergency removals when there is an "imminent danger" or "imminent safety threat" to a child.^[178]

In some cases, state officials will remove children from the home before the investigation is complete. This can happen, for example, when police respond to an incident in the home and see a child present at a crime scene. Immediate removal can also happen when a caseworker arrives for the initial investigative visit. When a child is truly in danger, quick intervention can be crucial.

However, due to the subjectivity inherent in the emergency removal of a child, there are times children are removed unnecessarily, and without due process. Further, emergency removal can sometimes result in children sleeping in hotels and offices or other makeshift facilities because no placements are available.^[179]

In emergency removal cases, the caseworker must seek an emergency court protective order, usually from a family court judge, authorizing the immediate removal of a child.^[180] In many states, a child can be removed first, either by the police and other first responders or a caseworker, and the order can be requested later, usually within 24 to 72 hours of removal. After an emergency removal, a judge reviews the case, the parent or guardian has an opportunity to be heard, and the judge decides whether to send the child home or keep them in state custody.

[181]

Table 16. Average Number of Days Between Report and Removal to Foster Care, by State

202211crd_us_fostercareremoval_days



In cases that do not meet the state requirements for emergency removal, a court examines the findings of the investigation, assesses whether the child welfare agency has made reasonable efforts to prevent children from entering the foster system, and makes a subjective determination, based on the jurisdiction's removal standard as to whether the child should become a ward of the state, or remain at home.^[182]

If a child becomes a ward of the state, the state or county responsible for removing them must find them a suitable placement within the foster system. If the child is sent home, or if the allegations are unsubstantiated, a monitoring plan may assign a caseworker to provide support in addressing the family's needs and conduct regular home visits for a period of time to ensure the child's safety.^[183]

Living in Limbo: Court Ordered Removal and Service Plans

If the court decides that the child should be removed, the child is placed in the foster system, often referred to as an out-of-home placement.^[184] The case must be reviewed every six months by the court.

Initially, at least, the primary goal is to reunify the family. Caseworkers develop a permanency plan for the child and a case plan for the parents with services they must complete to prove they have addressed the allegedly neglectful or abusive circumstances that resulted in the child's removal. For example, a parent may have to show proof of completing a parenting class, receiving drug treatment, or securing housing and stable employment.^[185]

Many parents told us that the services ordered were not tailored to the family's needs. For example, one parent of adolescent children was assigned parenting classes for newborns.^[186] Parents described feeling "railroaded," "insecure and [in] constant fear of losing our children," and being expected to "jump through every hoop" to complete services under significant time pressure.^[187]

Children removed from their parents may be placed with a relative, with a foster family they do not know, or in a non-family-based environment with more youth, such as a group home or a more restrictive institutional setting.^[188] States receiving federal funds are required to place children, when possible, in a "safe setting that is the least restrictive (most family-like) and ... in close proximity to the parents' home," and preferably with family or close friends to avoid disruptions to family and community.^[189] However, actual placement depends on the availability of foster homes that would meet the child's needs.

Although most children are placed in a home setting, almost 40,000 children in the foster system live in group homes or other institutional settings, such as residential treatment facilities. These settings are intended for children with a greater level of need or for temporary stays, but instead are often used as the default long-term placement for older youth because there are not enough foster homes.^[190]

Studies have shown that when a child is placed in a non-relative foster home, and when they experience placement changes, their ability to form healthy attachments is impaired.^[191] Placement changes also harm children's decision-making capacity, social and emotional functioning, and ability to maintain healthy relationships.^[192]

Daniella Serrano, a mother of five from California who has three children in the foster system, told Human Rights Watch that she was charged with child endangerment when her oldest daughter, Harper, reported abuse by her stepfather, Daniella's second husband. Daniella was horrified when she learned her daughter was facing abuse and said she swiftly took steps to report him and protect her children. Still, her children were removed from her care and separated. Harper and her brother Liam went to live with their father, and their three younger siblings were placed in foster homes.^[193] Harper described the loss she experienced when separated from her younger siblings.

I'm the older sister, so I have to take care of all my siblings. That's my job to be big sister to all my siblings. It's really sad because I feel like I don't take care of them at all, like I can't even be a big sister to them.^[194]

Parents described the experience of having a child in the foster system as “a living nightmare” that “made living and moving forward difficult.” Parents reported feeling “absolutely devastated,” “broken,” “destroyed,” and “completely shattered and in a perpetual state of grief, trauma, and longing.”^[195]

In some cases, children in out-of-home placements experience maltreatment, including sexual or physical abuse, which causes further trauma.^[196]

Hannah Garcia, a mother in California, told us her daughter Delilah, 4 years old at the time, was only in the foster system for 25.5 hours. While they were the worst hours of Hannah’s life, she hoped that her daughter would not remember the separation. However, Hannah told us that Delilah recently disclosed being sexual abused in the foster home:

It’s been 14 years since this has happened and she’s 18 now, but Delilah remembered it like it was yesterday.... She was watching Barney when she was molested by the biological son [of the foster parent].

Hannah survived child sexual abuse and desperately wanted to protect her daughter from experiencing the pain she felt. Hannah’s eyes pooled with tears and her voice cracked as she became visibly overwhelmed with emotion.

As a former foster youth who was molested, I was so overprotective that I would watch her even when she was with her own dad. I would watch him bathe her, because I was afraid of her being molested. For her to get taken from me [for less than a day] and then molested in the foster home....

After taking a moment to steady her breath, she continued: “In just one day, you know?... trauma on top of trauma.”^[197]

Family Surveillance: Visitation, Supervision, and the Role of Caseworkers

While children are in the foster system, most parents are initially allowed supervised visits with the child while completing their service plans.^[198] Visits take place in a designated visitation center, a public place, or other location usually determined by the assigned caseworker, occasionally in consultation with the foster family.

Among the families interviewed, visits were typically held at the child welfare agency offices and supervised by a caseworker. Visitation rooms are high-traffic

areas; they may be dirty or messy when the family arrives and usually have limited toys or supplies for interaction. The caseworker sits near the door observing interactions and may interrupt if they observe the family engaging improperly. These factors and the power dynamics between parents and caseworkers create a stilted environment and can lead to awkward interactions that may be used against parents as evidence of lack of parental bonding.

Parents told Human Rights Watch that they felt like they were being watched constantly. Some perceived that a caseworker assigned to "help" was actually "trying to catch them failing."^[199] Parents said they worried constantly about making a mistake that would be punished heavily.

Testimony: Maya Lopez

Maya Lopez, a mother from California, described changing her toddler's diaper while a caseworker and a visit supervisor hovered over her in a small bathroom.

It's hard to do this when two people are just staring at you, waiting for you to mess up. I was just very careful on everything and trying to control my emotions.

Maya said the caseworker told her she was "getting too emotional" and "confusing the kids." Maya said: "I'm a very emotional person, but I was trying to separate that for my kids because I didn't want to confuse them." Maya said she felt like her caseworker did not support her goal of reunification:

They were telling me the children were adoptable, and I was saying I didn't want that. I wanted to bring my children home. I felt like they had already made their decision about what they wanted to do.^[200]

Julia Griffin, a mother from California, described how being under caseworker evaluation while visiting her infant son affected her mindset about family time. As a result, she made sure weekly visitation time was during her infant son's waking hours:

My main concern is that I don't want to have a visit with my son only to hold him [while] he's sleeping because that might show them we are not interacting with our son [and be used against us].

Describing the condition of the room set up for family time, Julia said: "The [visit supervisor] said it was a positive visit, even though it's not that positive because we are there lugging every toy that we can to this stupid room that's plain and dirty." Her husband Noah added:

When we saw him, I laid on the floor next to him, gave him a big kiss, held him. He recognizes me. He knows I'm dad.... I had to bring a mat and everything in a blanket just to put him on the floor so we could sit on the floor and play with him. It's like a prison visit for your baby. We can see him once a week for two hours. He's an infant. I'm outraged with that. I'm sorry, that's my son, he needs to see Dad.... I want my boy back.^[201]

Daniella Serrano, a mother from California, told Human Rights Watch that the hardest part about visitation was saying goodbye at the end and leaving her children behind:

It takes a toll on me every single time I leave my visit. I have to go to work right after that. I'm praying and praising God on the drive to give me strength to continue the rest of the day because it's hard to see my baby and leave him every single time.^[202]

Caseworkers are responsible for referring parents to service providers, supporting them toward achieving reunification, and providing parents with timely updates on their children's well-being in the foster system.

Caseworkers in many states are overburdened and struggle to manage their caseloads, and they refer parents to equally overburdened service providers, where parents sometimes wait weeks or even months for services. Parents and experts interviewed for this report described how long waits can negatively impact a parent's ability to reunify with their child if a judge finds that a parent who has not completed services is not compliant with their court-mandated service plan.^[203]

Caseworkers are also responsible for monitoring the child in the foster home, connecting them to mental health and medical services, identifying a foster parent who would be interested in adoption, and planning for adoption.

The worker's dual role as a supporter and investigator, with the opposing goals of facilitating reunification and arranging for adoption, in addition to the worker's limited capacity due to being overworked and underpaid, does not foster an open and communicative relationship with a child's parents.^[204]

Determining the Family's Fate: Reunification or Termination of Parental Rights

They took my life the day they took my girls.

Once a child has been placed in the foster system, judges make the final decision about whether to reunify the family or terminate parental rights. Caseworkers must update the court on the child's and family's progress while in the foster system. If a parent completes the service plan in a timely and satisfactory manner, the agency may recommend reunification. If so, the child returns to the family, initially on a trial basis and then permanently.^[205] Alternatively, the agency may recommend termination of parental rights if it believes it is in the child's best interest. Family court judges review the cases and decide on reunification or termination of parental rights.

