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

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Introduction

There is no shortage of calls to reimagine legal and social systems and rethink the concept of safety in order to strengthen and empower communities as recognition of the detrimental effects of these systems on marginalized communities grows. As these calls draw every system in this country under a microscope, we must examine and dismantle all practices, policies, and structures that stand in the way of building well-resourced, strong communities where children and families can remain safely together. One such practice within the child welfare system is that of mandated reporting. Reporting for neglect based on lack of financial resources or an inability to access support services is particularly cruel and pernicious; it must end if we want to achieve the ultimate goal of strengthening communities. Taken as a whole, mandated reporting laws have done more harm than good. As applied to people experiencing poverty, particularly Black people, these laws have given the state license to destroy their families and communities.

Parents and former foster youth who have first-hand experience with the child welfare system have provided us with insight into what communities and families need to thrive. Rather than protecting children and strengthening families, mandated reporting too often uproots children, devastates families, and inflicts additional trauma on children and parents. It has deviated so far from its stated purpose that it has been likened to "stop and frisk" for families[1] — a tool of omnipresent surveillance and devastation. Mandated reporting is a key reason that many impacted parents, activists, advocates, and scholars now call the "child welfare" system, the "family regulation" or "family policing" system.[2] In our response to calls to reimagine the family regulation system ("family regulation system" or "the system"), we must be led by the voices of impacted parents and young people in envisioning and implementing a framework for child safety

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[1] Michelle Burrell, *What Can the Child Welfare System Learn in the Wake of the Floyd Decision?*: A Comparison of Stop-And-Frisk Policing and Child Welfare Investigations, 22 CUNY L. REV. 124, 130-38 (2019), https://academicworks.cuny.edu/clr/vol22/iss1/14/.

[2] Dorothy Roberts, *Abolishing Policing Also Means Abolishing Family Regulation*, The Imprint (June 16, 2020), https://imprintnews.org/child-welfare-2/abolishing-policing-also-means-abolishing-family-regulation/44480 (asserting that the "misnamed 'child welfare' system . . . is designed to regulate and punish black and other marginalized people," and "could be more accurately referred to as the 'family regulation system.'"); *Family Policing Definition*, upEND Movement, https://upendmovement.org/family-policing-definition/ (last visited Dec. 14, 2021) (noting that the term family policing system, "more accurately captures the roles this system plays in the lives of families, which include surveillance, regulation, and punishment, all roles associated with policing rather than children's welfare"); Halimah Washington et al., *An Unavoidable System: The Harms of Family Policing and Parents' Vision for Investing in Community Care*, Rise & TakeRoot Justice (2021), at 6, https://www.risemagazine.org/wp-content/uploads/2021/09/AnUnavoidableSystem.pdf (Explaining that "'family policing' highlights the system's connection to and similarities with the criminal legal system," and "most accurately and directly describes the system's purpose and impact.").

that is rooted in community success and not family punishment.

History Of Mandatory Reporting

Established over five decades ago, mandated reporting is a policy that lacks empirical justification for its efficacy but continues to fuel unnecessary surveillance and regulation of families.[3] While it purportedly exists to protect children from harm by encouraging early identification of child maltreatment, the system of mandated reporting has ultimately contributed to increased surveillance and separation of Black and Brown families, without necessarily improving the safety of children who are harmed or at risk of harm.[4]

Reporting of child maltreatment became the focus of family regulation policy in the 1960s, amidst growing public concern over the occurrence of child abuse. Although child abuse received attention in some medical scholarship dating from the 1940s, the publication of Dr. C.

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[3] Patricia A. King et al., *Legal Interventions, in* Violence in Families: Assessing Prevention and Treatment Programs 158, 161 (Rosemary Chalk & Patricia A. King Eds., 1998) (observing that reporting requirements were adopted without evidence of their effectiveness); *The Child Abuse and Treatment Act: 40 Years of Safeguarding America's Children*, Nat'l Child Abuse & Neglect Training & Publ'ns Project (2014), at 15–16, https://www.acf.hhs.gov/sites/default/files/documents/cb/capta_40yrs.pdf (explaining that institutional support for efforts to identify and treat child abuse and neglect was widely lacking because "there was no research related to outcomes and no basis for the formulation of policy other than a desire to protect children from harm and dangerous parenting."); Mical Raz, *Too Much Reporting, Too Little Service*, in Abusive Policies: How the American Child Welfare System Lost Its Way 55, 70–71 (U.N.C. Press 2020) (asserting that mandated reporting emerged as "the main legacy of 1970s child abuse policy," and "[d]espite a dearth of evidence on its effectiveness, [it] continues to be the mainstay of current child abuse policies.").

[4] Charlotte Baughman et al., *The Surveillance Tentacles of the Child Welfare System*, 11 Colum. J. Race & L. 501, 507 (2021) (asserting that "the family regulation system and its 'surveillance tentacles' monitor families in low-income communities and increase their susceptibility to becoming entangled in the system. This rampant surveillance is inextricably linked to mandated reporting."); Gary B. Melton, *Mandated Reporting: A Policy without Reason*, 29 Child Abuse & Neglect 9, 15 (2005) (concluding that mandated reporting is a "bankrupt policy," which "has had clearly negative side effects, some of which probably adversely affect children's safety.").

