

Volume 22 | Issue 1

---

Winter 2019

## 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

Michelle Burrell  
mburrell@ndsny.org

Follow this and additional works at: <https://academicworks.cuny.edu/clr>



Part of the [Law Commons](#)

---

### Recommended Citation

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 (2019). Available at: <https://academicworks.cuny.edu/clr/vol22/iss1/14>

The CUNY Law Review is published by the Office of Library Services at the City University of New York. For more information please contact [cunylr@law.cuny.edu](mailto:cunylr@law.cuny.edu).

**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**

*Michelle Burrell*†

INTRODUCTION.....	125
I. THE HISTORY OF STOP-AND-FRISK IN NEW YORK .....	128
II. PARALLELS BETWEEN USE OF STOP-AND-FRISK AND CPS INVESTIGATIONS.....	130
<i>A. Low Burden of Proof</i> .....	130
<i>B. Disproportionate Effects on People of Color in Low         Income Communities</i> .....	133
<i>C. The Impact on Community</i> .....	134
<i>D. Lack of Recourse for Rogue Police Officers and Rogue         Caseworkers</i> .....	135
<i>E. Media Representations of Crime and Abuse</i> .....	136
III. DIFFERENCES BETWEEN USE OF STOP-AND-FRISK AND CPS INVESTIGATIONS.....	138
<i>A. Ongoing Caseworker Intervention</i> .....	138
<i>B. Civil Rights and Social Work Approaches</i> .....	140
IV. RAMIFICATIONS OF THE STATUS QUO .....	141
V. WHAT CAN PRACTITIONERS AND ADVOCATES DO? .....	142
<i>A. Collect Data</i> .....	142
<i>B. Push for a Higher Burden of Proof</i> .....	143
<i>C. Fight for “Miranda Rights” for Child Protective         Investigations</i> .....	144
<i>D. Undertake Mass Community Education</i> .....	146
<i>E. Flood the Media with Alternative Stories</i> .....	146
CONCLUSION.....	147

---

† Michelle Burrell is the Managing Attorney of the Family Defense Team at the Neighborhood Defender Service of Harlem. She manages a practice of attorneys, social workers, and parent advocates that represent parents in abuse and neglect cases in the Harlem section of Manhattan.

## INTRODUCTION

Years ago, I was in the Park Slope section of Brooklyn with my then-coworkers enjoying a retreat organized by our management team. It was an amazing day of reflection and relaxation as we thought about the vision for our team, our individual places within the organization, and the larger issue of self-care amid the reality of representing parents in abuse and neglect cases in Family Court. The work was demanding in substance and emotional in nature, as we were dealing with the loss of the most precious thing to most people: their children. To add to that, walking into Family Court on any given day shed a light on the disproportionate representation of poor Black and Brown families that comprised the majority of the clients we served.

As I sat in the sun, reflecting with my colleagues, we recalled our successes and our losses and confided in one another about the challenge of it all. At some point, I stood up to go inside the facility where our retreat was housed, and, as I approached the building, a small child ran up to me with great speed and hugged my leg. When I looked down at his blond mane, I was puzzled at this display. As the child looked up at me, a rush of confusion took over his face and he immediately let go of my leg and started to cry. Seconds later, a Black woman ran up to the child and scooped him into her arms. She looked at me and apologized for the misunderstanding and then I immediately understood what had happened. As a Black woman, in a sea of white faces, I was mistaken by this small white child as his nanny.

What made this interaction memorable, as a Family Defense attorney, was the moment of realization, in surveying the people around me, that the park was filled with what appeared to be nannies and children. I had not noticed it at all until that moment. Furthermore, all of the nannies in the park were women of color and, more specifically, the majority of them were Black women. This was a stunning realization given the daily experiences that my colleagues and I were just reflecting on of women of color being accused as inadequate caretakers for their own children. In that moment, I began to wonder about how these two realities collided. How is it that so many Black and Brown women are being trusted to care for white children as domestic workers, yet every day in court I have witnessed an inherent distrust of Black and Brown women's ability to rear their own children? How could it be that in the context of taking care of white children, women of color were seen as incredibly qualified and yet, in the context of being able to keep their own children safe, they were constantly villainized?

The distrust and paternalism exerted on women of color puzzled me further because of the long history of Black women in the United States

being seen as more than adequate caretakers of white children, especially in the South.<sup>1</sup> This juxtaposition between the way in which Black women are treated with their own children and the way in which they are entrusted with white children seemed paradoxical. In that moment, and ever since, the logic seemed to break down further as I thought about my experiences with the ways in which friends and colleagues, who are white, were parenting without government intervention in the same ways that were causing my Black and Brown clients to get abuse and neglect cases in court. Furthermore, the very few times that rich white families were forced to interface with the child welfare standard, they received more lenient consequences. Why is a white parent on the Upper East side of Manhattan, who is openly struggling with an addiction to drugs or alcohol, allowed to struggle with and work through her issues as she parents, while Black children are simultaneously removed in the South Bronx for her mother's one-time positive drug test?<sup>2</sup> How come a white mother in Fort Greene, Brooklyn can struggle with depression and anxiety, dabble in therapy and medication inconsistently, refuse treatment altogether, and remain unbothered by child welfare officials, while her Black counterpart in Brownsville, Brooklyn, dealing with mild symptoms of depression, is required by the Court to participate in therapy until a social worker, most likely a young white intern who is providing her therapy at a public hospital, determines that she can stop?

A large part of the problem is the public's perception and a lack of understanding about the parents that are subject to contact with child welfare agencies. I have been told over and over again by people who have never had any contact with child protection personally or professionally that they believe that if children are removed, or if a child welfare agency

---

<sup>1</sup> For the history of domestic workers, including a discussion of enslaved Black women as the "original domestic workforce" and the "mammy" archetype, see Maggie Caldwell, *Invisible Women: The Real History of Domestic Workers in America*, MOTHER JONES (Feb. 7, 2013, 11:06 AM), <https://perma.cc/5QB4-XCMD> (discussing history of domestic work in the United States). See also KIMBERLY WALLACE-SANDERS, MAMMY: A CENTURY OF RACE, GENDER, AND SOUTHERN MEMORY 4 (2008) ("The *American Dictionary of Regional English* traces the etymological roots of the word to a blending of *ma'am* and *mamma* . . . [B]y 1820 the word was almost exclusively associated with African American women serving as wet nurses and caretakers of white children.").

<sup>2</sup> In my experience practicing in the New York City Family Court system, it is rare to see middle class white parents with a family court case. Even when white parents are brought into court with charges of abuse and neglect, their children are rarely removed and their cases most often settle, even when the allegations would ordinarily mean the removal of children for poor Black and Brown parents. For the demographics of children in foster care see, N.Y.C. ADMIN. OF CHILDREN'S SERVS., REPORT ON YOUTH IN FOSTER CARE (2017), <https://perma.cc/59EH-QFZH> (showing only 5% of children in foster care are white).

is investigating a home, then the parent must deserve or need that intervention in some way. While there are families that need assistance, that does not mean that all families that interface with child welfare officials deserve an investigation. There is an automatic stigma that attaches when someone's ability to parent is called into question, and the presumption that follows is that removals of children from households having child protective intervention are always justifiable and in the best interests of children and families.<sup>3</sup> This belief is fueled by the reality that the media primarily covers stories of child death and serious abuse, which are only a small percentage of what is being investigated.<sup>4</sup>

Justifying the reasonableness of government intervention is akin to the public's acceptance of the ways in which Black and Brown men are being mass incarcerated, held with bail they are unable to pay, and in the past, stopped and frisked by the thousands. However, in recent years, there has been a growing awareness of the over-policing of communities of color, the harmful effects of such intervention, and the civil rights violations associated with disturbing the liberty of individual citizens without due process. Particularly, with the massive slowdown of stop-and-frisk policies in New York City. This came out of a broad-scale awareness of how communities of color were being policed, took hold of the public discourse around policing and the injustice of these unreasonable searches and seizures, and caused reform to take shape.<sup>5</sup>

Though stop-and-frisk was a police tactic for decades,<sup>6</sup> it underwent a dramatic public image shift during the many years of Mayor Michael Bloomberg's tenure, which caused a fresh skepticism around police intervention in communities of color.<sup>7</sup> Where it was once regarded as a useful tool for preventing crime, it became framed as a discriminatory tactic that unfairly targeted Black and Brown men.<sup>8</sup> The backlash that accompanied

---

<sup>3</sup> This stigma and presumption attach even when the removal is for a short period of time. For a discussion on the effect of a removal on the right to family integrity, even when children are removed for less than 30 days, see Vivek 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, 210-14 (2016).

