

## COMMENT: THE HARM OF INDETERMINACY

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Advocates increasingly recognize that the child welfare system in the United States reflects larger societal inequities and causes great harm to children, families and communities.<sup>1</sup> The child protection legal system is a key component of the child welfare system.<sup>2</sup> The judicial determinations that it renders change lives, often irrevocably,<sup>3</sup> and it, too, is increasingly understood to perpetuate harm to children and their parents.<sup>4</sup> In his article, *Confronting Indeterminacy and Bias in Child Protection Law*, Professor Josh Gupta-Kagan identifies substantive legal indeterminacy as a source of this harm.<sup>5</sup> He makes a compelling case that the lack of definitional clarity and persistence of ambiguous legal standards within the child protection legal system endanger family integrity.<sup>6</sup>

To illustrate the negative impact of this substantive legal indeterminacy, Gupta-Kagan chronicles the actual experience of a family in the case of *In re A.M.* In so doing, he humanizes the injustice that so many families experience within the child welfare system. Gupta-Kagan offers concrete and actionable strategies that will help advance justice in the child protection legal system.<sup>7</sup>

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1. See, e.g., *The Moment is Now*, CHILD.'S BUREAU EXPRESS, <https://perma.cc/S3WU-SAVD> (archived July 5, 2022).

2. U.S. DEP'T OF HEALTH & HUM. SERVS., ADMIN. FOR CHILD. & FAMS., UTILIZING TITLE IV-E FUNDING TO SUPPORT HIGH QUALITY LEGAL REPRESENTATION FOR CHILDREN AND YOUTH WHO ARE IN FOSTER CARE, CANDIDATES FOR FOSTER CARE AND THEIR PARENTS AND TO PROMOTE CHILD AND FAMILY WELL-BEING (2021).

3. *Id.*

4. See, e.g., Sarah Fathallah & Sarah Sullivan, *Away From Home: Youth Experiences of Institutional Placements in Foster Care*, THINK OF US (July 21, 2021), <https://perma.cc/P4KY-QHY6>.

5. Josh Gupta-Kagan, *Confronting Indeterminacy and Bias in Child Protection Law*, 33 Stan. L. & Pol'y Rev. 217 (2022).

6. *Id.*

7. See generally Jerry Milner & David Kelly, *The Need for Justice in Child Welfare*, 99 CHILD WELFARE J. (2021).

Certain statutory language and legal standards within the child protection legal system have long been sources of debate and concern;<sup>8</sup> namely, “reasonable efforts” and the “best interest of the child.”<sup>9</sup> Gupta-Kagan’s piece is laudable for its direct interrogation of this lexicon and the conditions that sustain it. Similarly praiseworthy is his analysis of how the system’s lack of definitional clarity, especially at the federal level, results in an excess of subjectivity in child protection adjudication that has fueled harmful trends such as the conflation of poverty with neglect.<sup>10</sup> Gupta-Kagan’s article effectively traces the links connecting these systemic issues to specific, real-world harms. Addressing indeterminacy is a critical step, without which family injustice and needless trauma will continue.

This essay is intended to lend additional perspective and support to Gupta-Kagan’s call for determinacy in the child protection legal system. Part I speaks directly to indeterminacy in law and practice. Part II offers evidence of the negative impact of indeterminacy on children and families. Part III identifies and discusses conditions that lay the foundation for indeterminacy in the child protection legal system and how to remedy them. Specifically, I focus on the need for a new vision for child welfare in the United States and the realignment of practice and federal funding to support it.

### I. INDETERMINACY IN LAW AND PRACTICE

Subjectivity, fueled in part by indeterminacy, is pervasive in the child protection legal system. Statutory language such as “reasonable efforts,” “contrary to the welfare of the child” and “best interest of the child” are hallmarks of child protection law and practice.<sup>11</sup> These are among the most nebulous standards in law, yet their application has grave consequences. Indeed, the right of a parent to raise their child—a fundamental liberty interest—hangs in the balance of each such application.<sup>12</sup> Furthermore, the vagueness of current standards is an

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8. See, e.g., Janet L. Dolgin, *Why Has the Best Interest Standard Survived?: The Historic and Social Context*, 16 CHILD. LEGAL RTS. J. 2 (1996).

9. For an in-depth discussion of the history, import and application of reasonable efforts, see LEONARD EDWARDS, *REASONABLE EFFORTS: A JUDICIAL PERSPECTIVE* (2d ed. 2021).

