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## Systemic Inequality | Systemic Racism in Child Neglect Laws

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## COMMENT

### SYSTEMIC RACISM IN CHILD NEGLECT LAWS

*Kendra Kumor\**

*The American child protection and support system was founded in the Reconstruction era. After the Civil War, many Southern states passed so-called Black Codes, which included apprenticeship statutes. These apprenticeship statutes allowed children to be removed from their parents' care for any number of reasons, including poor moral character or financial instability. Although these statutes have long since been repealed, the residual institutional effects still linger in today's child neglect and custody battles. Black children are disproportionately represented in child protective services investigations, in part because Black families constitute a disproportionate part of the homeless and impoverished population in the United States. Currently, some states' legal definitions for child neglect simply track the expected conditions of poverty. This Comment argues child neglect should be defined more narrowly to avoid the arbitrary removal of Black children from their families. This Comment also argues that child protection professionals should take into account the wider environmental conditions Black families face, which are often the result of community neglect, as opposed to parental neglect.*

#### INTRODUCTION

My first client as a family defense lawyer was a Black mother who left her 13-year-old in charge of 8- and 6-year-old siblings while she went to the dry cleaners. In suburban America, we call this babysitting. In a predominately Black, public housing complex in Washington, D.C., this constituted neglect.

—Vivek Sankaran<sup>1</sup>

Black children constitute 14 percent of the total child population in the United States today.<sup>2</sup> However, Black children represent 23 percent of the

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1. Vivek Sankaran, *With Child Welfare, Racism Is Hiding in the Discretion*, IMPRINT (June 21, 2020, 11:00 PM), <https://imprintnews.org/child-welfare-2/with-child-welfare-racism-is-hiding-in-the-discretion/44616> [<https://perma.cc/8F4L-F4JQ>] (emphasis omitted).

2. *Black Children Continue to Be Disproportionately Represented in Foster Care*, KIDS COUNT DATA CTR. (Apr. 13, 2020), <https://datacenter.kidscount.org/updates/show/264-us-foster-care-population-by-race-and-ethnicity> [<https://perma.cc/XDP7-SXNH>].

total population in the child welfare system.<sup>3</sup> Of the 37.4 percent of U.S. children who are the subject of a child protective services investigation before their eighteenth birthdays, 53 percent of those children are Black.<sup>4</sup> The disproportionate representation of Black children in the child protection system can be traced back to the Reconstruction era, when apprenticeship statutes afforded local law enforcement officers and judges broad discretion to take Black children away from their families.<sup>5</sup> Today, many state child neglect statutes still allow social workers and judges much discretion to decide what constitutes child neglect.<sup>6</sup> This Comment argues that many states' child neglect statutes remain too broad, contributing to the high disproportionality rates of Black children in the child welfare system.<sup>7</sup> State legislatures should adopt a uniform, narrow definition of child neglect to help reduce racial bias in child neglect determinations and account for the community neglect that many Black families face today.<sup>8</sup>

## I. HISTORY OF THE U.S. CHILD PROTECTION SYSTEM

The American child protection system is rooted in the aftermath of the Civil War. Part I.A outlines the so-called Black Codes, which contained certain child protection provisions that effectively reenslaved Black children. Part I.B illustrates how the child apprentice system evolved during the Second Industrial Revolution and continued to disproportionately impact Black children and their families.

### A. Reconstruction Era: Black Codes

After the Civil War, many Southern states passed Black Codes<sup>9</sup> which included apprenticeship statutes.<sup>10</sup> These statutes created a duty for all civil officers to report free Black children under the age of eighteen “who are orphans, or whose parent or parents have not the means, or who refuse to provide for and support said minors, and thereupon it shall be the duty of said probate court . . . to apprentice said minors to some competent or suitable person.”<sup>11</sup> Children could be taken away from their parents for any number of reasons including vagrancy, “poor moral character,” financial instability,

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3. *Id.*

4. Hyunil Kim et al., *Lifetime Prevalence of Investigating Child Maltreatment Among U.S. Children*, 107 AM. J. PUB. HEALTH 274, 274 (2017).

