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## ARTICLE

### THE SURVEILLANCE TENTACLES OF THE CHILD WELFARE SYSTEM

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*The family regulation system identifies families through the use of widespread, cross-system surveillance for the purported purpose of keeping children safe. But the system does not surveil all families equally, leading to the disproportionate impact of family regulation on Black, Brown, and Native families, and fails to protect while causing more harm to children and communities of color. We examine how institutions and professionals that are meant to provide necessary services to the community—medical providers, social services agencies, the police, and schools—act as tentacles of surveillance, entrapping families in the family regulation system. We argue that engineering service and community providers as surveillance agents perpetuates inequality and leads to unnecessary family separation and trauma, and that genuine support for families can only thrive outside of the family regulation system and its surveillance tentacles.*

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## I. INTRODUCTION

The child welfare system, which we refer to throughout this Article as the family regulation system,<sup>1</sup> depends upon a system of surveillance to entrap low-income Black, Brown, and Native families within it. Mental health and social service providers, educational institutions, law enforcement, and the family regulation system itself, function as the surveillance tentacles of the family regulation system, drawing low-income Black and Brown families under the watchful eye and control of family regulation workers and courts. These tentacles seek out indications of neglect or abuse, which is often little more than evidence of poverty, and focus on reporting concerns and placing families under even greater levels of surveillance. By utilizing these tactics, the family regulation system causes greater trauma to impacted communities and fails to provide the support necessary to assist families living in poverty. In this Article, we explore how the family regulation system uses its surveillance tentacles to control families, without providing the assistance or protection to children it is purportedly designed to deliver. We argue that families need direct material support that is divorced from the threat of surveillance or family separation.

Mary<sup>2</sup> is a 25-year-old Black mother who has been running late all week—late to pick the baby up from daycare, then late to get her to the pediatrician’s office. She missed the appointment, for the third time. She was late to pick her son up from her mom’s house and arrived at the shelter after curfew. Mary missed her recertification appointment at the public assistance office because her son’s school bus didn’t show up and she had to take him to school on public transportation. The knock on the door from the

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<sup>1</sup> Throughout this Article, “child protective services” workers will be referred to as “family regulation” workers and the “child welfare” system will be referred to as the “family regulation” system to recognize that the system “is designed to regulate and punish Black and other marginalized people.” Dorothy Roberts, *Abolishing Policing also Means Abolishing Family Regulation*, IMPRINT (June 16, 2020, 5:26 AM) [hereinafter Roberts, *Abolishing*], <https://imprintnews.org/child-welfare-2/abolishing-policing-also-means-abolishing-family-regulation/44480> [https://perma.cc/3VAJ-H8WP].

<sup>2</sup> This Article will include several client stories. These stories are meant to be reflective of our client’s experiences but are not the stories of any one client.

family regulation worker was the last straw. A shelter case worker overheard a heated argument between Mary and her husband and made a child maltreatment report. A family regulation worker told her that there would be a conference that same day to discuss the agency's concerns. In addition to the shelter caseworker who made the report, the family regulation worker had also talked to Mary's son's school and his pediatrician. Mary and her husband would have separate conferences because the report mentioned domestic violence. During the conference, Mary learned that a domestic violence consultant who had never met Mary or her husband had reviewed their case history and felt her children were unsafe. Mary sat at a table across from three strangers, looking down at the "service plan" and could not understand how she was going to get it all done without losing her children. The family regulation worker told her that she would have to enforce an order of protection against her husband and that he would have to find another place to live. She would be required to bring the children to the family regulation agency for supervised visits with their father, on top of enrolling in a parenting class, family therapy, domestic violence services, and complying with regular home visits from the family regulation worker. Mary could barely stay afloat, and now she was going to have to do everything on her own. She felt like she was being set up to fail, but she agreed to the plan. What other choice did she have?

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There is nothing new about the policing and surveillance of Black and Brown bodies. Parents like Mary are routinely assigned "service plans" by family regulation workers as means of addressing what the latter sees as deficiencies in their parenting. These plans are rarely tailored to the needs of the family but are instead cookie cutter solutions that often make matters worse and provide a pathway for the family regulation systems to watch the family more closely and control their

behavior. This control determines who is allowed to come in contact with their children, where they can live, what doctor they have to go to, what time they must be home, where and when they can work, and what services they must engage in.

Black and Brown families have been over-policed, over-surveilled, torn apart, and disrespected for hundreds of years. Black children were kidnapped and taken across the world to be enslaved. Black families were separated, and children were sold away from their parents as a means of control. Black women were considered more valuable to slave owners when they were in their “child bearing years.”<sup>3</sup> Slave owners closely monitored the behavior of Black mothers to make sure that they were properly caring for their children.<sup>4</sup> In the 1960s, the government sanctioned the forced removal of Native children from their families and, in most cases, placed them in white homes far from their families.<sup>5</sup> By the 1970s, between “25 and 35 percent of all [Native] children had been placed in adoptive homes.”<sup>6</sup> For the past several years, Brown children have been forcefully separated from their parents and detained at the border in an attempt to discourage immigration.<sup>7</sup> Today, the young mothers we represent at the Center for Family Representation (CFR), who are usually Black or Brown, are frequently denied favorable settlement offers because family regulation system prosecutors believe they will have more children in the future and want to retain an easier pathway to more surveillance through subsequent court involvement that often involves micromanaging the care of their children.<sup>8</sup>

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<sup>3</sup> Emily West & Erin Shearer, *Fertility Control, Shared Nurturing, and Dual Exploitation: The Lives of Enslaved Mothers in the Antebellum United States*, 27 WOMEN'S HIST. REV. 1006, 1006–07 (2018).

<sup>4</sup> *Id.*

<sup>5</sup> Christie Renick, *The Nation's First Family Separation Policy*, IMPRINT (Oct. 9, 2018, 5:05 AM), <https://imprintnews.org/child-welfare-2/nations-first-family-separation-policy-indian-child-welfare-act/32431> [<https://perma.cc/L254-9DLR>] (“In its [1978] report to Congress, a task force said, “The removal of Indian children from their natural homes and tribal setting has been and continues to be a national crisis.”).

<sup>6</sup> *Id.*

<sup>7</sup> Amelia Cheatham, *U.S. Detention of Child Migrants*, COUNCIL ON FOREIGN RELS (Oct. 29, 2020), <https://www.cfr.org/background/US-detention-child-migrants> [<https://perma.cc/A4S5-46ZH>].

<sup>8</sup> In New York, a court may either enter a finding of neglect or abuse against a parent or order an adjournment in contemplation of dismissal or a suspended judgement, which will allow the petition to be dismissed following a

The family regulation system, as the scholar Dorothy Roberts aptly describes the American child welfare system, is a continuation of this horrific American tradition.<sup>9</sup> This system is perhaps one of the most glaring modern-day attempts to destroy the Black family. It is one that identifies children and families believed to be in need of intervention, largely through institutions and professionals trained to detect and mandated to report signs of child maltreatment. But these systems—like law enforcement, social services, shelters, and public schools—are entrenched in low-income communities of color by design. They identify children “at risk” for maltreatment through cross-system surveillance—the “stop and frisk” equivalent to parenting<sup>10</sup>—that leads to a disproportionate number of Black and Brown families reported, investigated, and monitored for maltreatment.

