

COLUMBIA JOURNAL OF RACE AND LAW

VOL. 12

JULY 2022

NO. 1

REPLACING CPS: ISSUES IN BUIDLING AN ALTERNATIVE SYSTEM

Michael S. Wald*

I. Introduction.....	713
II. Parenting and Child Welfare	716
A. The Need for CPS: Protecting a Child’s Current Physical and Mental Safety.....	717
B. Protecting and Promoting the Child’s Basic Physical, Social-Emotional, and Academic Development.	718
III. Current Efforts to Reduce the Reach of CPS.....	721
A. Differential Response.....	721
B. Voluntary Prevention and Treatment Programs	722
IV. Towards a New System.....	723
A. Families with Newborns and Young Children	723
B. Older Children	725
V. Moving Forward.....	727
A. Resources	728
B. Service Coordination.....	729
C. Quality Control: Multiple Models v. Limited Number of Evidence-Based Programs	730
D. Capable Personnel	731
VI. Community Control.....	732
VII. Conclusion.....	733

* Jackson Eli Reynolds Professor of Law Stanford Law School. I wish to thank Rhiannon Bronstein for her outstanding research assistance.

I. INTRODUCTION

In the United States, child rearing has always largely been considered the right and province of parents. Given this value preference, government agencies theoretically have a very limited legal role in regulating and monitoring child rearing; there is no formal government oversight of parenting unless a parent's behavior falls below a standard that is considered abuse or neglect (maltreatment).¹

Yet, over the past fifty years, the reach of the child protection system ("CPS") has expanded enormously.² Beginning in the late 1960s, prompted by the identification of "battered child syndrome,"³ all states established mandatory child abuse reporting laws, which focused on situations involving physical harm to children.⁴ In the early 1970s, child protection agencies investigated several hundred thousand reports of maltreatment each year.⁵ Overtime, reporting laws were continually expanded to cover more and more situations, "with the 'discovery' of sexual abuse in the late 1970s, the impact of the 'crack epidemic' in the late 1980s, . . . a new focus on domestic violence and educational neglect in the 1990s," and the "opioid crisis" in the 2000s.⁶

Today the level of CPS involvement with families has reached staggering proportions. CPS agencies investigate more than 2.5 million families with over 3.5 million children each year, over seven percent of all families with children.⁷ More than one-third of all children have been investigated by CPS at least once by age eighteen;⁸ one in eight have a confirmed case.⁹ As Dorothy Roberts was among the first to recognize, the

¹ Some forms of deference to parents may be Constitutionally protected. See Frank Vandervoort, *The Law and Policy of Maltreatment*, in HANDBOOK OF INTERPERSONAL VIOLENCE AND ABUSE ACROSS THE LIFESPAN, 1, 4–6 (Robert Geffner et al. eds., 2020).

² Child protection systems are the creation of states and basically subject to state laws. However, there are numerous federal laws that offer funding to states to use for CPS activities provided that the states adopt policies enumerated by federal law; thus, federal laws have a significant impact on state policies. The issues discussed herein need to be addressed at both the federal and state levels. See Michael S. Wald, *New Directions for Foster Care Reform*, 68 JUV. & FAM. CT. J. 7, 10 fig.1 & n.9 (2017) [hereinafter Wald, *New Directions*] (summarizing federal legislation).

³ C. Henry Kempe et al., *The Battered Child Syndrome*, 181 J. AM. MED. ASSOC. 17 (1962) (defining battered child syndrome, a condition affecting children who have faced serious physical abuse).

⁴ Leonard Brown III & Kevin Gallagher, *Mandatory Reporting of Abuse: A Historical Perspective on the Evolution of States' Current Mandatory Reporting Laws with a Review of the Laws in the Commonwealth of Pennsylvania*, 59 VILL. L. REV. 37, 41–42 (2014).

⁵ JANE WALDFOGEL, *THE FUTURE OF CHILD PROTECTION* 7 (1998).

⁶ Michael S. Wald, *Taking the Wrong Message: The Legacy of the Identification of the Battered Child Syndrome*, in C. HENRY KEMPE: A 50 YEAR LEGACY TO THE FIELD OF CHILD ABUSE AND NEGLECT 89, 92 (Richard Krugman & Jill Korbin eds., 2013) (citations omitted).

⁷ These numbers are drawn from CHILD. BUREAU, U.S. DEP'T OF HEALTH & HUM. SERVS., *CHILD MALTREATMENT 2018*, at xiii ex. S–2 (2020) [hereinafter CHILD MALTREATMENT].

⁸ Hyunil Kim et al., *Lifetime Prevalence of Investigating Child Maltreatment Among US Children*, 107 AM. J. PUB. HEALTH 274, 278 (2017) [hereinafter Kim et al., *Lifetime Prevalence*].

⁹ Hyunil Kim & Brett Drake, *Cumulative Prevalence of Onset and Recurrence of Child Maltreatment Reports*, 58 J. AM. ACAD. CHILD & ADOLESCENT PSYCHIATRY 1175, 1175 (2019) [hereinafter Kim & Drake, *Cumulative Prevalence*].

risks of being reported and investigated are substantially higher for African American children: over half of African American children are reported to CPS at some point in their childhood, and one in five have a confirmed maltreatment case at some point before their eighteenth birthday.¹⁰

This expansion has occurred despite the fact that the great majority of reports, even when they lead to investigations, do not lead to a substantiated finding of abuse or neglect or to active involvement by CPS with the family.¹¹ Moreover, there is substantial evidence that CPS throughout the country often performs very poorly when intervening with families.¹² Child development experts recognize that coercive state intervention, especially if it involves removal of a child from their family, is often harmful to the child, as well as the parents.¹³ Over the past fifty years, there have been continuous efforts to improve federal and state policies related to state interventions to protect children and to the performance of CPS (including efforts to reduce the scope of CPS).¹⁴ More than twenty major pieces of federal legislation designed to improve various aspects of child protection systems have been passed.¹⁵ Yet, there is consensus that CPS throughout the country continue to function very poorly in a number of major respects.¹⁶

¹⁰ Kim et al., *Lifetime Prevalence*, *supra* note 8, at 278; *see also* Kim & Drake, *Cumulative Prevalence*, *supra* note 9, at 1178; DOROTHY ROBERTS, *SHATTERED BONDS: THE COLOR OF CHILD WELFARE* (2001) [hereinafter ROBERTS, *SHATTERED BONDS*] (describing the overrepresentation of black children and families in the child welfare system). The increase in neglect reports is especially puzzling given the large declines in juvenile delinquency, births to teens, and the large increase in high school graduation rates over the past twenty years, all of which would seem to indicate that parenting has improved, not gotten worse. *See* Charles Puzzanchera, *The Decline in Arrests of Juveniles Continued Through 2019*, OFF. OF JUV. JUST. & DELINQ. PREVENTION (2020).

¹¹ CHILD MALTREATMENT, *supra* note 7, at 6–8. *See also* Elizabeth Bartholet, *Creating a Child-Friendly Child Welfare System: Effective Early Intervention to Prevent Maltreatment and Protect Victimized Children*, 60 *BUFF. L. REV.* 1321 (2012) (calling for better research on how and why children are screened out or kept at home despite reports of maltreatment).

¹² There is a vast literature detailing these failures, many of which are discussed in the articles in this volume.

¹³ ROBERTS, *SHATTERED BONDS*, *supra* note 10, at 91; Michael S. Wald, *State Intervention on Behalf of Neglected Children: A Search for Realistic Standards*, 27 *STAN. L. REV.* 985, 993–99 (1975) [hereinafter Wald, *State Intervention*].

¹⁴ *See, e.g.*, INST. OF JUD. ADMIN. & A.B.A., *JUVENILE JUSTICE STANDARDS PROJECT – STANDARDS RELATING TO ABUSE AND NEGLECT – TENTATIVE DRAFT* (1977) (proposing a significant narrowing of the jurisdiction of CPS and juvenile courts). The proposed standards were never adopted by the ABA because of opposition from juvenile court judges, who favored broad discretion for intervention. *See* INST. OF JUD. ADMIN. & A.B.A., *JUVENILE JUSTICE STANDARDS PROJECT – STANDARDS RELATING TO ABUSE AND NEGLECT 2*, 9–13 (1981) (describing the desire for discretionary intervention and listing the revisions made to the 1977 tentative draft).

