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## RETHINKING FOSTER CARE: WHY OUR CURRENT APPROACH TO CHILD WELFARE HAS FAILED

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### ABSTRACT

*Over the past decade, the child welfare system has expanded, with vast public and private resources being spent on the system. Despite this investment, there is scant evidence suggesting a meaningful return on investment. This Article argues that without a change in the values held by the system, increased funding will not address the public health problems of child abuse and neglect.*

### INTRODUCTION

In 2018, the U.S. Department of Justice announced a new zero-tolerance policy on illegal immigration, of which one consequence would be separating kids from their parents.<sup>1</sup> A public outcry followed, rooted in both social justice and the recognition of the trauma children would suffer when involuntarily separated from their parents. Speaking of the impact of family separation, one prominent pediatrician stated, “If people paid attention at all to the science, they would never do this.”<sup>2</sup> Lost in the conversation, however, was the reality that the child welfare system—in the name of child protection—routinely does this every day to children already in the United States.

The child welfare system’s benevolent goal to protect children from harm began

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1. Press Release, U.S. Dep’t. of Justice, Attorney General Announces Zero-Tolerance Policy for Criminal Illegal Entry (Apr. 6, 2018), <https://www.justice.gov/opa/pr/attorney-general-announces-zero-tolerance-policy-criminal-illegal-entry> [https://perma.cc/R3UM-SPP2].

2. William Wan, *What Separation from Parents Does to Children: ‘The Effect Is Catastrophic,’* WASH. POST (June 18, 2018, 5:15 PM), [https://www.washingtonpost.com/national/health-science/what-separation-from-parents-does-to-children-the-effect-is-catastrophic/2018/06/18/c00c30ec-732c-11e8-805c-4b67019fcfe4\\_story.html](https://www.washingtonpost.com/national/health-science/what-separation-from-parents-does-to-children-the-effect-is-catastrophic/2018/06/18/c00c30ec-732c-11e8-805c-4b67019fcfe4_story.html) [https://perma.cc/5GC7-D2LV].

with philanthropic roots. The early efforts of charitable organizations to protect children from abuse and neglect are well documented in stories like the case of Mary Ellen Wilson<sup>3</sup> and the establishment of the first juvenile court in Chicago, Illinois, in 1899.<sup>4</sup> Roughly a decade later, the federal government entered the child protection realm when President Taft established the Children's Bureau as the first federal agency charged with investigating and reporting "upon all matters pertaining to the welfare of children."<sup>5</sup> Over time, the Children's Bureau grew, as did the federal government's role in administering child welfare systems. As state actors replaced philanthropists, courts and legislatures began to limit the government's ability to intervene, recognizing a parent's and child's reciprocal constitutional right to remain together, free from government intrusion absent compelling circumstances.<sup>6</sup> Yet high-profile cases of child fatalities and public advocacy have led to the slow but steady expansion of the child welfare system.<sup>7</sup> Unsurprisingly, our child welfare system today resembles an industrial complex.

The Children's Bureau's budget now approaches \$8 billion annually, which it largely spends on providing support, guidance, and monitoring to local child welfare agencies charged with responding to reports of suspected child abuse and neglect.<sup>8</sup> State and local government agencies also invest substantially in the machinery built to respond to child maltreatment.<sup>9</sup> While charitable organizations now take a back seat to government actors in terms of directly responding to reports of child abuse and neglect, the combined investment of these organizations certainly rivals the investment by governments.<sup>10</sup>

In addition to funding entities to protect children, a significant amount of money is devoted to improving the experience of children already in foster care. The Children's Bureau spends portions of its annual budget on discretionary grants to support research to identify promising programs and practices.<sup>11</sup>

3. See, e.g., Mary Renck Jalongo, *The Story of Mary Ellen Wilson: Tracing the Origins of Child Protection in America*, 34 *EARLY CHILDHOOD EDUC.* J. 1, 1-4 (2006).

4. NAT'L RESEARCH COUNCIL & INST. OF MED., *JUVENILE CRIME, JUVENILE JUSTICE* 157 (Joan McCord et al. eds., 2001).

5. Children's Bureau Act, Pub. L. No. 62-116, ch. 73, 37 Stat. 79, 79 (1912) (codified as amended at 42 U.S.C. §§ 191-94 (2018)) (establishing and stating purpose of the Children's Bureau).

6. See generally LEONARD EDWARDS, *REASONABLE EFFORTS: A JUDICIAL PERSPECTIVE* 14-17 (2014).

7. See, e.g., Theresa Covington & Ilana Levinson, *Better Abuse Fatality Reviews Are Key to Overhauling Child Welfare*, *CHRON. OF SOC. CHANGE* (Aug. 15, 2019), <https://chronicleofsocialchange.org/opinion/better-child-abuse-fatality-reviews-are-key-to-overhauling-child-welfare/36866> [<https://perma.cc/94AX-57PH>] (discussing increased legislation in response to child fatalities due in part to public advocacy).

8. CB Fact Sheet, CHILDREN'S BUREAU, <https://www.acf.hhs.gov/cb/fact-sheet-cb> [<https://perma.cc/WBN2-CQHQ>] (last reviewed Jan. 8, 2019).

9. See, e.g., ELIZABETH JORDAN & DANA DEAN CONNELLY, *CHILD TRENDS, AN INTRODUCTION TO CHILD WELFARE FUNDING, AND HOW STATES USE IT* 1-2 (2016), <https://www.childtrends.org/wp-content/uploads/2016/01/2016-01IntroStateChildWelfareFunding.pdf> [<https://perma.cc/CH2E-KLN6>].

10. See, e.g., CASEY FAMILY PROGRAMS, *ON THE PATHWAY OF HOPE* 23 (2019), <https://caseyfamilypro-wpengine.netdna-ssl.com/media/2019/Signature-Report.pdf> [<https://perma.cc/JAH8-V7WZ>].

11. CB Discretionary Grant Programs, CHILDREN'S BUREAU, <https://www.acf.hhs.gov/cb/grants/discretionary-grant> [<https://perma.cc/DL4B-UL9Y>] (last

Nonprofit organizations and foundations pour significant resources into improving the child welfare system through consulting, research, policy analysis, lobbying, and program development.<sup>12</sup> Impact-litigation firms have sought to reform child welfare systems through expensive, long-running class action lawsuits.<sup>13</sup> In the wake of high-profile tragedies, states have responded with legislative commissions and executive task forces that increased funding,<sup>14</sup> established new ombudsman offices,<sup>15</sup> or found other ways to build up infrastructure to mitigate the likelihood of future tragedies. With each passing year, the child welfare-industrial complex grows.

It has been just over a hundred years since the Children's Bureau was established, formalizing the federal government's entrance into child welfare. Julia Lathrop, the first Chief of the Children's Bureau, established a number of priorities for the Bureau, including one rooted in social justice: "[T]he justice of today is born out of yesterday's pity."<sup>16</sup> From the perspective of Lathrop, justice, and not pity, was to be child welfare's North Star.

What does justice look like today for families involved with the child welfare system? Have the billions of dollars advanced by public and private actors improved justice for children? Have the billions of dollars spent annually reduced the incidence of child abuse and neglect? Have the billions of dollars mirrored the research to carefully calibrate a child welfare system that no child unnecessarily passes through? Have the billions of dollars reduced our nation's reliance on institutions to warehouse children? The answers to these questions should concern all of us and imbue the child welfare system with an unwavering commitment to rethink the current system.