Henry Kempe's *The Battered-Child Syndrome* drew unprecedented national attention to the issue.[5] Kempe proposed that physicians "should report possible willful trauma to the police department or any special children's protective service that operates in [their] community," and that reporting "should be restricted to the objective findings which can be verified and, where possible, should be supported by photographs and roentgenograms."[6] Following the publication of Kempe's seminal article in 1962, the Children's Bureau convened a group of professionals and experts in the field to discuss and develop specifications for a model mandatory reporting law that states could use to design their own reporting statutes.[7]

Issued in 1963, the Children's Bureau's model legislation placed a clear emphasis on reporting of child abuse by physicians.[8] The Bureau embraced the view that physicians were "in an optimum position to form reasonable, preliminary judgments" as to how physical injuries occurred.[9] Between 1963 and 1965, the Council of State Governments and the Children's Division of the American Humane Association also issued model legislation with proposed reporting requirements for medical professionals.[10] The underlying assumption in advancing mandated reporting as a policy solution to address child maltreatment was that it would not only encourage identification of children in crisis, but also contribute to child protection and safety.[11] The Children's Bureau, for example, explained that the sole purpose of their model legislation was "to protect the child," and expressed hope that identifying children in crisis would lead "to protection from further abuse and to providing [children] with a safe and wholesome environment."[12]

By 1967, all 50 states had enacted legislation requiring professionals, primarily those in the medical field, to report suspected cases of child abuse.[13] States expanded the scope of their reporting laws considerably in the following decade. The shift towards broader mandated reporting requirements was strongly influenced by the passage of the Child Abuse Prevention and Treatment Act of 1974 (CAPTA).[14] CAPTA conditioned federal funding on meeting certain minimum standards for responding to child abuse and neglect, jointly defined as "the physical or mental injury, sexual abuse, negligent treatment, or maltreatment

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[5] John E.B. Myers, *A Short History of Child Protection in America*, 42 Fam. L. Q. 449, 454–55 (2008); C. Henry Kempe, et al., *The Battered-Child Syndrome*, 9 Child Abuse & Neglect 143, 143 (1985), https://www.kempe.org/wp-content/uploads/2015/01/The_Battered_Child_Syndrome.pdf (defining the battered-child syndrome as "a term used . . . to characterize a clinical condition in young children who have received serious physical abuse, generally from a parent or foster parent.").

[6] Kempe, et al., supra note 5, at 153.

[7] *U.S. Dep't of Health, Edu., & Welfare, Children's Bureau, The Abused Child: Principles and Suggested Language for Legislation on Reporting of the Physically Abused Child* (1963), at 1, https://babel.hathitrust.org/cgi/pt?id=pur1.32754078884032&view=1up&seq=1.

[8] *Id.* at 5–6.

[9] *Id.*

[10] Alan Sussman, *Reporting Child Abuse: A Review of the Literature*, 8 Fam. L. Q. 245, 247 (1974); Monrad G. Paulsen, Child Abuse Reporting Laws: The Shape of the Legislation, 67 Colum. L. Rev. 1, 5 (1967) (explaining that the American Medical Association also issued suggested legislation for reporting in 1965, but proposed a broader list of reporters, including school teachers and social workers.); Leonard G. Brown III & Kevin Gallagher, *Mandatory Reporting of Abuse: A Historical Perspective on the Evolution of States' Current Mandatory Reporting Laws with a Review of the Laws in the Commonwealth of Pennsylvania*, 59 Vill. L. Rev. Tolle Lege 37, 39 (2014), https://digitalcommons.law.villanova.edu/vlr/vol59/iss6/5/ (noting that the Children's Bureau's model legislation became the most influential of the four proposals).

[11] Ben Mathews, *Mandatory Reporting Laws: Their Origin, Nature, and Development Over Time*, in Mandatory Reporting Laws and the Identification of Severe Child Abuse and Neglect 3, 5 (Ben Mathews & Donald C. Bross Eds., 2015) (observing that the fundamental premise in the mandated reporting laws enacted between 1963 and 1967 was that "doctors . . . are well placed to identify cases of severe maltreatment, and by reporting it enable intervention by welfare agencies to interrupt the abuse and facilitate health rehabilitation and other services for the child and family."); King et al., *supra* note 3, at 161 ("The mandatory reporting laws were adopted in the belief that they would reveal cases of child maltreatment that were previously undetected and would provide a means for children and families to receive appropriate services prior to the occurrence of serious injuries, thus enhancing child safety and well-being.").

[12] U.S. Dep't of Health, Edu., & Welfare, Children's Bureau, *supra* note 7, at 2.

[13] Myers, *supra* note 5, at 456; Brown III & Gallagher, supra note 10, at 40–42 (explaining that while most state's followed the Children's Bureau's model closely, placing the duty to report on physicians, Nebraska, Tennessee, and Utah instituted universal reporting laws).

[14] Mathews, *supra* note 11, at 9–10.

of a child . . . ."[15] These minimum standards pushed states to expand the definitions of child maltreatment in their reporting statutes and broaden the network of professionals required to surveil families.

In the four years after Congress enacted CAPTA, 14 states introduced reporting requirements for nurses, 24 introduced reporting requirements for social workers, 25 introduced reporting requirements for educational personnel, and 31 introduced reporting requirements for law enforcement personnel.[16] This transformed the narrow reporting regime envisioned by Kempe and the Children's Bureau into an expansive system, reliant on an extensive network of reporting professionals. Importantly, these sweeping changes were not grounded in evidence that more reporting, from a wider range of sources, contributed to better outcomes for children at risk.[17] Instead, they were driven by the goal of involving more professionals who regularly interfaced with families, and were therefore "seen to have frontline prevention and reporting responsibilities," in child protection.[18]

In response to CAPTA, states also expanded definitions of child abuse and neglect in their reporting laws to meet federal funding requirements.[19] While earlier mandated reporting statutes focused on "physical injury," the new wave of reporting laws introduced "negligent treatment," sexual abuse, and emotional or psychological abuse as categories of child maltreatment.[20] Classifying "negligent treatment" as a reportable offense created a false equivalency between intentional harm and conditions of poverty that impact the welfare of children.[21] Moreover, it contributed to an "epidemic of reporting" that overburdened the family regulation system with unfounded reports, disproportionately harming low-income and minority families.[22] As discussed below, these outcomes continue to compromise the effectiveness of the mandated reporting regime in protecting children, and threaten efforts to strengthen communities.

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[15] For example, in order for a state to qualify for federal funding, it was required to "provide for the reporting of known and suspected instances of child abuse and neglect" in line with the federal definition of child abuse and neglect. CAPTA, Pub. L. No. 93-247, 88 Stat. 4 (1974); David Pimentel, *Fearing the Bogeyman: How the Legal System's Overreaction to Perceived Danger Threatens Families and Children*, 42 Pepperdine L. Rev. 235, 243-44 (2015).

