

COLUMBIA JOURNAL OF RACE AND LAW FORUM

VOL. 12

JUNE 2022

NO. 1

A ROLE FOR COMMUNITIES IN REASONABLE EFFORTS TO PREVENT REMOVAL

Shanta Trivedi* & Matthew Fraidin†

Ostensibly, the “child welfare system” exists to safeguard the well-being of minors. However, child welfare agencies often exercise their authority by removing children in the aftermath of family crises that less disruptive upstream interventions could have mitigated. Children from low-income families are over-represented in the child welfare system; they are removed too frequently from communities that have been systemically marginalized.

* Shanta Trivedi is an Assistant Professor of Law at The University of Baltimore School of Law and Faculty Director of the Sayra and Neil Meyerhoff Center for Families, Children & the Courts.

† Matt Fraidin is a Professor at the University of the District of Columbia David A. Clarke School of Law.

I.	Introduction.....	31
II.	The Failure of the Reasonable Efforts to Prevent Removal Requirement.....	34
III.	The Promise of a Prevention-Based Approach	36
	A. The Haddon Matrix.....	36
	B. Successful Prevention Campaigns.....	37
	C. Preventing Child Removals: Primary Prevention Efforts to Build Communities' Wealth and Social Cohesion	38
IV.	Conclusion.....	43

In July 2014, Debra Harrell worked the day shift at McDonald’s. A single mother, Ms. Harrell worked in a job that did not provide paid family leave and did not pay enough to cover childcare for her nine-year-old during the summer recess. When her daughter asked to play outside instead of sitting in the restaurant all day, Ms. Harrell gave her a cell phone and a key to their house before dropping her off at a local park.¹ Another parent, however, alerted police that the girl was there without supervision. Several hours later, Ms. Harrell was arrested, and her daughter was sent to a group home, where she stayed for the next eighteen days.² In a society that touts “family values” yet fails to provide the supports that families need to thrive, “Debra Harrell’s village fail[ed] her.”³

I. INTRODUCTION

Ostensibly, the “child welfare system” exists to safeguard the well-being of minors.⁴ Before a child is taken from the home and placed in state custody, federal law requires public agencies to make “reasonable efforts to prevent or eliminate the need” for removal.⁵ As the American Academy of Pediatrics has recognized, separating a child from their family inflicts profound trauma that can negatively impact that child’s mental health—often irreparably.⁶ Indeed, the term “prevention” appears frequently throughout numerous federal child welfare statutes enacted since the 1970’s.⁷ Yet state child protective services (“CPS”) rarely take meaningful preventative action before ordering a child’s removal; despite a theoretical commitment to “prevention,” these agencies often exercise their authority by removing a child in the aftermath of a real or perceived family crisis that could have been mitigated by far less disruptive upstream interventions.

Although state laws tend to limit child removals only to those cases involving imminent danger to the child,⁸ it is well-established that children from low-income families are dramatically overrepresented in the child

¹ Chris Branch, *An Important Conversation About the Mom Arrested for Leaving her Kids at the Park*, HUFF. POST (July 16, 2014), https://www.huffpost.com/entry/single-mom-jail-child-unattended-park_n_5592799 [https://perma.cc/F2Z6-8JLN].

² Anndee Hochman, *In Defense of a ‘Bad Mother’: Debra Harrell’s Village Fails Her*, WHYY (July 28, 2014), <https://whyy.org/articles/in-defense-of-a-bad-mother-debra-harrells-village-fails-her/> [https://perma.cc/F2Z6-8JLN].

³ *Id.*

⁴ CHILD. BUREAU, U.S. DEP’T OF HEALTH & HUM. SERVS., HOW THE CHILD WELFARE SYSTEM WORKS 2 (Oct. 2020), www.childwelfare.gov/pubpdfs/cpswork.pdf [https://perma.cc/NZL5-33L7].

⁵ Adoption and Safe Families Act, 42 U.S.C. § 671(a)(15)(B)(i) (1997).

⁶ Press Release, Colleen Kraft, President, Am. Acad. of Pediatrics, AAP Statement Opposing Separation of Children and Parents at the Border (May 8, 2018) [hereinafter Kraft, AAP Statement], <https://web.archive.org/web/20200108215150/https://www.aap.org/en-us/about-the-aap/aap-pressroom/Pages/StatementOpposingSeparationofChildrenandParents.aspx>.

⁷ See generally CHILD. BUREAU, U.S. DEP’T OF HEALTH & HUM. SERVS., MAJOR FEDERAL LEGISLATION CONCERNED WITH CHILD PROTECTION, CHILD WELFARE, AND ADOPTION (2019), <https://www.childwelfare.gov/pubPDFs/majorfedlegis.pdf> [https://perma.cc/QC89-4L6T].

⁸ See, e.g., N.Y. FAM. CT. ACT §§ 1027–1028 (McKinney 2018).

welfare system.⁹ Neglect-based removals—which accounted for 74.9% of all removals in 2019—illustrate a “catch-all” and vague classification used to take children from the home despite having experienced no harm or risk of harm.¹⁰ This data thus highlights the biggest risk for family unity among low-income households: the government’s bias in conflating poverty and neglect.¹¹ Many of the conditions cited when state workers remove children from the home could easily have been addressed prior to the emergence of a crisis, through the types of services that the states could and should provide. Children from communities that have been systemically marginalized are frequently removed due to homelessness, a lack of heat, food shortage, or in the case of Debra Harrell’s daughter, inadequate supervision.¹² Other children are removed because CPS conflates a parent’s inability to afford health care with intentional deprivation.¹³ Multiple studies demonstrate that thirty percent of foster children could be reunified with their parents if their parents had stable and affordable housing.¹⁴

Additionally, Black parents are more likely to be investigated by CPS,¹⁵ and once investigated, are more likely to have their children removed.¹⁶ An astounding fifty-three percent of Black children in America will have had contact with the child welfare system in their lifetimes.¹⁷ Thus, the combination of racial bias with the conflation of poverty and neglect by child welfare actors means that when parents are both poor and Black, their children are at extremely high risk of removal.¹⁸ But given the enormous federal budget allocated to the “child welfare” or family

⁹ 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, 5 (Jan. 2017).