¹⁵ *See* Wald, *New Directions*, *supra* note 2, at 10 fig.1.

¹⁶ This consensus includes leaders in every discipline related to child welfare and among practitioners as well as academics. I will not review here the many problems, which are detailed in the Introduction and many of the articles in this Symposium. *See also* Tom Morton, *The Pernicious Failure of Child Welfare Reform*, *IMPRINT* (Nov. 21, 2017, 5:00 AM), <https://imprintnews.org/child-welfare-2/pernicious-failure-child-welfare-reform/28708> [perma.cc/9XM3-Z7AN] (arguing that “[c]hild welfare agencies as currently designed are predestined to fail”).

Spurred in part by the writings and activities of Dorothy Roberts, the United States appears ready for major child welfare reform. Calls for change have come from a wide range of commentators, including many current and former child welfare agency leaders.¹⁷ Many focus on reforming CPS, with a particular focus on reducing the use of foster care.¹⁸ Other commentators, including many in this symposium, believe that CPS needs to be abolished entirely and replaced by a system of supportive services designed and controlled by local communities.¹⁹ On the other hand, there are some commentators who would expand the reach of CPS.²⁰

Building on more than fifty years of work on reforming CPS, this Piece proposes that a new approach should be developed to help parents and protect children in the great majority of situations now referred to CPS. While some level of coercive intervention, including placement in foster care, will remain necessary in some situations, the reach of the current system can and should be reduced by fifty to eighty percent immediately without jeopardizing the safety of these children.²¹ Most of these families, however, do need some state outreach and support. Reducing the role of CPS should not reduce efforts to help parents who are unable to promote for the basic emotional and social development of their children. As Dorothy Roberts recognizes, abolishing or greatly reducing the reach of CPS is not an end in and of itself; the end goals of government policies and programs should be creating conditions that will enable all children to have safe and supportive childhoods and to acquire the skills needed for basic emotional, social, and academic skills.²²

This Piece proposes an alternative approach for addressing the needs of parents and protecting the safety and development of children in

¹⁷ See, e.g., Thomas Morton & Jess McDonald, *America Must Change its View of Poverty and Neglect*, IMPRINT (Feb. 15, 2021, 7:00 PM), <https://imprintnews.org/child-welfare-2/america-must-change-its-view-of-poverty-and-neglect/51659> [perma.cc/QB4A-85JS] (advocating for child welfare reform that distinguishes between poverty and neglect); Jerry Milner & David Kelly, *It's Time to Stop Confusing Poverty with Neglect*, IMPRINT (Jan. 17, 2020, 5:12 AM), <https://imprintnews.org/child-welfare-2/time-for-child-welfare-system-to-stop-confusing-poverty-with-neglect/40222> [perma.cc/DM48-3NUF] (arguing that the child welfare system should distinguish between neglect, which may justify removal, and poverty, which should never alone justify family separation); Josh Gupta-Kagan, *Towards a Public Health Legal Structure for Child Welfare*, 92 NEB. L. REV. 897 (2014) (advocating for a public health model to replace the current system).

¹⁸ See, e.g., Casey Family Programs, *First-of-its-Kind National Partnership Aims to Redesign Child Welfare into Child- and Family Well-Being Systems* (Sept. 9, 2020), <https://www.casey.org/thriving-families-safer-children/> [perma.cc/25BC-NYKR] (describing an effort to reform child welfare “by creating the conditions for strong, thriving families where children are free from harm”).

¹⁹ This position is supported by Dorothy Roberts, who has been a leader in arguing for abolition. See *‘Abolition is the Only Answer’: A Conversation with Dorothy Roberts*, RISE (Oct. 20, 2020), <https://www.risemagazine.org/2020/10/conversation-with-dorothy-roberts/> [perma.cc/MAB3-WGDZ] (advocating for abolition of the child welfare system).

²⁰ JAMES G. DWYER, *LIBERAL CHILD WELFARE POLICY AND ITS DESTRUCTION OF BLACK LIVES* (2018) (arguing for a system with greater focus on child well-being and preventing an inter-generational cycle of poverty and trauma).

²¹ See CHILD MALTREATMENT, *supra* note 7, at 18–19 ex. 3–B (demonstrating that only 16.8% of children with screened in reports were classified as victims of maltreatment).

²² Dorothy Roberts, *Is There Justice in Children's Rights?: The Critique of Federal Family Preservation Policy*, 2 J. CONST. L. 112 (1999) (arguing that a reformed child welfare system must be based on a definition of children's rights that centers social justice).

the great majority of situations that are now referred to CPS agencies. It must be recognized that building a high-quality system of services is very challenging—just as it has been challenging to reform CPS. Virtually all past legislative reform efforts focused largely on policy and not enough on creating the elements necessary for successful implementation of a system of services.²³ This failure contributed to the limited success of past efforts to reduce the role of CPS and to limit out-of-home placement. A focus on the elements necessary for successful implementation needs to be central to any efforts to substantially change or abolish the current system.

II. PARENTING AND CHILD WELFARE

Most parents are committed to advancing their children's well-being. Still, some parents behave in ways that are harmful to their children and cause serious injuries, either intentionally or through failure to provide the type of care needed to prevent serious physical or mental harm to a child. Other parents face substantial challenges in providing the types of care and interaction that are important to facilitating children's basic emotional, social, and academic development.²⁴ Some form of state involvement is needed to protect the safety and/or development of the children in these families.²⁵

However, it is well-established that state attempts to regulate, supervise, or monitor parental behavior can have detrimental effects on the children, as well as parents. In particular, there can be substantial costs to children and parents from investigating parenting and imposing services on families against their will.²⁶

Thus, policy makers must determine what types of state actions/programs are best suited to address situations where the safety or development of a child is threatened or compromised by the behavior(s) of a parent. I have long argued that involuntary or coercive intervention through CPS should be restricted to situations that pose an immediate threat of serious harm to a child, such as sexual conduct with a child, actions causing severe physical injury, or substantial emotional abuse. Such cases may require involuntary monitoring and supervision of the

²³ See Wald, *New Directions*, *supra* note 2, at 12. This was especially true regarding the two major federal laws on child protective service systems. See also Adoption Assistance and Child Welfare Act of 1980, Pub. L. No. 96-272, 94 Stat. 500; Adoption and Safe Families Act of 1997, Pub. L. No. 105-89, 111 Stat. 2115. I was involved in the drafting of major legislation at the federal and state levels, including the Adoption Assistance and Child Welfare Act of 1980; the Indian Child Welfare Act of 1978, 25 U.S.C. §§ 1901–63; and major legislation in California, and I have studied the implementation of these statutes.

²⁴ By “basic,” I mean a level of emotional, social, and academic development that is generally needed in order to earn an adequate income and engage in meaningful relationships during adulthood. See COMM. ON SUPPORTING PARENTS OF YOUNG CHILD. ET AL., PARENTING MATTERS: SUPPORTING PARENTS OF CHILDREN AGES 0–8, at 45 (Heather Breiner et al. eds., 2016) [hereinafter PARENTING MATTERS] (analyzing parental attitudes and knowledge to better understand what is best for child development).

²⁵ See Michael S. Wald, *Beyond Maltreatment: Developing Support for Children in Multiproblem Families*, in HANDBOOK OF CHILD MALTREATMENT 251, 251–52 (Jill Korbin & Richard Krugman eds., 2014) [hereinafter Wald, *Beyond Maltreatment*].