To many, the violation of privacy and the various forms of surveillance that are forced upon low-income communities and people of color are justified as being in service of safety and support. In reality, surveillance has a negative impact on these communities. In our society, while everyone is susceptible to some level of surveillance, not everyone receives the same amount. The power of surveillance “touches everyone, but its hand is heaviest in communities already disadvantaged by their poverty, race, religion, ethnicity, and immigration status.”<sup>11</sup> While privacy rights exist, people who are low-income do not have the same means to exercise them.<sup>12</sup>

Organizations like CFR employ attorneys, social workers, and parent advocates to represent parents when they are targeted by the family regulation system.<sup>13</sup> In New York City,

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period of supervision. N.Y. FAM. CT. ACT §§ 1039, 1051–52. N.Y. FAM. CT. ACT 1046(a)(i) allows a prior finding of neglect or abuse to be used as evidence of abuse or neglect of any other child.

<sup>9</sup> Roberts, *Abolishing*, *supra* note 1.

<sup>10</sup> Michelle Burrell, *What Can the Child Welfare System Learn in the Wake of the Floyd Decision?: A Comparison of Stop-And-Frisk Policing and Child Welfare Investigations*, 22 CUNY L. REV. 124, 130–38 (2019).

<sup>11</sup> Barton Gellman & Sam Adler-Bell, *The Disparate Impact of Surveillance*, CENTURY FOUND. (Dec. 21, 2017), <https://tcf.org/content/report/disparate-impact-surveillance/?session=1&session=1> [<https://perma.cc/28H4-KLPH>]

<sup>12</sup> *Id.*

<sup>13</sup> CFR was founded in 2002 to dramatically improve outcomes for children and families and reduce reliance on foster care. CFR’s largest, primary target population is low-income parents who are summoned to family court by

where CFR is based, the family regulation system disproportionately impacts Black and Brown families for both family separation and increased surveillance. Most of the allegations our clients face are poverty-related. They are issues that could be solved with money: children left at home because a parent could not afford to pay for childcare, insufficient food in the cabinets, unstable housing, lack of medical insurance to take children to the dentist or for routine checkups, etc.

Most families that come into contact with the family regulation system cannot afford to hire an attorney or social worker to help them navigate it. Many states, like New York, do not require that family regulation workers inform parents of their rights not to speak with investigators or share information. Whenever possible, CFR tries to connect with families during the investigation stage, but these resources are not available everywhere. The family regulation system works to prevent those it seeks to surveil and control from having access to legal support. In 2018, Monroe County, New York, turned down funds that would have paid for public defense attorneys for parents.<sup>14</sup> In New York City, the local family regulation system, called the Administration for Children's Services (ACS), has publicly opposed proposed city and state laws that would require parents to be informed of their rights during an investigation. Meanwhile, the family regulation system and its "surveillance tentacles" monitor families in low-income communities and increase their susceptibility to becoming entangled in the system.

This rampant surveillance is inextricably linked to mandated reporting. Laws in all fifty states enumerate which groups of people in each state are required to report suspected child abuse or maltreatment to each state's child maltreatment hotline.<sup>15</sup> School personnel and teachers, mental health

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the Administration for Children's Services (ACS) in Manhattan or Queens, when ACS alleges the parents have put their children at risk of maltreatment. CFR provides parents with holistic legal and social work support to enable children to live safely with their families and prevent the devastating consequences of foster care.

<sup>14</sup> Meaghan M. McDermott, *Family Advocate, Monroe County at Odds over Rejected Grant Money*, DEMOCRAT & CHRON. (Jan. 26, 2018, 1:55 PM), <https://www.democratandchronicle.com/story/news/2018/01/26/family-advocate-monroe-county-nixing-grant-money-callous-political-expediency/1057855001/> [<https://perma.cc/SFJ3-LFPM>].

<sup>15</sup> While some states require *all* people to report suspected maltreatment (Idaho, New Jersey, Wyoming), most specify particular

professionals, drug treatment counselors, law enforcement personnel, and social workers are considered mandated reporters in most states. When a state's child maltreatment hotline receives a credible report alleging child maltreatment, the local department of social services must initiate an investigation. As a result of their investigation, a family regulation worker may decide to file maltreatment allegations against a parent in court, which can in turn lead to the removal of a child or court-mandated services, or the family regulation worker may request that a parent voluntarily participate in services to avoid court involvement or a removal. Each of these results leads to more surveillance and control over Black and Brown families' daily activities. A parent targeted by the family regulation system will be under the scrutiny of various mandated reporters, from the initial reporter of the case, to the family regulation worker investigating the case, to the various service providers, mental health counselors, drug treatment providers, and social services workers the parent must interface with to apply for housing and public benefits.

Mandated reporters make approximately two-thirds of all child maltreatment reports made in the United States.<sup>16</sup> The vast majority of reports to maltreatment hotlines are not substantiated. Nationally, 4.1 million cases were called into child maltreatment hotlines in 2019. Of the 4.1 million cases, 2.4 million were screened as potentially credible, with fewer than 400,000 (slightly less than 10%) determined to be credible upon further investigation.<sup>17</sup> This means that millions of families are subject to an intrusive and traumatic investigation with no benefit to child safety, the purported purpose of mandated reporter laws.

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professionals required to make reports. See ARIANE FROSH, *THE ELEPHANT CIRCLE, MANDATORY REPORTING: A GUIDE FOR PRACTITIONERS* 1 (2020), <https://static1.squarespace.com/static/57126eff60b5e92c3a226a53/t/5f84b886d7a3130e832fa7e7/1602533514502/Mandatory+Reporter+Laws+by+State.pdf> [<https://perma.cc/W2ZZ-TNCN>] (detailing professionals who are required to make reports by state).

<sup>16</sup> U.S. DEP'T HEALTH & HUM. SERVS., *CHILD MALTREATMENT 2018: SUMMARY OF KEY FINDINGS* 2 (2020), <https://www.childwelfare.gov/pubPDFs/canstats.pdf> [<https://perma.cc/6WVC-RWQH>].

<sup>17</sup> FROSH, *supra* note 15.



Black and Brown families are disproportionately impacted by family regulation investigations.<sup>18</sup> 53% of Black children living in the United States experience a family regulation investigation during their lifetime.<sup>19</sup> The cumulative risk of experiencing an investigation is much higher for children living in low-income and/or non-white neighborhoods. This means that children living in low-income, non-white communities are much more likely than white children to experience multiple family regulation investigations throughout their childhood.<sup>20</sup> In New York City, the rate of investigations was about four times higher in the ten districts with the highest rates of child poverty than the ten districts with the lowest child poverty rates.<sup>21</sup> In districts with similar child poverty rates, districts with larger Black and Brown populations had higher rates of investigation.<sup>22</sup>

## II. THE SURVEILLANCE TENTACLES

Families involved in the family regulation system often feel trapped or as though they have been set up for failure. In *Shattered Bonds*, Dorothy Roberts describes how a “family’s fate becomes focused on a list of tasks a caseworker has typed or scribbled on a form” and failure could mean family separation.<sup>23</sup> The family regulation system relies on the “tentacles” in other systems to surveil and report families for investigation. Families are pulled into the family regulation system through systems that they are told to rely on for support: the public assistance office, substance abuse programs, mental health clinics, their child’s school, the local police department, or a prevention services program. Families in need of assistance must accept

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<sup>18</sup> Hyunil Kim & Brett Drake, *Child Maltreatment Risk as a Function of Poverty and Race/Ethnicity in the USA*, 47 INT’L J. EPIDEMIOLOGY 780, 781 (2018).

<sup>19</sup> Hyunil Kim et al., *Lifetime Prevalence of Investigating Child Maltreatment Among US Children*, 107 AM. J. PUB. HEALTH 274, 277 (2017).

<sup>20</sup> Kelley Fong, *Neighborhood Inequality in the Prevalence of Reported and Substantiated Child Maltreatment*, 90 CHILD ABUSE & NEGLECT 13, 14 (2019).

