



# **FAMILY DEFENSE**

**PREPARED BY**

**SOCIAL WORKERS  
AGAINST MANDATES  
(SWAM)**

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***“The child welfare system is designed to detect and punish neglect on the part of poor parents and to ignore most middle-class and wealthy parents’ failings. Although the meaning of child maltreatment shifted from a social to a medical model, it retained its focus on poor families. The system continues to concentrate on the effects of childhood poverty, but it treats the damage as a symptom of parental rather than societal deficits.”***

**-Dorothy Roberts, *Shattered Bonds: The Color of Child Welfare* (2001)**

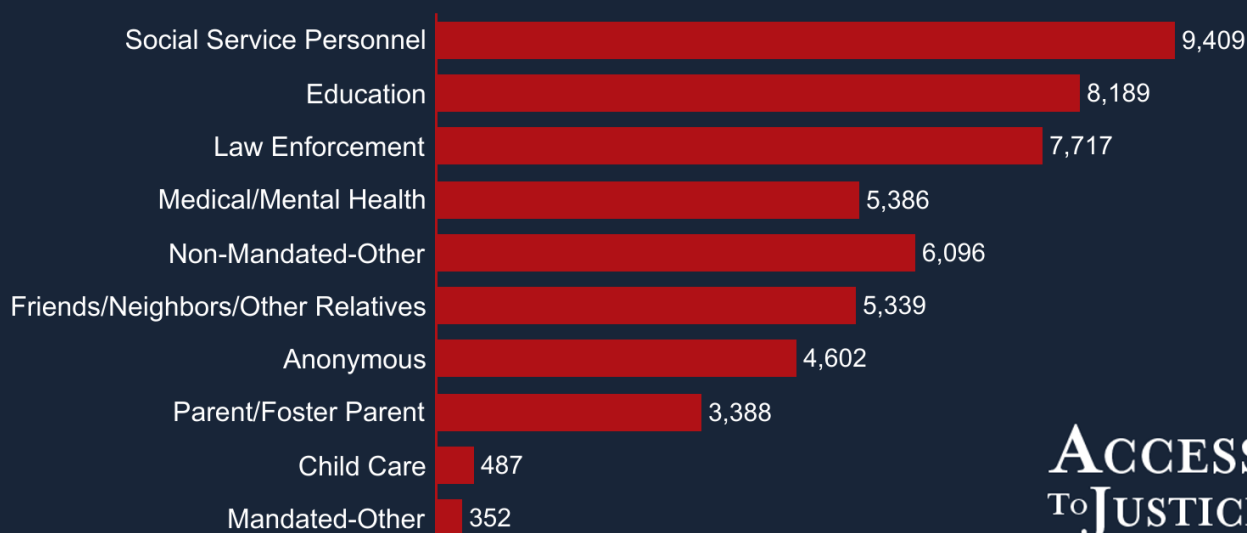
Dorothy Roberts, J.D. is an acclaimed scholar of race, gender and the law and is faculty members at the University of Pennsylvania. Her pathbreaking work in law and public policy focuses on urgent contemporary issues in health, social justice, and bioethics, especially as they impact the lives of women, children and Black Americans.

**Notable names necessary in acknowledging include the following: Dorothy Roberts, Joyce McMillan (PLAN & JMac4Families), Erin Cloud (Movement for Family Power), Columbia University Mandated Supporting Collective, NY Social Workers Uprising Now, and students at the University of Houston, Hunter School of Social work and UCI Jane Adams.**

In our role as mandated reporters, Social Workers function as policing agents. Through us, the carceral surveillance state extends into schools, homes, and communities, criminalizing poverty and violently enforcing adherence to white, middle class norms through the constant threat of permanent family separation.

