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DIVEST, INVEST, & MUTUAL AID

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"[We must develop a] freedom constitutionalism . . . seek[ing] to abolish historical forms of oppression beyond slavery . . . , [and] to dismantle systems beyond police and prisons, including foster care, regulation of pregnancy, and poverty."

– Dorothy Roberts[1]

"We Keep Each Other Safe: Mutual Aid For Survival And Solidarity."

– Dean Spade, Mariame Kaba, & Ejeris Dixon[2]

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† Professor of Law, Brooklyn Law School. Thank you to the symposium organizers, Nancy Polikoff and Jane Spinak, for the opportunity to contribute and participate, as well as to our co-panelists and moderator, Kele Stewart, Bianca Shaw, Halimah Washington, Imani Worthy, and Tricia Stephens. We are also grateful to Vivek Sankaran and Michael Wald for helpful comments, Danika Gallup for excellent research assistance, and the editors for thoughtful edits.

[1] Dorothy E. Roberts, *Abolition Constitutionalism*, 133 HARV. L. REV. 1, 120 (2019).

[2] Dean Spade, Mariame Kaba, & Ejeris Dixon, *We Keep Each Other Safe: Mutual Aid for Survival and Solidarity*, BARNARD CTR. FOR RSCH. ON WOMEN (Nov. 12, 2020), https://bcrw.barnard.edu/event/we-keep-each-other-safe/ [https://perma.cc/R6R5-NNUW].

We are honored to be part of this symposium issue envisioning the transformation of family support and honoring the work of Dorothy Roberts. The symposium is both essential and timely. It is essential because abolition of the family policing system is needed, and needed now; it is timely because the inequality exposed by the pandemic and the overdue reckoning with state violence, particularly against people of color, have mobilized communities bringing new energy and hope.[3]

We look to mutual aid as a solution to the harms wrought by the family policing system.[4] The vast majority of parents enter the system because of the government's failure to support them, particularly through its divestment from and punishment of families in low-income communities of color.[5] What families need is concrete material aid—housing, food, childcare—rather than state surveillance and punishment. As the abolitionist group Critical Resistance puts it: "The best way to reduce harm is by building safe, healthy communities where people have their basic needs met."[6] Moreover, listening and giving agency to these families constitute an essential component of true transformation of the way our society protects all children and supports all families.

Mutual aid is both a practice and a theory. It consists of "people get[ting] together to meet each other's basic survival needs with a shared understanding that the systems we live under are not going to meet our needs and we can do it together . . . ."[7] Mutual aid couples material resources with empowerment and community-building of those impacted by the system, in order to secure real harm reduction for children and families and transformative change across communities.[8] At the same time that we propose a community-based and empowering mutual aid model, we also advocate for divestment from punitive state interaction and for investment in supports for children and families, funding of communities, and grassroots interventions, all undergirded by a social safety net.

This Essay proceeds in three parts. We begin by critiquing the family policing system as one that consolidates white supremacy, punishes

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[3] As stated by Dorothy Roberts, "[p]olicing captures what this system does. It polices families with the threat of taking children away. Even when its agents don't remove children, they *can* take children and that threat is how they impose their power and terror. It is a form of punishment, harm and oppression." *'Abolition is the Only Answer': A Conversation with Dorothy Roberts*, RISE (Oct. 20, 2020), https://www.risemagazine.org/2020/10/conversation-with-dorothy-roberts/ [https://perma.cc/V3LY-BETB].

[4] *See generally What is Mutual Aid?*, BIG DOOR BRIGADE, https://bigdoorbrigade.com/what-is-mutual-aid/ [perma.cc/R6R5-NNUW] [hereinafter *What is Mutual Aid?*] (defining mutual aid).

[5] For a seminal discussion of the racist socioeconomic context underlying families' involvement in the so-called "child welfare" system, see generally DOROTHY ROBERTS, SHATTERED BONDS: THE COLOR OF CHILD WELFARE (2002) [hereinafter ROBERTS, SHATTERED BONDS]; *see also* Cynthia Godsoe, *An Abolitionist Horizon for Child Welfare*, L. & POL. ECON. BLOG (Aug. 6, 2020) [hereinafter Godsoe, *Abolitionist Horizon for Child Welfare*], https://lpeproject.org/blog/an-abolitionist-horizon-for-child-welfare/ [https://perma.cc/42QW-BWJD] (laying the groundwork for a longer work-in progress situating the child welfare system in the punitive carceral state).

[6] CRITICAL RESISTANCE, WHAT IS ABOLITION? (June 2012), http://criticalresistance.org/wp-content/uploads/2012/06/What-is-Abolition.pdf [https://perma.cc/BC2L-RF58].

[7] *What is Mutual Aid?*, *supra* note 4.

[8] *See* discussion *infra* Section III.

poverty, and brings significant fiscal and human costs, including family separation, with no benefit. In Part II, we describe mutual aid, and its long history of use by marginalized communities to help each other and fight back against the oppressive state. Mapping the recent resurgence of mutual aid efforts, we flag parent organizing as an essential force to abolish the family policing system. Part III elaborates on our argument to divest from the current punitive system and invest in a mutual aid model. An abolitionist horizon guides our thinking, both as "a practical organizing tool and a long-term goal."[9] We warn against the pitfalls of "reformist reforms"[10] that grow and entrench the system, and conclude that only financial investment in, and power-shifting to, communities can truly keep all children and families safe and healthy.

I. FAMILY POLICING IS HARMFUL, RACIST, AND PUNISHES POVERTY

Like the criminal legal system, the family policing system is a state apparatus of racialized social control, ineffective at preventing or redressing harm on its own terms, while imposing very high fiscal and human costs.[11] Players within the system—mandated reporters, police officers, "child protective specialists," and judges—perpetuate an intergenerational cycle that punishes and separates low-income and marginalized families. The current system and America's Family Courts are not trauma-informed but rather trauma-inducing and continually re-traumatizing for impacted families each and every day.

Every year, millions of families are investigated by state actors, surveilled through court-ordered supervision, and required to participate in intrusive services such as parenting classes, drug-testing, and therapy, all on tenuous allegations of harm or risk of harm to their children.[12] Armed

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[9] *What is the PIC? What is Abolition?* CRITICAL RESISTANCE, http://criticalresistance.org/about/not-so-common-language/ [https://perma.cc/3BBQ-WQWU] ("An abolitionist vision means that we must build models today that can represent how we want to live in the future. It means developing practical strategies for taking small steps that move us toward making our dreams real and that lead us all to believe that things really could be different. It means living this vision in our daily lives.").

[10] RUTH WILSON GILMORE, GOLDEN GULAG: PRISONS, SURPLUS, & OPPOSITION IN GLOBALIZING CALIFORNIA 242 (2007). We discuss reformist reforms further *infra* Section III.B.3.

[11] *See* ROBERTS, SHATTERED BONDS, *supra* note 5, at 274–76 (summarizing criticism of the coercive state enforcement of the child welfare system's "punitive function"); *see also* ELISA MINOFF, ENTANGLED ROOTS: THE ROLE OF RACE IN POLICIES THAT SEPARATE FAMILIES 4 (2018), https://cssp.org/wp-content/uploads/2018/11/CSSP-Entangled-Roots.pdf [https://perma.cc/G44R-6T7W] (connecting the family separation in the immigration, criminal, and family regulation systems, and arguing that "racism has always played a central role in the publicly funded systems that separate families").

[12] *See* Michael S. Wald, *Beyond CPS: Building A System to Protect the Safety and Basic Development of Children Experiencing Problematic Parenting*, *in* HANDBOOK OF CHILD MALTREATMENT 2 (forthcoming 2022) ("[S]tudies estimate that over one-third (37.4%) of all children have been investigated by CPS at least once by age 18[.]"). Only a small percentage of these cases are for sexual (4%) or physical abuse (13%); the vast majority of children are taken from their homes and put in foster care for allegations of parental neglect, "caretaker inability to cope," housing, "child behavioral issue," or similarly ill-defined and poverty-based allegations. ADMIN. FOR CHILD. & FAMILIES, U.S. DEP'T OF HEALTH & HUM. SERVS., AFCARS REPORT NO. 27, PRELIMINARY FY 2019 ESTIMATES 2 (2020) [hereinafter AFCARS REPORT] (reporting on data from the Adoption and Foster Care Analysis and Reporting System, which compiles case information from state and tribal child welfare agencies).

police play a role in this, interrogating children at school and accompanying case workers to remove children from their homes, sometimes arresting parents in front of their children.[13] Faced with the state's loosened standards of proof, insufficient provisions of due process, and use of children as bargaining chips, parents deemed neglectful or abusive hardly have any legal protections against the threat of dire employment consequences and tremendous societal stigma.[14]

A. Family Policing is Harmful to Children and their Families

Over 430,000 children annually (a number that has risen for the last five years) are forcibly separated from their parents, and often their siblings, and put in foster care.[15] This practice persists despite the fact that government agencies themselves have documented high rates of sexual and physical abuse in care and recognized effects of trauma to separated children.[16] Experts estimate that 1 in 7 children (14%) will be subjects of two or more child protective reports by age twelve, and approximately 6% of all children in the United States (10% of African American children and 15% of Native American children) are removed from their homes at least once before age eighteen.[17] Annually, thousands of parents have their rights and all ties to their children permanently terminated.[18] Tens of thousands of these children are never adopted and never enter into any kind of permanent relationship with another adult, bouncing among many foster homes and institutions, and entering adulthood as "legal orphans"

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[13] The connection between law enforcement and family regulation workers is also demonstrated by the law enforcement training many workers receive. *See, e.g.*, Thomas Tracy, *Administration of Children's Services Staffers Now Being Sent to NYPD Investigator Course*, N.Y. DAILY NEWS (Sept. 24, 2017), https://web.archive.org/web/20200808001909/https://www.nydailynews.com/new-york/acs-staffers-nypd-investigator-article-1.3518025.

[14] *See* Godsoe, *Abolitionist Horizon for Child Welfare*, *supra* note 5 (outlining the "lack of process [that] make[s] findings of neglect or abuse almost a foregone conclusion" throughout the investigation and adjudication of mistreatment reports).

[15] AFCARS REPORT, *supra* note 12, at 1; ADMIN. FOR CHILD. & FAMILIES, U.S. DEP'T OF HEALTH & HUM. SERVS., TRENDS IN FOSTER CARE AND ADOPTION: FY 2009–FY 2018, http://centerforchildwelfare.fmhi.usf.edu/kb/natres/trends_fostercare_adoption_09thru18.pdf [https://perma.cc/7LFH-DLSS].

[16] *See* ADMIN. FOR CHILD. & FAMILIES, U.S. DEP'T OF HEALTH & HUM. SERVS., CHILD WELFARE OUTCOMES 2018: REPORT TO CONGRESS 16, 19–24 (2018) (reporting performance outcomes for reduction of "incidence of child abuse and/or neglect in foster care," including incidence of maltreatment by foster parents or facility staff, and noting its association with increase in trauma symptoms); *see also* Richard Wexler, *Abuse in Foster Care: Research vs. the Child Welfare System's Alternative Facts*, YOUTH TODAY (Sept. 20, 2017), https://youthtoday.org/2017/09/abuse-in-foster-care-research-vs-the-child-welfare-systems-alternative-facts/ [https://perma.cc/W48Q-XLX5] (examining examples of child abuse by "parents" in foster and adoptive settings); NAT'L COAL. FOR CHILD PROT. REFORM, FOSTER CARE VS. FAMILY PRESERVATION: THE TRACK RECORD ON SAFETY AND WELL-BEING (2019) (gathering research comparing child abuse rates in foster care and in the general population); Laura Gypen et al., *Outcomes of Children Who Grew Up in Foster Care: Systematic-Review*, 76 CHILD. & YOUTH SERVS. REV. 74, 77–80 (2017) (reviewing over thirty studies and finding that children in foster care have lower rates of high school and college completion, lower employment rates and earnings, and higher rates of substance abuse, mental health issues, and involvement in the criminal system, than the rest of the population).