[16] Brown III & Gallagher, *supra* note 10, at 42.

[17] Raz, *supra* note 3, at 55-56 (explaining that while many speculated that more reporting would equate to better care for children, "as states adopted more stringent requirements for mandatory reporting, and more reports came streaming in, there was no evidence that increasing reporting helped better identify and assist children at risk."); Grace W. K. Ho et al., *Universal Mandatory Reporting Policies and the Odds of Identifying Child Physical Abuse*, 107 Am. J. Pub. Health 709 (2017) (comparing outcomes in states with and without universal mandatory reporting, and finding no correlation between the more expansive universal reporting requirements and increased identification of children at risk of physical abuse).

[18] *The Child Abuse and Treatment Act: 40 Years of Safeguarding America's Children,* Nat'l Child Abuse & Neglect Training & Publ'ns Project (2014), at 17, https://www.acf.hhs.gov/sites/default/files/documents/cb/capta_40yrs.pdf; Douglas J. Besharov, *The Legal Aspects of Reporting Known and Suspected Child Abuse and Neglect*, 23 Vill. L. Rev. 458, 467 (1978), https://digitalcommons.law.villanova.edu/cgi/viewcontent.cgi?article=2180&context=vlr (observing that most states expanded reporting requirements to nonmedical professionals because they recognized that other professionals have regular contact with children, and are also in a position to identify abuse and neglect).

[19] Prior to CAPTA, there was no federal standard requiring states to include neglect in their mandated reporting laws. As such, few states required reporting professionals to refer cases of alleged neglect to child protection agencies. Besharov, supra note 18, at 460 (observing how states amended legislation to require reports of suspected neglect as well as abuse in part because of the impetus of CAPTA); Mathews, *supra* note 11, at 9-10.

[20] *Compare* U.S. Dep't of Health, Edu., & Welfare, Children's Bureau, *supra* note 7, at 11 (requiring physicians to report cases involving "serious physical injury or injuries."), with CAPTA, Pub. L. No. 93-247, 88 Stat. 4 (1974).

[21] Angela Olivia Burton & Angeline Montauban, *Toward Community Control of Child Welfare Funding: Repeal the Child Abuse Prevention and Treatment Act and Delink Child Protection from Family Well-Being*, 11 Colum. J. Race & L. 639 (2021) (explaining that this false equivalency "effectively transform[ed] child poverty from a social, economic, and racial justice issue into a problem of individual parental pathology and deviant behavior.").

[22] Raz, supra note 3, at 63; Myers, supra note 5, at 456 (observing that reports of child maltreatment increased from 60,000 in 1974 to one million in 1980 and two million in 1990); Douglas J. Besharov, "Doing Something" About Child Abuse: The Need to Narrow the Grounds for State Intervention, 8 Harv. J. L. & Pub. Pol'y 539, 557 (1985) (reporting that between 1976 and 1985, the number of unfounded reports of suspected maltreatment increased from 35 percent to 65 percent).

Mandated Reporting for Neglect: A Barrier to Strengthening Communities

Families in need should not be subjected to surveillance and investigations by the family regulation system, yet the inclusion of neglect in mandated reporting laws ensures that they are. Despite the initial goal of using mandated reporting to capture severe physical abuse, almost all states have regimes that require reporting of not just abuse but also neglect.[23] The most recent federal data from 2019 shows that at least 73 percent of child welfare cases were based on neglect, not abuse.[24] At a minimum, reimagining this system requires assessing the impact of neglect reporting requirements on family and community well-being, and addressing the observed structural harms by ending the current practice altogether.

Overreporting Due to the System's Conflation of Poverty and Neglect

Across the country, standards for neglect are notoriously vague and amorphous[25] and mandatory reporting requirements are difficult to understand.[26] For example, some states include neglect within the definition they provide for abuse rather than classifying it as a distinct term.[27] Additionally, many states provide a single definition for "child abuse or neglect," "abused or neglected child," or "abuse or neglect," rather than separating the terms to identify critical differences.[28] This vagueness and ambiguity combined with the fact that people report based on their own bias and moral judgements, results in overreporting.[29] While mandatory reporters are required to report suspected neglect, not all suspicions

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[23] Josh Gupta-Kagan, *Toward a Public Health Legal Structure for Child Welfare*, 92 Neb. L. Rev. 897, 930 (2014); Mandatory Reporters of Child Abuse and Neglect, Child Welfare Info. Gateway (2019), https://www.childwelfare.gov/pubPDFs/manda.pdf (listing standards for reporting in all 50 states, D.C., and the five major territories).

[24] While the AFCARS report lists "housing" as a distinct removal cause, housing issues often trigger neglect cases because of broad statutory definitions that conflate poverty and neglect. *AFCARS Report No. 27*, U.S. Dep't of Health & Hum. Servs., Admin. for Child. & Families, Children's Bureau (2020), https://www.acf.hhs.gov/cb/report/afcars-report-27; Kristcha DeGuerre & Katharine Briar-Lawson, *A Typology of Child Neglect Statutes and Exploration of Rate Variation among States* (unpublished manuscript) (on file with author), at 5 (observing that 45 states categorize failure to provide for basic needs, including food, nutrition, clothing, education, and shelter, as neglect).

[25] David Pimentel, *Punishing Families for Being Poor: How Child Protection Interventions Threaten the Right to Parent While Impoverished*, 71 Okla. L. Rev. 885, 895 (2019), https://digitalcommons.law.ou.edu/cgi/viewcontent.cgi?article=1362&context=olr.

