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## COMMENT

### **“IT’S THE ONLY SYSTEM WE’VE GOT”: EXPLORING EMERGENCY RESPONSE DECISION-MAKING IN CHILD WELFARE**

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*Front-line public “Child Welfare” caseworkers, also known as emergency response or investigative caseworkers, play a significant role in the “Child Welfare” system. Placed in an intermediary role within the system, investigative caseworkers are tasked with making critical decisions while attempting to advocate for families and uphold the system’s policies. To understand the caseworker decision-making processes more in-depth, a qualitative study was conducted with eighteen investigative caseworkers in four different counties. The guiding research question of the current study was: “What impacts the decision-making processes in which child protective service workers investigate and substantiate referred cases of child maltreatment?” Findings revealed several nuances and extensive complexities in how workers navigated often contradictory roles within the system. Important emerging themes include caseworkers’ use of surveillance during investigation and multi-institution partnership in decision-making processes. This Comment discusses the ways in which caseworkers react to and navigate ambiguity and parental resistance during investigations, lending an often-overlooked exploration into various nuances within the decision-making apparatus. Understanding nuances in the complex web of decision-making*

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*and information-gathering may lead to novel ways of thinking about how the "Child Welfare" system addresses child protection.*

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## I. INTRODUCTION

The public “Child Welfare” system in the United States is comprised of a network of organizations and institutions that have collaboratively and historically exercised power over numerous families and communities in the name of “child safety and protection.”<sup>1</sup> The “Child Welfare” system in the United States primarily functions through state and county departments such as the Department of Child & Family Services (DCFS) in Los Angeles. These county and state agencies are responsible for assessing, investigating, and substantiating reported cases of child abuse and neglect. To fulfill this responsibility, “front-line” emergency response or investigative caseworkers (CSW) within the department are tasked with investigating suspected cases of maltreatment that have been filtered through the reporting hotline, collecting and utilizing several forms of data and “evidence” to inform critical decisions such as removing children from their homes. These frontline departmental caseworkers are often placed in intermediary roles, functioning as both advocates for family and enforcers of department policy. Dorothy Roberts describes this intermediary role as the “Caseworkers as Investigators and Helpers” paradox, which explains the ways in which some caseworkers use coercion and threats during their intrusive investigations, while simultaneously being responsible for providing supportive services to families.<sup>2</sup> Caseworkers are not only expected to navigate this paradoxical role as helper and investigator; they must also navigate multi-system partnerships between departments and agencies within the larger “Child Welfare” system that have historically ignored family autonomy. These systems include punitive institutions like the courts and police departments.

In recent years, departments like DCFS have increased their uses of multi-institution partnerships and collaborations, relying more on various institutions within the broader “Child

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<sup>1</sup> Quotes are utilized when mentioning the “Child Welfare” system as it has recently been termed the “Family Policing” system by families impacted by the system. See Ava Cilia, *The Family Regulation System: Why Those Committed to Racial Justice Must Interrogate It*, HARV. C.R.-C.L. L. REV. (Feb. 17, 2021), <https://harvardcrcl.org/the-family-regulation-system-why-those-committed-to-racial-justice-must-interrogate-it/> [<https://perma.cc/9XG7-SMSY>].

<sup>2</sup> See Dorothy E. Roberts, *Child Welfare’s Paradox*, 49 WM. & MARY L. REV. 881, 886–88 (2007) [hereinafter Roberts, *Paradox*].

Welfare” system. This includes contractual relationships and information-sharing partnerships with the education system, the medical and health industry, and the criminal justice system. Roberts refers to this as a “multi-institutional apparatus of surveillance, social control, and punitive regulation.”<sup>3</sup> The increase and strengthening of these partnerships can be observed in processes that are now required and embedded within the “Child Welfare” system including: forensic interviews with specialized healthcare providers and clinics, shared reporting infrastructures with the police, interagency databases, and mandated reporting laws. Multi-system partnerships and collaborations shift various policies and regulations, consequently impacting the ways that caseworkers make life-altering decisions when investigating cases of child maltreatment. These multi-institution partnerships often negatively impact families, making them more susceptible to monitoring and surveillance by the state. As defined by David Lyon, surveillance is “any collection and processing of personal data, whether identifiable or not, for the purposes of influencing or managing those whose data has been garnered.”<sup>4</sup>

A closer investigation into both frontline caseworker decision-making and their utility and implications of multi-agency collaborations is needed. Some researchers believe that increasing data and surveillance within the department generally will move “Child Welfare” towards a twenty-first century transformation that is better aimed at prevention.<sup>5</sup> Further, some researchers believe that increasing the department’s collaborative nature will assist this efficacy in preventing child maltreatment.<sup>6</sup> Other researchers have suggested that surveillance harms communities that already

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<sup>3</sup> See Dorothy E. Roberts, *Digitizing the Carceral State*, 132 HARV. L. REV. 1695, 1706 (2019) (book review) [hereinafter Roberts, *Digitizing*].

<sup>4</sup> See DAVID LYON, *SURVEILLANCE SOCIETY: MONITORING EVERYDAY LIFE 2* (2001).

<sup>5</sup> See *21st Century Child Well-Being System*, CASEY FAM. PROGRAMS (Mar. 16, 2021), <https://www.casey.org/tag/21st-century-child-well-being-system/> [<https://perma.cc/3JUL-C7YF>].

<sup>6</sup> See SARAH FONT, AM. ENTER. INST., WHAT LESSONS CAN THE CHILD WELFARE SYSTEM TAKE FROM THE COVID-19 PANDEMIC? 1–12 (2021); See also Emily Putnam-Hornstein et al., *A Public Health Approach to Child Maltreatment Surveillance: Evidence from a Data Linkage Project in the United States*, 20 CHILD ABUSE REV. 256 (2011).

have been historically impacted by various systems.<sup>7</sup> Moreover, some researchers believe that widespread dispersal of power may be a function of the neoliberal state.<sup>8</sup> Systems and structures of power that work in conjunction with departments like DCFS or ACS might reciprocally impact its priorities and practices, resulting in the over-surveillance and dehumanization of families. As Kimberlé Crenshaw explains, systems and structures have the embedded power to enable and perpetuate systemic oppression.<sup>9</sup> It is no surprise that agencies like DCFS and ACS disproportionately harm families with low income, families of color, Black families, and Indigenous families. The presence of the police state and the widespread targeting of already over-surveilled communities show that the tentacles of the carceral state might reach deep into the “Child Welfare” system. As such, it is critical to understand how investigative front-line caseworkers make decisions to remove children from their homes, including the ways that they use multi-system collaboration and partnerships.

