

**Written Statement of
Richard Wexler
Executive Director, National Coalition for Child Protection Reform
to the North Carolina Advisory Committee to the
United States Commission on Civil Rights
October 25, 2024**

SUMMARY AND TABLE OF CONTENTS

Perhaps this is a case of “be careful what you wish for...” but the Committee expressed a strong interest in data and detail. Because this statement provides an abundance of both, I begin with this summary.

Safety: Those defending the *status quo* repeatedly defame and degrade those of us fighting for a better approach by falsely claiming that we ignore child abuse deaths and don’t care about child safety. On the contrary. All of the horror stories you hear about child abuse fatalities occurred not under the system we want but under the current system of massive surveillance of impoverished families, especially impoverished families of color. In this section, NCCPR dissects how data were cherry-picked by some witnesses, provides the missing context and explains why an approach emphasizing family preservation makes all children safer. **[See pp. 4-10.]**

Permanence: The other (rightly) sacred tenet of the system is the goal of providing every child with a permanent home. You heard a lot about that from Ginger Rhoads of the group that now calls itself the RAISE Foster Reform Coalition but originally called itself Foster Lives Matter NC.

Everything Rhodes said about the harm of impermanence, the harm of prolonged foster care, and the harm of moving from placement to placement is right – albeit incomplete. But, with a single exception that I will discuss later, everything she said about what causes those problems and what should be done about them is wrong. **[See pp. 10-13.]**

Poverty and neglect: This section summarizes the mass of data showing that yes, poverty is routinely confused with neglect. Claims that every case involves substance use, mental illness or domestic violence are false. Where those factors *are* involved, the current system often worsens them. We also discuss how, contrary to a defamatory and degrading comment by one witness, research showing the enormous inherent harm of foster care placement compared to leaving children in their own homes not only has not been “debunked” it’s been reinforced by numerous subsequent studies. **[See pp. 13-20.]**

Racial bias. This section answers a question posed early on: “Is this a civil rights issue?” It discusses the numerous studies that document racial bias over and above the class bias in the system. This section also discusses deeply disturbing comments by two committee members

which, I argue, themselves reflect bias. Their comments defamed and degraded family members who shared their deeply personal and traumatic stories with this committee. Early on, another member of the committee asked if trust between families and the system could be rebuilt. A first step in that direction would be adding another meeting where the families who were defamed and degraded would be afforded the opportunity to respond. [See pp. 21-26 and 36-37.]

The hierarchy of harm. This section discusses the overwhelming evidence that when children must be placed in foster care kinship foster care is by far the least harmful – and least dangerous – alternative, and institutionalizing children is, by far, the worst. [See pp. 26-29.]

Rylan’s Law and visitation: This section describes the evidence that the visitation restrictions in Rylan’s Law have backfired, doing nothing to make children safer and exacerbating the trauma of foster care. [See pp. 29-30.]

Is anyplace doing better? At one meeting, a member of the committee asked if there was any state or locality that is doing a better job, and if North Carolina could learn from such a place. The answer is yes, no, and it depends on when you ask. This section discusses potential lessons. [See pp. 30-31.]

Key recommendations:

- Repeal the Rylan’s Law visitation restrictions.
- Abolish mandatory reporting. Research shows it has backfired. That does not mean abolishing reporting, rather it leaves professionals free to exercise their professional judgment. [See pp. 35-36.]
- Provide every family with high-quality interdisciplinary family defense. This has been proven to reduce needless foster care with no compromise of safety. [See p. 31.]
- Provide children with lawyers advocating for what the child wants, known as “expressed wishes representation” (yes, Ms. Rhoads and I agree on this). That’s not because children always should get what they want, but because the best way to know what is best is if all sides have vigorous advocates making their case. [See p. 34.]
- Abolish child welfare “ransom.” Yes, DSS calls it “child support,” but when you take someone’s child and make the parent pay money to get that child back, the only proper term is “ransom.” [See p. 32.]
- Make the system fully transparent. To its credit, North Carolina has a presumption of open courts, but judges have abused their discretion and closed them needlessly. That discretion should be narrowed. [See pp. 33-34.]