¹⁰ CHILD. BUREAU, U.S. DEP’T OF HEALTH & HUM. SERVS., CHILD MALTREATMENT 2019, at 90 (2019), <https://www.acf.hhs.gov/sites/default/files/documents/cb/cm2019.pdf> [<https://perma.cc/U7AB-HZ38>].

¹¹ Jerry Milner & David Kelly, *It’s Time to Stop Confusing Poverty With Neglect*, IMPRINT (Jan. 17, 2010), <https://imprintnews.org/child-welfare-2/time-for-child-welfare-system-to-stop-confusing-poverty-with-neglect/40222> [<https://perma.cc/X4TU-G8LF>].

¹² *Id.*

¹³ Larissa MacFarquhar, *When Should a Child Be Taken From his Parents?*, NEW YORKER (Aug. 7, 2017), <https://www.newyorker.com/magazine/2017/08/07/when-should-a-child-be-taken-from-his-parents> [<https://perma.cc/86PF-KRLL>].

¹⁴ See, e.g., Deborah S. Harburger & Ruth Anne White, *Reunifying Families, Cutting Costs: Housing–Child Welfare Partnerships for Permanent Supportive Housing*, 83 CHILD WELFARE 493, 501 (2004); D.C. CHILD & FAM. SERVS. AGENCY, ANNUAL PUBLIC REPORT 2–3 (2008) (stating that thirty-four children were removed in 2008 due to “inadequate housing”); Corey S. Shdaimah, “CPS Is Not A Housing Agency”; *Housing is a CPS problem: Towards a Definition and Typology of Housing Problems in Child Welfare Cases*, 31 CHILD. & YOUTH SERVS. REV. 211, 213 (2009).

¹⁵ Frank Edwards, *Family Surveillance: Police and The Reporting of Child Abuse and Neglect*, 5 RSF J. SOC. SCIENCES 50, 51–52 (2019).

¹⁶ *Is Racial Bias Still a Problem in Child Welfare?* MST SERVS. (June 12, 2019), <https://info.mstservices.com/blog/racial-bias-problem-child-welfare> [perma.cc/7ER9-9MPL].

¹⁷ Neil Schoenherr, *1 in 3 Children Investigated for Abuse/Neglect by 18*, WASH. U. ST. LOUIS NEWSROOM (Dec. 20, 2016), <https://source.wustl.edu/2016/12/one-third-us-children-reported-investigated-child-abuse-neglect-age-18/> [<https://perma.cc/CU2X-J393>].

¹⁸ Dorothy Roberts & Lisa Sangoi, *Black Families Matter: How the Child Welfare System Punishes Poor Families of Color*, APPEAL (Mar. 26, 2018), <https://theappeal.org/black-families-matter-how-the-child-welfare-system-punishes-poor-families-of-color> [<https://perma.cc/ZV3D-TP8Z>].

regulation system,¹⁹ “the disturbingly large number of poverty-related family separations that Black families experience are simply unnecessary.”²⁰ As one long-time attorney for parents in family regulation proceedings put it, “[t]he problem is not that child services fails to remove enough children. It’s that the agency has not been equipped to address the daily manifestations of economic and racial inequality. Instead, it is designed to treat structural failings as the personal flaws of low-income parents.”²¹

Notwithstanding the legal requirement that public agencies make “reasonable efforts to prevent or eliminate the need” for removal,²² foster care systems in states across the country are filled with children who did not need to be removed and who suffer greater harm from being removed than they would if they had been allowed to stay at home.²³

The “reasonable efforts to prevent removal” requirement has failed to prevent unnecessary removals because current governmental efforts to “prevent” children’s removal from their families are usually last-minute, crisis-driven, unrealistic, and minimal: a mother in crisis is given a list of substance abuse treatment facilities; or is placed on a waiting list for mental health services; or is handed a bag of groceries.²⁴ These measures offer too little, come too late, and are not consistent with decades of experience in other fields in which social ills have been prevented successfully.

Effective prevention of any social ill requires actions intended to prevent the appearance of the problem. These actions, called “primary prevention,” are taken long before the actualization of the harmful event sought to be avoided, in an effort to minimize or eliminate risk of the event’s occurrence.²⁵ Reasonable measures to “prevent or eliminate the need” for child removal would help children and families upstream, when

¹⁹ CONG. RSCH. SERV., IF10590, CHILD WELFARE: PURPOSES, FEDERAL PROGRAMS AND FUNDING 1 (June 30, 2020).

²⁰ CHILDREN’S RIGHTS, FIGHTING INSTITUTIONAL RACISM AT THE FRONT END OF CHILD WELFARE SYSTEMS: A CALL TO ACTION 4 (May 15, 2021), www.childrensrights.org/wp-content/uploads/2021/05/Childrens-Rights-2021-Call-to-Action-Report.pdf [<https://perma.cc/A2R3-5V3M>].