²⁶ CTR. FOR IMPROVEMENT OF CHILD & FAM. SERVS., REDUCING THE TRAUMA OF INVESTIGATION, REMOVAL, & INITIAL OUT-OF-HOME PLACEMENT IN CHILD ABUSE CASES, PORTLAND STATE UNIV. 4, 10 (2009).

family.²⁷ However, most reports to CPS involve parents who, for a variety of reasons, face difficulties in meeting the physical or health needs of their children or in providing minimally consistent and stable parenting. This parenting is problematic in that it can negatively impact the child's current well-being and future development, but it should be addressed in a very different manner than parental behaviors that require involuntary intervention through CPS because of the nature of the behavior and the seriousness of the harm to the child.

A. The Need for CPS: Protecting a Child's Current Physical and Mental Safety.

Protecting children from serious physical or mental harm often requires actions against the parent's will, including reporting the parent's behavior, investigating the child's home environment, requiring parental participation in services, and possibly removing the child from the home. These situations require special legal authority and the powers and skills that well-trained CPS personnel should have, such as conducting investigations and working with courts. This requires an organization with very different structures, personnel, and resources from those that are likely to be best for working with parents through voluntary services.

Some proponents of limiting the reach of CPS divide the need for CPS in terms of abuse versus neglect, proposing that CPS be limited to cases of "abuse" and that situations involving "neglect" be handled by another system.²⁸ This is not a sensible distinction. The terms "abuse" and "neglect" have no agreed-upon meaning²⁹ and do not capture the nature of harm to a child—more children die from "neglect" than "abuse."³⁰ CPS jurisdiction should be defined in terms of harms to children caused by parental behaviors, not on labels that are vague or meaningless.³¹ The types of parental behaviors that cause or threaten serious imminent harm are reasonably clear. They include 1) directly inflicting serious physical injury on the child or behaving in ways that pose a substantial risk of causing such injury; 2) consistently exposing the child to conditions or situations that carry a substantial risk of causing serious physical injury or threaten the child's mental health (this includes failing to provide medical care to treat or prevent such harm); and 3) committing sexual acts with or on the child or exposing the child to conditions or situations that carry a substantial risk of other adults committing such acts. Beyond

²⁷ I would still largely define state jurisdiction in terms of the categories of harms described in Wald, *State Intervention*, *supra* note 13, at 1005–36.

²⁸ See, e.g., Morton & McDonald, *supra* note 17.

²⁹ Sarah Font & Kathryn Maguire-Jack, *The Scope, Nature, and Causes of Child Abuse and Neglect*, 692 ANNALS AM. ACAD. POL. & SOC. SCI. 26, 27–29 (2020) [hereinafter Font & Maguire-Jack, *Scope, Nature, and Causes*]; CHILD WELFARE INFO. GATEWAY, DEP'T OF HEALTH & HUM. SERVS., DEFINITIONS OF CHILD ABUSE AND NEGLECT (2019) (describing various definitions of child abuse across federal and state law, civil and criminal); Rebecca Rebbe, *What is Neglect? State Legal Definitions in the United States*, 23 CHILD MALTREATMENT 303 (2018) (comparing state statutory definitions of neglect).

³⁰ CHILD WELFARE INFO. GATEWAY, DEP'T OF HEALTH & HUM. SERVS., CHILD ABUSE AND NEGLECT FATALITIES 2019: STATISTICS AND INTERVENTIONS 5, fig.2 (2021).

³¹ See Wald, *State Intervention*, *supra* note 13, at 1000–04.

causing current harm, experiencing these types of parental conduct also impairs the future development of many children.³²

While there may be a continuing need for an agency that has the right to intervene coercively into families, only a small percentage of the situations currently referred to CPS involve harms that may require investigation and monitoring and even fewer require on-going agency involvement. At most, between ten and twenty percent of the 3.5 million children whose families are investigated by CPS are threatened by parental behaviors that have caused or have a high potential of causing serious physical or emotional injuries.³³ The absence of a current and on-going significant threat to the child's physical or mental safety in most situations reported to CPS is reflected in the fact that CPS agencies do not seek to deal directly with, or require involuntary oversight of, the family in between eighty and ninety percent of the cases reported to and screened in by the agencies.³⁴ The great majority of cases are either handled through differential response ("DR"), which offers parents voluntary access to services, or closed completely.³⁵ Moreover, in the twenty percent of cases for which CPS has made a finding of maltreatment (substantiation), only half result in formal supervision of the family.³⁶ Less than five percent of reported children are brought under court supervision, indicating that the agency sees a need for mandated supervision of the family.³⁷ Thus, CPS agencies determine that no formal CPS involvement is needed in more than ninety percent of screened in cases.³⁸

B. Protecting and Promoting the Child's Basic Physical, Social-Emotional, and Academic Development.

Is CPS involvement needed in the eighty percent of screened in reports that are now diverted or closed? Unfortunately, there is limited research describing the nature and scope of the harm in most of these situations. As just discussed, the fact that these cases are closed or referred to some form of alternative response indicates that CPS workers do not see these as situations posing the risk of serious, imminent injury.³⁹ These judgements are supported by the findings of several recent studies applying sophisticated risk assessment tools.⁴⁰

³² See Cathy Spatz Widom, *The Longterm Consequences of Child Maltreatment*, in HANDBOOK OF CHILD MALTREATMENT 225 (Jill Korbin & Richard Krugman eds., 2014) (describing the potential long-term consequences of child maltreatment).

³³ Precise estimates are not possible since there is no consistency in the way data are collected or reported.

³⁴ CHILD MALTREATMENT, *supra* note 7, at 18–19 ex.3–B.

³⁵ *Id.*

³⁶ *Id.* at xiii ex.S–2.

³⁷ *Id.* at 19, 71 (finding that of the seventeen percent of children found to be victims of maltreatment, only twenty-nine percent had court actions).

³⁸ In essence, CPS agencies now function mostly as screening, investigation, and referral systems, plus overseeing foster care placements.

³⁹ Some commentators argue that too many are screened out. See, e.g., Bartholet, *supra* note 11, at 1323–24. CPS agencies clearly make mistakes, often tragic mistakes. These cases receive great attention but are very rare.

⁴⁰ Studies in Allegheny County, Pennsylvania and Los Angeles, California have found that the vast majority of cases reported to CPS in these jurisdictions do not have foster care placement in the two years following the report and most do not have new referrals. Alexandra Chouldechova et al., *A Case Study of Algorithm-Assisted Decision Making in*

The best available studies indicate that the majority of these situations involve parents challenged, for a variety of reasons, in providing adequate physical or emotional care to one or more of their children.⁴¹ Most commonly, these are families in which one or both of the parents struggles with substance use and/or where there is a persistent situation of domestic violence (in many states, these may be mandated reporting situations). Often, they involve single caretakers struggling with deep poverty, which may lead to erratic caretaking. These parents may be loving and even committed, but they may be unable to provide consistent physical or emotional care. Many of these children already evidence developmental delays or are likely to experience academic, emotional, or social problems as they age. These include physical and/or mental health problems, higher rates of disruptive behavior at school, more delinquent behavior, and lower rates of completing high school than children of comparable backgrounds who are not reported to CPS.⁴²

While some form of active attention by the state is needed in order to protect and promote these children's basic well-being, this should not be through CPS. There are several compelling reasons why states should reduce the role of CPS and develop more and better alternative approaches to help these families. First, CPS agencies do not have the resources to deal effectively with situations posing current or imminent severe harm, let alone the millions of referrals that are closed or diverted to alternative services.⁴³ This has been true for the past fifty years.

Second, CPS is not designed to provide the types of services and support needed by most families now being screened out or handled

Child Maltreatment Hotline Screening Decisions, 81 PROC. MACH. LEARNING RSCH. 1, 3 (2018); Child. Data Network et al., *California Child Welfare Predictive Risk Model Proof of Concept*, CTR. FOR SOC. DATA ANALYTICS (June 2018), <https://csda.aut.ac.nz/research/our-projects/2018/california-child-welfare-predictive-risk-model-proof-of-concept> [perma.cc/XN5C-WP9R].