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Overview

Just as I finished the first draft of this statement in August, *NC Newsline* published a story that almost makes this statement, and all the others you have received, unnecessary. Because [in this one story](#), about a single lawsuit brought by Disability Rights North Carolina, may be everything you need to know about what should be called the family policing system in North Carolina, its sheer power, its brute force, its almost incomprehensible arrogance and why your intervention is needed to curb that force, that power, and that arrogance.

Because in North Carolina it isn't just poverty that's confused with neglect. In North Carolina, even cancer is confused with neglect.

The lawsuit alleges the following:

In 2022 a mother was hospitalized with cancer.

The children were placed with a relative (probably informally; the story doesn't say).

A month later, for unspecified reasons, Moore County DSS took them.

They went through hell in institutional placements. One child lived for a time in an office, another was institutionalized out-of-state.

By early 2023 Mom was sufficiently recovered to care for her children.

Moore County DSS refused to give them back – because, they said, “she might have cancer again in the future.”

Finally, after a 16-month fight, the children were returned.

That is the system you are investigating, that is the system you are being asked to help change.

And to the member of this commission who, after hearing story after story of families grievously wronged by this system still said that the problem is “parents making bad choices that lead to abuse and neglect...” I ask: How, exactly did this mother choose to get cancer?

In this statement, I will elaborate on my comments to the Committee on July 12 and August 7. There is much to unpack after what you heard on those days and at your meeting in September. There also were a lot of calls for data. For both reasons, this presentation will be heavy on data. You will find links to sources for all data and studies cited embedded in this statement. If they did not come through, or if you have any additional questions, within the limits of the rules of this committee, please feel free to contact me at any time.

But I want to begin with a value preference – one which I hope is universally shared. It's something said to me decades ago, when I was a journalist, not by someone advocating for family preservation but by someone leading an adoption agency:

*The burden of proof should always rest with those who believe children **don't** belong with their families.*

The “child welfare” debate largely flunks this test. The current system can be shown to have done children enormous damage and made all vulnerable children less safe. Yet it is constantly demanded of those of us who advocate for something better that we prove that tearing a child away from everyone they know and love and consigning them to the chaos of foster care is harmful. Oh, the trauma of removal is acknowledged in passing, but that is simply another way of dismissing it. And it is demanded that we prove doing anything else is better and safer.

Or worse, that trauma is, in effect, hijacked – used as an excuse to promote doubling down on the very approaches that inflicted the trauma in the first place.

What does it say about how we've stigmatized and stereotyped impoverished families – especially impoverished families of color – that we do not instead demand that the proponents of massive family surveillance and child removal prove *their* approach is safe and effective? Why are they not required to bear the burden of proof when they challenge alternatives?

Nevertheless, we can meet that challenge.

Child safety

Those defending the *status quo* repeatedly defame and degrade those of us fighting for a better approach by falsely claiming that we ignore child abuse deaths and don't care about child safety.

But who is it who really cares about safety?

None of the horror stories invoked by defenders of the *status-quo* occurred under the system we envision – a system built predominantly around safe, proven alternatives to foster care and safe proven alternatives to omnipresent family surveillance. They all happened under the

current system. Where else but in child welfare do people point to their worst failures as reason to double down on the very system that failed?

We say: Fifty years of failure is an argument to go a new way. So who really cares about safety?

The research on the inherent emotional trauma of family separation is enormous. One can read the literature or just listen to the cries of children [torn from their parents](#) at the Mexican border a few years ago. Yes, there is a difference when workers for Departments of Social Services (DSS) do it: They almost always mean well. But that doesn't help the children. They cry out the same way for the same reason.

You heard that trauma invoked selectively. What you heard about the trauma of prolonged foster care is absolutely correct; but the speaker who invoked it ignored the worst trauma or all, the trauma of needless removal caused by "bad choices" *not* by parents but by government agencies and middle-class professionals.