²¹ Emma S. Ketteringham, *Live in a Poor Neighborhood? Better Be a Perfect Parent*, N.Y. TIMES (Aug. 22, 2017), <https://www.nytimes.com/2017/08/22/opinion/poor-neighborhoods-black-parents-child-services.html> [perma.cc/9ETC-8R7L].

²² Adoption and Safe Families Act, 42 U.S.C. § 671(a)(15)(B)(i) (1997).

²³ See, e.g., Vivek S. Sankaran & Christopher Church, *Easy Come, Easy Go: The Plight of Children Who Spend Less Than Thirty Days in Foster Care*, 19 U. PA. J.L. & SOC. CHANGE 207, 216 (2016) (“[D]espite this clear legal framework and the sound research concerning the trauma resulting from removal and placement in foster care, each year, juvenile courts sanction the removals of roughly 25,000 children whose complete foster care episode is thirty days or less.”).

²⁴ Cf. COLO. REV. STAT. § 19-1-103(89); DEL. CODE ANN. tit. 29, § 9003 (“[Family] preservation services will be provided to those families whose children are at *imminent risk* of out-of-home placement when it is determined that out-of-home placement can be avoided. . . .”) (emphasis added).

²⁵ See generally William M. Haddon, Jr., *The Changing Approach to the Epidemiology, Prevention, and Amelioration of Trauma: The Transition to Approaches Etiologically Rather Than Descriptively Based*, 58 AM. J. PUB. HEALTH & NATION’S HEALTH 1431 (1968) [hereinafter Haddon, *Changing Approach*] (discussing the harm prevention literature’s gradual recognition and preference of long-term mitigative approaches).

intervention offers a greater return on investment for all stakeholders. Remedial efforts undertaken only after problems have emerged are doomed to failure and thus are not reasonably calculated to prevent or eliminate the need for removals.

Because so many children are removed unnecessarily due to poverty, primary prevention efforts focused on building economic stability and social cohesion should be made in underserved communities. Building family and community wealth could undergird the local support networks so crucial to child and family well-being. The failure of states thus far to meaningfully address poverty has resulted in thousands of unnecessary child removals, primarily from low-income and other marginalized families.²⁶ Accordingly, states should not be found to have satisfied their legal obligation to act reasonably in trying to prevent the child's removal unless they have taken certain prophylactic steps. Applying this "reasonable efforts" provision correctly will lead to fewer child removals, because communities—especially communities of color—will be stronger.

This Piece argues that prevention of child removal must include efforts to create and fund anticipatory, rather than reactive, measures by the state that build the wealth and cohesion of communities.²⁷ Strong communities prevent social problems—like child removals—because strong communities have layers of social and economic insulation that prevent the need for removal from arising at all. Living in a community marked by interpersonal cohesion and a baseline of necessary resources and infrastructure limits the stresses and other tangible consequences of poverty.²⁸ Strong communities also prevent removals because if a problem arises in a family, the family has a broad support network to which it may turn, potentially obviating a need for government intervention. Wisdom from prevention-based interventions in other contexts, and the requirement that state agencies must draw on community strengths, will empower communities to support families and ultimately lead to fewer removals.

II. THE FAILURE OF THE REASONABLE EFFORTS TO PREVENT REMOVAL REQUIREMENT

Under federal law, states are entitled to reimbursement for the costs incurred in keeping a child in foster care, only if the state makes "reasonable efforts . . . to preserve . . . families prior to the placement of a child in foster care, to prevent or eliminate the need for removing the child from the child's home."²⁹ First included in the 1980 Adoption Assistance

²⁶ See generally CHILDREN'S RIGHTS, FIGHTING INSTITUTIONAL RACISM, *supra* note 20.

²⁷ We are not the first to suggest this approach. See, e.g., Child. Bureau, U.S. Dep't of Health & Hum. Servs., *Improving Child Welfare Through Primary Prevention*, CHILDREN'S BUREAU EXPRESS, <https://cbexpress.acf.hhs.gov/index.cfm?event=website.viewArticles&issueid=202§ionid=1&articleid=5258> [https://perma.cc/S4FJ-NVLZ] (discussing Dr. Jerry Milner's suggestions to keep children out of foster care).

²⁸ See, e.g., Robin J. Kimbrough-Melton & Gary B. Melton, "Someone Will Notice, and Someone Will Care": *How to Build Strong Communities for Children*, 41 CHILD ABUSE & NEGLECT 67, 68–70 (2015).

²⁹ Adoption and Safe Families Act, 42 U.S.C. § 671(a)(15)(B)(i) (2021).

and Child Welfare Act (“AACWA”),³⁰ this requirement was incorporated into the 1997 Adoption and Safe Families Act (“ASFA”).³¹ According to the January 25, 2000 Federal Register setting forth regulations on states’ compliance, ASFA “seeks to provide States with the necessary tools and incentives to achieve the original goals of [the AACWA]: *safety; permanency; and child and family well-being.*”³² Accordingly, regulations promulgated in the implementation of ASFA require that each state “make reasonable efforts to maintain the family unit and prevent the unnecessary removal of a child from his/her home, as long as the child’s safety is assured.”³³

There is little legislative, administrative, or judicial guidance at the federal level as to what constitutes “reasonable efforts” to prevent child removal.³⁴ Similarly, while every state has promulgated a plan and enacted local statutes requiring that reasonable efforts be made to avoid removal (and placement), there is considerable variance in how such requirements are interpreted.³⁵

As a result, state policies focus on the emergency, crisis-driven needs of children in immediate danger or at imminent risk of removal from their families and placement in foster care. Colorado, for example, requires that services be provided to children “at *imminent risk* of out of home placement”³⁶; unfortunately, these “services” are limited to a boilerplate menu of last-minute parenting classes and drug testing facilities rather than meaningful assistance in addressing a specific family’s underlying challenges.³⁷ Moreover, the state’s assistance is only offered once a family is already in crisis, when even robust interventions face long odds.