⁴¹ Despite the extensive literature discussing the factors associated with reported cases of abuse or neglect, it is very hard to get a clear picture of the actual parental behaviors in most cases, even those that have been fully investigated. Available data and research provide very little detail. For a general picture of these difficulties, see Laura J. Proctor & Howard Dubowitz, *Child Neglect: Challenges and Controversies*, in HANDBOOK OF CHILD MALTREATMENT 27 (Jill Korbin & Richard Krugman eds., 2014). See also Font & Maguire-Jack, *Scope, Nature, and Causes*, *supra* note 29 (recognizing the various definitions of child maltreatment that cover a range of parental activity); Wald, *Beyond Maltreatment*, *supra* note 25 (calling for an outcome-focused framework of maltreatment that distinguishes between specific parenting behaviors).

⁴² See RICHARD BARTH ET AL., INST. FOR SOC. & ECON. DEV., DEVELOPMENTAL STATUS AND EARLY INTERVENTION SERVICE NEEDS OF MALTREATED CHILDREN (2008) (studying the developmental concerns of children receiving child welfare services); Cecilia Casanueva, Theodore P. Cross & Heather Ringeisen, *Developmental Needs and Individualized Family Service Plans Among Infants and Toddlers in the Child Welfare System*, 13 CHILD MALTREATMENT 245 (2008) (examining the developmental needs of children investigated by child protective services); Sara Font & Kathryn Maguire-Jack, *It's Not "Just Poverty": Educational, Social, and Economic Functioning Among Young Adults Exposed to Childhood Neglect, Abuse, and Poverty*, 101 CHILD ABUSE & NEGLECT 104356 (2020) (noting that developmental outcomes for children with alleged or confirmed neglect cases were worse in all domains than for impoverished children without maltreatment allegations).

⁴³ Michael S. Wald, *Preventing Maltreatment or Promoting Positive Development—Where Should a Community Focus its Resources?: A Policy Perspective*, in PREVENTING CHILD MALTREATMENT 182, 186 (Kenneth A. Dodge & Doriane Lambelet Coleman eds., 2009).

through DR. In general, these parents are caring but are struggling to consistently provide adequate physical care to a child (and often self-care) or are having trouble coping positively with a child's behavioral problems. While a portion are onetime or easily remedied situations, many are more chronic. The majority of these parents have unaddressed or inadequately addressed mental health conditions or substance-abuse problems and/or are experiencing domestic violence (which in many states are grounds, in and of themselves, for reporting and investigation). Of equal or greater importance, an estimated eighty-five percent of families investigated by CPS have incomes below 200% of the federal poverty line,⁴⁴ which produces a variety of poverty-related stressors—like unstable housing and employment, violent neighborhoods, and inadequate schools. CPS agencies generally do not deliver, or control access to, the treatment resources needed by the parent, and most cannot provide the economic aid or access to housing that many of these families need.⁴⁵ It is not surprising that the evidence, although limited, indicates that becoming known to CPS does not lead to improved parenting in most families or to improved well-being for most children.⁴⁶ If the U.S. had adequate income support, referrals to CPS would undoubtedly decline.⁴⁷

Finally, not enough is known about the relationship of parenting to specific developmental outcomes, or the impact of interventions as a means of achieving these outcomes, to justify *coercive* interventions unless the situation poses a threat of imminent harm.

The fact that over fifty percent of all African American children and over thirty percent of all children are reported to CPS at some point during their childhood raises a fundamental question about the way our society uses CPS. There is no indication that such a large percentage of children experiences the type of serious physical or emotional harm that the system was designed to address. Rather, it appears that the large number of reports is driven by the breadth and vagueness of reporting laws and by mandatory reporters and family members who look to CPS as the only

⁴⁴ Leroy H. Pelton, *The Continuing Role of Material Factors in Child Maltreatment and Placement*, 41 CHILD ABUSE & NEGLECT 30, 31–32 (2016).

⁴⁵ *Family and Child Well-Being System: Economic & Concrete Supports as a Core Component*, CHAPIN HALL AT THE UNIV. OF CHI. (Apr. 2021) (analyzing available resources to combat poverty, maltreatment, and abuse of children). In some of these situations, it is the parent who contacts CPS as the only way to get services for a child with significant mental health or behavioral problems that the parent is having trouble handling.

⁴⁶ Richard Barth et al., *Outcomes Following Child Welfare Services: What Are They and Do They Differ for Black Children?*, 14 J. PUB. CHILD WELFARE 477 (2020) (recognizing that child welfare services might create worse outcomes for children, particularly children of color); Abraham B. Bergman, *Child Protective Services Has Outlived its Usefulness*, 164 ARCHIVES PEDIATRIC ADOLESCENT MED. 978 (2010) (finding that children investigated by child protective services were not perceptively different than non-investigated children in social support, family functioning, poverty, maternal education, or child behavioral problems).

⁴⁷ Several studies have found that relatively small increases in income can reduce maltreatment reports by as much as ten percent. Maria Cancian, Mi-Youn Yang & Kristen Shook Slack, *The Effect of Additional Child Support Income on the Risk of Child Maltreatment*, 87 SOC. SERV. REV. 417, 429–30 (2013); Kerri Raissian & Lindsey Rose Bullinger, *Money Matters: Does the Minimum Wage Affect Child Maltreatment Rates?*, 72 CHILD. & YOUTH SERVS. REV. 60, 60 (2017) (finding that a one dollar increase in the minimum wage creates a 9.6% decrease in neglect reports).

place to get help in situations where a parent is struggling to provide adequate care due to poverty or to personal challenges like depression or substance use.⁴⁸ Moreover, despite years of efforts, most CPS departments still struggle to integrate the policing and service roles, which are generally conflicting. The possibility of family separation when CPS is involved engenders acute fears among many parents. Mandatory referrals to CPS by professionals often strain relationships between families and the service providers reporting them, thus resulting in a reduction of needed services.⁴⁹ As a result, CPS does not have the type of community support and confidence needed to effectively work with large numbers of parents in these communities. A new approach is essential.

While intervention through CPS is inappropriate, and often counter-productive, in the eighty percent of screened in reports that are now diverted or closed, there is a need for some state involvement with these families if the children are to achieve the outcomes identified above. The issue is what should replace CPS.

III. CURRENT EFFORTS TO REDUCE THE REACH OF CPS

In the past twenty years, a number of states and local governments have developed policies and programs designed to reduce the role of CPS. There are two main approaches. One, differential response (“DR”), tries to engage parents referred to CPS in services on a voluntary basis, without formal investigation or court involvement. The second approach, on the other hand, focuses on the development of parenting programs available to all parents, not just those referred to CPS. The hope is that providing such services will help parents engage in positive behaviors and reduce harmful behaviors that could lead to CPS involvement.⁵⁰

A. Differential Response

Based on assumptions that coercive supervision by a CPS worker is not needed in many situations reported to CPS, and that a less hostile approach will lead to more family cooperation, at least twenty states have adopted a “quasi” CPS approach for dealing with a portion of the families referred to CPS.⁵¹ Under this approach, referred to as differential response or DR, reported cases that involve less risky situations are referred to a disparate group of community agencies that can provide “voluntary”

⁴⁸ Kelley Fong, *Getting Eyes in the Home: Child Protective Services Investigations and State Surveillance of Family Life*, 85 AM. SOCIOLOGICAL REV. 610, 611 (2020); Gupta-Kagan, *supra* note 17, at 897 (finding that overly broad definitions of “abuse” and “neglect” expand the scope of mandatory reporting and thereby increase surveillance and intervention).

⁴⁹ Kelley Fong, *Concealment and Constraint: Child Protective Services Fears and Poor Mothers’ Institutional Engagement*, 97 SOC. FORCES 1785 (2021) (describing how fear of CPS reports motivates poor mothers to avoid mandatory reporters, who are often vital support systems for disadvantaged families).

⁵⁰ Many of these programs are described in PARENTING MATTERS, *supra* note 24, at 125 (describing universal, preventive interventions that emphasize providing parents with knowledge and guidance concerning child development and best parenting practices); *id.* at 229 (describing evidence-based and evidence-informed interventions targeted at specific populations of interest).

