

The Path to Racial Equity in Child Welfare:

**VALUING
FAMILY AND
COMMUNITY**

**POLICY SUMMIT
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**Children's Law Center
of California**



Los Angeles Dependency Lawyers Inc.

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For Strengthening Children and Families

PROJECT SUMMARY



The child welfare system is intended to be one of the final social safety nets to support children and families in crisis.

However, despite the best efforts of reformers and practitioners, the racism and bias embedded in the system from its founding have led to rigid policies that are often more focused on compliance and surveillance than healing and support. Eliminating the racial disproportionality and disparities in child welfare requires an examination of how families come to the attention of the system, the policies and practices that lead to family separation, the treatment of children and families in foster care, and the ways that permanency and reunification are achieved and supported.

This report and the accompanying summit would not be possible without the activism and advocacy of Black, Native American, and Latinx¹ communities that have been and continue to be disproportionately harmed by the child welfare system. This conversation, like the ongoing national reckoning on racism and oppression in the United States, is long overdue. The proposed policy reforms represent a blueprint for a child welfare system that is truly equitable, just, and family-centered. These reforms strive to achieve the following objectives:

value family and community through prevention strategies aimed at avoiding maltreatment from occurring and halting all unnecessary separations of children and parents;

empower the family network and connect youth to their community if and when removing a child from their home is necessary and appropriate; and

prioritize family decision making and preferences when considering permanency and reunification at the point a child is exiting foster care.

¹ Asian and Pacific Islander (API) children are significantly underrepresented among children in foster care. In California, for example, API children comprise 13 percent of all children but less than 2 percent of children in care. This underrepresentation does not necessarily mean that children in these communities are less likely to experience abuse and neglect. Rather, they may be less likely to come to the attention of the system because of cultural norms around government intervention and aid, language accessibility, and lack of engagement by child welfare professionals and other social service providers, among other issues. While the question of the underrepresentation of API children in foster care is beyond the scope of this project, it deserves greater focus in conversations about reform.

BACKGROUND

BEGINNINGS OF RACIAL DISPROPORTIONALITY AND DISPARITIES



The racial inequities in child welfare have roots in the practices of nineteenth-century orphanages. Mostly private institutions run by religious groups, orphanages provided shelter, food, and education to the children of deceased parents or parents unable to adequately care for their children, usually because they were poor.²

As Dr. Jessica Pryce explained in a 2020 virtual lecture series hosted by the UCLA Pritzker Center for Strengthening Children and Families, child welfare had a “dual-track delivery system” from the very beginning.³ In both the Southern and Northern United States, White children and Black children were placed in separate facilities, and the services and resources offered in orphanages for the latter group were generally of substandard quality. Further, because most cities and states had relatively few Black orphanages (if any), many needy Black children ended up on the streets or in almshouses, which were notoriously run-down shelters for the poor, the elderly, and those suffering from mental illness.⁴

Native American children also experienced racism in the nascent child welfare system of the 19th century. Beginning in 1860, the federal Bureau of Indian Affairs established boarding schools on tribal reservations with the goal of assimilating Native youth into mainstream White American

society. Students were forced—frequently under the threat of physical punishment—to shun their traditional languages, customs, and beliefs.⁵

In the 1880s, the federal government adopted a more aggressive assimilationist approach by removing Native children from their homes and sending them to boarding schools and orphanages outside of tribal lands. Perhaps the most well-known of these institutions was the Carlisle Indian Industrial School in Carlisle, Pennsylvania. The school’s founder, U.S. Army Captain Richard Henry Pratt, stated that his mission was to “kill the Indian...and save the man.”⁶ At Carlisle and other schools, students were essentially cut off from their families and communities. According to journalist Mary Annette Pember, when boarding school students died of disease, malnutrition, or other causes, they were sometimes buried in unmarked graves without their parents’ knowledge.⁷ It was not until the passage of the Indian Child Welfare Act of 1978 (discussed later) that Native families were granted the right to prevent their children from being placed in off-reservation schools.

² Minnesota Dept. of Human Services, “Role of Orphanages in Child Welfare.”

³ Pryce, “Eradicating Racism and Bias in Foster Care/Child Welfare.”

⁴ Roberts, “Shattered Bonds.”

⁵ Crofoot and Harris, “An Indian Child Welfare Perspective,” 1668.