## Social Services Filed Highest Number of Reports in NYC, Followed by School Officials and Police

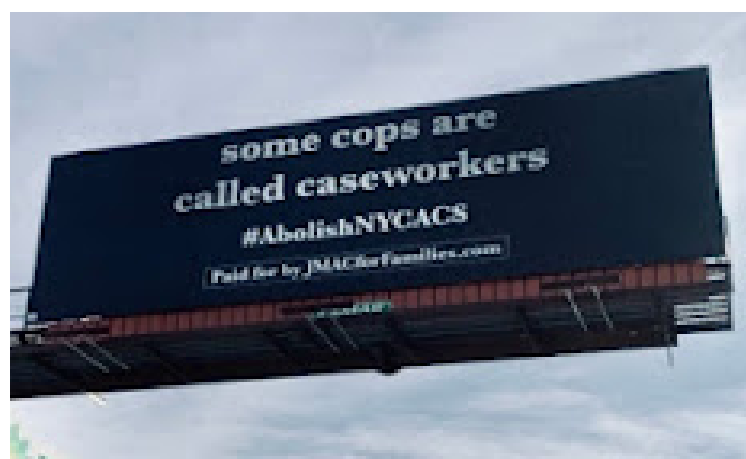
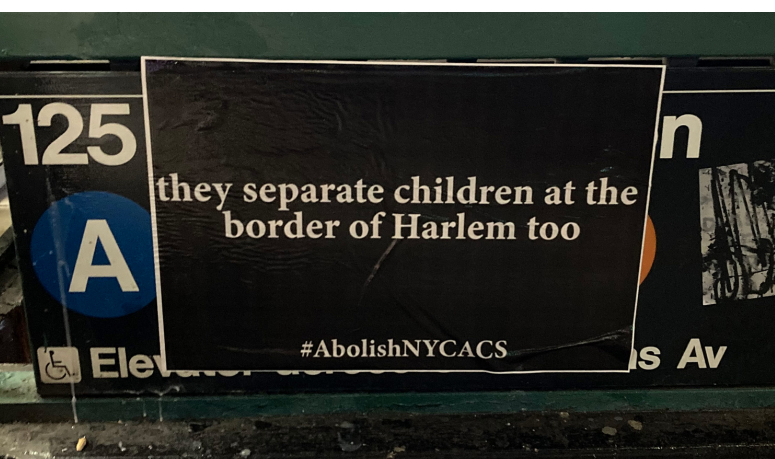
Private citizens filed 6,096 reports of child neglect or abuse in 2020, a significant share of the total number of reports. While government agencies and people acting in official capacity must include name and contact information, private citizens can file report anonymously.



ACCESS  
To JUSTICE

LAW360

Source: New York City Administration for Children's Services



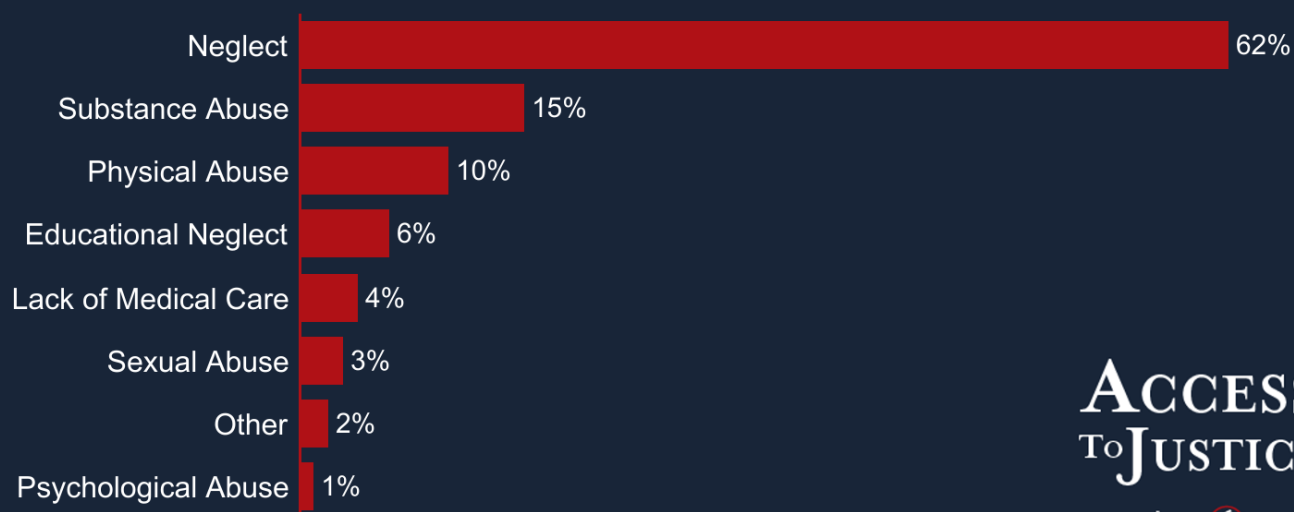
Over 50 percent of Black children in the entire country are subject to investigations by child protective services under suspicion of neglect or abuse, according to a study published in the American Journal of Public Health based on U.S. Census data (Kim et al., 2017).