⁵¹ *Differential Response in Child Protective Services*, NAT’L CONF. OF STATE LEGISLATURES (Dec. 15, 2019), <https://www.ncsl.org/research/human-services/state-legislation-differential-response.aspx> [perma.cc/4BJG-S942].

services wanted by the parents. These services vary greatly in availability, quality, and effectiveness.⁵² While the evidence indicates that DR does not create an increased risk to children's safety, it is generally minimally helpful to families needing significant support.⁵³ DR programs have limited funding and are not designed to provide intensive, long-term services to families when these are needed.⁵⁴ In many jurisdictions, little or no service provision occurs because parents do not deem the available services useful or are reluctant to engage in services that they associate with CPS. Most critically, DR does not create a coordinated system, which would require a dedicated funding stream, clear criteria for who is served, and mandates regarding outcomes.⁵⁵ It is unrealistic to assume that most CPS agencies, which are routinely challenged in providing adequate services to the children under supervision, will have the capacity to effectively organize and monitor an effective set of community services.

B. Voluntary Prevention and Treatment Programs

A second approach works to develop "prevention" services, like home visitors, especially for families with newborns and young children. Over the past twenty years, the federal government has funded and evaluated a number of such efforts, especially home visiting programs designed to assist new parents.⁵⁶ Some of these programs have helped participants avoid behaviors that would be subject to a CPS report and, more importantly, have improved long-term developmental outcomes for children.⁵⁷ The evidence is mixed, however, and the programs fail to reach a significant portion of families.⁵⁸

Moreover, these programs are not an alternative when parenting has already become problematic and possibly subject to a CPS referral. While many communities have a variety of health and social service programs that are designed to promote positive parent-child interactions and to help parents experiencing difficulties with parenting, most of these programs have little or no outreach; parents must seek them out, and there are indications that the highest risk parents do not seek out these services.⁵⁹ Disparities in access to these programs, often shaped by race and class, mean that a disproportionate number of minority and poor families receive distinctly fewer and often more punitive service options. No state or community provides these types of services in a systemic

⁵² There is a debate regarding the utility and practice of DR, which has been implemented in highly variable ways in different states. Cf. Tamara Fuller, *Beyond Investigations: Differential Response in Child Protective Services*, in HANDBOOK OF CHILD MALTREATMENT 443 (Jill Korbin & Richard Krugman eds., 2014) (describing DR and its variations and highlighting how DR differs from the traditional approach); Bartholet, *supra* note 11, at 1333–38.

⁵³ Bartholet, *supra* note 11, at 1337–38.

⁵⁴ *Id.*; Caitlyn Garcia & Cynthia Godsoe, *Divest, Invest & Mutual Aid*, 12 COLUM. J. RACE & L. __ (2022) (arguing that underfunding sets DR programs up for failure).

⁵⁵ Deborah Daro & Genevieve Benedetti, *Sustaining Progress in Preventing Child Maltreatment: A Transformative Challenge*, in HANDBOOK OF CHILD MALTREATMENT 281, 295 (Jill Korbin & Richard Krugman eds., 2014).

⁵⁶ See Supporting Parents et al., *Universal Interventions*, *supra* note 50; Supporting Parents et al., *Targeting Interventions*, *supra* note 50.

⁵⁷ Supporting Parents et al., *Universal Interventions*, *supra* note 50, at 141–55.

⁵⁸ *Id.*

⁵⁹ PARENTING MATTERS, *supra* note 24, at 326–29.

manner that integrates the various approaches, examines community needs, and makes funding priorities based on those needs.

IV. TOWARDS A NEW SYSTEM

In order to significantly reduce the reach of CPS while protecting the safety and basic development of children, there is a need for an alternative service system that serves a dual role. First, services should help parents avoid behaviors that impair the emotional, social, and academic development of their children. Second, services should provide an alternative set of responses in situations where parents engage in problematic behaviors. While such a system should not have the coercive powers of CPS, it should include active outreach, screening, and some monitoring of parental conduct, not just provision of services to parents who seek help. It also requires a way to track families' development, the services they seek and receive, and the results of those services. An effective system requires performance standards, accountability measures, regular monitoring, and consistent data collection and evaluation.⁶⁰ Given the long history of failure in designing and implementing systems that actually deliver the services families need, it is essential that advocates think through what an alternative approach or system should look like and the issues involved in implementation.

The following sections outline possible models and then look at a number of implementation issues. The goal is to generate thinking about the possible structures and elements of new approaches that focus on strengthening the role of multiple community organizations, not just government agencies.⁶¹ The discussion looks separately at alternatives for families with young children and approaches to helping families with older children, based both on the fact that the needs of parents and children differ depending on the age of the child and the fact that there are many more resources and models in place for helping parents with young children than with school-age children.⁶²

A. Families with Newborns and Young Children

Over the past ten years, a small number of communities have attempted more comprehensive approaches to helping parents of newborns and young children develop the skills and access the support needed to promote the safety and development of the child.⁶³ In a few jurisdictions, these approaches also include efforts to identify situations when the parent may need additional services in order to provide adequate parenting. The most developed approach is FAMILY CONNECTS ("FC") in North

⁶⁰ Arthur J. Reynolds, *Developing Early Childhood Programs for Children and Families at Risk: Research-Based Principles to Promote Long-Term Effectiveness*, 20 CHILD. & YOUTH SERVS. REV. 503, 511–12 (1998).

⁶¹ This idea has roots in the framework offered by the U.S. Advisory Board on Child Abuse and Neglect in the 1990's. U.S. ADVISORY BD. ON CHILD ABUSE & NEGLECT, U.S. DEP'T OF HEALTH & HUM. SERVS., *CREATING CARING COMMUNITIES: BLUEPRINT FOR AN EFFECTIVE FEDERAL POLICY ON CHILD ABUSE AND NEGLECT* (1991) (noting that effective child welfare requires greater reliance on community efforts).

⁶² Of course, many families have younger and older children. It will be necessary to develop approaches that enable these families to work in a single system.

⁶³ The history of these efforts is discussed in Deborah Daro, *A Shift in Perspective: A Universal Approach to Child Protection*, 29 FUTURE CHILD. 17 (2019).

Carolina. FC includes three key elements that are necessary to a system that is both supportive to parents and protective for children.⁶⁴ First, it includes universal outreach and assessment. FC tries to reach every family giving birth in its coverage area, aiming to identify family-specific risks and needs and then to connect each family with the community resources to meet those needs. The structure starts with *home visiting*, offered to all new mothers, typically at the birthing hospital. During the home visits, a home visiting nurse seeks to identify family needs or problems in parent-child relations utilizing a four-point standardized screening tool assessing risks. The nurse then connects the family with appropriate community resources, including strong, concrete efforts in higher risk situations to connect the parent with a community resource to resolve challenges to parenting that require professional treatment, such as substance abuse.

Second, FC includes data and monitoring, utilizing an electronic data system that acts as a family-specific psychosocial and educational record to document nurses' assessments of mother and infant, as well as connections with community agencies. One month after the nurse terminates involvement with the family, FC staff telephone each family to find out whether they had successfully made a community resource connection. Third, FC includes community alignment, an effort to assemble a coordinated system of all community resources available to families at birth, including childcare agencies, mental health providers, government social services, and programs for subgroups of families, such as Healthy Families, Parents as Teachers, and Early Head Start.⁶⁵

How can/should something like FC be implemented nationally, while allowing for local variation and community design? Figure 1 shows a possible structure.

