

CHILD WELFARE LAW AND PRACTICE

Representing Children,
Parents, and Agencies in
Neglect, Abuse, and Dependency Cases

4th Edition

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Chapter 4

RACIAL JUSTICE

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§ 4.1 • INTRODUCTION

History and research show that racial injustices in child abuse and neglect systems across the country persist. Black families, Indigenous families, and families of color remain overrepresented and oppressed. To achieve racial justice, individuals must learn how and where individual and institutional racial bias manifest and together strive toward racial justice.

Amid a global pandemic, the reckoning of racial injustice in the United States in 2020 reignited scrutiny of racism in institutions, and child protection or

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family regulation systems were no exception.² Examining racial bias is timely, but history demonstrates that systemic regulation and destruction of families who are Black, Indigenous, and people of color (collectively, BIPOC) is timeless.³ As this chapter highlights, all professionals, from mandatory reporters to judges, hold the discretionary decision-making power to determine the fate of families, and that power can be infected with implicit bias or used to disrupt racial bias; this is why racial justice is enduring and urgent.⁴

Child protective services agencies (CPS) separate Black, Indigenous, and, in some states, Latinx families at disproportionately higher rates than White families.⁵ CPS separates White families, but White children are at lower risk of foster care placement than Black and Indigenous children.⁶ White children are not

² See Jessica Pryce, *What Will It Take for the Child Welfare System to Become Anti-Racist?*, IMPRINT (June 25, 2020), <https://imprintnews.org/child-welfare-2/what-will-take-for-child-welfare-system-become-anti-racist/44702>; Stephanie S. Franklin, *NACC Open Webinar: Don't Minimize the Moment: Truth, Reparatory Justice, and Healing for Black Families Who Are Descendants of Captive and Enslaved Africans in the U.S.*, NAT'L ASS'N OF COUNSEL FOR CHILD. (July 23, 2020), <https://www.naccchildlaw.org/events/EventDetails.aspx?id=1393168>.

³ For a history of family separations and how our field is premised on the Constitution's guarantee of preserving family integrity, see ch. 1, *supra*. "BIPOC" in this chapter refers to Black, Indigenous, and certain peoples of color, such as Latinx families, in the child protection or family regulation system, because overrepresentation or racial disproportionality has been observed among Black, Indigenous, and Latinx children "although to a lesser degree and with variations by state." Alan J. Dettlaff, *Introduction to Racial Disproportionality and Disparities in Child Welfare*, in RACIAL DISPROPORTIONALITY AND DISPARITIES IN THE CHILD WELFARE SYSTEM 3 (Alan J. Dettlaff ed., 2021).

⁴ See DOROTHY E. ROBERTS, *SHATTERED BONDS: THE COLOR OF CHILD WELFARE* 55 (2002) ("In fact, the child protection process is designed in a way that practically invites racial bias. Vague definitions of neglect, unbridled discretion, and lack of training form a dangerous combination in the hands of [professionals] charged with deciding the fate of families.").

⁵ See C. Puzanchera & M. Taylor, *Disproportionality Rates for Children of Color in Foster Care Dashboard*, NAT'L COUNCIL OF JUV. & FAM. CT. JUDGES (2020), http://ncjj.org/AFCARS/Disproportionality_Dashboard.aspx (comparing children entering into and in foster care to youth population by race from 2010 to 2019); CHILD WELFARE INFO. GATEWAY, CHILD.'S BUREAU, ADMIN. CHILD. & FAMS., U.S. DEP'T HEALTH & HUM. SERVS, *CHILD WELFARE PRACTICE TO ADDRESS RACIAL DISPROPORTIONALITY AND DISPARITY* 2 (2021), <https://www.childwelfare.gov/pubs/issue-briefs/racial-disproportionality/> (defining disproportionality as "the overrepresentation or underrepresentation of a racial or ethnic group compared with its percentage in the total population").

⁶ See Christopher Wildeman & Natalia Emanuel, *Cumulative Risks of Foster Care Placement by Age 18 for U.S. Children, 2000–2011*, PLOS ONE (2014), <https://journals.plos.org/plosone/article?id=10.1371/journal.pone.0092785> (showing 15% of Indigenous children and 11% of Black children could wind up in foster care compared to 5% of White children); ROBERTS, *supra* note 4, at 17 ("White children who are abused and neglected are twice as likely as Black children to receive services in their own homes, avoiding the emotional damage and physical risks of foster care placement.").

overrepresented in the system relative to their representation in the general population or compared to children of other races.⁷ White families may experience bias on account of their poverty or living conditions, but not on account of their race, and not on a systemic scale.⁸

BIPOC and poverty-stricken White families occupy a lower caste, the social construction in the United States that assigns superior or inferior value and rank to one group over another in society based on traits like skin color and wealth.⁹

[Caste] relied on stigmatizing those deemed inferior to justify the dehumanization necessary to keep the lowest-ranked people at the bottom and to rationalize the protocols of enforcement. . . . [Caste] embeds into our bones an unconscious ranking of human characteristics and sets forth the rules, expectations, and stereotypes that have been used to justify brutalities against entire groups within our species. . . . Race does the heavy lifting for a caste system that demands a means of human division. . . . We may mention “race,” referring to people as [B]lack or [W]hite or Latino or Asian or [I]ndigenous, when what lies beneath each label is centuries of history and assigning of assumptions and values to physical features in a structure of human hierarchy.¹⁰

⁷ *Compare Child Population by Race in the United States*, KIDS COUNT DATA CTR., ANNIE E. CASEY FOUND. (Sept. 2021), <https://datacenter.kidscount.org/data/line/103-child-population-by-race?loc=1&loct=2#2/2-11/false/574,1729,37,871,870,573,869,36,868,867/asc/68,69,67,12,70,66,71,72/424> with *Children in Foster Care by Race and Hispanic Origin in the United States*, KIDS COUNT DATA CTR., ANNIE E. CASEY FOUND. (June 2021), <https://datacenter.kidscount.org/data/line/6246-children-in-foster-care-by-race-and-hispanic-origin?loc=1&loct=1#1/any/false/1729,37,871,870,573,869,36,868,867,133/asc/2638,2601,2600,2598,2603,2597,2602,1353/12993> [hereinafter *Children in Foster Care by Race and Hispanic Origin*] (showing that from 2010 to 2019, non-Hispanic White children represent 43% of children in foster care versus 47% to 53% of non-Hispanic White children in the general population at the same time).

⁸ ABA Ctr. on Child. & the L., *A Conversation About the Manifestation of White Supremacy in the Institution of Child Welfare*, YOUTUBE, (Jul. 15, 2020), <https://www.youtube.com/watch?v=EUBuOCVhUZI>; RASHAD ROBINSON & NICOLE SUSSNER RODGERS, COLOR OF CHANGE, CHANGING THE NARRATIVE ABOUT BLACK FAMILIES 38 (2020), https://colorofchange.org/wp-content/uploads/2020/10/20_FamilyStory_RaceGuide_v08.pdf (“[W]hite families living in poverty are not seen as a threat to society or punished nearly as often for the realities and challenges they face.”).