10. See, e.g., Eli Hager, *A Mother Needed Welfare. Instead, the State Used Welfare Funds to Take Her Son*, PROPUBLICA (Dec. 23, 2021, 5:00 AM EST), <https://perma.cc/5SH6-K47A>; Jerry Milner & David Kelly, *It’s Time to Stop Confusing Poverty with Neglect*, CHILD.’S BUREAU EXPRESS (Dec. 2019/Jan. 2020), <https://perma.cc/D9W5-UJ55>; Kelley Fong, *Child Welfare Involvement and Contexts of Poverty: The Role of Parental Adversities, Social Networks, and Social Services*, 72 CHILD. & YOUTH SERV. REV. 5 (2017).

11. 42 U.S.C. § 672(a)(2)(A)(ii); 42 U.S.C. § 671(a)(15); 45 C.F.R. § 1356.21(b)(2). For a summary of state statutory treatment of best interest of the child, see DETERMINING THE BEST INTEREST OF THE CHILD, STATE STATUTES CURRENT THROUGH JUNE 2020 (Child Welfare Information Gateway 2020).

12. The Supreme Court of the United States has recognized a fundamental liberty interest in a parent’s upbringing of their child. See *Meyer v. Nebraska*, 262 U.S. 390 (1923); *Pierce v. Society of Sisters*, 268 U.S. 510 (1925); *Prince v. Massachusetts*, 321 U.S. 158 (1944); *Troxel v. Granville* 530 U.S. 57 (2000). For a discussion on terminating parental rights, see

invitation for implicit bias and discrimination based on race, class, religion, country of origin, sexual orientation, and gender identity.

Indeterminacy also pervades the basic federal guidelines for state child protection systems. The controlling federal statute, the Adoption and Safe Families Act of 1997, focuses the child protection legal system's adjudications on the goals of safety, permanency, and the well-being of children.<sup>13</sup> While these are popular goals in concept, the manner in which they are interpreted varies widely. None of these terms are defined in statute, although options for permanency are delineated.<sup>14</sup> As Gupta-Kagan notes, this lack of definitional clarity allows for highly subjective interpretations at all stages of a child welfare case, from reporting through investigation, adjudication, disposition, as well as each case-planning decision and judicial determination made thereafter.<sup>15</sup>

State neglect and mandatory reporting statutes provide further examples of how indeterminacy and definitional ambiguity can harm families.<sup>16</sup> Ambiguity in defining child maltreatment or neglect can lead to overreporting and oversurveillance where actual child maltreatment or intentional neglect are absent. For example, what may seem safe to one person is highly dependent on their life experiences, culture, or beliefs, and may feel inadequate or unsafe to another. Likewise, the range of perspectives on what well-being means can vary dramatically based on one's socio-economic status, race, culture, faith tradition, or privilege.

Moreover, as Gupta-Kagan points out, the absence of clear standards that link the severity of parental acts or omissions to proportional and appropriate responses is a major flaw of the current child protection legal system.<sup>17</sup> This lack of clarity permits disproportionate responses, such as the removal and placement into foster care of a child for one parental act or omission that may not represent an ongoing danger.<sup>18</sup> It also can lead to termination of parental rights for a parent chronically struggling with housing. These are not issues of abuse or neglect, but economic problems that can be addressed with material solutions.<sup>19</sup>

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Martin Guggenheim, *The Effects of Recent Trends to Accelerate the Termination of Parental Rights to Children in Foster Care – An Empirical Analysis in Two States*, 29 Fam. L. Q. 121 (1996).

13. Pub. L. No. 105-89 (1997). For analysis and discussion of the impact of the Adoption and Safe Families Act, see Frank Myers, *The Harm Caused by the Adoption and Safe Families Act*, 1 FAM. INTEGRITY & JUST. Q. 84-93 (2022); see also Shanta Trivedi, *Adoption and Safe Families Act is the 'Crime Bill' of Child Welfare*, IMPRINT (Jan. 28, 2021), <https://perma.cc/8JXG-X9YF>.

14. See Social Security Act, 42 U.S.C. § 475A(a)(2)(B).

15. Gupta-Kagan, *supra* note 5, at 225.

16. Diane L. Redleaf, *The Challenge of Changing Amorphous, Limitless Neglect Laws in a Family Surveillance Society*, 1 FAM. INTEGRITY & JUST. Q. 120 (2022).