<sup>4</sup> See U.S. DEP'T OF HEALTH & HUMAN SERVS., ADMIN. FOR CHILDREN & FAMILIES, ADMIN. ON CHILDREN, YOUTH & FAMILIES, CHILDREN'S BUREAU, CHILD MALTREATMENT 20 (2012) (showing that 21.7% of children were not subject to extreme forms of abuse, such as physical or sexual abuse).

<sup>5</sup> Al Baker, *Street Stops by New York City Police Have Plummeted*, N.Y. TIMES (May 30, 2017), <https://perma.cc/N6L2-RDTS>.

<sup>6</sup> Ernie Naspretto, *The Real History of Stop-and-Frisk*, N.Y. DAILY NEWS (June 3, 2012, 3:57 AM), <https://perma.cc/5KP3-XJGZ>.

<sup>7</sup> See Mike Riggs, *The Incredible Rise of Stop and Frisk, in One Chart*, CITYLAB (Oct. 7, 2013), <https://perma.cc/CU4P-2H5U>.

<sup>8</sup> See Daniel Bergner, *Is Stop-and-Frisk Worth it?*, ATLANTIC (Apr. 2014), <https://perma.cc/G5DM-E3YL> (discussing how the broken windows based rationale initially

this image shift helped discourage use of stop-and-frisk; reported stops shrank from a peak of 685,724 in 2011 to 22,563 just four years later.<sup>9</sup> I have believed for a long time that the child welfare system needs its own “stop-and-frisk moment”: a broad-scale moment of public awareness that communities of color are being investigated by child welfare agencies unjustly and inequitably.

The child welfare system needs a public image shift. The image of parents who have been subjected to government intrusion needs to be shifted, from a public mindset that those who are receiving intervention from child protective officials need or deserve it, to a healthy criticism and interrogation of the intrusion and family separation based on allegations that have not been proven true. Recently, the prospect of removing children from their parents at the border was met with much public backlash,<sup>10</sup> and mental health professionals across the country insisted that the harm being caused by such separation was inhumane and could have long-term irreparable effects.<sup>11</sup> This is also true for children removed from their parents residing in the United States. The same irreparable harm applies to children separated in communities across the country.

This article will examine the history of the stop-and-frisk policy in New York City, the similarities and differences between the child welfare system and the criminal legal system, and suggest ways that we can combat the misconceptions around safe parenting and the assumed need for child protective intervention.

## I. THE HISTORY OF STOP-AND-FRISK IN NEW YORK

Stop-and-frisk policies have a long and litigious history in New York. As early as the 1960s New York courts grappled with the constitutionality of the practice.<sup>12</sup> In *People v. Peters*, the Court of Appeals, New York’s highest state court, determined stop-and-frisk was an appropriate

---

given for stop-and-frisk was masking the underlying discriminatory intent of the unconstitutional practice).

<sup>9</sup> Baker, *supra* note 5.

<sup>10</sup> David Smith & Tom Phillips, *Child Separations: Trump Faces Extreme Backlash from Public and His Own Party*, GUARDIAN (June 19, 2018, 2:23 PM), <https://perma.cc/ZLD2-P38K> (quoting Tim Malloy, assistant director of the Quinnipiac poll) (“Two-thirds of American voters oppose the family separation policy . . .”).

<sup>11</sup> See *Stop Border Separation of Children from Parents!*, CHILD’S WORLD AM. (June 22, 2018, 9:40 AM), <https://perma.cc/JH9B-QTSD> for an example of a petition with over 13,000 signatures from mental health professionals calling for an end to separation of children from parents because of its impact on “children’s behavioral, psychological, interpersonal, and cognitive trajectories.”

<sup>12</sup> See *People v. Peters*, 18 N.Y.2d 238, 247 (1966), *aff’d sub nom. Sibron v. New York*, 392 U.S. 40 (1968).

use of police power.<sup>13</sup> Though there were several dissenting opinions, the majority held that “[t]he doctrine of ‘stop and frisk upon reasonable suspicion’ does not produce unreasonable searches and seizures.”<sup>14</sup> The use of the policy increased exponentially in New York City in the decades following that decision. In the mid-2000s, during Michael Bloomberg’s tenure as mayor, the use of stop-and-frisk policy reached alarming rates.<sup>15</sup> By 2006 there were half a million stops made city-wide.<sup>16</sup> In 2011 the number of individuals stopped ballooned to 685,724.<sup>17</sup>

These numbers became impossible to ignore. Though the City defended its practices,<sup>18</sup> data showed that stop-and-frisk policies were not effective at identifying and stopping crime.<sup>19</sup> It also showed that the police were specifically targeting people of color.<sup>20</sup> The conversation shifted as stop-and-frisk was finally seen more widely for what it was: a racially discriminatory practice that required a very low burden of proof and allowed police to commit rampant constitutional violations. A long-overdue reckoning followed—in 2013, a Federal Judge for the Southern District of New York rendered a decision in *Floyd v. City of New York* that explicitly recognized that the use of stop-and-frisk violated the constitutional rights of people of color in New York City and summoned a policy overhaul.<sup>21</sup> In a separate remedial opinion, the judge forced the City to implement reforms.<sup>22</sup> While imperfect, the mandatory appointment of an independent monitor, revisions to training programs for the NYPD,

---

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> Riggs, *supra* note 7.

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> See Joseph Goldstein, *Judge Rejects New York’s Stop-and-Frisk Policy*, N.Y. TIMES (Aug. 12, 2013), <https://perma.cc/R4RK-BPKJ> (“The use of police stops has been widely cited by city officials as a linchpin of New York’s success story in seeing murders and major crimes fall to historic lows.”); see also Kate Taylor, *Stop-and-Frisk Policy ‘Saves Lives,’ Mayor Tells Black Congregation*, N.Y. TIMES (June 10, 2012), <https://perma.cc/82VH-SWHU> (quoting Mayor Bloomberg) (“We are not going to walk away from a strategy that we know saves lives.”). Mayor Bloomberg buckled down in his support of the strategy after the unfavorable Floyd decision. Michael R. Bloomberg, *Michael Bloomberg: ‘Stop and Frisk’ Keeps New York Safe*, WASH. POST (Aug. 18, 2013), <https://perma.cc/P5RZ-U2DL>.

<sup>19</sup> Donald Braman, *Stop-and-Frisk Didn’t Make New York Safer*, ATLANTIC (Mar. 26, 2014) <https://perma.cc/3Y4X-F66S> (quoting David F. Greenberg, *Studying New York City’s Crime Decline: Methodological Issues*, 31 JUST. Q. 194, 194 (2014)) (“[Greenberg] finds ‘no evidence that misdemeanor arrests reduced levels of homicide, robbery, or aggravated assaults.’”).

<sup>20</sup> *Stop-and-Frisk Data: Annual Stop-and-Frisk Numbers*, NYCLU (Apr. 2, 2018), <https://perma.cc/G4JC-E953>.