This Article explores these questions, focusing on the system's growth over the last decade. The first section briefly documents the vast public and private resources spent on child welfare. It is not an exhaustive documentation, yet it reveals the magnitude of the public and private resources committed to child welfare. The second section questions whether those resources have helped the child welfare system achieve its many goals, with an emphasis on children safely remaining with their families. While a rigorous scientific study of the preceding question is beyond the scope of this Article and beyond the authors' expertise, there is scant evidence suggesting a meaningful return on investment. Finally, the

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reviewed Jan. 23, 2020).

12. See, e.g., CASEY FAMILY PROGRAMS, *supra* note 10, at 23 ("In 2018, Casey Family Programs spent \$111 million in pursuit of our vision of safely reducing the need for foster care . . .").

13. See, e.g., CHILDREN'S RIGHTS, 2017 REPORT 5 (2018), <https://www.childrensrights.org/wp-content/uploads/2018/09/180802-CR-Annual-Report-2017-4.pdf> [<https://perma.cc/HZ6T-VUT8>] (reporting a total public support and revenue of more than \$5.9 million in 2017).

14. See, e.g., Andy Miller, *New Chief Named for Ga. Family, Children Services; Current Leader Takes Job in LA*, WABE (July 27, 2018), <https://www.wabe.org/new-chief-named-for-ga-family-children-services-current-leader-takes-job-in-la> [<https://perma.cc/F5Q9-VJU2>].

15. See, e.g., Micah Caskey, *We Could Have Saved This Toddler but Failed to Act. We Can't Let That Happen Again*, STATE (Apr. 24, 2018, 9:33 AM), <https://www.thestate.com/opinion/op-ed/article209605814.html> (explaining the establishment of the South Carolina Department of Children's Advocacy in wake of high profile tragedy).

16. Paul Theerman, *Julia Lathrop and the Children's Bureau*, 100 AM. J. PUB. HEALTH 1589, 1589-90 (2010) (internal quotation marks omitted).

Article proposes a reorientation for how the child welfare system might improve its response to the public health problem of child abuse and neglect over the next decade.

### I. A FLURRY OF ACTIVITY

Over the past decade, policymakers, private foundations, and advocates have busily sought to improve the child welfare system. The federal government has legislated, regulated, and funded the field with an aim towards improving practice and clarifying the legal framework that governs child welfare proceedings.

The legislative activity reflects the government's belief that adding more technical requirements to state child welfare systems will improve outcomes for children. A brief description of legislation over the past decade highlights this compliance-driven framework. For example, in 2008, Congress passed the Fostering Connections to Success and Increasing Adoptions Act, which, among other things, required states to improve support for relatives of children in foster care and to prioritize keeping siblings together while they are in foster care.<sup>17</sup>

Three years later, it enacted the Child and Family Services Improvement and Innovation Act, which required caseworkers to visit children more frequently and mandated agencies to consult with medical professionals in the ongoing treatment of children in foster care.<sup>18</sup> Just three years after that, the federal government passed the Preventing Sex Trafficking and Strengthening Families Act, requiring states to track kids in foster care at risk of sex trafficking and requiring caseworkers to work with older youth in foster care to plan for a transition into adulthood.<sup>19</sup> Most recently, in 2018, Congress passed the Family First Prevention Services Act, which allows federal foster care funds to support certain types of prevention services and also limits states from placing kids in institutional settings.<sup>20</sup> The federal government's involvement in the child welfare system was extremely limited before the 1970s, so this flurry of legislative activity over the last decade demonstrates a sustained interest among federal policymakers to manage state child welfare systems—primarily through increasing technical requirements—with an aim towards improving the lives of children in foster care. Consistent with this interest, from 2004 to 2014, the federal government, along with states, spent nearly thirty billion dollars to protect children.<sup>21</sup>

The investment of private foundations in the foster care system has been

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17. Fostering Connections to Success and Increasing Adoptions Act of 2008, Pub. L. No. 110-351, 122 Stat. 3949 (codified as amended in scattered sections of 26 U.S.C., 31 U.S.C., and 42 U.S.C. (2018)).

18. Child and Family Services Improvement and Innovation Act, Pub. L. No. 112-34, 125 Stat. 369 (2011) (codified as amended in scattered sections of 42 U.S.C.).

19. Preventing Sex Trafficking and Strengthening Families Act, Pub. L. No. 113-183, 128 Stat. 1919 (2014) (codified as amended in scattered sections of 28 U.S.C. and 42 U.S.C.).

20. Bipartisan Budget Act of 2018, Family First Prevention Services Act, Pub. L. No. 115-123, tit. VII, 132 Stat. 64, 232-69 (codified as amended in scattered sections of 42 U.S.C.).

21. See DANA DEAN CONNELLY & KRISTINA ROSINSKY, CHILD TRENDS, FEDERAL AND STATE/LOCAL CHILD WELFARE AGENCY SPENDING PER CHILD, 2004-2014, at 1-2 (2018), [https://www.childtrends.org/wp-content/uploads/2018/06/Federal-and-State-Local-Child-Welfare-Agency-Spending-per-child\\_ChildTrends\\_June2018.pdf](https://www.childtrends.org/wp-content/uploads/2018/06/Federal-and-State-Local-Child-Welfare-Agency-Spending-per-child_ChildTrends_June2018.pdf) [<https://perma.cc/BH94-F6XM>].

equally strong. Casey Family Programs, the nation's largest operating foundation focused on safely reducing the need for children to remain in foster care, spends over \$100 million a year in support of its mission.<sup>22</sup> Consultants working for the foundation are spread all over the country, working closely with state child welfare agencies and courts to support systems improvement.<sup>23</sup> Similarly, its sister foundation, the Annie E. Casey Foundation, spent equally as much to improve the lives of at-risk children.<sup>24</sup> Other foundations, including Kellogg, Conrad Hilton, and Kresge, have poured in millions of dollars to support the improvement of the foster care system.<sup>25</sup>

The advocacy community has been mobilized as well. As a result of the advocacy of Children's Rights, "a national watchdog organization advocating on behalf of abused and neglected children,"<sup>26</sup> at least seventeen state child welfare systems are under federal court oversight, some of which have been under such oversight for thirty years.<sup>27</sup> Since 2017, the organization has filed four new class action lawsuits asking for court monitoring of additional state systems. Other advocacy organizations focused on foster care reform, such as A Better Childhood, the Youth Law Center, the Juvenile Law Center, and the National Center for Youth Law, engage in similar lawsuits. These lawsuits finance lawyers, monitors, and contractors under the ambitious plan of using class action lawsuits to turn around state foster care systems. To both defend lawsuits and monitor settlements, states have expended millions of dollars. Yet very few states that have been subjected to federal consent decrees as a result of these lawsuits have successfully exited them.<sup>28</sup>

In addition to funding required by class action lawsuits, states are also spending increased funds providing children and parents with advocates to help them navigate the foster care system. The overwhelming majority of states now provide parents and children with attorneys in these cases, and most major cities have nonprofits that serve the legal needs of families. In 2016, the Family Justice Initiative was launched to further "strengthen families through the provision of high-quality legal representation for children and parents involved in the child welfare system."<sup>29</sup> The need for specialized advocates to practice child welfare law

22. *About Us*, CASEY FAMILY PROGRAMS, <https://www.casey.org/who-we-are/about/> [<https://perma.cc/HWM7-K8NE>] (last visited Oct. 8, 2019).