Notwithstanding these perfunctory and impersonal family services, courts typically find that the state has made sufficient efforts to prevent a child’s removal.³⁸ Judge Leonard Edwards says of his colleagues, “[s]ome judges understand their responsibility but are unwilling to exercise their power and rule on social service failures.”³⁹ Further, many judges are

³⁰ Adoption Assistance and Child Welfare Act of 1980, 42 U.S.C. § 622(b)(8)(A)(iii)(I) (2018).

³¹ Adoption and Safe Families Act of 1997, Pub. L. No. 105-89, 111 Stat. 2115, 2116 (1997).

³² Title VI-E Foster Care Eligibility Reviews and Child and Family Services State Plan Reviews, 65 Fed. Reg. 4020, 4020 (Jan. 25, 2000) (to be codified at 45 C.F.R. pts. 1355–57) (emphasis added).

³³ 45 C.F.R. § 1356.21(b).

³⁴ Alice C. Shotton, *Making Reasonable Efforts in Child Abuse and Neglect Cases: Ten Years Later*, 26 CAL. W.L. REV. 223, 225 (1990).

³⁵ See, e.g., Jeanne M. Kaiser, *Victimized Twice: The Reasonable Efforts Requirement in Child Protection Cases When Parents Have a Mental Illness*, 11 WHITTIER J. CHILD & FAM. ADVOC. 3, 15–16 (2011).

³⁶ COLO. REV. STAT. § 19-1-103(114) (emphasis added).

³⁷ See, e.g., Kaiser, *supra* note 35, at 26 (“[A] stock requirement of service plans for parents involved with C[hild] W[elfare] A[gency]s is participation in a parenting group.”).

³⁸ See generally J. Leonard P. Edwards, *Improving Implementation of the Federal Adoption Assistance and Child Welfare Act of 1980*, 45 JUV. & FAM. CT. J. 3 (1994); see also Shanta Trivedi, *The Harm of Child Removal*, 43 N.Y.U. REV. L & SOC. CHANGE 523, 577 (2019) (“[One study] showed that over 90 percent of judges rarely or never made a no-reasonable-efforts finding and 40 percent had made reasonable efforts findings *even when they believed that the agency had not, in fact, made those efforts.*”).

³⁹ See Edwards, *supra* note 38, at 4.

worried about making a finding of no reasonable efforts because they know it will affect federal funding.⁴⁰ On the other hand, if the court finds that reasonable efforts to prevent removal (“REPR”) were made, the state is entitled to some federal reimbursement of the costs of the child’s stay in foster care.⁴¹ Thus in most states, the consequence of a finding that REPRs were not made is the state’s loss of the reimbursement.

As a result of the failure of judges to enforce the “reasonable efforts to prevent removal” requirement, thousands of children whose removals could have been prevented were taken from their families. For example, scholars Vivek Sankaran and Christopher Church found that in one year, 25,000 children who were removed from their families left foster care in thirty days.⁴² The average child spent six days in foster care, and seventy-five percent were back home within two weeks.⁴³ Moreover, seventy-six percent of these children went back to the very homes from which they were removed.⁴⁴

Thus, prevention of child removals has been ineffective. Efforts to prevent other social ills, however, such as automobile accidents and gun violence, offer promise and lessons that can be applied in the field of child welfare.

III. THE PROMISE OF A PREVENTION-BASED APPROACH

A. The Haddon Matrix

The most widely used framework in the field of prevention is the Haddon Matrix, developed by William Haddon after researching how best to prevent auto accidents and how best to minimize serious injury if an accident could not be prevented.⁴⁵ The Haddon Matrix distinguishes between efforts designed to avoid an accident in the first place (primary prevention), those designed to reduce the severity of trauma during an accident (secondary prevention), and those designed to provide treatment for injuries after an accident (tertiary prevention).⁴⁶

According to Haddon, there are three stages to the injury process: a pre-event phase, an event phase, and a post-event phase.⁴⁷ Haddon’s research identified “driver, vehicle, and environmental factors before, during, and after collisions to minimize injuries and their severity.”⁴⁸ Each

⁴⁰ NAT’L COUNCIL OF JUV. & FAM. CT. JUDGES, NEVADA COURT IMPROVEMENT PROJECT RE-ASSESSMENT FINAL REPORT 48 (2005).

⁴¹ *Id.*

⁴² Sankaran & Church, *supra* note 23, at 218.

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ See generally William M. Haddon, Jr., Editorial, *On the Escape of Tigers: An Ecologic Note*, 60 AM. J. PUB. HEALTH & NATION’S HEALTH 2229 (1970) [hereinafter Haddon, *On the Escape of Tigers*].

⁴⁶ Daniel J. Barnett et al., *The Application of the Haddon Matrix to Public Health Readiness and Response Planning*, 113 ENV’T HEALTH PERSPS. 561, 561 (2005); see also Larry Cohen & Susan Swift, *The Spectrum of Prevention: Developing a Comprehensive Approach to Injury Prevention*, 5 INJ. PREVENTION 203, 203 (1999) (citing Haddon, *supra* note 45, at 2229–34).

⁴⁷ See Haddon, *On the Escape of Tigers*, *supra* note 45, at 2230–33.