[26] Most states require mandated reporters to refer cases to the system when they have "reasonable suspicion" or "reasonable cause to suspect" that a child has been subjected to abuse or neglect. This requirement is incredibly confusing absent clear guidance on what constitutes reasonable suspicion. *Mandatory Reporters of Child Abuse and Neglect*, Child Welfare Info Gateway (2019), at 3, https://www.childwelfare.gov/pubpdfs/manda.pdf; Benjamin H. Levi & Georgia Brown, *Reasonable Suspicion: A Study of Pennsylvania Pediatricians Regarding Child Abuse*, 116 Pediatrics (2005) (finding "significant variability in how [Pennsylvania] pediatricians interpret reasonable suspicion, with a range of responses so broad as to question the assumption that the threshold for mandated reporting is understood, interpreted, or applied in a coherent and consistent manner."); Lee McKoin, *Systemic Racism in Child Abuse Reporting by Clinicians*, Medium (June 6, 2019), *https://medium.com/race-law-a-critical-analysis/systemic-racism-in-child-abuse-reporting-by-clinicians-f2fec0f94ee6* (noting that "calling CPS is a difficult decision" because mandated reporters must question whether they would be getting a child out of a dangerous situation or imposing significant and unwarranted stress on a family, while knowing that they may be penalized for not following reporting requirements).

[27] *See e.g.*, Ga. Code Ann. § 19-7-5(b) (which includes "neglect or exploitation of a child by a parent of caretaker thereof" in the statutory definition of "child abuse").

[28] *See e.g.*, Me. Rev. Stat. Ann. Tit. 22 § 4002 (defining "abuse or neglect" as "a threat to a child's health or welfare by . . . deprivation of essential needs," among other circumstances.).

[29] Mical Raz, *Calling Child Protective Services is a Form of Community Policing That Should Be Used Appropriately: Time to Engage Mandatory Reporters as to the Harmful Effects of Unnecessary Reports*, 110 Child. & Youth Servs. Rev. 1, 3 (2020) (finding that assessments of potential risk to children depend on moral judgments about parental behavior, and are correlated with the race and ethnicity of the family in question); *Child Maltreatment 2019*, U.S. Dep't of Health & Hum. Servs., Admin. for Child. & Families, Children's Bureau (2021), at 7, https://www.acf.hhs.gov/sites/default/files/documents/cb/cm2019.pdf (reporting that the family regulation system receives roughly 4 million referrals annually).

are valid and therefore lead to unnecessary scrutiny on families with no safety concerns.[30] Further, there is little to no room for nuance as the statutes compel reporting and fear of penalties for failure to report coupled with institutional encouragement to "err on the side of caution"[31] deters many reporters from weighing the potential harms and benefits of making a report.[32]

Experts and impacted parents also bemoan the overreporting of under-resourced families due to the system's conflation of poverty and neglect.[33] As legal scholar and justice advocate Dorothy Roberts has suggested, "[t]he main reason child protective services deal primarily with poor families is because of the way child maltreatment is defined."[34] Under current legal standards, parents may be considered guilty of neglect because they are unable to provide food, clothing, shelter, medical care, or supervision for their children.[35] It defies logic that most parents would deny their children basic necessities, such as food and housing if they were able to afford them. Yet, while the system does little to address the deeply entrenched structural, economic, and racial inequities that leave families without basic necessities, it readily punishes parents for poverty-based neglect.[36]

There is no shortage of stories highlighting how the family regulation system conflates poverty and neglect. In Pennsylvania, public school district officials threatened to report families whose children had outstanding breakfast and/or lunch debts.[37] In their letter to about 40 families, officials wrote, "[y]our child has been sent to school every day without money and without a breakfast and/or lunch. This is a failure to provide your child with proper nutrition and you can be sent to Dependency Court for neglecting your child's right to food."[38] In another devastating example, the system separated a Black mother from her son because she was unable to secure stable housing, even though she made numerous requests for housing assistance.[39] More recently, school administrators in the Bronx threatened to report another Black mother in the midst of the pandemic because her two children, who were sharing a single laptop,

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[30] Ryan C. F. Shellady, *Martinis, Manhattans, and Maltreatment Investigations: When Safety Plans Are a False Choice and What Procedural Protections Parents Are Due*, 104 Iowa L. Rev. 1613, 1619 n.30 (2019) (citing Bob Lonne, Mandatory Reporting and the Difficulties Identifying and Responding to Risk of Severe Neglect: A Response Requiring a Rethink, in Mandatory Reporting Laws and the Identification of Severe Child Abuse and Neglect 245 (Ben Mathews & Donald C. Bross Eds., 2015)).

[31] *See e.g. Reporting Child Abuse and Neglect: What School Personnel Need to Do, Module III: How to Report*, N.J. Dep't of Educ. & N.J. Dep't of Child. & Families https://www.state.nj.us/education/students/safety/socservices/abuse/training/mod3/; Jill Patterson, *Mandated Reporting*, Mo. State Univ. (2019), https://www.mercy.net/content/dam/mercy/en/pdf/springfield-tdo/mandated-reporting.pdf.

[32] McKoin, *supra* note 26.

[33] *See e.g.* Jerry Milner & David Kelly, *It's Time to Stop Confusing Poverty With Neglect*, The Imprint (Jan. 17, 2020), https://imprintnews.org/child-welfare-2/time-for-child-welfare-system-to-stop-confusing-poverty-with-neglect/40222 (noting that "[m]ore times than not, poverty and struggles to meet the basic, concrete needs of a family are a part of the equation in all types of neglect."); Elizabeth Brico, *Poverty Isn't Neglect, But the State Took My Children Anyway*, TalkPoverty.org (Nov. 16, 2018), https://talkpoverty.org/2018/11/16/poverty-neglect-state-took-children/ (explaining that the state often separates families in cases "where parents do their very best but still come up short on money for the heat, or the rent, or a licensed babysitter," and that "a little more cash and sympathy" would have prevented her own family's separation); Pimentel, *supra* note 25, at 895-906 (asserting that some of the legal standards that define neglect appear skewed to characterize poverty as neglect, which suggests that "investigations and interventions are merely reacting to and treating the symptoms of poverty rather than the root causes of abuse and neglect," a type of victim blaming that "punish[es] parents already oppressed by poverty for their circumstances and the hardships their kids suffer . . .").