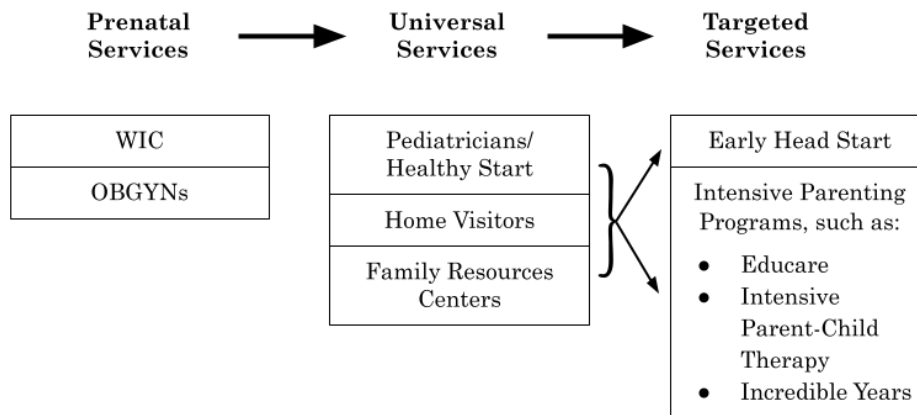


Figure 1. Support system flowchart.

⁶⁴ Kenneth A. Dodge & W. Benjamin Goodman, *Universal Reach at Birth: Family Connects*, 29 *FUTURE CHILD*. 41 (2019) (describing the three key elements of the Family Connects program in Durham, North Carolina).

⁶⁵ *Id.* at 47–50. As described in the article, FC developers have tried to ensure that the approach is sensitive to the concerns that some parents have over possible stigmatization and monitoring entailed in participation in the HV program. *Id.* at 48–49.

The structure is built around the four major national programs supporting parenting: the Women, Infants, and Children Program (“WIC”), home visiting (“HV”), Early Head Start (“EHS”), and Head Start (“HS”), supplemented by various evidence-based parenting programs for families needing more intense services.

The system would begin during pregnancy. All pregnant women would receive health and economic support as needed and would be screened for significant adversities, such as substance use, within prenatal and obstetric care settings, including WIC. Following birth, all parents would be connected to a pediatrician, who would provide regular care, screening, and referrals. All mothers would also be offered home visiting.⁶⁶ The home visitor would provide direct support and advice and conduct further screening to determine any special needs. A number of home visiting models have now been designed to help mothers deal with special needs, including depression, substance abuse, and domestic violence problems. Linkages would also be made to the targeted parenting programs of different intensities depending on need. A strong system might also include neighborhood-based family resources centers (“FRC”) that would provide on-going support, encourage connections with other families, and house some of the key programs to serve a coordinating role.

While any system will be implemented at a local level by thousands of non-profit and government agencies, there are strong reasons for trying to build local systems around a core set of national programs, with oversight and assistance from a federal agency. Starting with nationally funded programs provides already established funding streams with strong constituencies that can advocate for expanded funding. These programs also have structures for enhancing quality control, assessment, and technical assistance, and for creating more policy-relevant research than now occurs. A key factor is that all of the programs are run by thousands of local community agencies and thus already engage parents and community members.

B. Older Children

While a number of jurisdictions have developed systems focused on prevention and referral to services for young children, much less attention has been paid to developing ways of strengthening parenting and developing alternatives to CPS referrals in situations where older children are experiencing problematic parenting or where parents are seeking help in handling an older child’s behaviors. Brianna Harvey, Josh Gupta-Kagan, and Christopher Church explore the potential of using schools as a service system issue in their contribution to this Symposium.⁶⁷ As they

⁶⁶ *Id.* at 47. Other programs have worked on delivery methods that meet the needs of victims of domestic violence. See Phyllis W. Sharps et al., *Domestic Violence Enhanced Perinatal Home Visits: the DOVE Randomized Clinical Trial*, 25 J. WOMEN’S HEALTH 1129 (2016) (describing the effectiveness of the DOVE intervention in reducing perinatal intimate partner violence).

⁶⁷ Brianna Harvey, Josh Gupta-Kagan & Christopher Church, *Reimagining Schools’ Role Outside the Family Regulation System*, 11 COLUM. J. RACE & L. 1 (2021) (arguing that public schools should shift from a reporting function to providing services directly to families). See also Gupta-Kagan, *supra* note 17, at 954–58 (describing a “school-to-health” pipeline).

discuss, several factors make schools an attractive system for providing preventive or protective services or as serving as the primary replacing CPS.

First, schools are the one system that has contact with virtually all children. With the great expansion of Pre-K schooling, a school-based model has the potential for reaching a large portion of children over three years old. Second, schools already do monitoring—teachers are the largest referrer of cases to CPS.⁶⁸ It would be far preferable if schools could work with families directly or through referral to specific community-based service programs. Finally, many school systems offer social work services, although these primarily appear to focus on students experiencing school-related problems. School systems also are responsible for providing services to students with special education needs. This requires working with parents to develop Individual Education Plans (“IEPs”). While these plans generally focus solely on the needs of the child, the IEP process provides schools with experience in working with families.

There are several models to build on. One organization, Communities in Schools (“CIS”), works directly in 2,500 schools in twenty-five states and the District of Columbia.⁶⁹ CIS school-based staff partner with teachers to identify challenges students face in class or at home and to provide needed services to the student. Staff also work with families to help them obtain economic resources, counseling, or emotional support. In North Carolina, a joint project of the North Carolina Department of Health and Human Services and the North Carolina Department of Public Instruction provides funding for child and family support teams in a number of schools.⁷⁰ Through these teams, school social workers work with school nurses to screen and identify children who are potentially at risk of academic failure or out-of-home placement due to physical, social, legal, emotional, or developmental factors and connect these students’ families with needed services.⁷¹ Other approaches include School Based Health Centers⁷² and Wellness Centers.⁷³ While these services have focused primarily on meeting the physical and mental health needs of the students, they could be used to address parenting issues.

⁶⁸ Harvey et al., *supra* note 67, at 1–2.

⁶⁹ CIS is described at CMTYS. IN SCHS., <https://www.communitiesinschools.org/perma.cc/982L-KWZR> (last visited Jan. 22, 2022).

⁷⁰ N.C. DEPT OF HEALTH & HUM. SERVS., *Community Child Protection Teams*, <https://www.ncdhhs.gov/divisions/social-services/child-welfare-services/community-child-protection-teams> [perma.cc/73P4-QTNH] (last visited Jan. 22, 2022).

⁷¹ *See id.*

⁷² Michael Arenson et al., *The Evidence on School-Based Health Centers: A Review*, 6 GLOB. PEDIATRIC HEALTH 1 (2019) (analyzing the history, health outcomes, costs, and impact on health equity of school-based health centers).

⁷³ Carolyn Jones, *School “Wellness Centers” Could Be the Answer to Soaring Mental Health Needs in California*, EDSOURCE (Dec. 9, 2020), <https://edsource.org/2020/school-wellness-centers-could-be-an-answer-to-soaring-mental-health-needs-in-california/644857> [perma.cc/GQ3X-Y5NC] (describing a California state commission call for wellness centers in schools amid the pandemic); MENTAL HEALTH SERVS. OVERSIGHT & ACCOUNTABILITY COMM’N, EVERY YOUNG HEART AND MIND: SCHOOLS AS CENTERS OF WELLNESS (Oct. 2020) (arguing that a school-based wellness approach is vital to protecting children’s mental health).

A number of factors will need to be addressed in developing a system of services through schools. Establishing strong services requires major commitment from the entire school community. Many school systems have started and abandoned social service programs over the years because of pressure to focus on classroom teaching and/or a lack of community commitment to the services among school personnel. School principals and staff may be reluctant to perform an assessment, service, and referral role in the situations now referred to CPS. Moreover, it appears that schools in the areas where there may be the greatest need for social services often serve as part of the coercive system rather than as a supportive alternative, perhaps in part because there are great disparities in funding of school systems and individual schools.⁷⁴

A different, or additional approach, to service delivery for families with older children is the use of Family Resource Centers.⁷⁵

V. MOVING FORWARD

Building a new approach requires addressing a number of system design issues and budgeting decisions at the federal, state, and local levels. Proponents of abolishing or significantly reducing the reach of CPS need to consider the factors that have made it so difficult to make CPS effective despite intensive legislative and administrative efforts over the past forty years. Most of these factors will be relevant to developing alternative approaches. The persistent failures of other systems serving children and families experiencing difficulties, including K-12 education, juvenile justice, mental health, substance abuse treatment, and domestic violence, is an indication that developing strong service systems is very difficult regardless of intent. Reforming CPS has been challenging in other countries as well, indicating that the barriers are not specific to U.S. institutions or policies.⁷⁶

A key challenge is that services must be developed and implemented in thousands of localities; there is no federal service delivery system. Each locality must rely, for the most part, on the capacities of local, non-profit service providers. Local control is positive because it facilitates community voice and a degree of community control. But local implementation means that the contours and policies of every system are subject to changing personnel, political priorities, and constituencies.