⁴⁸ L.S. Robertson, Guest Editorial, *Groundless Attack on an Uncommon Man: William Haddon, Jr, MD*, 7 INJ. PREVENTION 260, 260 (2001).

stage requires a different intervention strategy, and a variety of techniques may be necessary to maximize the effect of each stage.⁴⁹ The emphasis at the pre-event stage is placed on primary prevention, ideally eliminating hazardous conditions and insulating individuals from harmful elements.⁵⁰ Successful secondary prevention, meanwhile, should incorporate safeguards aimed at limiting damage once a harmful event is underway.⁵¹ Finally, post-event, tertiary preventions focus on providing treatment and rehabilitation to the injured or vulnerable party.⁵²

B. Successful Prevention Campaigns

The value of Haddon's concept of pre-event intervention can be seen in non-automobile contexts. One such example is violence intervention programs. In these initiatives, trusted members of the community serve as messengers to intervene in conflict before it leads to violence.⁵³ Over twenty years ago, Cure Violence Global ("CVG") adopted a public health approach to interrupting gun violence by using trusted community members to mediate conflict and promote healthier behaviors among individuals at highest risk.⁵⁴ This program was replicated all over the world and led to a reduction in violence of up to ninety percent in some cases.⁵⁵ Further, the program had other positive effects on the community such as better education and employment outcomes, improved parenting, and an overall change in community norms surrounding violence.⁵⁶

In Baltimore's "Safe Streets" program, the three-pronged public-health approach identifies those at high risk of engaging in violence, intervenes in conflict with mediation prior to escalation into violence and finally, changes the community narrative surrounding violence and the acceptance thereof.⁵⁷ Safe Streets "violence interrupters" recognize the value of being in the community, canvassing daily and building relationships with the most vulnerable. Additionally, the organization hosted community events such as basketball tournaments and movie nights, provided essentials such as diapers and shoes to community members, and partnered with other organizations to provide services such

⁴⁹ See NICOLE S. BELL ET AL., U.S. ARMY RSCH. INST. OF ENV'T MED., INJURY CONTROL PART II: STRATEGIES FOR PREVENTION 9 (Jan. 1999), <https://apps.dtic.mil/dtic/tr/fulltext/u2/a372985.pdf> [<https://perma.cc/7JNV-D9UG>] (summarizing and analyzing the Haddon matrix).

⁵⁰ *Id.* at 11.

⁵¹ *Id.*

⁵² *Id.*

⁵³ Fact Sheet, White House, More Details on the Biden-Harris Administration's Investments in Community Violence Interventions (Apr. 7, 2021) [hereinafter White House Fact Sheet], <https://www.whitehouse.gov/briefing-room/statements-releases/2021/04/07/fact-sheet-more-details-on-the-biden-harris-administrations-investments-in-community-violence-interventions/> [<https://perma.cc/G48R-TCF6>].

⁵⁴ CURE VIOLENCE GLOBAL, THE EVIDENCE OF EFFECTIVENESS 4 (Aug. 2021), <https://cvg.org/wp-content/uploads/2021/09/Cure-Violence-Evidence-Summary.pdf> [<https://perma.cc/2DYF-LBNV>].

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ Christianna McCausland, *Don't Take it Outside*, BALTIMORE MAG., <https://www.baltimoremagazine.com/section/gamechangers/safe-streets-baltimore-ending-city-violence> [<https://perma.cc/2CAE-URPE>].

as job training and housing.⁵⁸ Finally, some violence interrupters visited victims of gun violence in the hospital in an effort to reduce retaliatory violence and to increase the likelihood that they will follow up on medical care.⁵⁹ These combined efforts resulted in community buy-in and a hugely positive response. After Safe Streets' implementation, the area it serviced went twenty-three months without a homicide.⁶⁰ The program was not perfect, as primary prevention cannot completely eliminate the negative results it seeks to avoid.⁶¹ Overall, however, the program's eight zones realized significant decreases in shootings and homicides than neighborhoods that did not implement it.⁶²

In recognition of the positive impact of evidence-based, public health approaches to gun violence, the Biden administration recently directed significant federal funding towards a series of Community Violence Intervention ("CVI") programs.⁶³ Importantly, the government took a broad-based approach to intervention from jobs programs providing at-risk individuals with skills necessary for employment, to services specifically targeted towards addressing the risk of children's exposure to violence, to micro-grants for innovative community policing strategies.⁶⁴

These programs involve substantial efforts in the "pre-event" stage—prior to any occurrence of the phenomenon sought to be prevented. For communities that suffer the disproportionate impact and trauma of gun violence, anything but primary prevention is too late.⁶⁵

C. Preventing Child Removals: Primary Prevention Efforts to Build Communities' Wealth and Social Cohesion

Currently, the family regulation system concentrates its efforts at the crisis event itself and the post-crisis period. For example, in Ms. Harrell's case, the event was the moment that her daughter was alone at a park due to Ms. Harrell's inability to afford childcare.⁶⁶ The child welfare system therefore intervened to remove the child, post-event.⁶⁷

The promise of Haddon's research has been realized in a limited number of initiatives which have demonstrated that child removals can be prevented by primary prevention efforts. In the context of child welfare,

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ Shelly Orman, *Three Baltimore Safe Streets Workers Killed Over Past Year*, FOX BALTIMORE (Jan. 23, 2022), <https://foxbaltimore.com/news/local/three-baltimore-safe-streets-workers-killed-over-past-year> [<https://perma.cc/X4CJ-N4RZ>].

⁶² *Id.*

⁶³ White House Fact Sheet, *supra* note 53.