17. *Id.*

18. See Gupta-Kagan, *supra* note 5, at 223-30 (providing an example where one instance of lack of supervision by a parent with inadequate childcare options does not indicate a pattern of leaving a child in dangerous circumstances).

19. Richard Wexler, *In Child Welfare, If the Solution Is Money, the Problem Is Poverty*, YOUTH TODAY (Mar. 3, 2022), <https://perma.cc/GZ42-2FTD>.

Gupta-Kagan thus articulates the deeply unjust reality of the child protection legal system. Due to substantive legal indeterminacy, all parental acts or omissions leading to child welfare involvement, no matter how minor or unintentional, could lead to the most severe sanction available under the law: termination of parental rights. He makes the critical point that this indeterminacy compounds over the life of a child protection legal case, such that the cumulative result of indeterminacy can become an ever-growing problem for parents.<sup>20</sup>

The harm of substantive legal indeterminacy is most clearly seen and felt in the life of a family. Gupta-Kagan artfully integrates *In re A.M.* into his article to humanize the challenges faced by a particular family in the child protection legal system, and to objectively dissect what was done to them at every step of the legal process.<sup>21</sup> Sadly, as he notes, this case is not exceptional. When I was with the United States Children's Bureau, I was routinely contacted by colleagues at the Department of Justice's Office of Civil Rights Enforcement over similar complaints filed in states across the country. Moreover, even as I have been writing this piece, I have been made aware of other such cases with shockingly similar fact patterns (some of which are active). I have seen terminations of parental rights pursued for lack of adequate housing or income, disability, simple substance use (not misuse or abuse), and limited English proficiency of a parent. I have seen termination pursued based on simple preference for a foster parent and the notion that a child would have access to more resources with a different family than their own. In my view, all are examples of profound injustices that indeterminacy can cause.

## II. DETERMINATE DATA, DETERMINATE HARM

Decades of national data speak to the harms caused by the current child welfare system.<sup>22</sup> More fundamentally, the child welfare system's historical ties to slavery and efforts to redistribute poor children, children of immigrants, and children of color have been well documented.<sup>23</sup> It is a history replete with othering, forced separation, forced assimilation, and unspeakable trauma,<sup>24</sup> and current data shows that these patterns continue.<sup>25</sup> Black and Native American and Alaska Native children are taken from their families and in out-of-home care at rates far higher than White children.<sup>26</sup> Children from low-income families are

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20. Gupta-Kagan, *supra* note 5, at 261.

21. *Id.* at 223-30. Gupta-Kagan uses *In re A.M.* as a real-life example of how indeterminacy can be present in a specific child legal protection system case, how it can compound, and the negative impact it can have on the life of a family. I use this case illustratively throughout the article.

22. See, e.g., CHILD'S BUREAU, U.S. DEP'T OF HEALTH & HUM. SERVS., CHILD MALTREATMENT 1 (2019).

23. DOROTHY E. ROBERTS, SHATTERED BONDS: THE COLOR OF CHILD WELFARE 6 (2001).

24. *Id.*

25. *Id.*

26. CHILD'S RTS., FIGHTING INSTITUTIONAL RACISM AT THE FRONT END OF CHILD WELFARE SYSTEMS 4 (2021).

always more likely to be taken from their families than children from higher income families.<sup>27</sup> Neglect, not physical or sexual abuse or exploitation, is the most common reason that children are taken from their families.<sup>28</sup>

The racial inequities of the child protection legal system are glaringly apparent. Per scholar Dorothy Roberts:

. . . [Spend] a day at dependency court in any major city and you will see the unmistakable color of the child welfare system . . . If you came with no preconceptions about the purpose of the child welfare system, you would have to conclude that it is an institution designed to monitor, regulate, and punish poor Black families.<sup>29</sup>

Roberts has also shared the story of a judge visiting from another country, who, upon observing dependency court in the United States remarked to his host, “Thank you for showing me the court for black families; when do we visit the one for whites?”<sup>30</sup>

A cursory examination of the federal child welfare budget alongside the data previously discussed reinforces this perception.

Nevertheless, the basic approach to child welfare in the United States—responding to familial vulnerabilities, need, crisis or danger by removing children from their parents instead of meeting needs and removing danger—continues largely unchanged.