<sup>21</sup> ANGELA BUTEL, THE NEW SCH.: CTR. FOR N.Y.C. AFFS., CHILD WELFARE INVESTIGATIONS IN NEW YORK CITY NEIGHBORHOODS, 1 (2019), <https://static1.squarespace.com/static/53ee4f0be4b015b9c3690d84/t/5d12746c3cdaa000017dfc2a/1561490541660/DataBrief.pdf> [<https://perma.cc/YK7B-4KHB>].

<sup>22</sup> *Id.*

<sup>23</sup> DOROTHY ROBERTS, SHATTERED BONDS: THE COLOR OF CHILD WELFARE 80 (2002) [hereinafter ROBERTS, SHATTERED BONDS].

support from these institutions that come with a high level of control, surveillance, and risk of family regulation involvement. The tentacles feed families into the family regulation system, and once entangled, often make it more difficult for them to escape.

A. Surveillance Disguised as Support in Mental Health and Social Services

Leslie is a 19-year-old Black woman who recently gave birth to her first child. When she was interviewed by a hospital social worker, she disclosed that she was diagnosed with a mental health condition and took psychotropic medication when growing up in the foster care system. She couldn't recall the specifics, other than that she stopped taking medication when she turned eighteen and voluntarily signed herself out of foster care. The hospital social worker made a report to the family regulation system, reporting a possible risk to the newborn due to Leslie's untreated mental health condition. The family regulation worker who responded to the report was able to review Leslie's records from her time in foster care. She noted that Leslie was diagnosed with Bipolar II Disorder when she was fourteen and was prescribed Depakote. Leslie agreed to cooperate with prevention services, who would monitor her engagement in mental health services, over the alternative of her newborn going into foster care. Because Leslie agreed to engage in services, her case was never filed in court; she did not have access to an attorney to inquire about her options. Leslie lost her housing because the family members she was living with were uncomfortable with the prevention services agency making regular home visits and entered a family shelter. Leslie had to quit her part-time job as she had no childcare options, and she could not place her child in daycare until he was at least six months old. Leslie struggled with enrolling in mental health services for the same reason, prolonging the length of time her family was monitored. Leslie started to feel depressed and

anxious due to the laundry list of services she was required to engage in, the lack of support she had access to due to living in the shelter, and the constant visits to her unit by social workers. Leslie didn't disclose this to the preventive caseworker, as she knew the disclosure would mean more intervention and monitoring when all she wanted was to be able to make her own decisions for herself and her son.

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Mandated reporters surveil families in settings that provide essential resources like hospitals, homeless shelters, and public assistance offices, creating a dangerous conflict for families who need and seek out support, not family monitoring and regulation. Medical providers, mental health agencies, public benefits and emergency housing agencies all fall into the category of institutions and services that both surveil and provide essential material support.<sup>24</sup> The family regulation system positions staff from these institutions as surveillance agents, who are ready to report any *possible* sign of maltreatment, undermining any benefit or genuine support to the families they serve. The family regulation system does not surveil all families equally: the system's reliance on institutions that are designated to help those in need suggests that the family regulation system is only interested in regulating certain types of families and communities, while the private lives of more privileged communities remain out of view of mandated reporters. These surveillance tentacles, which are primary referral sources for the family regulation system, serve low-income families and marginalized communities by design.

Black and Brown communities are disproportionately targeted and reported for child maltreatment as a result of the over-surveillance and bias from mandated reporters. A family's race and socio-economic level significantly increase the likelihood that they will be reported to the family regulation system when all other factors remain the same. Low-income families and families residing in low-income neighborhoods are most likely to

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<sup>24</sup> FROSH, *supra* note 15 (detailing the medical providers, mental health agencies, and other agencies required to make reports by state).

be reported for child maltreatment.<sup>25</sup> Low-income Black and Brown families are far more likely to be reported than white families in the same low-income neighborhood.<sup>26</sup> Bias also appears in how medical professionals identify abuse. Studies have found that pediatricians diagnose child abuse at a higher rate among low-income families.<sup>27</sup> When socioeconomic cues were reversed, doctors reversed their diagnostic decisions in forty percent of potential child abuse cases.<sup>28</sup> Another study showed that Black, Brown, and Native children are more likely to be reported for potentially abusive bone fractures.<sup>29</sup>

Low-resourced families can become entangled in the family regulation system when they try to access support or essential services from the surveillance tentacles comprised of mandated reporters. Medical personnel are the source of approximately 10% of national child maltreatment reports; mental health professionals make up about 6% of reports; and other social services personnel constitute a little under 11%.<sup>30</sup> Medical professionals may make a maltreatment report if a parent misses a child's follow up appointment, has a concern that a parent waited too long to seek treatment for a child, or if the doctor observed a bruise that the parent could not explain. Hospital staff also regularly report mothers who test positive for illicit drugs, even when the mother is already engaged in a substance abuse program or the substance is marijuana, which has not been linked to any detrimental effects or risk for the child. Mental health professionals may make a child maltreatment report when a parent discloses domestic violence in the home or if there is a concern for a parent's mental health due to missed appointments. Substance abuse treatment providers may report parents who test positive for illicit substances or who are not fully compliant with programs, even when there is no evidence of child endangerment. Parents who regularly interact with the surveillance tentacles are subject to

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<sup>25</sup> Fong, *supra* note 20, at 14.

<sup>26</sup> *Id.*

<sup>27</sup> Stephanie Clifford, *Two Families, Two Fates: When the Misdiagnosis Is Child Abuse*, MARSHALL PROJECT (Aug. 20, 2020, 6:00 AM), <https://www.themarshallproject.org/2020/08/20/two-families-two-fates-when-the-misdiagnosis-is-child-abuse> [<https://perma.cc/U8NW-EVAS>].

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

<sup>30</sup> U.S. DEP'T HEALTH & HUM. SERVS., *supra* note 16, at 9.

constant scrutiny by mandated reporters and are only a phone call away from family regulation system involvement.

Families experiencing housing instability are at greater risk for being investigated for child maltreatment and becoming entangled in the family regulation system.<sup>31</sup> Families who have no other option than to live in emergency temporary housing have reason to fear engaging and accessing natural supports which make them more vulnerable to the surveillance associated with the family regulation system.<sup>32</sup> While the relationship between housing instability and alleged child maltreatment is complex, a 2004 study posited that one possible explanation is the “fishbowl effect,” due to the surveillance over families in shelters and increased likelihood of family regulation system involvement when a family experiences multiple shelter stays.<sup>33</sup> The fishbowl effect occurs when “families, once in the shelter system, are subject to heightened scrutiny from service providers in homeless shelters, and people are more likely to refer them to child welfare professionals.”<sup>34</sup> The study also points to a link between the social and community isolation of homeless families on the increased likelihood of becoming involved in the family regulation system.

The family regulation system’s vigilant and unrelenting surveillance of low-income Black and Brown communities disincentivizes parents from seeking supportive services. CFR’s clients regularly express fear of the family regulation system in explaining why they did not seek immediate medical treatment after their child sustained a minor injury. Pregnant women who use substances may fail to obtain prenatal treatment due to concerns of surveillance. Reports by providers expose families to the added trauma of a punitive family regulation investigation and possible removal of a child. These reports also break down the treatment relationship: one study found that about

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<sup>31</sup> Katherine E. Marcal, *The Impact of Housing Instability on Child Maltreatment: A Causal Investigation*, 21 J. FAM. SOC. WORK 332, 332–35 (2018); Susan M. Barrow & Terese Lawinski, *Contexts of Mother-Child Separations in Homeless Families*, 9 ANALYSES SOC. ISSUES & PUB. POL’Y 157, 158 (2009).