<sup>21</sup> *Floyd v. City of New York*, 959 F. Supp. 2d 540, 667 (S.D.N.Y. 2013).

<sup>22</sup> *Floyd v. City of New York*, 959 F. Supp. 2d 668 (S.D.N.Y. 2013).

changes to stop-and-frisk record keeping, a pilot project for body cameras, and other remedial efforts ensured that the prior abuses of governmental authority would be mitigated.<sup>23</sup>

## II. PARALLELS BETWEEN USE OF STOP-AND-FRISK AND CPS INVESTIGATIONS

Stop-and-frisk policing may seem like an extreme example of governmental abuse of power based on the clear disproportionate impact on communities of color. But, many parallels exist between the way the policy was used in low-income communities of color and the way that child welfare officials enter the lives of parents to investigate allegations of abuse and neglect.

### *A. Low Burden of Proof*

It is shocking how easy it is for child protective officials to invade someone's life. It only takes a simple phone call, which can even be placed by an anonymous citizen.<sup>24</sup> In New York State, the State Central Register (SCR), commonly known as "the hotline," receives calls of alleged child abuse or neglect.<sup>25</sup> Any report that the hotline operator believes "could reasonably constitute" actual child abuse or neglect will be referred to Child Protective Specialists (CPS) for investigation.<sup>26</sup>

The hotline operator's standard of what might "reasonably constitute" child abuse or neglect is an even lower standard of proof than the reasonable suspicion required for a stop-and-frisk. Reasonable suspicion is the process of an officer putting together facts and making inferences based on what they see and have experienced, whereas the "could reasonably constitute" standard is much more arbitrary and based solely on whether the hotline worker believes there to be abuse or neglect with very limited information. Hotline workers never meet the alleged subjects of the report, the alleged perpetrators, or even the reporters, and, since hotline calls can be made anonymously, there is a lack of transparency around the process.<sup>27</sup>

Once the case is referred to a CPS investigator, the investigator has sixty days to determine whether or not there is "some credible evidence"

---

<sup>23</sup> *See id.*

<sup>24</sup> *See The Statewide Central Register of Child Abuse and Maltreatment*, OFFICE CHILD. & FAMILY SERVS., <https://perma.cc/4ARK-TFPG> (last visited Dec. 30, 2018).

<sup>25</sup> *Id.*

<sup>26</sup> N.Y. SOC. SERV. LAW § 422(2)(a) (McKinney 2018).

<sup>27</sup> *See The Statewide Central Register of Child Abuse and Maltreatment*, OFFICE CHILD. & FAMILY SERVS., <https://perma.cc/4ARK-TFPG> (last visited Dec. 30, 2018).



of abuse or neglect.<sup>28</sup> In my practice, I can recall instances where the people I represented were brought to the attention of child welfare caseworkers because of allegations of marijuana use, without a showing of harm to children, or because of vague allegations of a dirty or deplorable home. Dirty home allegations are especially subjective; depending on the time of entry into any home, its cleanliness can be called into question.

Despite the low burden of proof required for a report to the SCR to be turned into an investigation, once an investigation starts, it can have significant implications on the civil liberties of individuals when a CPS investigator is given entry into families' homes and personal lives. It is a common practice for an investigator to visit the home of the family under investigation unannounced, even late at night.<sup>29</sup> Investigators routinely pop up at children's schools to interview the children themselves and their teachers.<sup>30</sup> My clients have reported the embarrassment that their children have experienced when caseworkers arrive at their children's schools to question them because their friends were acutely aware of why the caseworkers were present. While the caseworkers had the benefit of a more neutral environment to interview the children, their mere presence signals an investigation into a child's family because of the prevalence of child protective workers in low-income communities of color.

Digging into the medical and mental health records of parents and children is also a staple of most investigations. Again, these significant invasions of privacy need only be justified by the hotline operator's vague belief that child abuse or neglect might have occurred. Knowing what we know now about the overuse and outright abuse employed by the police under the guise of stop-and-frisk practices, it is easy to see how child protective specialists could similarly abuse their power, especially given that they receive even less training than police officers,<sup>31</sup> and are procedurally granted more power based on a minimal standard of proof.

---

<sup>28</sup> N.Y. COMP. CODES R. & REGS. tit. 18, § 432.2(b)(3)(iv) (2018).

<sup>29</sup> See *A Parent's Guide to a Child Abuse Investigation*, N.Y.C. ADMIN. FOR CHILD. SERVS., <https://perma.cc/9ETA-S7GK> (last visited Dec. 30, 2018); see, e.g., THE CHILD WELFARE ORGANIZING PROJECT ET AL., *THE SURVIVAL GUIDE TO THE NYC CHILD WELFARE SYSTEM: A WORKBOOK FOR PARENTS BY PARENTS* 27, 29 (2007) (highlighting accounts of parents who experienced late-night ACS investigations).

<sup>30</sup> See *A Parent's Guide to a Child Abuse Investigation*, *supra* note 29.

<sup>31</sup> Compare 785 New Police Recruits Sworn Into the NYPD, NYPD NEWS (Jan. 11, 2018), <https://perma.cc/A7V6-6E9W> (NYPD officers receive six months of training at the Police Academy in College Point), with *Frequently Asked Questions About Being a CPS*, N.Y.C. ADMIN. FOR CHILD. SERVS., <https://perma.cc/U5W2-LBD3> (last visited Jan. 15, 2019) (Child Protective Specialists receive six weeks of training at James Satterwhite Training Academy).

At the end of the sixty-day investigation, a CPS investigator must either “indicate[]” the report, if they believe there is “some credible evidence” of abuse or neglect, or “unfound[]” the report.<sup>32</sup> Indicated reports remain accessible in the SCR, and if employers request a check of the SCR, the existence of a report is made available to them.<sup>33</sup> The ramifications of an indicated SCR report could range from barriers to employment in childcare to preventing an individual from becoming a foster or adoptive parent in the future.<sup>34</sup> Regardless of whether or not the report is indicated, if the caseworker believes that there is imminent risk to a child’s emotional or physical health or safety at any point during the investigation, they can use their emergency powers of removal to take a child into protective custody even without the approval of a court.<sup>35</sup> These emergency removals can be done at any time of the day, and caseworkers have unfettered discretion as to whether removals done outside of court hours are merited.<sup>36</sup> When parents are uncooperative, police are used to assist with the removal,<sup>37</sup> even when there hasn’t been a court order.<sup>38</sup> Just imagine the traumatic effect of a police officer and caseworker entering your home to remove your children. One of my clients once reported that her child urinated in his pants as police entered the building and continued to wet the bed well into his pre-teen years as a result. The force with which the separation occurred was devastating for him.

These low and subjective standards of proof have tremendous impacts on families’ civil liberties and the fundamental rights of parents to raise their children. In breaking down the investigative process, the parallels between the low standard of proof required for police to stop-and-

---

<sup>32</sup> N.Y. SOC. SERV. LAW § 424(7) (McKinney 2018).

<sup>33</sup> See N.Y. ST. OFFICE OF CHILDREN & FAMILY SERVS., NEW YORK STATE CHILD PROTECTIVE SERVICES MANUAL: SCR SERVICE CENTER OPERATIONS, ch. 3, C-1 (2017).

<sup>34</sup> N.Y. FAM. CT. ACT § 1051(f)(iii) (McKinney 2018).

<sup>35</sup> See *id.* § 1024(a); SOC. SERV. § 422(4)(A)(b).

<sup>36</sup> See THE CHILD WELFARE ORGANIZING PROJECT ET AL., *supra* note 29, at 29, 38-39.

<sup>37</sup> For more discussion on how police can be utilized in removals, see Larissa MacFarquhar, *When Should a Child Be Taken from His Parents*, NEW YORKER (Aug. 7 & 14, 2017), <https://perma.cc/RUG6-ERH3>.