To understand this critical relationship and decision-making processes more in-depth, I conducted a qualitative study with front-line “Child Welfare” caseworkers, also known as Emergency Response (ER) or investigative caseworkers within DCFS. Investigative caseworkers have a unique position in the system in which they are tasked with being first responders for threats to child safety and consequently determining if children will become wards of the court. The guiding research question of the current study was: “What impacts the decision-making processes in which child protective service workers investigate and substantiate referred cases of child maltreatment?” Findings from the study showed that major complexities exist within caseworker decision-making processes including the use of

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<sup>7</sup> See STOP LAPD SPYING COAL., A REPORT ON UNDERSTANDING HARM, SURVEILLANCE, & INFORMATION SHARING IN THE DEPARTMENT OF CHILDREN AND FAMILY SERVICES IN LOS ANGELES COUNTY (2020). See also Lynne Wrennall, *Surveillance and Child Protection: De-Mystifying the Trojan Horse*, 7 SURVEILLANCE & SOC'Y 304 (2010); Jessica Lovaas, *Policing Through 'Paperwork': Foster Youth Files and Archival Surveillance in the 21st Century*, 6 GLOB. STUD. CHILDHOOD 442 (2016).

<sup>8</sup> See Marilyn Brown & Barbara E. Bloom, *Colonialism and Carceral Motherhood: Native Hawaiian Families Under Corrections and Child Welfare Control*, 4 FEM. CRIM. 151 (2009).

<sup>9</sup> Kimberlé Crenshaw, *Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color*, 43 STAN. L. REV. 1241 (1991).

surveillance and monitoring, both internally and through other agencies. As such, two themes are discussed within the study: *Caseworker Use of Surveillance During Investigation* and *Multi-Institution Partnerships in Decision-Making Processes*. These themes indicate that larger structures of power fuel and are reciprocally fueled by the “Child Welfare” system, leaving lasting impacts not only on families who come into the system but also department caseworkers.

## II. METHODS

### A. Methodology

The current study utilizes constructivist grounded theory (CGT) as a way to explore how individual “Child Welfare” workers make meaning while engaging in decision-making processes.<sup>10</sup> Grounded Theory, created by Barney Glaser and Anselm Strauss, is an inductive and iterative qualitative methodology with noted origins in pragmatism.<sup>11</sup> CGT claims that “subjectivity is inseparable from social existence,” acknowledging the researcher as an active actor and co-creator of knowledge.<sup>12</sup> Thus, CGT is highly compatible with pragmatism. Similar to the tenets of pragmatism, CGT focuses on situated knowledge, recognizing an individual’s partialities and variances.<sup>13</sup>

### B. Data Collection and Analysis

Institutional Review Board (IRB) approval was obtained from the IRB of University of California, Los Angeles, prior to beginning the study. A semi-structured interview guide was created and included questions regarding general decision-making processes. Participants were recruited via convenience sampling. Participants were required to have experience in substantiating or investigating a case of child maltreatment as an emergency response worker in a county or state department of “Child Welfare”. Coding was influenced by Charmaz’s

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<sup>10</sup> See KATHY CHARMAZ, *CONSTRUCTING GROUNDED THEORY: A PRACTICAL GUIDE THROUGH QUALITATIVE RESEARCH* (2d ed. 2014)

<sup>11</sup> See JULIET CORBIN & ANSELM STRAUSS, *BASICS OF QUALITATIVE RESEARCH: TECHNIQUES & PROCEDURES FOR DEVELOPING GROUNDED THEORY* 9 (4th ed. 2015).

<sup>12</sup> CHARMAZ, *supra* note 10, at 14.

<sup>13</sup> *Id.*

“Constructing Grounded Theory”<sup>14</sup> and included initial process codes followed by focused coding. Focused codes revealed some gaps in the data that were addressed in subsequent interviews until the point where limited novel data was being added. CGT acknowledges that the researcher is an active participant in the entire research process, including data collection and data analysis. For this reason, memos were frequently written.<sup>15</sup> Memos were both written and recorded before and immediately after the interviews were conducted, addressing initial thoughts and ethical considerations. Memos were also written after coding, during coding, and while comparing data. Reflexive memos additionally added space to explore and address biases and personal assumptions, as well as to prevent theoretical leaps. Furthermore, to look closely at the context of the interviews, situational maps were utilized.<sup>16</sup>

### III. CASEWORKERS USE OF SURVEILLANCE IN DECISION-MAKING PROCESSES

Eighteen frontline investigative caseworkers from four different urban counties in the United States were interviewed for this study. Interviews ranged from forty-five to ninety minutes and were conducted in-person, through phone call, or over Zoom. Caseworkers in this study were asked to share their processes for investigating and substantiating cases of child abuse and neglect. Responses from caseworkers largely showed that uses of surveillance were prevalent throughout the decision-making process. Use of surveillance came in the form of data use as well as in physical forms such as monitoring families. Moreover, it occurred within the department by caseworkers directly, and also expanded through collaborations with other institutions. Though often being a critical tool in the decision-making process, use of surveillance was a point of immense tension and reflection for caseworkers, impacting the ways in which they interacted with families and other agencies.

#### A. Departmental Surveillance of Uncooperative Parents

A large amount of surveillance that was used in decision-making processes by caseworkers during their investigations was

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<sup>14</sup> See generally *id.*

<sup>15</sup> *Id.* at 14.

<sup>16</sup> See ADELE CLARKE, ET AL., SITUATIONAL ANALYSIS: GROUNDED THEORY AFTER THE INTERPRETIVE TURN 127 (2d ed. 2017).

in reaction to parental resistance and “uncooperative” parents. Seven caseworkers shared that suspected cases are often escalated due to reasons beyond the actual suspected abuse or neglect claim.<sup>17</sup> Caseworker Aida recalls one salient experience in which a family was pushed deeper into the system’s surveillance due to a father’s inability or unwillingness to answer DCFS calls.<sup>18</sup> Because of the father’s failure to communicate with the department, the voluntary services department refused to work with him, forcing Aida to move the family into a more formal relationship with the court.<sup>19</sup>

Like Aida’s case, Derek recounted experiences where the department enacted surveillance as a consequence of parental resistance. In Derek’s story, a young mother who barely spoke English was confused about caseworkers showing up to her house.<sup>20</sup> After the initial visit from Derek and his supervisor, he explained that the mother subsequently “wouldn’t let us in, and she was hard to contact.”<sup>21</sup> This became an issue and “pissed off the department,” resulting in added attempts to observe the family, labeling them as more non-cooperative every time she refused. This resulted in the children being taken from the mother’s home, something Derek shared could have been prevented with more understanding and patience from the department. Derek empathized with the mother stating:

I just imagined myself, you know my mom being fed up like y’all crazy. We fine. I don’t need to talk to y’all. Door slam. Then next thing I know we got the government eyes on us . . . and it’s just like we uncooperative, when it was really just confusing, you know?<sup>22</sup>

Derek was not the only caseworker who referred to departmental monitoring as eyes or “government eyes.” Other caseworkers, including Monica and Alexis, also mentioned this in

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<sup>17</sup> To ensure anonymity, pseudonyms were used for all participants names as well as for formal names of places or locations mentioned during the interviews.

<sup>18</sup> Interview with Aida, Caseworker, Dep’t of Child & Fam. Servs. (Nov. 9, 2019).

<sup>19</sup> *Id.*

<sup>20</sup> Interview with Derek, Caseworker, Dep’t of Child & Fam. Servs. (Feb. 2, 2020).