5. *See infra* Part I.A.

6. *See infra* Part II.A.

7. *See infra* Part III.A.

8. *See infra* Part III.B.

9. *See* 2 EDWARD MCPHERSON, POLITICAL HISTORY OF THE UNITED STATES OF AMERICA DURING THE PERIOD OF RECONSTRUCTION 29–44 (surveying statutes from Alabama, Florida, Georgia, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee, Texas, and Virginia).

10. Drew D. Hansen, *The American Invention of Child Support: Dependency and Punishment in Early American Child Support Law*, 108 YALE L.J. 1123, 1143 (1999).

11. MCPHERSON, *supra* note 9, at 29 (citing a Mississippi statute).

and industrial incompetency.<sup>12</sup> Predictably, white parents were not held to these same standards.<sup>13</sup> Under these laws, Black parents' custody became conditional on their perceived parental competency.<sup>14</sup> If their parental competency was questioned, it became the parents' burden to prove they had sufficient moral character or industriousness to satisfy the court or authority ordering the seizure of their children.<sup>15</sup> Given the prejudice of white judges and law enforcement personnel, convincing these authorities of sufficient parental competency and ability was a nearly impossible task.<sup>16</sup> Additionally, recently freed Black Americans, without the means to afford legal counsel, were almost always unrepresented.<sup>17</sup> Child custody litigation also involved a complex interplay between labor law, constitutional challenges, state law statutory interpretation, and habeas corpus petitions.<sup>18</sup> Courts often ruled against Black parents on technicalities—which would have been easily avoidable with access to trained legal counsel.<sup>19</sup> Even if Black parents could afford an attorney, the legal precedent for obtaining child custody did not favor them.<sup>20</sup> Authorities could essentially interpret and apply the apprenticeship statutes at will, creating a system that could deprive virtually any Black parent of their child custody rights.<sup>21</sup>

The drafters of these apprenticeship statutes justified them as a means to “provide[] protection and safe governance for . . . people unfit to . . . provide suitably for their children.”<sup>22</sup> Although these statutes claimed to protect the interests of disadvantaged or orphaned children, the laws had the opposite effect because they essentially reinstated slavery for Black children.<sup>23</sup> For example, in Maryland alone, it is estimated that 90,000 slaves were freed after emancipation, but approximately 10,000 were reenslaved under apprenticeship statutes.<sup>24</sup> Within a month of emancipation, Maryland courts had apprenticed more than 2500 Black children, mostly to their former masters.<sup>25</sup> It was reported that children were carried to the local courts in wagons and carriages to be placed in the apprenticeship system.<sup>26</sup> Additionally, politicians used these statutes to trim budgets by taking poor

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12. Peggy Cooper Davis, “*So Tall Within*”—the Legacy of Sojourner Truth, 18 CARDOZO L. REV. 451, 464 (1996).

13. Laura F. Edwards, “*The Marriage Covenant Is at the Foundation of All Our Rights*”: The Politics of Slave Marriages in North Carolina After Emancipation, 14 LAW & HIST. REV. 81, 97 (1996).

14. *Id.*

15. *See id.*

16. *Id.*

17. James D. Schmidt, “*Free Labor Still Lives*”: African-American Uses of Labor Law in the Reconstruction South, 1864–1868, 3 J.S. LEGAL HIST. 37, 49 (1994).

18. *See id.* at 52.

19. *See id.* at 59.

20. *Id.* at 49.

21. *See* Edwards, *supra* note 13, at 97.

22. Davis, *supra* note 12, at 460.

23. Hansen, *supra* note 10, at 1143.

24. Davis, *supra* note 12, at 457.

25. *See id.* at 457 n.40.