[34] Dorothy Roberts, Shattered Bonds: The Color of Child Welfare 33 (2002).

[35] Pimentel, *supra* note 25, at 895 (noting that some of the legal standards that define neglect appear skewed to characterize poverty as neglect); *Definitions of Child Abuse and Neglect*, Child Welfare Info. Gateway (2019), https://www.childwelfare.gov/pubpdfs/define.pdf.

[36] Wendy A. Bach, *The Hyperregulatory State: Women, Race, Poverty, and Support*, 25 Yale J. L. & Feminism 317, 325-26 (2014); Burton & Montauban, supra note 21, at 667.

[37] Bobby Allyn, *Don't Have Lunch Money? A Pennsylvania School District Threatens Foster Care,* NPR (July 22, 2019), https://www.npr.org/2019/07/22/744005587/dont-have-your-lunch-money-one-pennsylvania-school-district-threatening-foster-c.

[38] *Id.*

[39] *When the Bough Breaks on Motherhood,* YouTube (Oct. 16, 2020), https://www.youtube.com/watch?v=a-sa8B0OuOw&list=PLdf1tpNUoh_2DMb1YP-LlWdgqhzCkW1C5.

missed class whenever their schedules overlapped.[40]

Importantly, as a consequence of current and historical racism, Black families are disproportionately represented in under-invested communities, which have historically been targeted by the family regulation system.[41] Thus, the problematic nature of the system is revealed by the way it punishes parents for societal failures and structural racism and treats an inability to provide for their children as personal shortcomings.[42]

Unsubstantiated Reports Lead to Unnecessary Trauma & Diversion of Resources

Overreporting of cases that do not warrant government involvement often floods the system with unfounded reports and diverts resources away from cases involving actual safety risks to children. This is not a recent phenomenon. Advocates began voicing concerns about these outcomes as early as 1978, barely a decade after the mandated reporting regime was first conceived. That year, psychoanalyst Albert Solnit observed that more than a third of referrals to agencies did not involve physical or sexual abuse, or the imminent risk of serious harm.[43] He argued that unnecessary reports increased the risk of overlooking children at serious risk of harm and often led to unwarranted, coercive interventions.[44] At a hearing before the House Committee on Children, Youth, and Families in 1987, Douglas Besharov, the first director of the U.S. National Center on Child Abuse and Neglect, echoed these concerns. Besharov suggested that the roughly 65 percent of unsubstantiated reports were evidence of "unavoidably traumatic investigation[s]" that inherently constituted a breach of family privacy.[45] The Senate Committee on Labor and Human Resources also took issue with the flood of unsubstantiated reports overwhelming agencies.[46] Like Solnit and Besharov, the Committee recognized that unsubstantiated reports were endangering children who were abused and in need of protection, jeopardizing the civil liberties of families in some cases, and likely over-extending the system "beyond anything reasonably needed."[47]

Unsubstantiated reports remain a problem today, particularly for Black families. Educators, who disproportionately report Black children, are also responsible for a great deal of reports

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[40] Noah Goldberg & Michael Elsen-Rooney, *NYC Families Unable to Have Kids Log Into Online Classes Fear Being Reported to Child Services for Truancy*, NY Daily News (Oct. 25 2020), https://www.nydailynews.com/new-york/ny-homeless-mother-nyc-truancy-school-doe-shelter-wifi-remote-learning-20201026-jl55pntulfefjbfwt3etgxyfsm-story.html.

[41] Alan J. Dettlaff & Reiko Boyd, *Racial Disproportionality and Disparities in the Child Welfare System: Why Do They Exist and What Can Be Done to Address Them?*, The Annals. Am. Acad. Pol. & Soc. Sci. 253, 260 (2020), https://doi.org/10.1177/0002716220980329 ("Enduring consequences of racism, including residential segregation, discrimination in labor markets, unequal access to quality education, and implicit and explicit biases perpetuate the disproportionate concentration of Black families among the poor."); Dorothy E. Roberts, Child Welfare and Civil Rights, 2003 U. Ill. L. Rev.171, 175 (2003) ("The child welfare system is designed to address mainly the problems of poor families. Because black children are disproportionately poor, we would expect a corresponding racial disparity in the child welfare caseload."); Baughman et al., supra note 4, at 506 (explaining that mandated reporters—"like law enforcement, social services, shelters, and public schools—are entrenched in low-income communities of color by design."); Stephanie Clifford & Jessica Silver-Greenberg, Foster Care as Punishment: The Reality of 'Jane Crow', N.Y. Times (July 21, 2017), https://www.nytimes.com/2017/07/21/nyregion/foster-care-nyc-jane-crow.html (observing that "[i]n interviews, dozens of lawyers working on [removal] cases say the removals punish parents who have few resources. Their clients are predominantly poor black and Hispanic women . . . .").

[42] Roberts, *supra* note 41, at 176-77.

[43] Raz, *supra* note 3, at 62-63.

[44] *Id.*

[45] *Child Abuse and Neglect in America: The Problem and the Response, Hearing Before the Select H. Comm. on Child., Youth and Families*, 100th Cong. 33 (1987) (statement of Douglas J. Besharov). Decision-Making in Unsubstantiated Child Protective Services Cases, Child Welfare Info. Gateway (June 2003), https://www.childwelfare.gov/pubpdfs/decisionmaking.pdf (explaining that an "unsubstantiated" report is one where "an investigation determined no maltreatment occurred, or there was insufficient evidence under State law or agency policy to conclude that the child was maltreated.").

[46] S. Rep. No. 104-117, at 12-13 (1995).

[47] *Id.* at 12.

that the system ultimately does not substantiate.[48] While educational personnel are responsible for 21 percent of reports made by professionals annually, data shows their reports are 1.84 times more likely to be unsubstantiated than reports from other professionals.[49] Unsurprisingly, the problem of misplaced allegations extends far beyond reports by educational professionals. For example, of the 4.4 million referrals received in 2019, 2 million were screened-out, or did not warrant investigation.[50] As earlier advocates observed, the influx of reports that are ultimately screened out or unsubstantiated overwhelms caseworkers with unmanageable caseloads and overburdens an already beleaguered system, diverting resources from cases involving severe abuse and actual safety risks to children.[51] When the system is inundated with baseless reports, even fewer cases are substantiated.[52] This results in a never-ending cycle that undermines the goal of child protection and instead inflicts greater harm on families.