<sup>21</sup> *Id.*

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

their recollections. Alexis shared, “When you refuse or say you’re fine, next thing you know you got government eyes on you 24/7.”<sup>23</sup> Additionally, Monica stated, “once we put eyes on them ugh . . . and we take that child from her parents, it’s the worst thing you could do for her.”<sup>24</sup> Finally, Aida shared how mandatory reporters’ fears might lead to unnecessary department eyes or surveillance. She stated, “the you’re-liable-if-something-happens kind of thing scares so many people into reporting whatever. Once you report something there’s eyes.”<sup>25</sup> Paralleling Derek’s story, these statements from other caseworkers show how much power the department has in subjecting families to unnecessary surveillance. This power is fueled by subjective assumptions made about parents, labeling parental refusal as being “uncooperative” or non-compliant. Aida’s experience shows how the department has an ability to enact surveillance on its own terms, even in the early stages of a referral. The implications of this are dire. Caseworkers expressed that they fear putting eyes on the family because it consistently pushes families deeper into the system, leading to more risk of family separation.

#### B. Utilizing Preventative Surveillance in Ambiguous Cases

Similar to caseworkers use of surveillance on “uncooperative” parents, surveillance also occurred when there was increased ambiguity in a case. Ambiguity in cases often resulted from circumstances where abuse or neglect was not immediately obvious or severe enough to warrant immediate removal of the child from the home. This ambiguity was exacerbated by the lack of available data caseworkers could use to prove that maltreatment occurred. It was also a result of tools, like the frequently mentioned Structure-Decision Making Tool (SDM), lacking the ability to capture the entirety of a family’s circumstance. In navigating these gray areas, some caseworkers expressed the need to increase departmental monitoring so that they did not miss anything. The fear of missing something was extremely prominent when there were instances of child death within the department. Because of this, caseworkers often

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<sup>23</sup> Interview with Alexis, Caseworker, Dep’t of Child & Fam. Servs. (May 8, 2020).

<sup>24</sup> Telephone Interview with Monica, Caseworker, Dep’t of Child & Fam. Servs. (Dec. 8, 2019).

<sup>25</sup> Interview with Aida, *supra* note 18.

decided to take preventative action “just in case.” This was expressed by Julia who stated:

So a lot of the times when we are using the tools, everything seems like it's good, we can return the child. But then . . . there's something that you know, that we feel that isn't right yet or that we see may be not being fully evaluated in the tool.<sup>26</sup>

In response to this “gut” feeling, Julia decided to increase monitoring of the family until they could confirm or deny their suspicions, even though there was no evidence “on paper.”<sup>27</sup> Another caseworker, Corey, recounted a similar feeling, sharing that: “the gut feeling you get, even though the paper said there is no evidence of abuse . . . you can see from the child's eyes whether there is intimidation.”<sup>28</sup> In this case, Corey suspected more harm was happening when he looked at the child, even though there was no proof from the data and assessments. This provoked him to ask the judge to change the mother's overnight visits to monitored visits. These stories highlight an extremely important point. Many researchers have stated that caseworkers do not rely on risk assessment tools alone, but instead utilize their judgment and perceptions to prevent categorizing families as “high” or “low” risk erroneously.<sup>29</sup> As exemplified in Corey's and Julia's cases, the inadequacies of tools led caseworkers to increase their surveillance in hopes of finding something that would confirm their gut feelings. Even in the absence of tangible evidence and supporting data, some caseworkers continue to work against families based primarily on their own inner assumptions.

Several caseworkers also shared their experiences with utilizing other tools in attempts to fill in the missing gaps that existed within ambiguous cases, as highlighted in Julia's and

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<sup>26</sup> Telephone Interview with Julia, Caseworker, Dep't of Child & Fam. Servs. (Feb. 7, 2020).

<sup>27</sup> *Id.*

<sup>28</sup> Telephone Interview with Corey, Caseworker, Dep't of Child & Fam. Servs. (Dec. 7, 2019).

<sup>29</sup> See Peter J. Pecora et al., *Safety and Risk Assessment Frameworks: Overview and Implications for Child Maltreatment Fatalities*, 90 CHILD WELFARE 154 (2013). See also Putnam-Hornstein et al., *supra* note 6; Jeri L. Damman et al., *Factors Associated with the Decision to Investigate Child Protective Service Referrals: A Systematic Review*, 25 CHILD & FAM. SOC. WORK 785 (2020); Cheryl Regehr et al., *Confidence and Professional Judgment in Assessing Children's Risk of Abuse*, 20 RSCH. ON SOC. WORK PRAC. 621 (2010).

Corey's stories. This included the use of discretionary drug testing. Derek shared that drug tests were used as precautions and often were rationalized by an individual's past history with the criminal justice system or DCFS.<sup>30</sup> Lonie similarly highlighted this point, stating:

I told him to go [get] drug tests, and they were just scared. I was just trying to get them more ready. I said I know y'all smoked before. It's fine. We just want to make sure just because of your history.<sup>31</sup>

Another caseworker, Cindy, adds that the provision of these tests was often discretionary, varying from random caseworker requests to test or requests for on-demand tests. This left parents fearful of testing.<sup>32</sup> At times, this made parents evade drug testing, leading to increased monitoring and mistrust from the department. In utilizing caseworker discretion, Monica recalls a scenario in which a mother was asked to do numerous "voluntary" drug tests to ensure child safety.<sup>33</sup> This was based on suspicion that the mother was smoking marijuana in front of her child. The mother took one test which resulted in negative results. The mother refused subsequent testing requests. After multiple refusals, those working on the case recognized that they legally could not act. Instead, they decided to increase unannounced visits "just to see what was going on."<sup>34</sup> This form of surveillance was due to suspicions of drug use around the child compounded by the mother's refusal to disprove these suspicions.

#### 1. Tensions in Utilizing Surveillance for Prevention

The department's insistence on preventing future risk of maltreatment through surveillance was an immense point of tension for caseworkers, as they often reflected on how it was a way to ensure child safety regardless of it feeling intrusive. Danielle clearly exemplified this when rationalizing the need to be invasive, regardless of her difficulty with it:

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<sup>30</sup> Interview with Derek, *supra* note 20.

<sup>31</sup> Telephone Interview with Lonie, Caseworker, Dep't of Child & Fam. Servs. (Feb. 12, 2020).

<sup>32</sup> Telephone Interview with Cindy, Caseworker, Dep't of Child & Fam. Servs. (May 6, 2020).

<sup>33</sup> Telephone Interview with Monica, *supra* note 24.