If the court believes adoption is in the child's best interest and that the parents cannot complete their service plan in a satisfactory and timely manner, the judge terminates their parental rights, permanently severing their familial bonds.^[206] This report discusses the lack of appointed legal counsel for these proceedings and appeals in the section on due process issues.

Table 17. Racial and Ethnic Disparities in Termination of Parental Rights

202211crd_us_parentalrights_termination

Parents have the right to appeal the order terminating their parental rights within a limited timeframe. In some states the child cannot be adopted while an appeal is pending.^[207] The appeal involves a limited review by a higher court of the facts

and arguments presented during the termination trial, case records, judicial decision, and order to determine if the law was correctly applied. Parents do not get a new trial and cannot submit additional arguments.

In 2019, nearly 61,000 children had their parents' rights terminated by courts, a process described by many parents and advocates as "the civil death penalty."^[208]

Nationwide, Indigenous children had their parents' rights terminated at 1.75 times the rate of white children, and Black children at 1.23 times the rate. In the states we examined, the disparities were much larger. Black children have their parents' rights terminated at 2.8 and 2.6 times the rate of white children in California and New York, respectively. Multiracial children have parents that have their rights terminated at higher rates than white children in New York, Oklahoma, and West Virginia as do Indigenous children in Oklahoma.

Table 18. Days Since Termination of Parental Rights for Children Awaiting Adoption, by Race/Ethnicity

[202211crd_us_parentalrights_termination_days](#)



Of children and youth whose parents had their parental rights terminated in 2019, 68 percent were still waiting to be adopted, emancipated, or aged out of the foster system by the time the year ended. There were slight differences by race and

Children with parental rights termination may wait years to be adopted, and some never will be. There are racial disparities in how long children wait. For those waiting for adoption at the end of 2019, Black children had been waiting more than six months longer, on average, than white children since the date their parents' rights were terminated.

Table 19. Rate of Termination of Parental Rights, by State

202211crd_us_parentalrights



Racial disparities persist, as in all stages of child welfare involvement: Black children are legally orphaned by the child welfare system at a higher rate than white children. One study examined data on termination of parental rights between 2000 and 2016 and found that: “In all but two states (Tennessee and Vermont), African American children are at higher risk of having their parents’ rights terminated than are white children.”^[210]

Maya Lopez, a 28-year-old mother of two from California, talked to Human Rights Watch about her termination hearing last year, which was held virtually. Maya was facing challenges connecting via video and was instructed to join via phone call. She was straining to hear when she realized the judge had just terminated her parental rights:

I had no idea what happened. I kept asking what is going on, and no one was saying anything. I tried calling the foster mother right after, and she didn't answer me, and then the attorney called me to tell me my rights were terminated.

Distraught, Maya told us that she asked about her options and whether she could appeal. Her lawyer told her she would lose the appeal anyway, and not to bother. The entire hearing and conversation took less than five minutes, Maya said.^[211]

Once all appeals have been exhausted or the time by which to file has passed, which could take up to a year or longer, the termination decision becomes final, and the parent-child relationship is legally severed.

The child welfare agency that had been responsible for undertaking reasonable efforts toward reunification, while concurrently planning for an alternate permanent placement for the child, is now responsible for planning for the child's exit from the foster system. In cases where adoption is not feasible or not in the child's best interest, the caseworker must plan accordingly; this most often happens with teenage children and results in a goal of emancipation. These children are discharged from the foster system to live on their own, usually without family connections or support, and in some cases are dropped off at temporary shelters if they or their caseworker cannot secure housing.^[212]

Parents told Human Rights Watch that they felt their family was "torn apart," "ripped," or "destroyed" after their parental rights were terminated. Interviewees said they felt "life just isn't worth living," they "struggle daily to push forward always wondering and worrying," they are "grieving [their] living child," and experience "pain [that] is always there."^[213]

V. Equating Poverty with Parental Unfitness

If I wasn't poor, I wouldn't be unfit.

—Bobbie Butts, advocate, California, April 15, 2022^[214]

One in seven American children lives below the federal poverty line of US\$27,479 per year for a family of four with two children.^[215] Nearly half of those children live in extreme poverty, with their families surviving on less than \$13,740 per year.^[216] Black children are three times as likely, and Hispanic and Indigenous children are twice as likely, to live in poverty compared to white children.^[217]

Every US state includes at least one factor related to poverty or income in its legal definition of child maltreatment. These include factors such as inadequate food, clothing, shelter, medical care, hygiene, nutrition, and supervision.^[218]

The child welfare system often responds to circumstances of poverty with punishment—charging families with neglect, investigating them without consideration of extenuating circumstances, removing children from their parents, and in some cases, arresting the parent, instead of providing concrete, responsive supports.^[219]

The experience of many of the people we interviewed reflected how these legal definitions translated into practice. Different parents repeatedly described how circumstances related to poverty, including housing instability or inadequate resources, were used as evidence of parental unfitness either to support neglect allegations, justify family separation, or terminate parental rights.

Table 20.

Estimated Poverty Rates by Race and Ethnicity, 2020			
Location	White	Black	
United States	8.3%	19.8%	
California	7.9%	14.6%	
New York	8.0%	15.9%	
Oklahoma	13.4%	22.1%	
West Virginia	14.4%	N/A	
Note on N/As: estimates with relative standard errors greater than 30 percent are not provided.			
Source: Kaiser Family Foundation estimates based on the Census Bureau's March Current Population Survey, 2018-2019. https://www.kff.org/health-policy/report/2022/11/17/if-i-wasnt-poor-i-wouldnt-be-unfit/family-separation-crisis-us-child-welfare			

Housing Instability as Evidence of Parental Unfitness

Nationally, the steadily worsening housing crisis has resulted in widespread housing shortages and lack of affordable housing options, with particularly adverse consequences for the lowest-income renters in every US state.^[220] In Los Angeles, for example, tens of thousands of residents live in encampments or cars for prolonged periods of time.^[221]

Table 21.

Children living in households with a high housing cost burden*, 2020		
	Number	Percentage of total children in US
United States	21,570,000	30%
West Virginia	72,000	20%
Oklahoma	234,000	25%
New York	1,479,000	37%
California	3,613,000	41%
*Definition: The share of children living in households where more than 30 percent of the monthly income was spent on rent, mortgage payments, taxes, insurance, and/or related expenses.		
Source: Population Reference Bureau, analysis of data from the US Census Bureau, 2019 American Community Survey, 2019, https://datacenter.kidscount.org/data/tables/7244-children-living-in-households-with-a-high-housing-cost-burden-in-the-united-states#detailed/2/2-53/false/1729,37,871,870,573,869,36,868,867,133/any/14287,14288 (accessed October 28, 2022).		

People of color are much more likely than white people to be renters and have extremely low incomes. Twenty percent of Black households, 18 percent of Indigenous households, 15 percent of Latinx households, and 10 percent of Asian households are extremely low-income renters. In contrast, only 6 percent of white non-Latinx households are extremely low-income renters.^[222]

Table 22.

Estimated Rent Burden by Location, 2020			
State	Extremely low-income renter households	Number of affordable and available rental homes per 100 extremely low-income renter households	Extremely low-income renter households with severe cost burden
United States	10,984,841	36	71%
California	1,308,774	23	76%

New York	963,048	36	70%
Oklahoma	131,726	46	67%
West Virginia	64,690	61	64%
Source: National Low Income Housing Coalition, Tabulations of 2020 5-year ACS PUMS, https://nlihc.org/gap (accessed October 28, 2022).			

Families living in poverty who reside in low-income neighborhoods, especially those experiencing housing instability, are more likely to be investigated, have their children removed and placed in foster homes, and face barriers to reunification.^[223] In 2019, more than 25,000 children were removed from their families and entered the foster system because of housing-related circumstances.^[224]

Amelia Smith, a 52-year-old woman from Oklahoma, told Human Rights Watch that she lost custody of her 8-year-old son, James, when Child Protective Services (CPS) became involved for reasons she still does not understand. She lived in a modest mobile home, the condition of which was a factor in the investigation. "They said [one reason] was because we had no running water, but I had like 12 gallons in my camper. Water wasn't the problem." She added:

We were looking for a place to rent and hadn't found one yet.... They said it was because we lived in a camper and that there was inadequate room, and then they said it was because my husband didn't care enough about his health to go to the hospital. He had already been to the hospital three times in two months and was told he was dying, there was nothing more to be done.^[225]

Amelia told Human Rights Watch that she and her husband signed over their rights after months of pressure from the caseworker and under the mistaken belief that they would be able to see a judge and continue fighting for custody. Amelia is exploring legal options to reunite with James, who she hasn't seen in more than two years. Amelia's husband passed away without ever seeing their son James again.^[226]

Parents experiencing housing insecurity told Human Rights Watch that despite diligently fulfilling the requirements of their service plans, housing was frequently used as a reason to justify keeping their families apart.

For Maya Lopez from California, unreasonable housing requirements prevented her two children from being placed with extended family after they were removed from her care. When Maya's youngest son David tested positive for

methamphetamines at birth, Maya's family came together to support her and her children. They spent nearly \$3,000 to modify Maya's grandmother's large Victorian home to make it suitable for placement by the caseworker.

"When they [CPS] came and inspected the house, they said that there was too much clutter because my grandma has a lot of like antique stuff like clocks," Maya said. Maya said that CPS alleged that the clutter, the family's pet dogs and cats, which lived outdoors in a fenced-in yard, a built-in bed in one of the downstairs bedrooms, and the presence of bars on the windows made the home unsuitable for her sons, Mason and David. In response, "they [my mother and grandmother] pretty much fixed everything in the house to make it suitable for the kids to be there."^[227] Maya's mom took required parenting classes and renovated the home to meet their standards, including removing the bars from the windows, replacing furniture, and getting the bedframe modified.