23. *Id.*

24. See *Financial Information*, ANNIE E. CASEY FOUND., <https://www.aecf.org/about/financials/> [<https://perma.cc/2XQQ-S8LQ>] (last visited Oct. 8, 2019).

25. See, e.g., *Friends of the Children Awarded \$1.75 Million Grant from Conrad N. Hilton Foundation*, FRIENDS OF THE CHILDREN (Sept. 12, 2018), <https://friendsofthechildren.org/news/2018/friends-of-the-children-awarded-1-75-million-grant-from-conrad-n-hilton-foundation> [<https://perma.cc/G5HT-UBQD>].

26. Press Release, Children's Rights, Forty-Nine States Falling Short of Adequate Reimbursement Rates for Foster Care, Study Shows (Oct. 3, 2007), <https://www.childrensrights.org/press-release/forty-nine-states-falling-short-of-adequate-reimbursement-rates-for-foster-care-study-shows/> [<https://perma.cc/9TUP-2MZ6>].

27. See *Class Actions*, CHILDREN'S RIGHTS, <https://www.childrensrights.org/our-campaigns/class-actions/> [<https://perma.cc/QQ3X-9HAL>] (last visited Oct. 29, 2019) (listing pending lawsuits).

28. See *id.*

29. For more information about the initiative, see *Mission & Vision*, FAMILY JUSTICE INITIATIVE, <https://familyjusticeinitiative.org/about/mission-vision/> [<https://perma.cc/246R-D4NY>] (last visited Oct. 29, 2019).

also resulted in the National Association of Counsel for Children creating a certification program signifying “an attorney’s specialized knowledge, skill, and verified expertise in the field of child welfare law.”<sup>30</sup> Since the program’s inception in 2006, over 800 attorneys have become certified.<sup>31</sup> In addition to lawyers, each year more than 85,000 volunteer, court-appointed special advocates or guardians *ad litem* work with more than 260,000 children to make recommendations to juvenile courts about what is in the best interests of those children.<sup>32</sup>

The machinery we have created to serve children in foster care is vast. On the child welfare agency side, it includes Child Protective Services (CPS) investigators, foster care workers, adoption workers, and foster care licensing workers. Court professionals include judges, lawyers for children, parents, agencies, and court-appointed special advocates. In addition, federal employees closely monitor child welfare systems for compliance with laws, privately retained monitors track adherence to federal lawsuits, and researchers at universities or other organizations study child welfare practice and programs.

This snapshot above is intended to make a very simple point—in the past decade, policymakers, foundation leaders, and advocates have been busy trying to improve the lives of at-risk children. Numerous laws have been passed, requirements have been imposed, and billions of dollars have been spent to support programs, professionals, and policies to change the trajectory of the lives of children in foster care. More professionals are focused on improving the lives of at-risk children. Undoubtedly, the child welfare community has been active, busy, and organized. If activity and busyness were metrics for success, the past decade should receive high marks.

But key questions remain. Has this activity translated into better outcomes for children and families? In other words, is the child welfare system making progress towards keeping more children safe with their families? And if not, how might our system change its focus in the next decade to better serve children and their families?

## II. LITTLE PROGRESS TOWARDS JUSTICE FOR FAMILIES

Despite the significant investment of resources discussed above, the child welfare system has made little progress improving justice for children and families involved in the child welfare system.

First, children have a right to be safe from abuse and neglect. The public, including certain mandated reporters, is charged with helping child welfare agencies identify potential victims of abuse and neglect. Despite child welfare’s significant investment, the number of children identified by CPS agencies as

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30. For more information about the certification program, see *Promoting Excellence: CWLS Certification*, NAT’L ASS’N OF COUNSEL FOR CHILDREN, <https://www.naccchildlaw.org/page/Certification> [<https://perma.cc/KYQ6-LATR>] (last visited Oct. 25, 2019).

31. *Id.*

32. See *Our Reach*, NAT’L CASA/GAL ASS’N FOR CHILDREN, <https://casaforchildren.org/our-impact/our-reach/> [<https://perma.cc/JG63-X222>] (last visited Oct. 9, 2019) (indicating the breadth of the court-appointed special advocate program).

victims of caretaker abuse and neglect in the United States has not decreased over the past decade. During the 2010 federal fiscal year (FFY), the number of victims state child welfare agencies identified was 9.37 victims per 10,000 children in the population.<sup>33</sup> During the 2017 FFY, the rate was 9.57 victims per 10,000 children.<sup>34</sup> Between these two timeframes, the annual rate never exceeded 9.81 and never fell below 9.19 per 10,000 children.<sup>35</sup>

This is concerning for two reasons. First, nearly four decades of research reveals that although child welfare agencies investigate a substantial amount of maltreatment, those children represent “only the ‘tip of the iceberg.’”<sup>36</sup> “Available data suggest that the rates of child maltreatment . . . may be [two] to [three] times higher than the number of identified victims” each year.<sup>37</sup> Yet our primary response to maltreatment is a reactionary system that relies on voluntary and mandated reporters to report suspected victims of maltreatment to CPS, an agency we know is incapable of preventing, identifying, or treating victims of maltreatment. In fact only 25% of children referred to CPS ever receive any type of assistance from the agency.<sup>38</sup> Yet we continue to fund this system, which fails to make meaningful progress to protect children from abuse and neglect.

The second reason this is concerning is that the rate at which the child welfare system protects victims from subsequent harm is also stagnant. Over the past eight

33. ADMIN. ON CHILDREN, YOUTH & FAMILIES, CHILDREN’S BUREAU, NATIONAL CHILD ABUSE AND NEGLECT DATA SYSTEM (NCANDS) CHILD FILE, FFY 2010 [hereinafter 2010 FFY NCANDS FILE]. The National Child Abuse and Neglect Data System (NCANDS) is a voluntary data collection system containing child-specific data of all investigated reports of maltreatment by state child protective services agencies. Unless otherwise noted, the administrative data presented in this Article were made available by the National Data Archive on Child Abuse and Neglect (NDACAN) at Cornell University and has been used with permission. The authors, in partnership with Fostering Court Improvement, have analyzed the data, and analyses are on file with them. The collector of the original data, the funder, the Archive, Cornell University, or their agents bear no responsibility for the analyses or interpretations presented in this Article. Correspondence related to data analysis should be directed to cchurch@law.sc.edu.

34. ADMIN. ON CHILDREN, YOUTH & FAMILIES, CHILDREN’S BUREAU, NATIONAL CHILD ABUSE AND NEGLECT DATA SYSTEM (NCANDS) CHILD FILE, FFY 2017 [hereinafter 2017 FFY NCANDS FILE].

35. *Id.*; ADMIN. ON CHILDREN, YOUTH & FAMILIES, CHILDREN’S BUREAU, NATIONAL CHILD ABUSE AND NEGLECT DATA SYSTEM (NCANDS) CHILD FILE, FFY 2016 [hereinafter 2016 FFY NCANDS FILE]; ADMIN. ON CHILDREN, YOUTH & FAMILIES, CHILDREN’S BUREAU, NATIONAL CHILD ABUSE AND NEGLECT DATA SYSTEM (NCANDS) CHILD FILE, FFY 2015 [hereinafter 2015 FFY NCANDS FILE]; ADMIN. ON CHILDREN, YOUTH & FAMILIES, CHILDREN’S BUREAU, NATIONAL CHILD ABUSE AND NEGLECT DATA SYSTEM (NCANDS) CHILD FILE, FFY 2014 [hereinafter 2014 FFY NCANDS FILE]; ADMIN. ON CHILDREN, YOUTH & FAMILIES, CHILDREN’S BUREAU, NATIONAL CHILD ABUSE AND NEGLECT DATA SYSTEM (NCANDS) CHILD FILE, FFY 2013 [hereinafter 2013 FFY NCANDS FILE]; ADMIN. ON CHILDREN, YOUTH & FAMILIES, CHILDREN’S BUREAU, NATIONAL CHILD ABUSE AND NEGLECT DATA SYSTEM (NCANDS) CHILD FILE, FFY 2012 [hereinafter 2012 FFY NCANDS FILE]; ADMIN. ON CHILDREN, YOUTH & FAMILIES, CHILDREN’S BUREAU, NATIONAL CHILD ABUSE AND NEGLECT DATA SYSTEM (NCANDS) CHILD FILE, FFY 2011 [hereinafter 2011 FFY NCANDS FILE]; 2010 FFY NCANDS FILE, *supra* note 33.