But the harm doesn't stop there. The rate of abuse in foster care itself is far higher than in the general population, far higher than generally realized and far higher than shown in official figures, which involve agencies investigating themselves. We know this thanks to [multiple independent studies](#) that find abuse in one-quarter to one-third of stranger family foster homes. The rate in group homes and institutions is even worse.

We say: Stop relying so heavily on an option that has been proven to be so unsafe. So who really cares about safety?

And even that isn't the worst of it. Some want you to believe that the worst child abuse tragedies, those deaths of children "known to the system," are a result of some sort of Vast Family Preservation Conspiracy or because, as an article by Naomi Schaefer Riley [put it](#): "Wokeness has come for child protective services." The same false claim is invoked as the supposed reason for long stays in foster care. As will be discussed below, that isn't true either.

In fact, both kinds of tragedy are made more likely because all the time, money and effort spent pursuing false allegations, trivial cases and poverty cases is, in effect, stolen from finding the few children in real danger, and from overseeing cases, providing help, and reaching decisions to get children out of foster care.

We want to give workers time to find more of those cases and act expeditiously once found. So who really cares about child safety?

Fatalities

The issue of safety most often is brought up in the context of child abuse fatalities. The law at the heart of this committee's inquiry was a response to such a fatality. Like so many other knee-jerk responses, it failed. Indeed, if, in fact, fatalities in North Carolina increased between 2018 and 2023 [as the News and Observer reports](#) – after this law took effect – it is simply one more example of how doubling down on policing in an effort to curb fatalities is doomed to fail.

One sees a similar phenomenon at the national level. Nationwide in 1998, for example, the federal government [reported](#) 2.8 million calls alleging abuse and neglect. (They don't give the number of children involved in those calls, but if it's the same proportion as 2022 then it would be 5.2 million children.) Also in 1998, the same federal report estimated that there were 1,100 child abuse and neglect deaths.

In 2022 there were 4.3 million such calls, involving more than 7.5 million children, an increase of more than 40 percent. Indeed, as we, and many others, have noted, the child welfare surveillance state has reached the point that more than one-third of all children and [more than half of all Black children](#) will have to endure a child abuse investigation at some point during their childhoods. And yet that same report estimates that, in 2022, there were 1,820 child abuse deaths.

Making the child welfare surveillance state more than 40% bigger doesn't seem to have helped.

In discussing the North Carolina figures I said *if* there is an increase because, as is discussed below, there is very little we can be sure of when it comes to such fatalities, including their number and any trends. But we can say, sadly, but with confidence, that there is no evidence Rylan's Law has reduced their number, just as there is no evidence similar expansions of surveillance and foster care have reduced their number nationwide. And there are far more promising solutions.

The only acceptable goal for child abuse fatalities is zero. The question is: How do we get closer to that goal? The answer is, as usual, counterintuitive, but the data are clear: Tearing apart more families does nothing to reduce child abuse fatalities and, as can be seen during [foster-care panics](#), (a phenomenon discussed in more detail below) may increase them. But targeting poverty; even just ameliorating it a little, reduces child abuse fatalities.

That's because, though each is the worst kind of tragedy, compared to the number of children in America, the number of such fatalities is infinitesimal. They are needles in a haystack. That makes them no less horrifying and the need for action no less urgent. And that is why one should never use the word "only" to describe the number of such fatalities, just as we should never use the word "only" to describe the proportion of investigated children forced into foster care.

But it also means that knee-jerk response from the child welfare establishment just makes the haystack bigger. Instead, we need better ways to find the needles.

The limits of current data

The first thing to know about child abuse fatalities is how little we know. For starters, we don't know how many there really are. The skill or lack of skill of coroners and medical examiners, changes in definitions, the failure to report fatalities to a given database and the fact that deciding if a death is due to maltreatment or accident is surprisingly subjective all contribute to the inability to determine a figure.