Maya's mother, Sophia, said: "We were fighting to get custody of the boys and went through so many processes to get them to come home. I was approved to be a foster parent, and all I wanted was my grandchildren back home with family." Ultimately, these modifications were not enough, and the caseworker recommended to the court that Maya's sons, Mason and David, remain with the non-relative foster parents permanently, in part due to the familial bond they had developed while Covid-related court closures prevented them from seeing Sophia. Maya's parental rights were ultimately terminated.^[228]

Joshua Michtom, a Connecticut public defender who represents parents in child welfare proceedings, discussed the ways class differences between investigators and parents play a role in child welfare determinations. "If a social worker doesn't know what it's like to be poor and doesn't know what it's like to make the compromises poor people have to make, they may describe a messy or cluttered house as deplorable or filthy, increasing the likelihood that the child will be removed."^[229]

Julia Griffin, a mother of two from California and a survivor of domestic violence, was charged with neglect after reporting her abuser to the police. She faced challenges completing her service plan to reunite with her children while trying to stay safe from her former partner's threats and harassment:

I ended up having to leave the county because of too much harassment. Multiple times I had to change the programs I was doing and [because] they don't transfer any credits, one of them I was halfway done, but I had to restart all over again because I had to leave because he was harassing me that bad.^[230]

Julia told the Los Angeles County Department of Children and Family Services (DCFS) that her former partner harassed her, showed up to her classes, threatened her outside court, and made her feel unsafe. But her concerns were not taken seriously, she said, and she was found to be noncompliant. Julia lost her housing during the crisis and moved in with a friend. Her housing insecurity was presented as evidence of her inability to provide for her children: "[DCFS told me] I didn't have a home like a legit house with bills in my name and everything. They told me that I ran out of time," she said, referring to the timeframe under the Adoption and Safe Families Act requiring a state to file for termination of parental rights when a child has been in a foster home for 15 out of the most recent 22 months. Julia's parental rights were terminated two years ago, and she now has little contact with her children.

Inadequate Resources as Evidence of Parental Unfitness

If you would've offered me any service, I would've done anything, anything not to lose my kids.

—Lily Cooper, parent, West Virginia, December 21, 2021

Families and communities living in poverty often have limited, or no access to resources, services, and social supports for the kinds of issues many parents struggle with, such as mental health, relationships, services for children with disabilities, or responding to behavioral issues.^[231] For parents trying to comply with child welfare service plans, accessing these services quickly and consistently is essential for family reunification.

Gabrielle Jacobi, a policy analyst at Oklahoma Policy Institute, described how resource deserts, unreliable infrastructure, and historic underinvestment in public services affect child-welfare-involved families:

In Oklahoma, we have high poverty rates, high substance use rates, high rates of community violence, and high maltreatment rates of which around 80 percent are neglect.

Services in Oklahoma are concentrated in Oklahoma City and Tulsa, and families who don't live in those metro areas and live in rural Oklahoma, aren't getting access to many services because there aren't many nonprofits, food banks, or resources locally in the community. There are huge deserts for many services, for example in Oklahoma there are entire counties that don't have a

single childcare facility.

Transportation is a huge problem in Oklahoma. Our rural areas are spread out so far away from each other, and we don't have public transportation, and the buses that we do have are not reliable and taking the bus is not a viable option.

Gabrielle added: "The limited economic resources and opportunities available to many Oklahoma families force them to make hard decisions that could be perceived as maltreatment. For example, if a family is struggling to pay bills and the water is cut off, under the definition of the law, this could be construed as neglect."^[232]

The parents we interviewed described how their lack of access to reliable information, services, or support was interpreted as parental unfitness. For some parents, it was used as evidence to remove their children; for others, it prevented them from reuniting.

Stella and Austin Murphy in Oklahoma told Human Rights Watch that their children were removed due to allegations of medical neglect, for not vaccinating their children or attending regular medical appointments, and in the case of their older son, for "malnourishment" based on his low body weight.

Their older son has disabilities, including feeding issues due to regurgitation, that Stella and Austin believed were related to autism caused by an early childhood vaccination—unfortunately a common misconception.^[233] Records reviewed by Human Rights Watch state Stella and Austin informed the court that they had recognized their child's needs and struggled to find a pediatrician they trusted to address them. Stella told us this was in part due to the dearth of local providers, requiring them to travel long distances to seek services, which they were unable to do because of Oklahoma's poor public transportation infrastructure and their limited financial resources. The court determined the parents had neglected their children.^[234]

Thomas Moore, a father from New York, told us about his difficulty accessing resources and support to help him care for his daughter. Thomas's daughter, Eva, had a turbulent childhood. She was in the foster system as a young child because her mother was largely absent, and Thomas was incarcerated. After his release, Thomas regained custody, overcoming numerous challenges to do so. But Eva continued to struggle with the mental health impacts of a traumatic childhood, and Thomas struggled to find services and support for her. He reached out to New York City's Administration for Children's Services (ACS) for help:

I'm looking for help for my daughter.... I went to ACS for help, they couldn't help me, they didn't offer no help. We had a conference with her therapist [and ACS]. [The therapist] expressed everything [including] the high level of care that's needed.

Thomas said ACS was unable to offer any support, and in desperation and frightened for her safety, he left his daughter in their custody. He knew they were mandated to report him, but he hoped they could finally get her the help she needed. "She needs a higher level of care. This has been the issue all of this time.... Do you know how much I begged and asked them for their help?"^[235] Thomas was charged with abandonment and Eva was placed in a foster home.

In his column, published in *Rise Magazine*, a publication led by and for parents who have experienced child welfare system involvement, Eric Mullins, a father from California, wrote about the impact of limited resources on his ability to get custody of his daughter, Cadence, after DCFS removed her and her half-sister Casey from their mother's care:

When [child protective services] found my girlfriend intoxicated and the girls unsupervised, they took both girls into foster care. I could only afford a room in an apartment with friends ... I wanted to get custody ... but I didn't know how to find a suitable place. I didn't ask the agency for help with rent, and they didn't offer any ... my feeling of hopelessness was the absolute worst feeling I've ever felt. Still, in the first few months, I went from supervised to unsupervised visits [with Cadence]. I thought my daughter would return to me.^[236]

Unfortunately, Eric was mistaken, and circumstances related to poverty impaired his ability to reunify with his daughter.

Casey was going to be adopted ... the [case]worker told me that if I didn't find a suitable place, I could lose Cadence, too. I moved into a small apartment in an unsafe part of town. There wasn't much space, so I packed our belongings in the bedroom and figured we'd sleep in the living room. But this was against department policy ... my daughter's attorney came by and reported that my place was cluttered, and I lost my overnight visits.^[237]

Eric's parental rights were eventually terminated, Cadence was adopted, and at time of his writing, Eric had not seen Cadence in more than five years. "It's hard to accept that if I'd found a decent home when the girls went into care, I might never have lost them," he wrote.^[238]

A lack of resources in the community, or barriers to accessing resources, makes it difficult for some parents to meet the requirements of their child welfare service plans. Parents experiencing poverty and correlating factors told Human Rights Watch that their adversities were often interpreted by child welfare agencies as intentional neglect and evidence of their inability and lack of fitness to be a parent.

Violet Sanchez, a 35-year-old woman from California, called police for help when experiencing domestic violence, not knowing that it would subject her to child welfare interventions. Discussing her experience with Human Rights Watch, she said: "I feel like every time I was honest with DCFS about anything and needed help, I was penalized for it and humiliated."^[239]

Parent advocates who joined a Human Rights Watch focus group facilitated by Rise in New York City talked to us about the resource challenges in their communities. They shared that caseworkers refer families to providers and resources in the community that are already overburdened, underfunded, and usually have long wait times. Despite the limited time parents have to fulfill the requirements of their case plans, a parent with an open child welfare case does not receive priority access to ordered services. Under federal law, caseworkers must show they have engaged in "reasonable efforts" to address the parents' needs. Some caseworkers advocate to judges to give parents more time to comply with service plans, recognizing the long waits for certain services. Other caseworkers claim they have made "reasonable efforts" without explaining to the judge that parents are stuck on waitlists. A parent may then be charged with noncompliance for failure to make progress on their service plan, despite having acted diligently.^[240]

While working as a parent advocate in New York, Evelyn Perez told Human Rights Watch:

I would accompany my clients to some of these services because I needed to see for myself where they were referring my clients to. And one of them was a mental health provider and it wasn't far from our office. And when I went in there,... they were packed. It just looked like in a zoo. There was no order. There was no like semblance of respect for the client.... I was disgusted. I ended up referring her somewhere else.^[241]

Some parents struggled to cover transportation or other costs associated with their mandated service plans. Eric Mullins described his experience:

My daughter and the agency were in an expensive area, far from

my neighborhood. I didn't have a car and getting to the agency took three hours by public transportation. Sometimes I'd make appointments with the caseworker not knowing how to get there. [Somehow] I always found a way to make it to visits with my daughter, even if I had to eat cheap for a week.^[242]

Daniella Serrano, a mother from California, told Human Rights Watch that her best defense against having her parental rights terminated was to establish that she still had a bond with her children, which required paying nearly \$5,000 for a study. Daniella works as a hairdresser and told Human Rights Watch that she had been working to save money for the study when she injured her wrist and had to take time off work:

I had been saving money to pay for this bonding study but now I'm out of work until a doctor says I can go back. I'm using my savings to keep a roof over my head and pay my bills. My only hope now is that they extend court by three months so I can have time to get the money.^[243]

VI. Substance Use as Evidence of Parental Unfitness

Over the last two decades, the number of children who are removed from their families and placed in the foster system due to parental substance use has more than doubled.^[244] Nearly 90,000 children, more than one-third of all removals, were placed in foster homes due to parental substance use in 2019, and an estimated 80 percent of all foster system cases involve allegations that the parent used drugs at some point in time.^[245] In states that criminalize prenatal substance use, infants removed from their home due to parental substance use are less likely to reunify with their parents, especially if they are Black, than children removed for other reasons.^[246]

Not all drug use rises to the level of a substance use disorder, which involves significant impairment and uncontrolled use despite harmful consequences.^[247] Drug use by itself should not necessarily be grounds for removal or even an investigation.