36. ANDREA J. SEDLAK ET AL., U.S. DEP’T OF HEALTH & HUMAN SERVS., FOURTH NATIONAL INCIDENCE STUDY OF CHILD ABUSE AND NEGLECT (NIS-4): REPORT TO CONGRESS 2-2 (2010), [https://www.acf.hhs.gov/sites/default/files/opre/nis4\\_report\\_congress\\_full\\_pdf\\_jan2010.pdf](https://www.acf.hhs.gov/sites/default/files/opre/nis4_report_congress_full_pdf_jan2010.pdf) [<https://perma.cc/6NTV-PYHJ>].

37. Emily Putnam-Hornstein et al., *Risk of Re-Reporting Among Infants Who Remain at Home Following Alleged Maltreatment*, 20 CHILD MALTREATMENT 92, 92 (2015).

38. *Id.* at 100.



years, the recurrence-of-maltreatment rate has hovered between 6%–7%, moving very little year after year.<sup>39</sup> Setting aside any concerns regarding the rate at which the child welfare system initially identifies victims of caretaker abuse and neglect, the system has made no progress in reducing the rate at which it protects those victims from subsequent or ongoing abuse and neglect.

The child welfare system is also continuing to separate children from their families at a consistent rate. During the most recent annual reporting period, the child welfare system separated more than a quarter of a million children from their parents.<sup>40</sup> During the 2010 FFY, the average monthly removal rate was 2.98 removals for every 10,000 children in the population.<sup>41</sup> During the 2018 FFY, the average monthly removal rate was 2.9 per 10,000 children.<sup>42</sup> Between these two time frames, the annual rate never exceeded 3.21 per 10,000 children and never fell below 2.86 per 10,000 children.<sup>43</sup> Despite some annual fluctuation, the stagnant rate of removals between 2009 and 2017 has nonetheless contributed to an increase of nearly 15,000 more children in foster care in 2018 than in 2008.<sup>44</sup>

39. 2017 FFY NCANDS FILE, *supra* note 34; 2016 FFY NCANDS FILE, *supra* note 35; 2015 FFY NCANDS FILE, *supra* note 35; 2014 FFY NCANDS FILE, *supra* note 35; 2013 FFY NCANDS FILE, *supra* note 35; 2012 FFY NCANDS FILE, *supra* note 35; 2011 FFY NCANDS FILE, *supra* note 35; 2010 FFY NCANDS FILE, *supra* note 33.

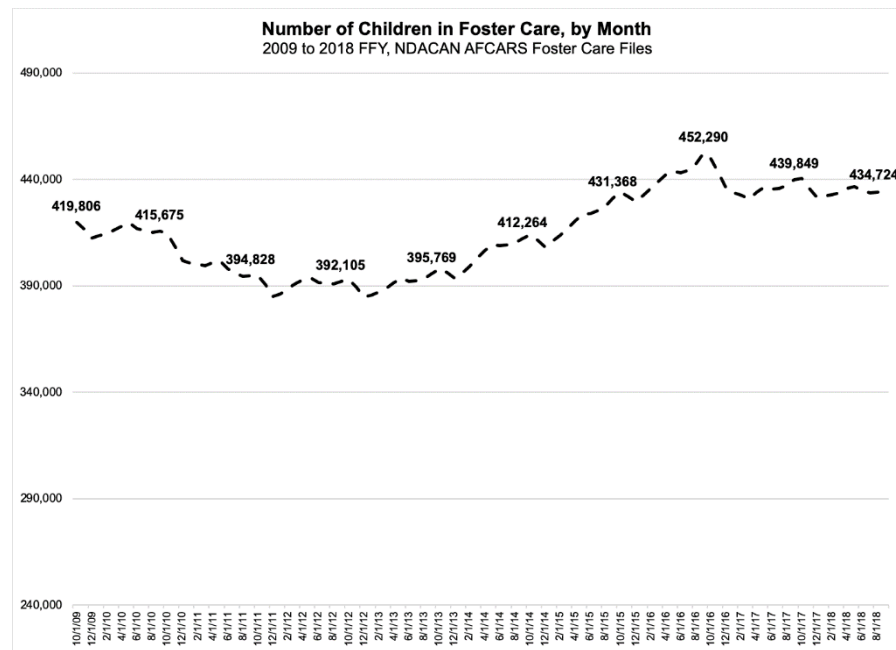
40. John Kelly, *Foster Care Numbers Up for Fifth Straight Year, Federal Data Released Today Shows*, CHRON. OF SOC. CHANGE (Nov. 8, 2018), <https://chronicleofsocialchange.org/child-welfare-2/fifth-straight-year-u-s-foster-care-totals-were-up-in-2017/32717> [<https://perma.cc/YD7U-6NAY>].

41. ADMIN. ON CHILDREN, YOUTH & FAMILIES, CHILDREN'S BUREAU, ADOPTION AND FOSTER CARE ANALYSIS AND REPORTING SYSTEM (AFCARS) FOSTER CARE FILE, 2010 [hereinafter 2010 FFY AFCARS FILE]. Data from the Adoption and Foster Care Analysis and Reporting System (AFCARS) were originally collected by the states' child welfare agencies pursuant to federal reporting requirements.

42. ADMIN. ON CHILDREN, YOUTH & FAMILIES, CHILDREN'S BUREAU, ADOPTION AND FOSTER CARE ANALYSIS AND REPORTING SYSTEM (AFCARS) FOSTER CARE FILE, 2018 [hereinafter 2018 FFY AFCARS FILE].