⁶⁴ *Id.*

⁶⁵ Everytown Rsch. & Pol'y, *Invisible Wounds: Gun Violence and Community Trauma Among Black Americans*, EVERYTOWN FOR GUN SAFETY & SUPPORT FUND (May 27, 2021), <https://everytownresearch.org/report/invisible-wounds-gun-violence-and-community-trauma-among-black-americans/#conclusion> [<https://perma.cc/SMF9-SAM9>].

⁶⁶ See *supra* notes 1–3 and accompanying text; see also Jessica Grose, *Parents are Now Getting Arrested for Letting Their Kids Go to the Park Alone*, SLATE (July 15, 2014), <https://slate.com/human-interest/2014/07/debra-harrell-arrested-for-letting-her-9-year-old-daughter-go-to-the-park-alone.html> [<https://perma.cc/TP8B-JL95>].

⁶⁷ *Id.*

these primary prevention efforts have been directed toward building wealth and strengthening communities.

For example, Universal Basic Income programs are an example demonstrating how even a small amount of money can lead to a dramatic change in circumstance for many families. In Stockton, California, low-income residents were given \$500 a month for two years, no-strings-attached.⁶⁸ In addition to improving “participants’ job prospects, financial stability and overall well-being,” the program “alleviated financial strain across fragile networks and generated more time for relationships.”⁶⁹ The recent Child Tax Credit (“CTC”) also demonstrates how unconditional financial support can allow low-income families to thrive. One study showed that the majority of the families who received the CTC used the money to pay their bills, pay their housing costs, and buy food.⁷⁰ A large percentage also used the money for child-related costs including school supplies and childcare.⁷¹

Programs such as these that provide poor families with more income to meet basic needs can result in lower levels of contact with child protective services.⁷² At the most basic level, states who took advantage of the option to expand Medicaid coverage in the Affordable Care Act saw a decline in “child neglect” while the states who did not saw an increase.⁷³ Another study found that increasing the earned income tax credit by only \$1,000 reduced the likelihood of a child protective investigation by seven to ten percent.⁷⁴ Recently, research showed that an 11.3% drop in substantiated cases of child maltreatment was attributed to the introduction of a single additional store that accepts Supplemental Nutrition Assistance Program (“SNAP”) benefits in the most sparsely populated areas of Connecticut.⁷⁵ Similar studies found that measures such as increasing the minimum wage and access to Medicaid and preventing evictions led to reduced child welfare intervention and to improved child and family well-being.⁷⁶

Ultimately, however, money alone will not prevent children from being taken unnecessarily from their families. Resources need to be

⁶⁸ Rachel Treisman, *California Program Giving \$500 No-Strings-Attached Stipends Pays Off, Study Finds*, NPR (Mar. 4, 2021), <https://www.npr.org/2021/03/04/973653719/california-program-giving-500-no-strings-attached-stipends-pays-off-study-finds> [https://perma.cc/WCL7-MYYE].

⁶⁹ *Id.*

⁷⁰ Mara Ostfeld & Jared Wadley, *Child Tax Credit Providing Critical Help, But Not Reaching More Than 1 in 10 Eligible Families*, U. OF MICH.: POVERTY SOLS. (Oct. 6, 2021), <https://poverty.umich.edu/2021/10/06/child-tax-credit-providing-critical-help-but-not-reaching-more-than-1-in-10-eligible-families/> [https://perma.cc/3DFX-V7T9].

⁷¹ *Id.*

⁷² *Id.*

⁷³ Richard Wexler, *Want to Prevent Child Abuse? Behold the Transformative Power of Cash*, YOUTH TODAY (Aug. 14, 2019), <https://youthtoday.org/2019/08/want-to-prevent-child-abuse-behold-the-transformative-power-of-cash/> [https://perma.cc/49QH-Y325].

⁷⁴ *Id.*

⁷⁵ *Georgia Tech Study Finds More SNAP Retailers in Rural Areas Lowers Rates of Child Maltreatment*, GEORGIA TECH. IVAN ALLEN COLL. OF LIBERAL ARTS (May 19, 2021), <https://iac.gatech.edu/news/item/647589/georgia-tech-study-finds-more-snap-retailers-rural-areas-lowers-rates-child> [https://perma.cc/XF4F-6QU2].

⁷⁶ *Id.*

combined with non-punitive aid to ensure that families will truly be able to thrive. Several social support programs have demonstrated success. In South Carolina, Dr. Gary Melton developed an initiative called *Strong Communities For Children*, which eliminated the need for government assistance or intervention. The ultimate goal of this program was to prevent child abuse and neglect by strengthening children's communities.⁷⁷ In this initiative "[a]ll are guided by the principle that people shouldn't have to ask [for help]—that help should be built into community settings in a manner that is 'natural,' responsive, and non-stigmatizing" in an effort to create normative change in people's perceptions and beliefs about other families.⁷⁸

Strong Communities used volunteer resources and existing community facilities, like churches, community centers, schools, and libraries to (a) connect systematically with families of very young children, (b) provide activities to help parents build social support networks, and (c) provide or arrange direct support for families in need.⁷⁹

The kind of services that developed included parents' nights out; play groups; family activities; extra well-care visits focused on family support; and chats with family advocates. The services were designed to be universally available to families of young children in the community, and both to provide direct assistance and to offer ways for families to make connections with one another in a way that promoted new norms of mutual assistance.⁸⁰ These are the types of activities that build cohesive and trusting communities, providing a safe space for families to address concerns without fear about becoming system-involved. Government intervention never becomes necessary.