⁶ Ibid.

⁷ Pember, “Death by Civilization.”

EARLY FEDERAL CHILD WELFARE POLICIES

The federal government began to take a more prominent role in child welfare policy at the turn of the 20th century.

Decrying the institutionalization of children, the attendees of the 1909 White House Conference on the Care of Dependent Children declared that “children should not be removed from their families except for urgent and compelling reasons, and destitution was not one of those reasons.”⁸ As public opinion turned against the practice of housing children in orphanages, nearly every state instituted a “mothers’ pension” for widows and single mothers living in poverty.

The Social Security Act of 1935 incorporated the mothers’ pension into federal statute with the creation of the Aid to Dependent Children program (later renamed Aid to Families with Dependent Children [AFDC]). With tacit federal approval, state child welfare agencies systematically deprived Black families of AFDC benefits and services, particularly in the Jim Crow South. States instituted policies that “arbitrarily denied [AFDC] benefits to African Americans because their homes were seen as immoral, men other than biological fathers were identified by workers as assuming care of the recipients’ children, the worker believed a man was living in the home, and/or the mother had children born out-of-wedlock.”⁹

In the early 1960s, under growing pressure from civil rights organizations, the federal Department of Health, Education, and Welfare (HEW) amended AFDC to address discriminatory practices. The impetus for these reforms was the so-called Louisiana Incident. In 1960, Louisiana removed 23,000 children—most of them Black—from its state welfare rolls because their households were deemed “unsuitable.” In the aftermath of the Louisiana Incident, HEW instituted the “Flemming Rule” in 1961. Named after HEW secretary Arthur Flemming, this rule barred states from denying welfare benefits to families based

on their parents’ marital status. The Flemming Rule also empowered states to remove children from homes judged “unsuitable” and provide services to a foster caregiver rather than offer services to the family in the home.¹⁰

The laws passed following the Louisiana incident and the institution of the Flemming rule laid the foundation for the punitive child welfare policies that disproportionately harm children and families of color today. After denying services to Black families for decades, public child welfare agencies began increasing their surveillance and punishment of this same population. According to the 1962 Public Welfare Amendments, child welfare agencies were now required to refer “neglectful” parents to the court system. Since parents of color (particularly Black and Native American parents), experienced poverty at higher rates than their White counterparts, they were more likely to be judged neglectful and ultimately have their children placed in out-of-home care.

In 1962, pediatrician C. Henry Kempe introduced the world to battered-child syndrome, “a clinical condition in young children who have received serious physical abuse, generally from a parent or foster parent.”¹¹ According to Dr. Kempe and his colleagues, the syndrome could cause permanent disability or death. This claim sparked nationwide concern about child abuse, and at a meeting convened by the Children’s Bureau that same year, Kempe and other advocates “recommended state legislation requiring doctors to report suspicions of abuse to police or child welfare.”¹² By 1967, all 50 states passed some form of mandatory reporting law. Coupled with mandatory reporting, the new focus on abuse and neglect led to a marked increase in the foster care population.

⁸ Crenson, “Building the Invisible Orphanage,” 15.

⁹ Lawrence-Webb, “African American Children in the Modern Child Welfare System,” 11.

¹⁰ Ibid.

¹¹ Kempe et al., “The Battered-Child Syndrome,” 23.

¹² Myers, “History of Child Protection,” 456.

THE MODERN ERA OF CHILD WELFARE REFORM

As the number of out-of-home placements jumped in the late '60s and early '70s, calls for child welfare reform grew louder.

In the landmark 1972 book *Children of the Storm*, Andrew Billingsley and Jeanne M. Giovannoni argued that state agencies were not only removing Black children from their homes unjustly, but also denying them much-needed services. The authors recommended that Black communities be empowered to care for their own children without state intervention.¹³ To the dismay of Billingsley, Giovannoni, and many others, the post-civil rights era saw the government expand the reach of the child welfare system in new and concerning ways.

Over the next few decades, the federal and state governments adopted well-meaning policy priorities—protecting children, expediting permanency, funding foster families, supporting adoption—that have allowed racial disproportionality and disparities to either grow or persist. The Child Abuse Prevention and Treatment Act of 1974 (CAPTA) created a federal mandate for state mandatory reporting laws and introduced new definitions of abuse and neglect. In the wake of CAPTA's passage, the number of children coming into the child welfare system skyrocketed.