### III. OTHER CONDITIONS THAT CONTRIBUTE TO HARMS

Numerous factors, in addition to substantive legal indeterminacy, combine to create the conditions for harm in the child welfare system. This section will address three interrelated factors: the system’s overall (and misguided) vision of child welfare, its funding priorities, and its enduring commitment to the status quo.

#### A. Vision

At its root, the indeterminacy issues in the child protection legal system are born of a misguided vision of child welfare in the United States. This vision is rooted in the historical belief that poor children, children of immigrants, and children of color are better off in wealthier, whiter families.<sup>31</sup> As the child welfare system has moved from its largely philanthropic and faith-based roots to become a government institution, it has built and maintained structures and

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27. *Id.*; see also CHILD.’S DEF. FUND, *THE STATE OF AMERICA’S CHILDREN 2020: POVERTY* (2020).

28. CHILD.’S BUREAU, *supra* note 22, at xi.

29. ROBERTS, *supra* note 23, at 6.

30. Dorothy E. Roberts, *Why Child Welfare is a Civil Rights Issue*, 3 FAMILY DEFENDER 1, 7 (2009).

31. DOROTHY ROBERTS, *TORN APART: HOW THE CHILD WELFARE SYSTEM DESTROYS BLACK FAMILIES AND HOW ABOLITION CAN BUILD A SAFER WORLD* 102 (2022).

institutions that perpetuate white supremacy and white saviorism,<sup>32</sup> shown in the system's continual disparate impact on low-income families and racial minorities.<sup>33</sup> These poor outcomes demonstrate that the system as currently conceived continues to perpetrate great harms and needs to be abolished and replaced with a system founded in an entirely different vision.<sup>34</sup>

Organizations such as the United States Children's Bureau, with which I have worked extensively, have provided these alternative visions. Beginning in 2017, leadership of the United States Children's Bureau began promoting a new national vision for child welfare.<sup>35</sup> This vision was shaped by the experiences of children, youth and parents who had been directly involved with the system. It called on all in the field to recognize the harm that the current system causes and the need to reorient around the goals of strengthening families and communities while responding to serious abuse or intentional neglect in healing and humane ways.

We established two overarching national goals: (1) reduce the need for families to interact with the child welfare system; and (2) improve the experiences for children, youth and their parents when this interaction is necessary.<sup>36</sup> We pursued these goals relentlessly, recognizing the current system's inadequate resources, their inequitable distribution, and the inability of the system to use these resources prior to crises occurring. We argued that equity would be advanced if federal child welfare funds could be invested directly in families and communities.

We linked the vision to federal guidance on numerous related issues, including the importance of primary prevention;<sup>37</sup> the need for permanency for youth in foster care;<sup>38</sup> the need to engage youth and parents in decision-making about their lives;<sup>39</sup> the importance of family time for children in care and their families;<sup>40</sup> and the importance of legal representation for parents and children.<sup>41</sup>

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32. *Id.* at 43, 272.

33. See, e.g., Krista Ellis, *Race and Poverty Bias in the Child Welfare System: Strategies for Child Welfare Practitioners*, ABA (Dec. 17, 2019), <https://perma.cc/E9FP-WSNA>.

34. See, e.g., Brian Rinker, *Q&A: UPenn Prof. Dorothy Roberts Makes the Case for Abolishing the Child Welfare System*, YOUTH TODAY (Feb. 8, 2022), <https://perma.cc/DWR8-MKAM>.

35. CHILD.'S BUREAU, U.S. DEP'T OF HEALTH & HUM. SERVS., STRENGTHENING FAMILIES THROUGH PRIMARY PREVENTION OF CHILD MALTREATMENT AND UNNECESSARY PARENT-CHILD SEPARATION (2018) [hereinafter STRENGTHENING FAMILIES 2018].

36. Jerry Milner & David Kelly, *Standing in the Breach*, CHILD.'S BUREAU EXPRESS (Dec. 2020), <https://perma.cc/JTP3-YHF6>.

37. *Id.*

38. CHILD.'S BUREAU, U.S. DEP'T OF HEALTH & HUM. SERVS., ACHIEVING PERMANENCY FOR THE WELL-BEING OF CHILDREN AND YOUTH (2021).

39. CHILD.'S BUREAU, U.S. DEP'T OF HEALTH & HUM. SERVS., ENGAGING, EMPOWERING, AND UTILIZING FAMILY AND YOUTH VOICE IN ALL ASPECTS OF CHILD WELFARE TO DRIVE CASE PLANNING AND SYSTEM IMPROVEMENT (2019).