<sup>38</sup> There are many instances where caseworkers in New York conduct a removal and then, once a court order is sought for the removal, the judge does not grant the order and the children are immediately returned. The number of cases where this occurs skyrockets when there is a high-profile, media-covered infant death. ABIGAIL KRAMER, THE NEW SCH.: CTR. FOR N.Y.C. AFFAIRS, CHILD WELFARE SURGE CONTINUES: FAMILY COURT CASES, EMERGENCY CHILD REMOVALS REMAIN UP 2 (2018), <https://perma.cc/GKK9-KQGB>. Recently, with the tragic and unfortunate death of Zymere Perkins in New York City, there was an influx of removals and filings against families that resulted in the children being immediately returned. *Id.* at 3 (quoting an anonymous caseworker regarding emergency removals without judicial order) (“Take the case to court and let the judge say no. Then we can document we tried. Nobody wants to end up with their face in the *Daily News*. They don’t want to face criminal charges.”).

frisk, and the low standards of proof required for a caseworker in New York to separate a family are clear. Both practices occur outside the courtroom, out in the community, with little judicial oversight, creating a high likelihood of misuse and trauma.

*B. Disproportionate Effects on People of Color in Low Income Communities*

The most concerning similarity between stop-and-frisk tactics and child protective investigations in New York City is the disproportionate impact such practices have on people of color. While the number of stops has decreased dramatically, those stopped are still disproportionately people of color.<sup>39</sup> In the first quarter of 2018, New Yorkers were stopped and frisked by the police on 2,562 occasions.<sup>40</sup> Of those stopped, 56% were Black and 33% were Latinx.<sup>41</sup> Sixty-six percent of all individuals stopped were innocent of any crime or wrongdoing.<sup>42</sup> These statistics come five years after the *Floyd* decision.

Similarly, a disproportionate number of children who are the subject of child protective proceedings are Black and Brown.<sup>43</sup> If you walk in the door of any Family Court building in New York City, you will see a shocking disparity. In the same way the criminal legal system separates Black and Brown men from their families, the child welfare system causes the separation of Black and Brown women from their families.<sup>44</sup> Community members regularly remark to me that they can see how families are being torn apart unnecessarily. Although the players involved in the system know, because it is readily apparent in day-to-day practice, that child protective investigations are entrapping innocent families at an alarming rate—particularly families of color—there is a concerning lack of formal

---

<sup>39</sup> See *Stop-and-Frisk Data: Annual Stop-and-Frisk Numbers*, NYCLU (Apr. 2, 2018), <https://perma.cc/G4JC-E953>.

<sup>40</sup> *Id.*

<sup>41</sup> *Id.*

<sup>42</sup> *Id.*

<sup>43</sup> VAJEERA DORABAWILA, N.Y. ST. OFFICE OF CHILDREN & FAMILY SERVS., BUREAU OF EVALUATION AND RESEARCH, RACIAL AND ETHNIC DISPARITIES IN THE CHILD WELFARE SYSTEM: NEW YORK CITY COMPARED TO THE REST OF THE STATE 20 (2011), <https://perma.cc/FLV2-42CW> (“In NYC, in 2010, relative to white children, black children are 5.2 times as likely to be reported to SCR, 6.6 times as likely to be indicated, 13.6 times [as] likely to be admitted to foster care[,] and 13.4 times as likely to be in care.”). For national information, see U.S. DEP’T FOR HEALTH & HUMAN SERVS., ADMIN. OF CHILDREN & FAMILIES, CHILDREN’S BUREAU, CHILD WELFARE INFO. GATEWAY, RACIAL DISPROPORTIONALITY AND DISPARITY IN CHILD WELFARE (2016), <https://perma.cc/N5DQ-YGVG>.

<sup>44</sup> For more discussion on this parallel, see Collier Meyerson, *For Women of Color, the Child-Welfare System Functions Like the Criminal-Justice System*, NATION (May 24, 2018), <https://perma.cc/8GZS-4EDE>.

data surrounding the demographics of families in New York City who are the subject of investigations.<sup>45</sup> The disparity within the child welfare system is stark and worthy of the same public scrutiny as the stop-and-frisk policing policies of the past and the present.

### C. *The Impact on Community*

The impact of stop-and-frisk was often the wrongful incarceration of men of color. Many prison reform advocates understand that when a person is removed from the community and incarcerated, even for a short period of time, the family and community they leave behind suffer the consequences.<sup>46</sup> The financial toll on families—including the family's loss of that individual's income, as well as the cost for phone calls and visitation to the facility where the family member is being housed—can lead to poverty and homelessness, and can have a lasting emotional impact on children.<sup>47</sup>

Part of the call for the end of stop-and-frisk was due to the public acknowledging the loss that incarceration for any period of time has on individuals and families. However, when it comes to the impact of removing children from their families, there is an outright refusal to consider anyone outside of the child, regardless of the fact that the removal can have an impact on the ease with which parents are able to work towards getting their children back. Children are often viewed in isolation and not as a part of a larger family and community. This may be because parents are often demonized for their shortcomings rather than seen as individuals suffering from the effects of impoverished communities.

Poverty and homelessness can similarly result when children are removed from their families, since a parent who receives public assistance can have their benefits reduced as a result of a decrease in household size or composition.<sup>48</sup> This can impact their ability to maintain food and shelter until the child is returned. In addition, in order for parents to get their children home, they are required to engage in services and attend visits,

---

<sup>45</sup> See Beth L. Green et al., *It's Not as Simple as It Sounds: Problems and Solutions in Accessing and Using Administrative Child Welfare Data for Evaluating the Impact of Early Childhood Interventions*, 57 CHILD. & YOUTH SERVS. REV. 40 (2015), for a discussion of the challenges around child welfare data.

<sup>46</sup> Dorothy E. Roberts, *Prison, Foster Care, and the Systemic Punishment of Black Mothers*, 59 UCLA L. REV. 1474, 1487 (2012).

<sup>47</sup> *More on Incarceration's Impact on Kids and Families*, VERA INST. JUST.: HUM. TOLL JAIL, <https://perma.cc/9VSK-3VDG> (last visited Dec. 30, 2018); Ruth Delaney, *Who Pays in an Offender-Funded Justice System?*, VERA INST. JUST. (Oct. 13, 2015), <https://perma.cc/L4V2-MK3A>.

<sup>48</sup> See N.Y. COMP. CODES R. & REGS. tit. 18, § 351.2(c),(k)(4) (2018).

and these mandates can often conflict with their work schedule and in many cases can result in loss of employment.<sup>49</sup>

*D. Lack of Recourse for Rogue Police Officers and Rogue Caseworkers*

With the rise of the #BlackLivesMatter movement and the onslaught of videos circulating images of police misconduct on social media, it has become increasingly difficult to justify the excessive use of force on people stopped by the police for minor offenses. While the most publicized cases often result in the death of an unarmed Black man or woman, there are hundreds of other instances of excessive police force that are never recorded and that are excessive in relation to the crime allegedly committed. Notwithstanding the steady stream of police brutality stories throughout American history, the prospect of having police disciplined, arrested, and eventually convicted is highly unlikely, even when there is clear evidence of misconduct.<sup>50</sup>

There is a similar lack of memorialization in the investigations conducted by child services. In many cases, the parents I've worked with have reported that when caseworkers spoke to their children, the recorded statements were different than the representations that their children made to them. Those parents were unable to verify the accuracy of the statements attributed to their children. This doesn't mean that every caseworker has bad intent. However, with the demands of the job being high and because conversations are not recorded, sometimes caseworkers write down/memorialize information based on their humanly faulty memory, and paraphrase rather than record verbatim conversations. The use of interpreters can also lead to misrepresentation of what parents are trying to convey in their native language.