Concerned about the growth of the national foster care population and the increase in lengths of stay in care, Congress passed the Adoption Assistance and Child Welfare Act of 1980 (AACWA). AACWA "required states to make 'reasonable efforts' to avoid removing children from maltreating parents" and to reunite children with parents in removal cases.¹⁴ In addition, children in foster care now needed a "permanency plan" for reunification or termination of parental rights. The law also incentivized adoption by providing financial support to adoptive parents.

While the number of children in care and time spent in care dipped for a few years after AACWA's passage, these indicators shot up again during the crack cocaine and HIV epidemics of the '80s and '90s, both of which devastated many Black communities.¹⁵ Amidst these public health crises and an economic downturn, the foster care population grew from 280,000 in 1986 to nearly 500,000 in 1995.¹⁶ And between 1986 and 2002, the proportion of Black children entering foster care jumped from about 25 percent to 42 percent.¹⁷

The Adoption and Safe Families Act of 1997 (ASFA) built on the permanency planning focus of AACWA by establishing strict timelines for terminating parental rights and incentivizing adoption through direct payments to states.¹⁸ The strategies at the core of ASFA, and subsequent legislation such as the Fostering Connections Act of 2008 (FCA), aimed to move children out of the system more quickly and were ultimately successful in doing so. After peaking at 567,000 in 1999, the national foster care population dropped to 397,000 in 2012.¹⁹

California's foster care caseload dropped 41 percent between 2000 and 2016, from 103,000 to 61,000.²⁰ Nevertheless, over this same period, the percentage of children entering care in California following a substantiated abuse or neglect allegation remained stable. The decline in caseloads was attributable almost entirely to faster exits out of care, as opposed to fewer entries into care. This suggests many missed opportunities to prevent maltreatment or provide in-home services to keep parents and children together. Even if more relatives have achieved

¹³ Billingsley and Giovannoni, "Children of the Storm."

¹⁴ Myers, "History of Child Welfare," 459.

¹⁵ Murray and Gesiriech, "Legislative History of Child Welfare."

¹⁶ Ibid.

¹⁷ Roberts, "Shattered Bonds," 8.

¹⁸ Curtis and Denby, "African American Children in Child Welfare."

¹⁹ Child Trends, "Foster Care."

²⁰ Lucile Packard Foundation, "Children in Foster Care."

legal guardianship in recent years—one effect of FCA—the trauma of separating a parent and child cannot be undone.

Among the federal legislative reforms of the last half century, the Indian Child Welfare Act (ICWA) of 1978 stands apart because it applies to a single group—children who are members, or are eligible for membership, of a federally recognized tribe. Describing the congressional hearings that preceded the passage of ICWA, law professor Matthew L. M. Fletcher writes,

“Hundreds of pages of legislative testimony taken from Indian Country over the course of four years confirmed for Congress that many state and county social service agencies and workers, with the approval and backing of many state courts and some Bureau of Indian Affairs officials, had engaged in the systematic, automatic, and across-the-board removal of Indian children from Indian families.”²¹

As noted in an earlier section, these policies and practices dated back to the mid-nineteenth century. The goal of ICWA was to preserve cultural and familial ties between Native children, families, and communities and elevate tribal authority over placement decisions.

DISPROPORTIONALITY AND DISPARITIES TODAY

Today, children of color, and specifically Black and Native American children, continue to experience disparities at every stage of the child welfare system: maltreatment reports, investigations, case substantiations, service referrals, out-of-home placements, family reunification, termination of parental rights, and time spent in foster care. Black children comprise 14 percent of all children nationwide but 23 percent of children in the child welfare system.²² More than half of Black children experience a child welfare investigation before the age of 18.²³ Despite ICWA's passage more than 40 years ago, the proportion of Native

children in foster care is 2.6 times higher than their share of the total child population.²⁴ Though Latinx children are underrepresented in the national foster care population, they are overrepresented in more than 20 states, including California.²⁵ Generally, children of color are less likely than White children to exit foster care through reunification, adoption, and legal guardianship.²⁶