State laws defining substance use as maltreatment are typically broadly phrased, and, along with stringent mandatory reporting requirements, invite unwarranted abuse or neglect reports and may deter parents from seeking treatment.^[248] Parental substance use is too often punished by the child welfare system without determination as to the reason for use, degree of use, or the likely or actual harm to the child. For example, a federal law, the Child Abuse Prevention and Treatment Act of 1974 (CAPTA) requires healthcare providers to notify child protection services any time an infant is born and identified as affected by substance use, regardless of whether the child is adversely affected.^[249] While CAPTA does not require this notification to be categorized as suspected abuse or neglect or mandate that parents are reported—in fact, CAPTA instead allows for the data to be provided in an aggregated and de-identified format—many state laws include parental substance use as an element of child abuse or neglect and effectively require these reports to be treated as maltreatment referrals.^[250] While parental substance use is often alleged as interfering with the ability to parent, research does not support the proposition that use standing alone automatically impairs parenting abilities.^[251]

The Drug Policy Alliance, a New York City-based non-profit organization working to reduce the role of criminalization in drug policy, has noted that, “drug use has become one of the most prevalent allegations in maltreatment investigations.... [and] some studies estimate that over 80 percent of all foster system cases involve caretaker drug allegations at some point in the case.”^[252] Even when a parent was using a substance legally or provided documentation of medical necessity, parents told us that substance use was raised in court and used as a reason to prevent reunification.

Indiscriminate Punishment

Federal legislation requires states to institute policies and procedures to address the needs of substance-exposed infants, including by mandating that healthcare providers report them to child protective services, and address parental substance use related harm or neglect of children.^[253]

As a result, all states include substance use by parents in their child protection statutes, regulations, or policies, with many states incorporating substance use definitions that are broader than those federally required in their child abuse and neglect laws and criminalizing prenatal substance use.^[254] Due to significant variations in state definitions of substance use and reporting requirements, reporting is required in some states for conduct that does not rise to the level of child maltreatment in other states.^[255]

Substance use does not automatically result in the inability to care for children,

but it is one of the most prevalent child maltreatment allegations and is often substantiated using a single drug test, despite the test's inability to establish a substance use disorder.^[256] Further, substance use in many cases is not problematic, and even in cases where it approaches a substance use disorder, there are several steps that can be taken before assuming that a child would be negatively impacted—namely, services for the person who uses drugs.

Andi Mazingo, director at A New Way of Life Reentry Project, talked to us about how drug testing is used against parents in child welfare proceedings. "In California, marijuana use is legal. However, parents in child welfare proceedings are subjected to drug testing routinely, and parents who test positive for marijuana can expect that it will be used to undermine their parental fitness and they will be ordered to undergo rehab."^[257]

Dinah Ortiz, a mother from New York, told Human Rights Watch that she was reported for her drug use without evidence of any harm to her children. Dinah and her children were living in a family shelter:

The staff [at the shelter] had called ACS [New York City's Administration for Children's Services] because of my drug use, although my children were going to school every day, I had food in my house, they reported me. That's the first time ever that I knew anything about them [ACS] and they came knocking on my door and told me that they would remove my children....^[258]

Describing her children as "the air I breathe," Dinah wrote about her seven-year experience under ACS supervision in *Rise Magazine*, a publication by parents who have faced the child welfare system:

I never denied the use of drugs, but I did deny that I was a horrible parent because of it. I felt like the judge who was making monumental decisions about my family should know that my boys always had a meal; I never spent money on drugs that the kids needed; they always had clothes and were kept safe; and I never did drugs around them.^[259]

Intervening at Birth

The immediate and long-term health and developmental impact of prenatal substance exposure is unclear and even what is known shows significant variation in impact depending on factors, including maternal health generally, type of substance, degree of exposure, and other factors.^[260] Yet, 24 states consider substance use during pregnancy to be child abuse under civil child-welfare

statutes, 25 states require healthcare professionals to report suspected prenatal drug use, and 8 states require healthcare professionals to drug test pregnant people suspected of using drugs.^[261]

In some states, hospitals drug test pregnant people without their consent. Nonconsensual prenatal drug testing, which, disproportionately happens to women of color, leads to unnecessary investigations and trauma.^[262] In response to outcry from advocates, the New York City Health and Hospitals Corporation enacted a new policy in September 2020 to end its practice of drug testing pregnant patients without consent. However, some hospitals continue to test and report, and the practice continues.^[263]

Prominent health professionals' organizations oppose moves to equate substance use during pregnancy with child maltreatment. For example, the American Medical Association's 2019 policy opposes both "any efforts to imply that the diagnosis of substance use disorder during pregnancy represents child abuse" and "the removal of infants from their mothers solely based on a single positive prenatal drug screen without appropriate evaluation."^[264] The American College of Obstetricians and Gynecologists (ACOG) states that it "joins every leading medical and public health organization in approaching the problem of drug and alcohol use during pregnancy as a health concern that's best addressed through education, prevention and community-based treatment, not through punitive drug testing and reporting laws or criminal prosecution." ACOG also takes the position that a positive drug test should not be "the sole factor in determining family separation."^[265] Despite these positions, child welfare authorities respond to prenatal substance exposure in some cases by separating infants from their mothers, disrupting mother-infant bonding that occurs through skin-to-skin contact, breastfeeding, swaddling, and time spent together. Experts explain that this early separation is particularly harmful because newborns depend on their mother's physical presence to feel safe. As a result, even a brief disruption causes distress. Research shows early separation is linked to impaired child development and subsequent mental health problems.^[266]

For Maya Lopez, an early home birth resulted in a trip to a California hospital to ensure her newborn son's well-being. While there, the hospital personnel told Maya that the baby was healthy and was not suffering from acute harm, but they still tested him for substance exposure despite his overall healthy appearance. She said:

I gave birth to my second son David [at home]. I wasn't expecting the baby to come, and he came out a month early, but they said he [looked like he] was a full nine months and we were taken to the hospital, and that's where they tested him, and he came out

positive for drugs and that's basically when the whole case opened.
[268]

Maya told Human Rights Watch that both of her children were removed immediately and sent to live with her aunt at first, then moved and placed with stranger foster parents when the caseworker was dissatisfied with Maya's progress and the renovation efforts made by her mother to prepare her home for licensing. Maya's parental rights were eventually terminated without regard to the efforts she was making toward substance use recovery, and her sons were adopted.

Drug tests are not reliable. According to the American Medical Association, "drug testing does not provide any information about pattern of use of drugs, dose of drugs taken, physical dependence on drugs, the presence or absence of a substance use disorder, or about mental or physical impairments that may result from drug use, nor does it provide valid or reliable information about harm or potential risk of harm to children or, by itself, provide indication or proof of child abuse, or neglect or proof of inadequate parenting."^[269]

National Advocates for Pregnant Women, a nonprofit organization focusing particularly on pregnant and parenting women, highlight some harms of clinical drug testing of pregnant women and newborns without informed consent:

Positive toxicology results are too often reported to government officials and used to support criminal and civil child abuse or neglect prosecutions ... while such medical test results should never be used to prosecute women or accuse them of bad parenting, it is particularly concerning that the test results may not even be accurate or reliable. Yet clinical drug testing, without specific informed consent, is used as an excuse to intrude into people's lives with grave consequences, including criminal proceedings and family separation.^[270]

Barriers to Reunification

Parents interviewed for this report described several ways in which drug use was a barrier to reunify with their children.

Some parents said that they were expected to discontinue the medication they were prescribed, even when cessation was not recommended by their provider.

For example, Josephine Cadell, a mother from California, told Human Rights Watch that a false allegation resulted in a child welfare investigation in which she was questioned about her use of a medically indicated opioid pain medication for

a spinal condition. She said:

They wanted me to admit to abusing something that's prescribed to me. I was asked: 'Would you accept saying you have a history of substance abuse?' And I said: 'I don't have a history of substance abuse. Did I take one? Yeah, but I don't have a history of abuse.' [Then they asked me]: 'Will you say that you take a pain medication that could interact with you taking care of a child?' [I responded]: 'No I can't say that either because it actually helps me take care of my child.'^[271]

Josephine told us she complied with the terms of her service plan, attended therapy, domestic violence, and parenting classes, and even stopped taking her prescription medication to satisfy the caseworker. However, she still does not have custody of her son.

Parents in recovery and undergoing treatment for substance use disorders said their medically indicated treatment plans were used as evidence that they were unfit.

Daniel Carter, whose six children were removed from his care in West Virginia, told Human Rights Watch that although CPS did not suggest any drug-related concerns at the time of removal, Daniel and his wife were ordered to undergo random and routine drug testing due to their history of past substance use. They had been in recovery for many years and on buprenorphine treatment under medical supervision for which they had submitted medical documentation to the court. Daniel said: "I'm on buprenorphine, but I take it like I'm directed. I've never failed a drug test."^[272] In court records reviewed by Human Rights Watch, CPS alleged that their use of buprenorphine "impaired their judgment and proper parenting skills."