Even if reports are ultimately unsubstantiated, in the interim families are subjected to invasive scrutiny[53] and children and their parents may face the traumatic effects of removal.[54] Because broad reporting requirements encourage professionals to call in anything they find suspicious, even though not everything that may draw suspicion is indicative of maltreatment, mandated reporting often places unnecessary scrutiny on safe, healthy, and functional families.[55] This experience imposes profound trauma on children and parents alike and seldom improves family stability.[56] Families have testified that being subjected to investigations and interventions violated their privacy and autonomy, disrupted family relationships, harmed their children, failed to address their needs, and had a long-lasting adverse impact on their lives.[57]

Severing Communities from Authentic Supports and Services

Beyond the negative impacts to families, mandated reporting of neglect weakens communities by creating barriers to authentic supports and services. The "surveillance tentacles" of the system intentionally run deep into marginalized communities[58]

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[48] Kathryn Suzanne Krase, *Child Maltreatment Reporting by Educational Personnel: Implications for Racial Disproportionality in the Child Welfare System*, 37 Child. & Schools 89 (2015), https://doi.org/10.1093/cs/cdv005; Colin B. King & Katreena L. Scott, *Why Are Suspected Cases of Child Maltreatment Referred by Educators So Often Unsubstantiated*, 38 Child Abuse & Neglect 1, 1–2; Child Maltreatment 2019, U.S. Dep't of Health & Hum. Servs., Children's Bureau (2021), at 9, https://www.acf.hhs.gov/sites/default/files/documents/cb/cm2019.pdf.

[49] This translates into schools, which were supposed to be the "great equalizer" in our society, functioning as the largest source of reports to child protective services that are least likely to be substantiated. Brianna Harvey et. al., *Reimagining Schools' Role Outside the Family Regulation System*, 11 Colum. J. Race & L. 575, 581–84 (2021), https://journals.library.columbia.edu/index.php/cjrl/article/view/8745/4500; *Child Maltreatment 2019*, U.S. Dep't of Health & Hum. Servs., Admin. for Child. & Families, Children's Bureau (2021), https://www.acf.hhs.gov/sites/default/files/documents/cb/cm2019.pdf; King & Scott, *supra* note 48, at 1–2.

[50] In 2019, the Department of Health and Human Services reported that approximately 4.3 million children were the subject of reports. Of these cases, roughly 16.7 percent were substantiated or indicated and the remaining 83.3 percent were unsubstantiated or received an alternative response to removal. *Child Maltreatment 2019*, U.S. Dep't of Health & Hum. Servs., Admin. for Child. & Families, Children's Bureau (2021), https://www.acf.hhs.gov/sites/default/files/documents/cb/cm2019.pdf.

[51] Gupta-Kagan, *supra* note 23, at 933.

[52] Mical Raz, *Preventing Child Abuse: Is More Reporting Better?*, Univ. of Penn., Leonard Davis Inst. of Health Econ. (Apr. 10, 2017), https://ldi.upenn.edu/our-work/research-updates/preventing-child-abuse-is-more-reporting-better/.

[53] Shellady, *supra* note 30, at 1619 n.30; Mical Raz, *Unintended Consequences of Expanded Mandatory Reporting Laws*, 139 Pediatrics 1, 2 (2017) (warning that "as we increase the rate of reports in a system already underfunded and overburdened, we may be reducing the ability to detect and subsequently intervene on behalf of children in danger.").

[54] *See generally*, Vivek S. Sankaran & Christopher Church, *Easy Come, Easy Go: The Plight of Children Who Spend Less Than Thirty Days in Foster Care*, 19 U. Pa. J. L. & Soc. Change 207 (2016).

[55] Shellady, *supra* note 30, at 1619 n.30.

[56] Washington et al., supra note 2, at 12–15; Kristine A. Campbell et al., *Household, Family, and Child Risk Factors After an Investigation for Suspected Child Maltreatment: A Missed Opportunity for Prevention*, 164 Archives Pediatric & Adolescent Med. 943 (2010) (suggesting that "[i]t is not clear that we are taking advantage of [investigations] to help families," especially considering that only 38 percent of children investigated for maltreatment receive any post-investigative services.).

[57] Washington et al., *supra* note 2, at 12–15.

[58] Baughman et al., *supra* note 4, at 506.

whose parenting abilities have always been questioned.[59] Low-income and primarily Black parents are subject to the relentless scrutiny of mandated reporters.[60] As advocates for parents from the Center for Family Representation in Queens, New York noted, most of their clients' family regulation system involvement is due to poverty-based allegations that could easily be remedied with money, such as food and housing instability and unaffordable childcare.[61] As such, many indigent parents live in fear of having their children removed.[62] Ms. Paige resided in a shelter with her three children and was pregnant with her fourth. She ran out of food stamps, leaving nothing but peanut butter for the family to eat for six days. On top of the anxiety of being unable to secure food for her family, she feared being caught by shelter staff and reported to New York's Administration for Children's Services (ACS). Ms. Paige and her kids spent their days sitting in the park to avoid shelter staff. Because she did not want to be reported, she did not ask for help.

Under the current system, instead of providing resources to support struggling families, children are removed from their parents and foster parents—strangers—are paid to care for them.[63] Mandated reporting prevents people with the ability to help families in distress from doing so because their options are to either involve the family regulation system and initiate a punitive response or violate the mandated reporting statute and face criminal or civil penalties (or both).[64]

Research indicates that reporting requirements also engender distrust between families and "helping professions" such as teachers, health care providers, and social service workers.[65] While the threat of being reported does not cause parents to avoid services altogether, it does constrain their participation.[66] For instance, one Black mother described the need to be cautious when speaking with professionals, warning, "just be careful when you're mentioning things about your kids... Don't say too much 'cause you never know what's gonna happen."[67] These information management practices might allow parents to avoid undue intervention, but they ultimately isolate families from institutional resources and supports that they may benefit from.[68] Instead of allowing parents to seek the assistance they need to prevent discomfort or harm to their children, they feel that they must hide their struggles because the risk of losing their children is too high. In this way, the surveillance state limits engagement with community networks that families should be able to rely on.