⁹ ISABEL WILKERSON, CASTE: THE ORIGINS OF OUR DISCONTENTS 17–18 (2020) (describing the hierarchy of caste as power and resources, which groups have them and are deemed worthy to acquire and control them, and which groups do not). “[Caste] is about respect, authority, and assumptions of competence—who is accorded these and who is not.” *Id.* at 18.

¹⁰ *Id.*

Caste, in child protection or family regulation systems, keeps BIPOC families inferior through stereotypes, labels, and assumptions that their parenting is deficient, dangerous, and deviant.¹¹ Most BIPOC families affected by CPS are accused not of abuse but neglect, “which is inextricably linked to poverty.”¹² Poverty-driven reports of neglect are “most often driven by an implicit bias that Black parents are a danger to their own children.”¹³ Implicit bias, as explained throughout this chapter, infects discretionary decision-making against BIPOC families to justify their separation under the guise of saving BIPOC children.¹⁴

This rhetoric (language, labels, and narrative) to “save children” is crucial because it drives this multibillion-dollar institution.¹⁵ The punitive ideology of saving children from dangerous families often means destroying families, which primarily affects families based on race and caste—the disparate impact caused by

¹¹ See Felice León, *Save Black Children: Child Welfare, Foster Care and the Broken American System That Continues to Harm Black Families*, ROOT (May 18, 2021), <https://www.theroot.com/save-black-children-child-welfare-foster-care-and-the-1846911381>; Darcey H. Merritt, *Lived Experiences of Racism Among Child Welfare-Involved Parents*, 13 RACE & SOC. PROBS. 63, 64 (2021) (“The [Child Protection System] is structured by codified practices that support the status quo of racial hierarchies.”).

¹² Bryan Samuels, *Family and Child Well-Being: An Urgent Call to Action*, 21 CHILD.’S BUREAU EXPRESS (2020), <https://cbexpress.acf.hhs.gov/index.cfm?event=website.viewArticles&issueid=218§ionid=2&articleid=5602>.

¹³ Jeremy Christopher Kohomban, *Be the Child Welfare Leader Who Creates a New History*, 21 CHILD.’S BUREAU EXPRESS (2020), <https://cbexpress.acf.hhs.gov/index.cfm?event=website.viewArticles&issueid=218§ionid=2&articleid=5623>.

¹⁴ See Samuels, *supra* note 12 (referring to “nobly rescuing children from dangerous situations to their benefit”); see also, e.g., Theresa R. Beardall & Frank Edwards, *Abolition, Settler Colonialism, and the Persistent Threat of Indian Child Welfare*, 11 COLUM. J. RACE & L. 533, 563 (2021) (“For Black and Native mothers alike, there is an invested interest in presenting them as inherently dangerous and deficient relative to [W]hite families. This framing allows child removal to become naturalized as a desirable and logical intervention.”).

¹⁵ See generally Dorothy Roberts, *How I Became a Family Policing Abolitionist*, 11 COLUM. J. RACE & L. 455 (2021), <https://journals.library.columbia.edu/index.php/cjrl/article/view/8738/4475>; Vivek Sankaran, *Our Moment of Obligation: Replacing Foster Care with a Family Compassion System*, 21 CHILD.’S BUREAU EXPRESS (2020), <https://cbexpress.acf.hhs.gov/index.cfm?event=website.viewArticles&issueid=218§ionid=2&articleid=5599> (“We have tolerated a system that spends 10 times more to support strangers caring for children than to support the child’s own family.”).

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a society that has problematized child protection.¹⁶ Many call this system not child protection but family policing, family regulation, or family death penalty.¹⁷

Decades of research document racial inequities and serious harms at each decision-making juncture: initial report, investigation, substantiation, removal, placement in foster care, termination, permanency, etc.¹⁸ “We now know the current system of family separation was built on a set of false assumptions—‘rescuing’ Black, Brown, [I]ndigenous, or poor White children from their families and placing them with Whiter or richer families provides them a ‘better’ life—has not . . . produced the desired outcomes.”¹⁹ BIPOC families instead testify that they are heavily policed and regulated, and this system is like other American institutions that discriminate against them, a carceral one.²⁰

This chapter reminds readers that race and caste figure in each and every case, whether one realizes it or not. It explores the history, statistics, research, lived experiences, legal frameworks, and strategies to become more aware and work toward racial justice. Finally, this chapter compels individuals to question, from their own particular vantage point, what racial justice in child abuse and neglect systems truly looks like, and their respective roles in every case in either perpetuating or disrupting racial bias.

§ 4.2 • RACIAL INJUSTICE IN CHILD ABUSE AND NEGLECT

§ 4.2.A. Historical Context

Our nation has historically devalued families of color. Black children were sold away from their parents during slavery, Native American children were removed from their families and placed in foster care, and during the past four

¹⁶ See generally Symposium, *Strengthened Bonds Abolishing the Child Welfare System and Re-envisioning Child Well Being*, 11 COLUM. J. RACE & L. 421 (2021), <https://journals.library.columbia.edu/index.php/cjrl/issue/view/789/188>.

¹⁷ See *id.*

¹⁸ See Dettlaff, *supra* note 3, at 5.

¹⁹ Amelia Franck Meyer, *Building a New Way, Together*, 21 CHILD.'S BUREAU EXPRESS (2020), <https://cbexpress.acf.hhs.gov/index.cfm?event=website.viewArticles&issueid=218§ionid=2&articleid=5603>.

²⁰ See Roberts, *supra* note 15, at 461 (describing a system that is “entangled with police, criminal courts, and prisons, forming a coherent carceral machine”). This system “relies on terrorizing [BIPOC] families by taking their children away or weaponizing their children with the threat of removal, to impose intensive surveillance and regulation on them.” *Id.* at 457.

years, countless Latino children have been caged at the border away from their parents.²¹

“For more than two centuries, children in the United States were sold away from their enslaved kin and caregivers.”²² Indigenous children were among the first to be “saved” in the late 1800s—to be Christianized and civilized through forced separation from their families to boarding schools, where they faced abuse and death.²³ For over one hundred years known as the Boarding School Era, children were forcibly removed and held in military-style institutions where they were denied their language, customs, clothing, and religion.²⁴ In the 1960s and 1970s, child protection or family regulation systems targeted Indigenous families for poverty or kinship child-rearing practices common to Indigenous tribes until the passage of the Indian Child Welfare Act (ICWA) sought to end that in 1978.²⁵

In the early twentieth century, federal programs designed to “save children” focused on poor White immigrants and widows, with monetary aid to mothers (or mothers’ pensions) and foster and adoption programs “to keep poor families intact.”²⁶ It was not until the civil rights era in the 1950s and ’60s when Black families became eligible to receive federal public benefits that the system started “saving” Black children.²⁷ “When Black families began to be included in child

²¹ Tehra Coles et al., *The Sad Omission of Child Welfare from Mainstream Discussion on Race*, IMPRINT (Aug. 6, 2020), <https://imprintnews.org/opinion/sad-omission-child-welfare-mainstream-discussion-race>; Samuels, *supra* note 12 (“The systematic separation of children of color from their parents, without regard for the lasting trauma it entails, is a thread that runs through our nation’s history, from slavery and Native American boarding schools to present-day child welfare practice.”); Jasmine Aguilera, *How Foster Families Are Stepping Up to House Unaccompanied Children Arriving at the U.S.-Mexico Border*, TIME (Mar. 19, 2021), <https://time.com/5948102/unaccompanied-children-border-foster-care/>.