[17] *See* Wald, *supra* note 12, at 2 (regarding reports or investigations conducted by Child Protective Specialists).

[18] In 2019, the most recent year for which we have data, 71,335 parents had their rights permanently terminated. AFCARS REPORT, *supra* note 12, at 1.

with a catastrophically high likelihood of experiencing homelessness, imprisonment, and mental health trauma.[19]

B. Family Policing is Racist

The family policing system is also racist. The numbers are stark; "[B]lack children are twice as likely as white children to wind up in foster care and face its devastating effects."[20] This system is harmful, not helpful, as reflected in its long history of racialized social control—a history stemming back to the orphan trains carrying young immigrants;[21] the forcible removal of Native American children;[22] and the immigration policies separating Asian-American families in the nineteenth and early twentieth centuries.[23] This historical pathway continues today, as evidenced by the child welfare "savior" mentality;[24] the criminalization of health needs that is enforced through mandated reporting and the drug testing of Black mothers and their newborns;[25] the unacknowledged

[19] Godsoe, *Abolitionist Horizon for Child Welfare*, *supra* note 5 (reporting 71,000 legal orphans in 2018 alone).

[20] *Sherry* Lachman, Opinion, *The Opioid Plague's Youngest Victims: Children in Foster Care*, N. Y. TIMES (Dec. 28, 2017), https://www.nytimes.com/2017/12/28/opinion/opioid-crisis-children-foster-care.html [https://perma.cc/E8EG-HGGG]; *see also* Kathleen B. Simon, Note, *Catalyzing the Separation of Black Families: A Critique of Foster Care Placements Without Prior Judicial Review*, 51 COLUM. J. L. & SOC. PROBS. 347, 350 (2018) (recommending more stringent emergency removal laws to reduce the number of Black children in foster care).

[21] *See generally* STEPHEN O'CONNOR, ORPHAN TRAINS (2004) (presenting a history and legacy of supposedly welfare-enhancing orphan trains of the mid-to late nineteenth century, which transported children from urban parts of the nation and placed them in rural parts, mostly for labor). On the dynamics between immigration, class, and "juvenile criminal[ity]" in urban areas during the time leading up to the operation of orphan trains, see *id*. at 115–16.

[22] Christie Renick, *The Nation's First Family Separation Policy*, IMPRINT (Oct. 9, 2018), https://imprintnews.org/child-welfare-2/nations-first-family-separation-policy-indian-child-welfare-act/32431 [https://perma.cc/G4UC-35FX]; *see also* Anya Zoledziowski, *The Residential School System Didn't End—It Just Became Foster Care*, VICE (June 9, 2021), https://www.vice.com/en/article/7kvkb9/the-residential-school-system-didnt-endit-just-became-foster-care [https://perma.cc/5WGX-HFQ6] (describing the same history in Canada).

[23] MINOFF, *supra* note 11, at 7.

[24] Child welfare or protection workers have seen themselves as "saviors" since their first incarnation during the Progressive Era. *See, e.g.*, ANTHONY M. PLATT, THE CHILD SAVERS: THE INVENTION OF DELINQUENCY 139 (40th ed. 2009); *see also* MICHAEL WILLRICH, CITY OF COURTS: SOCIALIZING JUSTICE IN PROGRESSIVE ERA CHICAGO, at xxviii (2003) (asserting that juvenile court "aimed not merely to punish offenders but to assist and discipline entire urban populations"). The current "child-welfare industrial complex doubles down on the idea that it is 'saving' children." Chris Gottlieb, *Black Families are Outraged About Family Separation Within the U.S. It's Time to Listen to Them*, TIME (Mar. 17, 2021), /https://time.com/5946929/child-welfare-black-families/ [https://perma.cc/UMC4-HHN5] (further explaining the "racist imagery" and implicit bias that inform the "savior" mentality).

[25] On January 14, 2021, the Shriver Center on Poverty Law highlighted the concerns of criminalizing health needs and punishing mental illness, as the system used Black bodies for medical testing, drug tested newborns and new mothers to then remove babies, and created a healthcare professional's purpose to work with the judiciary (specially referring to child abuse pediatricians). *Webinar: Your Family or Its Health: Intersections Between the Healthcare and Foster Systems*, SHRIVER CTR. ON POVERTY LAW (Jan. 14, 2021), https://www.povertylaw.org/article/webinar-your-family-or-its-health/ [https://perma.cc/FUV9-4QZ3].

trauma of family separation;[26] and the fact that the outcomes for most children placed in foster care are terrible on every axis.[27]

C. Family Policing Punishes Poverty

The family policing system maintains America's caste system, a system that "holds everyone in a fixed place."[28] It maintains the status quo by holding parents of color and low-income parents within the lowest ranks of society's hierarchies. To paraphrase Paul Butler's point on policing and punishment, when harms are inflicted on the lowest ranks, the system is working like it is supposed to.[29] Put another way, the harms are a feature, not a bug.

Despite the rhetoric of "parental abuse" in the system, the vast majority of children are removed from their parents for allegations of "neglect."[30] This is a vague legal category that centers on a parent's "failure" to provide food, medical care, housing, and child care. Or, it could mean that the parent failed to get proper (i.e. private-pay) treatment for mental health or substance abuse. The relationship between neglect and poverty is in the very statutory language. A typical state statute, like Oklahoma's, defines neglect as "the failure . . . to provide . . . *adequate* nurturance and affection, food, clothing, shelter, sanitation, hygiene, or

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[26] Analogous to the separation of families at the border, "highly stressful experiences, like family separation, can cause irreparable harm, disrupting a child's brain architecture and affecting his or her short- and long-term health. This type of prolonged exposure to serious stress—known as toxic stress—can carry lifelong consequences for children." Colleen Kraft, Am. Acad. of Pediatrics, AAP Statement Opposing Separation of Children from Parents at the Border (May 8, 2018), https://docs.house.gov/meetings/IF/IF14/20180719/108572/HHRG-115-IF14-20180719-SD004.pdf [https://perma.cc/P9H3-WLCZ]. This trauma is particularly unacknowledged for marginalized families, such as Native American families. *See* This Land, *The Heart of It*, CROOKED MEDIA (2021), https://crooked.com/podcast/this-land-season-2-coming-august-23rd/ (podcast season 2, episode 8) (conversing about the trauma from the removal of Native children from reservations, in the context of federal litigation on the adoption industry's harm to tribal sovereignty).

[27] *The Evidence is In: Foster Care vs. Keeping Families Together: The Definitive Studies*, NAT'L COAL. FOR CHILD PROT. REFORM (Nov. 29, 2021), https://nccpr.org/the-evidence-is-in-foster-care-vs-keeping-families-together-the-definitive-studies/ [https://perma.cc/X3H4-6LGN] (collecting studies comparing outcomes for children placed in foster care with outcomes for children remaining with their own families).

[28] ISABEL WILKERSON, CASTE, THE ORIGINS OF OUR DISCONTENTS 73 (2020); *see also id.* at 70–71 ("Caste is the granting or withholding of respect, status, honor, attention, privileges, resources, benefit of the doubt, and human kindness to someone on the basis of their perceived rank or standing in the hierarchy.").

[29] Paul Butler, *The System is Working the Way It Is Supposed To: The Limits of Criminal Justice Reform,* 104 GEO. L. J. 1419, 1425–27 (2016) (persuasively setting up the argument that police violence against Black men is a systemic, structural problem that requires radical, abolitionist change).

[30] In 2019 (the latest available data), 61% of children reported were alleged to have been neglected, 10.3% were physically abused, and 7.2% were sexually abused. CHILDREN'S BUREAU, U.S. DEP'T OF HEALTH & HUM. SERVS., CHILD MALTREATMENT 2019, at ii (2019), https://www.acf.hhs.gov/sites/default/files/documents/cb/cm2019.pdf [https://perma.cc/42FG-KCHR] [hereinafter CHILD MALTREATMENT 2019]. Beyond its obvious application to poverty-related neglect cases, a mutual aid model that provides true community support would likely reduce even the number of cases of physical abuse, because without mandated reporting, parents will be more willing to seek out and accept help. They will have a safe way to address the stressors of poverty.

appropriate education."[31] The government itself recognizes the deep connection to poverty: virtually all of the federal Health and Human Services risk factors for neglect turn on a lack of resources such as "inadequate housing"[32] and "financial problems."[33] Experts at the Centers for Disease Control and Prevention also recognize that virtually all of the protective factors turn on material resources, such as "nurturing and safe childcare," "access to medical care and mental health services," and "steady employment."[34]

D. Child Safety Requires Material Investment in Marginalized Families

Instead of providing families with child care, health care, and housing, the nation's policy has been to stigmatize aid and condemn children to poverty and inequality.[35] The United States has virtually no social safety net, as compared to so many other nations. Massive cuts in (already meager) welfare over the last twenty-five years, have produced childhood poverty rates that are at an all-time high, particularly among kids of color.[36] To cite just one statistic, nearly eleven million children lack enough food to eat—an unacceptable fact in one of the richest countries in the world.[37] Since welfare "reform" in 1996, federal spending on cash aid to families has fallen 82%. The benefits are now so meager that many families are still left below the poverty line and usually unable to afford basic

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[31] OKLA. STAT. tit. 10A, § 1-1-105 (2021); *see also* Godsoe, *Abolitionist Horizon for Child Welfare*, *supra* note 5 (further discussing the class and cultural biases underlying the definition).

[32] CHILD MALTREATMENT 2019, *supra* note 30, at 23 (listing risk factors including "Inadequate Housing: A risk factor related to substandard, overcrowded, or unsafe housing conditions, including homelessness; Public Assistance. . ."). One of the co-authors recently worked on a case that illustrates the punitive dynamic of family policing in the context of housing insecurity. Ms. W.'s eight children were removed from her care for allegations of child neglect, after she complained to the building management about the lack of repairs completed in her apartment. Ms. W. was only trying to ensure that her home was providing safe and healthy accommodations for her children. Instead of supporting her in this process, the state intervened to seize Ms. W.'s children and ensnare the family in costly and traumatizing legal proceedings.

[33] *Id.* at 23 (listing risk factors including "Financial Problem: A risk factor related to the family's inability to provide sufficient financial resources to meet minimum needs"); *Risk and Protective Factors*, CTRS. FOR DISEASE CONTROL & PREVENTION, https://www.cdc.gov/violenceprevention/childabuseandneglect/riskprotectivefactors.html [https://perma.cc/C5AU-VJ6C] [hereinafter *Risk and Protective Factors*] (listing CDC Risk Factors including "food insecurity," "economic stress," and "concentrated neighborhood disadvantage").

[34] *Risk and Protective Factors*, *supra* note 33.

[35] *See* Maxine Eichner, *What Is The "Free Market Family" And How Can We End It?*, L. & POL. ECON. BLOG (May 24, 2021), https://lpeproject.org/blog/what-is-the-free-market-family-and-how-can-we-end-it/ [https://perma.cc/8KY5-46AW] (noting that "the U.S. has long been an outlier . . . expect[ing] families to provide the conditions, cash, and services their members need to thrive"). *See generally* LINDA GORDON, PITIED BUT NOT ENTITLED: SINGLE MOTHERS AND THE HISTORY OF WELFARE, 1890–1935 (1994) (presenting a history of stigmatization of public aid for poor single mothers and their families); KHIARA M. BRIDGES, THE POVERTY OF PRIVACY RIGHTS (2017) (describing the state's invasions of poor mothers' privacy rights in family and reproduction).

[36] Areeba Haider, *The Basic Facts About Children in Poverty*, CTR. FOR AM. PROGRESS (Jan. 12, 2021), https://www.americanprogress.org/issues/poverty/reports/2021/01/12/494506/basic-facts-children-poverty/ [https://perma.cc/492Q-J7DT].