<sup>32</sup> Jung Min Park et al., *Child Welfare Involvement Among Children in Homeless Families*, 83 CHILD WELFARE 423, 432–33 (2004).

<sup>33</sup> *Id.* at 433–34.

<sup>34</sup> *Id.* at 433.

one-fourth of families receiving mental health treatment will experience a disruption in treatment following a report.<sup>35</sup>

The COVID-19 pandemic, which disproportionately impacts people of color,<sup>36</sup> has also highlighted the negative effect of mandated reporting on marginalized communities. As a result of the pandemic, ACS publicly increased their reliance on surveillance from the Department of Homeless Services and the public hospital system, in addition to other tentacles that feed into the family regulation system, when reports from schools fell due to the switch to remote learning. ACS commented, regarding their 2021 budget, that “[i]n response to decreasing rates of reporting, ACS has strengthened collaboration with other mandated reporters, such as the Department of Homeless Services, Department of Education, and Health+Hospitals.”<sup>37</sup> Families who already have little control over basic parenting decisions because they reside in family shelters or engage with public social service agencies should not be subject to unequal scrutiny during a global public health crisis. ACS increased their reliance on mandated reporters from surveillance tentacles who continued to engage with low-resourced families during the pandemic, like hospitals and homeless shelters, and appeared to encourage a heightened vigilance beyond the legal requirement for mandated reporters.

The family regulation system does not recognize the limitations imposed on homeless families as a result of shelter rules and regulations, and has prioritized surveillance over examining methods for reducing compounding stressors that homeless families face. The family regulation system focused public resources on surveillance, not direct assistance of food or clothing, child care or material support, during an unprecedented public health crisis. This decision reflects the system’s deeply ingrained bias and disparate treatment towards low-income

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<sup>35</sup> Gary B. Melton, *Mandated Reporting: A Policy Without Reason*, 29 CHILD ABUSE & NEGLECT 9, 14 (2005).

<sup>36</sup> Don Bambino Geno Tai et al., *The Disproportionate Impact of COVID-19 on Racial and Ethnic Minorities in the United States*, 72 CLINICAL INFECTIOUS DISEASES 705, 705 (2021).

<sup>37</sup> THE N.Y.C. COUNCIL, NOTE ON THE FISCAL 2021 EXECUTIVE BUDGET FOR THE ADMINISTRATION FOR CHILDREN’S SERVICES (ACS) COMMITTEE ON GENERAL WELFARE AND THE COMMITTEE ON JUSTICE SYSTEM 1, 4 (2020), <https://council.nyc.gov/budget/wp-content/uploads/sites/54/2020/06/ACS-Budget-Note.pdf> [<https://perma.cc/Y8FF-DWS9>].

communities, primarily Black and Brown families, by suggesting that child maltreatment can be reduced through surveillance, not support. This prioritization goes against an abundance of research demonstrating that rates of child maltreatment are reduced when public assistance and Special Supplemental Nutrition Program for Women, Infants, and Children (WIC) payments are increased, or when more child support dollars reach families.<sup>38</sup>

Families who need assistance—whether in the form of resources or clinical services and support—engage with service providers differently when they are aware of the service providers' obligation to report or their potential bias.<sup>39</sup> Many parents living in communities targeted by carceral systems understand that engaging with providers and institutions, while sometimes necessary, exposes them to additional risks. Some families find themselves in a catch-22 of needing to interact with certain institutions to avoid allegations of maltreatment—like schools and doctor's offices—despite those institutions increasing their risk of being reported for maltreatment. Research shows that parents who are conscious of this predicament change their behaviors and interactions with providers as a result.<sup>40</sup> The fear of surveillance can therefore prevent mental health, substance abuse, and medical professionals from connecting families with social services that could actually address the family's needs. If the families who are most in need of support do not feel comfortable or safe engaging with the institutions designed to service them, the efficacy and utility of these services, and the systems that fuel them, must be examined and fundamentally reimagined.

Institutions like public hospitals and clinics, family shelters, and public assistance offices are created with the intention to provide essential services to the communities they serve. But, the interplay between the family regulation system and institutions governed by mandated reporter laws prevents families in need from accessing genuine support and punishes communities targeted for family regulation. Parents living in

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<sup>38</sup> Maria Cancian et al., *The Effect of Additional Child Support Income on the Risk of Child Maltreatment*, 87 SOC. SERV. REV. 417, 429–30 (2013).

<sup>39</sup> Kelley Fong, *Child Welfare Involvement and Contexts of Poverty: The Role of Parental Adversities, Social Networks, and Social Services*, 72 CHILD. & YOUTH SERVS. REV. 5, 11–12.

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

low-income communities and communities of color are familiar with the risks associated with these institutions—they might avoid or over-access services in an attempt to protect themselves and their children from a report to the family regulation system, or a neglect filing after the system has already become involved. In order for communities to benefit from these services, we must reimagine how these powerful systems support the families they serve. Institutions working in communities impacted by racially-oppressive systems must change their behavior so that symptoms of poverty are not categorized as maltreatment, and the responsibility to link families to resources is not passed on to the family regulation system. This behavior change must be informed by an understanding of the cultural identity of the community being served—not only through research, but through listening and collaborating directly with community members. Service provision must be both culturally sensitive and detached from the surveillance associated with the family regulation system in order to prevent further harm to marginalized communities. As a society, we must begin to invest in social programming that reaches all families who need support without the punitive function of the family regulation system. In order for these institutions to effectively connect families to the appropriate support, that support must be able to flourish within communities and outside of carceral systems.

#### B. Schools as Systems of Surveillance

Paul is a 35-year-old Black single father caring for his son Jordan, who has special needs. Paul was en route to the pediatric emergency room psychiatric unit after receiving a call from his son Jordan's private school. This was not the first or second time he would receive a call at work. It was a pattern. Paul was at risk of losing his job but had no choice but to leave work early once again. The school told him they had not only sent his son to the emergency room, but they had called to make another child maltreatment report because Paul had missed too many days of school that month. Every time a family regulation worker visited their home, Jordan would have a meltdown the next day. The bus driver would refuse to allow him on the bus, and Jordan would



miss more school. Even though the school staff were well aware of how Jordan's behavioral challenges were making it difficult for Paul to get him to school before going to work, they continued to report the family to the family regulation system and called the police when Jordan's behaviors became difficult to manage. When Paul arrived at the emergency room, Jordan was already calm. On the way home, Jordan quietly asked his father if he was a bad person. Shocked, Paul asked Jordan why he would think that about himself. Jordan looked away for a few minutes, then told his father, "because the police always come to get me."

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Educational professionals working in low-income Black and Brown neighborhoods make up one of the family regulation system's strongest surveillance tentacles. School personnel account for over 20% of all child maltreatment reports made nationally, the highest report rate of any professional group.<sup>41</sup> The family regulation system relies heavily on reports from school staff as they often have the most exposure to children outside of their families, making them uniquely situated to expose possible neglect. The family regulation system often directly partners with schools, encouraging school personnel to closely monitor students for signs of neglect or abuse, outside of excessive school absence or lateness. School staff that suspect a student may be hungry, unkempt, or experiencing mental health issues are mandated to address these types of concerns through a report to the family regulation system, rather than offer genuine assistance or support. But, the belief that schools are best suited to detect child maltreatment is largely unsupported: recent federal data shows that 90% of child maltreatment reports called in by teachers were not substantiated.<sup>42</sup>

Unsubstantiated reports of child maltreatment are not harmless; they can still pull parents into the tentacles of the

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<sup>41</sup> U.S. DEP'T HEALTH & HUM. SERVS., *supra* note 16, at 6.