26. *See id.*

children away from their homes and placing them with individuals who could provide for them without relying on government assistance.<sup>27</sup> Overall, the myth of white parental supremacy and paternalism in the post-emancipation years rationalized the South's apprenticeship statutes.<sup>28</sup>

*B. Second Industrial Revolution: Poor Laws*

By the early 1870s, courts had overturned most apprenticeship statutes instituted by the Black Codes using the Thirteenth Amendment<sup>29</sup> and the Civil Rights Act of 1866.<sup>30</sup> However, Black children were still subjected to apprenticeship systems either voluntarily by their parents, who hoped their children would learn a trade, or involuntarily under state poor laws well into the twentieth century.<sup>31</sup> Poor laws were originally instituted in the colonial era to ensure that towns and provinces would provide for impoverished children and adults.<sup>32</sup> Although poor laws were conceived with charitable intentions, they no longer reflected these intentions by the twentieth century.<sup>33</sup> The apprenticeship system was used exclusively for cheap child labor—in the form of household workers, farm hands, and factory laborers.<sup>34</sup> Towns and states with poor laws were happy to continue the apprenticeship system; the system allowed them to “provide for” poor children as cheaply as possible since the children's own labor, rather than government funds, paid for their room and board.<sup>35</sup>

During the Great Depression, the apprenticeship system, under the guise of the poor laws, continued to deprive poor parents of child custody.<sup>36</sup> “Orphan trains” transported over 200,000 poor children from inner cities to farm families in the Midwest.<sup>37</sup> Politicians justified this movement by assuring that children in rural America would learn the trade of a hired farm hand and stay off of the dangerous streets of the inner cities.<sup>38</sup> This system perpetuated the breakup of poor families by creating a cycle of poverty and a dearth of public resources for poor parents.<sup>39</sup> Even if poor parents were able to improve their economic prospects, society still viewed them as immoral and unfit to regain custody of their children.<sup>40</sup>

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27. Janet L. Dolgin, *Transforming Childhood: Apprenticeship in American Law*, 31 NEW ENG. L. REV. 1113, 1118 (1997).

28. See Davis, *supra* note 12, at 460.

29. U.S. CONST. amend. XIII.

30. Ch. 31, 14 Stat. 27 (codified as amended in 42 U.S.C. §§ 1981–1992); Schmidt, *supra* note 17, at 58.

31. See Dolgin, *supra* note 27, at 1127.

32. See *id.* at 1176.

33. See *id.* at 1174.

34. *Id.* at 1177.

35. *Id.*

36. See Jessica Dixon Weaver, *Beyond Child Welfare—Theories on Child Homelessness*, 21 WASH. & LEE J.C.R. & SOC. JUST. 17, 26–27 (2014).

37. See *id.* at 27.

38. See *id.*

39. See *id.*

40. See *id.*

To this day, children removed from their families due to poverty or homelessness often cannot be reunited with their families because their parents cannot secure public assistance from the government.<sup>41</sup> As such, the law continues to deprive poor families of the same protection of their child custody rights as is afforded middle-class families.<sup>42</sup> Black Americans make up a disproportionate percentage of both the impoverished and homeless population and the foster care system.<sup>43</sup> This is a product of the fact that race and poverty have been legally intertwined in the United States since its founding.<sup>44</sup> Reconstruction-era laws enacted and upheld well into the twentieth century continue to perpetuate this inequality.<sup>45</sup>

## II. DEFINING CHILD NEGLECT

While Part I focused on the historical evolution of American child protection laws, Part II focuses on the current status of the law—particularly, how state law defines child neglect.<sup>46</sup> Most states define neglect as some failure of a person responsible for a child to provide food, shelter, clothing, medical care, or supervision.<sup>47</sup> This Comment separates state child neglect definitions into two categories. Part II.A discusses broad statutory definitions of child neglect, while Part II.B discusses narrow statutory definitions.

### A. Broad Definitions of Child Neglect

Defining child neglect is a notoriously difficult endeavor.<sup>48</sup> The debate over the definition implicates questions about minimum standards of care, action and inaction, and intentionality.<sup>49</sup> Some states' child neglect statutes employ a broad definition of child neglect, allowing for more discretion on the part of the social workers and judges who must apply and interpret this statutory definition.<sup>50</sup> For example, several states include in the definition of child neglect situations where a child may be put at risk but is not actually

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41. *Id.* at 29–30.