[37] *Id.*

housing.[38] Meanwhile, higher-income families are supported in numerous ways, such as with mortgage and college tuition tax credits, despite claiming not to take "handouts" from the state. Accordingly, inequality continues to grow.

What most families need is material help with housing, food, and other basic necessities. In 2021, a New York-based parents' advocacy group, Rise, published a report based on a participatory action research project with the legal group TakeRoot Justice.[39] As part of the project, they held "community conversations" and collected surveys asking parents themselves, particularly those who had been involved with the city's family policing system, what they and their families needed most. The responses reflected the first-order need for information about and access to resources, without surveillance or punishment.[40]

More broadly, research shows a direct connection between removing families from welfare (particularly, the Temporary Assistance for Needy Families (TANF) program), and increased neglect cases (23%), as well as entries into foster care (13–16%).[41] Accordingly, increased income supports—such as the Earned Income Tax Credit, a higher minimum wage, expanded Medicaid access, and supportive housing—would lead to lower rates of "neglect" and, in turn, lower rates of child removal.[42] Yet, rather than supporting these families on the front end, we spend billions of dollars to harm them via family policing and removal.[43] Despite recent legislation that moderately increases support for preventative measures, the system continues to vastly prioritize out-of-home placement over support to

[38] Diana Azevedo-McCaffrey & Ali Safawi, *To Promote Equity, States Should Invest More TANF Dollars in Basic Assistance*, CTR. ON BUDGET AND POL'Y PRIORITIES (Jan. 12, 2022), https://www.cbpp.org/research/family-income-support/to-promote-equity-states-should-invest-more-tanf-dollars-in-basic [https://perma.cc/26BX-XLYN].

[39] Naashia B. et al., Rise Participatory Action Rsch. Project & Takeroot Just., *An Unavoidable System: The Harms of Family Policing and Parents' Vision for Investing in Community Care*, RISE 9 (2021) [hereinafter Rise & Takeroot Just., *An Unavoidable System*], https://www.risemagazine.org/wp-content/uploads/2021/09/AnUnavoidableSystem.pdf [https://perma.cc/LUZ4-PHQ2].

[40] *Id*. at 12–16. Parents called for "well-resourced communities, including childcare, jobs, housing, community centers and supports such as therapy . . . financial investment in families, access to information about the rights, non-judgmental and compassionate care, and care from people with similar experiences and backgrounds." *Id*. at 6.

[41] CHAPIN HALL, UNIV. OF CHICAGO, FAMILY AND CHILD WELL-BEING SYSTEM: ECONOMIC & CONCRETE SUPPORTS AS A CORE COMPONENT 24–27 (Apr. 2021), https://www.in.gov/dcs/files/Economic-Supports-deck.pdf [https://perma.cc/VJ4U-DHLZ].

[42] *Id*.; *see also* Cara Baldari & Rricha Mathur, *Increasing the Minimum Wage is Good for Child Well-Being*, FIRST FOCUS ON CHILD. (Aug. 21, 2017), https://firstfocus.org/blog/increasing-the-minimum-wage-is-good-for-child-well-being [https://perma.cc/7ZRB-99QS] (summarizing a new study on the minimum wage as well as prior research).

[43] Some states even divert most of the TANF money intended to support families of origin, to family policing and removal. Eli Hager, *A Mother Needed Welfare. Instead, the State Used Welfare Funds to Take Her Son*, PROPUBLICA (Dec. 23, 2021), https://www.propublica.org/article/a-mother-needed-welfare-instead-the-state-used-welfare-funds-to-take-her-son [https://perma.cc/9DMT-KW3N].

existing families.[44] In 2018, eight out of nine billion dollars of Congressional funding for child welfare went to foster care.[45]

Indeed, experts have documented not only the fact that federal funding incentives are skewed towards removal, but also that it is the deliberate "revenue strategy" of many states to "mine" foster children for federal Social Security and other funds.[46] To meet their fiscal needs, states use children who become wards of the state.[47] More specifically, the higher the state's percentage of children removed from low-income families and eligible for IV-E funding, and the longer they stay in foster care, the more federal dollars can be used for the state's administrative costs,[48] agency training-related costs,[49] disability payments (if children are deemed eligible for Social Security Disability benefits),[50] and more. As succinctly explained by Daniel Hatcher, "[i]f the state receives more federal money, less state spending is required."[51] This skewed funding scheme is a major factor perpetuating family policing and separation.

II. MUTUAL AID PROVIDES A MODEL THAT HAS BEEN HISTORICALLY EMPOWERING AND HELPFUL TO MARGINALIZED COMMUNITIES

In this Part, we outline mutual aid as both a practical intervention and a political movement, and document its historical use in marginalized communities. We also flag state authorities' consistent attempts to thwart these community-led efforts. This tension underlies our nuanced proposal that for families and communities truly to flourish, grassroots mutual aid programs should be community-run, but accompanied by a robust social safety net.

A. What is Mutual Aid?

Mutual aid has been described as "community support" that "lift[s] up the least equal among us."[52] In addition to providing people with material goods such as food and clothing, mutual aid also constitutes an empowering governance model, "a form of political participation in which people take responsibility for caring for one another and changing political conditions, not just through symbolic acts or putting pressure on their representatives in government, but by actually building new social relations that are more survivable."[53] It is different from "charity" in the key sense that it is not a delivery from the rich to the poor, based on the

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[44] *See* Family First Prevention Services Act, Pub. L. No. 115–123, 132 Stat. 64 (codified as amended at 42 U.S.C. § 671) (providing for increased federal funding of prevention of foster care placements through various services); *see also infra* Section III.B.3 (critiquing the Act).

[45] EMILIE STOLTZFUS, CONG. RSCH. SERV., R45270, CHILD WELFARE FUNDING IN FY2018, at 1, 4–5 (July 30, 2018).

[46] DANIEL L. HATCHER, THE POVERTY INDUSTRY: THE EXPLOITATION OF AMERICA'S MOST VULNERABLE CITIZENS 65 (2016).

[47] *Id.* at 66.

[48] *Id.* at 71.

[49] *Id.* at 72.

[50] *Id.* at 73.

[51] *Id.* at 69.

[52] *What is Mutual Aid?*, *supra* note 4.

[53] *Id.*

giver's funding priorities, with many strings attached, and creating a shame in dependency. In contrast, mutual aid is designed to be communally led through a relationship among equals. The aid is not based on means-testing and carries no stigma or threats.

Mutual aid builds solidarity. As Dean Spade describes, it is a "radical act of caring for each other while working to change the world."[54] It collectively ensures that marginalized and oppressed people get their basic needs met, while also developing group awareness and organizing together against the root causes of this oppression[55]—here, the failure of the state to support families. Spade notes three "key elements" of mutual aid programs, including (1) meeting survival needs and building awareness of why people do not have what they need; (2) mobilizing people and expanding movements for change; and (3) "solving problems through collective action rather than waiting for saviors."[56]

As an abolitionist movement, mutual aid is visionary. To quote Dorothy Roberts, abolitionism is both "destructive and . . . creative," dismantling harmful and racist systems while rebuilding safer and more equal ones.[57] Similarly, as W.E.B. Du Bois conceived of it, "abolition democracy" is not only a destructive project of dismantling unjust institutions, but also a positive one of imagining and building a more just society—what post-Civil War Reconstruction should have been.[58] Du Bois noted that slavery was only ended in a narrow, hyper-legal sense, and that the criminal system was one of the primary tools that the state powers used as a method of keeping Black people at work and intimidating them.[59] Change would not come just from dismantling the criminal system or related unjust labor and property practices such as share-cropping; it would have to be accompanied by equal access to education, employment, and voting.[60] In contemporary times, mutual aid continues to create new ways of relating to each other and building a more robust societal infrastructure.[61]

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[54] *Mutual Aid: Building Solidarity During This Crisis (And the Next)*, DEAN SPADE, http://www.deanspade.net/mutual-aid-building-solidarity-during-this-crisis-and-the-next/ [https://perma.cc/EP4D-TSA5] (book abstract); DEAN SPADE, MUTUAL AID: BUILDING SOLIDARITY DURING THIS CRISIS (AND THE NEXT) 12, 82 (2020) [hereinafter SPADE, MUTUAL AID: BUILDING SOLIDARITY].

[55] *Id. at* 66.

[56] *Id.* at 13–34; Dean Spade, *Mutual Aid is Essential to Our Survival Regardless of Who Is in the White House*, TRUTHOUT (Oct. 27, 2020), https://www.truthout.org/articles/mutual-aid-is-essential-to-our-survival-regardless-of-who-is-in-the-white-house/ [https://perma.cc/7BMN-5HDA].

[57] Roberts, *Abolition Constitutionalism*, *supra* note 11, at 43–44.

[58] *Id.*

[59] *See generally* W.E.B. DU BOIS, BLACK RECONSTRUCTION IN AMERICA (1935) (studying the "retreat" into subjugation of Black people and resistance against real abolition democracy in the period after Emancipation); *see also* Roberts, *Abolition Constitutionalism, supra* note 11, at 44 (discussing Du Boisian abolition democracy).

[60] *See* ANGELA Y. DAVIS, ABOLITION DEMOCRACY 95–97, 118 (2005) (noting that "[s]lavery could not be truly abolished until people were provided with the economic means for their subsistence," as well as "access to educational institutions and . . . voting and other political rights").

[61] In times of natural disasters such as the California wildfires, Puerto Rico earthquake, and numerous hurricanes, "people default back to mutual aid . . . people spontaneously come together and care for each out in times of crisis." Miguel Petrosky, *What*

This model is also inherently localized and anti-authoritarian, building grassroots community power rather than relying on the state or the "non-profit industrial complex."[62] Creating spaces where oppressed groups can come together to both get their needs met and organize against the causes of their oppression helps to overcome the stigma and shame, which the government and society have consistently imposed on low-income people throughout history.[63] Mutual aid marks a departure not only from government stigma surrounding state assistance, but also from non-profits' sometimes skewed funding priorities, hierarchical structures, and the one-way direction of charity. Mutual aid eliminates stigma through a few deliberate aspects. Unlike government assistance and charity, it is not uni-directional (although, as noted earlier, government assistance to more affluent families goes unrecognized as such). Instead, mutual aid is, for lack of a better word, mutual—both the giver and the recipient benefit from each other's experience, insight, and contributions; their roles may be reversed at any time.[64] Mutual aid also seeks to be proactive, rather than reactive, in recognition of the structural causes of poverty and other social harms: "mutual aid organizations strengthen community bonds to prevent problems from occurring in the first place."[65] Mutual aid is also characterized by a lack of "strings attached." There are no prerequisites (such as highly scrutinized proof of income) and no enforcement measures for compliance (such as "man in the house" inspections for men living with single mothers receiving public assistance).[66] In this manner, mutual aid models avoid becoming the "degradation ceremonies" that so often accompany both government and private non-profit aid.[67]

B. Historical Use of Mutual Aid by Marginalized Communities

In the past, marginalized communities have turned to self-help in the form of mutual aid to serve children's welfare in the face of a punitive

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Can Mutual Aid Do in a Disaster?, SOJOURNERS (Oct. 5, 2021), https://sojo.net/articles/what-can-mutual-aid-do-disaster [https://perma.cc/NXA2-E3EW] (quoting Jimmy Dunson, an organizer with Mutual Aid Disaster Relief). This includes distributing supplies, food, clothing, money, and necessities to others. *Id*.

[62] The role of the state in our model is a key aspect differentiating our model from some abolitionist models. Many abolitionists (there is of course no monolithic definition) envision transforming the state, while mutual aid organizations exist largely outside of the state.

[63] *See, e.g.*, GORDON, *supra* note 35, at 4–36 (presenting a history intersecting the welfare system's structure with stigma against single-mother families); BRIDGES, *supra* note 35, at 37–55 (examining various "construction[s]" of the stigma against poor Black mothers, including in welfare reform and in the law).

[64] Mutual aid is similar to concepts of community self-defense, as outlined further infra Section III.C.