<sup>42</sup> Eli Hager, *Is Child Maltreatment Really Rising During the Pandemic?*, MARSHALL PROJECT (June 15, 2020, 5:00 AM), <https://www.themarshallproject.org/2020/06/15/is-child-abuse-really-rising-during-the-pandemic> [<https://perma.cc/ARH5-XSCL>].

family regulation system. In most states, unfounded reports of child maltreatment are documented and remain accessible to the family regulation system for many years following the report. Parents who are the subject of an unsubstantiated report called in by their child's school are subject to intrusion from family regulation workers during their investigation and may be pressured to participate voluntarily in prevention or other supportive services that place them under additional scrutiny from mandated reporters. A visit from a family regulation worker is often a traumatic experience for parents and children, and it can erode the family's trust and collaboration with the educational and school community.<sup>43</sup>

Just as the family regulation system depends on schools as surveillance agents, schools depend on surveillance from law enforcement and the family regulation system to surveil and control students and parents. Black children, Brown children, Native children, and children with disabilities often attend schools with fewer resources. Instead of providing supportive services to students or connecting families to resources in the community, these schools often turn to systems of surveillance, including the family regulation system, to control students in their classrooms. Inadequately trained school and support staff frequently request help from family regulation workers and law enforcement to address behavioral problems and other concerns. Parents often report that schools call the family regulation system when their child becomes a "problem" in school. In many districts, police are also embedded into the school system itself. Police are trained to detain, handcuff, and arrest. They are not trained to address behavioral problems or to prevent or de-escalate conflicts. Similarly, instead of working with struggling parents or attempting to connect them and their children with material support or services to address the needs that often arise for families living in poverty, schools report parents to the family regulation system and wipe their hands of the responsibility to assist.

Twenty years ago, mass shootings in affluent communities from Columbine to Sandy Hook and Parkland created a new market for surveillance to promote school safety

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<sup>43</sup> Melton, *supra* note 35, at 12.

and security in schools across America.<sup>44</sup> Low-income Black and Brown students in urban communities that do not have a history of mass shootings experience the impact of greater surveillance quite differently than those in white affluent schools.<sup>45</sup> In low-income Black and Brown communities, schools turn to school resource or security officers trained and supervised by police to patrol the halls and the family regulation system to control parents. Schools use a zero-tolerance policy of punitive, exclusionary discipline that includes suspensions, expulsions, and a dependence on the court system to bring delinquency proceedings against children. In September 2019, a Florida police officer arrested and handcuffed a six-year-old Black girl for having a tantrum in class.<sup>46</sup> In 2014, a seven-year-old Black boy was handcuffed by a school resource officer in Missouri after yelling about being bullied.<sup>47</sup> These practices disconnect children from school and criminalize behavior related to disorderly conduct, which places them at greater risk of educational disengagement.<sup>48</sup> This all feeds into the school-to-prison pipeline, a pathway to the prison industrial complex.<sup>49</sup> The dependence on surveillance in public schools has wreaked havoc on low-income

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<sup>44</sup> J. William Tucker & Amelia Vance, *School Surveillance: The Consequences for Equity and Privacy*, 2 EDUC. LEADERS REP. 1, 7–8 (2016).

<sup>45</sup> See Interview by Ann Bradley with Peter Langman, Clinical Director, KidsPeace, and Katherine Newman, Professor of Sociology, Princeton University (Apr. 20, 2009), <https://edweek.org/leadership/what-we-have-learned-about-school-shooters-10-years-after-columbine> [<https://perma.cc/GJD7-67JD>] (describing these tragedies as “overwhelmingly happen[ing] in places with low levels of violence, and hence no violence prevention programs in place. The residents thing [sic] this sort of thing happens in New York and Chicago when, in reality, it never does. All kinds of violence goes down in big cities, but not this kind”).

<sup>46</sup> Leonard Pitts Jr., *Leonard Pitts: Black Officer Arrests Black 6-Year-Old. It Doesn't Mean Racism Didn't Make Him Do It*, PRESS HERALD (Sept. 24, 2019), <https://www.pressherald.com/2019/09/25/leonard-pitts-black-officer-arrests-black-6-year-old-it-doesnt-mean-racism-didnt-make-him-do-it/#> [<https://perma.cc/HDB2-U6HT>].

<sup>47</sup> Rebecca Klein, *Family Sues After 7-Year-Old Gets Handcuffed at School for Crying*, HUFFINGTON POST (Sept. 15, 2016 6:17 PM), [https://www.huffpost.com/entry/kaylb-primm\\_n\\_57d9b706e4b04a1497b23f1b](https://www.huffpost.com/entry/kaylb-primm_n_57d9b706e4b04a1497b23f1b) [<https://perma.cc/4UPV-67JM>].

<sup>48</sup> *A Look at School Discipline: Zero Tolerance Discipline, Discrimination, and the School to Prison Pipeline*, N.Y. CIV. LIBERTIES UNION, [https://nyclu.org/en/look-school-discipline#-ft\\_nref4](https://nyclu.org/en/look-school-discipline#-ft_nref4) [<https://perma.cc/P3FS-UF9E>] (last visited Feb. 23, 2021).

<sup>49</sup> *Id.*

Black and Brown children, with little apparent benefit to school safety.<sup>50</sup>

The cross-system surveillance and partnership between schools, law enforcement, and the family regulation system play a significant role in traumatizing Black and Brown students, parents, and families living in marginalized communities. This trauma can negatively impact educational outcomes for children, along with their employment stability, physical health, and criminal justice involvement later in life. Educational institutions must begin to sever ties with law enforcement and create spaces for healing, restoration, and transformation in schools. Schools must divest from law enforcement and prosecution and invest in professionals trained to prevent and address trauma and behavioral issues, de-escalate crises, and resolve conflicts. In New York City, only 2,800 full-time guidance counselors work in public schools, compared to 5,511 New York Police Department school safety agents.<sup>51</sup> This call for a shift in resources must also extend to ending surveillance from the family regulation system and prioritizing material support.

The Healing-Centered Schools Workgroup in the Bronx, New York, is an example of how communities can reduce surveillance from the family regulation system and continue to support families.<sup>52</sup> The Workgroup is a coalition of parents, students, educators, mental health providers, and advocates who believe that when students are given a space to heal, learn, and

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<sup>50</sup> CHARLOTTE POPE, CHILD'S DEF. FUND N.Y., "UNTHINKABLE": A HISTORY OF POLICING IN NYC PUBLIC SCHOOLS AND THE PATH TOWARD POLICE-FREE SCHOOLS (2019), [https://www.cdfny.org/wp-content/uploads/sites/3/2019/10/CDF-NY-Report-History-of-Policing-in-NYC-Public-Schools.pdf?\\_ga=2.158663354.1266419985.1608165692-617824654.1608165692](https://www.cdfny.org/wp-content/uploads/sites/3/2019/10/CDF-NY-Report-History-of-Policing-in-NYC-Public-Schools.pdf?_ga=2.158663354.1266419985.1608165692-617824654.1608165692) [https://perma.cc/3E3F-25T6] (noting that between 1999–2000, there was a 101% increase of criminal court summons served on students, while 67% of principals reported there had been little change in school safety).

<sup>51</sup> URB. YOUTH COLLABORATIVE & CTR. FOR POPULAR DEMOCRACY, THE \$746 MILLION A YEAR SCHOOL-TO-PRISON PIPELINE: THE INEFFECTIVE, DISCRIMINATORY, AND COSTLY PROCESS OF CRIMINALIZING NEW YORK CITY STUDENTS 2 (2017), [https://populardemocracy.org/sites/default/files/STPP\\_layout\\_web\\_final.pdf](https://populardemocracy.org/sites/default/files/STPP_layout_web_final.pdf) [https://perma.cc/7R6C-D97J].