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

The department is so invasive. I struggled with that in the beginning. But I think we're invasive for a reason. We have to do our job to make sure the child is okay. We have to make preventative measures for the future.<sup>35</sup>

Danielle was echoed by Dana who similarly rationalized the use of preventative surveillance to ensure that child maltreatment does not come under the department's attention again:

If we're not invasive, and we're very lenient, and we don't catch these little bitty tiny details, that detail might make a huge impact in a year, something that we should have caught when we were on you for a couple of months.<sup>36</sup>

This point was further shared by MJ who admitted to the intrusiveness of caseworker monitoring, rationalizing its purpose for "bettering" a child's life. In her analysis, she acknowledged that the department makes it difficult on clients even if they are not directly separating the family:

We can go down the route to where we don't detain, but we are going to pull all of these efforts to make it really hard for the client, in order to better that child's life. Like hard. Including requiring like 36 weeks of [Domestic Violence] classes, 6 months of sober living. We are really on top of you for the next couple of months.<sup>37</sup>

In these cases, shared by DCFS workers, there is a common theme of fear around future occurrences of child maltreatment that might have been prevented by the caseworker. This sense of responsibility for a child's life is persistent throughout caseworker narratives. There is an internalized and consistent feeling that caseworkers must be the ones to ensure that a child is "safe" and risk-free in both the present and the future. The department is given a major

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<sup>35</sup> Telephone Interview with Daniella, Caseworker, Dep't of Child & Fam. Servs. (July 2, 2020).

<sup>36</sup> Telephone Interview with Dana, Caseworker, Dep't of Child & Fam. Servs. (July 12, 2020).

<sup>37</sup> Telephone Interview with MJ, Caseworker, Dep't of Child & Fam. Servs. (June 26, 2020).

responsibility. If caseworkers fail to meet it, they may be blamed for injury or death to a child, and risk losing their job or incarceration. Caseworkers mentioned how decisions to use surveillance and monitoring were significantly impacted by these pressures and expectations of the department and broader “Child Welfare” system. Use of drug tests for example, was a point of tension for seven caseworkers who expressed feeling pressured to use them by their supervisors and other agencies. They explained that utilizing drug tests was often required to ensure that a home was safe for the child to stay, and that the parents had the capacity to fulfill their parental duties. Yet, frequently these caseworkers had to drug test in instances where there were no prominent or concerning signs of safety risk. In adhering to preventative tactics, the department creates avenues for unnecessary and increased surveillance on families. Cara shared her doubts in the department’s aim to take on a more preventative role stating:

I’ve heard that there are things in the works about being more proactive like preventative care. But I don’t believe in that with the department. Because if you start preventative programs that just means you have eyes on people and you’re just gonna take more kids. I think any government eyes on people like . . . that’s why certain communities are more policed. There are more eyes on people.<sup>38</sup>

Cara’s reservations about departmental prevention efforts highlight many important implications for families. Departmental shifts to enact more prevention works in conjunction with surveillance, potentially increasing family separation. Further, it adds to the surveillance of individuals who are already constantly monitored by other systems, resulting in a culmination of policing tactics.

#### IV. MULTI-INSTITUTION PARTNERSHIPS IN DECISION-MAKING

Though caseworkers enacted surveillance themselves and through the internal work of the department, they also shared the ways in which their work was directly entangled with

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<sup>38</sup> Telephone Interview with Cara, Caseworker, Dep’t of Child & Fam. Servs. (Feb. 1, 2020).

various systems like hospitals, police departments, and courts. These working partnerships occurred both in-person and through data and technology including forms of mandatory reporting, training, partnered investigations, and special access privileges. Working intimately with other agencies often increased monitoring and surveillance of families and impacted caseworkers' trajectories of decision-making. This sort of monitoring and surveillance has been mentioned previously in the literature.<sup>39</sup> In several circumstances, partnerships were revealed in less obvious ways, such as in caseworkers' ability to access data from other agencies. Several caseworkers utilized these forms of data from other agencies to decide whether child abuse or neglect actually happened. One caseworker, Melissa, highlighted that specific data such as police reports and medical records, are key forms of evidence that help prove that abuse or neglect occurred.<sup>40</sup> In the county that Dana and a few other caseworkers worked in, parents were asked to sign a disclosure which would allow the caseworkers to access these forms of data from other agencies. Dana explains that this disclosure allowed caseworkers to gain overarching access to data, including the ability to request medical records and school records of youth.<sup>41</sup> In addition to these uses of data, other more blatant instances of multi-system surveillance occurred through collaborative training or partnered investigations.<sup>42</sup>

Important to highlight from these caseworker narratives are the complexities around having access to a multitude of agencies. Caseworkers use of "evidence gathering" across different agencies and their use of surveillance during the decision-making process was often deemed necessary, assisting them in determining both the presence of maltreatment and the

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<sup>39</sup> Majid A. AlEissa et al., *A Commentary on National Child Maltreatment Surveillance Systems: Examples of Progress*, 33 CHILD ABUSE & NEGL. 809 (2009); See Kelley Fong, *Getting Eyes in the Home: Child Protective Services Investigations and State Surveillance of Family Life*, 85 AM. SOC. REV. 610 (2020). See also JENNIFER REICH, *FIXING FAMILIES: PARENTS, POWER, AND THE CHILD WELFARE SYSTEM* (2005); Dorothy Roberts, *Child Protection as Surveillance of African American Families*, 36 J. SOC. WELFARE & FAM. L. 426 (2014); Meghan E. Shanahan et al., *Child Maltreatment Surveillance Improvement Opportunities*, 79 N.C. MED. J. 88 (2018).

<sup>40</sup> Telephone Interview with Melissa, Caseworker, Dep't of Child & Fam. Servs. (Dec. 22, 2019).

<sup>41</sup> Telephone Interview with Dana, *supra* note 36.

<sup>42</sup> *Id.*

safety risk of leaving the child with their family. The following sections explore the various ways in which multiple systems are implicated within the front-line caseworker decision-making and how “evidence gathering” and surveillance are both utilized and subsequent byproducts of these processes.

A. The Courts, Warrants, and “Voluntary” Services

Cases of child abuse and neglect are housed within dependency court and in some severe cases are also seen in criminal courts. Because of this inextricable tethering to the courts, collaborative infrastructures have been created to ensure that caseworkers can gain more expedited access to both court warrants and drug testing during their decision-making processes. In this study, many caseworkers shared that they are expected to use the courts for warrants to complete their investigations and assist in their decision-making. The department’s relationship with the courts have allowed for the creation of several internal partnered processes, as well as creation of voluntary services or voluntary family maintenance as a way to monitor, track, and mitigate family risk. The use of any formal court procedure or process, whether warrant or voluntary services, increased tensions felt by caseworkers in their paradoxical roles as both investigators and advocates of families. As suggested by several caseworkers, the threat of warrants and voluntary services can be used to get parents to cooperate during the investigation. In one example, Dana shares that you can get an investigative warrant if parents do not want kids to talk to the caseworker privately:

Some people will tell me you can’t talk to my kid without me, and I’m like I will need to talk to your kid like that’s not even a question, and if you don’t want to allow that . . . and it’s fucked up because this is intimidation to me. But I feel like I need to be transparent, if you don’t want me to talk to your kid, I’m gonna get an investigative warrant, and they’re going to approve it. If someone’s not cooperating, you go and get an investigative warrant. So, it’s kind of like you don’t really have a right to say no.<sup>43</sup>