[65] *See* Sophie Roppe, *Progress Without Profit: Make Room for Mutual Aid Organizations*, DAILY TROJAN (Apr. 5, 2021), https://dailytrojan.com/2021/04/05/progress-without-profit-make-room-for-mutual-aid-organizations/ [https://perma.cc/YHL9-USVC].

[66] *See* IFE FLOYD ET AL., CTR. ON BUDGET & POL'Y PRIORITIES, TANF POLICIES REFLECT RACIST LEGACY OF CASH ASSISTANCE 14 (Aug. 4, 2021), https://www.cbpp.org/sites/default/files/8-4-21tanf.pdf [https://perma.cc/8LYH-HPLC] (explaining "man in the house" laws and their enforcement).

[67] Kaarin Gustafson, *Degradation Ceremonies and the Criminalization of Low-Income Women*, 3 U.C. IRVINE L. REV. 297, 301–302 (2013) (presenting finger imaging of public benefits recipients as an example of degradation and pointing to involvement with the criminal justice system as "[w]hat makes the degradation of the poor in the United States ceremonious,").

state that deprives those communities of material resources. Black, Asian, Latinx, and other excluded groups rightfully skeptical of state aid, have long created and led mutual aid efforts.[68] These usually began out of necessity, as a result of exclusion from societal and legal systems of employment, financial support such as banking, or even definitions of personhood. For instance, Nyamagaga Gondwe connects the "precarious constitution of Black families in the slave economy" to ongoing expansive kinship networks and community support systems.[69] Other scholars have demonstrated that fraternal societies in the late nineteenth century into the early years of the Great Depression enabled women, immigrant, and other marginalized groups to access social-welfare services such as medical care and insurance, as well as social support, otherwise unavailable to them.[70] Indeed, Dean Spade argues that every "large, powerful" social movement has engaged in mutual aid.[71]

During the 1960s and 1970s, the Black Panther Party made clear that overcoming white supremacy entailed not just political change and abolition of the policing and criminal systems, but also concrete supports to families such as child care, nutritious meals, and free medical clinics.[72] At the same time, they aimed to teach the children (and adults) a "rigorous liberation curriculum."[73] The Black Panthers created over sixty Survival Programs including "acts of washing pots, distributing shoes, transporting elders to the grocery store, testing for sickle cell, and offering culturally relevant schooling[.]"[74] The Party's efforts were based on the community's

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[68] *See The Radical Past and Present of Mutual Aid*, FOUND. BEYOND BELIEF (May 7, 2020), https://foundationbeyondbelief.org/the-radical-past-and-present-of-mutual-aid/ [https://perma.cc/LRU3-GQKS] [hereinafter *The Radical Past and Present of Mutual Aid*] (presenting historical examples of mutual aid in order to articulate it as a "mainstay in communities that have often been abandoned or marginalized by government institutions").

[69] Nyamagaga Gondwe, *The Black Tax*, 74 TAX L. REV. (forthcoming 2022) (on file with author) (also noting the presence of mutual aid and collective caregiving responsibilities among enslaved peoples).

[70] DAVID T. BEITO, FROM MUTUAL AID TO THE WELFARE STATE: FRATERNAL SOCIETIES AND SOCIAL SERVICES 1890–1967 (2000) (noting that these societies were phased out of existence in large part by the welfare state, which never sufficiently supported low-income people, including children, and has always come with stigma and surveillance).

[71] SPADE, MUTUAL AID: BUILDING SOLIDARITY, *supra* note 54, at 1.

[72] *Id.* at 13; Erin Blakemore, *How the Black Panthers' Breakfast Program Both Inspired and Threatened the Government*, HISTORY (Feb. 6, 2018), https://www.history.com/news/free-school-breakfast-black-panther-party [https://perma.cc/5VF3-RYV8].

[73] SPADE, MUTUAL AID: BUILDING SOLIDARITY, *supra* note 54, at 13–14.

[74] *Mutual Aid—Today and Tomorrow*, PEOPLE'S KITCHEN COLLECTIVE, http://peopleskitchencollective.com/panthers-mutual-aid [https://perma.cc/3WCY-JTGZ] (drawing inspiration from the Black Panther Party's programs and gathering information on mutual aid efforts in California's Bay Area); *see also Survival Programs*, IT'S ABOUT TIME: BLACK PANTHER PARTY LEGACY & ALUMNI, http://www.itsabouttimebpp.com/Survival_Programs/survival_programs.html [https://perma.cc/8KYV-WK2L] (listing programs that the Black Panther Party "instituted or envisioned starting" in order to "help African Americans and other oppressed peoples meet their basic necessities"); Dorothy Hastings, *'Abandoned by Everyone Else,' Neighbors Are Banding Together During the Pandemic*, PBS (Apr. 5, 2021), https://www.pbs.org/newshour/nation/how-mutual-aid-networks-came-together-in-a-year-of-crisis [https://perma.cc/2K4Q-EL2S] (relating traditions of mutual aid, a "centuries-old practice," to responses to recent crises such as the pandemic and natural disasters). For a historically rooted analysis of the survival programs, see generally Mary Potorti, *"Feeding the Revolution": The Black Panther Party, Hunger, and Community Survival*, 21 J. AFR. AM. STUD. 85 (2017).

values and started within the community, addressing nutrition and education needs as well as economic empowerment and resource-sharing.[75] Not only did these programs meet the basic needs of the Black community, but they allowed Black doctors, scientists, educators, and community members to work within their communities.[76]

The Black Panthers' "serve the people" programs were so successful and powerful that J. Edgar Hoover, the FBI director at the time, described the Breakfast for Children Program as "the best and most influential activity [for the Black Panther Party] and, as such . . . potentially the greatest threat to efforts by authorities to neutralize the BPP and destroy what it stands for."[77] The night before the Chicago program was to open, police broke into the church housing it and urinated on all the food.[78] This disturbing incident illustrates both the power of these programs, and the extent the government will go to destroy or co-opt them. The latter is another reason, in addition to community self-determination, why we do not recommend a government mutual aid program.

Another prominent example is the transformation of the Young Lords from a largely Puerto Rican Chicago-based "street gang" to a mutual aid group that organized free breakfasts and community tuberculosis and lead testing, ultimately occupying New York City's Lincoln Hospital to provide free health care in 1970.[79] They brought people into the Puerto Rican liberation movement by "starting with the everyday needs of Puerto Ricans in impoverished communities."[80] The Young Lords specifically sought to help poor and working class families, often meeting at the Armitage Avenue Methodist Church for sit-ins.[81] Further, the Young Lords "protested police brutality against Black and Brown men."[82] Protests demonstrating such solidarity continue today, surging nationwide after the police murder of George Floyd.[83]

In the family policing context, mutual aid could be a particularly promising intervention but has hardly ever been used until very recently. Dorothy Roberts has traced elements of mutual aid to the Progressive era,

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[75] Potorti, *supra* note 74, at 89–97, 107–108.

[76] *See The Radical Past and Present of Mutual Aid*, *supra* note 68 (referring to black mutual aid societies' "self-sufficiency" and "employment network"); Blakemore, *supra* note 72.

[77] SPADE, MUTUAL AID: BUILDING SOLIDARITY, *supra* note 54, at 14 (quoting Hoover's memo to FBI local offices).

[78] *Id.*

[79] *Id.*; *The Radical Past and Present of Mutual Aid*, *supra* note 68. It is important to note that the term "gang" is often used to vilify community groups. *See, e.g.*, Babe Howell, *Gang Policing: The Post Stop-And-Frisk Justification for Profile-Based Policing*, 5 DENVER CRIM. L. REV. 1, 5 (2015) ("[T]he conflation of gangs and gang membership with violent crimes creates the misimpression that gang membership alone is a proxy for violent criminality.").

[80] SPADE, MUTUAL AID: BUILDING SOLIDARITY, *supra* note 54, at 14.

[81] Sarah Coffman, *The Young Lords and the Black Panther Party*, DIGITAL CHICAGO, https://digitalchicagohistory.org/exhibits/show/young-lords/young-lords-and-black-panthers [https://perma.cc/SCK3-LMRB].

[82] *Id.*

[83] *See* Larry Buchanan et. al., *Black Lives Matter May Be the Largest Movement in U.S. History*, N.Y. TIMES (July 3, 2020), https://www.nytimes.com/interactive/2020/07/03/us/george-floyd-protests-crowd-size.html [https://perma.cc/4Z55-UU79].

when Black women who were excluded from state institutions purporting to help children initiated their own programs within the Black community.[84] Akin to mutual aid, these programs focused on children's wellbeing embedded *within* their families and communities, and provided tangible assistance such as child care free of state strings.[85] A mutual aid framework, however, has not influenced state "child welfare" policy; instead, the government, and many children's advocates, have preferred to double down on family surveillance and separation.

C. Recent Resurgence of Mutual Aid Efforts

More recently, many movements follow the mutual aid model. For one, child care collectives for parents involved in social movements are helping those parents more fully engage in activism while avoiding the punitive family policing system, by ensuring that children are not left home alone or unattended.[86] We are also seeing a resurgence of mutual aid throughout the United States in the face of state failure during the COVID-19 pandemic and natural disasters.[87] With groups such as the Texas student mutual aid group Trinity Mutual Aid providing groceries to community pantries and Black Queer Groceries raising funds for contactless deliveries to Black, queer, and trans people, the explosion of mutual aid highlights the potential for such assistance in dismantling the family policing system.[88]

In New York alone, nearly sixty mutual aid networks were operating during the pandemic. One group in Brooklyn's Flatbush neighborhood focused on food distribution.[89] East Brooklyn Mutual Aid and the Astoria Mutual Aid Network also provided food to families so that many did not have to choose between paying rent and buying groceries.[90] By providing families with necessities and resources faster than the government does, mutual aid reduces the risk that the Administration for Children's Services ("ACS"—Child "Protective" Services in New York—will be called for a lack of food or resources in the home. Similarly, in Houston,

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[84] Dorothy E. Roberts, *Black Club Women and Child Welfare: Lessons for Modern Reform*, 32 FLA. ST. U. L. REV. 957, 957–58 (2005) (introducing the overlooked history of Black women's "child service movement . . . which tied child welfare to racial advancement and justice" through organizing within women's clubs and church groups).

[85] *See id*. at 958–71.

[86] *Free Access to Movements Childcare Collective*, MUTUAL AID DISASTER RELIEF, https://mutualaiddisasterrelief.org/co-conspirators/free-access-to-movements-childcare-collective/ [https://perma.cc/7HSN-PWYV] ("FAM [Free Access to Movements] offers childcare at community events and grassroots political organizing meetings. . . .").

[87] *Mutual Aid Resources*, MOVEMENT FOR BLACK LIVES, https://m4bl.org/mutual-aid/ [https://perma.cc/B8W8-Y2ZP].

[88] *See* Elizabeth Merritt, *Mutual Aid in Time of Crisis*, AM. ALLIANCE OF MUSEUMS: CTR. FOR THE FUTURE OF MUSEUMS BLOG (Aug. 12, 2020), https://www.aam-us.org/2020/08/12/mutual-aid-in-a-time-of-crisis/ [https://perma.cc/Z7C6-DLS8]; Madison Semro, *Through the Storms and Beyond*, TRINITY UNIV.: TRINITY MAG. (Apr. 12, 2021), https://www.trinity.edu/trinity-magazine/spring-2021/through-storms-and-beyond [https://perma.cc/A2B3-4JXM] (describing Trinity Mutual Aid's efforts for the San Antonio community during winter storm shutdowns).

[89] Anna Arons, *An Unintended Abolition: Family Regulation During the COVID-19 Crisis*, 12 COLUM. J. RACE & L. F. (2022).

[90] Keyna Franklin, *'Our First Priority is Making Sure People are OK'*, RISE (May 20, 2021), https://www.risemagazine.org/2021/05/east-brooklyn-mutual-aid/ [https://perma.cc/TQ7B-SCD7].