43. *Id.*; ADMIN. ON CHILDREN, YOUTH & FAMILIES, CHILDREN'S BUREAU, ADOPTION AND FOSTER CARE ANALYSIS AND REPORTING SYSTEM (AFCARS) FOSTER CARE FILE, 2017 [hereinafter 2017 FFY AFCARS FILE]; ADMIN. ON CHILDREN, YOUTH & FAMILIES, CHILDREN'S BUREAU, ADOPTION AND FOSTER CARE ANALYSIS AND REPORTING SYSTEM (AFCARS) FOSTER CARE FILE, 2016 [hereinafter 2016 FFY AFCARS FILE]; ADMIN. ON CHILDREN, YOUTH & FAMILIES, CHILDREN'S BUREAU, ADOPTION AND FOSTER CARE ANALYSIS AND REPORTING SYSTEM (AFCARS) FOSTER CARE FILE, 2015 [hereinafter 2015 FFY AFCARS FILE]; ADMIN. ON CHILDREN, YOUTH & FAMILIES, CHILDREN'S BUREAU, ADOPTION AND FOSTER CARE ANALYSIS AND REPORTING SYSTEM (AFCARS) FOSTER CARE FILE, 2014 [hereinafter 2014 FFY AFCARS FILE]; ADMIN. ON CHILDREN, YOUTH & FAMILIES, CHILDREN'S BUREAU, ADOPTION AND FOSTER CARE ANALYSIS AND REPORTING SYSTEM (AFCARS) FOSTER CARE FILE, 2013 [hereinafter 2013 FFY AFCARS FILE]; ADMIN. ON CHILDREN, YOUTH & FAMILIES, CHILDREN'S BUREAU, ADOPTION AND FOSTER CARE ANALYSIS AND REPORTING SYSTEM (AFCARS) FOSTER CARE FILE, 2012 [hereinafter 2012 FFY AFCARS FILE]; ADMIN. ON CHILDREN, YOUTH & FAMILIES, CHILDREN'S BUREAU, ADOPTION AND FOSTER CARE ANALYSIS AND REPORTING SYSTEM (AFCARS) FOSTER CARE FILE, 2011 [hereinafter 2011 FFY AFCARS FILE]; 2010 FFY AFCARS FILE, *supra* note 41.

44. 2018 FFY AFCARS FILE, *supra* note 42; 2017 FFY AFCARS FILE, *supra* note 43; 2016 FFY AFCARS FILE, *supra* note 43; 2015 FFY AFCARS FILE, *supra* note 43; 2014 FFY AFCARS FILE, *supra* note 43; 2013 FFY AFCARS FILE, *supra* note 43; 2012 FFY AFCARS FILE, *supra* note 43; 2011 FFY AFCARS FILE, *supra* note 43; 2010 FFY AFCARS FILE, *supra* note 41.



Despite all the efforts discussed in the previous section, the child welfare system is still identifying and removing victims at rates similar to what they were in 2010 and is not succeeding in reducing the number of maltreated children. As the authors have previously discussed, many of these children may have never needed to be separated from their parents for purposes of placement in foster care.<sup>45</sup> The trauma of separating children from their families is far more potent when it is laced with the injustice of unnecessary separation.<sup>46</sup>

Once in foster care, children are not faring much better. While in the legal custody of the state, children in foster care have a right to be safe, be well, be placed in a family-like setting, maintain connections with their family and community, and receive the support and services necessary to heal from their early childhood experiences. They also have a right to return home if that can be safely achieved. But we cannot say with confidence that the child welfare system is improving on any of these outcomes.<sup>47</sup>

The child welfare system aims to place children in the most family-like setting. Such a placement can minimize a child's grief and sense of loss, can help

45. Vivek S. Sankaran & Christopher Church, *Easy Come, Easy Go: The Plight of Children Who Spend Less than 30 Days in Foster Care*, 19 U. PA. J.L. & SOC. CHANGE 207, 209-10 (2016).

46. Vivek Sankaran et al., *A Cure Worse than the Disease? The Impact of Removal on Children and Their Families*, 102 MARQ. L. REV. 1161, 1163 (2019).

47. See, e.g., Emily Wax-Thibodeaux, 'We Are Just Destroying These Kids': The Foster Children Growing Up Inside Detention Centers, WASH. POST. (Dec. 30, 2019, 7:05 PM), [https://www.washingtonpost.com/national/we-are-just-destroying-these-kids-the-foster-children-growing-up-inside-detention-centers/2019/12/30/97f65f3a-eea2-11e9-9c6d-436a0df4f31d\\_story.html](https://www.washingtonpost.com/national/we-are-just-destroying-these-kids-the-foster-children-growing-up-inside-detention-centers/2019/12/30/97f65f3a-eea2-11e9-9c6d-436a0df4f31d_story.html) [https://perma.cc/VG9Z-7XQS].

normalize the foster care experience, and promotes child well-being.<sup>48</sup> As more researchers study the impact of foster care placements, the field has learned more about the importance of the type of placement for children in foster care. For example, the overutilization of congregate placements for children in foster care—like group homes or residential-placement facilities—has been the subject of legislation or regulation,<sup>49</sup> class action lawsuits,<sup>50</sup> and countless private-sector and governmental initiatives.<sup>51</sup> While most children in foster care are placed in a family-like setting, the rate at which children are placed in congregate placements has not shifted much over the past decade. On October 31, 2009, more than 48,000 children, or 11.5% of all children in foster care, were living in a congregate setting.<sup>52</sup> On September 30, 2018, 10.6% of all children in foster care were living in a congregate placement.<sup>53</sup> Between those two time frames, the proportion of children in foster care living in a congregate placement never rose above 11.8% or fell below 10%.<sup>54</sup> Despite ongoing policy, litigation, and financial incentives to reduce the utilization of congregate placements, at any given time, approximately one out of every ten children in foster care still lives in one.<sup>55</sup> Of course, variance across states, a child's age, a child's health, and other demographic and programmatic considerations can dramatically shift that utilization, for better or worse.

Similarly, children in foster care are prescribed psychotropic medications at significantly higher rates than children in the general population.<sup>56</sup> The overutilization of psychotropic medications for children in foster care negatively impacts their well-being and raises concerns about safety, overdiagnosis, consent, and monitoring. Similar to congregate placements, because the use of psychotropic medications raises both clinical and legal concerns, its overutilization has been the subject of legislation and regulation,<sup>57</sup> class action

48. See, e.g., David Rubin et al., *The Impact of Placement Stability on Behavioral Well-Being for Children in Foster Care*, 119 PEDIATRICS 336, 341, 343 (2007).

49. See, e.g., Bipartisan Budget Act of 2018, Family First Prevention Services Act, Pub. L. No. 115-123, §§ 50741–42, 132 Stat. 64, 253–59 (codified as amended in scattered sections of 42 U.S.C. (2018)).

50. See, e.g., Final Settlement Agreement, *Michelle H. v. Haley*, C/A No. 2:15-cv-00134-RMG, at 11–12 (D.S.C. 2016) (on file with the SMU Law Review Association).

51. See, e.g., *Strategy Brief Strong Families: How Can We Improve Placement Stability for Children in Foster Care?*, CASEY FAMILY PROGRAMS 4–5, [https://caseyfamilypro-wpengine.netdna-ssl.com/media/SF\\_Strategies-to-improve-placement-stability.pdf](https://caseyfamilypro-wpengine.netdna-ssl.com/media/SF_Strategies-to-improve-placement-stability.pdf) [<https://perma.cc/A79J-QLDK>] (last updated Sept. 2018).

52. 2010 FFY AFCARS FILE, *supra* note 41. This corresponds to a rate of 6.5 children in a congregate setting for every 10,000 in the population.

53. 2018 FFY AFCARS FILE, *supra* note 42. This corresponds to a rate of 6.3 children in a congregate setting for every 10,000 in the population.

54. *Id.*; 2017 FFY AFCARS FILE, *supra* note 43; 2016 FFY AFCARS FILE, *supra* note 43; 2015 FFY AFCARS FILE, *supra* note 43; 2014 FFY AFCARS FILE, *supra* note 43; 2013 FFY AFCARS FILE, *supra* note 43; 2012 FFY AFCARS FILE, *supra* note 43; 2011 FFY AFCARS FILE, *supra* note 43; 2010 FFY AFCARS FILE, *supra* note 41.

55. *Foster Care*, CHILDREN'S RIGHTS, <https://www.childrensrights.org/newsroom/fact-sheets/foster-care/> [<https://perma.cc/7ZDC-DZW4>] (last visited Oct. 29, 2019).