This often is cited as evidence that the "real" number of fatalities is higher than official figures. But this ambiguity can cut both ways.

Consider a hypothetical I've used for many years: Early one Sunday morning, while his parents are asleep, a three-year-old wakes up, manages to unlatch the back door of the family home and wanders away. He falls into a body of water and drowns. Unlike the real-life case of Rylan Ott, there are no previous incidents. Accident or neglect? The history of American family policing suggests that if the body of water is the pool behind a McMansion it will be labeled an accident. If it's a pond behind a trailer park it will be labeled neglect.

But here's something we do know: The [federal government reports](#) that in 2022, the most recent year for which national statistics are available, there were 1,990 known child abuse deaths. For the sake of argument let's double the official figure. Also in 2022, there were more than 73 million children in America. In other words, in 2022, 99.995% of American children did not die of abuse or neglect.

We know even less about *trends* in child abuse fatalities. Advocates of a take-the-child-and-run approach love to cherry-pick data. They'll selectively cite certain years and say: Look! Fewer children were taken away and child abuse deaths went up! But one can just as easily select another pair of years and say: Look! Fewer children were taken away and child abuse deaths went down. For example, fatalities dropped dramatically in Texas after that state enacted [new laws that reduced foster care](#).

Furthermore, particularly when looking at a single year, we don't even know if claims of an increase – or decrease – are accurate, much less what may have caused a change. That's because of all the reasons mentioned earlier, and a simple fact for which we all should be grateful: The numbers often are low enough to rise or fall in a single year due to random chance.

North Carolina fatality data

To see how unreliable trend data are, look no further than what North Carolina reported to the federal government between 2018 and 2022, [as seen in this federal report](#). (See the table on Page 60.)

The table reported the following for North Carolina:

Year	Abuse/Neglect fatalities
2018	14
2019	5
2020	99
2021	121
2022	93

Does anyone seriously believe fatalities went from 5 to 99 in a single year? Is it not vastly more likely that the earlier figures were in error or there was some vast change in counting methods and/or definitions?

But if this is the measure those wedded to the *status-quo* insist on using: Between 2020 and 2022 entries into foster care declined. One year child abuse deaths went up, the next they went back down – to a level below 2020.

Do we really want to draw sweeping conclusions from any of this? Or does it make more sense to acknowledge that, as Prof, Emily Putnam-Hornstein [told the *News & Observer*](#): “We’re not able to even remotely begin to track in any real way whether things are trending up or down.”

Better measures

There are ways to measure changes in child safety that, while also flawed, are superior to trying to measure fatalities. One of them is to compare over time rates of what state family policing agencies deem to be all forms of child abuse or neglect. This time, let’s start with the long view. The best available data suggest that in recent decades, the number of children taken from their parents over the course of a year peaked in 2006. It has, mostly, slowly and steadily declined since (though it has not declined nearly enough). Overall rates of child abuse also have, mostly, slowly and steadily declined ever since – though, again, not nearly enough.*

Did taking fewer children make children safer? We would argue yes, because it gave workers more time to find the relatively few in real danger. Of course, we can’t be sure. But we *can* be sure that reducing foster care did not lead to more child abuse. Supporters of destroying

more families divert us to the unreliable measure of fatalities because they are so gut-wrenching – and because they don't want us to notice what's really happening.

The basic fact that the number of fatalities is so low compared to the child population, or even compared to the number of children “known to the system,” explains why tearing apart more families never works. Almost always, when a child “known to the system” dies it's because the worker didn't do a sufficiently thorough investigation. That's because they are drowning in false reports, trivial cases, and cases in which family poverty is confused with “neglect.” They don't have any time to investigate any case properly. There is no time to find the needles in a haystack. As we noted above, responding to child abuse tragedies by rushing to investigate more families and take away more children only makes the haystack bigger. So of course children in real danger are more likely to be overlooked.