²² LAURA BRIGGS, TAKING CHILDREN: A HISTORY OF AMERICAN TERROR 17 (2020). See generally Laura Briggs, *Twentieth Century Black and Native Activism Against the Child Taking System: Lessons for the Present*, 11 COLUM. J. RACE & L. 611 (2021) [hereinafter *Activism Against the Child Taking System*].

²³ See generally Addie C. Rolnick, *Assimilation, Removal, Discipline, and Confinement: Native Girls and Government Intervention*, 11 COLUM. J. RACE & L. 811 (2021), <https://journals.library.columbia.edu/index.php/cjrl/article/view/8752/4492>.

²⁴ See *Activism Against the Child Taking System*, *supra* note 22, at 630; Beardall et al., *supra* note 14, at 544.

²⁵ See *Activism Against the Child Taking System*, *supra* note 22, at 631; Beardall et al., *supra* note 14, at 544. For more on ICWA, see ch. 7, *infra*.

²⁶ León, *supra* note 11 (ignoring Black children); Dettlaff, *supra* note 3, at 10.

²⁷ See León, *supra* note 11; see also Dettlaff, *supra* note 3, at 10–11 (attributing the steady increase of Black children to migration patterns during the 1950s–’60s, along with increased integration and decreasing poverty rates among White children).

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welfare services, these programs [became] more punitive.”²⁸ By the 1970s, Black children were overrepresented in foster care.²⁹

As awareness of this overrepresentation grew, the U.S. Department of Health and Human Services began tracking the national incidence studies (NIS) of child abuse and neglect by race.³⁰ The first three NIS conducted from 1979 to 1993 found “[n]o significant or marginal racial differences in the incidence of maltreatment.”³¹ The data suggested “that all [racial] groups should be represented in the child welfare system consistent with their proportion of the population as a whole. If not, then a basis for the presumption of bias exists.”³² The fourth NIS released in 2010, however, found that Black children were at significantly higher risk than White children of experiencing maltreatment but that “race difference depended on [socioeconomic status].”³³

Poverty is correlated with maltreatment, and Black and Indigenous families are disproportionately poorer than White families.³⁴ But maltreatment rates also depend on the individuals and systems making the decisions, like individual agency workers and their “sentinel agencies” (police, medical, educational, and social service providers) who surveil families receiving benefits, and research shows evidence of racial bias affecting substantiation decisions.³⁵ Notions about parental fitness are “deeply intertwined with race, class, and family structure in ways that may affect the likelihood of a maltreatment report.”³⁶

²⁸ León, *supra* note 11 (stating that “when Black children enter the system, foster care became the major so-called service”); see also *Activism Against the Child Taking System*, *supra* note 22, at 627 (describing this decade as the “browning of child welfare”).

²⁹ See Dettlaff, *supra* note 3, at 10–11.

³⁰ See *id.* at 11 (attempting to estimate the actual incidence of maltreatment from community professionals separately from the official rates of maltreatment from CPS agencies).

³¹ *Id.*

³² *Id.* at 12.

³³ Andrea J. Sedlack et al., Fourth National Incidence Study of Child Abuse and Neglect (NIS-4): Supplementary Analyses of Race Differences in Child Maltreatment Rates in the NIS-4 1 (2010), https://www.acf.hhs.gov/sites/default/files/documents/opre/nis4_supp_analysis_race_diff_mar2010.pdf.

³⁴ *Id.* (noting that “incomes of Black families have not kept pace with the incomes of White families”); Beardall et al., *supra* note 14, at 570 (stating that “poverty disproportionately burdens Native families and there is a clear relationship between poverty and involvement in the child welfare system”).

³⁵ See Alan J. Dettlaff, *The Evolving Understanding of Racial Disproportionality and Disparities*, in RACIAL DISPROPORTIONALITY AND DISPARITIES IN THE CHILD WELFARE SYSTEM 16–18, *supra* note 3.

³⁶ Frank Edwards, *Family Surveillance: Police and the Reporting of Child Abuse and Neglect*, 5 RUSSELL SAGE FOUND. J. SOC. SCIS. 50, 55 (2019), <https://doi.org/10.7758/rsf.2019.5.1.03>. “Race,

§ 4.2.B. Current Trends

America's legacy of separating BIPOC families endures to this day. Black and Indigenous children in particular remain disproportionately overrepresented.³⁷ Racial disproportionalities for BIPOC children can be seen nationwide, with some variations by state.³⁸ Black and Indigenous children are investigated at the highest rates, and more than half of all Black families will be subject to a child abuse or neglect investigation before their child turns eighteen.³⁹ "Black children are more likely to be removed from their families, experience a longer stay in foster care, and wait for longer periods of time to reunify with their families."⁴⁰ Indigenous children "remain at incredibly high risk of family separation," their rates of removal into foster care have remained constant, and "the post-investigation removal decision by child welfare agencies is a key mechanism of inequality in family separation."⁴¹ Latinx children, although underrepresented nationally, are

gender, and entrenched ideas about the family have central roles in structuring both the infrastructure of family surveillance and the micro-level interactions that lead to the decision to file a report." *Id.* at 63.

³⁷ See Roberts, *supra* note 15, at 456 ("Black children were only 14% of children in the United States in 2018, they made up 23% of children in foster care."). Similarly, Indigenous children comprised less than 1% of all U.S. children, but 2.4% of children in the system. See Terry L. Cross, *Racial Disproportionality and Disparities Among American Indian and Alaska Native Populations*, in RACIAL DISPROPORTIONALITY AND DISPARITIES IN THE CHILD WELFARE SYSTEM 99, 101, *supra* note 3.

³⁸ Compare *Child Population by Race, supra* note 7, with *Children in Foster Care by Race and Hispanic Origin in the United States, supra* note 7 (showing that in 2019, Black children represent 83% of children in District of Columbia's foster care but only 53% of children in the general population of the District of Columbia at the same time; showing that in 2019, Indigenous children represent 21% of children in Minnesota's foster care but only 1% of children in the general population of Minnesota at the same time; showing that in 2019, Latinx children represent 31% of children in Massachusetts' foster care but only 19% of children in the general population of Massachusetts at the same time; and showing that in 2019, Asian children represent 34% of children in Hawaii's foster care but only 22% of children in the general population of Hawaii at the same time).

³⁹ See Hyunil Kim et al., *Lifetime Prevalence of Investigating Child Maltreatment Among U.S. Children*, 107 AM J. PUB. HEALTH 274, 277-78 (2017), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5227926/pdf/AJPH.2016.303545.pdf>; Roberts, *supra* note 15, at 457 ("15% of Native children and 11% of Black children could expect to enter foster care before their eighteenth birthday.").

⁴⁰ Jessica Pryce et al., *Racial Disproportionality and Disparities Among African American Children in the Child Welfare System*, in RACIAL DISPROPORTIONALITY AND DISPARITIES IN THE CHILD WELFARE SYSTEM 51, *supra* note 3 (showing differential services offered to families in the system by race). "When compared to White children, Black children and families in the child welfare system experience lower access to services and higher rates of placement instability . . . as well as less engagement with caseworkers." *Id.* (internal citations omitted).