42. *See id.* at 31.

43. *See id.* at 32.

44. *See id.* at 32–33.

45. *See id.* at 33.

46. Although the Child Abuse Prevention and Treatment Act also provides a federal definition for child neglect, this piece will focus on variations in state law. *See* 42 U.S.C. § 5106.

47. *See Acts of Omission: An Overview of Child Neglect*, BULL. FOR PROS. (Child.'s Bureau, Washington, D.C.), July 2018, at 1–2, <https://www.childwelfare.gov/pubPDFs/acts.pdf> [<https://perma.cc/2V6F-AKL5>].

48. *See* DIANE DEPANFILIS, U.S. DEP'T HEALTH & HUM. SERVS., CHILD NEGLECT: A GUIDE FOR PREVENTION, ASSESSMENT, AND INTERVENTION 9–10 (2006), <https://www.childwelfare.gov/pubPDFs/neglect.pdf> [<https://perma.cc/86T5-L73X>].

49. *Id.*

50. *See* Stephanie Ann Stowman, *Relevance of Age and Special Needs in Initial Development Phases of a Child Neglect Scale 8* (Nov. 15, 2005) (M.A. thesis, University of Nevada, Las Vegas), <https://digitalscholarship.unlv.edu/cgi/viewcontent.cgi?article=2911&context=rtids> [<https://perma.cc/E9YV-XHQH>].

harmful. Florida's statute defines neglect as when "a child is permitted to live in an environment when such deprivation or environment causes the child's physical, mental, or emotional health to be significantly impaired or to be *in danger of* being significantly impaired."<sup>51</sup> California's statute requires a finding of neglect when a "child has suffered, or there is a *substantial risk* that the child will suffer, serious physical harm or illness."<sup>52</sup> These types of broad statutory definitions are meant to allow social workers to be proactive instead of reactive.

Another example of a broad statutory definition of child neglect includes the "prudent parent" standard.<sup>53</sup> For example, Colorado's statute states that child neglect includes "[a]ny case in which a child is a child in need of services because the child's parents . . . fail[] to take . . . actions to provide adequate food, clothing, shelter, medical care, or supervision that a prudent parent would take."<sup>54</sup> Iowa has a similar standard, describing neglect as a "failure to provide for the adequate supervision of a child . . . that a reasonable and prudent person would exercise under similar facts and circumstances."<sup>55</sup> Tennessee even provides that a person may be deemed an "unfit" caretaker by reason of "immorality."<sup>56</sup> These types of statutes allow for broad discretion, as any given social worker or judge may have a different idea of how a prudent or moral parent should act in a specific set of circumstances.<sup>57</sup>

Finally, some statutory definitions of child neglect are so broad as to encompass deliberate and negligent acts or omissions as well as one's simple inability to provide for a child. For example, Indiana's statute states child neglect occurs when a "child's physical or mental condition is seriously impaired or seriously endangered as a result of the *inability*, refusal, or neglect of the child's parent, guardian, or custodian" to provide for the child.<sup>58</sup> Similarly, Idaho defines a neglected child as one whose "parents, guardian or other custodian are unable to discharge their responsibilities to and for the child and, as a result of such *inability*, the child lacks the parental care necessary for his or her health, safety or well-being."<sup>59</sup> It is important to note neither Indiana nor Idaho supplies an exception for financial inability to provide for a child in their statutory definitions.<sup>60</sup>

Overall, these types of broad statutes have advantages and disadvantages. On the one hand, broad statutory language allows social workers and judges

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51. FLA. STAT. § 39.01(50) (2021) (emphasis added).

52. CAL. WELF. & INST. CODE § 300(b)(1) (West 2021) (emphasis added).

53. See, e.g., COLO. REV. STAT. § 19-1-103 (2021).

54. *Id.* § 19-1-103(1)(a)(III).