Texas, the Black women-led mutual aid organization, BLMHTX, stepped up to check in on neighbors during the pandemic.[91] It is this peer-to-peer assistance that gives mutual aid groups power—the power of spreading justice and supporting the collective wellbeing.

This equal power dynamic from community member to community member moves away from the hierarchical structure of charities and nonprofits.[92] Similarly, parent movements like the one at Rise have brought parents to the front and center of change while "working to build a peer and community care network to support families and give them information about resources, so that when families have challenging situations they can address them early on . . . without system involvement."[93]

III. DIVEST FROM FAMILY POLICING AND INVEST IN COMMUNITY-LED MUTUAL AID

Delivering services or treatment through a punitive framework does not work.[94] Instead, keeping children and families safe and healthy requires divesting from the family policing system and investing in care. Public funding currently spent on surveillance and removal/foster care should go to societal supports such as housing, mental health, substance abuse treatment, and child care. Moreover, divesting and investing, taken together as a model, does not just entail better allocation of societal resources, but also a shift in power from state "experts" to the community—both components of mutual aid.[95] This transformation requires questioning existing perceptions of child and societal protection. The divest/invest model that this Part will outline changes the sticky narrative that children's well-being comes from state surveillance and family separation, offering the alternative one that "basic necessities such as food, shelter, and freedom are what really make our communities secure."[96] This recognition compels a shift from a fear-based to a care-based framework for true community safety, and challenges the false binary between child

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[91] *See* Hastings, *supra* note 74.

[92] *Id.* (citing proponents of mutual aid).

[93] Keyna Franklin, *How Rise is Working to Support Faster Family Reunification – And Shrink the Foster System*, RISE (June 16, 2021), https://www.risemagazine.org/2021/06/how-rise-supports-faster-reunification/ [https://perma.cc/A25R-78P5]. Through interviews with parents themselves, Rise has found that ACS is virtually unavoidable in Black and Brown communities, ACS fails to help parents, ACS intervention inflicts trauma, ACS involvement damages relationships, and parents suffer long-lasting consequences from ACS involvement. *See* Rise & Takeroot Just., *An Unavoidable System*, *supra* note 39, at 6.

[94] Wald, *supra* note 12, at 21.

[95] One co-author has looked to the participatory defense movement in criminal defense to illustrate this power-shifting. Cynthia Godsoe, *Participatory Defense: Humanizing the Accused and Ceding Control to the Client*, 69 MERCER L. REV. 715, 716 (2018) [hereinafter Godsoe, *Participatory Defense*] (examining the participatory defense movement, which seeks to "transform the landscape of power in the court system"). Parent-led movements in the family policing space are adopting similar models to "humanize the defendant . . . and increase visible family presence" in individual cases, as well as to address the system as a whole. *See, e.g.*, *Family Reunification, Equity & Empowerment (Free) Project*, STARTING OVER, INC. https://www.startingoverinc.org/free [https://perma.cc/953D-RZAA].

[96] *About*, CRITICAL RESISTANCE, https://web.archive.org/web/20220310180902/http://criticalresistance.org/about/.

protection and family health and integrity.[97] On a broad scale, greater racial and class equality and more funding for families hold the potential to reduce harm and help better serve all children.

A. Divest

A truly pro-family system entails both the divestment of state funding from family separation and punitive expertise and the concomitant investment in state support for families of origin, as well as a shift in power to community and parent expertise. As Part I has shown, foster care has terrible outcomes for children, whereas material support for families (not what we currently call "prevention") has proven to achieve successful outcomes for children and families.[98] Despite this substantial evidence, state funding is still very skewed to out-of-home care and to preventive "services" like drug testing and parenting classes, which harm rather than help families. Indeed, every dollar spent on family separation and foster care takes away from potential spending on things families need.[99] To cite just one recent example, experts estimate that the government will spend *nine hundred and seventy-two million dollars* ($972,000,000) on foster care, a cost of eighteen-thousand dollars ($18,000) per child, this year just for children who are removed due to their family's lack of secure housing.[100] Helping their families of origin with rent and in-home services would cost only one fourth as much, two hundred and seventy-six million dollars ($276,000,000).[101]

The government should reallocate those dollars away from family policing, and begin giving families the material support they need to thrive. Currently, most families can only access services via punishment.[102] In many cases, only once Family Courts order services do parents actually receive assistance (still often not tailored to their needs), and even then,

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[97] *See* ZACH NORRIS, DEFUND FEAR: SAFETY WITHOUT POLICING, PRISONS, AND PUNISHMENT (2020) (proposing a continuum of societal supports in place of criminalization and punishment, and citing successful community programs).

[98] For foster care, see *supra* notes 15, 25 and accompanying text; for efficacy of material support, *see supra* notes 37–39, 81–85, 142–147 and accompanying text.

[99] Analogously, see DAVID SCOTT, AGAINST IMPRISONMENT: AN ANTHOLOGY OF ABOLITIONIST ESSAYS 195 (2018) ("Building a new prison is not just about putting money into the pain infliction industry- it is also about shifting focus away from welfare support.").

[100] Letter from Ruth White, Exec. Dir., Nat'l Ctr. for Hous. and Child Welfare, to JooYeun Chang, Principal Deputy Assistant Sec'y and Acting Assistant Sec'y, Admin. of Child. and Fams., U.S. Dep't of Health & Hum. Servs. 2 (Mar. 2 2021), https://static1.squarespace.com/static/5a7dcc2a0100277e36127414/t/6044f78ec81e850732f644d5/1615132558695/Stafford+Act+Request+to+ACF+for+Families+2021+revised.pdf [https://perma.cc/7HQH-PKF6] (referencing a 2021 cost analysis by the National Center for Housing and Child Welfare, comparing funding for the cost of foster care with funding for housing subsidization and related services).

[101] *Id.*; *cf.* NAT'L CTR. FOR HOUS. AND CHILD WELFARE, NCHCW HOUSING–CHILD WELFARE COST STUDY 2015, https://static1.squarespace.com/static/5a7dcc2a0100277e36127414/t/5c1286abc2241b1194b3569e/1544717995727/NCHCW+Housing+Cost+Savings+Study+2015.pdf [https://perma.cc/9TL8-Q3AM] (concluding that the study "shows considerable savings to states when Title IV-E [child welfare] funding is used to subsidize housing and supportive services").

[102] *See* Rise & Takeroot Just., *An Unavoidable System*, *supra* note 39, at 7 ("[M]ost parents are mandated to preventive services *after* being reported and experiencing an investigation."); Wendy A. Bach, *Flourishing Rights*, 113 MICH. L. REV. 1061, 1064–65, 1067–70 (2015) (reviewing CLARE HUNTINGTON, FAILURE TO FLOURISH: HOW LAW UNDERMINES FAMILY RELATIONSHIPS (2014)).

under punitive terms; if parents do not comply with service plans, judges can punish parents for not complying with their orders.[103] Conversely, many existing public services, such as educational and healthcare systems, function as the point of entry for state surveillance into intimate spaces and family relations.[104] This lack of community-based supports—particularly disproportionate in communities of color—also underlies many mandatory reports on families. [105] For instance, many parents become ensnared in the family regulation system because they are forced to call the police and other state actors for help with intimate partner violence and housing, due to the scarcity of resources in their communities.[106] True community support entails funding for services that free individuals from the broad net of punitive surveillance and control, in exchange for services that provide true "dignity, care, and justice."[107] It also requires divestment from social work, legal, and other professionals tasked with family surveillance and separation.[108] Instead, we must learn from parents and community organizers—they know best how to care for their children.[109]

B. Avoid Reformist Reforms of Prevention & Differential Response

Here we consider two options within the system other than the current investigate/prosecute model: (1) preventive services, and (2) differential response. Although these options are both better than the current prosecutorial model, they also risk net-widening. Most importantly, they are never going to be implemented in a way that fully supports families, due to the stigmatizing politics and social worker surveillance that are endemic to the entire family regulation system. In other words, the current system cannot be repaired. It is doing what it was designed to do: surveil and control marginalized families. As a result, any reforms to the existing system risk becoming "reformist reforms," which are sometimes worse than no reform at all.[110]

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[103] Bach, *supra* note 102, at 1073.

[104] Kelley Fong, *Getting Eyes in the Home: Child Protective Services Investigations and State Surveillance of Family Life*, 85 AM. SOC. REV. 610, 610–38 (2020).

[105] *See id*. at 1795–97 (discussing the connection between mothers' material hardship and mandatory reporting). About two-thirds of reports to the State Central Registry in New York are made by mandated reporters, who are required to report suspected abuse and neglect. Mandatory reporters are usually state employees tasked with helping families, such as teachers, doctors, and shelter workers. Rise & Takeroot Just., *An Unavoidable System*, *supra* note 39, at 22.

[106] *See generally* Kelley Fong, *Concealment and Constraint: Child Protective Services Fears and Poor Mothers' Institutional Engagement,* 97 SOC. FORCES 1785 (2019) (examining ways that communities "strategize to evade" state contact, such as concealment of domestic violence, particularly in relation to child welfare entanglement).

[107] THE PEOPLE'S PLAN NYC, https://peoplesplan.nyc/ [https://perma.cc/QJ9S-AVD4] (presenting the "collective vision" of the Plan, developed by hundreds of organizers across New York City).

[108] *See, e.g.*, Leah A. Jacobs et al., *Defund the Police: Moving Towards An Anti-Carceral Social Work*, 32 J. PROGRESSIVE HUM. SERV. 37, 54 (2021); *see also* Cynthia Godsoe, *The Place of the Prosecutor in Abolitionist Praxis*, 69 UCLA L. REV. (forthcoming 2022) [hereinafter Godsoe, *Place of the Prosecutor*] (describing the need for lawyers to examine their role in supporting the carceral state).

[109] *See* discussion *infra* Section III.C (on community defense).

[110] *See* GILMORE, *supra* note 10, at 242 (cautioning against reforms that "get caught in the logic of the system itself" to solve the system's own problems); *see also* discussion *infra*

1. Prevention

Investing in prevention is better than investing in foster care, but it is still very problematic. Again, useless services, surveillance, and, worst of all, net-widening, enmesh families further in the punitive system.

First, efforts to invest in prevention provide very limited direct support. One effort in particular, the Family First Prevention Services Act of 2018 ("FFPSA"), was enacted to use federal funding to provide mental health services, substance misuse treatment, and in-home parenting skill-based programs to families at risk of entering the family policing system.[111] Yet, this funding allocation is limited in scope and reach. When the numbers were broken down on a national level between 2018 and 2022, the FFPSA would only provide approximately four hundred and eighty dollars ($480) per child or family.[112] Substance misuse treatment lasts only twelve months, failing to account for relapses and the high recidivism rates among those who misuse opioids and other drugs.[113] In-home services also failed to meet the needs of families experiencing homelessness and housing insecurity.[114]

Second, prevention efforts like the FFPSA lead to more surveillance of Black and Brown families and their children. With mental health counselors providing updates and reports to Family Court, substance misuse treatment programs continually drug testing mothers, and parenting skills training actually taking place within the home, families become more entrenched in the family policing system without being provided a way out. Analogous to efforts to decarcerate without an abolitionist horizon, these preventive efforts have the harmful effect of net-widening, thus expanding the surveillance, control, and punishment of marginalized communities.[115]

2. Differential Response

Differential response ("DR") is the most promising model in the existing family policing system, but the "pathological politics" of the system

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Section III.B.3. For instance, preventive services can net-widen and increase funding for the family policing system. *See* discussion *infra* Section III.B.1.