⁴¹ Beardall et al., *supra* note 14, at 534.

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overrepresented in foster care in some states.⁴² “[S]tudies that have examined maltreatment over the course of a child’s lifetime suggest that Latinx children experience a cumulative incidence of investigated and substantiated maltreatment that is higher than White children.”⁴³

“Once in foster care, children of color experience higher rates of placement disruptions, longer times to permanency, and more frequent reentry than their White counterparts.”⁴⁴ Children and youth in foster care suffer worse on every measure of wellbeing: they are “more likely to be incarcerated, to be in juvenile detention, less likely to go to college, and more likely to live in poverty.”⁴⁵ Removal of BIPOC children from their families, even abusive ones, compounds their harm.⁴⁶ Former foster children often lose their culture, language, identity, and family traditions.⁴⁷

§ 4.2.C. Lived Experiences

BIPOC children and parents tell us their experiences with racism in the system: “Black voices and experiences are not valued”; White foster families are supported, but kinship care families, which are more likely to be Black, are not; youth have no “voice or choice” in foster care; BIPOC children “share traumatic, racist experiences with foster parents and families”; and Black children especially lack support emancipating from the system to navigate into positive adulthood.⁴⁸ BIPOC parents experience trauma by continued oversight and surveillance, perceive stigma and shame within their communities, and feel blame, intimidation,

⁴² See Michelle Johnson-Motoyama et al., *Racial Disproportionality and Disparities Among Latinx Children*, in RACIAL DISPROPORTIONALITY AND DISPARITIES IN THE CHILD WELFARE SYSTEM 69, 71, *supra* note 3; Dettlaff, *supra* note 3, at 5 (noting that in 2017, Latinx children were “overrepresented in 20 states with a disproportionality ratio as high as 9.0 in Maine”).

⁴³ Johnson-Motoyama et al., *supra* note 42, at 70.

⁴⁴ Samuels, *supra* note 12.

⁴⁵ León, *supra* note 11.

⁴⁶ See Shanta Trivedi, *The Harm of Child Removal*, 43 N.Y.U. REV. L. & SOC. CHANGE 523, 528 (2019) (stating that removal has dire consequences for children’s health); Merritt, *supra* note 11, at 69 (stating that the trauma of surveillance “transfers intergenerationally to children and affects their coping mechanisms and healthy development”).

⁴⁷ Leyda Garcia-Greenawalt, *Guilty: How Immigrating to the United States Became a Life Sentence to Child Welfare*, COLUM. J. RACE & L. BLOG (Mar. 19, 2021), <https://journals.library.columbia.edu/index.php/cjrl/blog/view/319>[<https://perma.cc/9ET6-SHSA> (testifying to her lived experiences in foster care for eight years).

⁴⁸ CHI BY DESIGN, HOW RACISM IN THE OH CHILD SERVICES SYSTEM IMPACTS THE LIVES OF INDIVIDUALS INVOLVED 8 (2020), <https://jfs.ohio.gov/ocf/Pub-ODJFSRacismOCSFinalReport.stm>.

judgment, and being overwhelmed, afraid, and out of control.⁴⁹ BIPOC parents testify that their parent–child visits were cancelled without notice, they received constant misinformation, their caseworkers refused to work with them, and caseworkers informed the foster parents that their children would soon be available for adoption even though the permanency goal was reunification.⁵⁰ “[BIPOC] parents and youth report not understanding the legal process, their rights, or what transpires at court.”⁵¹ “Parents felt threatened by workers, judges, and others rather than viewing them as helpers.”⁵²

§ 4.3 • LEGAL FRAMEWORKS PERPETUATE RACIAL INJUSTICE

§ 4.3.A. *Child Protection Policies*

Federal child protection laws seem color-blind on their face, but as history has demonstrated, they harm BIPOC families. The Child Abuse and Prevention Act of 1974 (CAPTA) ushered in decades of surveillance of BIPOC families.⁵³ Through the legislation’s foundational mandated-reporting requirements and cross-systems collaboration, CAPTA enabled CPS to surveil and separate hundreds of thousands of BIPOC families.⁵⁴ The Adoption and Safe Families Act of 1997 prioritized permanency for children in care, especially permanency through adoption, which disproportionately affected BIPOC families by speeding up the termination of their constitutional rights.⁵⁵ Reasonable efforts to prevent removal, another federal

⁴⁹ See Merritt, *supra* note 11, at 69. “Overwhelmingly, the respondents in this study expressed feeling mistreated and unfairly judged by child welfare agency workers based on their race/ethnicity.” *Id.* at 67.

⁵⁰ See Angela Olivia Burton & Angeline Montauban, *Toward Community Control of Child Welfare Funding: Repeal the Child Abuse Prevention and Treatment Act*, 11 COLUM. J. RACE & L. 639, 654–55 (2021), <https://journals.library.columbia.edu/index.php/cjrl/article/view/8747/4497>.

⁵¹ Kristen Weber & Sarah Morrison, *The Institutional Analysis, A Tool for Diagnosing Structural Contributors to Racial Disproportionality and Disparity in Child Welfare*, in RACIAL DISPROPORTIONALITY AND DISPARITIES IN THE CHILD WELFARE SYSTEM 375, 393, *supra* note 3.

⁵² *Id.*

⁵³ See Burton & Montauban, *supra* note 50, at 643–44; Pryce et al., *supra* note 40, at 49 (citing studies).

⁵⁴ See Burton & Montauban, *supra* note 50, at 644.

⁵⁵ See Martin Guggenheim, *How Racial Politics Led Directly to the Enactment of the Adoption and Safe Families Act of 1997: The Worst Law Affecting Families Ever Enacted by Congress*, 11 COLUM. J. RACE & L. 711, 721–28 (2021), <https://journals.library.columbia.edu/index.php/cjrl/article/view/8749/4495>; Ashley Albert et al., *Ending the Family Death Penalty and Building a World We Deserve*, 11 COLUM. RACE & L. J. 861, 878 (2021), <https://journals.library.columbia.edu/index.php/cjrl/article/view/8753/4491>; see also Pryce et al., *supra* note 40, at 49–50.

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policy, has been “questionably implemented,” leaving Black and Latinx families “to fend for themselves to get their children back.”⁵⁶

Even laws intended to remedy past racial harms, like the ICWA, have not reduced the racial inequities Indigenous families experience.⁵⁷ The Multiethnic Placement Act of 1994 was nominally enacted to “diminish the effects of racism in foster care and adoptive placement” and reduce the disproportionality of BIPOC children in the system by recruiting ethnically and racially diverse foster and adoptive families.⁵⁸ However, BIPOC children remain overrepresented in the system and remain in foster care longer than White children.⁵⁹ Former foster youth testify to foster care placements outside their racial and cultural backgrounds where they cannot speak their language and practice their traditions—they lose their identity.⁶⁰ The Family First Prevention Services Act of 2018, which promised to center BIPOC families through prevention services, continues to surveil and supervise BIPOC families through ongoing monitoring and periodic risk assessments.⁶¹ Federal laws and policies continue to fund and incentivize the removal of children into state foster care systems, and funding goes primarily to investigation and foster care, not prevention services—with a heavy reliance on medical and educational systems that are plagued by their own racial disparities to do that surveillance.⁶²

⁵⁶ Weber & Morrison, *supra* note 51, at 392 (finding that BIPOC parents are offered “lists of services” outside their language, culture, and neighborhoods to navigate for themselves).