There is no oversight mechanism testing the veracity of the statements of caseworkers, and the assertions of caseworkers are generally accepted as true unless they make egregious misrepresentations.<sup>51</sup> In addition, there are times when caseworkers have removed children based on

---

<sup>49</sup> As family defense attorneys, we are often advocating for the most parenting time possible and have been successful in getting our clients as many as three visits per week. In addition, services often require multiple days of attendance and a myriad of meetings with the agencies, so it can be hard for parents to maintain all of these obligations while still maintaining their employment. Keeping a public assistance case open can be difficult with the appointments required, particularly amidst all of the other demands on a parent's time.

<sup>50</sup> See, e.g., Conor Friedersdorf, *Eric Garner and the NYPD's History of Deadly Chokeholds*, ATLANTIC (Dec. 4, 2014), <https://perma.cc/R44J-35H5>.

<sup>51</sup> While the caseworkers' statements are generally taken as true, there have been instances where the records on a particular case are called into question because of the caseworker's inability to report the interaction in a timely manner. See, e.g., Mosi Secret, *Welfare*

allegations that are largely unsubstantiated, and when further investigation is done and/or the parents are given the benefit of a full and fair hearing with the opportunity to cross examine witnesses and present evidence, the children are returned to their parents. There is no recourse for the violent and traumatic ripping of children from the arms of parents who are not actually a danger to their children.<sup>52</sup> After an unnecessary removal, there is no means of disciplining the caseworkers, whose shoddy case work caused the temporary removal of their children and the resulting long-term trauma that ensued. In the same ways that the stop-and-frisk movement has taught us that the actions of police officers are often racially motivated, we must also interrogate the actions and investigations of caseworkers who are tasked with removing children from homes. Without such interrogation and oversight, the disproportionate impact on low-income communities will continue and the intergenerational contacts that communities will have with foster care will increase.

#### *E. Media Representations of Crime and Abuse*

One of the scariest parallels between stop-and-frisk and child welfare is the media coverage of each. When stop-and-frisk policies began, the justification used in the media, that helped garner widespread support for the policy, was the assertion that stopping people in the street would lower crime and get guns and drugs off the street.<sup>53</sup> This appealed to both leaders in the communities affected by the policy and the public at large. The widespread promulgation of the policy was built on people's worst fears about the pervasiveness of violent crime in their neighborhood, and that fear was used perfectly to create a system of justifiable racial profiling. The reality was that, out of the 191,851 stops that were made in 2013,

---

*Worker and Supervisor Charged in Death of Child*, N.Y. TIMES (Mar. 23, 2011), <https://perma.cc/8X73-SMQX>.

<sup>52</sup> Recently, the world witnessed the viral footage of a mother in New York City, sitting on the ground in a public benefits office after waiting for hours to secure a daycare voucher so that she could return to work, have her child ripped from her arms by law enforcement officials. These scenes are not uncommon, but they do not all have the benefit of being on public display. These are the types of scenes that my clients have reported, stories that are ultimately hidden from public view, that frame the ways in which communities of color experience parent-child separation. See Ashley Southall & Nikita Stewart, *They Grabbed Her Baby and Arrested Her. Now Jazmine Headley Is Speaking Out.*, N.Y. TIMES (Dec. 16, 2018), <https://perma.cc/D2PG-TYJT>, for reporting on the footage of Jazmine Headley, whose child was ripped from her arms by law enforcement.

<sup>53</sup> See *Stop-and-Frisk Myth Busters*, NYCLU (Aug. 30, 2012), <https://perma.cc/J7AC-5GNB> (disproving the myth perpetuated by Ray Kelly, former police commissioner and proponent of "broken-windows" policing, that the stop-and-frisk policy effectively lowered crime rates).

only 397 guns were found—a less than 1% recovery rate.<sup>54</sup> Thus, although the media coverage suggested that stop-and-frisk was effective in stopping crime, there was no clear correlation between the policy and the reduction of crime.

Similarly, the majority of stories that flood the media regarding child welfare relate to child infant deaths. Although the amount of child deaths in New York City is low,<sup>55</sup> cases like the tragic death of Zymere Perkins<sup>56</sup> in 2016 are the types of cases that flood the media.<sup>57</sup> These types of cases, publicized every few years, are the cases that the public has come to believe represent the standard case that a child protective worker encounters on a daily basis. However, nothing could be further from the truth. The vast majority of the cases that child protective workers encounter deal with neglect and not abuse.<sup>58</sup>

While child deaths that could have been prevented by better case-work and oversight should be highlighted in order to ensure that child welfare agencies are adequately doing their jobs, they should not be heralded as a justification for more and broader interventions into communities that are already dealing with poverty and lack of resources. Only highlighting these stories, and not the stories of wrongful prosecution of abuse and neglect, dramatically takes away from the ways in which child welfare agencies are really missing the mark: penalizing parents for their poverty and failing to provide interventions that will help communities and end the generational cycles of foster care. This mischaracterization of the vast majority of child welfare interventions supports the belief that all

---

<sup>54</sup> Emily Badger, *12 Years of Data from New York City Suggest Stop-and-Frisk Wasn't That Effective*, WASH. POST: WONKBLOG (Aug. 21, 2014), <https://perma.cc/NKX3-NHK7>.

<sup>55</sup> See Ariel Spira-Cohen et al., *Understanding Child Injury Deaths: 2010-2015 Child Fatality Review Advisory Team Report*, 17 N.Y.C. VITAL SIGNS, no. 4, at 1 (May 2018), <https://perma.cc/F9RR-6QSA> (showing that there were 22 deaths in 2015, including intentional and accidental injury deaths).

<sup>56</sup> See GLADYS CARRIÓN, N.Y.C. ADMIN. FOR CHILDREN'S SERVS., REPORT ON THE CHILD WELFARE CASE OF ZYMERE PERKINS (2016), <https://perma.cc/43TK-7SS8>, for an account Zymere Perkin's death.

<sup>57</sup> See, e.g., Andy Mai et al., *Brooklyn Day Care Worker Beats Her 4-Year-Old Son to Death with Stick for Dropping Egg on Floor*, N.Y. DAILY NEWS (Jan. 27, 2017, 3:23 AM), <https://perma.cc/46GU-SLCW>; Kareem Fahim, *Mother Gets 43 Years in Death of Child*, 7, N.Y. TIMES (Nov. 12, 2008), <https://perma.cc/WC26-BWA2>; N. R. Kleinfeld & Mosi Secret, *A Bleak Life, Cut Short at 4, Harrowing from the Start*, N.Y. TIMES (May 8, 2011), <https://perma.cc/7LCY-CN73>.

<sup>58</sup> N.Y. FAM. CT. ACT § 1012(e)-(f) (McKinney 2018) (explaining the legal difference between abuse and neglect in New York State); CHILD WELFARE LEAGUE OF AM., NEW YORK'S CHILDREN 2017: NEW YORK'S CHILDREN AT A GLANCE (2017), <https://perma.cc/3JRQ-5P4D> (citation omitted) (“In 2015, there were 66,676 victims of abuse or neglect in New York, a rate of 15.8 per 1,000 children, a [sic] an increase [of] 2.5% from 2014. Of these children, 95.3% were neglected, 9.7% were physically abused, and 3% were sexually abused.”).

families need the intervention in much the same way that the fear stoked by the presence of guns and drugs in the community fueled the belief that stop-and-frisk-policing was necessary.

### III. DIFFERENCES BETWEEN USE OF STOP-AND-FRISK AND CPS INVESTIGATIONS

While there are many similarities between the stop-and-frisk policy and the ways in which child protective officials intervene into the households of Black and Brown families, there are differences between the two that highlight the ways in which child welfare investigations are even more complicated than the stop-and-frisk policing model.