[111] The Family First Prevention Services Act enacted in 2018 allocates federal child welfare funding streams, Title IV-B and Title IV-E of the Social Security Act, to be used to assist families at risk of entering the child welfare system, specifically by reimbursing states for families' mental health services, substance abuse treatment, and in-home parenting skills training. Family First Prevention Services Act, Pub. L. No. 115–123, 132 Stat. 64 (codified as amended at 42 U.S.C. § 671). For in-depth explanations of the Act, see *Family First Prevention Services Act*, NAT'L CONF. OF STATE LEG. (Apr. 1, 2020), http://www.ncsl.org/research/human-services/family-first-prevention-services-act-ffpsa.aspx [https://perma.cc/H72R-U5JR]; *Family First Prevention Services Act Section by Section*, FIRST FOCUS CAMPAIGN FOR CHILD. (Mar. 2018), https://campaignforchildren.org/wp-content/uploads/sites/2/2016/06/FFCC-Section-by-Section-FFPSA.pdf [https://perma.cc/ZR5E-VSLQ].

[112] Caitlyn Garcia, *Replacing Foster Care with Family Care: The Family First Prevention Services Act of 2018*, 52 FAM. L. Q. 27, 35–36 (2019).

[113] *Id.* at 37–39.

[114] *Id.* at 39–41; *cf.* Charlotte Baughman. Tehra Coles, Jennifer Feinberg, & Hope Newton, *The Surveillance Tentacles of the Child Welfare System*, 11 COLUM. J. RACE & L. 501, 530 (2021) (critiquing the Act's focus on funding for formal services rather than material resources).

[115] Godsoe, *Place of the Prosecutor*, *supra* note 108.

nonetheless mean that differential response programs are under-utilized and set up for failure.[116] Differential response posits multiple pathways as a response to reports of child maltreatment, including alternative pathways from the "regular track" of CPS investigation, prosecution, and foster care placement.[117] Under a DR model, families are subject to different response pathways based on factors reflecting risk of maltreatment.[118] Over half the states have implemented DR to some degree in the last fifteen to twenty years.[119] These states' rationales include: reducing the very high number of families that are in the system for poverty-related reasons; increasing services available to at-risk families; reducing the stigma of child protective services ("CPS") involvement; improving caseworker satisfaction; and addressing racial disproportionality.[120] States' DR programs are also considerably more cost-effective than the regular track.[121]

Towards these myriad ends, differential response departs significantly from traditional family policing. Two key components of DR are: (1) a focus on meeting the material needs of struggling families, such as diapers and groceries; and (2) a service approach for caseworkers, rather than an "investigate and prosecute" model.[122] Guidance urges caseworkers to prepare to be "respectful and cooperative from the very first contact with the family," noting that "[f]amily engagement and respect are core values."[123] Accordingly, workers make appointments with families rather than the midnight knocks on the door typical of many family policing agencies.[124] The contrast to the regular family policing system is stark, as

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[116] Bill Stuntz famously summarized the legislative one-way ratchet to increased criminalization and punitiveness. William J. Stuntz, *The Pathological Politics of Criminal Law*, 100 MICH. L. REV. 505, 509 (2001). We argue that the family policing system is very similar to, and closely intertwined with, the criminal system, and that many of the criminal system's "pathological politics"—such as recognition of only one-sided risks and skewed media coverage—apply here.

[117] CHILDREN'S BUREAU, U.S. DEP'T OF HEALTH & HUM. SERVS., DIFFERENTIAL RESPONSE: A PRIMER FOR CHILD WELFARE PROFESSIONALS 1–2 (Oct. 2020), https://www.childwelfare.gov/pubPDFs/differential_response.pdf [https://perma.cc/QE8A-MEER].

[118] *Differential Response in Child Protective Services: Analysis of State Legislative Provisions*, NAT'L CONF. OF STATE LEG. (Dec. 15, 2019), https://www.ncsl.org/research/human-services/state-legislation-differential-response.aspx [https://perma.cc/PP9G-Z6UD].

[119] *Id*.

[120] *See* Cynthia Godsoe, Symposium, *Just Intervention: Differential Response in Child Protection*, 21 J. L. & POL'Y 73, 75–77 (2012) [hereinafter Godsoe, *Just Intervention*].

[121] *Id*. at 82.

[122] Most reports on families lead to no assistance. For instance, in California, ninety-two percent of reports of maltreatment were closed after initial contact by CPS staff, with no services provided to the families, yet many of these families were re-reported shortly afterwards. Sofya Bagdasaryan et al., *Implementation of California's Differential Response Model in Small Counties*, 23 PROTECTING CHILD., 40, 41 (2008).

[123] N.Y. STATE CHILD PROTECTIVE SERVICES MANUAL ch. 5, § D-1 (N.Y. OFF. OF CHILD. & FAM. SERVS. 2022) [hereinafter NYS CPS MANUAL] (providing guidance on the conduct of family assessments).

[124] *Id*. The recent case of Ms. M., whose newborn was removed by numerous police officers and child protective specialists at 3:00am, highlights the use of police to weaponize the family policing system. Although the Administration for Children's Services' own guidelines state, "Defensive and angry behaviors towards child welfare workers or others can be a normal reaction to a stressful situation," Ms. M.'s reaction to the removal of her infant in the middle of the night unfairly became characterized as "imminent risk of harm."

reflected in parents' reactions. As one put it: "My caseworker was awesome. She saw that I wasn't a bad mother. I just needed a little help to get back on the right track. And I love her for that."[125] Workers recognize the change too: "Families don't believe you are actually going to help them. And when you do, they are flabbergasted."[126]

In theory, DR programs focus on the family's strengths and on "solutions to the family's needs" rather than on whether there was maltreatment and who is responsible.[127] Instead of an approach where the caseworker mandates services—or goes to court to have them ordered—the agency and parents develop solutions together. States vary widely in their criteria, although none include physical or sexual abuse cases in their differential responses. The most common types of cases on DR's alternative track are educational neglect, lack of supervision, and other more minor neglect cases.[128] Even where the law allows for a wide range of cases to go through DR, localities or individual workers usually underutilize it.[129]

Virtually all the research on existing programs shows that DR systems are very effective, both in increasing family satisfaction and in improving safety rates for children; there are also far fewer traumatic interventions such as child removals and family separation.[130] Researchers noted two key points: more material resources provided to families, and greater respect accorded to parents.[131] Studies have overwhelmingly found that families in the DR track felt more listened to, helped, and generally positive about their experience with the agency.[132] The research on the key issue of re-report rates also favors DR, although one or two local studies

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N.Y.C. ADMIN. FOR CHILD. SERVS., PRINCIPLES TO INFORM CHILD WELFARE DECISION-MAKING REGARDING MENTAL HEALTH ISSUES 1–2 (2013).

[125] Godsoe, *Just Intervention, supra* note 120, at 85 (quoting an Ohio parent).

[126] *Id.* at 86 (quoting a caseworker who was interviewed in a Nevada study, GARY L. SIEGEL ET AL., INST. OF APPLIED RSCH., DIFFERENTIAL RESPONSE IN NEVADA: FINAL EVALUATION REPORT (2010)).

[127] *See, e.g.*, NYS CPS MANUAL ch. 5, *supra* note 123, at A-2. Guidance also specifies that "solutions are different than services and more than referrals." *Id.* at D-6.

[128] Godsoe, *Just Intervention, supra* note 120, at 79.

[129] For instance, New York state allows this track for all neglect cases, other than severe neglect, but most localities use it only for a narrow category of the least serious cases, such as educational neglect. *See* NYS CPS MANUAL ch. 5, *supra* note 123, at B-1–B-3 (setting forth restrictions on the eligibility for differential response).

[130] The most comprehensive study found DR to be successful on all fronts. JOHN D. FLUKE ET AL., OFF. OF THE ASSISTANT SEC'Y FOR PLAN. & EVALUATION, U.S. DEP'T OF HEALTH & HUM. SERVS., DIFFERENTIAL RESPONSE AND THE SAFETY OF CHILDREN REPORTED TO CHILD PROTECTIVE SERVICES: A TALE OF SIX STATES (2016), https://aspe.hhs.gov/system/files/pdf/204981/DifferentialResponse.pdf [https://perma.cc/L28E-SWQS] [hereinafter DIFFERENTIAL RESPONSE REPORT] (using data from the National Child Abuse and Neglect Data System (NCANDS) for six states using DR from 2004 to 2013). *See also* Godsoe, *Just Intervention, supra* note 120, at 82 (also reporting increased caseworker satisfaction in DR programs).

[131] *See, e.g.*, L. Anthony Loman & Gary L. Siegel, *Effects of Approach and Services Under Differential Response on Long Term Child Safety and Welfare,* 39 CHILD ABUSE & NEGLECT 86, 91–96 (2015) (discussing empirical findings on the "shift[ ] toward material services to more families" and "changes in approach" in services, from a study on the implementation of DR program reforms in ten Ohio counties).

[132] *See* Godsoe, *Just Intervention, supra* note 120, at 82, 85–87 (findings from numerous state-level studies).

indicate slightly higher re-referral rates for DR families.[133] Like the use of arrests to measure recidivism rates, the metric of re-reporting itself is flawed in measuring risk of maltreatment.[134]

More significantly, opposition to DR is usually driven not by data but by political opposition to change. Given their empirical success and cost-effectiveness, one would think that DR programs would be expanding. This is unfortunately not the case. The pathological politics of the family policing system have instead led to doubling-down on the ineffective and harmful status quo. Indeed, states are using DR less frequently than they were even a few years ago. To cite just two examples, Minnesota, the state that had most widely and effectively used DR, rolled back its program considerably, and a New York county discontinued its program altogether.[135] As in other locations, these programs were shrunk or stopped altogether after high-profile and very unusual child fatalities, with tenuous if any connection to DR, as well as political pressure to reserve all the funding for the traditional family policing system.[136]

In criminal law, this focus on extreme outlier examples is termed the "Willie Horton" effect, because an entire successful furlough program was upended (and likely a Presidential election lost) because one of the thousands of participants committed a violent crime post-release. Government officials used that tragic event to overlook the evidence that the hundreds of other participants in the program were very successful.[137] Family policing agencies are likely even more publicity-shy and skewed towards the risk of wrongful separation.[138] Revealing their vested interest in keeping the machine of family policing running, some researchers and agencies switched the baseline to argue that differential response had to be proven much more effective than the current system in order to justify

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[133] *See* DIFFERENTIAL RESPONSE REPORT, *supra* note 130, at 5–8 (presenting data on re-report rates across DR utilization in six states, and finding no association with increased risk of re-reporting).

[134] *See id*. at 5 (explaining that child safety is "difficult to capture" and cautioning that "interpretation of re-reporting is confounded by many systemic factors"); *cf.* Anna Roberts, *Arrests as Guilt*, 70 ALA. L. REV. 987, 1000–07 (2019) (problematizing the use of "rearrest as a proxy for recidivism" and the underlying use of arrest as "equivalent to guilt").

[135] Mark Hudson, *Minnesota's Experience with Differential Response*, 28 APSAC ADVISOR 15, 15–16 (2016); David Thompson, *Putting Differential Response Into Perspective*, THE IMPRINT (Nov. 2, 2014, 7:43 PM), https://imprintnews.org/child-welfare-2/putting-differential-response-into-perspective/8453 [https://perma.cc/3MFJ-UPQ9]; *Monroe County Ends Use of Alternative Child Protective Services Program*, WHAM (June 21, 2018), https://13wham.com/news/local/monroe-county-ends-use-of-child-protective-services-program [https://perma.cc/52E7-VMSZ].

[136] *Monroe County Ends Use of Alternative Child Protective Services Program*, *supra* note 135; *see also* Elizabeth Bartholet, *Differential Response: A Dangerous Experiment in Child Welfare*, 42 FLA. STATE U. L. REV. 573, 598 (2015) (critiquing DR for taking funding from regular track and listing nine states that recently limited or eliminated DR on the basis of funding tradeoffs or in response to a high-profile child fatality only tangentially linked to DR).