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<sup>43</sup> *Id.*

In this example, Dana highlights the inability for parents to truly consent under what feels like intimidation tactics. Although the department technically states that they allow for family autonomy, if families create barriers to an investigation, they will face serious consequences. Families are, in reality, unable to reject or refuse the department's surveillance. Similar to Dana, Carrie agrees that tensions exist in using warrants when families do not complete their court-orders on time:

I don't know if this is the policy or not, but I have been advised to do it by my supervisor after 12 months. It's like an automatic warrant, so automatically you have to do a warrant if they [parents] don't complete what they're supposed to do in 12 months. The decision is to open a warrant, so it's like you either decide to fight for the client and try to beg the court to give them six month[s], or you just follow the policy and seek the warrant even though they didn't necessarily do anything, and it's not an immediate safety [issue,] or there's no danger.<sup>44</sup>

Carrie's story highlights an important power dynamic within the department and the caseworker decision-making processes. Families who have already endured a year of surveillance and monitoring by the department can become placed in the crossfires between caseworkers and the courts. The fate of a family is situated between a caseworker's willingness to advocate for them by begging the courts for more time, and a caseworker's strict adherence to policy by serving an automatic warrant. In this scenario, the courts are at the top of the hierarchy, determining the trajectory of the family by either declining or allowing the caseworker and family more time to complete court-orders for family reunification. This power is held within the courts regardless of the caseworker not observing any immediate safety or danger risk. In this circumstance, families must endure either continued surveillance by the department, or family separation and additional cumulative surveillance by the courts because they did not satisfy court-orders.

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<sup>44</sup> Telephone Interview with Carrie, Caseworker, Dep't of Child & Fam. Servs. (June 30, 2020).

### 1. Voluntary Services

Caseworkers continued to discuss the use of warrants when sharing stories about voluntary services. Many times, when warrants were sought out, it was due to parents' attempts to evade the system. In echoing Dana's point about intimidation through warrants, Paul describes how warrants might be used as a threat when offering "voluntary" services:

When we say voluntary services, we say it in a way where it's not voluntary. But they didn't feel safe leaving the kid in the home. This is all noted in the system. If you decline the services, then we will take measures to ensure that we keep the minors safe. So basically, read between the lines. If you don't get this . . . if you don't accept to have these services, we may potentially write up a warrant to take your children.<sup>45</sup>

Not only are parents' refusal of voluntary services tracked in the system, caseworkers who are already operating within a power hierarchy "offer" services to families under the threat of caseworkers acquiring warrants to remove children from the home. Melissa reiterates this point, stating that voluntary services require court presence, even if families have not been substantiated for abuse or neglect. She adds that these services are posed as voluntary, but really are coercive:

For the voluntary, it's kinda like a volun-told. Like we're going to do a voluntary case so we're going to take you to court. I didn't even want to do a voluntary, if we do a voluntary, we are going to set this family up to fail. Like we are going to take their kid just because we have eyes on them. Because they don't wake up early, and they don't answer their phone. This is so wrong. Voluntary services set up famil[ies] to fail.<sup>46</sup>

Melissa's opinions about both parental autonomy in decision-making, and effectiveness of court voluntary services is striking. In describing voluntary services, Melissa emphasizes again, that families are under constant threat of being taken into

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<sup>45</sup> Telephone Interview with Paul, Caseworker, Dep't of Child & Fam. Servs. (July 1, 2020).

<sup>46</sup> Telephone Interview with Melissa, *supra* note 40.

court under more surveillance and risk of family separation. She further states that by adding voluntary services, you are adding more eyes on the family, leading to a likely family separation due to irrational reasons like failure to communicate.<sup>47</sup>

#### B. The Criminal (In)Justice System

In addition to partnerships with the courts, collaborations between DCFS and police departments were the most frequently mentioned relationships throughout interviews with caseworkers. Similar to this inextricable tie with the courts, DCFS' relationship with the police department has also become embedded through the creation of collaborative policies and training between both agencies. As such, working with the criminal justice system, though sometimes discretionary, was not always optional for caseworkers. Ten caseworkers in this study described the ways in which police departments and the courts have an immense amount of power and discretion over aspects of the caseworker decision-making process. DCFS caseworker Miranda states that working with law enforcement changes the way she investigates, depending on how they "level with" her.<sup>48</sup> Similarly, she adds that this collaboration can change the dynamic between caseworker and families:

With them responding with us, it kind of gives you a different first-hand experience with the family. Rather than when you respond as DCFS only. I feel that it changes the report, and it changes the relationship that DCFS builds with family. You know, more likely than not families fear the police, especially given the areas that we can serve, such as predominantly undocumented families and people who have a history with law enforcement and don't really trust it.<sup>49</sup>

The influence of the criminal justice system can impact caseworkers' investigations and assessments indirectly or directly. Moreover, it can exacerbate the monitoring and policing of families who already have past experience in the criminal justice system. The implications of this relationship also seep

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<sup>47</sup> *Id.*

<sup>48</sup> Telephone Interview with Miranda, Caseworker, Dep't of Child & Fam. Servs. (July 14, 2020).

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

directly into the dynamic between caseworker and family during investigation, altering the ways in which families perceive the department. Aida states:

When people see law enforcement, they tend to be more cooperative. Because of fear. But I think that more often, families are more fearful of our department than we are of what they can do.<sup>50</sup>

#### 1. Types of “Law Enforcement” Partnerships

Caseworkers in this study highlighted the different ways in which law enforcement or police and DCFS work together, sometimes in ways that are often not discussed in the larger body of research. In five interviews, caseworkers stated that this relationship was established from their very first days of working within the department. In these five cases, caseworkers attended a training that included collaborative simulation sessions taught by police and training caseworkers. These simulations were examples of situations that might happen in person, and allowed caseworkers to identify potential points of bias during their investigations and assessments before entering direct work with families. Cara recounted her experience with simulations and the use of police officers stating:

Okay first I was like, I’m not a fan of cops, but it’s just these are cops that are either retired or in the process of retiring in the last few years. They’ve been in the force for a long time. And these are cops that have worked and have had so many experiences with DCFS. In terms of like, hey, we’re detaining, and parents might not be happy, and we need support.<sup>51</sup>

Cara highlights the use of cops with extensive experience with DCFS, bringing to the forefront the historical intermingling of both of the systems. She states that police are a form of support, a way to mitigate parents’ unhappiness especially in cases of child removal.<sup>52</sup> Michael adds his gratitude for having police do collaborative training. He explains that police offer a sense of protection and teach specific lessons such as the differences between strangulation and choking, when to leave a

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<sup>50</sup> Interview with Aida, *supra* note 18.

<sup>51</sup> Telephone Interview with Cara, *supra* note 38.

<sup>52</sup> *Id.*

house, and what protocols to follow when in danger.<sup>53</sup> These foundational relationships between the criminal justice system and “Child Welfare” during new worker training already set a tone for expectations within the department, and necessitate a specific knowledge that is assumed to be only gained through a collaboration between both agencies.