⁵⁷ See Beardall et al., *supra* note 14, at 552 (“[T]he magnitude of Native family separation through the child welfare system has substantially increased since the passage of ICWA.”); Lauren van Schilfgaarde & Brett Lee Shelton, *Using Peacemaking Circles to Indigenize Tribal Child Welfare*, 11 COLUM. J. RACE & L. 681, 689 (2021), <https://journals.library.columbia.edu/index.php/cjrl/article/view/8748/4496> (“Today, despite forty years of concentrated federal efforts to combat this bias, removal of Indigenous children from their homes remains disproportionately and tragically high.”).

⁵⁸ Pryce et al., *supra* note 40, at 50.

⁵⁹ See *id.*

⁶⁰ See Garcia-Greenawalt, *supra* note 47.

⁶¹ See Miriam Mack, *The White Supremacy Hydra: How the Family First Prevention Services Act Reifies Pathology, Control, and Punishment in the Family Regulation System*, 11 COLUM. J. RACE & L. 767, 770 (2021), <https://journals.library.columbia.edu/index.php/cjrl/article/view/8751/4493> (“[T]he Family First Act reinforces the notion that Black children remaining in their homes with their parents necessitates the watchful eye of family regulation system agents.”). “[P]ersistent, unconstrained government monitoring and supervision is not benign. And the threat of family separation to compel acquiescence can be equally traumatic.” *Id.* at 798.

⁶² See Burton & Montauban, *supra* note 50, at 667; Symposium, *supra* note 16. For a historical context of how racial disparities in the medical model of neglect and abuse developed, see ch. 2, *supra*.

§ 4.3.B. Legal Standards

Interpretations of these laws still rely on negative stereotypes, tropes, and metaphors of BIPOC parental unfitness—enduring relics of slavery and colonialism in America.⁶³ “These images of Black maternal unfitness have been around so long that many Americans don’t even notice[; they are . . . reincarnated so persistently and disseminated so thoroughly that they become part of the unconscious psyche[,] . . . so prevalent that even many Black caseworkers have absorbed them.”⁶⁴ System professionals hold explicit and implicit negative assumptions of BIPOC families that influence decisions about placements, services, and support.⁶⁵ When stereotypes of BIPOC families are coupled with the indeterminate, subjective decision-making characteristic of child protection laws, BIPOC families are most at risk for racial injustice.⁶⁶

The overarching legal standard for many decisions, the “best interests of the child,” is so indeterminate and vague that it allows system professionals “to substitute their own judgment about what is in a child’s best interest and allows unintended biases to permeate decision-making.”⁶⁷ What is in a child’s best interests becomes not what is best for that child in the context of their family and culture; instead, it is based on “American family standards” or White middle-class ideals.⁶⁸

Implicit bias affects everyone. Mandatory reporters, caseworkers, GALs, CASAs, lawyers, and judges all perpetuate racial harm, such as subconsciously holding BIPOC parents to a different standard of parenting than White parents.⁶⁹ “Practitioners hold conscious and unconscious negative assumptions of families of color that go unchecked. Case file documentation and the everyday language of practitioners . . . often described [Black]/Latinx children, youth, or parents as

⁶³ See ROBERTS, *supra* note 4, at 64–65 (“Another contemporary image of Black mothers is the welfare queen, the lazy mother who refuses to work and breeds children to fatten her monthly check from the government.”); Albert et al., *supra* note 55, at 875 (referring to “calling Black, Brown, and low-income mothers “crackheads” and “welfare queens”); Pryce et al., *supra* note 40, at 47.

⁶⁴ ROBERTS, *supra* note 4, at 65.

⁶⁵ See Weber & Morrison, *supra* note 51, at 375, 391.

⁶⁶ See Tanya Asim Cooper, *Racial Bias in American Foster Care: The National Debate*, 97 MARQ. L. REV. 215, 245 (2013). See generally Josh Gupta-Kagan, *Confronting Indeterminacy and Bias in Child Protection Law*, 33 STAN. L. & POL’Y REV. (forthcoming 2022).

⁶⁷ Cooper, *supra* note 66, at 245.

⁶⁸ See Beardall et al., *supra* note 14, at 569 (“Also salient to the Native experience, Black families receive differential treatment by child welfare workers who show a lack of cultural sensitivity, express judgment about Black parenting styles, and compare Black parenting against [W]hite and middle-class parenting perspectives.”).

⁶⁹ See Pryce et al., *supra* note 40, at 55.

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‘hostile’, ‘aggressive’, ‘psychotic’, ‘pathological’ and other negative descriptors without accompanying and supporting facts.”⁷⁰ System professionals from middle-class backgrounds unwittingly favor placement with a higher-caste foster parent than reunification, reflecting their bias that the parents’ poverty or lifestyle are at odds with their child’s wellbeing.⁷¹

Research show that lawyers view BIPOC parents as unintelligent, dependent on local resources, helpless, unengaged, or unwilling to participate in their own case, which is how race/caste bias manifests.⁷² Judges, too, infuse their own values on child-rearing practices.⁷³ “Decision-making power shifts between the professionals in the system and ‘moment-by-moment appraisals [of indigent families of color] may be infused with biases, differing values, and stereotypical views, which can then alter child [protection] and legal professionals’ interactions with families, and ultimately culminate in faulty decision making.”⁷⁴ At worst, repeat players mutually defer to each other without examining the biases that inform their respective “role in a traumatic intervention: why an investigation was triggered, why a removal was conducted, and why it was legally sanctioned by the courts.”⁷⁵

All stages or junctures in the system—mandatory reporting, investigation, removal, termination, and case closures—are vulnerable to subjective decision-making, and all demonstrate racial disparities.⁷⁶ Mandated reporters are more likely to report suspicions of maltreatment of BIPOC children. Agencies are more likely to investigate and substantiate maltreatment of BIPOC children, separate BIPOC children from their families, seek termination of BIPOC parental rights, and allow BIPOC children to age out of the system without support. Lawyers and judges are more likely to defer to agencies’ actions. All these stages involve discretionary decision-making opportunities where implicit bias occurs.⁷⁷

⁷⁰ Weber & Morrison, *supra* note 51, at 391.

⁷¹ See Cooper, *supra* note 66, at 253 (citing *Smith v. Org. of Foster Fams.*, 431 U.S. 816, 834 (1977)).

⁷² See Colum. J. Race & L., *Family Defense Lawyering*, YOUTUBE (July 13, 2021), <https://www.youtube.com/watch?v=PicFEbCWICE> [hereinafter *Family Defense Lawyering*] (showing Jessica López-Espino discussing her ethnographic study from 13:20 to 15:15).

⁷³ See Cooper, *supra* note 66, at 254.

⁷⁴ *Id.* at 253 (citing Sandra T. Azar & Philip Atiba Goff, *Can Science Help Solomon? Child Maltreatment Cases and the Potential for Racial and Ethnic Bias in Decision Making*, 81 ST. JOHN’S L. REV. 533, 534 (2007)).