56. Ramesh Raghavan et al., *Psychotropic Medication Use in a National Probability Sample of Children in the Child Welfare System*, 15 J. CHILD & ADOLESCENT PSYCHOPHARMACOLOGY 97, 102 (2005).

57. See, e.g., Child and Family Services Improvement and Innovation Act, Pub. L. No. 112-34, § 101(b), 125 Stat. 369, 369 (2011) (codified as amended in scattered sections of 42 U.S.C. (2018)).

lawsuits,<sup>58</sup> and numerous private-sector and governmental initiatives.<sup>59</sup> Still, Medicaid claims data show that reliance on antipsychotics for children in care is increasing as of 2007, with one state reporting 21.7% of children in care on an antipsychotic.<sup>60</sup>

Finally, not only has the child welfare system failed in reducing the rate at which it separates families, our system has not made progress on supporting families so that children can return home after removal. In fact, between 2007 and 2017, the rate of children in foster care being reunified with their parents dropped from reunification representing 53% of all exits to 49%.<sup>61</sup> Rather than sending more kids home, our system has increased its rate of permanently terminating parental rights over the last decade. In FFY 2010, the child welfare system terminated parental rights at a rate of 7.2 per 10,000 children.<sup>62</sup> The most recent data reveal that the child welfare system now terminates parental rights at a rate of 8.36 per 10,000 children.<sup>63</sup> The increasing rate at which we judicially destroy family bonds is a strong rebuke to our system's goal of keeping children safe with their families whenever possible. The child welfare system's increased reliance on termination of parental rights has its costs: in 2018, there were 17,000 more children in limbo awaiting a permanent home than there were in 2010.<sup>64</sup>

The list of concerning practices, prescribed treatments, and lived experiences of children in foster care is long. However, the story is not all grim. For example, the percent of kids living with relatives after they have been removed from their parents has increased from 26% in 2007 to 33% in 2017.<sup>65</sup> Placement stability also improved, with the rate of placement moves during the first twelve months of care dropping from 8.52 moves per 1,000 days at the end of the 2009 FFY to

58. See, e.g., John Kelly, *Potential 'Landmark' Settlement Reached on Use of Psychotropic Drugs in Foster Care*, CHRON. OF SOC. CHANGE (July 19, 2019), <https://chronicleofsocialchange.org/child-welfare-2/potential-settlement-reached-on-use-of-psychotropic-drugs-in-foster-care/36384> [<https://perma.cc/6RQR-3DEA>].

59. See, e.g., *Improving the Use of Psychotropic Medication Among Children and Youth in Foster Care: A Quality Improvement Collaborative*, CTR. FOR HEALTH CARE STRATEGIES, INC., <https://www.chcs.org/project/improving-the-use-of-psychotropic-medication-among-children-and-youth-in-foster-care-a-quality-improvement-collaborative> [<https://perma.cc/UD2Q-NTMD>] (last visited Oct. 29, 2019).

60. ADRIENNE L. FERNANDES-ALCANTARA ET AL., CONG. RESEARCH SERV., R43466, *CHILD WELFARE: OVERSIGHT OF PSYCHOTROPIC MEDICATION FOR CHILDREN IN FOSTER CARE* 10 (2017), [https://www.everycrsreport.com/files/20170217\\_R43466\\_62d2a80968fb095760b70f326e1932be457cee0d.pdf](https://www.everycrsreport.com/files/20170217_R43466_62d2a80968fb095760b70f326e1932be457cee0d.pdf) [<https://perma.cc/VE4S-3BJE>].

61. See CHILD WELFARE INFO. GATEWAY, *FOSTER CARE STATISTICS 2017*, at 6 (2019), <https://www.childwelfare.gov/pubPDFs/foster.pdf> [<https://perma.cc/828S-6X7T>].

62. 2010 FFY AFCARS FILE, *supra* note 41.

63. 2018 FFY AFCARS FILE, *supra* note 42.

64. See ADMIN. ON CHILDREN, YOUTH & FAMILIES, CHILDREN'S BUREAU, *TRENDS IN FOSTER CARE AND ADOPTION: FY 2010-FY 2018*, at 1 (2019), [https://www.acf.hhs.gov/sites/default/files/cb/trends\\_fostercare\\_adoption\\_09thru18.pdf](https://www.acf.hhs.gov/sites/default/files/cb/trends_fostercare_adoption_09thru18.pdf) [<https://perma.cc/6D5V-NQAL>].

65. Sarah Catherine Williams & Kristin Sepulveda, *The Share of Children in Foster Care Living with Relatives Is Growing*, CHILD TRENDS, <https://www.childtrends.org/the-share-of-children-in-foster-care-living-with-relatives-is-growing> [<https://perma.cc/XB7F-DK4C>] (last updated May 24, 2019).

4.6 moves at the end of 2018 FFY.<sup>66</sup> Broader measures of family well-being also give hope: for example, infant mortality rates are down from 6.75 per 1,000 live births in 2007 to 5.79 per 1,000 live births in 2017.<sup>67</sup> In 2008, 10% of all children living in the United States did not have health insurance.<sup>68</sup> By 2017, that rate was cut in half, with only 5% of children not having health insurance.<sup>69</sup> These are two critically important measures of a nation's priorities around children and families. Yet those measures are more distant to a child welfare system's goals of preventing kids from being maltreated and keeping kids safely with their families. While there are some measures that indicate movement in a positive direction, they are dwarfed by those that do not.

If our system's goal is to keep children safe with their families and to rely on foster care only when absolutely necessary, data reveal that our system has not made much progress in the past decade. The rate at which children are maltreated has not gone down. The number of children taken from their families and placed in foster care has increased. Indicators of child well-being for children in foster care are, at best, stubbornly stagnant. Our system continues to increase its rate of terminating parental rights, permanently separating children from their families. We must do better.

So the question is: How can we target our investment over the next decade to get better results?

### III. THE NEXT DECADE

Continuing to prevent child maltreatment with a seemingly haphazard influx of resources, new laws and regulations, and increased compliance mechanisms has not and will not change this trajectory. The failing of our past decade has been our complacency with quick-fix solutions, or our tinkering with our inadequate infrastructure and approach, to address a complex problem. Child welfare continues to face an adaptive challenge that requires us to alter the values we bring to the work. We must abandon the simplicity of technical compliance and change how we view families involved in the system to develop a family-oriented child welfare system. To do this, we need a clear vision of how to move forward.

Evidence that quick, technical solutions will not work, absent a fundamental change in values, abounds. Take, for example, the team decision-making model embraced by the Annie E. Casey Foundation and others. The model "brings together parents, family, community members and others to assess the situation and determine how best to keep the child safe."<sup>70</sup> It enables those closest to a

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66. 2018 FFY AFCARS FILE, *supra* note 42; 2010 FFY AFCARS FILE, *supra* note 41.

67. *About Linked Birth/Infant Death Records, 2007–2017*, CDC, <https://wonder.cdc.gov/lbd-current.html> (last visited July 31, 2019) (click "I Agree" button; then select "2007" under the "Infant Characteristics" section; then click "Send" button).

68. *Children 17 and Below Without Health Insurance in the United States*, KIDS COUNT DATA CTR., ANNIE E. CASEY FOUND., <https://datacenter.kidscount.org/data/tables/8810-children-17-and-below-without-health-insurance#detailed/1/any/false/870,573,869,36,868,867,133,38,35/any/17657,17658> [<https://perma.cc/4H7D-DDFU>] (last updated Sept. 2017).