#### *A. Ongoing Caseworker Intervention*

While the stop-and-frisk movement may only result in a brief interaction with an officer (as unjust as that stop may be), when a family encounters a child welfare agency official, it is never a brief intervention—in fact, it can often last months without court involvement.<sup>59</sup> After an arrest is made, police officers generally have little-to-no additional contact with the people who they have arrested. Caseworkers, on the other hand, often have substantial contact with families once they are assigned to investigate a case.<sup>60</sup> Most troubling is the reality that investigative case workers (Child Protective Specialists) in New York City, who often use their investigations to secure a removal of children by testifying against parents, are then tasked to “work” with families, even when there is a clear factual dispute and hurtful allegations have been made. This is also troubling because parents who do not work with caseworkers are seen as defiant and uncooperative, even though there is good reason to understand that any trust in the relationship hopelessly eroded once the investigation began. Although the caseworkers’ work is often heralded as “social work,” the majority of the front-line workers do not have a degree in social work<sup>61</sup> and do no more than hand the family a piece of paper with

---

<sup>59</sup> See N.Y.C. ADMIN. FOR CHILDREN’S SERVS., ACS QUARTERLY REPORT ON PREVENTION SERVICES UTILIZATION, JULY-SEPTEMBER 2018 (2018), <https://perma.cc/HNV7-6XHF> (showing that the average enrollment in preventive services is 9.4 months). In New York, families are often offered preventive services rather than taken to court. While these services are explained to be voluntary, parents have often reported that if they did not agree to the services, court intervention was threatened.

<sup>60</sup> N.Y. ST. OFFICE OF CHILDREN & FAMILY SERVS., NEW YORK STATE CHILD PROTECTIVE SERVICES MANUAL: SERVICE PROVISION AND DEVELOPMENT OF A FASP WITH A PROTECTIVE PROGRAM CHOICE, ch. 8, C-2, -3 (2017), <https://perma.cc/Y4ZZ-H492>.

<sup>61</sup> See *id.* at INTRODUCTION TO CHILD PROTECTIVE SERVICES, ch. 1, D-1 (2017), <https://perma.cc/9FZT-ZB85> (“It is preferable that CPS workers have an educational back-



referrals as a means of lending support, when a more complicated inquiry into the conditions that caused the need for intervention is needed in order to remedy the present issues and prevent future interventions.

In the criminal context, a lawyer need only call the police station and invoke on behalf of her client to stop the police from further questioning. Once a person is charged and assigned an attorney, there is no further police intervention unless that individual has new charges brought against them. In contrast, parents are required to have many conversations with their caseworkers outside of court throughout the duration of a case, which may refer back to the initial allegations. The caseworkers in New York City schedule several conferences that parents are required to attend outside of court. There, they attempt to have conversations with parents about the allegations because there is an assumption that whatever allegations were brought against the parents are true and that providing referrals—for what limited services are available—is the only way to remedy the past wrongs.<sup>62</sup>

If parents are uncooperative with the caseworkers, they are seen by the court as dangerous and lacking insight. This is problematic because of the ways in which a parent's statements can be used against them when proving the existing allegations and when bringing additional charges of abuse and neglect.<sup>63</sup> If parents are not willing to admit to the alleged wrongdoing, there are assertions and assumptions made by judges, caseworkers, attorneys for the agency, and attorneys for the child, about their insight into the underlying allegations, even before a judge determines the validity of the allegations. These assertions become an additional barrier by preventing parents from regaining the trust of the court, so that they can get their children home.<sup>64</sup> Thus, parents involved in the child welfare

---

ground or experience in social work or a related field and be skillful and experienced in working with children and families. State regulations require any CPS Supervisor hired after December 1, 2006, to have, at a minimum, a baccalaureate degree and two years of relevant child welfare services experience, except that these requirements may be waived by OCFS where they have created a barrier to hiring suitable staff. Non-supervisory CPS workers must have a baccalaureate degree and/or must have relevant human services experience.”).

<sup>62</sup> At Neighborhood Defender Service (NDS) of Harlem, we have parent advocates and social workers who attend these conferences and assist our clients with navigating service planning without making additional admissions that could have negative effects on the parent's eventual trial.

<sup>63</sup> I once represented a client in a case where all of the testimony at trial around the validity of the allegations came from her admissions at service planning conferences after the petition alleging neglect had been filed against her.

<sup>64</sup> In New York City, it can often take many months for a judge to have a trial on the initial allegations of abuse and neglect. While waiting for that trial, parents are able to request a hearing, pursuant to section 1028 of the Family Court Act, to get their children home. N.Y. FAM. CT. ACT § 1028 (McKinney 2018). It is at this hearing that parents are expected to admit

system face an impossible dilemma when they have allegations brought against them in court: they can engage in the services offered, accept responsibility for the allegation to be reunified with their children and receive positive settlements, or they can contest the allegations and face the possibility of being seen as difficult, lacking insight, and potentially dangerous to their children. This is very different from the way in which the criminal legal system operates.

### *B. Civil Rights and Social Work Approaches*

Moreover, these ongoing family court interventions are perceived as protective of children and somehow tantamount to the Constitutionally protected rights of parents to rear their children free from governmental intrusion.<sup>65</sup> In contrast, in the criminal context, a person's individual right to liberty is central and arguments made in court around an individual's Constitutional rights are standard. In the stop-and-frisk context, criminal justice reform advocates argued that the practice of stop-and-frisk violated an individual's Fourth Amendment right to be free of unreasonable search and seizure.<sup>66</sup> Additionally, the lawyers and advocates fighting against stop-and-frisk practices argued that a disproportionate number of the searches targeted Black and Brown men, thus violating the Equal Protection Clause of the Fourteenth Amendment.<sup>67</sup> These arguments ultimately fueled the widespread support to reform this racist practice in New York City.

In the Family Court context, however, arguments about the constitutionality of removals or assertions of a parent's Fifth or Sixth Amendment rights<sup>68</sup> are seen as incredibly out of touch. These arguments are seen as interfering with the true progress in a case, which many define as providing a family with services rather than upholding the law even though the services are often cookie cutter and not specific to the needs of a family. The use of Constitutional arguments is seen, by some judges, as a self-righteous act by the defense attorney rather than the continual reminder

---

to (or explain) their past behavior even before a judge has adjudicated the parent as neglectful. *See id.*

<sup>65</sup> *Troxel v. Granville*, 530 U.S. 57, 65-66 (2000) (describing the constitutional right to care, custody, and control of one's children).

<sup>66</sup> The Editorial Board, *Racial Discrimination in Stop-and-Frisk*, N.Y. TIMES (Aug. 12, 2013), <https://perma.cc/P2ED-CGG2>.

<sup>67</sup> *See id.*

<sup>68</sup> The Fifth Amendment right against self-incrimination often comes up when a parent has a concurrent criminal case. 1 THOMAS A. JACOBS, CHILDREN AND THE LAW: RIGHTS AND OBLIGATIONS § 2:9 (2018). The Confrontation Clause of the Sixth Amendment comes up when the only corroborating evidence would require a child or an adult to testify in open court. *Id.* § 1:14.

of a parent's Constitutionally protected right to rear their child(ren) free from government intervention and in accordance with the Constitutional protected ideals.

Providing a social work approach to family intervention is seen as the highest priority even though most of the caseworkers are not actual social workers, nor are they clinically trained.<sup>69</sup> The fact that children are removed disproportionately from Black and Brown mothers is merely seen as an unfortunate consequence of child protection rather than a violation of the Equal Protection Clause of the Fourteenth Amendment. The narrow focus of the court and child protective agencies on the protection of children has led to a broader justification of any and all government intervention, regardless of its deleterious effects on families and communities. However, the system should be more concerned with strengthening families and communities by *upholding* a parent's civil rights. In upholding the rights of parents, we can protect communities from erroneous governmental decision-making, gain the trust of those parents who need help, and guard against unnecessary removals that are traumatic to children.