55. IOWA CODE § 232.68(4)(b) (2021).

56. TENN. CODE ANN. § 37-1-102(b)(13)(B) (2021).

57. See Peter H. Rossi et al., *Understanding Decisions About Child Maltreatment*, 23 EVALUATION REV. 579, 594–95 (1999) (finding that child welfare experts disagreed nearly 50 percent of the time when given a hypothetical about whether a situation constituted child neglect or maltreatment).

58. IND. CODE § 31-34-1-1(1) (2021) (emphasis added).

59. IDAHO CODE § 16-1602(31)(b) (2021) (emphasis added).

60. See *infra* note 68 and accompanying text.

to be flexible in deciding child neglect cases based on individualized facts and local community standards.<sup>61</sup> Broad language also allows social workers to intervene preventively before harm actually occurs when there is a “substantial risk,” instead of reactively addressing the situation after the harm has already occurred.<sup>62</sup> On the other hand, broad definitions have been criticized for “imposing middle-class values as interpreted by professionals on lower class families” without consideration of cultural differences.<sup>63</sup> In some cases, parents can be charged with neglect simply for living in a certain area or building because a social worker considers these circumstances to constitute an inability to care for the child.<sup>64</sup> Narrowing the definition of child neglect could help eliminate court intervention based on value judgments about family lifestyles or subjective determinations about cleanliness or care.<sup>65</sup> Additionally, broad definitions have the potential to overload a strained child welfare system with a wide variety of neglect cases.<sup>66</sup>

### B. Narrow Definitions of Child Neglect

In contrast to the broad definitions above, some states have implemented narrow statutory definitions of child neglect that afford less discretion to social workers and judges applying the standard in practice. One way that states have narrowed their definitions of child neglect is to provide an exception for financial inability—meaning that financial inability alone cannot constitute child neglect.<sup>67</sup> Twelve states and the District of Columbia provide a separate statutory exception for financial inability to provide for a child.<sup>68</sup> Other states embed the financial inability exception into their actual statutory definitions. For example, Michigan defines child neglect as failing to provide for the child “though financially able to do so.”<sup>69</sup> Similarly, New Hampshire’s definition lists several acts and omissions and concludes with a

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61. See Stowman, *supra* note 50, at 9.

62. See *supra* notes 51–52 and accompanying text.

63. See Stowman, *supra* note 50, at 9; see also Annette R. Appell, *Protecting Children or Punishing Mothers: Gender, Race, and Class in the Child Protection System*, 48 S.C. L. REV. 577, 584 n.35 (1997) (stating that the majority of child services professionals, judges, caseworkers, and lawyers who handle child neglect cases are white).

64. Kathleen A. Bailie, Note, *The Other “Neglected” Parties in Child Protective Proceedings: Parents in Poverty and the Role of the Lawyers Who Represent Them*, 66 FORDHAM L. REV. 2285, 2295 (1998).

65. Judith Areen, *Intervention Between the Parent and Child: A Reappraisal of the State’s Role in Child Neglect and Abuse Cases*, 63 GEO. L.J. 887, 918–19 (1975).

66. See Stowman, *supra* note 50, at 9; see also Michael Wald, *State Intervention on Behalf of “Neglected” Children: A Search for Realistic Standards*, 27 STAN. L. REV. 985, 1015 (1975) (noting that subjective determinations and projections about future harm could lead to overreporting).

67. *Definitions of Child Abuse and Neglect*, STATE STATUTES (Child’s Bureau, Washington, D.C.), Mar. 2019, at 1, 4, <https://www.childwelfare.gov/pubPDFs/define.pdf> [<https://perma.cc/CD56-BNGK>].

68. Those twelve states are Arkansas, Florida, Kansas, Louisiana, Massachusetts, New Hampshire, North Dakota, Pennsylvania, Texas, Washington, West Virginia, and Wisconsin. *Id.* at 4 n.26.