In moving beyond new worker training and discussing actual fieldwork during child maltreatment investigations, caseworkers revealed that their relationship with police continued. This relationship between law enforcement was discretionary, as there were no generalized standards of how to work with law enforcement across interviews. Although their caseworkers mentioned policy that required law enforcement presence, implementations of the policies varied per caseworker. Caseworkers presented different circumstances that they felt required law enforcement presence. These circumstances included: investigations of severe abuse, investigations of parents who are known to be aggressive or combative, investigations of families with prior DCFS history, or when needing supplemental information or evidence. Katie, who worked in the department for two years, stated that working with law enforcement is rather common:

We do a lot of collaboration with law enforcement. So, for example, if I got a referral that was in regard to domestic violence, it's usually called in by law enforcement. They are really hard to get in contact with, but we have access to their emails and phones. Some of them are really good, and some were just not. So, you're trying to get into contact with law enforcement, especially because sometimes there's criminal cases . . . and this also goes for sexual abuse and severe child abuse and stuff like that.<sup>54</sup>

Katie's explanation shows how deep and normalized ties with law enforcement are. They serve as both reporting parties and partners in investigations. They hold critical information needed for investigation, and also play a significant role in cases

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<sup>53</sup> Telephone Interview with Michael, Caseworker, Dep't of Child & Fam. Servs. (June 2, 2020).

<sup>54</sup> Telephone Interview with Katie, Caseworker, Dep't of Child & Fam. Servs. (June 6, 2020).

that are deemed criminal by law. She adds that in domestic violence cases, caseworkers often pull call logs from law enforcement that show how many times they have been called and have come to the house:

I would request call logs to the person's house . . . which is like—I hate saying that out loud because it sounds so, like, intrusive—but I would do, like, call logs. If I put the specific person's name, house, and apartment number, then it would come out, like, how many times law enforcement's going out to the house.<sup>55</sup>

This form of evidence gathering adds to the already established surveillance that occurs when becoming involved with law enforcement. Cody, another caseworker within DCFS, additionally explained that law enforcement is required when investigating physical abuse allegations where the caseworker's gender does not “match” that of the child presumptively being maltreated:

[W]hen I got the referral . . . it was a very detailed report stating that the child reported having marks and bruises, and she was female. I drove to law enforcement. Local law enforcement. And I asked that I get a female officer, at least one backup officer, because of our policy. If it's physical abuse, and there are possibilities of marks and bruises, then we have to go with law enforcement in case we have to place the child in protective custody.<sup>56</sup>

In this case, having a female law enforcement officer allowed Cody to be able to investigate the child's marks and bruises.<sup>57</sup> This DCFS policy drastically altered the nature of his investigation as he would not have been able to conduct his investigation and make a subsequent decision without the use of law enforcement. This form of collaboration forces children and families to have unnecessary encounters with law enforcement,

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

<sup>56</sup> Telephone Interview with Cody, Caseworker, Dep't of Child & Fam. Servs. (Dec. 8, 2020).

<sup>57</sup> *Id.*

and is embedded within policy. Due to this, some caseworkers are forced into doing partnered investigations.

## 2. Criminal Justice Data

The ties with the criminal justice system seep also into generational data that is shared and collected between both systems. Caseworkers acknowledged that some forms of data have been used for years, with databases showing generational cases of abuse, neglect, and incarceration. Melissa shared, “I can see that Americans have shared trauma, history of us taking them as kids. Immigrants don’t know us yet, but they will.”<sup>58</sup> The use of historical data and shared documents were claimed to be a necessity, though sometimes they proved to be beneficial and other times acted as a barrier. Caseworkers discussed that these forms of data sometimes provided pivotal information to help them substantiate claims of maltreatment. They also shared that their ability to view historical data enabled them to question evidence and pursue hunches. In one salient instance, Corey found out that a foster mother’s boyfriend had a criminal history and was given access to the home, leading Corey to believe that there might be sexual abuse occurring:

[S]o now as a social worker, I’m triggered now to look if this child has been a victim of sexual abuse as well . . . because if she’s [the foster mom] given this you know . . . felon access to the home, there’s a possibility that this child might have been subjected to sexual abuse and told not to mention it to anybody.<sup>59</sup>

Corey’s labeling of the mother’s boyfriend as a “felon” and subsequently questioning sexual abuse made him seek out continued forms of monitoring to ensure that the child was not being harmed. In being able to see various data, including prior histories within the criminal justice system, caseworkers are able to come to their own conclusions about family risk and child safety. These forms of data can cause barriers for families, exposing them to more surveillance and potentially impacting future outcomes for their children. A story shared by Melissa

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<sup>58</sup> Telephone Interview with Melissa, *supra* note 40.

<sup>59</sup> Telephone Interview with Corey, *supra* note 28.

showed that even charges as a youth can impact caseworker and departmental decision-making:

I do the background checks on them so we could have officially a safety plan in place for the department, and sure enough he had a ticket for consumption of alcohol when he was like eighteen years old. So, the department was like, this is still something on his record. They had no one else who could be a protective parent, and I was like this man has stability, and we are giving him crap even though it was nothing violent or offensive or anything.<sup>60</sup>

In this case shared by Melissa, a child was removed from her home due to child abuse. Melissa identified a family member of the child, but was unable to place the child with him based on his previous record with the police department. This resulted in having the child placed in foster care due to having no other options. This recollection shows that these forms of data tracking follow families throughout years and impact the trajectory of future cases that might come into the department. Similarly, this data informs risk assessments and other predictive algorithms that are used by the department. Caseworkers Dana and Corey mention how these forms of data impact risk assessments, stating that these prior histories can lead to erroneously inflated scores. There was a perceived unfairness to this, Corey shares, “sometimes [the scores are] high, and it’s just like well, it’s just because of their history and that to me is very unfair.”<sup>61</sup>

Many forms of criminal justice and DCFS data intertwine and follow people throughout their lives. Five interviews indicated that reports to their state Departments of Justice (DOJ) were required for both victims and perpetrators of certain forms of maltreatment. Cody stated that it becomes part of a parent’s criminal record.<sup>62</sup> To be removed from this database, individuals have to go through a grievance hearing. One of Cody’s cases ended with a mother attempting to get parental rights back through this grievance process. The mother wanted to expunge her record so that she could regain reunification possibilities with

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<sup>60</sup> Telephone Interview with Melissa, *supra* note 40.

<sup>61</sup> Telephone Interview with Corey, *supra* note 28.

<sup>62</sup> Telephone Interview with Cody, *supra* note 56.

her daughter. During this grievance hearing, several forms of data were used—including the DOJ data, data obtained by police, and reports from the caseworker. These several forms of data did not favorably assist the mother as explained by Cody:

The first grievance hearing fell apart. The grievance commissioner told her that there were enough reasons for the charges to be made, because the police report and the harm in the initial report and statements from the child's mouth for the investigation reveal that she inflicted harm to the child.<sup>63</sup>

This case was a clear example of how several agencies can be implicated in significant departmental decision-making processes, fueling the continuation and need for data partnerships. Dana and Carrie explain that these databases are used to further punish and criminalize those who have been substantiated for abuse.<sup>64</sup> Carrie adds that this information is even used further down the road when approving houses for foster families.<sup>65</sup> These forms of data are not just impacting families as they currently are present within the system, but last throughout generations, impacting future decision-making and imprinting on records permanently.