⁷⁴ Nationally, public schools employ more police officers than social workers. See Harvey, *supra* note 67, at 34–35. Most advocacy and research in recent years has focused on policies to make schools less punitive; there is much less thinking about how to expand the role of schools as family support systems.

⁷⁵ See *Family Resources Centers*, CHILD WELFARE INFO. GATEWAY, <https://www.childwelfare.gov/topics/preventing/prevention-programs/familyresource/> [perma.cc/2J8J-G3DQ] (last visited Jan. 22, 2022) (describing the services offered by family resource centers). For other approaches, see PARENTING MATTERS, *supra* note 24, at 370–74.

⁷⁶ See NATIONAL SYSTEMS OF CHILD PROTECTION: UNDERSTANDING THE INTERNATIONAL VARIABILITY AND CONTEXT FOR DEVELOPING POLICY AND PRACTICE (Lisa Merkel-Holguin, John D. Fluke & Richard Krugman eds., 2019) (describing child protection systems in Australia, Canada, Europe, Israel, and South Korea).

There are at least four elements needed for successful implementation of high-quality services: 1) Resources; 2) Service Coordination; 3) Quality Control; and 4) Capable Personnel.

Upon reflection, the failure to address these factors prevented the success of an earlier legislative effort to reduce the scope of CPS, the Adoption Assistance and Child Welfare Act of 1980 (“ACCWA”).⁷⁷ ACCWA envisioned greatly reducing the reach of CPS largely along the lines this Piece proposes, but the legislation failed to have a vision for and a means of creating an alternative service delivery system. It also did not allocate funds for front-end services to families referred to CPS, including services to eliminate the need for intervention or foster placement removal.⁷⁸ Because the allocated resources focused on the backend of the system—permanency and adoption—this is where states focused their efforts.⁷⁹ These mistakes need to be addressed if a new approach is to have a chance of success.

A. Resources

Any approaches to better helping parents challenged in providing adequate parenting will require both a large increase in funding for programs and more flexibility in the ways local governments can utilize the funding. Services systems with inadequate staff or funding will function poorly whatever their goals, policies, and delivery structure. Child welfare agencies have always been enormously underfunded.⁸⁰ Developing a system that includes a much larger investment in prevention/early intervention will be very expensive. This is especially true with respect to developing high quality services reaching a large number of families who present highly varied and complex needs. While only a portion of all parents may require intensive services in order to enable their children to achieve the desired basic outcomes, helping these families requires far more resources than is currently being invested.

Getting increased funding for these services will be challenging. Targeted programs for higher risk families face difficulties in generating a large enough constituency to influence government funding. Proponents must compete with a number of other important priorities that have broad

⁷⁷ Adoption Assistance and Child Welfare Act of 1980, Pub. L. 96-272, 94 Stat. 500 (1980). Senators Long and Moynihan rejected a proposal to provide resources at the front-end and to provide guidance on necessary services, preferring the vague mandate of “reasonable efforts.” There also was little knowledge about what a good service alternative system would look like at that time, as most of the program elements suggested herein did not even exist at that time.

⁷⁸ Front-end services include programs and services to eliminate the need for formal CPS involvement, such as the use of differential response and provision of services to prevent removal in substantiated cases. Back-end services include foster care, reunification services, and adoption.

⁷⁹ CONG. RSCH. SERV., CHILD WELFARE: PURPOSES, FEDERAL PROGRAMS, AND FUNDING (2021) (describing state funding for back-end services). *See also* Ron Haskins, *Child Welfare Financing: What Do We Fund, How, and What Could be Improved?*, 692 ANNALS AM. ACAD. POL. & SOC. SCI. 50, 52–56 (Nov. 2020) (summarizing spending by child welfare programs, most of which goes to foster care and adoption).

⁸⁰ *See, e.g.*, CHILD WELFARE LEAGUE OF AM., MEETING THE CHALLENGE OF THE FAMILY FIRST PREVENTION SERVICES ACT (2019) (describing the underfunding of the Child Abuse Prevention and Treatment Act, particularly for front-end and prevention services).

support in low-income communities, such as universal child-care subsidies, universal Pre-K, and housing. There will be trade-offs for advocates seeking to enhance the effective individual treatment/services model while also addressing the income and other structural barriers that confront the majority of parents currently referred to CPS. In order to obtain more resources, it will be necessary to connect to health care and education funding streams that have broader constituencies.⁸¹

One issue related to funding is the balance between universal and targeted parenting support services. Universal programs are more expensive but also often generate more public support.⁸² Home visiting should be universal, reflecting the fact that all new parents benefit from parenting support and education. Making HV universal is important in generating political support and avoiding stigmatization. Family Connects controls HV costs by restricting the number and length of time of visits.⁸³ FC provides HV to the entire population for a maximum of seven visits over the first twelve weeks following birth. Further services are offered to targeted families. Targeting requires having a means of determining which families need more intensive services and what kinds. New thinking is needed about how to assess parents and direct them to a level of service best suited to their needs and capacity to stay enrolled.

B. Service Coordination

A second issue is how to build a “coordinated” system. Many parents face multiple adversities, including personal challenges (mental health, substance use, domestic violence), and economic issues, including job training.⁸⁴ No state or community provides these types of services in a systemic manner that enables parents to receive needed support in the easiest way possible. Even in localities that have an array of services, organizations providing each of these services largely work independently of each other, have different funding streams, and may serve different target populations.

Again, overcoming the barriers to creating a coordinated system is very difficult; proponents of more coordination have been trying for many years to change the behavior of federal, state, and local governments, with only limited success. Funding at both the federal and state levels is heavily siloed into problem areas (mental health, domestic violence, substance

⁸¹ For a description of the broader programs and how these can be used to help, see AJAY CHAUDRY ET AL., *CRADLE TO KINDERGARTEN: A NEW PLAN TO COMBAT INEQUALITY* (2017) (explaining how to overhaul the early care and education system to reduce educational and economic inequalities). See also PARENTING MATTERS, *supra* note 24, at 351 (describing what a more successful national framework for child protection and parenting support might look like).

⁸² Daro & Benedetti, *supra* note 55, at 292.

⁸³ Dodge & Goodman, *supra* note 64, at 46. Another large-scale family support/parenting approach, Triple P, contains both universal and targeted elements. Ronald J. Prinz, *A Population Approach to Parenting Support and Prevention: The Triple P System*, 29 *FUTURE CHILD*. 123, 125 (2019).

⁸⁴ *Coordination of Services and Service Array*, CHILD WELFARE INFO. GATEWAY, <https://www.childwelfare.gov/topics/management/reform/soc/communicate/initiative/ntaec/socoolkits/coordinationofservices/#phase=pre-planning> [perma.cc/S54X-FS2N] (last visited Jan. 22, 2022).

abuse, etc.), with different agencies overseeing different programs.⁸⁵ Changing systems and building integrated systems of support is a long-term proposition. Weaving these systems into a cohesive whole takes time, leadership, and commitment that may take years of groundwork.⁸⁶ Partnerships grounded in a commitment to common principles are essential.

Ideally, an integrated funding stream would be established at the federal level. While people in federal agencies recognize this, there has been little success in accomplishing this legislatively. Given the politics, it may be best to focus on increasing the funding for core programs at the federal and state levels and encouraging local jurisdictions to develop coordinating mechanisms. The program(s) should be primarily embedded in health and education systems because these are the only systems with sufficient financial resources to have a system of high-quality programs. Once a system is in place, local jurisdictions can examine the types and quantity of needed services, make funding priorities based on local needs, and work to build the necessary system capacity.