<sup>52</sup> NANCY BEDARD ET AL., COMMUNITY ROADMAP TO BRING HEALING-CENTERED SCHOOLS TO THE BRONX: A PROJECT OF THE HEALING-CENTERED SCHOOLS WORKING GROUP (Katrina Feldkamp ed., 2020), <https://www.legalservicesnyc.org/storage/PDFs/community%20roadmap%20to%20bring%20healing-centered%20schools%20to%20the%20bronx.pdf> [https://perma.cc/A68W-XGW7].

exist in community with one another, they are able to grow their strengths and build a foundation for success.<sup>53</sup> Healing-centered educational practices can produce positive outcomes for students' social-emotional well-being, staff wellness, parent/caregiver trust, and school structure.<sup>54</sup> The Workgroup recognized that social-emotional well-being as a necessary ingredient for learning,<sup>55</sup> and ensured that all students, parents/caregivers, and staff feel physically, psychologically, and emotionally safe in their school. Students, parents/caregivers, and staff are critical partners in creating a supportive school environment and are central to decision-making and community-building. School resource officers were also removed from the schools, and community members were hired to provide support and de-escalation when necessary.<sup>56</sup>

C. Law Enforcement and the Family Regulation System:  
Partners in Surveillance

Kim is a 30-year-old Hispanic mother of two children. Kim was recently granted a full stay away order of protection against the father of her children and agreed to regular visits from the domestic violence unit at her local precinct, believing they would help her and her children stay safe. When Kim called the domestic violence officer and reported that her former partner had pushed her into a wall in front of their newborn, she never expected to become the subject of an investigation herself. Kim was struggling to make it to the WIC office that week because her toddler was sick, and she had allowed her former partner back in the home to drop off diapers and formula for the baby. The day after Kim called the police, a family regulation worker showed up on her doorstep. She was told to come to their office for a conference. The worker told Kim that they were concerned that there had been multiple instances of domestic violence in front of her baby and that she had not taken sufficient steps to protect her

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<sup>53</sup> *Id.* at 3.

<sup>54</sup> *Id.* at 18.

<sup>55</sup> *Id.* at 22.

<sup>56</sup> BEDARD, *supra* note 52, at 84–85.

children. Kim was told that they would file a neglect petition against her former partner, but she needed to enter a domestic violence shelter, submit to a mental health evaluation, and consent to supervision of her home by the Court and the family regulation system in order to avoid becoming a respondent as well. If she refused to agree to these terms, then the family regulation agency would seek to remove her children.

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Law enforcement and family regulation officials are two sides of the same racially-oppressive coin and work hand in hand to perpetuate surveillance and control over Black and Brown communities. In 2015, the police were the source of one-fifth of all family regulation investigations.<sup>57</sup> This number is significant given what we know about how Black and Brown people are disproportionately targeted by the police. Black men make up 13% of the total male population but are 35% of those incarcerated.<sup>58</sup> Targeting by the police feeds the family regulation system through increased surveillance of Black and Brown communities. Black people are more likely to be “stopped by the police, detained pretrial, charged with more serious crimes, and sentenced more harshly than white people.”<sup>59</sup> A criminal court judge’s choice to incarcerate a single parent is effectively a choice to place their child in foster care. When parents are incarcerated, their children may stay in care longer, especially if there are no family members to care for the child. Once behind bars, it is harder for the parent to plan for the return of the child, stay in communication with them, engage in services they need, and maintain their family bond. Many may lose their housing and employment while they wait for their criminal court case to proceed, making reunification even harder.

For parents like Kim, who are not even accused of a criminal offense, there is still a risk of an interaction with law

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<sup>57</sup> Frank Edwards, *Family Surveillance: Police and the Reporting of Child Abuse and Neglect*, 5 CRIM. JUST. CONTACT & INEQ. 50, 50 (2019).

<sup>58</sup> ELIZABETH HINTON ET AL., VERA INST. J., AN UNJUST BURDEN: THE DISPARATE TREATMENT OF BLACK AMERICANS IN THE CRIMINAL JUSTICE SYSTEM (Dec. 20, 2020), <https://www.vera.org/downloads/publications/for-the-record-unjust-burden-racial-disparities.pdf> [<https://perma.cc/P7QD-5L2K>].

<sup>59</sup> *Id.*

enforcement leading to more surveillance by the family regulation system. When families cannot rely on police for protection, they are less safe. As discussed above, families even face exposure to law enforcement in the school system. Black parents must be concerned about their, and their children's, physical safety during interactions with police in the community, at school, and in their homes. They must also be concerned that they will be reported to the family regulation system and risk separation. Parents like Kim recognize that they cannot rely on law enforcement for protection or the family regulation system for support. They know that there are eyes everywhere and that, unlike other mandated reporters, law enforcement requires an even more heightened level of awareness. Black and Brown parents may be less likely to call the police because they know it can result in involvement with the family regulation system, even when there may be a genuine concern for their personal safety.

In 2019, 32% of CFR clients had criminal court cases concurrent to their family court proceedings, 19% were domestic violence survivors, 19% were accused domestic violence perpetrators, 24% had allegations related to domestic violence, and 10% had allegations related to criminal activity. In many cases the allegations a parent faces in criminal court mirror those being made in family court. However, to the extent that the family regulation system is ill equipped to address the real needs of a family, the criminal court system is even worse. Parents in this situation often have to deal with conflicting family court and criminal court orders. The demands put on their time by the criminal court system and family regulation system often make it difficult to fully comply with both. Organizations like CFR offer wraparound services so that parents can be represented in multiple systems by one law office, with social worker support. Many parents do not have that option. As a result, miscommunications can occur between lawyers, or decisions are made without full access to information about the other case, leading to more delays to reunification.

A common refrain of the movement to defund the police is that the significant number of resources given to the police would be better served if they were invested in communities. The call to "defund" does not mean abolish policing. And even some who say abolish, do not necessarily mean to do away with law

enforcement altogether.<sup>60</sup> Rather, they want to see the rotten trees of policing chopped down and fresh roots replanted anew.”<sup>61</sup> The role law enforcement plays in worsening the impact of the family regulation system on Black and Brown families is a part of a rotten system that needs replanting.

Black parents should not have more to fear from law enforcement involvement than other families. There are concrete steps that can be taken to address the destructive role that law enforcement plays in the family regulation system. Divestment from the American policing system by shifting “financing away from surveillance and punishment, and toward fostering equitable, healthy, and safe communities” would go a long way in addressing the problems of the family regulation system, which punishes poverty with family separation and surveillance.<sup>62</sup>

Beyond divestment, parents should be treated with respect during interactions with law enforcement. When completing an arrest, the police must be required to allow a parent to make alternative caretaking plans for their child, without interference from the family regulation system. Police must be sensitive to the presence of a child in their interactions with parents and families. The family regulation system should not rely on the assistance of law enforcement when a parent refuses access to a home absent a genuine belief that a child is in imminent risk of harm. Family regulation workers must be prohibited from using the fear of police brutality as a means of gaining access to children in their homes. Finally, in cases where a parent faces the same allegations in criminal court as they do in family court, the criminal court judge should be prohibited from issuing orders preventing a parent from contacting a child. These orders often tie the hands of the family court judge, who is best positioned to assess the appropriate level of contact. The American system of policing, like the family regulation system,

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<sup>60</sup> Rashawn Ray, *What Does ‘Defund the Police’ Mean and Does It Have Merit?*, BROOKINGS INST. (June 19, 2020), [www.brookings.edu/blog/fixgov/2020/06/19/what-does-defund-the-police-mean-and-does-it-have-merit/](http://www.brookings.edu/blog/fixgov/2020/06/19/what-does-defund-the-police-mean-and-does-it-have-merit/) [<https://perma.cc/U6NG-Y9MM>].