[137] John Pfaff, *The Never-Ending 'Willie Horton Effect' Is Keeping Prisons Too Full for America's Good*, L.A. TIMES (May 14, 2017), https://web.archive.org/web/20220601173015/https://www.latimes.com/opinion/op-ed/la-oe-pfaff-why-prison-reform-isnt-working-20170514-story.html (discussing the "Willie Horton" effect). https://web.archive.org/web/20220601173015/https://www.latimes.com/opinion/op-ed/la-oe-pfaff-why-prison-reform-isnt-working-20170514-story.html

[138] Godsoe, *Abolitionist Horizon for Child Welfare*, *supra* note 5.

using it even for some small number of cases.[139] This argument, however ignores the elephant in the room: there is no evidence that the current system keeps kids safe. In fact, the trauma of family investigation and separation, and the terrible outcomes from foster care, show that the system is harming children, families, and entire communities.[140]

When DR is used, it is inevitably set up for failure, since it is severely underfunded and implemented as an arm of the punitive family regulation system, rather than an independent path for families. First, the entry point is almost always a report of maltreatment.[141] Second, participation is usually not fully voluntary, but rather court-mandated and/or overseen by family policing system personnel.[142] This can be net-widening, particularly in states where families who do not qualify for general system involvement are included in DR. Third, many states provide no services, only referrals, or limit services to a very short-term period of two to three months, although the challenges and poverty facing these families are not solvable in sixty days.[143] Finally, the history and culture of family policing agencies do not seem to allow for a truly alternative track. The dual-mission agency problem is well-documented in administrative law literature.[144] Differential response can only succeed if it is administered through community-based organizations, separate from the family policing system. No state has done this.[145]

3. The Fundamental Shortcomings of Reformist Reforms

In abolitionist theory, all reforms must be assessed against the horizon of dismantling the carceral state (transformative or abolitionist reforms), rather than inadvertently empowering it (reformist reforms). As Mariame Kaba explains in the context of policing, "[T]he only way that we will address oppressive policing is to abolish the police. Therefore, all of the 'reforms' that focus on strengthening the police or 'morphing' policing into

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[139] *See, e.g.*, Bartholet, *supra* note 136, at 628 (comparing re-report rates to denounce alternative response); Thompson, *supra* note 135, at 22 (comparing re-report rates to conclude that DR implementation "did not result in better child safety outcomes"); Ronald C. Hughes et al., *Issues in Differential Response*, 23 RSCH. ON SOC. WORK PRAC. 493, 502 (2013) (critiquing multiple studies on DR, and arguing that even "lower observed recurrence rates in [alternative response] families may not be a meaningful measure of the effectiveness of the AR program in ensuring children's safety").

[140] Critics also pointed out methodological characteristics of the DR research that are essentially true of all social work research. *See* Alberta J. Ellett, *Timely and Needed Perspectives on Differential Response in Child Protective Services,* 23 RSCH. ON SOC. WORK PRAC. 521, 522 (2013) (making this point against DR critics).

[141] Godsoe*, Just Intervention*, *supra* note 120, at 88.

[142] *See, e.g.*, Hudson, *supra* note 135, at 16 (noting that both tracks—alternative and traditional—are involuntary child protection responses); NYS CPS MANUAL ch. 5, *supra* note 123, at G-1 (advising caseworkers faced with "uncooperative" families after just one week, with no full assessment, to make a new report of maltreatment on the traditional track).

[143] *See, e.g.*, NYS CPS MANUAL ch. 5, *supra* note 123, at D-7 (advising workers who believe the family has ongoing needs at the end of the case to give the family "information regarding available services in their community"); *see also* Bartholet, *supra* note 136 (describing the financial stipends provided by DR programs as "pathetically limited"); Hudson, *supra* note 135, at 16 (noting that most children and families in the Minnesota DR track were offered no services).

[144] Godsoe, *Just Intervention, supra* note 120, at 88–92.

[145] *Id.*

something more invisible but still as deadly should be opposed."[146] These include measures to increase police budgets to monitor police malfeasance and develop diversion programs that are ultimately controlled by law enforcement. In contrast, abolitionist steps reduce the funding and scope of policing by, for instance, capping overtime pay, refusing to re-hire police involved in excessive force, and, most of all, using police funding for other social goods such as housing and education.[147]

Reformist reforms, as Ruth Wilson Gilmore famously termed them, can be worse than no change because they entrench and further legitimate the existing system under new cover.[148] By obscuring the true nature of fundamentally unjust and flawed institutions—be it the police, the family policing system, or the neo-liberal capitalist state—reformist reforms help to reinvent and perpetuate these institutions and the concomitant hierarchies of race and class.[149] In contrast to reformist reforms, truly transformative changes modify power relations and yield greater self-determination for marginalized communities.[150] Thus, they are developed bottom-up, rather than formulated by elites, and they directly involve struggle—just like mutual aid.

Both preventive services and differential response, in their current iterations, are reformist reforms that further entrench the system as the primary state intervention to "protect" children. They likely net-widen to include more families. More broadly, they legitimate the system by dividing families into "worthy" and "unworthy" ones, obscuring the structural causes of family poverty and other struggles, and further perpetuating the false narrative of individual wrongdoing. Drawing on concerns about police reforms, we conclude that slight improvements to the family policing system may similarly "smooth out the wheels of injustice" and render less visible the inherent brute force of the institution, thus prolonging its existence.[151]

C. Invest in Community-Led Mutual Aid

A mutual aid model has great potential to successfully support families. Although research on the model in a family policing system is limited, the research there is supports this view. One study, out of Canada, found that the parents in a mutual aid group "showed positive gains over

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[146] Mariame Kaba, *Police "Reforms" You Should Always Oppose*, TRUTHOUT (Dec. 7, 2014), https://truthout.org/articles/police-reforms-you-should-always-oppose/ [https://perma.cc/JN2B-HPRL].

[147] *Reformist Reforms vs. Abolitionist Steps in Policing*, CRITICAL RESISTANCE, https://criticalresistance.org/wp-content/uploads/2018/06/CR_NoCops_abolitionistreforms.pdf [https://perma.cc/Q8YP-CEVH].

[148] GILMORE, *supra* note 10, at 23, 242.

[149] Rachel Herzing, *Let's Reduce, Not Reform*, *Policing in America*, OPEN SOC'Y FOUND. (Oct. 6, 2016), https://www.opensocietyfoundations.org/voices/let-s-reduce-not-reform-policing-america [https://perma.cc/SRM8-U9T8] (describing the hierarchical relations enforced through policing).

[150] *See* Amna A. Akbar, *Demands for A Democratic Political Economy*, 134 HARV. L. REV. F. 90, 97–98 (2020) (introducing "non-reformist reform" as a heuristic for grassroots social movements' "bottom-up project" of democratic transformation and self-determination).

[151] Raj Jayadev & Pilar Weiss, *Organizing Towards A New Vision of Community Justice,* L. & POL. ECON. BLOG (May 9, 2019), https://lpeproject.org/blog/organizing-towards-a-new-vision-of-community-justice/ [https://perma.cc/63VV-J3RX].

the evaluation time period that were not apparent for the comparison group members receiving regular child welfare services."[152] The evidence from DR, as well as research on violence prevention and community health more broadly, further support the conclusion that unstigmatized universal support, particularly economic support, for communities would increase child wellbeing and family stability far more than the current system does.[153] On this point, sociologist Patrick Sharkey's research demonstrates that building up community resources and social infrastructure, such as local non-profits, can address even violent crime "at least as effective[ly] as the police" and with far fewer costs.[154] Accordingly, he calls for "investments in a different set of institutions [than law enforcement and the criminal system] driven by residents and local organizations that can play a central role in creating safe streets and strong communities."[155] Relatedly, Vivek Sankaran, who represents parents in Michigan, describes the false narrative "that CPS has the tools to support families in crisis" and calls for agencies to "reimagine" how they serve families by providing, for instance, rental aid and food.[156] Given the strong correlation between family struggles and a lack of resources, a mutual aid model that increases community infrastructure without stigma or surveillance would likely bring very beneficial results.

Beyond the research, we know from families themselves that material aid and resources are what they most need, and that they and their communities know best how to safely care for their children.[157] It not only provides essential material services, but also brings about destigmatized, bottom-up change that gives agency to the families most impacted by the system. Mutual aid does this by "practic[ing] non-hierarchy, positioning recipients as *members* of the project—with a goal of

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[152] Gary Cameron & Shelly Birnie-Lefcovitch, *Parent Mutual Aid Organizations in Child Welfare Demonstration Project: A Report of Outcomes*, 22 CHILD. & YOUTH SERVS. REV. 421, 421–22 (2000).

[153] *See, e.g.*, Godsoe, *Place of the Prosecutor*, *supra* note 108 (summarizing research on violence prevention).

[154] *See* Roge Karma, *How Cities Can Tackle Violent Crime Without Relying on Police*, VOX (Aug. 7, 2020), https://www.vox.com/21351442/patrick-sharkey-uneasy-peace-abolish-defund-the-police-violence-cities [https://perma.cc/6LF7-Y8JV] (in conversation with Sharkey, who references violence reduction outcomes gleaned from his own study on the expansion of the nonprofit sector, and from other studies on programs focused on transitional employment and public space).

[155] *Id.*

[156] Vivek Sankaran, *Redesigning Child Welfare Agencies to Address the Concrete Needs of Families*, RETHINKING FOSTER CARE (Sept. 23, 2020), http://rethinkingfostercare.blogspot.com/2020/09/redesigning-child-welfare-agencies-to.html [https://perma.cc/FKY9-3KCR]. Sankaran has also observed, for example, that a Michigan state program that provided civil legal services to families to prevent CPS involvement was very successful until defunded. E-mail from Vivek S. Sankaran, Clinical Professor of Law, Univ. of Mich. Law Sch., to co-author (Feb. 12, 2021) (on file with authors).

[157] *See supra* notes 39–40, 93, 102, 105 and accompanying text; Rise & Takeroot Just., *An Unavoidable System*, *supra* note 39, at 6. *See also* Ashley Albert et al., *Ending the Family Death Penalty and Building A World We Deserve*, 11 COLUM. J. RACE & L. 861, 869 (2021) ("We demand a world where the integrity of all families is valued and family ancestry is held sacred. In this world, families are supported and given the resources they need to thrive, and the family death penalty, or termination of parental rights, no longer exists."); Wald, *supra* note 12, at 16 (noting that agencies do not provide the treatment programs, housing, or economic aid "needed by most families").

self-determination."[158] In the context of abolishing the family policing system, mutual aid reduces forced reliance on punitive state institutions by providing families and communities with autonomy. As the upEND and parent-led movements tell us, "safety and protection of children [rest] with families and communities *first*."[159] Instead of stigma, surveillance, and removal, parents should be lifted up; we should recognize their expertise and engage together in work as "community guardians."[160] The egalitarian and grassroots mutual aid framework decenters professionals, such as social workers and lawyers. Rather, it builds on the collective expertise and reciprocal aid of people in our communities.[161]

One local program illustrates the promising potential of building on community expertise and local harm prevention infrastructure. The Bay Area Transformative Justice Collective addresses more serious physical and sexual abuse, rather than the much more widespread and poverty-related neglect.[162] The organizing model centers on families' chosen "pods" of support, correctly positing that many survivors, particularly in marginalized communities, "turn to their intimate networks before . . . state or social services."[163] Empowering these pods to build prevention infrastructures aids both in individual cases and systemic change.

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[158] Tammy Gan, *Mutual Aid: Non-Hierarchy in Practice*, BAD ACTIVIST COLLECTIVE, https://www.badactivistcollective.com/the-bad-book/mutual-aid-non-hierarchy [https://perma.cc/M6X2-TLNF].

[159] The upEND movement seeks to end the "child welfare system" and reimagine a new, anti-racist means of helping children, families, and communities thrive by redirecting resources to the communities themselves. Alan J. Dettlaff et. al., *It is Not a Broken System, It is a System that Needs to be Broken: The UPEND Movement to Abolish the Child Welfare System*, 14 J. PUB. CHILD WELFARE 500, 508–11 (2020).

