



## “WHATEVER THEY DO, I’M HER COMFORT, I’M HER PROTECTOR.”

### How the Foster System has Become Ground Zero for the U.S. Drug War

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Summary

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This report - which draws on interviews with a variety of advocates and parents who are impacted by and/or touch the child welfare and foster care systems (collectively foster system), academic investigation, and systems-wide data - is in part a plea to the social justice community to embrace activism against the foster system as a core social justice cause of our time. The foster system has profound implications for the communities served in the fights for reproductive justice, racial justice, economic justice, drug policy and harm reduction, disability justice, immigration justice, anti-criminalization, and others. This report is also intended to contextualize the system for actors complicit in or actively perpetuating the harms of the foster system in an effort to encourage them to stop harming families or at least begin to understand the lineage of their line of work, the context within which it currently occurs, and the future likely outcomes of their work.

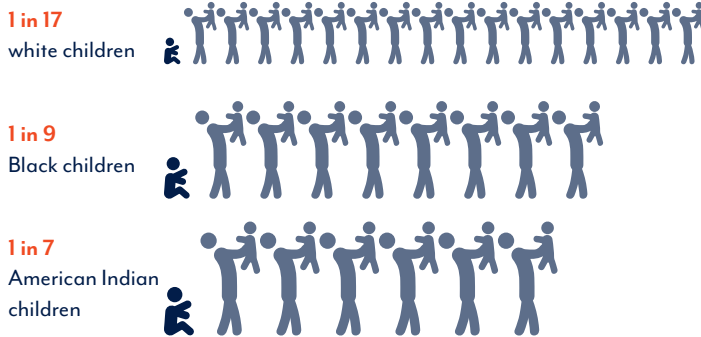
**The foster system is a central battleground for the war on drugs.**

A significant proportion of cases in the family court system involve allegations of parental neglect based on substance use. And while these cases run the gamut - from occasional cannabis use to debilitating substance use disorders - they all share several common threads. Virtually every case is characterized by gross misinformation on the science of substance use, involves a punitive legal process that resembles the criminal legal system but lacks even the most basic rights protections, and focuses on individual responsibility for alleged parenting failures while completely ignoring the structural failings that often instigate involvement in the first place.

The foster system holds perhaps the greatest power a state can exercise over its people: the power to forcibly take children away from parents and permanently sever parent-child relationships.

CPS has inserted itself into the lives of many American families - over one-third of American children and over half of Black children have been the subject of a child abuse/neglect investigation.<sup>1</sup> Between 2000 and 2011, one in seventeen white children, one in nine Black children, and one in seven American Indian children had been removed from their parents' care.<sup>2</sup>

**Between 2000 and 2011**



**had been removed from their parents' care.**

The United States holds the distressing distinction of having the greatest number of legal orphans in the world - children forcibly made legally parentless by a mechanism known as termination of parental rights.<sup>3</sup> Many millions of parents have been subjected to foster system surveillance and control, including temporary and permanent loss of the custody of their children. Indeed in 2017 alone, over 500,000 parents

- almost all low income and disproportionately Black, American Indian, Latinx and female presenting - were deemed by the foster system of having maltreated their children.<sup>4</sup> The reach of the foster system into the lives of people living in poverty and Black, American Indian, and Latinx communities rivals the much more widely discussed criminal legal system.<sup>5</sup>

We must radically reimagine how we support children and families through an entirely different system that does not rely on surveillance, control, and family separation.

### ***A Brief Summary of Movement for Family Power's Recommendations for Change***

People and community organizations have long been agitating to limit the reach of the foster system into their families' and community's lives. These recommendations are a reflection of their work - some are abolitionist in nature (calling for an overall shrinking of the system's scope and size, and the transfer of power and resources back into community) while others are reformist (which may address the immediate harm families experience under the heel of the foster system today).

#### *Philanthropy*

- Stop giving money to child protective services agencies.
- Fund directly impacted leader and community based organizations.

#### *Drug Treatment Providers*

- Treat parents with dignity and respect.
- Authentically employ the goals of harm reduction.
- Decrease coordination and complicity with carceral systems.

#### *Attorneys for Children*

- Listen and learn from parents who have been through the system.
- Advocate and request material resources for the family on behalf of your client.
- Where ethical, object to court orders that include testing negative for drugs as a condition of children being released to their parents, as well as court orders that punish children by restricting visitation.

#### *New York Administration for Children's Services (ACS)*

- An agency that has the power to apprehend children and dissolve families will never play a meaningful role in service provision in a community. Advocate for defunding of your agency and moving of

services from ACS to community-based organizations that are not mandated reporters. Stop policing drug use. Drugs do not have to lead to family separation.

- Advocate against being the arbiter of plans of safe care under the Child Abuse Prevention Treatment Act (CAPTA). Advocate for community-based organizations to take the lead on this.

### *Family Court Judges*

- Challenge the bias that the war on drugs has left on all of us, and how it is enacted in the courtroom.
- Challenge ACS.
- Court intervention is a specific type of government intrusion that is not the same as support. Extending supervision because drug use is present should not be conflated with helping children or families.

### *Media*

- Understand that child protective services agencies err in all directions, and needlessly placing a child in foster care is harmful.
- Center perspectives of children, and parents.
- Be more nuanced and present positive stories of people who parent while using drugs. Stop repeating the harm you wrought with the “crack baby” myth and hysterical reporting.

### *Hospitals*

- Only conduct drug testing when medically indicated and with specific and informed consent for both the mother and newborn.
- Understand the implications of reporting people to CPS and the long-term harm and trauma caused by family separation.
- Take accountability for the harms that have been inflicted on Black and Brown families, especially parents who use drugs. Admit where mistakes have been made and work to repair harm.

### *New York City Government*

- Create and fund meaningful and interdisciplinary legal protections for parents accused of child abuse maltreatment or facing termination of parental rights.
- Fund material resources for underserved communities, which can stabilize and mitigate potential risk to children. These resources should be provided by community-based organizations, not ACS.
- Fund community-based organizations to serve as watchdogs on ACS and family court.

## *State and Federal Government*

- Repeal the Adoption and Safe Families Act (ASFA) and altogether eliminate timelines which constrain the time a parent has to regain custody of their child or lose them forever.
- Repeal the Child Abuse Prevention Treatment Act (CAPTA), in particular the plan of safe care provision which has incentivized hospitals to report to CPS agents.
- Decrease and then end the federal open-ended entitlement for funding foster care. Reinvest that money into community-based organizations that can provide services families need.

## References

- 1 Hyunil Kim et al., Lifetime Prevalence of Investigating Child Maltreatment Among US Children, 107 American Journal of Public Health 274-280 (2017).
- 2 Christopher Wildeman & Natalia Emanuel, Cumulative Risks of Foster Care Placement by Age 18 for U.S. Children, 2000–2011, 9 PLoS ONE e92785 (2014).
- 3 Christopher Wildeman, Frank R. Edwards & Sara Wakefield, The Cumulative Prevalence of Termination of Parental Rights for U.S. Children, 2000–2016, Child Maltreatment (2019).
- 4 U.S. Department of Health & Human Services, Administration for Children and Families, Administration on Children, Youth and Families, Children's Bureau (2019).
- 5 Dorothy Roberts, Shattered Bonds: The Color of Child Welfare (2002).