These demonstrably harmful outcomes are inconsistent with goals to both promote child welfare and strengthen communities, necessitating the removal of poverty-based neglect from the purview of what mandated reporters are required to report. This would not only enable caseworkers to focus on reports of genuine abuse but begin to allow "helping" professionals to actually help. What Ms. Paige needed was financial support and food for herself and her children, what she got was surveillance and a constant fear of ACS involvement.

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[59] Chris Gottlieb, *Black Families Are Outraged About Family Separation Within the U.S. It's Time to Listen to Them*, Time (Mar. 17, 2021), https://time.com/5946929/child-welfare-black-families/.
[60] Baughman et al., *supra* note 4, at 512-15.
[61] *Id.* at 507.
[62] *Id.* at 513.
[63] Raz, *supra* note 3, at 70-71.
[64] *Penalties for Failure to Report and False Reporting of Child Abuse and Neglect*, Child Welfare Info. Gateway (2019), https://www.childwelfare.gov/pubpdfs/report.pdf (reporting that approximately 49 states, D.C., and the five major territories "impose penalties on mandatory reporters who knowingly or willfully fail to make a report when they suspect that a child is being abused or neglected."); Shanta Trivedi, Abuse Reporting Bills Would Criminalize Teachers, Baltimore Sun (Mar. 12, 2018), https://www.baltimoresun.com/opinion/op-ed/bs-ed-op-0313-mandatory-reporting-20180312-story.html (cautioning that with the imposition of new criminal penalties on mandatory reporters in Maryland, "[f]or fear of serious jail time and fines, mandatory reporters would be stripped of their well-earned discretion and would be forced to err on the side of reporting, even at the slightest suspicion of child abuse or neglect.").
[65] Kelley Fong, *Concealment and Constraint: Child Protective Services Fears and Poor Mothers' Institutional Engagement*, 97 Social Forces 1785 (2018) (finding that concerns about reporting prompted mothers to engage in a "selective or constrained visibility, concealing their hardships, home life, and parenting behavior from potential reporters.").
[66] *Id.*
[67] *Id.*
[68] *Id.* at 1806; Lynn Falletta et al., *Perceptions of Child Protective Services Among Pregnant or Recently Pregnant, Opioid-Using Women in Substance Abuse Treatment*, 79 Child Abuse & Neglect 125 (2018) (observing that fear of CPS can present a barrier to care for pregnant women who use opioids).

Replacement Approach

Responding to children and families in need with surveillance, policing, and punitive measures that strip them of their humanity is a misuse of public funds and a wholly inappropriate government response. Instead of utilizing mandated reporters to feed under-resourced families into the family regulation system, where their needs are often unmet, we must find meaningful ways to address the economic risk factors that contribute to family instability.

At present, the provision of resources and services within the system is coercive, often of poor quality, and misaligned with family needs. Agencies, not the families themselves, determine what services families need, with little consideration to issues of accessibility, transportation, childcare, or job responsibilities.[69] Even when characterized as "voluntary," these services are ultimately provided by a coercive system, and the threat of removal hangs over a family's participation.[70] Moreover, families too often feel the need to become entangled with the system to receive services that should be available through community organizations or other agencies.[71] A way forward is to decouple mandated reporting from cases of neglect based on lack of resources, including lack of or inability to access needed services. Families should never have to get involved with the system to access help. Increasing the potential of economic and concrete supports requires policies that shift from surveillance to support, expansion of programmatic capacity, analysis of service needs, and power-sharing to ensure system changes are community-driven.[72] Here, we offer several models for change that center around communities.

First, we can leverage existing relationships to create new pathways to services without involving the family regulation system. Schools account for the largest single source of allegations of child abuse and neglect, and a larger proportion of unsubstantiated claims, including the disproportionate reporting of low-income and Black children.[73] However, teachers also hold great potential for forming trusted relationships with families, given that children spend most of their day in school. Educational personnel should have the ability to fulfill their mandated reporting responsibilities by referring families directly to services over making a report.[74] Investment in schools as a community resource could open avenues for educational personnel to assist families in applying and accessing critical benefits such as Special Supplemental Nutrition Program for Women, Infants, and Children (WIC), Temporary Aid to Needy Families (TANF), Medicaid, Supplemental Security Income (SSI), housing assistance, and legal services. School-Based Health Centers (SBHCs) are a well-documented tool to combat health inequities.[75] SBHCs serve as a provider of preventative health, like primary medical care and nutrition. Taken a step further, they could be hubs for delivering social services to families that face barriers to access. This requires expanding our vision of what "health" means as well as the investment that we put into schools as a community asset.

If we look beyond these services, another way to serve families requires changing the way we think about traditional government programs, which often have eligibility requirements and limits to how benefits are used. A monumental change in this arena is the expansion of the Child Tax Credit. In 2021, the government increased this benefit, closed loopholes that

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[69] Alan Dettlaff et al., *How We endUP: A Future Without Family Policing*, upEND Movement (June 18, 2021), at 8, http://upendmovement.org/wp-content/uploads/2021/06/How-We-endUP-6.18.21.pdf.

[70] *Id.* at 8-9.

[71] Harvey et al., *supra* note 49, at 16-22.

[72] Dana Weiner et al., *System Transformation to Support Child & Family Well-Being: The Central Role of Economic & Concrete Supports*, Chapin Hall (July 2021), at 7-9, https://mcusercontent.com/99b002fd19862c29f6ff5815b/files/6ad95f49-c153-b0df-589c-b14f7e10f1bc/Chapin_Hall_Policy_Brief.pdf.