<sup>61</sup> *Id.*

<sup>62</sup> Annie Lowrey, *Defund the Police: America Needs to Rethink Its Priorities for the Whole Criminal-Justice System*, ATLANTIC (June 5, 2020), [www.theatlantic.com/ideas/archive/2020/06/defund-police/612682/](http://www.theatlantic.com/ideas/archive/2020/06/defund-police/612682/) [<https://perma.cc/3HE4-4MRL>].



has its roots in white supremacy and racism.<sup>63</sup> The steps laid out above are by no means presented as a complete solution to the very real and deeply seated problems of both systems. They are steps that could easily be implemented via internal policy changes or passing appropriate legislation.

#### D. Surveillance Masked as Protection: The Family Regulation System

Jasmine is a 40-year-old Black mother of four children. Jasmine is concerned that her oldest daughter, Amanda, might belong to a gang and has noticed cuts on her arms. Jasmine has tried to encourage Amanda to talk to a therapist, but every time she makes an appointment, Amanda refuses to go. A friend tells Jasmine to call the child maltreatment hotline and ask for help. If she doesn't, her friend warned, she could risk having a case called in regardless, and the family regulation agency could remove her younger children. Jasmine makes the call, and is relieved when the agency offers to help. During the initial home visit, the family regulation worker surveys Jasmine's home. He observes a wine bottle on the kitchen table and writes in his notepad. He asks Jasmine if she'll submit to a drug and alcohol test. The family regulation worker called Jasmine later that week and explained that the agency consultant is recommending intensive prevention services. The prevention worker will make three home visits a week and will send Jasmine for random toxicology tests. Since Amanda is turning eighteen in two weeks, it will be Amanda's choice whether to engage in the services. However, because Amanda is living in the home with Jasmine and the three younger children, Jasmine will still be responsible for getting Amanda into mental health services and addressing any safety concerns, including enrolling in drug and alcohol

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<sup>63</sup> Paige Fernandez, *Defunding the Police Will Actually Make Us Safer*, AM. CIV. LIBERTIES UNION (June 11, 2020), <https://www.aclu.org/news/criminal-law-reform/defunding-the-police-will-actually-make-us-safer/> [<https://perma.cc/T5YD-Z96P>].

treatment if any additional toxicology screens are positive for alcohol. Jasmine felt like telling the prevention worker she no longer wanted services but was afraid of what might happen next.

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Just as targeted policing leads to the disproportionate representation of Black and Brown bodies in criminal courts and prisons, the over-surveillance perpetrated by the family regulation system leads to a disproportionate number of Black and Brown children living under the supervision of the family regulation system, whether through a child maltreatment investigation, voluntary or court ordered services, or in the worst scenario, the placement of a child in foster care. Black children make up only 13.8% of the total national child population, but they make up 24.3% of children in foster care.<sup>64</sup>

A child who is removed from their parent by the family regulation system and placed in foster care can be exposed to significant risk of harm, which can be more detrimental than remaining even with a neglectful or abusive parent. The separation of a child from his parent is a trauma in and of itself that can have dire short- and long-term consequences on a child's behavioral and mental health.<sup>65</sup> Family separation can disrupt a child's brain architecture, harming a child's development.<sup>66</sup> Removal of a child from a parent can cause separation anxiety and attachment disorders, which manifest with immediate emotional and physical symptoms and can cause depression and aggression later in life.<sup>67</sup> Children also experience grief and confusion following the separation from their family, which can also have detrimental effects on the child.<sup>68</sup>

Numerous studies demonstrate that foster care itself is harmful to children and leads to poorer outcomes. Adults who were placed in foster care as children have substantially higher

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<sup>64</sup> CHILD WELFARE INFO. GATEWAY, RACIAL DISPROPORTIONALITY AND DISPARITY IN CHILD WELFARE 3 (2016).

<sup>65</sup> Shanta Trivedi, *The Harm of Child Removal*, 43 N.Y.U. REV. L. & SOC. CHANGE 523, 527 (2019)

<sup>66</sup> Julie M. Linton et al., *Detention of Immigrant Children*, PEDIATRICS, Apr. 2017, at 6.

<sup>67</sup> Trivedi, *supra* note 65, at 528.

<sup>68</sup> *Id.* at 532–34.

rates of mental illness when compared with other adults.<sup>69</sup> Even more disturbingly, adults who grew up in foster care are twice as likely to develop post-traumatic stress disorder than war veterans.<sup>70</sup> Children in foster care, particularly those who have had multiple placements, are significantly more likely to have contact with the delinquency system. By age seventeen, over half of foster youth had been arrested and over one-third had spent a night in a correctional facility.<sup>71</sup>

The harms of foster care are well documented and have been extensively researched, but communities most impacted by the family regulation system are also at risk of harm from cross-system surveillance, which can also lead to poor outcomes even when children remain at home with their parents. Investigations and services demanded by the family regulation system can be highly disruptive to families without providing the material support that could ameliorate the poverty-related concern that first brought the family in contact with the system. Investigations and service requirements can cause loss of housing, employment, and public benefits, which are often exacerbated by court intervention and/or the removal of a child from the household.

In some states, including New York, the family regulation agency may ask the court to give it the power to surveil a family, even when they are not seeking to remove a child. In these cases, the court may direct the family to cooperate with the agency, authorize the worker to make home visits, communicate with the family's therapists and mental health professionals, and report to the court regarding the compliance with any court orders and/or services.<sup>72</sup> Workers can make surprise home visits, and the family is legally obligated to cooperate. Courts often order parents to sign releases to disclose their family's private medical

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<sup>69</sup> FOSTER CARE ALUMNI STUDS., IMPROVING FAMILY FOSTER CARE: FINDINGS FROM THE NORTHWEST FOSTER CARE ALUMNI STUDY (2005), [https://casefamilypro-wpengine.netdna-ssl.com/media/AlumniStudies\\_NW\\_Report\\_FR.pdf](https://casefamilypro-wpengine.netdna-ssl.com/media/AlumniStudies_NW_Report_FR.pdf) [<https://perma.cc/SM7N-TGJ2>].

<sup>70</sup> *Id.*

<sup>71</sup> MARK E. COURTNEY ET AL., MIDWEST EVALUATION OF THE ADULT FUNCTIONING OF FORMER FOSTER YOUTH: CONDITIONS OF YOUTH PREPARING TO LEAVE STATE CARE (2004), <https://www.chapinhall.org/wp-content/uploads/Midwest-Study-Youth-Preparing-to-Leave-Care-Brief.pdf> [<https://perma.cc/3347-3H5F>].

<sup>72</sup> N.Y. FAM. CT. ACT §§ 1052, 1057.

information to providers working with the family. Parents are monitored and required to accept referrals from the same agency responsible for prosecuting the case against them in court. This court-sanctioned monitoring is an attempt to legitimize government surveillance as a necessity for keeping children safe.

The family regulation system expects parents like Jasmine to benefit from and engage in services with the threat of her children being removed looming over them. Family regulation workers threaten to remove children if the parent does not agree to engage in services and cooperate with their demands. The system views a failure to cooperate or reluctance to consent as safety concerns, leading to increased or prolonged surveillance. Sometimes the agency attempts to convince a parent to agree to additional services, without a court order, to avoid family separation or court intervention. The formal investigation ends, but the surveillance and monitoring continue through the service providers working with the family.