Because socioeconomic status and child welfare involvement are highly correlated, many attribute disproportionality in the system to high levels of poverty among certain communities of color. To analyze this argument, it is important to understand exactly how poverty, race, and the child welfare system interact. First, poverty among communities of color is often the direct result of racism in employment, housing, education, healthcare, and other areas. Moreover, as sociology professor Dorothy E. Roberts notes, “government authorities are more likely to detect child maltreatment in poor families, who are more closely supervised by social and law enforcement agencies.”²⁷ Therefore, official data inflates the extent of maltreatment in low-income households of color and further contributes to negative perceptions about these families. That said, generational poverty and systemic oppression can interfere with parents' ability to adequately care and provide for their children. Rather than equating poverty with neglect and needlessly separating children from their parents, child welfare agencies should strive to provide services and benefits that tangibly address the inequalities that stem from structural racism (while always prioritizing child safety).

Along with acknowledging and responding to structural racism broadly, child welfare practitioners must grapple with decades

²¹ Fletcher, “Indian Child Welfare Act,” 269.

²² Puzanchara and Taylor, “Disproportionality Rates.”

²³ Schoenherr, “1 in 3 Children.”

²⁴ Puzanchara and Taylor, “Disproportionality Rates.”

²⁵ Lucile Packard Foundation, “Children in Foster Care.”

²⁶ Tilbury and Thoburn, “Using Racial Disproportionality and Disparity Indicators.”

²⁷ Roberts, “Shattered Bonds,” 29.

of academic research and anecdotal evidence regarding the bias and discrimination within the system. When controlling for family income and perception of risk, caseworkers have been shown to be more likely to substantiate cases and make removal decisions when investigating Black families. These findings suggest that some caseworkers have a lower threshold for making the potentially life-altering decision to separate a child from their parents if the family in question is Black.²⁸ Another study found that caseworkers were more likely to refer Black parents to parenting classes “even if there were no racial differences in the identification of poor parenting skills.”²⁹ This sort of bias is very much felt and understood by communities of color and reinforces the belief that the child welfare system aims to undermine parents’ judgment and ultimately break families apart.

In recent years, some practitioners and advocates have embraced kinship care as a remedy for the racial disproportionality in foster care. However, in certain circumstances, these relative placements occur outside of the dependency court system in the context of threats or coercion by the child welfare agency. This results in the phenomenon of “hidden foster care.”³⁰ While connecting children with family members should be a top priority in removal cases, coercing families to establish informal custody changes outside of the system could deprive them of benefits and services that promote permanency, reunification, and healing. In forced diversion cases, child welfare agencies essentially relieve themselves of the responsibility to ensure a child resides in a safe, stable home, whether with a relative or a parent. This decision acknowledges harm caused by the system but does not prevent this harm—family separation—from occurring. As described by the policies below, real transformational reform encompasses upholding the rights of children and parents and offering family-centered services and supports.

²⁸ Dettlaff et al., “Disentangling Substantiation”; Rivaux et al., “Understanding the Decision.”

²⁹ Font, “Service Referral Patterns,” 384.

³⁰ Gupta-Kagan, “America’s Hidden Foster Care System.”

POLICY RECOMMENDATIONS

Since deep racial disparities persist at every decision-making point in the child welfare process, transformational change will require critical analysis and reform to better serve children and families before a child enters care and as they move through and eventually exit the system. The policy recommendations outlined below strive to achieve the following objectives:



value family and community through prevention strategies aimed at avoiding maltreatment from occurring and halting all unnecessary separations of children and parents;



empower the family network and connect youth to their community if and when removing a child from their home is necessary and appropriate; and



prioritize family decision making and preferences when considering permanency and reunification for children exiting foster care.



VALUE FAMILY AND COMMUNITY THROUGH PREVENTION STRATEGIES



providing responsive and trauma-informed crisis intervention; and bolstering legal safeguards against unnecessary removals.

Eliminating the racial disproportionality and disparities in child welfare begins long before a maltreatment allegation is made. Far too many low-income families of color come to the attention of child welfare agencies because of their socioeconomic status and through their interactions with social service providers. Because the United States provides a woefully inadequate social safety net compared to other industrialized countries, state and local child welfare agencies should develop policies and implement practices to help ensure that the families they serve have their basic needs met related to food, housing, employment, and healthcare. When engaging with families, agencies should aim first and foremost to avoid separating a child and parent. This can be accomplished by preventing maltreatment through programs that strengthen families' protective factors;



PROPOSED REFORMS

1

Expand primary prevention services to support families before maltreatment occurs.