Claire Bailey, a grandmother from West Virginia who had guardianship over five grandchildren, told Human Rights Watch that when she was investigated by child protective services, her history of substance use resulted in her being subjected to random drug tests despite telling the caseworker she was on suboxone as part of her recovery and would test positive. She told us the positive result was still used as evidence of neglect:

My caseworker told me I need to stop taking suboxone and go to rehab if I want my grandchildren back. Even though my doctor said I should [continue taking the medication], I stopped taking it.^[273]

Claire was still not allowed to reunify and told Human Rights Watch that her grandchildren were adopted despite there being no formal termination of parental rights proceedings. She finds herself constantly looking for them [and] hopes they will one day find their way back to her.

Substance use disorder (SUD) treatment is notoriously unavailable, prohibitively expensive, challenging to access, and varies in quality. However, when parents struggle to access these scarce services and come up short, they are often labeled as "non-compliant." This "non-compliance" then becomes a basis for a finding of parental unfitness and is used to justify termination of parental rights.^[274] In addition, for parents of younger children and for parents perceived to be non-compliant, many states reduce the time parents have to reunify with their children.^[275]

Undermining Substance Use Recovery

Our research shows that child welfare involvement undermined substance use recovery in some cases. Parents told us that their children were their reason to live, and once taken from them, some resorted to harmful drug use.

For example, Allison Turner, a grandmother from West Virginia, talked to Human Rights Watch about the devastating impact of losing her grandchildren to West Virginia child protective services. Her adult son, Luke, and three grandchildren were living with her when an abuse allegation led to an investigation and the children's removal. She told us that CPS informed them it was because her son allowed his children to stay overnight with their mother who did not have any custodial rights:

When they took his children away, it destroyed my son. He was occasionally using marijuana before but after he lost his children, that's when it got worse.... That's when he turned to meth. I'm not making excuses for him, but when people are in pain they turn to drugs, and once you get started, that's hard to come off of.^[276]

Luke had his parental rights terminated, lost his appeal, his children were adopted, and he was incarcerated on drug-related charges. Allison Turner has no contact with her grandchildren and is fighting to assert her rights as a grandparent.

Similarly, as detailed above, parents who are in recovery and taking medications like suboxone told us that their treatment was held against them, despite providing documentation regarding medical necessity and provider statements that it did not interfere with their parenting.^[277] In some cases, parents said caseworkers told them to stop taking medication.^[278] In cases where parents

complied and discontinued medication, past use was still used against them and judges and caseworkers questioned their ability to parent.^[279] Parents with a history of substance use told us they were subjected to random drug tests more frequently than parents without such history, causing unplanned disruptions that made it difficult for them to maintain employment, as those who were selected to drug test were often notified the same day and required to travel to designated testing sites within a few hours.

These factors together compromised recovery and weakened and destabilized families.

VII. Punishing Poverty

Child welfare system interventions too often unnecessarily disrupt family integrity and cause harm to the very children they aim to protect.^[280]

Despite recognizing that access to resources and social supports are protective factors that may prevent unintended neglect and protect children and be in their "best interests," the child welfare system invests nearly 10 times more on the foster system than on services that would support families in reunifying with their children.^[281]

System interventions also fail to adequately address the needs of the family, and in some cases exacerbate the problems that they intend to remedy.

Families we interviewed described how system involvement exacerbated poverty and economic hardship. As discussed in the previous section, some parents also said child welfare requirements or expectations interfered with their recovery from a substance use disorder.

Exacerbating Poverty

Economic insecurity can adversely impact a family's overall well-being. For example, loss and reduction of income and an increase in material hardships can place pressure on caregivers that can negatively affect familial relationships.^[282] However, current child welfare system interventions do not effectively address these factors, strengthen families, or protect children's health.^[283] In some cases,

child welfare involvement exacerbates financial hardships, with some states requiring families with children in the foster system to pay child support.^[284]

Parents we interviewed said they were assigned services as part of their reunification plan without an assessment of their actual needs or whether the services met those needs. Where there were circumstances to remedy, such as inadequate housing or employment instability, parents said they were not connected to resources to address those needs, such as housing or cash assistance. "Services provided by systems are not audited for effectiveness. This means while the system can check off a box and confirm they connected a parent or child to services, there is no accountability to ensure the overall issue is being addressed and improved," explained Allison Mahoney, a senior staff attorney at A Better Childhood, a nongovernmental organization in New York.^[285]

Some parents told us that fulfilling the system's requirements, such as random drug testing or counseling sessions that are only available during normal work hours, interfered with their ability to secure and maintain employment, in turn jeopardizing their economic stability and their housing.

John Allen, a father from California, told us:

It's been difficult because a lot of the times they were expecting us to attend counseling sessions sometime between Monday and Friday, sometime between 10:00 a.m. and 4:00 p.m. My wife worked at a school. I've been in property management. Where are we supposed to find the time for this? Employers [get upset] if I have to take a day off every single week so that I can go and attend these sessions.^[286]

Lily Gonzalez, a mother from California, told Human Rights Watch that her three children were removed from her care due to substance use allegations. She enrolled in a substance use treatment program where she was routinely tested. She also had to comply with additional testing required by her caseworker even though she tried to explain the burden this requirement placed on her:

I told the caseworker I'm going to lose my job. I can't keep leaving for random tests when the facility already tests me. They can just get the results. I always comply, but the caseworker told me that he would have to look into it, and I should keep testing.^[287]

Lily said she had to continue testing and lost her job as a result. She still does not have custody of her children.

Losing Benefits

Many parents experienced a reduction in the benefits they received after their children were removed. Some families were downgraded or removed from housing waiting lists because they no longer fulfilled the family requirement. This exacerbated family poverty, making it harder for parents to reunify with their children.

Visitation, court dates, services, family team conferences, and other meetings all require the family to take time and spend money to interact with the child welfare agency. Judges and caseworkers perceive a parent's failure to fulfill any requirements as a lack of commitment to reunify. Some parents told us that the agency would provide them with a single-use bus transportation card once they arrived at the agency for an appointment or service, but this required the parent to have sufficient means to get to the agency in the first place. Despite advocating to caseworkers, parents received no additional support.

Maya Lopez, a 28-year-old mother of two boys from California, told us that she relied on her mother's availability or used public transportation to get to visitation with her sons and attend services, while fulfilling her responsibilities as a full-time caretaker for her sick grandmother. She told us that any money she had went toward covering expenses and in preparation for the in-person visits.

The visitations rooms were so bare [at DCFS], there was a table and four chairs and very few toys. So, I would purchase toys and load them up in a large bag and bring it with me to my visits.

Without reimbursement for transportation, and without the mobility and flexibility to meet the children frequently, she could feel them getting distant, and mourned her inability to do anything about it. Maya became audibly overwhelmed with grief as she spoke:

We started meeting through video calls or phone calls that would be arranged through the foster mother, but it was difficult to connect that way and my son Mason refused to get on a call one day, and the foster mother encouraged him to say 'hello,' but he said, 'I don't want to talk to Maya.' He had never called me by name before, and the foster mom noticed and told him, 'Don't say Maya, that's mama,' and he refused to listen and said, 'No I don't want to talk to Maya,' and ran away.^[288]

In some states we focused on for this report, parents can also be required to contribute to the cost of their children's stay in a foster home. For instance, Stella

and Austin Murphy, parents from Oklahoma whose children were removed from them two-and-a-half years ago, told Human Rights Watch that their wages have been garnished to cover child support costs.^[289]

Foster parents who adopt children from the foster system are entitled to monthly payments ranging from \$500 to \$750 per child until the child turns 18.^[290] In some cases, families also receive health insurance for the child until they reach adulthood.^[291] Financial support and health insurance coverage help to strengthen the foster family.^[292] If such benefits were offered to the family prior to removal of the children, it could have a similarly positive effect.

Even when cases are closed and parents can reunite with their children, the system does not provide support after discharge. Many parents are left to address the trauma they and their children experienced on their own.^[293] Due to inadequate infrastructure and resource unavailability, as well as a lack of investment in the community, there are minimal post-reunification supports available for parents.

Sixto Cancel, CEO and founder of non-profit Think of Us, an organization led by former foster youth that is working to transform the child welfare system, said:

What we need is a system where people who are dealing with poverty issues get the support to be able to have the breathing room to meet their basic needs and learn whatever they need to learn in order to be self-sufficient. And sometimes that means uptraining, skill training, retraining, whatever it might be, and children need to be in a family setting where they can get the support and the healing that they need and to be able to also develop at the same time ... and so we need a system that is able to create the conditions for people to get the support that they need to heal, develop and really be positioned to thrive.^[294]

Unjust Systems Converge

Criminalization of parental substance use, and defining it as child maltreatment, increases related arrests and incarceration, disproportionately impacting people of color.^[295] The dual punishments meted out by the child welfare and criminal legal systems, along with federal investments in carceral systems and cuts in funding for social services, result in a disproportionate number of children being removed from their parents due to substance use, and parental rights being terminated at a higher rate due to lengthy incarceration periods and prolonged disruption in the parent-child bond exceeding the 15 to 22 month timeframes established by the Adoption and Safe Families Act [ASFA].^[296]

Incarcerated parents face infringement of their parental rights at a higher rate, with every step bringing them closer to termination of parental rights. Parents who are

incarcerated are impaired in their abilities to bond with the child. Regular contact between parents and children is necessary to ensure stability for both parent and child.^[297]

When a parent is incarcerated, there is inadequate support to help maintain the parent-child relationship, including by involving the parent more regularly in their children's lives. Incarcerated parents rarely receive support to help them advocate for leniency to keep the family together.