69. MICH. COMP. LAWS § 722.622(k)(i) (2021).



carveout: “and the deprivation is not due primarily to the lack of financial means of the parents, guardian, or custodian.”<sup>70</sup>

Another way that some states have narrowed their definitions is to provide an enumerated list of specific circumstances constituting child neglect. For example, Arkansas provides a list of ten different situations that constitute child neglect, thus limiting the statutory definition to specific failures or refusals to provide care while having the means to do so.<sup>71</sup> Similarly, Texas confines its statutory definition to a list of specified “acts or omissions by a person” responsible for a child’s care.<sup>72</sup> These types of statutes can provide more specific guidance for social workers and judges applying these standards in practice.

As with broad statutory constructions of child neglect, narrow definitions have advantages and disadvantages. On the one hand, narrower definitions provide less room for implicit racial and socioeconomic biases to influence social workers’ and judges’ decision-making processes.<sup>73</sup> Narrower definitions can also help ensure that child neglect reporting focuses on the fitness of the parents and not their economic status.<sup>74</sup> Statutory exceptions for financial inability, for example, can help prevent unnecessary state intervention which can sometimes do more harm than good.<sup>75</sup> On the other hand, narrow statutory language could restrict social workers’ ability to intervene preemptively before a child is physically harmed. Imposing overly specific conditions on caretakers can result in an “unacceptable degree of state intrusion into family life” and an infringement on family autonomy.<sup>76</sup> Additionally, no matter how narrowly a definition is written, social workers will inevitably vary in their determinations because these types of evaluations are based on individual interpretation through observation and experience.<sup>77</sup>

### III. REDEFINING CHILD NEGLECT

To avoid the continuation of systemic racial discrimination in the American child protection system, state legislatures should adopt a uniform,

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70. N.H. REV. STAT. ANN. § 169-C:3(XIX)(b) (2021).

71. See ARK. CODE ANN. § 12-18-103(14)(A) (2021).

72. TEX. FAM. CODE ANN. § 261.001(4)(A)(ii) (West 2021) (listing five situations that constitute child neglect).

73. See Areen, *supra* note 65, at 918–19.

74. See Bailie, *supra* note 64, at 2287.

75. See Wald, *supra* note 66, at 1021–22 (noting that separating parents from children due to a finding of child neglect can just perpetuate the very “culture of poverty” social workers are trying to break).

76. Areen, *supra* note 65, at 893.

77. Mohammed Nabeel Chaudhry, *The Identification of Child Neglect in Social Work Practice* 15 (2016) (D. Prof. dissertation, University of Salford), <https://usir.salford.ac.uk/id/eprint/41619/3/THE%20IDENTIFICATION%20OF%20CHILD%20NEGLECT%20IN%20SOCIAL%20WORK%20PRACTICE.pdf> [<https://perma.cc/TM9G-DWWW>]; see also Kay P. Kindred, *God Bless the Child: Poor Children, Parens Patriae, and a State Obligation to Provide Assistance*, 57 OHIO ST. L.J. 519, 533 (1996) (noting that even when there are statutory safeguards that excuse parents who are unable to provide for their children through no fault of their own, the distinction is not always made in practice).

narrow statutory definition of child neglect. Like the Black Codes that were so easily manipulated by authorities to arbitrarily remove Black children from their families,<sup>78</sup> broad statutory definitions of child neglect allow for more discretion and thus more room for social workers' and judges' explicit or implicit racial bias. This Comment argues for one uniform, narrow definition of child neglect and encourages social workers and judges to account for the larger issue of community neglect that so many Black families face.

#### A. Toward a Uniform, Narrow Definition

It is important to continually refine the definition of child neglect so that different child services agencies, researchers, attorneys, and policymakers can formulate a unified plan to better address the issue of child neglect.<sup>79</sup> Empirical studies show that broad definitions of neglect can lead to greater rates of disproportionality for Black children in the child welfare system. A disproportionality rate indicates the level at which certain groups of children are present in the child welfare system as compared to the general population.<sup>80</sup> States like California and Florida, which have disproportionality rates of 3.1 and 2.2 respectively,<sup>81</sup> employ definitions of child neglect that include risk or danger of harm.<sup>82</sup> Additionally, states that use a more nebulous “prudent parent” standard—like Colorado and Iowa,<sup>83</sup> which have disproportionality rates of 2.5 and 3.5 respectively,<sup>84</sup>—may also allow more room for explicit or implicit bias to taint child welfare decisions.