### C. Bypassing Parents Through Hospitals and Schools

In addition to collaborations with courts and the police described above, caseworkers also shared their experiences with both the medical system and education system. This included using hospitals and schools as sites of special access, additional sources of surveillance, and pipelines into becoming more entrenched within the “Child Welfare” system. Examples of this in the medical field are shown through caseworkers’ use of healthcare forms, medical exams, and hospital holds in this study. DCFS worker Michael explained that he was able to use hospital visitation logs to track when and why certain family members were coming to visit a mother who was under the purview of the department for using drugs while pregnant.<sup>66</sup> By utilizing hospital logs, he was able to see patterns and match

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<sup>63</sup> *Id.*

<sup>64</sup> Telephone Interview with Carrie, *supra* note 44.

<sup>65</sup> *Id.*

<sup>66</sup> Telephone Interview with Michael, *supra* note 53.

them with his own investigatory case notes. This led to a revelation that the mother and father were actually engaging in an incestual relationship, playing a factor in the eventual removal of the child from mother's custody. As explained by Michael, the hospital logs were key in his investigation and further monitoring of the unborn baby.<sup>67</sup>

Alongside caseworkers' usage of hospital forms, caseworkers also utilized the hospital as a site to substantiate maltreatment and detain youth from their parents. Cody shares his experience after finding out with a police officer, that a young girl was abused by her mother:

I am the primary caseworker, but in terms of determining whether this is criminal, whether this is abuse, law enforcement and I, we work jointly with the hospital. What they usually would do in that circumstance, we call it into the nearby hospital, a specific child abuse scan clinic. We transferred the child there. So, the forensic staff measures the lacerations on her body. So, at that point, it was determined that the child endured cruelty and physical abuse. She did have to be hospitalized, so I put a hospital hold, and then call in to after-hours detention control.<sup>68</sup>

In this case, it was necessary for Cody to use both the police and the specific hospital to finish his investigation and substantiation of abuse. It reveals that processes within the department have become so tied to and reliant on outside agencies that it is virtually impossible for caseworkers to do their job without it. Due to this, caseworkers are able to exercise power more diffusely, extending their arms into various spaces into homes and hospital rooms, and making surveillance more inescapable for families. In another case shared by Susan, the decision to use a hospital hold was made after accessing parents' criminal and mental health records. She shares:

My supervisor said we needed to detain, and these were newborn baby twins, but I guess that on the criminal record, the mom had child endangerment and a lot of mental health problems. And I don't

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<sup>67</sup> *Id.*

<sup>68</sup> Telephone Interview with Cody, *supra* note 56.

know, her sister wanted to take the kid[s] but because the sister was kinda like giving slight misinformation or whatever so we ended up being like you're not reliable. So, when we were detaining, I had to go tell her like you're gonna leave the hospital, but your kids aren't going with you. My mentor was like how do you feel right now? I was like I feel like shit. Like I hate this.<sup>69</sup>

The culmination of access to multi-institutional data and the use of subjectivity and assumptions led to a decision that Susan did not agree with but was expected to enforce.<sup>70</sup> Hospitals were not only an accessible space to force family separation, they were an embedded part of how caseworkers could exercise monitoring and control in the decision-making process. Detaining children in the hospitals was done in conjunction with law enforcement in some form, and was often a direct consequence of caseworkers mistrusting family members.

#### 1. Evading Consent Through Schools

Besides hospitals, schools were also implicated within the caseworker decision-making process. Although schools are often noted as sites of mandatory reporting, Cara shared that they are also spaces to bypass parental consent for specific cases of child maltreatment:

Generally, I want to talk to the kids first, which is tricky, but you can talk to them if they're in school, and you don't need consent from their parents. And I don't know that I agree with that but . . . so you can go to school without parents' consent if it's an investigation only. So, people on the back end cannot do this without consent.<sup>71</sup>

When discussing this ability to bypass, she also mentions the tensions that arise from using this option:

It's just like you're talking about the rights of the parents and children's rights, because kids are not going to, a little kid . . . most of my referrals are

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<sup>69</sup> Telephone Interview with Susan, Caseworker, Dep't of Child & Fam. Servs. (May 8, 2020).

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

<sup>71</sup> Telephone Interview with Cara, *supra* note 38.

younger kids. So you're going and talking to a first grade[r] without their parents' consent, they don't really know how to consent, so it's a really sticky situation, because it's like rights versus getting a thorough investigation. It's like law enforcement can't even do that. They can't just go to a school and just talk to a kid.<sup>72</sup>

This significant example, though only mentioned explicitly by one caseworker, shows explicit forms of power used by the department. Cara's ability and preference to speak with kids first brings into question the civil liberties and rights of not only children, but families as well. Further, it calls into question schools' complicity in allowing for workers to access privileges that are otherwise prohibited. These forms of access and shared monitoring are not always acknowledged, though they are deeply embedded within the system. Powerful privileges given to caseworkers, even in the name of child safety and prevention, produced tensions for Cara who posed rights and "a thorough investigation" as dichotomous.<sup>73</sup> In other words, a situation in which family rights were prioritized to the same level as the acquisition of needed *evidence* seemed an unlikely possibility. These difficult and complex situations that arose in different caseworkers' cases lead many of them to reflect on their positions and roles within the department.

#### V. CONCLUSION

The current study aimed to explore decision-making processes of frontline investigate caseworkers at DCFS, and revealed immense amounts of complexities throughout the department including a reliance on and need for surveillance. These complexities included tensions felt by caseworkers, especially in their uses of surveillance tactics internally and across multiple institutions. This led to some caseworkers questioning the system, doubting its efficiency in securing child safety as it intends. Lonie expressed at the conclusion of her interview, that the "Child Welfare" system is the normalized solution to addressing harm caused to children, no matter how traumatic it is. She states, "even when parents do bad things does it mean that you should take the children away? Unfortunately,

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<sup>72</sup> *Id.*

<sup>73</sup> *Id.*

we traumatize these kids even more. It's the only system we've got."<sup>74</sup> Lonie's sentiments lend a proposition to interrogate the primary ways in which the United States has addressed harm to children. Her statement "it's the only system we've got," allows for a critical questioning into the role of the system and into the possibilities of alternate modes of care that do not result in the traumatic havoc that the current department often causes. As exemplified by the stories shared by caseworkers in this study, the system of *protection* that we currently rely on is riddled with power hierarchies that often capture families in a web of generational surveillance and tracking.