In *Strong Communities*, community outreach workers take a twofold approach: 1) explaining the goal of the initiative to draw in community members and organizations to help families and create opportunities to incorporate the ideals of the initiative into their day-to-day lives; and 2) using the volunteers that they have mobilized to deliver services informally but reliably within the cornerstones of the community such as churches and parks.⁸¹ Crucially, the outreach workers are not bound by a "cookbook" of strategies in the way that caseworkers tend to be in our existing system. Outreach workers may "use their judgment and knowledge of the community, its culture, and its assets to design effective strategies to mobilize residents and community organizations."⁸² Creativity is encouraged. The workers are guided by principles taken from research about the factors that most affect children's well-being.⁸³

⁷⁷ See Melton & Melton, *supra* note 28, at 67.

⁷⁸ *Id.*

⁷⁹ *Id.* at 69.

⁸⁰ *Id.*

⁸¹ *Id.*

⁸² *Id.* at 70.

⁸³ *Id.*

Further, and crucially, the system cannot rely on the “bankrupt policy” of mandated reporting.⁸⁴ Mandated reporting creates distrust amongst neighbors, thereby undermining the goal of a cohesive community.⁸⁵ Lack of formal reporting requirements, and the ability to represent to clients that they may speak with the promise of absolute confidentiality and without the threat of child welfare intervention, allows outreach workers to build trust with the families they are serving.⁸⁶

In addition, family activity centers were developed as places for social interaction and community-building so that community members could know—and help—when their neighbors needed assistance.⁸⁷ This was combined with multi-faceted family resource centers which provided both formal and informal services such as a health center and a club for immigrant Latinx families.⁸⁸

Participation in these programs had tremendous impacts on families: parenting stress went down, and parents’ perception of their own parenting went up. Neighbors’ perception of others’ parenting went up as well. Most relevantly, rates of child abuse and maltreatment went down.⁸⁹

A similar project in Washington state, the King County Blended Funding Project (“the Project”), emerged “to meet the needs of children who had experienced years of failure in the mental health, child welfare, education and juvenile justice systems.”⁹⁰ Its goal was to provide a supportive community for parents to take on leadership roles and act as “parent partners” to reach out to engage other families.⁹¹ Social opportunities existed for all participating families to build community bonds and trust.⁹² Thus, families had people to turn to in times of crisis.⁹³

A key element of the Project was the idea of “co-production” which acted as a “critical countervailing force to professional, systematized care.”⁹⁴ Instead of typical reliance on professional services, this approach identified parents’ individual skills to determine how people could help others within the community.⁹⁵ For example, one woman who had a history of drug use and who had been formerly incarcerated used this experience to support others dealing with those struggles. A grandmother who raised her grandchildren started a support group for those in similar positions.⁹⁶

⁸⁴ Gary B. Melton, *Mandated Reporting: A Policy Without a Reason*, 29 CHILD ABUSE & NEGLECT 9, 15 (2005), <https://www.sciencedirect.com/science/article/pii/S0145213404002789?via%3Dihub> [<https://perma.cc/EFH8-HRZP>].

⁸⁵ *Id.*

⁸⁶ *Id.*

⁸⁷ See Melton & Melton, *supra* note 28, at 71–73.

⁸⁸ *Id.* at 74.

⁸⁹ *Id.*

⁹⁰ Bob Jones, *Creating Community-Driven Wraparound*, in THE RESOURCE GUIDE TO WRAPAROUND 1 (E. J. Bruns & J. S. Walker eds. 2008), <https://nwi.pdx.edu/NWI-book/Chapters/SECTION-2.pdf> [<https://perma.cc/22XS-FZQG>].

⁹¹ *Id.* at 2.

⁹² *Id.* at 6.

⁹³ *Id.*

⁹⁴ *Id.*

⁹⁵ *Id.* at 7.

⁹⁶ *Id.*

Over time, reliance on the Project became less formal as connections within the community deepened.⁹⁷

Unlike in *Strong Communities* or the Project, in our current system, if a family needs help, most of the people they would turn to—teachers, social workers or doctors—are mandated reporters.⁹⁸ Mandated reporters are required by law to report suspected child abuse or neglect or face the loss of their professional licenses or even subjection to criminal penalties.⁹⁹ Once a parent is reported, their cry for help is treated like an admission of wrongdoing.¹⁰⁰ In many instances, the assigned caseworker approaches interactions with the family as an evidence-gathering mission, rather than an opportunity to help.¹⁰¹ Even with the best of intentions, true reasonable efforts may not be possible because in many communities, the necessary services may not be available.¹⁰²

This is in part because historically, more money has been allocated towards foster care than to services to prevent removal.¹⁰³ Currently, \$5.3 billion is spent on the foster care industrial complex versus \$553 million on reunification services.¹⁰⁴ We spend ten times as much on adoption as we do on reunification.¹⁰⁵ The current financial incentive structure motivates states to remove children, because foster care costs are reimbursed, whereas prevention and preservation are not.¹⁰⁶ According to the National Coalition for Child Protection Reform, “children often are removed from their families ‘prematurely or unnecessarily’ because federal aid formulas give states ‘a strong financial incentive’ to do so rather than provide services that could help to keep families together.”¹⁰⁷

Happily, there is a significant amount of funding available to support widespread implementation of the insights in this Piece. Under the Coronavirus Aid, Relief, and Economic Security (“CARES”) Act, \$45 million was allocated “to support the child welfare needs of families during this crisis and to help keep families together.”¹⁰⁸ Further, under the bill, the

⁹⁷ *Id.* at 8.

⁹⁸ Adrienne Jennings Lockie, *Salt in the Wounds: Why Attorneys Should Not Be Mandated Reporters of Child Abuse*, 36 N.M. L. REV. 125, 131 (2006).