In comparison, of the twelve states that include in their child neglect definition an explicit statutory exception for financial inability to provide for the child,<sup>85</sup> seven have disproportionality rates at or below the national average of 1.7,<sup>86</sup> and ten have reduced their disproportionately rates for Black children since 2000.<sup>87</sup> Additionally, states like New Hampshire and Texas that use an enumerated list of specific acts or omissions that constitute child neglect<sup>88</sup> have disproportionality rates at or below the national average and have also reduced their disproportionality rates since 2000.<sup>89</sup>

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78. *See supra* Part I.A.

79. *See* Shannon Tyler et al., *Child Neglect: Developmental Consequences, Intervention, and Policy Implications*, 35 *CHILD & YOUTH CARE F.* 1, 4 (2006).

80. SHAMINI GANASARAJAH ET AL., NAT'L COUNCIL OF JUV. & FAM. CT. JUDGES, DISPROPORTIONALITY RATES FOR CHILDREN OF COLOR IN FOSTER CARE 3 n.1 (2017), [https://www.ncjfcj.org/wp-content/uploads/2017/09/NCJFCJ-Disproportionality-TAB-2015\\_0.pdf](https://www.ncjfcj.org/wp-content/uploads/2017/09/NCJFCJ-Disproportionality-TAB-2015_0.pdf) [<https://perma.cc/Z4RV-VK8X>]. For example, in California, Black children were disproportionately represented in the child welfare system at a rate of 3.1 times their rate in the overall child population. *See id.* at 3.

81. *See id.* at 5.

82. *See supra* notes 51–52 and accompanying text.

83. *See supra* notes 53–55 and accompanying text.

84. GANASARAJAH ET AL., *supra* note 81, at 5.

85. *See supra* notes 67–68 and accompanying text.

86. *See* GANASARAJAH ET AL., *supra* note 81, at 5–6.

87. *See id.*

88. *See supra* notes 71–72 and accompanying text.

89. *See* GANASARAJAH ET AL., *supra* note 81, at 5–6.

These statistics show that narrow statutory definitions of child neglect can help temper racial disproportionality in the child protection system. Although broader language to allow for intervention on a finding of “substantial risk” of child neglect may be helpful in some circumstances, social workers should be constrained in taking preemptive measures and be conscious of cultural biases that can be imparted into such arbitrary statutory terms.<sup>90</sup> For instance, statutory language that allows for a finding of child neglect for parental “immorality”<sup>91</sup> is wholly inappropriate because it mirrors statutory language from the Reconstruction era that allowed excessive discretion on the part of social workers and judges enforcing and applying these laws.<sup>92</sup>

Perhaps the most important step in curbing disproportionality rates is amending the definition of child neglect to eliminate poverty or financial inability as grounds for a finding of child neglect.<sup>93</sup> Since Black families make up a disproportionate amount of the impoverished population in the United States,<sup>94</sup> statutory definitions that allow for a finding of child neglect based on financial inability alone will continue to fuel the overrepresentation of Black children in the child protection system.

### B. Accounting for Community Neglect

Although narrowing the definition of child neglect to reduce the potential for racial bias in child neglect investigations and proceedings is important, it is unlikely to solve the disproportionality issue entirely. One reason why Black children are disproportionately represented in the child welfare system is the environmental conditions that many Black families face today. Black children are three times more likely to live in poverty than their white counterparts.<sup>95</sup> Accordingly, Black families are less likely to have access to high-quality housing, education, or community resources. Thus, instead of emphasizing the failures of individual caretakers, the application of child neglect standards should take into account “community child neglect.”<sup>96</sup>

A community as a whole can perpetuate child neglect “when it fails to provide adequate housing, adequate levels of public assistance, adequate schooling, adequate health services, or adequate recreational services.”<sup>97</sup> Reconceptualizing child neglect in this ecological framework highlights the structural causes of child neglect which include unemployment and

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90. See Stowman, *supra* note 50, at 9.