Throughout the interviews, it was made clear that caseworkers, as investigators and helpers, both exercised and experienced power dynamics throughout their work. During several investigations, caseworkers found themselves utilizing intimidation and coercive tactics, often increasing surveillance and monitoring of families for the sake of "child protection." Surveillance of families required both the collection of historical data and physical monitoring of families. These surveillance tactics were projected onto families without their ability to consent or refuse without repercussion. When parents refused surveillance or were not cooperative with departmental demands, they faced consequences in the form of additional monitoring and sometimes subsequent family separation. Due to the serious implications of using these tactics on families, caseworkers often felt tensions knowing that they had little room to deviate from department policy. In this way, caseworkers both exercised power and experienced power dynamics from their supervisors, departmental policies, and outside actors like the courts. These findings add to previous literature on caseworkers' experiences with powerlessness, role tensions, and role conflicts in decision-making.<sup>75</sup> These complexities that are exacerbated by feelings of role tensions create a diffuse matrix of power that families became entrenched in.

The department and broader "Child Welfare" systems aim to protect children by embedding many forms of surveillance

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<sup>74</sup> Telephone Interview with Lonie, *supra* note 31.

<sup>75</sup> Kimberly Bundy-Fazioli et al., *A Qualitative Examination of Power Between Child Welfare Workers and Parents*, 39 BRIT. J. SOC. WORK 1447 (2009). See also Martha L. Jones, *Role Conflict: Cause of Burnout or Energizer?*, 38 SOC. WORK 136 (1993).

and tracking within the department and collaborating with courts, police, hospitals, and schools. The stories shared by caseworkers exposed sites of surveillance and power that are often overlooked by the research including hospitals and schools. Further, findings also highlighted the inextricable connections between more widely known partner institutions like the courts and the criminal justice system. Through uses of shared data, partnered investigation processes, collaborative training caseworkers, and special access privileges, caseworkers in this study frequently blurred the already thin line between family's rights and the need for a thorough investigation. In ambiguous cases where data was missing or inadequate, caseworkers relied on their own judgments and inclinations, additional departmental surveillance, and other agencies to accumulate the information or evidence they needed to find the occurrence or absence of maltreatment. When explaining how to fill these evidence gaps, some caseworkers discussed that tools like the SDM were not always adequate at evaluating risk, frequently missing important points or erroneously inflating or deflating risk scores. As such, some caseworkers reiterated the importance of relying on their gut feelings or other institutions to guide their next steps.

The discretionary and cumulative uses of technological tools and caseworker judgment creates a cycle of subjectivity that greatly impacts families. Although literature has acknowledged deep flaws in the departments' use of historical data, they also pose that human or caseworker "checks" are a way to regulate use of algorithmic decision-making.<sup>76</sup> However, I pose that caseworker professional judgments or inclinations as a form of regulation is not enough to shift potential and actual harm caused by these technologies, as both the data that feeds the technology and the caseworker themselves are serious vehicles for subjectivity that cannot be rectified through reformation. More ideological undertakings are at stake within these topics. As stated by Roberts, predictive approaches, in general, support "punitive governance" and are embedded within the carceral state.<sup>77</sup>

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<sup>76</sup> See Emnet Almedom, Nandita Sampath, & Joanne Ma, *Algorithms and Child Welfare: The Disparate Impact of Surveillance in Risk Assessment Technologies*, BERKELEY PUB. POL'Y J., Fall 2020, at 14.

<sup>77</sup> Roberts, *Digitizing*, *supra* note 3, at 1712–24.

The use of surveillance in decision-making processes within “Child Welfare” is still an under-researched topic. In the literature, it is broadly discussed in oppositional ways. A body of literature explores surveillance as an intrusive extension of the state.<sup>78</sup> As Fong argues, child maltreatment investigations are often a site of invasive surveillance of families through home visits, assessments, background checks, and information sharing with various systems.<sup>79</sup> Conversely, another body of literature discusses the utility of surveillance through large databases which aim at more accurately and efficiently preventing and assessing safety risks.<sup>80</sup> This body of literature emphasizes the need to extend surveillance through potentially applying a public health approach, increasing information-sharing linkages with other systems, and adding more descriptive measures and variables of cases to databases. The tracking of families through multi-system data and information-hubs is often touted as preventative or otherwise necessary in assisting youth labeled as “at-risk” or “vulnerable.”<sup>81</sup>

Given the proliferation of the use of predictive analytics and artificial intelligence in “Child Welfare”, continued analysis of the use of surveillance and data within the “Child Welfare” system is essential. Because “Child Welfare” has more recently been engaged in using technology and predictive analytics to assist in decision-making points in child-welfare, it is important to continue to address the nuances of decision-making and critically analyze if there are alternative ways of supporting child safety without the surveillance and policing tactics. In this age of technology and the push for inter-agency collaboration, it is important to ask the questions of what “evidence” is being gathered and for what purpose, who it serves and why, and what

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<sup>78</sup> See Fong, *supra* note 39; Venezia Michalsen, *Abolitionist Feminism as Prisons Close: Fighting the racist and Misogynist Surveillance Child Welfare System*, 99 PRISON J. 504 (2019). See also Roberts, *Paradox*, *supra* note 2.

<sup>79</sup> Fong, *supra* note 39.

<sup>80</sup> See Rebecca T. Leeb & John D. Fluke, *Child Maltreatment Surveillance: Enumeration, Monitoring, Evaluation, and Insight*, 35 HEALTH PROMOTION & CHRONIC DISEASE PREVENTION IN CAN.: RSCH., POL'Y & PRAC. 138 (2015); See also Nigel Parton, *The 'Change for Children' Programme in England: Towards the 'Preventive-Surveillance State'*, 35 J.L. & SOC'Y 166 (2008); Putnam-Hornstein et al., *supra* note 6.

<sup>81</sup> See Paul M. Garrett, *The Electronic Eye: Emerging Surveillant Practices in Social Work with Children and Families*, 7 EUR. J. SOC. WORK 57 (2004).

are the implications. Given caseworkers' concern with not having enough options, we must also consider what providing services for youth and families will look like without the current system. Understanding the department's inability to work independently from other punitive systems like the criminal justice system, allows us to question the role of the "Child Welfare" system within a larger carceral ecosystem that upholds the carceral state. The "Child Welfare" system's tactics of policing often create an inescapable and intergenerational trap for families. It becomes a point of reflection then, to consider that the "Child Welfare" system acts as a punitive law enforcement agency or a family policing system as opposed to one akin to a social service agency. Considering these points, future research may dive deeper into alternate modes of addressing harm caused to children that do not rely on the current system.

#### VI. LIMITATIONS

Due to the qualitative nature of the study, the findings presented in this paper represent situated knowledge that is context-specific and do not claim to be generalizable. Rather, the findings of the study can be used to expand our knowledge of decision-making processes, acknowledge nuances within the "Child Welfare" system, and provide foundational inquiry for future research. Limitations of the current study include possible biases that occur during coding, analysis, and manuscript writing. As CGT suggests, researchers are a critical and active part of the research process who are constantly interpreting the text.<sup>82</sup> Any meaning ascribed to the text is intended to stay close to the perspective of the participant, though subjective interpretations were undoubtedly made.<sup>83</sup>

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<sup>82</sup> CHARMAZ, *supra* note 10.

<sup>83</sup> *Id.*