Instead, as a 2018 joint Human Rights Watch and ACLU report found, the criminal legal system's pretrial jailing of mothers, along with child welfare system involvement, exacerbates the instability that detained mothers and their children already face, expedites the termination of parental rights, and severs family ties, resulting in worse outcomes for families and extreme trauma, without support.^[298]

Impact on Children, Intergenerational Harms

Racial disparities in the US child welfare system, along with the prerequisites for reunification and impact to children and families, exacerbate socioeconomic and racial inequities.

Children who are removed from their homes experience poorer outcomes compared to their peers who do not experience system involvement. Specifically, they are more likely to be incarcerated;^[299] become teen mothers;^[300] experience poor outcomes related to cognitive development,^[301] education,^[302] and employment;^[303] and have a higher likelihood of having mental health conditions and substance use disorders.^[304]

A foster system alumni study that interviewed adults who were formerly in the foster system found that 54.4 percent of them had at least one mental health disorder, 20 percent experienced major depression, and 25 percent of them had post-traumatic stress disorder (PTSD).^[305]

Around 50,000 children are adopted from the foster system every year, but more than twice as many remain in foster homes waiting to be adopted. In 2019, more than 122,000 children were waiting to be adopted, many of whom had on average been in the foster system for more than two-and-a-half years.^[306]

More than half were children with no legal family because their parents' rights had been terminated and they were not in contact with or placed with kin. Only 18 percent of these children were placed with a family that would adopt them, referred to as a pre-adoptive home.^[307]

In fact, of children awaiting adoption and whose parents' rights had been terminated, one in ten was living in a group home or a more restrictive institutional setting.^[308] Nationally, about half the children awaiting adoption

were in a non-relative foster home. In some states, the proportion is much higher. In West Virginia, for example, three out of four children were living in a non-relative foster home.^[309]

There is also substantial state level variation in placement of children whose parents' rights have been terminated. In New York, 52 percent of children awaiting adoption with parental rights terminated were placed with a pre-adoptive family. In West Virginia, only 5 percent were.^[310]

More than 20,000 youth leave the foster system every year without family connections or supportive networks simply because they "age out."

This happens when child welfare authorities failed to help children achieve permanency through reunification with their family or by adoption, and state child welfare laws do not permit agencies to retain custody of young adults.^[311] In 2019, about 15 percent of the young people who aged out of foster systems had parents whose parental rights had been terminated.

Foster youth who age out disproportionately experience high rates of homelessness,^[312] incarceration, unemployment, and lack of access to health care,^[313] resulting in great personal and emotional costs, as well as billions in societal costs.^[314]

A study on the transition process for youth aging out of the foster system found that all foster youth experienced trauma, initially either at home or because they were removed from their home, and then additional trauma while in the foster system.^[315] In lieu of receiving a stable and nurturing environment to address their emotional needs, youth reported that they were more likely to be medicated instead. The study also found that despite funding, programming, and services offered by the child welfare system to prepare youth to transition out of care, youth felt unsupported in their goals and ill-prepared for adult life.

Lastly, youth transition out of care with fewer people who are sources of support than at entry, in part because the child welfare system does not invest time in cultivating or maintaining relationships with supportive adults who cannot provide permanency or a placement for the youth. As a result, youth age out of care with limited connections and experience poor health, education, housing, and employment outcomes that could be mitigated by guidance and care from a strong, consistent support network.^[316]

The child welfare system's interventions and disparate impacts help entrench these inequities in marginalized communities. These poor outcomes result in intergenerational child welfare involvement.^[317]

VIII. Due Process Concerns

I wish this happened in criminal court. I've been through the criminal justice system, and I know there are a lot of issues there but at least we would get a jury trial.

—Noah Griffin, parent, California, October 14, 2021

Child welfare involvement can have profound consequences. Reports and investigations can lead to family separation with children removed from their parents; parents charged with child maltreatment and placed on a state registry, adversely affecting their chances of getting and keeping jobs; parents facing criminal charges for statements made to an investigator or alleged mistreatment of their children; and in the most devastating cases, termination of parental rights.

Parents facing these grave outcomes need reliable information and consistent legal support. However, parents have fewer due process protections in child welfare cases than defendants or accused individuals in the criminal legal system.

Our research highlighted a range of due process concerns: lack of information on rights; caseworker's conflicting responsibilities; problems with legal representation and support; lack of transparency; and far-reaching consequences of being placed on child abuse and neglect registries.

Lack of Information on Rights

Most parents experience the early stages of child welfare intervention, sometimes referred to as pre-petition interventions, without legal representation or support and unaware of their rights and how they can assert them.^[318]

Impacted parents described their experiences navigating a confusing and opaque system that felt like it was stacked against them. Most parents said they did not know that the caseworker who appeared at their door was an investigator with authority to remove their children, nor did they know their rights. Many said they wished they had never opened the door.

Lucy Sawyer, an Oklahoma mother of two children, spoke of the long-term consequences of her confusion and struggle to assert her rights when the child protective services investigation was underway. Lucy told us that during a contentious custody battle with her ex-husband, she faced allegations that she failed to protect her two sons from abuse and domestic violence. She said the process gave her no meaningful opportunity to respond:

A caseworker came with a safety plan to move my youngest son out of my home to a friend's house for a few nights until a forensic interview was done on both my sons, but she couldn't tell me what I was being investigated for. The worker didn't talk to me about concerns. She came to my house and did a final interview and saw my sons' bedrooms and that's all she asked to see ... I didn't even know what I was being accused of until the end when they already said it was substantiated and I received a letter in the mail.^[319]

Lucy has not seen or talked to her sons in almost two years. They reside with her ex-husband, who prevents all contact and communication. She told Human Rights Watch that she cannot afford an attorney to help her with her case.

Child welfare investigations can involve interviews with parents where they do not have the same protection that they would receive in a criminal investigation.

Chris Martin, a civil rights and former parents' attorney in California, explained: "Parents don't know that the social worker is an adverse party when CPS shows up to the door. This results in them making incriminating statements without realizing the ramifications and/or their rights."^[320]

Caseworkers' Conflicting Responsibilities

The caseworker assigned to parents by the child welfare agency serves a dual role as supporter and investigator.^[321] Chris Gottlieb, a law professor and child welfare expert at New York University, said these combined responsibilities creates a conflict of interest:

Social workers play a dual role with opposing goals —they are expected to support the same parents they are charged with investigating and prosecuting. That creates a conflict that is not resolvable. If we want social workers to actually be helpful to families, the roles must be separated.^[322]

Some states and counties have taken steps to try to address this conflict. For example, New York has hired parent advocates who have experienced child

welfare involvement to support parents through their child welfare cases.^[323]

Even so, parent advocates in New York City told Human Rights Watch that they were limited in the ways they could help parents. They are employees of the same agency investigating the parents. Some parent advocates said they were tasked with documenting parents' failures and shortcomings to help the agency build a case against them. This undermined their ability to build trust and advocate for reunification.^[324]

Parent advocates who worked externally and were not employed by the child welfare agencies told us they had more autonomy and the ability to support families. They also had the ability to hold the agency accountable for any missteps with the family.^[325]

Parents interviewed for this report felt they lacked support and lived in constant fear of caseworker retaliation.^[326] We also heard several accounts of parents who believed they had been retaliated against when they tried to assert their rights, raise concerns, and advocate for themselves or their children. As a result, despite their anger and distress at being separated from their children, parents said they were afraid of showing any reaction or emotion for fear that it would be misinterpreted, and in turn negatively impact the likelihood of reunifying with their children.^[327]

Inadequate Legal Protections

The US Supreme Court has recognized the right of parents to raise their children as a fundamental right protected by the US Constitution.^[328] Nevertheless, parents in child welfare proceedings do not have a constitutional right to legal counsel.^[329] In addition, family courts provide limited procedural protections despite the high stakes parents face in child welfare cases.^[330]

Some states appoint a lawyer to indigent parents before the court can remove a child from a parent; others delay the appointment until the termination of parental rights stage; and some courts allow the termination of parental rights without ever appointing legal counsel for the parents.^[331]

Once the child is in an out-of-home placement in the foster system, many states provide legal representation to parents who cannot afford one. For example, New York and West Virginia provide a right to legal counsel for parents and caregivers in all child welfare proceedings, but even in New York, parents are not entitled to representation during the pivotal investigation phase before a petition is filed.^[332] Oklahoma provides a right to legal counsel in all child welfare proceedings except for the emergency hearing stage.^[333] In California, the right to counsel only applies

once a child is removed from their parent's custody, or a foster agency is recommending that the child be removed.^[334]

Even in states where legal counsel is appointed, parent attorneys are frequently underpaid and have high caseloads, which can adversely affect their ability to provide parents with quality representation.^[335] Parents told Human Rights Watch that their attorneys were overworked and, in some cases, only spoke with them for a few minutes before each hearing. Some attorneys appeared to be unable or unwilling to zealously advocate for their clients' parental rights.^[336] Civil rights attorney Wallace Pate said that in California:

Many parents report they didn't even have the opportunity to cross-examine the social worker. They didn't waive the right to do so, and their attorneys didn't even tell them what their rights were.
^[337]

Consequences of Being Placed on a Registry

Every year, more than 600,000 allegations of child maltreatment are substantiated by child welfare officials, many without judicial oversight.^[338] The parents are identified as "perpetrators" and listed on state child maltreatment registries for years or decades.^[339]

In some cases, parents are placed on the registry even if the investigation found no evidence of neglect or abuse. For example, unsubstantiated reports should not remain on the Child Abuse Central Index in California.^[340] However, that was not the experience of Hannah Garcia, a mother from California and an advocate for families impacted by the child welfare system. After the allegations against her were found to be unsubstantiated, she went through a lengthy process to have her name removed from California's Child Abuse and Neglect registry. More than 10 years later, she found out that her name was still on the registry when she tried to become a foster parent for a close family friend. She said:

The agency told me I couldn't have the children live with me because I was listed as a child abuser even though I told them [about my past] and gave them everything [pertaining to the previous case].^[341]

The licensing agency denied her application, forcing her to go through another lengthy process to demonstrate that she had been cleared of the charges. She was ultimately able to provide a foster home for the family friend, but her name

remains on the registry despite her efforts to clear her record.^[342]

In most states, placement on the registry often results in denial of employment and precludes parents from becoming foster parents. These registries are used by employers for background checks across a broad range of fields related to childcare, health care, and education. Women experiencing poverty, especially women of color, are disproportionately impacted because they are more likely to be overrepresented in child welfare investigations and because they occupy a significant share of care-related jobs.^[343]

Women of color are also more likely to experience financial and emotional pressures that are further exacerbated by the barriers to obtaining or maintaining employment due to inclusion on the registry, even after the maltreatment charges are dismissed.^[344] This, in turn, may prevent families from becoming stable and may increase risk of child maltreatment, perpetuating a vicious cycle.^[345]

John Allen, a father and social worker from California, was charged with failure to protect when his daughter reported to a teacher that her older brother was sexually abusing her. John said he did not know about the abuse and would have intervened if he had. He continued:

The judge ordered me to complete parenting classes and therapeutic support sessions that I taught as a social worker, so I told my caseworker that, and ... told him not to refer me there [to the organization I was employed with], but he referred me anyway, and of course as soon as they [my employer] got the referral, I was fired immediately.

John told us his placement on the registry prevents him from working as a social worker for an employer as long as he remains on it.

As soon as they saw my referral show up on their desks, that was it.... They dropped me like a hot rock, and that was after seven years of working with them as a professional counselor. Seven years' worth of working with this group and gone.

John told us he had to take on private clients, which were hard to come by, to make ends meet, and that his career was over as he knew it.^[346]

Reforming the Registry

In 2020, New York State enacted registry reforms that aim to mitigate the collateral

consequences to parents that result from being on the state's child abuse and neglect registry.

Under the revised law, CPS must prove by "a fair preponderance of the evidence" that abuse or neglect actually occurred before a parent is listed on the database. Previously, the law required only "some credible evidence" of abuse or neglect, a lower evidentiary threshold, to list a parent on the database. New York City's Administration for Children's Services applauded this change to the law as being "fairer" and one that "will help address some of the implicit biases seen in the child welfare system."^[347]

For cases of neglect, the length of time a parent is on the registry is reduced from up to 28 years to 8 years, limiting the time an employer would have access to this data.^[348]

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IX. International Human Rights Law and United States Law

This report describes a range of abuses that violate rights guaranteed under international human rights law and United States law.

Child Rights and Family Separation

Under the International Covenant on Civil and Political Rights, 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."^[349] Families are "entitled to protection by society and the State."^[350]

The Convention on the Rights of the Child, which the United States has signed but not ratified, details the measures of protection for children that states should provide. Protection should extend to "all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child."^[351]

Measures to protect children from abuse or maltreatment should include "social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement."^[352]

The convention establishes that the best interests of the child should be a primary consideration in all actions concerning children,^[353] and requires states to ensure that "a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child."^[354]

The convention also calls on states to provide "appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities" and to ensure "the development of institutions, facilities and services for the care of children."^[355]

The UN Committee on the Rights of the Child, which monitors the implementation of the Convention on the Rights of the Child, has stressed that family separation should be "a last resort":

Given the gravity of the impact on the child of separation from his or her parents, such separation should only occur as a last resort measure, as when the child is in danger of experiencing imminent harm or when otherwise necessary; separation should not take place if less intrusive measures could protect the child.^[356]

The committee has made clear that poverty does not justify separating children from their parents, observing, "Before resorting to separation, the State should provide support to the parents in assuming their parental responsibilities, and restore or enhance the family's capacity to take care of the child, unless separation is necessary to protect the child. Economic reasons cannot be a justification for separating a child from his or her parents."^[357]

The United Nations Guidelines for the Alternative Care of Children, adopted by the UN General Assembly in 2010, establish standards for the protection of children deprived of family care. The guidelines state: "Removal of a child from the care of the family should be seen as a measure of last resort and should, whenever possible, be temporary and for the shortest possible duration."^[358]

They also specify: "Financial and material poverty, or conditions directly and uniquely imputable to such poverty, should never be the only justification for the removal of a child from parental care ... but should be seen as a signal for the need to provide appropriate support to the family."^[359] The guidelines encourage family-based care whenever possible, including extended family (kinship) care, foster homes, or other forms of family-based or family-like care.^[360]

When children are outside of their family environment—temporarily or permanently—they are entitled to special care and protection from the state.^[361]

Right to Family and Privacy, Protection Against Arbitrary or Unlawful Interference

The International Covenant on Civil and Political Rights (ICCPR), which the United States has ratified, 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.^[362] International law protects everyone, including children, from arbitrary interference in the family or home.^[363]

The Convention on the Rights of the Child expressly recognizes that children have the right as far as possible to “know and be cared for” by their parents; the right to preserve their family relations; the right, if separated from one or both parents, “to maintain personal relations and direct contact with both parents on a regular basis” unless contrary to their best interests, and it establishes the principle that both parents have joint responsibility for caring for their children, with appropriate support by the state.^[364]

As a fundamental principle of international human rights law, restrictions on human rights are permissible only if they are necessary to serve a legitimate public interest and proportionate to that interest.^[365]

The United States recognizes familial association rights as fundamental and constitutionally protected by the First Amendment.^[366] These rights, along with the right to family integrity protected by the Due Process and Equal Protection Clauses of the Fourteenth Amendment and the Ninth Amendment, protect familial relationships from unwarranted government intrusion.

The US Supreme Court has recognized that parents are presumptively fit and act in the best interest of their children.^[367] Parents and children are deemed to share a vital interest in maintaining the familial relationship until and unless the state establishes parental unfitness. The Supreme Court has further established parents’ fundamental liberty to raise children without unjustified government interference.^[368]

Right to Equal Protection

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, along with the Fourteenth Amendment of the US Constitution, guarantee the right to equal treatment and protection under law, without discrimination along race, gender, and other lines.^[369] Title VI of the Civil Rights Act of 1964 further prohibits

discrimination in any program receiving federal financial assistance, which includes the US child welfare system.^[370]

US constitutional law requires a finding of discriminatory intent before courts will rule unconstitutional discriminatory practices that disproportionately burden a racial group.^[371] ICERD goes further, prohibiting policies and practices that have either the purpose or effect of restricting rights on the basis of race.^[372] It proscribes apparently race-neutral practices that affect fundamental rights—for example, the right to liberty—regardless of racist intent, if those practices create unwarranted racial disparities.

The Committee on the Elimination of Racial Discrimination, which interprets 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 is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary.”^[373]

Under the ICERD, governments may not ignore the need to secure equal treatment of all racial and ethnic groups, but rather must act affirmatively to prevent or end policies with unjustified discriminatory impacts.^[374] Governments are obligated to “prohibit and eliminate racial discrimination ... notably in the enjoyment of ... the right to equal treatment before the tribunals and all other organs administering justice.”^[375]

The Committee on the Elimination of Racial Discrimination commented specifically on racial discrimination in the US child welfare system in its 2022 concluding observations on the US. 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.”^[376]

The Convention on the Rights of the Child prohibits racial and socioeconomic discrimination, including when making determinations as to the child’s best

interests.^[377]

In addition to protecting from racial discrimination, international law requires states to protect from discrimination based on economic status. The International Covenant on Economic, Social and Cultural Rights (ICESCR), which was signed but not ratified by the United States, requires governments to ensure that a person's economic status does not have the consequence of "nullifying or impairing the recognition, enjoyment or exercise by all persons, on an equal footing, of all rights and freedoms."^[378]

The UN special rapporteur on contemporary forms of racism noted in 2009 that "the overlap between poverty and race in the United States" leads to "a vicious cycle of marginalization and exclusion of minorities."^[379] The special rapporteur also noted that the socioeconomic marginalization of racial and ethnic minorities "is a direct legacy of the past, in particular slavery, segregation, the forcible resettlement of Native Americans, which was confronted by the United States during the civil rights movement. However, whereas the country managed to establish equal treatment and non-discrimination in its laws, it has yet to redress the socio-economic consequences of the historical legacy of racism."^[380]

Rights to Equality Before Courts and a Fair Trial

The ICCPR and the Fifth, Sixth, and Fourteenth Amendments to the US Constitution require fair trials.^[381] The ICCPR provides that anyone facing "the determination ... of his rights and obligations in a suit at law" is entitled to a fair hearing.^[382] The US Supreme Court has held that, while child welfare proceedings need not provide the same fair trial protections as criminal proceedings, parents must be accorded due process of law where the state seeks to interfere with their fundamental right to parent.^[383]

The US Supreme Court further held that states must demonstrate that a parent is unfit before placing their child in the foster system, and in cases where states "move to destroy weakened familial bonds, [termination of parental rights proceedings] [states] must provide the parents with fundamentally fair procedures."^[384]

Right to an Adequate Standard of Living

The Universal Declaration of Human Rights reaffirms the right of everyone "to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social

services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.”^[385]

The ICESCR restates this right and requires ratifying states to strive to ensure that all their residents have adequate housing and to take “appropriate steps to ensure the realization of this right.”^[386] This includes their obligation to avoid policies and practices that predictably increase homelessness.^[387]