The Family First Prevention Services Act (FFPSA) can be a springboard to develop and expand access to prevention services while ensuring those services are not limited to children who are “candidates for foster care” (and their families). In addition, the review process for the California Evidence-Based Clearinghouse for Child Welfare can be refined to account for programs that do not meet the current scientific standards but have been implemented at the local level and align with community practices and values. Ideally, service provision should be trusted to community-based organizations (CBOs) that are uniquely attuned to their clients' needs. Leaving this responsibility to CBOs—rather than the child welfare agency itself—allows families to focus on healing and thriving without the looming threat of separation.

2

Give families in crisis the option to seek help from behavioral health specialists rather than law enforcement.

The Family Urgent Response System (FURS) can be made accessible to all families, not just current and former foster youth and their caregivers. This would allow youth and families to seek services before the point when child welfare caseworkers would typically intervene. Further, agencies could encourage youth and families to utilize FURS by ensuring that a call to the hotline would not automatically trigger a child welfare investigation.

3

Limit removals on the basis of “neglect.”

The statutory definition of “neglect” should be rewritten to reduce the number of removals that occur because families are living in poverty. Under Welfare and Institutions Code 300(b)(1), a child can become a dependent if the court rules “the child has suffered, or there is a substantial risk that the child will suffer, serious physical harm or illness, as a result of...negligent failure of the parent or guardian to provide the child with adequate food, clothing, shelter, or medical treatment.” To bolster the “reasonable efforts” requirement that already exists in statute, child welfare agencies could be required to show that a parent refused to utilize available services and supports.³¹ This same idea could be applied to the definition of “failure to protect” for domestic violence cases.

4

Mandate pre-petition legal representation.

The court process can be intimidating and overwhelming, especially for families experiencing poverty. Pre-petition representation ensures the rights of parents and children are protected and helps parents understand the steps they can take to guarantee their children’s health and safety and avoid the trauma of separation. According to Casey Family

5

Implement a “blind removal” process.

Blind removal has been shown to reduce the impact of practitioner bias. This process removes all identifying information (i.e., race, name, address) from the investigating caseworker’s report before a committee of child welfare professionals makes a recommendation regarding whether a child should be placed in out-of-home care.³³ When Nassau County, New York, began implementing blind removals in 2011, Black children comprised 55 percent of children removed from their homes; that number dropped to 27 percent by 2015.³⁴

Programs, “evaluations of a collection of pilot [pre-petition] programs show promise, including nearly 100 percent prevention of foster care entries and cost savings of 2-to-1 when compared with the cost of foster care placement.”³² Relatedly, at this same stage of the child welfare process, social workers and courts could be required to examine whether the use of intensive in-home services would be just as, if not more, effective in protecting a child’s safety as removal.

³¹ CA Welf & Inst Code § 300 (amended 2015).

³² Casey Family Programs, “Pre-Petition Legal Representation,” 2.

³³ A separate process for children belonging to federally recognized tribes would perhaps involve a review of the committee’s recommendation by tribal authorities.

³⁴ Fitzgerald, “Try Colorblindness.”




PROPOSED REFORMS



EMPOWER THE FAMILY NETWORK AND CONNECT YOUTH TO THEIR COMMUNITY

In cases where it is necessary and appropriate to separate a child from their parents because of a threat of immediate harm to the child, child welfare agencies should take every affirmative step to maintain that child's connections to their own family and community. These social bonds are critical for achieving permanency and reunification and healing from trauma. Further, families and communities have a right to make decisions about the care of their most vulnerable children. The procedures regarding voluntary placement agreements, child and family team meetings, and relative family approval are particularly promising areas for reform.

1

Use Voluntary Placement Agreements as a proactive family engagement tool.

Through a Voluntary Placement Agreement (VPA), county agencies can allow parents to identify a temporary placement for their child while receiving services and supports. During this process, the agencies can give parents time and space to consider placement options for their children because parents are best positioned to know where their children will feel safe and supported. In California, a VPA is the only legal option a child welfare agency may use to facilitate an out-of-home placement outside of a petition filed with the juvenile court. Nevertheless, many counties force the movement of a child to a relative's home without any documentation or use variations of a "safety plan," which is not authorized by statute, does not provide any due process protections to the parent or funding to the caregiver or the child, and does not result in a transfer of legal custody and control to the child welfare agency or the caregiver. Similarly, youth involved in the delinquency system are often released to relatives without establishing a formal or voluntary placement. To establish a formal transfer of care and custody of the child away from the parent, the delinquency court should utilize VPAs when they believe a formal placement (and completion of the resource family approval program) will not be necessary.