⁷⁵ Clara Presler, *Mutual Deference Between Hospitals and Courts: How Mandated Reporting from Medical Providers Harms Families*, 11 COLUM. J. RACE & L. 733, 763–64 (2021).

⁷⁶ See Dettlaff, *supra* note 3, at 5; Merritt, *supra* note 11, at 64.

⁷⁷ See also Vivek Sankaran, *With Child Welfare, Racism Is Hiding in the Discretion*, IMPRINT (June 21, 2020), <https://imprintnews.org/child-welfare-2/with-child-welfare-racism-is-hiding-in-the->

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Structural inequities compound this harm. High caseloads, lack of sufficient staff, and high turnover rates means agency help to individual families often suffers.⁷⁸

[P]ractitioners often design and implement treatment plans that discount [BIPOC families'] daily struggle This structural racism is based on our mainstream expectations of acceptable parenting and the accompanying criteria by which parents are deemed ill equipped to properly care for their children.⁷⁹

Due process is therefore essential, but studies find “quality legal representation is lacking.”⁸⁰ Too often, lawyers carry too many cases and “admit to triaging cases and providing little to no advocacy on cases they deem a low priority.”⁸¹ In entrenched systems with networks of repeat players and processes, demanding due process is challenging for lawyers, especially if doing so disrupts the status quo.⁸² Parents’ attorneys are discouraged from zealously advocating for their clients when caseloads are high and time per case is short.⁸³ Due process is sacrificed in favor of parent compliance and moving cases along, which positions parents as secondary to institutional goals of efficiency and expediency.⁸⁴ Meanwhile, repeat players claim they are moving forward to have a more permanent plan for the children’s benefit.⁸⁵ “Parents are told to stay in line, to avoid speaking out and contesting allegations”; hence, parents felt their attorneys were “public pretenders” working more for their colleagues and the institution than to develop a more rigorous challenge to their case.⁸⁶ “This is not so much about the biased motivations of [individuals] as the way the whole system is structured.”⁸⁷

discretion/44616 (“Discretion is the rule. And when such wide discretion exists, we know that both implicit and explicit bias can significantly affect the decisions that are made.”); see Albert et al., *supra* note 55, at 889 (stating that “powerful entities, such as judges and child welfare prosecutors, may . . . coerce families into separations and settle their termination trials”).

⁷⁸ See Cooper, *supra* note 66, at 253–54.

⁷⁹ Merritt, *supra* note 11, at 68.

⁸⁰ Weber & Morrison, *supra* note 51, at 393.

⁸¹ *Id.* (“Payment structures do not promote aggressive advocacy for families.”).

⁸² See generally Amy Sinden, *Why Won't Mom Cooperate: A Critique of Informality in Child Welfare Proceedings*, 11 *YALE J.L. & FEMINISM* 339 (1999); see also *Family Defense Lawyering*, *supra* note 72, at 21:03 (stating that “attorneys focus parents on compliance rather than direct challenges to the facts of a case”).

⁸³ See *Family Defense Lawyering*, *supra* note 72, at 1:19:57–1:21:33 (showing parent defender Melody Webb testifying to situations when she was told she was fighting too zealously for her client).

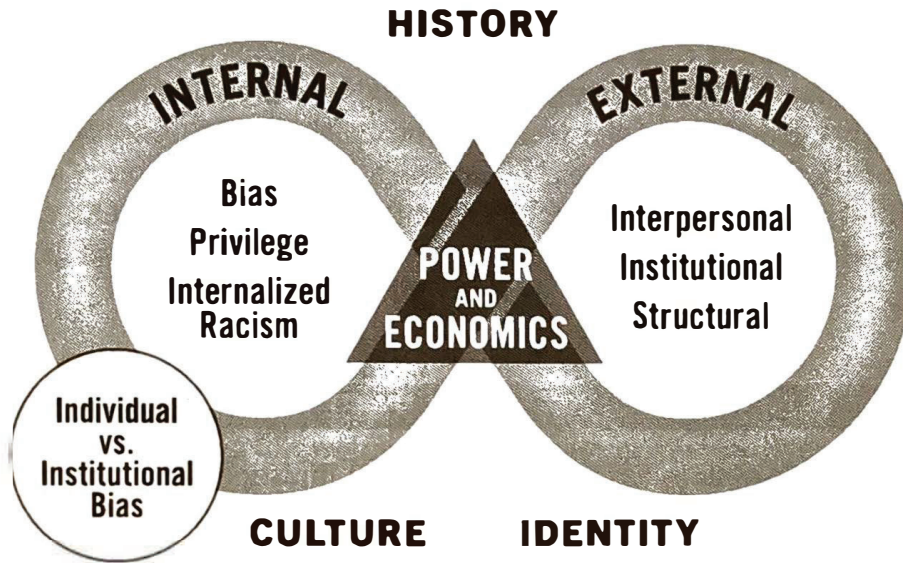
⁸⁴ *Id.* at 21:15–21:22 (ethnographic study by López-Espino).

⁸⁵ See *id.*; see also Sinden, *supra* note 82, at 354.

⁸⁶ *Family Defense Lawyering*, *supra* note 72, at 21:15–21:22.

⁸⁷ León, *supra* note 11 (featuring Dorothy Roberts).

This diagram from the ABA Center on Children and the Law depicts how these external, structural inequities compound internal biases.⁸⁸



Individual bias refers to internalized biases (stereotypes, assumptions, tropes) against BIPOC families that their parenting is inferior to that of White parents.⁸⁹ “Substantial power dynamics are intrinsic in these experiences, resulting from an imbalance between those in the position to judge and regularly scrutinize parental behaviors and parents very much at the mercy of their child welfare workers.”⁹⁰ Institutional bias manifests as BIPOC families navigate child protection systems, which are designed for the lower caste “with diminished access to power, knowledge, and optimal resources to thrive in our society.”⁹¹ Families are offered stock services, for example, without regard to their individual needs or ecological context and then subjected to consistent oversight and inspection with the explicit or implicit threat of consequences for not complying.⁹² “[T]hese families suffer a host of socio-emotional and psychological traumas while coping with the constant fear of negative consequences resultant from family assessments, processes, and placement decisions.”⁹³

⁸⁸ ABA Center on Children and the Law, *supra* note 8.

⁸⁹ See Burton & Montauban, *supra* note 50, at 645 (presumption of parental dangerousness).

⁹⁰ Merritt, *supra* note 11, at 64 (“Parents have a keen awareness of negative assumptions levied upon them based on their societal positions[.]”).

⁹¹ *Id.*

⁹² *Id.*

⁹³ *Id.*

Another compounding problem is the inherent tension that social workers, lawyers, judges, support staff, and foster parents are all getting paid for the removal of a child from their home and family.⁹⁴ This multibillion-dollar system is a “lucrative business that depends on keeping children in the system. The more children placed in foster care and the longer they are kept there, the more money that agencies make.”⁹⁵ This is a system supported by the courts, local government, children’s rights groups, and the media—who celebrate the removal of children from supposedly dangerous homes.⁹⁶ The harsh truth is that society’s priority to eradicate child abuse and save neglected children destroys BIPOC families. If reducing racial inequities is taken seriously, many system professionals should be out of work.