91. See *supra* note 56 and accompanying text.

92. See *supra* Part I.A.

93. See *supra* note 68 and accompanying text.

94. AJAY CHAUDRY ET AL., U.S. DEP'T OF HEALTH & HUM. SERVS., POVERTY IN THE UNITED STATES: 50-YEAR TRENDS AND SAFETY NET IMPACTS 26 (2016), <https://aspe.hhs.gov/system/files/pdf/154286/50YearTrends.pdf> [https://perma.cc/U9RM-EGLE] (stating that 26.2 percent of all Black Americans live in poverty, while only 10.1 percent of all white Americans live in poverty).

95. Council on Cmty. Pediatrics, *Poverty and Child Health in the United States*, PEDIATRICS, Apr. 2016, at 1, 2.

96. RUTH LAWRENCE & PENELOPE IRVINE, REDEFINING FATAL CHILD NEGLECT 1, 9 (2004).

97. Chaudhry, *supra* note 77, at 77.

poverty.<sup>98</sup> This definition also helps to explain why community financial weakness is an important indicator of which communities are at risk for higher levels of child neglect.<sup>99</sup> Accounting for community neglect would help to focus efforts on community assets and resources. This accounting would combine the top-down approach of narrowing statutory definitions of child neglect and the bottom-up community-driven approach of recognizing environmental factors that contribute to child neglect.<sup>100</sup>

Acknowledging community child neglect is now more important than ever, as the COVID-19 pandemic “has the potential to exacerbate existing inequities . . . especially in light of the evidence that financial hardship negatively impacts the risk of child neglect.”<sup>101</sup> Historically, declining financial conditions have been correlated with increases in child neglect cases.<sup>102</sup> It is clear that Black families are being disproportionately affected by the pandemic.<sup>103</sup> Thus, ensuring that Black families have access to financial resources and community support, instead of unnecessarily subjecting parents to the scrutiny and disruption of a child neglect investigation, can help reduce the disparities in the child protection system.<sup>104</sup>

#### CONCLUSION

Although the Black Codes and apprenticeship statutes on which the American child protection system was founded have long been repealed, residual systemic racial bias remains. Today, Black children are still disproportionately represented in child protective services investigations, in part because Black families disproportionately represent the homeless and impoverished population of the United States. State legislatures can help to reduce disproportionality rates by enacting narrow definitions of child neglect. Especially important are statutory exceptions for financial inability to provide for a child. The child protection system should also consider community neglect to account for the structural and environmental causes of child neglect. Through these measures, the American child protection system can begin to rid itself of the racial bias that still pervades it today.

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98. LAWRENCE & IRVINE, *supra* note 96, at 9.

99. Chaudhry, *supra* note 77, at 77.

100. See Michael G. Wessells, *Bottom-Up Approaches to Strengthening Child Protection Systems: Placing Children, Families, and Communities at the Center*, 43 CHILD ABUSE & NEGLECT 8, 8 (2015).

101. Kamia Rathore et al., *Recommendations to Address the Inequitable Impacts of COVID-19 in Child Welfare, Housing, and Community Capacity*, CHAPIN HALL ISSUE BRIEF (Chapin Hall at the University of Chicago, Chicago, Ill.), Sept. 2020, at 1, 2, <https://www.chapinhall.org/wp-content/uploads/Inequitable-impacts-of-COVID-19.pdf> [<https://perma.cc/NS3G-Y9AM>].

102. See *id.* (noting that several studies of the Great Recession of 2007 to 2009 show correlations between periods of economic hardship and increased child neglect).

103. See *id.* at 1; see also Kelly Glass, *Black Families Were Hit Hard by the Pandemic. The Effects on Children May Be Lasting.*, N.Y. TIMES (July 1, 2020), <https://www.nytimes.com/2020/06/29/parenting/coronavirus-black-children-inequality.html> [<https://perma.cc/69EG-E5FF>].

104. See Rathore et al., *supra* note 101, at 3.