69. *Id.*

70. See *Team Decision Making: A Better Way to Assess Child Safety*, ANNIE E. CASEY FOUND. (May

child to participate in problem-solving and ensures that the agency caseworker is not the lone decision-maker. Research suggests that this model leads to increased family engagement and better outcomes.<sup>71</sup> As a result, variations of this model now exist in many jurisdictions across the country.

Yet advocates all over the country can describe the challenges of implementing this model. Common complaints include the following: (1) meetings are held for no apparent purpose but simply because they are mandated by law or policy; (2) they may be held at times at which parents and family members cannot attend; and (3) caseworkers dominate the discussions and do not allow families to lead in defining solutions to their challenges. While states can claim success on paper by touting how often these meetings are held, many argue that the states fail to produce the success stakeholders expected.

But perhaps the limited impact of interventions like team decision-making reflects the importance of adaptive change. Implementing the model without changing the values of the participants in the meetings is fatal to its success. If agency workers truly do not believe that families should be solving their own problems, then any intervention premised on families solving their own problems will fail, regardless of how much the child welfare system forces compliance. Have we done enough to truly persuade professionals working in the field that families should be making decisions for their children? To sustain any change in the field, we must focus on changing the values supported by the child welfare system.

For meaningful change to occur, the child welfare system must embrace three fundamental values. First, to paraphrase the words of civil rights lawyer Bryan Stevenson, the system must recognize that each parent is more than the worst thing they have ever done.<sup>72</sup> That is, while child welfare petitions summarize allegations of neglect or abuse against a parent, that parent is far more than those allegations. Rather, they have strengths, accomplishments, virtues, gifts, and talents that our system must recognize, seek out, and praise. Only when we see the whole person will we truly invest in keeping families together.

How can stakeholders do this? See parents and children together. Identify as an advocate for the entire family, regardless of your role. Talk to those who know the parent—like family members, pastors, or neighbors. Meet with the parent outside of court, in a non-stressful environment, and give them the space to tell their story. Identify the good things that were going on in the family's life prior to child welfare involvement. Make sure court hearings and meetings focus on these strengths rather than obsess on the challenges.

Second, we must ensure that systems treat each family with dignity and respect, regardless of the allegations in the petition. Given that child welfare seeks to reunify families even after children are removed from their parents, it is crucial that we engage families. Research demonstrates that we can do this by adhering

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24, 2017), <https://www.aecf.org/blog/team-decision-making-a-better-way-to-assess-child-safety/> [<https://perma.cc/QPR3-8R2M>].

71. See *id.*

72. See Francesca Trianni & Carlos H. Martinelli, Bryan Stevenson: 'Believe Things You Haven't Seen,' TIME, <https://time.com/collection-post/3928285/bryan-stevenson-interview-time-100/> [<https://perma.cc/33CT-HP5K>] (last visited Oct. 29, 2019).

to the core principles of procedural justice, which instruct those in authority to ensure that they guarantee litigants: (1) an opportunity to be heard; (2) the ability to understand the proceedings; (3) an assurance that decisions are made without bias; and (4) the respect of decision-makers.<sup>73</sup> When professionals adhere to these components, litigants are far more likely to work with those in charge.

Third, stakeholders must recognize that foster care is a harmful intervention that must be used sparingly. A pediatric professor from Harvard describes separating a child from his parent as “catastrophic.”<sup>74</sup> Another opined, “Continuing [parent-child] separation removes the most important protection a child can possibly have to prevent long-term damage.”<sup>75</sup> Given what we know about the impact of removal, it is unsurprising that outcomes for those children on the margins—those who could either remain at home or enter foster care—are better when children remain at home.<sup>76</sup>

The devastating impact of removal is exacerbated by the reality that the foster care system is, in many ways, a neglectful parent. It might force a child to abruptly miss days of school or switch schools in the middle of a semester. It might separate siblings or make kids sleep in office buildings. It might not give children proper medical care or mental health treatment. It might keep kids from seeing their family. The words of a young child who aged out of foster care capture how many feel:

I had so many losses, man. I felt like my life was taken [sic] away, I felt like I didn't have no freedom, no independence, it was, to be completely honest with you really, it was one of the worst experiences in my life, going on 21 years that I've been on this Earth that was definitely one of the worst experience in my life, right there . . . You know, it was terrible. You know, I, I lost my strength, I lost my life, I lost myself. It was, it was, it was hell man.<sup>77</sup>

These sentiments are not included to argue that foster care is unnecessary for some children. Rather it is an extremely important but potentially harmful remedy that should be used sparingly—only for those children who truly need its protection.

Until child welfare systems embrace these basic principles, sustained change

73. See E. ALLAN LIND & TOM R. TYLER, *THE SOCIAL PSYCHOLOGY OF PROCEDURAL JUSTICE* 71 (1988); TOM R. TYLER & YUEN J. HUO, *TRUST IN THE LAW: ENCOURAGING PUBLIC COOPERATION WITH THE POLICE AND COURTS* 51, 93 (2002); TOM R. TYLER, *WHY PEOPLE OBEY THE LAW* 115, 129, 137 (1990); Tom. R. Tyler, *What is Procedural Justice?: Criteria Used by Citizens to Assess the Fairness of Legal Procedures*, 22 L. & SOC'Y REV. 103, 104 (1988).

74. See Wan, *supra* note 2 (internal quotations marks omitted) (quoting Dr. Charles Nelson).

75. See Jack P. Shonkoff, *Migrant Family Separation Congressional Testimony*, CTR. ON THE DEVELOPING CHILD, HARVARD UNIV. (Feb. 7, 2019), <https://developingchild.harvard.edu/about/press/migrant-family-separation-congressional-testimony-dr-jack-p-shonkoff/> [https://perma.cc/A3LG-JG53].

76. See Joseph J. Doyle Jr., *Causal Effects of Foster Care: An Instrumental-Variables Approach*, 35 CHILD. & YOUTH SERVS. REV. 1143, 1149 (2013); Joseph J. Doyle Jr., *Child Protection and Child Outcomes: Measuring the Effects of Foster Care*, 97 AM. ECON. REV. 1583, 1584 (2007).

77. Vivek Sankaran, *Is the Solution Really for More Children to Enter Foster Care?*, CHRON. OF SOC. CHANGE (Aug. 29, 2018), <https://chronicleofsocialchange.org/child-welfare-2/is-solution-really-more-children-entering-foster-care/32074> [https://perma.cc/QWF8-YKS2].

that will improve the lives of children will not occur. But if we shifted our values and then aligned our resources to prioritize those values, powerful change could occur. How might that change occur?

First, systems will invest in families *before* a child is maltreated. Interventions *after* a child is maltreated will only perpetuate the child welfare system's poor outcomes. Recruiting more foster parents, paying for college for foster care alumni, and connecting kids in foster care with relatives are all noble initiatives. But they will do nothing to stem the flow of children entering foster care. To do that, the child welfare system must reorient to aggressively reduce poverty, reduce food insecurity, increase access to affordable housing, and provide access to early, quality childcare and education.