§ 4.4 • STRATEGIES FOR RACIAL JUSTICE

Because this system has perpetuated racial injustice for so long, many call for it to be dismantled and abolished. “Reforms don’t change the features of institutions, the missions, the systems of accountability[;] . . . reforms do not redistribute money or power; reforms are about programs.”⁹⁷ Abolitionists instead call for a radical reimagining of the system such that proper support would go directly into local communities and address root causes such as poverty, houselessness, and domestic violence.⁹⁸ Abolitionists look to the recent past during COVID-19 lockdowns, when fewer children were removed without harm, as proof that the child-protection-savior narrative perpetuates not wellbeing but fearmongering and destruction.⁹⁹ Until current child protection systems are dismantled, attorneys must engage in color-conscious efforts that acknowledge the racial inequities the system creates and attempt to remedy them on individual and institutional levels.

§ 4.4.A. Individual Reforms

Take account of race. Everyone can perpetuate or disrupt racial bias, and awareness of the individual power to do so is key. Acknowledging the problem of racial injustice in child protection systems is one tangible, actionable thing everyone can do. Mandatory reporters, caseworkers, lawyers, judges, CASAs, and

⁹⁴ See Molly McGrath Tierney, *Rethinking Foster Care*, YOUTUBE (2014), <https://youtu.be/c15hy8dXSps>.

⁹⁵ ROBERTS, *supra* note 4, at 73.

⁹⁶ See Symposium, *supra* note 16.

⁹⁷ *Id.*

⁹⁸ See *id.*

⁹⁹ *Id.*

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GALs should question how race and caste inform their discretionary decisions about BIPOC families at each stage of a case and assume implicit bias.¹⁰⁰ “Child [protection] system professionals guided by state policies and statutes are in a place of power to determine if parenting is appropriate or inappropriate. We have been neglectful in acknowledging that such judgements come with implicit biases at all levels of service design and delivery.”¹⁰¹ To learn more about the role of race in our institution, consider these resources:

- *Race Equity Hub*, NAT’L ASS’N OF COUNSEL FOR CHILD., <https://www.naccchildlaw.org/page/race-equity-hub> (last visited Apr. 11, 2022).
- *Racial Equity Resources for Child Welfare Professionals*, CHILD WELFARE INFO. GATEWAY, <https://www.childwelfare.gov/topics/systemwide/diverse-populations/racialequity/> (last visited Apr. 11, 2022).
- Krista Ellis, *Race and Poverty Bias in the Child Welfare System: Strategies for Child Welfare Practitioners*, AM. BAR ASS’N (Dec. 17, 2019), https://www.americanbar.org/groups/public_interest/child_law/resources/child_law_practiceonline/january---december-2019/race-and-poverty-bias-in-the-child-welfare-system---strategies-f/.

Stay informed on the latest data and research on racial disparities, the root causes, and the evidence-based best practices to address them. With this data, system actors are much better equipped to address this unending problem in their local and legal communities and are much more likely to develop a reflective and reflexive racial justice practice. Here are some national resources to consider:

- *Children in Foster Care by Race and Hispanic Origin in the United States*, KIDS COUNT DATA CTR., ANNIE E. CASEY FOUND. (June 2021), <https://datacenter.kidscount.org/data/line/6246-children-in-foster-care-by-race-and-hispanic-origin?loc=1&loct=1#1/any/false/1729,37,871,870,573,869,36,868,867,133/asc/2638,2601,2600,2598,2603,2597,2602,1353/12993>.

¹⁰⁰ See Merritt, *supra* note 11, at 70 (“If racism and implicit bias is acknowledged and corrected across all aspects of the [system], parents will be less likely admonished for their well-intentioned parenting practices, particularly regarding child neglect.”); Sankaran, *supra* note 77; Presler, *supra* note 75, at 763–64.

¹⁰¹ Merritt, *supra* note 11, at 68.

- ROBERT B. HILL, CASEY-CSSP ALLIANCE FOR RACIAL EQUITY, SYNTHESIS OF RESEARCH ON DISPROPORTIONALITY IN CHILD WELFARE: AN UPDATE (2006), <https://assets.aecf.org/m/resourcedoc/aecf-CFS-SynthesisOfResearchOnDisproportionalityInChildWelfareAnUpdate-2006.pdf>.
- C. Puzzanchera & M. Taylor, *Disproportionality Rates for Children of Color in Foster Care Dashboard*, NAT'L COUNCIL OF JUV. & FAM. CT. JUDGES (2020), http://ncjj.org/AFCARS/Disproportionality_Dashboard.aspx.
- *Disproportionality and Race Equity in Child Welfare*, NAT'L CONF. OF STATE LEGISLATURES (Jan. 26, 2021), <https://www.ncsl.org/research/human-services/disproportionality-and-race-equity-in-child-welfare.aspx>.

§ 4.4.B. Institutional Reforms

Center BIPOC children's and parent's voices in their own cases. Listen to those individuals involved and most affected.¹⁰² Institutions reinforce caste hierarchies by ignoring and diminishing BIPOC voices, and "it is vital to validate their experiences of oppression, discrimination, and racism."¹⁰³ To really listen and learn from BIPOC families, experts recommend that individuals develop culturally humble, responsive practices.¹⁰⁴ BIPOC families explain, however, that individuals can never, by themselves, be truly culturally competent, so system actors need to partner with BIPOC families on this strategy.¹⁰⁵ Research suggests considering other paradigms that prioritize parents' perceptions and allow for a shared power dynamic¹⁰⁶—for example, partnering with Native families to learn how to

¹⁰² *Id.* at 64.

¹⁰³ *Id.* (noting the "great deal of variation" in how families respond to service delivery, regardless of whether their participation is voluntary or mandated).

¹⁰⁴ See Lisa Aronson Fontes, *Considering Culture in Child Abuse and Neglect Practice: Tips for Attorneys*, in CHILD WELFARE LAW AND PRACTICE: REPRESENTING CHILDREN, PARENTS, AND STATE AGENCIES IN ABUSE, NEGLECT, AND DEPENDENCY CASES 151, 156 (Nat'l Ass'n of Counsel for Child. ed., 3d. ed. 2016) (defining cultural competence as "the ability to understand world views, experiences, and needs of people from other cultures and adapt our work accordingly," which requires self-knowledge, humility, and constant learning). We have to "give up the 'color blind' notion that treating everyone exactly the same is fair" and instead realize each individual and family has its own strengths, weaknesses, habits, and preferences that we must adapt to learn from to be "fair." *Id.* at 156.

¹⁰⁵ See generally Symposium, *supra* note 16.

¹⁰⁶ Merritt, *supra* note 11, at 70 (writing "rather than leaning into an authoritative mindset that often comes with unbalanced power dynamics").