#### IV. RAMIFICATIONS OF THE STATUS QUO

The stop-and-frisk era should have provided a valuable lesson on the deep societal ramifications that abuses of power can have on government and community relations. The overuse of stop-and-frisk policy on Black and Brown people fostered extreme mistrust among communities and police which, despite reforms, still lingers today.<sup>70</sup> Young people in New York City who have been stopped in the past are less willing to report crime in the future; these scars of racial profiling stand in the way of community policing that might assist communities.<sup>71</sup> Given that over half of the stops made annually are young people ages thirteen to twenty-five<sup>72</sup>, it is clear that the abuses of stop-and-frisk will have negative impacts for the next generation on their trust of police and government.

---

<sup>69</sup> Because the only requirement for a caseworker is to hold a bachelor's degree, the individual caseworkers are not trained or prepared to work with parents who suffer from long term substance misuse or mental illness and the traumas that parents and children face are often unaddressed by inexperienced caseworkers. See N.Y. ST. OFFICE OF CHILDREN & FAMILY SERVS., NEW YORK STATE CHILD PROTECTIVE SERVICES MANUAL: SERVICE PROVISION AND DEVELOPMENT OF A FASP WITH A PROTECTIVE PROGRAM CHOICE, *supra* note 60.

<sup>70</sup> See JENNIFER FRATELLO et al., VERA INST. OF JUSTICE, CTR. ON YOUTH JUSTICE, COMING OF AGE WITH STOP AND FRISK: EXPERIENCES, PERCEPTIONS, AND PUBLIC SAFETY IMPLICATIONS 41 (2013).

<sup>71</sup> *Id.* at 69 (“[W]illingness to report crime and cooperate with law enforcement is low across the board.”).

<sup>72</sup> *Fact sheet*, COMING OF AGE WITH STOP AND FRISK: EXPERIENCES, SELF-PERCEPTIONS, AND PUBLIC SAFETY IMPLICATIONS, VERA INST. OF JUSTICE, CTR. ON YOUTH JUSTICE (2013).

Utilizing child protective policies in the same overbroad and racially motivated fashion will have the same effect for the next generation of families. If the net of child protective services continues to be cast too wide, entrapping innocent families, a deeper mistrust of the system will ensue. The Supreme Court recognized, in the late 1960s, that “the degree of community resentment aroused by particular practices is clearly relevant to an assessment of the quality of the intrusion upon reasonable expectations of personal security.”<sup>73</sup> Judges, legislators, and child welfare officials must consider the negative impact that overbroad and misused policies will have on identifying cases of actual abuse and in fostering community trust.

#### V. WHAT CAN PRACTITIONERS AND ADVOCATES DO?

The question remains as to what can be done by advocates in the field, be it lawyers, social workers, parent advocates, or civil rights advocates concerned with the disturbance of a parent’s fundamental right to rear their child.<sup>74</sup> The following are some ideas and action steps that practitioners and advocates should consider in their efforts to hold child protective agencies accountable and to reform the child welfare system.

##### A. Collect Data

The harsh reality of Stop-and-Frisk reforms is that they did not stem from the individual stories that Black and Brown men told of being violated, racially profiled, and humiliated at the whim of NYPD officers. The reality is that the data ultimately turned the tide. It was the realization that the number of stops being done by NYPD officers did not actually have an effect on the reduction of crime. Although the court in *Floyd* cited to racial discrimination, the majority of the decision was based on raw data that the mode of policing was not effective in stopping crime.<sup>75</sup>

There are major gaps in the ways in which child protective agencies in New York City and across the country report on their statistics. For

---

<sup>73</sup> Terry v. Ohio, 392 U.S. 1, 17 n.14 (1968).

<sup>74</sup> Troxel v. Granville, 530 U.S. 57, 65-66 (2000).

<sup>75</sup> See *Floyd v. City of New York*, 959 F. Supp. 2d 540, 562 (S.D.N.Y. 2013) (“[T]he City’s highest officials have turned a blind eye to the evidence that officers are conducting stops in a racially discriminatory manner. In their zeal to defend a policy that they believe to be effective, they have willfully ignored overwhelming proof that the policy of targeting ‘the right people’ is racially discriminatory and therefore violates the United States Constitution. One NYPD official has even suggested that it is permissible to stop racially defined groups just to instill fear in them that they are subject to being stopped at any time for any reason – in the hope that this fear will deter them from carrying guns in the streets. The goal of deterring crime is laudable, but this method of doing so is unconstitutional.”).

instance, it might be true that there are less children entering foster care in New York City each year, but it is unclear whether that data reflects the amount of times removals were sought or executed and then the children were quickly returned to their parents while the case continued. It is also unclear whether the number of children in foster care includes children placed with kinship resources that do not require foster care funds. The more we understand the impact of intervention, the more that we can analyze its efficacy. While the data clearly suggest that there is a disproportionate number of Black children in foster care,<sup>76</sup> there needs to be better, more consistent, accounting of whether the current interventions utilized by child protective agencies are actually resulting in the reduction of child abuse and neglect, and there needs to be a better assessment of the efficacy of the intervention. In addition, we need better data on the intergenerational effects of foster care on communities of color. It would be helpful to contextualize a parent's struggles, if we had information on whether they themselves were in foster care and what effect that experience had on them.<sup>77</sup> And, we must demand *ongoing* transparency from child protective agencies in their data, not only when there is a high-profile child death.<sup>78</sup> While data is released from child welfare officials,<sup>79</sup> there should be an independent monitor analyzing the data. Improving our ability to view, understand, and interpret data from child welfare agencies will improve the community's ability to assess the real impact of the governmental intrusion into the lives of families.

### *B. Push for a Higher Burden of Proof*

There also needs to be advocacy around having a higher burden of proof for hotline workers to employ at the onset of a call and for caseworkers during the investigation stage. During the investigation stage, the burden of "some credible evidence," used to determine whether or not to

---

<sup>76</sup> U.S. DEP'T FOR HEALTH & HUMAN SERVS., ADMIN. OF CHILDREN & FAMILIES, CHILDREN'S BUREAU, CHILD WELFARE INFO. GATEWAY, RACIAL DISPROPORTIONALITY AND DISPARITY IN CHILD WELFARE 2 (2016), <https://perma.cc/N5DQ-YGVG2> ("A significant amount of research has documented the overrepresentation of certain racial and ethnic populations—including African-Americans and Native Americans—in the child welfare system when compared with their representation in the general population").

<sup>77</sup> CHILD WELFARE INFO. GATEWAY, INTERGENERATIONAL PATTERNS OF CHILD MALTREATMENT: WHAT THE EVIDENCE SHOWS 2 (Aug. 2016), <https://perma.cc/U49D-ZQ9W> ("Although many researchers have attempted to quantify and explain the persistence of child abuse and neglect across generations . . . many in the field agree that the current evidence base is still woefully inadequate.").

<sup>78</sup> See, e.g., CARRIÓN, *supra* note 56.

<sup>79</sup> *Data & Analysis*, N.Y.C. ADMIN. FOR CHILD. SERVS., <https://perma.cc/JE2Z-24QD> (last visited Dec. 30, 2018).

mark a case indicated or unfounded, is unreasonably low considering the implications of an indicated case.<sup>80</sup> Even if a case is marked as “indicated,” suggesting that there is some credible evidence of neglect, that does not mean that a family will be subject to court intervention. In fact, there are many families that have indicated reports but have never been the subject of a court proceeding. Particularly when there is never any court intervention, it is unjust that an investigation can continue to affect a parent and her family in the long term. In many cases the caseworker may mark the case as indicated but not pursue formal charges in court if the parents are cooperative with services.