There will also be a need to establish a mechanism whereby one person or entity has responsibility for ensuring that services are provided and that parents can navigate dealing with several providers. This role might be assumed by a home visitor, a Family Resource Center, a school social worker, or another agency that is trusted by parents. The critical factor is that a new system will require designating an agency to perform the positive services that are performed by some CPS caseworkers.

C. Quality Control: Multiple Models v. Limited Number of Evidence-Based Programs

Throughout the country, most services to families are delivered by non-profit community organizations. This is true even for national programs like WIC and Head Start, which are run by local non-profit agencies under contract with the federal government, not by government agencies. State and local governments will need to rely on existing providers for implementing most programs. The quality of these organizations and their services is highly varied. Access to high quality programs is often especially limited in areas of concentrated poverty, the areas where the need is greatest. Mechanisms need to be developed to ensure that all providers offer effective services.

A key issue is whether to continue to support the use of multiple programs models or to concentrate funding on a small number of “evidence-based” models and establish procedures to continuously improve these programs through evaluation and research. Several federal and state statutes now require the use of all local “evidence-based models or

⁸⁵ Haskins, *supra* note 79, at 52.

⁸⁶ See, e.g., Christina Altmayer & Barbara Andrade DuBransky, *Strengthening Home Visiting: Partnership and Innovation in Los Angeles County*, 29 FUTURE CHILD. 61 (2019) (explaining how, since 2009, a universal home visiting program has grown to effectively serve more than 59,000 families in Los Angeles County).

practices.”⁸⁷ There are strong arguments for adopting a very small number of programs. It is very difficult to help families facing multiple problems change parenting practices. It may be easier to improve the quality of available services if there are just a few models in operation, implemented by programs that have a history of willingness to work with very hard-to-serve families. In addition, using a small number of programs would facilitate a realistic evaluation and research agenda, rather than trying to evaluate a large number of different approaches, which often involves small-scale evaluations of a number of local programs that produces little or no usable information.

Despite these considerations, several factors support encouraging and funding some degree of local variation. Most communities have a variety of services in place that are not easy to alter. It is often difficult to persuade community agencies, which may have substantial political power at the local level, to adopt program models different from what they are currently doing. Allowing each community to select a program that best fits its capacities and integrates with local resources enables more parent voice and may also lead to better implementation. From a practical and cost perspective, using local programs that are required to use some core principles with fidelity, rather than a specific manualized model, may be the most feasible approach. In general, evidence-based programs have a clear theory of how to influence both parent and child development. Requiring local programs to employ these principles, building in accountability mechanisms, and engaging organizations in continuous improvement, while trying to customize the programs to meet the need for local variation, may be the best way to create an effective system that can be readily monitored, evaluated, and improved.

D. Capable Personnel

Effective services require more than good models—staff quality is of critical importance. Working with parents and children who often have complex needs requires knowledge, judgement, and sensitivity. However, finding qualified staff is difficult for CPS agencies, schools, and most service programs. Putting together the types of systems this Piece suggests will require training a large number of people with a variety of skills. While employment of people who have been “clients” of CPS or other agencies will bring increased numbers and new skills to many programs, it is questionable whether the current educational programs have the capacity to produce the number of trained personnel to staff the wide range of services envisioned.

These proposed models also require that many current providers in WIC, HV, school-based health and social services, and other programs, adopt what might be difficult role changes, particularly engaging in assessment and monitoring. Many of these service providers may be

⁸⁷ Mark F. Testa & David Kelly, *The Evolution of Federal Child Welfare Policy Through the Family First Prevention Services Act of 2018: Opportunities, Barriers, and Unintended Consequences*, 692 ANNALS AM. ACAD. POL. & SOC. SCI. 68, 83–86 (2020).

reluctant to assume any form of regulatory role, so substantial efforts at training and developing assessment mechanisms will be necessary.⁸⁸

VI. COMMUNITY CONTROL

A central premise of many proponents of abolition/reform of CPS is that parent/community voice must be central in choosing the elements of a service system and, perhaps, in deciding how budgets are allocated. It is argued that the “community” has more expertise regarding what is needed and what is likely to work and that community control is necessary to undo the racialized and subordinating effects of racial segregation on both parent behaviors, communities, and the functioning of CPS.

The desirability of place-based initiatives with some form of community control has long been assumed by governments (for example, the federally funded Promised Neighborhoods program) and by many foundation initiatives.⁸⁹ These usually have focused on creating economic opportunity, but a number of community-based initiatives have focused on supporting and enhancing parenting. Yet, implementing community control has generally proven difficult. For example, in three cities, the Annie E. Casey Foundation recently funded community initiatives designed to provide a combination of job training and parenting support with parental voice as a major goal.⁹⁰ A recent evaluation concluded that “(d)espite discussions, none of the . . . communities succeeded in implementing a formal, empowered community body with shared design-authority throughout the seven years.”⁹¹

In proposals to replace CPS, the meaning and structure of community control is largely undeveloped. Since the safety and development of children is involved, a number of issues must be addressed, including: At what level is “community” defined?⁹² Who represents the community? Who speaks for the child? In many places, it is the non-profit organizations that provide services to families, usually using government funds, that end up representing and speaking for the “community.” These organizations may be focused more on their own interests than those of their clients.

Local jurisdictions now employ a wide range of mechanisms to involve non-governmental members of the community in decision-making processes and oversight of various social service agencies. Careful attention must be given to how various forms of community control/input have

⁸⁸ See Altmayer & DuBransky, *supra* note 86, at 67–68, 75–76 (explaining the importance of training employees in implementing and growing Los Angeles County’s universal home visiting program).

⁸⁹ See Malika Igalla et al., *What Explains the Performance of Community-Based Initiatives? Testing the Impact of Leadership, Social Capital, Organizational Capacity, and Government Support*, 22 PUB. MGMT. REV. 602 (2020) (testing the efficacy of community-based initiatives in the Netherlands).

⁹⁰ MARLA MCDANIEL ET AL., DEVELOPING PLACE-BASED TWO-GENERATION PARTNERSHIPS: LESSONS FROM THREE COMMUNITY CHANGE INITIATIVE PARTNERSHIPS, URB. INST. (2021) (reporting on the lessons from integrated services initiatives in Buffalo, New York; Columbus, Ohio; and San Antonio, Texas).

⁹¹ *Id.* at 10.

⁹² Harvey et al., *supra* note 67, at 14–15 (noting that CPS referrals may be concentrated in just a few blocks within a low-income neighborhood).

functioned. The limits of community control also must be considered. For example, budget decisions are made at the federal, state, county, city, and school district levels. Local community bodies may have more or less authority to determine how funds are allocated, the nature and mix of services, and the criteria for eligibility depending on the level of government with decision authority.

VII. CONCLUSION

Over the past fifty years, CPS policy and practice has been regularly subject to pendulum swings, partly driven by the fact that there are a number of competing and conflicting goals embedded in both legislation and practice.⁹³ While there is widespread agreement that a new approach to helping families and meeting the needs of children is needed, commentators offer very disparate views about both the problems and solutions. Differing positions often are greatly influenced by value premises and different interpretations about what is actually occurring. The absence of adequate data, limited research, and the fact that approaches vary so greatly between and within states makes analysis of the likely impact of various alternative proposals difficult to evaluate. But such analysis is essential if the future is to be better than the past. Dorothy Roberts has laid out the failures of the past and a vision for the future. It is up to the field to focus on the best available knowledge and do the detailed thinking necessary to get there.

⁹³ See JILL DUERR BERRICK, *THE IMPOSSIBLE IMPERATIVE: NAVIGATING THE COMPETING PRINCIPLES OF CHILD PROTECTION* (2017) (sharing stories of child welfare professionals navigating their work while grappling with often-contradictory fundamental principles of child welfare).