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recognize informal kinship networks common to them and existing programs that recruit ICWA-compliant foster families. “Recruitment requires the recognition and elimination of social and economic barriers for Native households to become a foster family in ways that speak to the necessity of mutual aid in cultivating safe and affirming homes for all Native families.”¹⁰⁷ To learn more, consider these resources:

- CTR. FOR ADVANCED STUD. IN CHILD WELFARE, SCH. OF SOC. WORK UNIV. OF MINN., *CULTURALLY RESPONSIVE CHILD WELFARE PRACTICE* (2015), <http://cascw.umn.edu/wp-content/uploads/2015/03/CW360-Winter2015.pdf>.
- *Facing Race in Child Welfare*, RISE (2014), https://www.risemagazine.org/wp-content/uploads/2015/08/Rise_issue_27-facing-race.pdf.
- FAM. JUST. INITIATIVE, *ATTRIBUTE 3: DIVERSITY AND INCLUSION/CULTURAL HUMILITY* (2020), <https://15ucklg5c821brpl4dycpk15-wpengine.netdna-ssl.com/wp-content/uploads/sites/48/2020/03/fji-implementation-guide-attribute3-1.pdf>.

Take race out of the equation with color-blind removals. Blind removal meetings convene a committee of professionals to decide whether children from a particular family should be removed by focusing on what occurred, family strengths, and relevant history—without knowing the family’s race, address, or other demographics.¹⁰⁸ Designed to address bias at the investigation/removal stage of a case, research has shown that this strategy can reduce removal of Black children from their families.¹⁰⁹ Even system experts disagreed “nearly 50% of the time when given a hypothetical about whether a child should be taken from his parents.”¹¹⁰ This strategy has its critics,¹¹¹ but officials in jurisdictions that have

¹⁰⁷ Beardall et al., *supra* note 14, at 571–72; Albert et al., *supra* note 55, at 885 (describing how tribal customary adoptions have allowed tribes to prevent parental rights from being terminated and maintain contact and connections between children and parents).

¹⁰⁸ See Jessica Pryce, *To Transform Child Welfare, Take Race Out of the Equation*, TED TALK, YOUTUBE (Sept. 11, 2018), <https://www.youtube.com/watch?v=ykLj-Hc28o4>; see also Pryce et al., *supra* note 40, at 59.

¹⁰⁹ Pryce et al., *supra* note 40, at 59 (tracking progress over five years—from 55.5% of Black children removed from their homes down to 29%).

¹¹⁰ Sankaran, *supra* note 77 (linking study).

¹¹¹ See Jeremy Loudonback, *Color-Blind Ambition*, IMPRINT (Apr. 1, 2021), <https://imprintnews.org/los-angeles/color-blind-ambition-removals/52958> (summarizing the

implemented these pilot programs see a decline in BIPOC children removals and find that the practice has improved casework.¹¹² To learn more about this strategy, consider these resources:

- SOC. WORK EDUC. CONSORTIUM, UNIV. OF ALBANY, RACE EQUITY: NASSAU AND ONONDAGA COUNTY REPORT (2016), <https://www.nassaucountyny.gov/DocumentCenter/View/18095/FINAL-OCFS-Report-Race-Equity-2016>.
- Jessica Pryce, *To Transform Child Welfare, Take Race Out of the Equation*, TED TALK, YOUTUBE (Sept. 11, 2018), <https://www.youtube.com/watch?v=ykLj-Hc28o4>.

Fund and ensure high-quality, multidisciplinary family defense lawyering. “[F]ully fund lawyers who can hold child welfare agencies to account—and assure that only children who really are at imminent risk of serious harm enter foster care.”¹¹³ This essential strategy is critical at all stages of the process, especially before children are removed.¹¹⁴ Family defenders must insist on due process at all critical stages and challenge vague legal standards.¹¹⁵ The Family Justice Initiative¹¹⁶ is developing an Anti-Racist Lawyering Toolkit for the child protection field. For an analogous resource in the delinquency field, consider Racial Justice for Youth: A Toolkit for Defender.¹¹⁷ For resources on this strategy, consider:

- Sheri Freemont, *Gold Standard Lawyering for Child Welfare System-Involved Families: Anti-Racism, Compassion, and Humility*, GUARDIAN, Winter 2020, [https://cdn.ymaws.com/www.naccchildlaw.org/resource/resmgr/guardian/2020 december/guardian 2020 v42n04 r6.pdf](https://cdn.ymaws.com/www.naccchildlaw.org/resource/resmgr/guardian/2020%20december/guardian%20v42n04_r6.pdf).

Limit removing children in “neglect cases.” To reduce racial disparities immediately, many recommend not removing children in cases arising from

criticism: the research methodology; that it is not radical enough; and the declines in Black children’s removals were not steady or consistent).

¹¹² *Id.*

¹¹³ Sankaran, *supra* note 77.

¹¹⁴ *Id.* See generally Symposium, *supra* note 16.

¹¹⁵ See *Family Defense Lawyering*, *supra* note 72.

¹¹⁶ FAM. JUST. INITIATIVE, <https://familyjusticeinitiative.org/> (last visited Apr. 11, 2022).

¹¹⁷ *Racial Justice for Youth: A Toolkit for Defenders*, JUV. JUST. INITIATIVE, <https://www.defendracialjustice.org/> (last visited Apr. 11, 2022).

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neglect, a proxy for poverty.¹¹⁸ “Conflating abuse and poverty-framed-as-neglect allowed policymakers to avoid addressing deeply entrenched structural, economic, and racial inequities affecting children’s wellbeing.”¹¹⁹ For more on this strategy, consider this resource:

- Jerry Milner & David Kelly, *It’s Time to Stop Confusing Poverty with Neglect*, IMPRINT (Jan. 17, 2020), <https://imprintnews.org/child-welfare-2/time-for-child-welfare-system-to-stop-confusing-poverty-with-neglect/40222>.

Change the narrative about BIPOC families. “Despite numerous reforms, the family policing system has not changed its punitive ideology or racist impact.”¹²⁰ Practitioners must heed this call from BIPOC parents: “Build with us and exist in principled struggle. We do not expect this to be linear or simple, it will be uncomfortable, there will be contradictions, mistakes, and need for deeper learning. There will be setbacks, harm, and indecision. However, there is no better time than now.”¹²¹ Start with these resources:

- RASHAD ROBINSON & NICOLE SUSSNER RODGERS, CHANGING THE NARRATIVE ABOUT BLACK FAMILIES (2020), https://colorofchange.org/wp-content/uploads/2020/10/20_FamilyStory_RaceGuide_v08.pdf
- Symposium, *Strengthened Bonds Abolishing the Child Welfare System and Re-Envisioning Child Well Being*, 11 COLUM. J. RACE & L. 421 (2021), <https://journals.library.columbia.edu/index.php/cjrl/issue/view/789/188>

Racial inequities in family separation and regulation do not have to be the status quo.¹²² “Ultimately, an anti-racist future envisions a child welfare agency that achieves racial equity by keeping families together rather than separating them.”¹²³ Until then, individuals can reduce these inequities, starting with their own

¹¹⁸ Edwards, *supra* note 36, at 63 (“[T]he overwhelming volume of maltreatment cases involve neglect, which is subject to tremendous discretion in identification and classification.”); Burton et al., *supra* note 50, at 645.

¹¹⁹ Burton & Montauban, *supra* note 50, at 667.

¹²⁰ Roberts, *supra* note 15, at 463.

¹²¹ Albert, *supra* note 55, at 894.

¹²² See Dettlaff, *supra* note 3, at 6.

¹²³ *Id.* at 7.

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awareness of the problem, the research, potential solutions, and individual roles in each of these.