40. CHILD.'S BUREAU, U.S. DEP'T OF HEALTH & HUM. SERVS., FAMILY TIME AND VISITATION FOR CHILDREN AND YOUTH IN OUT-OF-HOME CARE (2020).

41. See *supra* text accompanying note 2.

Our intent was to provide clear guidance to child protection agencies on approaches and strategies to serve parents and children in more just, equitable and humane ways to strengthen families and keep them safely together and ensure their voices are heard.

#### B. Federal funding

Funding priorities further reveal the misguided status quo of the child legal protection system, showing its harmful preference for removal over preserving families. Federal spending on child welfare programs totals approximately \$10 billion annually.<sup>42</sup> The majority of these dollars are spent on placement and administrative costs for foster care and adoption related costs, as well as other programing and technical assistance.<sup>43</sup> However, the federal government has recognized that this current funding structure does not meet the needs of children and families.<sup>44</sup> A report by Child Trends with support from federal government partners at the Children’s Bureau examines why. This report places combined annual spending on child welfare (from federal, state, local and other funds) at \$33 billion, categorizing spending as follows: 45% on out-of-home placement, 19% on guardianship and adoption, and 15% on preventing removals, a staggering display of lopsidedness in favor of out-of-home placement over preserving families.<sup>45</sup>

To address this issue, Gupta-Kagan helpfully suggests that agencies should have access to funding that equalizes resources for family preservation and foster care. He describes a “bitter irony of the disparity between funds paid to support children separated from their families and those paid to support them with their families.”<sup>46</sup> This would be a valuable reform. Equalizing funding or increasing the flexibility of current funding would better equip child protection agencies to make reasonable efforts to prevent child removals as required by federal statutory law. He further suggests that rather than assigning the responsibility of making “reasonable efforts” to the child protection agency, the responsibility should be shouldered across the state and its agencies.<sup>47</sup> I agree. A more expansive and helpful interpretation of reasonable efforts would require supporting families in a holistic way that includes resources from other federal programs, such as the

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42. KRISTINA ROSINSKY, SARAH CATHERINE WILLIAMS, MEGAN FISCHER & MAGGIE HAAS, CHILD WELFARE FINANCING SFY 2018: A SURVEY OF FEDERAL, STATE AND LOCAL EXPENDITURES, CHILD TRENDS (2021).

43. *Id.* For an historical accounting and its impact, see also Mark Testa & David Kelly, *The Evolution of Federal Child Welfare Policy through the Family First Prevention Services Act of 2018: Opportunities, Barriers, and Unintended Consequences*, 692 ANNALS AM. ACAD. POL. & SOC. SCI. 68 (2020).

44. U.S. DEP’T OF HEALTH & HUM. SERVS., FEDERAL FOSTER CARE FINANCING: HOW AND WHY THE CURRENT FUNDING STRUCTURE FAILS TO MEET THE NEEDS OF THE CHILD WELFARE FIELD (2005).

45. Milner & Kelly, *supra* note 7.

46. Gupta-Kagan, *supra* note 5, at 257; Strengthening Families 2018, *supra* note 35.

47. Gupta-Kagan, *supra* note 5, at 283.

Office of Child Care, the Maternal and Child Health Bureau or Housing and Urban Development.<sup>48</sup>

Both recommendations are consistent with the vision promoted by the Children's Bureau, as is Gupta-Kagan's call for prioritizing prevention by investing in families and communities as a means of reducing encounters with the system. One strategy to grow such investment is achieving parity between expenditures on foster care and funding for family strengthening and preservation efforts. Title IV-B of the Social Security Act, for example, could help accomplish this, if it were funded at similar levels to title IV-E.<sup>49</sup>

Title IV-E could also be reformed to allow for the provision of concrete supports such as housing and childcare assistance for families that can help prevent conditions that contribute to family vulnerability, as well as preventative legal services prior to a child's imminent entry into foster care. There is a strong case that increased funding and spending flexibility would dramatically reduce the need for such a high level of spending on out-of-home placement in foster care. To be clear, this is not an argument for slashing foster care funding, but rather for increasing the funds available for supporting families, thereby preventing the likelihood that their children will become candidates for foster care in the first place. Investment in supports much further upstream could organically reduce expenditures under the foster care entitlement.