Some states have committed to focusing more of their resources on family preservation services as alternatives to removal and investigation, citing the family regulation system's disproportionate impact on low-income Black and Brown families. In 2018, there were approximately 1.3 million instances of children receiving "postresponse services" to prevent future instances of child maltreatment or after a child maltreatment investigation.<sup>73</sup>

The family regulation system claims that the expansion of services that purport to support families rather than separate them will benefit communities targeted for family regulation. However, because these services are offered through the family regulation system, increasing its reach and ability to monitor and surveil, they can also be coercive and harmful to marginalized communities. A number of evidenced-based models have been developed as a result of the increased need for family preservation services.<sup>74</sup> The family regulation system uses

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<sup>73</sup> U.S. DEP'T HEALTH & HUM. SERVS., *supra* note 16, at 70.

<sup>74</sup> The standard for becoming an "evidence-based" model varies depending on what clearinghouse or assessment criteria is used; however, these models all have some formal research component which "validates" that the model is effective with a given population. *See, e.g.*, CASEY FAM. PROGRAMS, IMPLEMENTING EVIDENCE-BASED CHILD WELFARE: THE NEW YORK CITY EXPERIENCE (2017), <https://fpg.unc.edu/sites/fpg.unc.edu/files/>

intensive evidence-based models to deliver clinical services in families' homes, making them more accessible for families who may otherwise struggle to access services. But, these services, which are contracted and funded by family regulation agencies, are also used as monitoring agents who have frequent access to the family and can report any potential safety concern.

Prevention agencies are required to document casework contacts in a system accessible by family regulation workers, regardless of whether a family has engaged voluntarily or has engaged pursuant to a court mandate. Information like psychotherapy notes, which would normally be restricted under privacy laws, are visible to the family regulation agency. These notes can be accessed after the case is closed if the agency becomes involved with the family in the future, keeping generations of impacted families tangled in the web of the family regulation system while also weakening family support and increasing the likelihood of family separation.

The federal government has prioritized increased funding for alternative responses to foster care through the passage of the Family First Prevention Services Act.<sup>75</sup> This federal legislation allows states to claim funds for prevention services that are supported by research. Similarly in New York City, ACS recently announced plans to expand the CARES program.<sup>76</sup> CARES is an alternative to investigation offered to families who are open to working with ACS and need support. In exchange for cooperating with service referrals, the parent will avoid a substantiated report with the child maltreatment hotline. These offerings are certainly preferable to investigations or removals; however, they fail to address the root causes for the majority of neglect allegations, and instead vastly increase the number of families

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resources/reports-and-policy-briefs/evidence-based-child-welfare-nyc.pdf  
[<https://perma.cc/L38T-2JQC>].

<sup>75</sup> *Family First Legislation*, NAT'L CONF. STATE LEGISLATURES (Jan. 15, 2021), <https://www.ncsl.org/research/human-services/family-first-updates-and-new-legislation.aspx> [<https://perma.cc/W4ZQ-LN8B>].

<sup>76</sup> Press Release, Admin. for Child.'s Servs., Administration for Children's Services Announces Citywide Expansion & Renaming of the 'Family Assessment Response;' Now Known as 'CARES,' Alternative Child Welfare Approach Works Hand-in-Hand with Families to Provide Support Without the Need for a Traditional Investigation or Court Involvement (Oct. 19, 2020), <https://www1.nyc.gov/assets/acs/pdf/PressReleases/2020/ACSCARESExpansion.pdf> [<https://perma.cc/M3FF-PPQR>]. CARES stands for Collaborative Assessment, Response, Engagement & Support. *Id.* at 1.

under government surveillance and supervision. Impacted families should not have to give up their privacy in exchange for genuine support and aid. As Dorothy Roberts points out, we cannot expect even the most intensive prevention services to fix the family regulation system—especially when services designated to keep families together operate within the same system that tears them apart.<sup>77</sup>

The family regulation system may appear less punitive when directing federal funds to programs that allow children to remain home with their parents with services instead of going into foster care. However, we must recognize how prioritizing family preservation in the form of services over financial support and concrete needs perpetuates harm to targeted communities. Family First increases funding for formal service provision instead of resources like safe housing, clothing, or food for needy families, contributing to the narrative that families are system-involved because they are unfit parents or have poor judgment. In reality, family regulation involvement is more likely explained by limited resources and the over-surveillance of low-income Black and Brown communities. The beneficial elements of prevention services, like housing subsidies and daycare vouchers, should be accessible to families who need them without a referral from the family regulation system and the surveillance that accompanies it.

It is imperative that interventions designed to keep children out of foster care reflect the indisputable relationship between poverty and allegations of child maltreatment. Despite numerous studies demonstrating that child maltreatment rates diminish when families receive increased cash assistance<sup>78</sup> and access to safe, affordable housing,<sup>79</sup> the family regulation system does not focus on reducing poverty or improving the economic conditions of impacted communities. We must make a significant financial investment in addressing child poverty over continued surveillance; prevention services should not only include home visits from social workers, monitoring, and clinical services.

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<sup>77</sup> ROBERTS, SHATTERED BONDS, *supra* note 23, at 148.

<sup>78</sup> Kristen Shook Slack, *Child Protective Intervention in the Context of Welfare Reform: The Effects of Work and Welfare on Maltreatment Reports*, 22 J. POL'Y ANALYSIS & MGMT. 517 (2003).

<sup>79</sup> Saahoon Hong & Kristine N. Piescher, *The Role of Supportive Housing in Homeless Children's Well-Being: An Investigation of Child Welfare and Educational Outcomes*, 34 CHILD. & YOUTH SERV. REV. 1440, 1440 (2012).

Anti-poverty legislation and reform must become part of the family preservation agenda, and prevention services must extend beyond an agency whose purpose is to surveil and prosecute low-income communities. Connecting families to public assistance and temporary housing is not sufficient when those services are inaccessible and do not adequately meet families' needs.

### III. LOOKING FORWARD: SUPPORT, NOT SURVEILLANCE

We must reimagine the family regulation system to deliver material support to the low-income families it purportedly serves, without surveillance and prosecution. The family regulation system's dependence on surveillance and mandated reporting as a solution to child maltreatment is a fallacy.<sup>80</sup> Families must have access to concrete supports and services without interacting with mandated reporters. However, any "hotline" or referral service must not be staffed by anyone connected to the family regulation system. Interventions should be informed by parents and take into account the lived experiences of the families they serve, including the impact of ongoing surveillance and systemic racism.<sup>81</sup> The damage being done to Black and Brown families will continue unchecked "within all aspects of the [family regulation system] as long as we remain complicit in upholding the accepted racist conditions experienced by those most disenfranchised in our society."<sup>82</sup>

The family regulation system places a close watch on low-income Black and Brown families through the mobilization of mandated reporters, harming families and failing to produce positive outcomes for children. Provision of services and material support for the families who need it should be divorced from the family regulation system. Parents are experts on the needs of their families. They must be given the freedom to seek out

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<sup>80</sup> See Melton, *supra* note 35, at 10 (arguing the assumptions that guided the mandated reporting laws were erroneous).

<sup>81</sup> Darcey H. Merritt, *Lived Experiences of Racism Among Child Welfare-Involved Parents*, 13 RACE & SOC. PROBS. 63, 70 (2021) ("Future reforms to CWS interventions should be informed by parent's perceptions about the challenges related to ways in which racism and implicit bias appear in service delivery.").

<sup>82</sup> *Id.* at 8.

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necessary supportive services without fear of separation or of being subjected to a debilitating level of surveillance and control.

Until the family regulation system is dismantled, and its tentacles of surveillance amputated, Black and Brown families, especially those from low-income communities, will continue to be punished for their poverty.