Raquel Rolnik, UN special rapporteur on the right to adequate housing, expressed her “deep concern about the millions of people living in the United States today who face serious challenges in accessing affordable and adequate housing, issues long faced by the poorest people and today affecting a greater proportion of society,” in part due to “federal funding for low-income housing [which] has been cut over the past decades, leading to a reduced stock and quality of subsidized housing.”^[388]

Right to Health

The ICESCR provides that everyone has the right to “the highest attainable standard of physical and mental health.”^[389] The UN Committee on Economic, Social and Cultural Rights, which monitors state compliance with the covenant, has stated that, “The right to health is closely related to and dependent upon the realization of other human rights, as contained in the International Bill of Rights, including the rights to food, housing, [and] work[.]”^[390]

The International Guidelines on Human Rights and Drug Policy recognizes that the right to the highest attainable standard of health applies equally in the context of drug laws, policies, and practices.^[391] The guidelines require that States: “Address the social and economic determinants that support or hinder positive health outcomes related to drug use, including stigma and discrimination of various kinds, such as against people who use drugs,” and “ensure that demand reduction measures implemented to prevent drug use are based on evidence and compliant with human rights.”^[392]

The guidelines further recognize the right to a fair trial and privacy equally apply to people who use drugs and requires states to “guarantee to all persons accused of drug-related offences the right to a fair and public hearing, without undue delay, by a competent, independent, and impartial tribunal established by law, and further guarantee that all such persons will be presumed innocent until proven guilty according to the law,” and “adopt legislative, administrative, and other measures to prevent arbitrary and unlawful interference with the privacy, family life, home, and correspondence of people who use drugs,” respectively.^[393]

The guidelines also provide for children's right to care and protection necessary for their well-being where the child's parents use drugs or are drug dependent. In addition to requiring that the best interests of the child be the primary consideration in child welfare decisions, the guidelines prohibit states from using parental drug use or dependency as the sole justification for removing children or preventing reunification.^[394]

States are required to direct their efforts "primarily toward enabling the child to remain in or return to the care of their parents, including by assisting drug-dependent parents in carrying out their childcare responsibilities" and where parental rights must be limited to fulfill a drug-control obligation, the State has the burden of justifying that the limitation is necessary and proportionate.^[395]

The US child welfare system's practices are inconsistent with these standards. We have documented the system's reliance on parental drug use as evidence in child welfare investigations to justify removing children and as barriers to reunification, failure to provide evidence-based and adequate treatment for substance use disorder, including Medication-Assisted Treatment where appropriate, and imposition of punishment for relapse (given that substance use disorder is chronic and relapsing).

In addition, Human Rights Watch and the ACLU have taken the position that criminalizing drug use and possession for personal use violates international human rights standards on privacy and basic principles of autonomy that underlie all rights and is per se a disproportionate response.^[396] Accordingly, personal drug use and possession for personal use alone should not trigger child welfare system interventions.

X. Conclusion

The harms caused by the child welfare system are so severe that calls for a long-term reduction in the system's footprint and a reimagining of a non-coercive, rights-respecting child protection approach are needed.

A meaningful solution requires addressing the economic hardship and systemic racism at the heart of many child welfare cases.

To remedy the more immediate harms of child welfare system overreach and

failures, Human Rights Watch and the American Civil Liberties Union call on federal, state, and local governments to adopt the following reforms to reduce the harmful impact of child welfare interventions and strengthen and support families and communities to combat child maltreatment.

Recommendations

To Federal, State, and Local Governments

- **Hold public hearings**, including congressional hearings, to hear from families affected by the child welfare system.
- **Adequately fund critical social safety nets** for the lowest income and most marginalized households.
- **Adequately fund 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.
- **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.
- **Narrow the definition of child abuse and neglect.** 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.
- **Eliminate mandatory reporting requirements.** Replace universal, centralized, and anonymous mandatory reporting with permissive, confidential, and decentralized reporting; give reporters and responding agencies the option to refer families directly to services in lieu of the government child welfare agency; and maintain records about the administration of this direct referral process separate from agencies responsible for investigating and evaluating allegations of child abuse or neglect.
- **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.

- **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.
- **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.
- **Acknowledge and meaningfully address institutionalized racism and settler colonialism in child welfare policy and practices.** Governments at all levels should commit to data transparency to support independent assessment of the disparities and disproportionalities in the child welfare system. Specifically:
 - **Improve data collection at federal, state, and local levels.** 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.
 - **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.
 - **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.

To the US Congress

- **Require states to engage in active efforts to maintain family unity.** Replace existing obligations to provide "reasonable efforts" with clearly defined "active efforts" to avoid family separation and/or achieve reunification. Create means for parents to seek judicial enforcement of the "active efforts" obligation. Specifically:

- For parents experiencing child-welfare involvement due to correlating factors of poverty, require child welfare agencies to meaningfully assess and address parents' needs, including the provision of financial support for transportation and costs associated with visitation, court hearings, mandated services, and other meetings.
- For child-welfare-involved parents with problematic substance use, require child welfare agencies to ensure parents have unimpeded access to non-coercive, evidence-based, quality substance use disorder treatment, allowing for adequate time for relapse, without using parents' drug treatment plans against them in child welfare proceedings.
- **Curb unnecessary modification/termination of parental rights.** Eliminate ASFA'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. As a condition of federal funding, prohibit involuntary termination of parental rights unless the child has been in care for 24 consecutive months and require proof that separation is necessary to protect child from imminent risk of serious harm. Create exceptions to or suspension of the timeline for, at minimum, duration of incarceration/detention of the parent and public health emergencies.
- **Update the poverty guidelines** to implement a relative poverty measure that accurately reflects the needs of families living in poverty and provides them with necessary resources.

To the US Department of Health and Human Services

- **Work with state and tribal agencies** to eliminate reporting discrepancies among states. For neglect cases, require disaggregated reporting of specific circumstances (such as housing or substance use) that warrant initial or ongoing child welfare interventions, as well as reporting of county-level geographic identifiers. Revise section 1355.44 and other applicable sections of the Adoption and Foster Care Analysis and Reporting System (AFCARS) regulations as necessary.

To State Legislatures and Governors

- **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, and to deny employers the right to access the registry.

- **Enact legislation to build on, enhance, and protect the minimum requirements of the Indian Child Welfare Act**, including ensuring full access for Tribes in proceedings, establish State-Tribal Compacts or define government-to-government consultation processes, recognize tribal customary adoptions, and create State-Tribal forums for enhanced communication and decision making.

To County Child Welfare Agencies and Officials

- **Require enhanced training** for family-serving providers, including child welfare staff and any mandated reporters, on differentiating between poverty-related neglect and child endangerment, and establish a service and support referral process for mandatory reporters in lieu of child welfare referrals where appropriate. Include trainings for agency staff provided by tribal or urban Indian organizations on cultural competency and the specific requirements of state-specific or federal Indian Child Welfare Act law(s).
- **Meaningfully and successfully link families to public benefit programs**, housing programs, employment resources, financial planning resources, and other measures to address a family's needs.
- **Prioritize referrals for parents to supportive, non-coercive services** focused on harm reduction for substance use disorders and related chronic care management, including children's services for those most affected by their parents' substance abuse, de-linked from the child welfare system.

To Family, Juvenile, and Dependency Judges, and Courts

To the extent permitted by law and by limits on the appropriate exercise of discretion:

- **Ensure sufficient notice** and issue court orders to the child welfare agency to arrange transportation for parents to custody or juvenile court hearings.
- **Ensure family separation is only used as a last resort**, or where actual or imminent harm to a child is established with clear and convincing evidence. Consider trauma associated with disrupting a child's attachment to their families and their communities, as well as the potential for long-term impact on that child's development and life trajectory.
 - In cases where substance use is alleged as a basis for neglect, assess

whether parents' or caregivers' substance use actively interferes with their ability to provide for their child and results in demonstrated harm or clearly risks imminent harm to the child.

- Where it does not, dismiss the proceedings and ensure the expeditious reunification of a family if they are separated.
- Where it does, prioritize court ordering referrals for parents to supportive, non-coercive services focused on harm reduction for substance use disorders and related chronic care management, including children's services for those most affected by their parents' substance abuse, de-linked from the child welfare system.
- Consider poverty-related barriers to accessing services for parents and its effect on child welfare reunification plan compliance prior to every child welfare decision.
 - Assess and establish the necessity, adequacy, and appropriateness of recommended services and programs and inquire into a parent's ability to access and pay for them prior to inclusion in a child welfare service plan.
- **Conduct a meaningful review of the agency's efforts to preserve and sustain families** to avoid removal and support reunification, including but not limited to the provision of food, safe and affordable housing, medical care, substance abuse and mental health treatment, as well as whether the agency has meaningfully linked families to public benefit programs to address their needs.
- **Regularly collect and publish data that can be disaggregated** (by gender, race, and ethnicity) on court decisions related to child welfare, including temporary removals, termination of parental rights, the number of children in child welfare custody by maltreatment type, poverty-related barriers to reunification, and substance use factors in all child welfare hearings, including barriers to accessing and remaining enrolled in treatment.
- **Create State-Tribal court forums** in which representatives of each court system can meet regularly to discuss legal, inter-jurisdictional cooperation, and court procedural issues and engage in joint decision making.

To the United Nations and the Organization of American States (OAS)

- **Call upon the US to improve oversight**, establish incentives, and take other necessary steps to ensure compliance with its international human rights obligations at the state and local levels.

- **Establish an independent monitoring mechanism** to investigate and report on human rights violations, with a special focus on the US child welfare system's arbitrary interference with family integrity and disproportionate and disparate racial impact.

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Region / Country **United States**

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