### C. Disrupting the Status Quo

It must be understood that the status quo itself will present a significant obstacle to change, especially where advocates call for changing the funding structures that support the current system. Simply identifying and addressing existing inequities often elicits defensiveness from those invested in the status quo,<sup>50</sup> which raises barriers to realizing a new vision for child welfare in the United States.

Defenders of the system are quick to paint efforts to protect family integrity and prevent trauma as reflecting a lack of concern for the safety of children. Their commitment to the status quo is often rooted in deeply held beliefs that existing legislation is focused on securing the safety of children, and that any departure from the status quo would undermine this goal. Additionally, they contend that data shows that the system is simply responding to inequitable needs among the population, but overlook the inherent biases in much of the data we use.<sup>51</sup> Similarly, the inertia associated with maintaining traditional practices obstructs

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48. *See id* at 282-85.

49. For a general description of the program, see U.S. DEP'T OF HEALTH & HUM. SERVS., TITLE IV-E FOSTER CARE (2012).

50. Shrounda Selivanoff, *In Pursuit of Growing and Healing: Changing Child Welfare*, CHILD.'S BUREAU EXPRESS (Dec. 2020).

51. *See, e.g.*, J. Khadijah Abdurahman, *Calculating the Souls of Black Folk: Predictive Analytics in the New York City Administration for Children's Services*, 11 COLUM. J. RACE & L. 75 (2021).



efforts to invest in families or communities that may have different cultural practices and norms than members of majority culture.

Defenders of the current status quo also fail to recognize the inadequacy of less-transformational reforms. Significant resources and attention have already been spent on incremental reform efforts, including legislation that is transformative only in name.<sup>52</sup> Accordingly, these resources have been invested in efforts that grow or maintain the current system rather than transform it.<sup>53</sup> As a result, these reforms have made little difference in the lives of families and how they experience the system.<sup>54</sup> Instead, these reform efforts tend to benefit professionals within the industry more than children and families.<sup>55</sup> These theories of change rely on incrementalism and improving what we already have in place,<sup>56</sup> rather than responding to what families and communities need, even if that means departing from traditional structures of the child welfare system.<sup>57</sup>

### CONCLUSION

The harms of substantive legal indeterminacy are most clearly felt by parents and children entangled in the child protection legal system. In failing to address indeterminacy and to acknowledge its role in maintaining structural inequities, leaders of the child welfare field have shown their comfort with the harm caused by the status quo. Professor Gupta-Kagan's proposed reforms to improve determinacy, specifically in the child protection legal system, will help keep children safe and maintain family integrity. They will also help reduce contact with a system in need of dramatic overhaul by making it clear when, and under which circumstances, a child can be removed from their parents—and when a family must be reunified.

But clearer determinacy in the child welfare system's overall vision, law, and standards is also needed to prioritize the preservation of familial ties, connection, and belonging in the absence of an affirmative showing that those connections will hurt the child. To meet these commitments, Gupta-Kagan recognizes that we must link services and supports more clearly to reasons for

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52. See, e.g., The Family First Prevention Services Act (2018). For an overview, see Richard Wexler, *Family First Act Institutionalizes Institutions, Sets Up Prevention to Fail*, IMPRINT (June 30, 2016), <https://perma.cc/KHG4-9ZNX>.

53. See Wexler, *supra* note 52; Lisa Merkel-Holguin, Ida Drury, Colleen Gibley-Reed, Adrian Lara, Maleeka Jihad, Krystal Grint & Kendall Marlowe, *Structures of Oppression in the U.S. Child Welfare System: Reflections on Administrative Barriers to Equity*, 12 SOC'YS, 1 13 (2022).

54. Over the past five years, the author has met personally with hundreds of parents and youth with lived experience in the child welfare system to learn about the impact of legislative, policy and practice changes. Overwhelmingly, the individuals I met with have reiterated that reform efforts have not made meaningful differences in how they have experienced or are experiencing the child welfare system.

55. Merkel-Holguin et al., *supra* note 54, at 11.

56. *Id.*

57. *Id.*

removal. Delineating degrees and types of acts or omissions, as he suggests, will help tailor case planning to reparative or restorative actions for parents. These reforms will never completely eradicate bias, but will add a much-needed prophylactic component that is necessary to transform the child welfare system. Such reforms can begin to reduce some of the harms caused by indeterminacy. When they are combined with a clear vision focused on investing in families and communities, transformation and justice are possible.