2

Permit families, parents, or children to seek court review of any safety plan or informal care arrangement.

To protect due process rights, parents or children should be permitted to seek court review of any safety plan or informal care arrangement that did not utilize the state-sanctioned VPA form. This will allow parents to avail themselves of the representation offered by the child welfare system in those instances when such representation and support was denied because the child was removed from the parent through alternative, and unsanctioned, means.

3

Facilitate expedited guardianships through the dependency court system.

Families should not have to forfeit the legal protections and the supports and services afforded by the dependency system in order to place a child with a relative through probate court. The Welfare and Institutions Code 360(a) guardianship process should be amended to allow more family decision making with the benefit of counsel. This can be accomplished in three ways: (1) promoting family autonomy by allowing parents to designate individuals they determine to be fit to serve as the guardian rather than requiring resource family approval; (2) funding all guardianships ordered pursuant to Welfare and Institutions Code 360(a); and (3) changing the requirement that allegations against the parent must be substantiated before the court can order a guardianship under 360(a).³⁵

4

Make child and family team (CFT) meetings truly family-centered and culturally competent.

Child and family team (CFT) meetings should include independent facilitators or tribal representatives who are highly trained with a focus on trauma and

cultural competency. Current policy allows child welfare social workers to serve as facilitators. This arrangement presents a clear conflict of interest and heightens the confrontational aspect of the teaming process. The presence of an independent facilitator helps children and families feel as if they are collaborating with the child welfare agency to reach a resolution that is acceptable to all parties. Further, children and their caregivers (and the child's tribe in the case of Native American children) should always decide the time and location of CFT meetings.

5

Remove barriers preventing children from being immediately connected to their own family and extended family.

Adding a "reasonable efforts" requirement to Welfare and Institutions Code 361.3 would prevent placement delays that occur when relatives lack childcare supplies such as cribs, car seats and booster seats.³⁶ Further, child-specific approval should be granted (absent a risk to the child) whenever the relative has a "parent-like" relationship with the child, in the case of an emergency placement, and should be expanded to apply to all of the child's siblings. Another barrier to relative placement is the criminal history review component of the resource family approval (RFA) process, which excludes far too many relatives and extended family members who are fit and willing to care for a child in need of a safe and stable home. This issue is of particular concern to the Black and brown communities that have long been overrepresented in the criminal justice system. Old arrests or convictions should not prevent the government from empowering relatives who wish to step up as caregivers. Moving forward, the onus could be placed on county agencies to show why a child would be unsafe in a relative's care.

³⁵ CA Welf & Inst Code § 360 (amended 2010).

³⁶ CA Welf & Inst Code § 361.3 (amended 2017).



PRIORITIZING FAMILY DECISION MAKING AND PREFERENCES WHEN CONSIDERING PERMANENCY AND REUNIFICATION

In a child welfare system that is truly family-centered, children remain connected with their families at every step of the process and the emphasis is on relational permanence and ensuring the family continues to feel supported. However, as the system currently functions, as soon as a child is removed from the home, the child and family face a ticking clock by which they need to reunify or exit according to another permanency plan. The procedures for establishing permanency and facilitating reunification should give families the opportunity to heal and make decisions that align with their hopes for their children's futures.



PROPOSED REFORMS

1 Build in more flexibility for extending family reunification timelines based on the specific needs of the family.

Existing timelines for permanency and reunification, established in response to federal legislation, do not account for the generational trauma and systemic oppression endured by many communities of color.

Moreover, family relationships are fluid, and families should have the freedom to reorganize themselves as these relationships evolve and strengthen. With changes to federal statute, local child welfare agencies could honor the fact that it can take years for both parents and children to overcome the challenges that led to separation. The court should have the discretion to expand timelines in specific situations, particularly in relative placement cases.