More generally, federal resources should pass through local jurisdictions to enable child welfare agencies to flexibly provide proven support that strengthens family well-being and reduces the risk of child maltreatment, and ultimately, the need for foster care. Research demonstrates that housing, head start, and holistic legal services can all keep children out of foster care. A 2019 Chapin Hall study found that families working with Connecticut's intensive supportive housing program were 20%–30% less likely to enter foster care.<sup>78</sup> Similarly, researchers at Michigan State University found that participation in a Head Start program reduced the need for children to enter foster care by 93%.<sup>79</sup> An independent evaluation revealed that not one of the 110 children served by the Detroit Center for Family Advocacy, which provided legal and social advocacy work to families at risk of losing children to foster care, entered the system.<sup>80</sup> This advocacy focused on addressing collateral matters, such as housing or access to public benefits, rather than defending against the impending state child welfare agency action.

Research also demonstrates a close link between poverty and child maltreatment. For example, raising the minimum wage by one dollar would reduce child maltreatment reports by nearly 10%.<sup>81</sup> Similarly, imposing \$100 more in child support resulted in kids remaining in foster care for an additional six months.<sup>82</sup> Unsurprisingly, families involved in home foreclosures faced a 70% greater risk of being involved in a child protective investigation.<sup>83</sup> Studies also suggest that addressing neighborhood-level poverty would play a role in reducing child abuse and neglect.<sup>84</sup> All of the research points to an unassailable

78. See Anne F. Farrell et al., *Supportive Housing Interventions in Connecticut Found to Decrease Foster Care Placements*, CHAPIN HALL, <https://www.chapinhall.org/research/supportive-housing-ct/> [<https://perma.cc/T5WE-LZ5M>] (last visited Oct. 29, 2019).

79. Sacha Klein et al., *Early Care and Education Arrangements and Young Children's Risk of Foster Placement: Findings from a National Child Welfare Sample*, 83 CHILD. & YOUTH SERVS. REV. 168, 174 (2017).

80. See Vivek Sankaran, *Using Preventive Legal Advocacy to Keep Children from Entering Foster Care*, 40 WM. MITCHELL L. REV. 1036, 1042–43 (2014).

81. See Kerri M. Raissian & Lindsey Rose Bullinger, *Money Matters: Does the Minimum Wage Affect Child Maltreatment Rates?* 72 CHILD. & YOUTH SERVS. REV. 60, 63–64 (2017).

82. See Maria Cancian et al., *Making Parents Pay: The Unintended Consequences of Charging Parents for Foster Care*, 72 CHILD. & YOUTH SERVS. REV. 100, 108 (2017).

83. See Lawrence M. Berger et al., *Home Foreclosure and Child Protective Services Involvement*, 136 PEDIATRICS 299, 303 (2015).

84. See Jill D. McLeigh et al., *Neighborhood Poverty and Child Abuse and Neglect: The Mediating Role of Social Cohesion*, 93 CHILD. & YOUTH SERVS. REV. 154, 157 (2018).



conclusion—economic instability can significantly heighten a family's level of stress, which inevitably increases the risk of child maltreatment. To prevent child maltreatment, federal and state resources must be available to support a strong anti-poverty agenda.

Yet our actions do not reflect what the research tells us. Policymakers on both the federal and state levels continue to make it more difficult for poor families to access public benefits like cash assistance or health insurance, seeking to link those benefits to certain requirements that result in limiting access. More than a quarter of people living in poverty—over 13 million people—receive no help from food stamps, subsidized housing, cash assistance, or childcare programs.<sup>85</sup> A third of those living in deep poverty—families making less than \$13,000 a year—received no federal support.<sup>86</sup> Tellingly, while 68% of poor families received federal cash assistance in 1996, only 22% did in 2018.<sup>87</sup> Policy choices regarding benefit eligibility, benefit form, and other important considerations matter, and these choices make it increasingly more difficult for struggling families to access needed supports. And those that lack these supports are far more susceptible to the type of instability that leads to child maltreatment.

At the same time, our targeted child welfare spending also demonstrates a disinterest in trying to prevent child maltreatment. Most states use the majority of the \$7 billion dedicated to child welfare spending to fund the foster care system. For example, in 2017, \$5.3 billion was spent on foster care while only \$555 million was spent on prevention services.<sup>88</sup> For the most part, the federal laws detailed at the outset of this Article tinker with procedures *after* a child has already been separated from a parent. The major exception—the Family First Prevention and Services Act—has significant limitations. While it permits federal funds to be used for some prevention services, those services must fall into specified categories, must be evidence-based, and are time-limited. These limitations undermine confidence in the law's potential impact. To better serve children, policymakers should allocate the majority of funds in a flexible way that allows states to support initiatives that prevent child maltreatment rather than those that simply react to a child that has already been abused or neglected.

Second, courts must ensure that kids do not needlessly enter foster care. When children do enter foster care, courts must treat all families with respect and dignity, focusing on the core principles of procedural justice discussed above.<sup>89</sup> This requires courts to enforce state and federal laws strictly, including ones requiring agencies to make reasonable efforts prior to seeking to place children in

85. See SARAH MINTON & LINDA GIANNARELLI, URBAN INST., FIVE THINGS YOU MAY NOT KNOW ABOUT THE US SOCIAL SAFETY NET 5 (Feb. 2019), [https://www.urban.org/sites/default/files/publication/99674/five\\_things\\_you\\_may\\_not\\_know\\_about\\_the\\_us\\_social\\_safety\\_net\\_1.pdf](https://www.urban.org/sites/default/files/publication/99674/five_things_you_may_not_know_about_the_us_social_safety_net_1.pdf) [https://perma.cc/4D7T-5X96].

86. *Id.*

87. See IFE FLOYD, CTR. ON BUDGET & POLICY PRIORITIES, TANF REACHING FEW POOR FAMILIES 3, <https://www.cbpp.org/sites/default/files/atoms/files/6-16-15tanf.pdf> [https://perma.cc/F4FK-DSR7] (last updated Mar. 4, 2020).

88. See *State-by-State Data*, CASEY FAMILY PROGRAMS (May 13, 2019), <https://www.casey.org/state-data/> [https://perma.cc/PRG5-DGE5].

89. See *supra* note 73 and accompanying text.

foster care and requiring agencies to demonstrate that a child will face a substantial risk of harm if they remain at home. If a child must enter foster care, courts must keep families engaged in the process, which necessitates frequent and meaningful contact between parents and children, strong relationships between foster and birth parents, and purposeful involvement in court proceedings. Strong, high-quality legal representation is key to making all of these happen.

Finally, if professionals in the system embrace the core values identified above, then they must be given the time and space to form meaningful relationships with families. The growth of child welfare into a compliance-driven system with many technical obligations has overwhelmed frontline child welfare workers with administrative burdens. Rather than spending time with children and parents, agency caseworkers lament the forms they must fill out, the data entry they must complete, and the multiple reports they must draft. The influx of legislation, lawsuits, and regulations has prioritized the documentation of tasks instead of the development of close bonds with families. The child welfare system must take a step back and consider whether the influx of additional technical requirements has significantly improved the lives of the children it is trying to serve.

#### IV. CONCLUSION

Over the next decade, the child welfare system needs a clear vision aimed at supporting families so that children are not needlessly separated from their families. Without this vision, increased activity—whether in the form of new laws, increased funding, or additional lawsuits—will not improve outcomes for children. The flurry of activity over the past decade has proven this. Despite a great amount of activity, measures on key outcomes remain unchanged or have worsened.

But with a clear vision that centers on the needs of families before a child is maltreated, the child welfare system can finally recognize its potential. The system can actively partner with families, offering them the concrete support they actually need to care for their children. It can serve as a valuable resource that families want to seek out. And it can be seen as an ally that truly understands the challenges so many families face every day to safely raise children in their homes. With a clear vision, this is the potential that the system can finally grasp.