[160] *See* NORRIS, *supra* note 97, at 95 (positing community involvement in public safety as a remedy to the current "too narrow view of how community members can engage . . . and too broad a view of the role [state punitive authorities] should play").

[161] The participatory defense movement provides an analogous example of recognizing on-the-ground community expertise instead of relying on professionals. *See* Godsoe, *Participatory Defense*, *supra* note 95, at 719–20 (introducing participatory defense as a "grass-roots movement"); Jocelyn Simonson, Essay, *The Place of "The People" in Criminal Procedure*, 119 COLUM. L. REV. 249, 266–70 (2019) (explicating participatory defense, whereby "community groups join together with families, friends, neighbors, and allies of defendants" to build a defendant's criminal case, as an example of "bottom-up agonistic participation" that decenters legal expertise). Broader community self-defense movements do so as well, by embodying the concept that "we keep us safe," i.e. that true public safety comes from support systems for families and communities, who can also work together against violence and other harms through restorative justice and investments in resources like healthcare and housing, education and living-wage jobs, rather than top-down carceral interventions. Mariame Kaba, *Free Us All: Participatory Defense Campaigns as Abolitionist Organizing*, NEW INQUIRY (May 8, 2017), https://thenewinquiry.com/free-us-all/ [https://perma.cc/263A-S63W] (describing local and mass self-defense campaigns in relation to abolition).

[162] *See* Jacobs et al., *supra* note 108, at 48–49 (detailing the Bay Area Transformative Justice Collective's commitment to "restorative justice interventions to child sexual abuse and other related forms of interpersonal violence").

[163] *Id*. at 48. Pods, or localized support groups, are a key mutual aid component. *See* MUTUAL AID DISASTER RELIEF, MUTUAL AID 101: #WEGOTOURBLOCK, https://mutualaiddisasterrelief.org/wp-content/uploads/2020/04/NO-LOGOS-Mutual-Aid-101_-Toolkit.pdf [https://perma.cc/H4MF-MDBU] [hereinafter MUTUAL AID TOOLKIT] (presenting a toolkit that includes steps for building a neighborhood pod).

D. The Challenges of the Mutual Aid Model

There are several challenges to implementing a mutual aid framework in the family regulation context, both practical and political. One challenge lies in scaling up existing mutual aid models and, in particular, working in (arms-length?) collaboration with state programs. The mutual aid model is inherently local, but community-based mutual aid needs funding to expand.[164] To remain local and to not be overwhelmed, it should be accompanied by a government social safety net that is truly "child protective." Both an adequately-funded social safety net and a robust community-led mutual aid network are key components of family health and safety. In the United States, however, the social safety net has always been underfunded.

The extent to which to collaborate with governments at any stage is a difficult question for all abolitionist organizing. This is especially so for a mutual aid model of organizing which has been theorized as outside or even anti-government. Tellingly, even those politicians advocating for mutual aid, such as progressive U.S. Representative Alexandria Ocasio-Cortez, discuss a fully volunteer program, necessitated by ongoing government failure.[165] There have, however, been some initiatives that could be broadly conceptualized as mutual aid with government support, both in the further and more recent past. For instance, working-class Black women in the South collaborated with the federal government agency Child Development Group of Mississippi (CDGM) to found the child care and parental support program that became Head Start in the 1960s.[166] Rather than letting it be stigmatized as a state "handout," the women were actively engaged in mobilizing their community around this new program.[167] Some were also employed as child care workers and teachers, harnessing their community expertise and increasing their financial stability.[168]

However, these programs are rare, in part because they are at constant risk of being defunded or co-opted. Head Start was defunded due to backlash by state and local segregationists.[169] Co-optation is perhaps a

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[164] SPADE, MUTUAL AID: BUILDING SOLIDARITY, *supra* note 54, at 32–34 (discussing the meaning of "scaling up" mutual aid). Analogously, as Michael Wald points out, scaling up successful family-support programs is always a challenge due to their contextual and intensive character. Wald, *supra* note 12, at 23.

[165] MUTUAL AID TOOLKIT, *supra* note 163, at 1 (referring to a public discussion between Representative Alexandria Ocasio-Cortez and organizer Mariame Kaba, calling for "community building and resource sharing" in a mutual aid response to the COVID pandemic); *see also* Jia Tolentino, *What Mutual Aid Can Do During a Pandemic*, NEW YORKER (May 11, 2020), https://www.newyorker.com/magazine/2020/05/18/what-mutual-aid-can-do-during-a-pandemic [https://perma.cc/RL59-6XBQ] (quoting Representative Alexandria Ocasio-Cortez in stating that mutual aid would not wait for "Congress to pass a bill, or the President to do something").

[166] *See* CRYSTAL R. SANDERS, A CHANCE FOR CHANGE: HEAD START AND MISSISSIPPI'S BLACK FREEDOM STRUGGLE 3–10 (Waldo E. Martin Jr. & Patricia Sullivan, eds., 2016) (introducing the dynamics of local working class Black Mississippian women's involvement in "the CDGM 'communigarten' program").

[167] *Id.*

[168] *Id.*

[169] *Id.* at 152–62 (delineating the segregationist opposition, defunding, and replacement of Head Start); *Remembering Head Start History: Mississippi, 1966*, NAT'L HEAD START ASS'N (Feb. 8, 2021), https://natlheadstart.medium.com/remembering-head-start-history-mississippi-1966-e71dc62b552e [https://perma.cc/SFX2-83EY] (noting that

more significant risk. This is what happened to the Black Panther's breakfast clubs. They were co-opted by the Department of Agriculture through its School Breakfast program, which continues today.[170] This is not a wholly negative development, as more children are fed,[171] but the government program comes with significant strings attached. It is usually administered in schools, includes the participation of mandated reporters, and carries stigma as a handout.[172] Moreover, it does not come with the organizing and solidarity that are key to a mutual aid framework.[173] The government has made sure to thwart any efforts at community building and mobilization from the inception of the government-run version of the program.[174]

The big question is: will there ever be government-provided material support for families without punitive surveillance and stigma? Political history says no. Nevertheless, we are now at an extraordinary inflection moment. The pandemic has brought unprecedented recognitions of racist state violence and social inequality. This has increased public backing of state support for families, including—for the first time ever in American history—a universal child allowance.[175]

Although mutual aid has helped those whom the state leaves out or punishes, it should not be on communities alone to support their children. Accordingly, we propose divesting state funds from the family regulation-to-foster care apparatus, and investing instead in marginalized communities' infrastructure and health. As the #DefundPolice movement puts it: "Fully invest in care, not cops [including] allocat[ing] city funding toward healthcare . . . neighborhood-based trauma centers, non-coercive

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Head Start "challenged the status quo, disrupted the white power structures that were in place, and the political pressure to defund it mounted").

[170] Blakemore, *supra* note 72; Potorti, *supra* note 74, at 90, 108.

[171] Blakemore, *supra* note 72; *see also* SPADE, MUTUAL AID: BUILDING SOLIDARITY, *supra* note 54, at 13–14, 29–31 (suggesting that the Department of Agriculture's free breakfast program, as a co-optation and expansion of the Black Panther Party program, could also be seen as a "concession [that] might also provide support to many more people than mutual aid groups can reach").

[172] *See, e.g.*, Bettina Elias Siegel, *Shaming Children so Parents Will Pay the School Lunch Bill*, N.Y. Times (Apr. 30, 2017), https://www.nytimes.com/2017/04/30/well/family/lunch-shaming-children-parents-school-bills.html [https://perma.cc/8BD5-K92X] (citing the Department of Agriculture's finding that almost half of all school districts withheld food from children, shaming them and their families over "unpaid bill[s]"); Potorti, *supra* note 74, at 90–91 (detailing problems with the various federal food aid programs administered by the government in the 1960s).

[173] SPADE, MUTUAL AID: BUILDING SOLIDARITY, *supra* note 54, at 31–34 (contrasting locally run mutual aid frameworks with governmental initiatives that "centraliz[e] and standardiz[e]").

[174] *See, e.g.*, Potorti, *supra* note 74, at 90–91, 98–99 (examining the federal government's endeavors to suppress the Black Panthers' breakfast program, at the same time that the Department of Agriculture was piloting its own limited food programs).

[175] Steve Dean & Cynthia Godsoe, *It's Time for an Antiracist Welfare Policy*, IMPRINT (Mar. 15, 2021), https://imprintnews.org/child-welfare-2/time-for-an-antiracist-welfare-policy-america/52691 [https://perma.cc/XT2F-FCZG]. At the same time, it was not renewed for a second year, in the one-step forward, two-steps back, or two-steps forward, one-step back, path to change that is so central to the American approach to societal problems. Deepa Shivaram, *Families Are in Distress After the First Month Without the Expanded Child Tax Credit't*, NPR (Jan. 21, 2022), https://www.npr.org/2022/01/21/1074413273/end-expanded-child-tax-credit-families-effects [https://perma.cc/7LMX-6RMG].

drug and alcohol treatment . . . teachers and counselors, universal childcare[.]"[176] Similarly, diverting billions of dollars from foster care and family court into food, housing, and cash grants would do far more to keep children safe and healthy, while saving families from the trauma of the current system. Investments should be made in a social safety net and, most importantly, grassroots community-based organizations. The structural investment that states can provide is as important as the mutual aid that people build, in enhancing community dignity and self-governance. This combination is essential so that "those most impacted [can] control . . . the laws, the institutions, and policies that are meant to serve [the people]."[177]

IV. CONCLUSION

We strive to use this time, of both heightened awareness of and creative struggle against the over-policing of families of color, to propose a mutual aid model that truly empowers and supports families within a reimagined system of state interaction. As abolitionist leader Mariame Kaba points out, such a "change in society won't happen immediately, but the protests show that many people are ready to embrace a different vision of safety and justice."[178] America must radically reimagine child welfare under this vision of safety and justice for families. Working towards abolition, the proposed mutual aid model moves away from the current system's appetite for stigmatization and extreme social control of families of color. This model divests from family policing and foster care and invests in community-led mutual aid. It calls for providing public funds directly to families for basic necessities and asking families what they truly need, rather than surveilling families through costly and harmful means.

The history of mutual aid and the recent resurgence of mutual aid efforts in times of crisis, including the global health pandemic, demonstrate the power of providing such support to families without the stigma. Collaborating with the government for funding and assistance presents challenges and concerns for abolitionists, but this paper seeks to show the promise of such efforts until abolition. While we strive to eventually abolish the system, it is crucial to remember that it is a process. Some work with state agencies may be a short-term step, but we accept that work while always keeping an abolitionist horizon in view. Most importantly, "abolition is not about simply ending the family policing system, nor is it about ignoring child safety; it is about creating the conditions in society

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[176] 8 TO ABOLITION, ABOLITIONIST POLICY CHANGES TO DEMAND FROM YOUR CITY OFFICIALS 4 (2021), https://static1.squarespace.com/static/5edbf321b6026b073fef97d4/t/5ee0817c955eaa484011b8fe/1591771519433/8toAbolition_V2.pdf [https://perma.cc/6EWH-XWP5].

[177] *Community Control*, MOVEMENT FOR BLACK LIVES (Feb. 21, 2021), https://m4bl.org/policy-platforms/community-control/ [https://perma.cc/AW89-5QXY].

[178] Mariame Kaba, *Yes, We Mean Literally Abolish the Police: Because Reform Won't Happen*, N.Y. TIMES (June 12, 2020), https://www.nytimes.com/2020/06/12/opinion/sunday/floyd-abolish-defund-police.html [https://perma.cc/ZF6A-WTQS].

where the need for family policing is obsolete."[179] It is this radical cultural shift that government-supported mutual aid efforts will help encourage.[180]

[179] ALAN DETTLAFF ET AL., HOW WE ENDUP A FUTURE WITHOUT FAMILY POLICING 5 (2021), http://upendmovement.org/wp-content/uploads/2021/06/How-We-endUP-6.18.21.pdf [https://perma.cc/E4NQ-HCPZ].

[180] *Id.*