In New York state, an indicated case can result in the denial of employment in the field of childcare, which can eliminate a parent’s ability to obtain employment in daycares, hospitals, and schools.<sup>81</sup> Even in cases where parents were brought to court, the fact that they were able to remedy the problem identified by the child protective agency in a short period of time does not mean a report is removed from the registry.<sup>82</sup> In New York the “indicated” case can last until a parent’s youngest child turns 28 years of age if no hearing is requested to have the report amended and sealed.<sup>83</sup> With that said, many parents are denied the ability to be caretakers for their nieces, nephews, and grandchildren based on unproven allegations of neglect, when there are open investigations for family members years later. There is no precedent for this in any other area of government intrusion and it should be reformed.

### *C. Fight for “Miranda Rights” for Child Protective Investigations*

Another worthwhile reform is advocating for all parents to be told their rights at the beginning of a caseworker’s investigation, in the same manner that a police officer is required to advise a person being arrested and deprived of their liberty interest. This is appropriate and necessary because of the number and nature of rights being infringed upon once a child protective worker begins an investigation; they come into the home, look through the fridges and cabinets, ask that the children be examined without their clothes, question children without their parents, and potentially use all of that information to bring charges against a parent in court.

---

<sup>80</sup> N.Y. SOC. SERV. LAW §§ 422(8)(a)(iv), (v) (McKinney 2018).

<sup>81</sup> N.Y. FAM. CT. ACT § 1051(f)(iii) (McKinney 2018) (“[T]he existence of such report may be made known to employers seeking to screen employee applicants in the field of child care, and to child care agencies if the respondent applies to become a foster parent or adoptive parent.”).

<sup>82</sup> See John O’Brien, *NY Denied Thousands Accused of Child Abuse the Chance to Clear Their Name*, SYRACUSE.COM (Mar. 22, 2010, 6:00 AM), <https://perma.cc/8UNM-L22F>.

<sup>83</sup> SOC. SERV. §§ 422(5-a), (6).

This level of intrusion, and the implications of allowing child welfare officials into a parent's home, should be explained to all parents from the onset.

Some form of Miranda rights could be helpful for many reasons. First, it would inform the parent of their rights before they start to speak with investigative workers. Although characterized as social workers in the public eye, caseworkers are more akin to police officers, and parents should know that anything they tell them can, and will, be used against them in court. Most parents that I have encountered have no idea what their rights are, especially with respect to the sharing of information and access to their homes when a child protective worker knocks on the door. Parents generally want to cooperate because they are nervous about what will happen to their children and are not aware of how their cooperation can affect them legally in the future. Furthermore, some caseworkers, perhaps not understanding the potential legal path a case may take, urge parents to speak with them under the notion that if the parent explains what happened they can avoid further ACS interference. Parents should have the opportunity to understand the potential ramifications before speaking with child protective workers.

Second, although some parents will likely overshare despite the warnings, as is the case in the criminal context, the prevalence and mainstream knowledge of these rights could serve to formalize parent's interactions with child protective officials. In the criminal context, with shows like "Law & Order," the mainstream public has the Miranda rights memorized. This would be helpful to normalize a parent's understanding of their rights and allow them to grasp the gravity of the investigation and the potential implications, so that they can make informed choices about how to interact with ACS.

Finally, a requirement that parents be read their rights before proceeding with an investigation both centers the conversation on the parent's civil rights, and makes clear that the caseworkers are not uninterested third parties sent solely to help families, but rather a government worker sent to investigate the family and make determinations about the safety of children. This is necessary for the reframing of the state's intervention into families. Advocating for a form of Miranda rights would bring us a step closer to upholding the notion that the right to rear one's child is a fundamental right.<sup>84</sup>

---

<sup>84</sup> See generally Richard A. Leo, *The Impact of Miranda Revisited*, 86 J. CRIM. L. & CRIMINOLOGY 621 (1996) (discussing the impact that *Miranda* has had on police interactions).

*D. Undertake Mass Community Education*

These suggested reforms should go hand in hand with massive efforts to educate parents, and all of the social service providers that they may encounter, on the effects of the child welfare system on communities of color. Too often, I have heard from teachers, doctors, and even police officers that their intentions for the families who they reported were much different than the ultimate outcome of the report. Too often, I have heard that mandated reporters<sup>85</sup> received no clarity about what could happen to a family after they call child protective authorities. I have also heard from parents that they had no idea that an investigation could result in the removal of their children. Had they understood this result earlier, they could have made changes and interacted with the caseworkers very differently.

There needs to be a more concerted and widespread effort to explain to the public the way in which child protective investigations actually work. As is the case with the criminal legal system, understanding what to do when you are confronted by a government official is not intuitive, and the way a parent reacts to the confrontation can have an impact on how the rest of the investigation will go.

*E. Flood the Media with Alternative Stories*

Finally, it is crucial that the stories presented to and by media outlets be more than just stories of children dying tragically in horrifically abusive homes. While those stories may serve as click bait, they do not accurately depict the true stories of the parents who I see on a daily basis. The stories that I hear are of mothers using corporal punishment in a desperate attempt to keep their children in line so that they aren't later killed by police officers in a position of authority. I hear stories of teens who are mislabeled as having bipolar disorder or attention deficit disorder, and then their children are removed years later solely on the basis that these diagnoses might persist. I hear stories of abuse allegations causing months and months of separation where, ultimately, no medical professional can substantiate a finding of abuse.<sup>86</sup> I hear stories of women who are desperate to leave abusive households and make compromises with their partners to ensure the safety of their children, yet they are prosecuted for an alleged failure to protect those children. I hear stories of family members

---

<sup>85</sup> SOC. SERV. § 413(1)(a); *see also Mandated Reporters*, N.Y.C. ADMIN. FOR CHILD. SERVS., <https://perma.cc/8LQT-98DE> (last visited Dec. 30, 2018) (“Certain professionals such as doctors, nurses, teachers, police officers, and child care center workers are mandated by New York State law to report suspected child abuse and neglect to the state hotline, the New York State Central Register (SCR).”).

<sup>86</sup> *See, e.g.,* Steve Orr & Gary Craig, *Ruling Alters Legal Landscape in NY Shaken-Baby Cases*, DEMOCRAT & CHRON., (Nov. 16, 2016, 11:43 AM), <https://perma.cc/6TFS-MNKP>.



being denied the ability to care for a nephew or niece because ACS claims that the family member is a virtual stranger, despite the foster family who they are placed with being actual strangers. And, I hear mothers and fathers expressing their deep, deep longing to see and be with their children, even though they are struggling to make ends meet. These are the stories that need to be told. These are the stories that need to shape the narrative and we must bring these stories to the forefront of the conversation.

#### CONCLUSION

There is no guide book for raising children, and there will be mistakes made along the way for any individual bold enough to take on the task. But, at times, if you are a family of color and live in a poor community, what should be a bump in the road in the normal course of parenting can turn into a life-changing obstacle. A rough season in a parent's life where drinking is perhaps too prevalent, a young mother's struggle with postpartum depression, or the use of corporal punishment to allay a parent's worst fears for the way in which their children will act out publicly if not kept in line, should cause a community to rally around a family and support them rather than penalize parents for lacking the emotional fortitude and resources to cope with the ebbs and flows of life.

When a child protective official enters the life of a family, that family will most likely never be the same. Just as a stop-and-frisk proved to be an egregious, racially discriminatory unreasonable search and seizure, the ways in which child protective agencies enter the homes of private citizens has the same deleterious impact. This is because there are all sorts of ways in which caseworkers, believed to be present solely for assistance, separate children from their families for reasons that are not always justifiable. These obstacles should not result in the decimation of families and, considering the clear racial disparity of those affected by the system, this system should not go unchecked. The narrative must be changed. Child welfare needs a moment, much like the moment had around the injustice of stop-and-frisk, where the public does not simply accept that mostly Black and Brown children are being taken into foster care, but interrogates that reality in a way that brings real and sustainable reform.