Despite the staggering percentage of children who experience investigations, only a small fraction of parents are found having harmed their children. The vast majority of cases are called in due to "neglect," which is a term that is often conflated with poverty--a concern that is due to structural inequity rather than personal responsibility.

This data shows that the system is heavily biased in terms of race and class.

## Less Than One-Tenth of Child Abuse Reports in New York City Involve Physical Violence

The overwhelming majority of cases reported in 2020 involved neglect, which is classified as inadequate guardianship, inadequate food, clothing, shelter, lack of supervision, malnutrition, failure to thrive, swelling, dislocations and sprains.



Source: New York City Administration for Children's Services

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As a social worker-in-training, it is vital to gather strategies you can use to mitigate the harms of mandated reporting.

This module will provide an introductory understanding of mandated reporting laws, how you can more critically assess and navigate situations in which mandated *supporting* might be required, and what resources are available for parents and families targeted by the family regulation system:

- **Skill 1: Understanding mandated reporting laws and policies**
- **Skill 2: Discerning "neglect" from need**
- **Skill 3: Self-reflection prior to calling ACS**
- **Skill 4: Knowing what to do if you must call ACS**
- **Skill 5: Mitigating harm during if a call if it is made**
- **Skill 6: Knowing what happens after the call**
- **Skill 7: Understanding the impact of ACS involvement on family life**
- **Skill 8: Ensuring that families have the opportunity to exercise their legal rights**

# Skill 1: Understanding mandated reporting laws and policies

## Standards for Making a Report (Soc. Serv. Law § 413)

A report is required when the reporter has **reasonable cause** to suspect that either of the following is true.

**“Reasonable cause” is a vague standard, leaving significant discretion up to mandated reporters who may be influenced by a variety of factors and biases.**

A child coming before him or her in his or her professional or official capacity is an **abused or maltreated child**.

The parent, guardian, custodian or other person legally responsible for the child comes before the reporter and states from personal knowledge facts, conditions, or circumstances that, if correct, would render the child an **abused or maltreated child**.

**What is suspected to be abuse and/or neglect can be highly influenced by racism, classism, and ableism, among other things. We’ll explore this further in the next few slides.**

# Skill 1: Understanding mandated reporting laws and policies

## "Better Safe Than Sorry"?

Given the ambiguity of the “reasonable cause” standard, as well as the inequity baked into the system, it is important to interrogate the “better safe than sorry” policy that many social workers abide by. What really is “safe”? What really is “sorry”? The “better safe than sorry” approach centers liability over the true well-being of children and families and fails to truly understand what “safety” means

### Involvement with ACS doesn't make children safer:

- Children are far more likely to experience sexual abuse, physical abuse, and violence, homelessness, and lack of access to healthcare once entering the system than they are at home (Mundorff, 2003).
- Evidence suggests that mandated reporting laws actually decrease the likelihood the families will seek assistance and services, for fear of family separation, and also decrease the likelihood that children in actual danger will receive the support they need (Perrone, 2012; Besharov, 2001).
- The vast majority of cases are called in due to poverty-related concerns conflated with neglect...meaning that families suffer unnecessary consequences and surveillance for something that was not their fault, namely structural inequity.

### Involvement with ACS is what we should be sorry For:

- Removing children from their parents, even for a short period of time, can have devastating and long-lasting consequences for children and caregivers alike.
- Disruption of infant attachment to the parent can have disastrous consequences for a child's physical and emotional development, including aggression, depression, speech defects, attention demanding behavior, difficulties about food, enuresis, and more (Vicedo, 2011; Trivedi, 2019).
- There is no accountability of any kind for removals made based on claims later determined to be unfounded. This means that children can be removed, sometimes for years (during which they may be exposed to all kinds of abuse within the system) and in the end, the charges against the parent may be dropped without any apology or consequences against government agencies for the baseless removal.

# Skill 2: Discerning "neglect" from need

What is often categorized as "neglect" are often needs that social workers can help fulfill

## MISUNDERSTOOD CATEGORIES OF NEGLECT

Failure to provide adequate food, clothing, or shelter

Failure to provide medical or mental health care (including drug abuse services)

Failure to support a child's educational needs by 1) keeping a child home from school for unexcused reasons or 2) not following up with a child's educational needs despite the school's outreach to the parent or caretaker

Leaving a child alone who is not developmentally (assumptions about developmental abilities based on bias) able to be left alone without adequate supervision

Leaving a child with someone without establishing a plan for the provision for food, clothing, education, or medical care

Leaving a child with someone that does not have the ability to appropriately supervise or protect the child