2 Restructure visitation to promote family bonding time and set the stage for successful reunification.

Though consistent and meaningful visitation is vital to reunification, the standard visitation order almost always begins with supervised visitation and allows for just a few hours of visitation per week. In addition, visits are often scheduled during business hours and at locations far from where parents live. When such obstacles prevent parents from seeing

their children on a regular basis, county agencies may assume parents are not truly committed to reunification. With these challenges in mind, parents, caregivers, and agencies should work together to implement visitation in a way that encourages healing and connection for parents and children. Parents should be incorporated into a child's daily life as much as possible and visitation should be unsupervised unless there is an identified safety risk.

3

Ensure access to reunification services.

If court-ordered reunification services are not readily accessible and provided free of cost to parents, families are less likely to reunify. For the communities that are overrepresented in child welfare, these services often add to the daily stressors of poverty and structural racism. Instead of putting the onus on parents to locate and pay for services, the county should be required to fund services and ensure they are truly accessible.

4

Support families' preferred permanency arrangement.

California law sets out an "order of priority" for permanent plans, prioritizing adoption over guardianships and guardianships over placement with a "fit and willing relative."³⁷ Even though relatives can choose among these options, there are limitations built into the statute that impact practice, family engagement, and decision making in ways that can result in families feeling pressured and coerced into choosing options that do not promote the underlying wishes and needs of the child and family. Families, and particularly kinship caregivers, must be supported in fully understanding their options and choosing the permanency option that best supports the needs of the child and family.

5

Allow for the possibility of adoption without termination of parental rights (TPR).

In 2010, California implemented tribal customary adoption (TCA) as a permanency adoption for Indian children to whom the Indian Child Welfare Act (ICWA) applies.³⁸ TCA enables a state court adoption to be completed without terminating the legal parental rights of birth parents. For non-Indian adoptions, California dependency law requires termination of parental rights before adoption, a permanent severing of the parent-child legal relationship which creates a legal orphan now free for adoption. In a TCA, on the other hand, the legal rights of the birth parents are not severed but the rights and responsibilities of parenting are transferred to the adopting parent(s). Adoption without TPR is preferable for many California tribes because TPR and adoption were once used as tools of genocide in Native communities. Further, TPR is contrary to tribal customs, disrupts intrafamilial relationships, and re-traumatizes families. TCA in California has been a successful additional permanency option for children covered by ICWA. California statute could include a non-tribal/non-ICWA permanency option that does not involve TPR.

6

Eliminate requirement that parental rights must be terminated based on a finding that the child is adoptable.

California law requires that the parental rights of a biological parent be terminated after a certain time period if the child is deemed "adoptable." Terminating parental rights stops all visitation between the child and their biological parents and closes off any legal option for the parent to petition the court to resume custody of their child. Because the court can judge a child to be adoptable regardless of whether the child is in the home of a caregiver seeking adoption, many

³⁷ CA Welf & Inst Code § 727.3 (amended 2017).

³⁸ CA Welf & Inst Code § 366.24 (amended 2013).

children ultimately age out of the system without having found stability with a loving family, and a disproportionate number of these children are Black. The law should be restructured to include additional factors beyond adoptability to be considered before terminating parental rights.

7

Reassess system performance measures.

To avoid incurring federal financial penalties, states must comply with the stipulations of the Adoption and Safe Families Act (ASFA), including the requirement to solidify a permanency plan within 12 months of a child's out-of-home placement.³⁹ The rigidity of federal policy—and the potential financial ramifications—forces states to emphasize moving children out of the system over giving families the time they need to heal and grow. Future legislative reforms could introduce performance measures related to family health and wellbeing, such as connections to family members, school stability, housing, employment, healthcare, and other services.

³⁹ U. S. Congress. 105th Congress. An Act to Promote the Adoption of Children in Foster Care. Washington: Government Printing office, 1997.

ACKNOWLEDGMENT, REFORM, EDUCATION AND TRANSPARENCY

All policy changes must be grounded in an acknowledgment of past and ongoing harms and a commitment to anti-racist reform. Government child welfare agencies should institutionalize anti-racist trainings; outline specific targets for reducing racial disproportionality and disparities; and release an annual report analyzing progress on this agenda.

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The Alliance for Children's Rights thanks **Dick Wolf** for his generous support for the development of this report. This report reflects the opinions of the authors alone and does not necessarily reflect those of the funders.

Special thanks to all of the Alliance for Children's Rights' generous individual supporters who help make our work possible.

Additional thanks to the following for their logistical and informational support in the development of this report:

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