[73] *See supra* notes 48-49.

[74] Shanta Trivedi & Matthew Fraidin, *A Role for Communities in Reasonable Efforts to Prevent Removal*, 12 Colum. J. Race & L. ___ (forthcoming 2022) (arguing that "[r]einvesting in community-based prevention efforts would mean that families have places right in their backyards to go when they're struggling, without relying directly on children's services.").

[75] Harvey et al., *supra* note 49, at 30-31 (explaining that SBHCs "are often composed of a collaborative team of professionals . . . who work together to meet the needs of the youth and families they serve," and "serve an integral role in addressing health disparities for youth and families from medically underserved communities which historically are more likely to engage with the family regulation system. . . .").

previously prevented families from making too little money from qualifying, and disbursed the payments monthly to lift millions of children out of poverty.[76] Additionally, some cities and nonprofits are exploring guaranteed income pilot programs to provide families with more flexibility and agency. The Bridge Project, a New York-based pilot run by the Monarch Foundation, provides unconditional, direct cash assistance to new mothers as part of a study that tracks the participant's economic and housing stability, physical and mental health, and their children's developmental progress.[77] Similarly, a recently formed public-private partnership in Maryland's Montgomery County is also distributing no-strings-attached payments to families living in poverty.[78] Bureaucracy often gets in the way of what families really need, stipulating how income is used and putting families living in poverty under unfair scrutiny. These programs are an example of how to make economic supports more accessible to families.

Beyond economic and material supports, research shows that using models that allow families to have a platform for advocating for their needs prevents removals. Child Trends evaluated the Team Decision Making (TDM) model through a randomized control trial.[79] TDM invites families and supportive individuals to discuss with a trained facilitator what services they might need and to come to a consensus on the least restrictive way to keep the child safe.[80] The study showed that for families involved in this process, children were less likely to face removal.[81] This makes a strong argument for establishing similar teams or networks outside of the family regulation system to support families that might be struggling. It also offers an important lesson for changing the way we think about mandated reporting. While this intervention takes place after a report or hotline call, there is no reason that families must be involved in the system in order to have these important discussions or connections to community resources.

Rise, a New York City based organization led by impacted parents, believes in increasing access to "informal" support, such as mutual aid, which is less intrusive and more effective than other forms of support in order to reduce isolation, heal, and build within communities.[82] The Peer Model Program relies on two roles, Peer Supporters and Community Supporters, neither of which are mandated reporters.[83] Both roles have training in trauma and stress impacts, active listening, crisis de-escalation, boundaries, and self-care.[84] Peer Supporters are parents impacted by the family regulation system who can be a safe, non-judgmental resource for other parents who are facing challenges or system involvement.[85] They help parents form connections to community organizations and neighbors who can provide help.[86] Community Supporters work within community organizations that are trusted by parents and help them navigate systems.[87] Overall, this model focuses on the assets and networks communities do have, not what they don't. The Peer Model Program centers on trust, respect, empathy, and love.

Finally, implementation of any of these models requires a radical shift in funding priorities. The family regulation system prioritizes foster care and adoption, whereas taking a public health approach to child maltreatment means

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[76] Letter from AIDS Alabama et al. to President Biden and Members of Congress (Aug. 4, 2021), https://www.childrensdefense.org/wp-content/uploads/2021/08/ABC-Coalition-State-and-Local-Community-Organizations-Letter-to-Congress-to-Make-the-Child-Tax-Credit-Expansions-Permanent-August-4-2021.pdf

[77] *How $1,000 a Month in Guaranteed Income Is Helping N.Y.C. Mothers*, N.Y. Times (Jan. 18, 2022), https://www.nytimes.com/2022/01/18/nyregion/guaranteed-income-nyc-bridge-project.html.

[78] *Montgomery County Council Approves Special Approves Special Appropriation to Provide $800 Per Month for Selected Households in Need Through Guaranteed Income Pilot Program*, Montgomery Cnty. Council (Dec. 14, 2021), https://www2.montgomerycountymd.gov/mcgportalapps/Press_Detail.aspx?Item_ID=39676#:~:text=Guaranteed%20income%20is%20a%20direct,to%20improve%20their%20economic%20position.

[79] Berenice Rushovich & Allison Hebert, *Team Decision Making May Empower Child Welfare Decision Making and Improve Outcomes for Families*, Child Trends (Oct. 13, 2021), https://www.childtrends.org/publications/team-decision-making-may-empower-child-welfare-decision-making-and-improve-outcomes-for-families.

[80] *Id.* at 1.

[81] *Id.* at 2, 4.

[82] Washington et al., *supra* note 2, at 8, 30.

[83] *Id.* at 19.

[84] *Id.* at 13.

[85] *Id.*

[86] *Id.*

[87] *Id.*

investing in the least invasive, most effective measures.[88] We must decrease reliance on investigation, removal, and foster care and invest in comprehensive services. By centering communities in this way, families will be more equipped to access services before they are in crisis, rather than facing punishment because they asked for help.

Conclusion

Overreliance on an ineffective, inequitable, and weaponized mandated reporting system destroys children, families, and communities by unnecessarily enmeshing them with the family regulation system. Critically, change requires limiting the power and scope of the system by narrowing definitions of neglect or removing neglect related to lack of resources and poverty from the purview of mandatory reporters. If we want helping professionals to be a truly trusted resource, our policies cannot use the need for services as evidence of child maltreatment or reporting as a prerequisite for accessing them. At the same time, we acknowledge that the models laid out in the previous section are in tension with the perception that mandated reporters, particularly teachers and social workers, are the first line of defense against child maltreatment. Therefore, without a cultural shift in the way we view communities and mandatory reporting, there is a risk that even if laws are amended to exclude certain allegations of neglect, mandated reporters will continue to err on the side of reporting and families will continue to be unnecessarily surveilled and regulated. Only as the scope of the system changes and investment in community well-being becomes reality will there be an opportunity for genuine transformation.

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[88] Gupta-Kagan, *supra* note 23, at 949-53.

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