Subjecting a child to humiliation, fear, verbal terror, or extreme criticism

Using corporeal punishment beyond what is objectionably reasonable and results in the physical or emotional harm of a child

Exposing a child to family violence

Parent or caretaker using drugs to the point of not being able to adequately take care of a child

## ACTUAL NEEDS

- Food insecurity
- Housing insecurity
- Employment/financial insecurity

- Lack of access to health care

- Barriers to school engagement and attendance
- Lack of access to technology for online learning
- Disinterest in online learning due to trauma from COVID-19

- Barriers to appropriate childcare
- Closures of childcare facilities

- Not being able to find adequate and affordable childcare or after school programs

- Barriers to affordable childcare or after school programs

- Unresolved generational trauma
- Unmet mental health needs
- Projection of workplace treatment

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- Unresolved generational trauma
- Barriers to accessing conflict mediation

- Decriminalization of addiction
- Recognition that there are racially motivated biases against certain drugs



## Skill 3: Self-reflection prior to calling ACS

### *Reconsider & Remember:*

- Intervention does not equal help.** An ACS investigation does not ensure that a family's needs will be met (nor is it designed to do so).
- An ACS visit to a family's home is both *invasive* and *traumatizing*.** Every detail of a family's home is scrutinized and children are often asked to disrobe so they can be searched for physical marks and bruises.
- An ACS investigation is a form of state surveillance** that can generate information and evidence to prompt and/or support unnecessary criminal investigations that can tear a family apart.
- ACS investigations also often have a “domino effect,”** meaning that they can lead to eviction, job loss, and impact citizenship status, among other things.

## Skill 4: Knowing what to do if you must call ACS

### Questions to ask yourself before calling:

- Have I included the parent/guardian in the decision-making and reporting process?
- Have I exhausted every other option available to me?
- Did I inform the family of their rights?
- Did I connect the family to a legal advocate or Family Defense Practice? (e.g. Brooklyn Defender Services, Bronx Defenders, Neighborhood Defender Services)
- Am I giving a holistic, reasonable account of the family's situation and strengths?
- Have I processed the situation again and consult trusted help before making this decision?

# Skill 5: Making the Call in a Way that Mitigates Harm

If you truly think the benefits of calling ACS outweigh the trauma of an investigation and removal, here are some steps to take to *mitigate* (but could never *eliminate*) the harm:



**Involve the family when you call. Ideally, make the call *with* the family.**

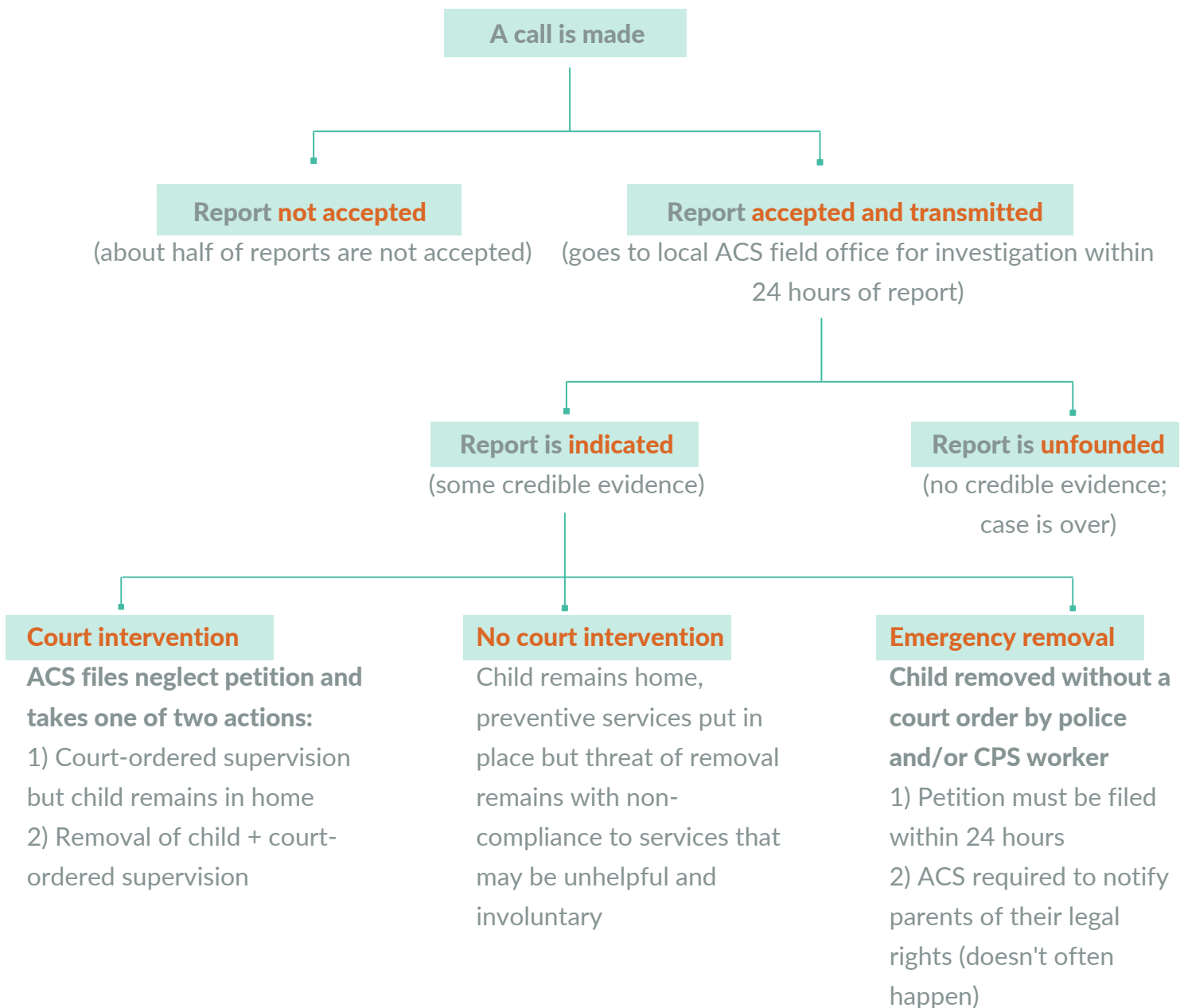


**Request the operator repeat back everything you say– and confirm that they are repeating it accurately.**



**Highlight the family's strengths and protective factors.**

# Skill 6: Knowing what happens after the call



# Skill 7: Understanding the impact of ACS involvement in family life



**Take 30 minutes to read Angeline Montauban's story of her fight to regain custody of her son, who was removed from her care by ACS:**

**<https://www.motherjones.com/politics/2020/12/do-we-need-to-abolish-child-protective-services/>**

**\*Record your reflection and answer the questions in Canvas\***

# Skill 8: Ensuring that families have the opportunity to exercise their legal rights

## Legal and advocacy support for families involved with ACS:

As mentioned in Angeline Montauban's story, one of most important parental rights is the right to an attorney in the event of ACS filing a petition with family court. The advocacy and public defense organizations pictured below offer parental representation in NYC. The practice of representing parents involved with ACS is called family defense, and social workers can be integral parts of family defense teams.



# Summary

## How can social workers mitigate the harms of making a call and support families involved with ACS?

### One option is... becoming a family defense social worker

- Social workers on family defense teams are covered under attorney-client privilege and are not required to act as mandated reporters.
- They work alongside parent advocates, family defense attorneys, and community organizers to practice holistic defense. Social workers play a critical role in advocating with parents to exercise their rights, providing supportive counseling, offering guidance through complex legal and social service systems, and connecting families to resources that support them in addressing socio-environmental or underlying issues that led to their contact with the family regulation system.

### Another option is... being conscious of the family regulation system as a social worker

- Be knowledgeable about the public defense organizations in your area.
- It is good practice to refer parents at any stage in ACS involvement to a family defense lawyer if they don't yet have one.
- It is also good practice to refer parents to a family defense lawyer at the time of making an ACS report if you absolutely have to report (review pages 8 & 9 for a refresher on this decision making process).
- It is best to refer a parent as early as possible to a family defense practice. Some public defenders do early defense work, which involves providing advocacy for families during ACS investigations (prior to court involvement), which may help prevent ACS from filing a court petition. For people interested in learning more about early defense work, see Emma Ketteringham's article in the references and resources list at the end of this training.
- Remember, a referral to a legal defense or advocacy organization could dramatically alter the outcomes for a family involved with ACS and possibly prevent an unnecessary child removal.

## Final reminders:

- **Mandated reporting IS NOT an evidence-based practice.**
- **No evidence currently exists that suggests that mandated reporting helps prevent child abuse or neglect**
- **Another way is possible!**

**In the following modules you will hear from people who have experienced the system directly and learn from them how they would have liked to be supported.**



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