⁹⁹ CHILD. BUREAU, U.S. DEP’T OF HEALTH & HUM. SERVS., PENALTIES FOR FAILURE TO REPORT AND FALSE REPORTING OF CHILD ABUSE AND NEGLECT 2 (Feb. 2019), <https://www.childwelfare.gov/pubpdfs/report.pdf> [<https://perma.cc/G36Q-M2WM>].

¹⁰⁰ *See* Melton, *supra* note 84, at 9–18.

¹⁰¹ *Id.*

¹⁰² *See, e.g.*, Edwards, *supra* note 38, at 6.

¹⁰³ Will L. Crossley, *Defining Reasonable Efforts: Demystifying the State’s Burden Under Federal Child Protection Legislation*, 12 B.U. PUB. INT. L.J. 259, 276 (2003).

¹⁰⁴ *State-by-State Data*, CASEY FAM. PROGRAMS (Aug. 2021), <https://www.casey.org/state-data/> [<https://perma.cc/7PSS-AGZG>].

¹⁰⁵ Elizabeth Brico, *The Government Spends 10 Times More on Foster Care and Adoption Than Reuniting Families*, TALK POVERTY (Aug. 23, 2019), <https://talkpoverty.org/2019/08/23/government-more-foster-adoption-reuniting/> [<https://perma.cc/A4H9-J6CR>].

¹⁰⁶ Robert M. Gordon, *Drifting Through Byzantium: The Promise and Failure of the Adoption and Safe Families Act of 1997*, 83 MINN. L. REV. 637, 664–82 (1999).

¹⁰⁷ Richard Wexler, *The Unreasonable Assault on “Reasonable Efforts,”* NAT’L COAL. FOR CHILD PROT. REFORM, <https://web.archive.org/web/20091024031909/http://www.nccpr.org/newissues/9.html> (quoting NAT’L COMM. ON CHILD., BEYOND RHETORIC: A NEW AMERICAN AGENDA FOR CHILDREN AND FAMILIES 290 (1991)).

¹⁰⁸ Press Release, Admin. for Child. & Families, *The Administration for Children and Families to Release Funding to Support Child Welfare Services*, (Apr. 24, 2020),

Administration for Children and Families of the U.S. Department of Health and Human Services also increased the reimbursement rate for prevention services from fifty percent to full reimbursement for the current fiscal year.¹⁰⁹

Reinvesting in community-based prevention efforts would mean that families have places right in their backyards to go to when they're struggling, without relying on children's services. For example, New Hampshire's Division for Children, Youth and Families ("DCYF") collaborated with a community provider to create a "warm line" which families can call to get support or referrals.¹¹⁰ Professionals follow up to ensure that families are doing well and that they have been able to access the suggested services.¹¹¹ The personnel answering the phone do not work for DCYF, as there is an understanding that people are more likely to ask for help from a community-based program than the state due to the fear of family regulation system involvement.¹¹² Similar models could be implemented nationwide.

IV. CONCLUSION

Neglect and poverty are intertwined. This recognition therefore requires us to pinpoint our focus on strengthening communities to meet the basic needs of families to increase their capacity to care for their children in safe and loving homes.¹¹³ Early, community-based intervention can both prevent the circumstances that lead to actual maltreatment and ameliorate many of the conditions that are later mistaken for maltreatment. Further, evidence suggests that community interventions such as these are less complex and relatively inexpensive, because the core messages are simple and success is possible with just a few community outreach workers.¹¹⁴ Not only would children avoid being unnecessarily removed from their homes, the system could then focus on those children who are actually harmed or at risk of harm, leading to better outcomes for them.¹¹⁵

Knowing what we know about prevention and the effectiveness of programs and efforts designed and administered in a manner consistent with Haddon, it seems clear that such efforts are mandated by the

<https://www.acf.hhs.gov/media/press/2020/administration-children-and-families-release-funding-support-child-welfare> [https://perma.cc/258L-8NQH].

¹⁰⁹ *Id.*

¹¹⁰ *Building Communities of Hope: Creating a Better Future for Children and Families in a Time of Crisis*, CASEY FAM. PROGRAMS (2020), <https://www.casey.org/hope/> [https://perma.cc/EB4S-TDNK].

¹¹¹ *Id.*

¹¹² *Id.*

¹¹³ Press Release, Admin. for Child. & Families, Child Abuse, Neglect Data Released (Jan. 15, 2020), <https://www.acf.hhs.gov/media/press/2020/2020/child-abuse-neglect-data-released> [https://perma.cc/H8CL-DPP2].

¹¹⁴ *Id.*

¹¹⁵ *American Child Welfare System has Lost its Way Says Rochester Historian*, UNIV. OF ROCHESTER: NEWS CTR. (Dec. 11, 2020), <https://www.rochester.edu/news-center/american-child-welfare-system-has-lost-its-way-says-rochester-historian-464292/> [https://perma.cc/N8MX-7BRA] ("[H]aving social workers sort through all of these reported cases is a huge drain on the system: it doesn't keep families safer, and it doesn't provide services for families. It actually obscures the problem and makes it harder for social workers to identify the children who are in need of intervention.").

“reasonable effort to prevent removals” requirement as written. It is not “reasonable” to seek to prevent a child’s removal simply by last-minute, emergency measures after the state believes a child has already been harmed or is at risk of harm. More than fifty years after William Haddon first published his work depicting the necessity of “pre-event” measures for prevention of harm,¹¹⁶ states should not be considered to be in compliance with the “reasonable efforts to prevent removal” requirement if they have not engaged in primary prevention efforts including wealth-building and promotion of social cohesion.

¹¹⁶ See generally Haddon, *Changing Approach*, *supra* note 25.