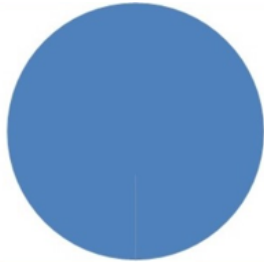
And no, you can't fix this with a caseworker hiring binge. The “shortage” of caseworkers is artificial – caused by the vast net of needless intervention that comes with a child welfare surveillance state. Hiring more caseworkers under the current system will only further widen the net of needless intervention.

But what about when they're “known to the system”

News accounts often tell us that a large percentage of children who died, typically between one-third and two-thirds, were in some way “known to the system.” The statistic is repeated over and over by those wedded to a take-the-child-and-run approach. But it is probably the most misleading statistic in all of child welfare. It creates a false mental image – an impression that a vast proportion of children known-to-the-system die.

Add just a little context and the story changes radically.

Nationwide, the number of children “known to the system” is astoundingly large: As noted above, more than 7.5 million children in 2022 alone. Assuming that two-thirds of known child abuse deaths involved children “known to the system” that would be 1,327 fatalities. In other words, in any given year, even among children “known to the system” 99.98% do not die of child abuse or neglect. Once again, we're talking needles in a gigantic haystack. Think of the blue circle on the next page as the number of children “known to the system” and the red line as the number among them who died. Yes, there's a red line in the graphic. If you're having trouble seeing it – that's the point. (If anything the graphic overstates the visibility of fatalities, since the line puts them all in one place, as opposed to dividing the line by 1,327 and scattering the dots within the circle.)



The other reason to reject the usual knee-jerk response is that we've tried it for more than 50 years – and it's obviously failed. As noted above, over that time we've created a giant child welfare surveillance state in which more than one-third of all children, and [more than half of Black children](#) will be forced to endure the trauma of a child abuse investigation before they turn 18 -- almost always in response to a false report or a case in which [family poverty is confused with neglect](#). It's forced hundreds of thousands of children to endure being torn needlessly from everyone they know and love and consigned to the chaos of foster care. And it hasn't done a thing to make children safer.

As Prof. Kelley Fong, author of the landmark book [Investigating Families](#) explains:

Research finds that following high-profile child fatalities, child welfare agencies respond by removing more children from their homes in a "foster care panic." There's no evidence, however, that this makes children safer. Instead, such panics leave more children and their parents traumatized by family separation, and spread child welfare workers even thinner.

As for fatalities: Dr. Richard Krugman helped build the system. He's the very personification of the child welfare establishment. He used to be director of the C. Henry Kempe National Center for the Prevention and Treatment of Child Abuse and Neglect. But even he's having second thoughts. [Says Dr. Krugman](#):

[W]e now have 40 years of experience with this approach and have made no progress in reducing the mortality from physical abuse of children (decades with 1500-2500 children dying annually). ... Doing the same thing for 40 years that doesn't seem (or can't be shown) to be working was someone's definition of insanity.

And, as is discussed below, we know that reducing family policing in favor of better alternatives really works.

Permanence

The other (rightly) sacred tenet of the system is the goal of providing every child with a permanent home. You heard a lot about that from Ginger Rhoads of the group that now calls itself the RAISE Foster Reform Coalition but originally called itself Foster Lives Matter NC – a choice of name I will get back to later in this statement.

Everything Rhodes said about the harm of impermanence, the harm of prolonged foster care, and the harm of moving from placement to placement is right – albeit incomplete. But, with a single exception that I will discuss later, everything she said about what causes those problems and what should be done about them is wrong.

The first clue to this can be seen in the sort of evidence she invokes. In discussing the harm of impermanence she cites data. (Though when citing Casey Family Programs and the Center for the Study of Social Policy she does not mention that these organizations' ideas for solutions are far different from her own.)

In contrast, though this committee specifically expressed a hunger for data to guide decision-making, when it comes to her claims about that Vast Family Preservation Conspiracy as the source of the problems she offered no data, only a succession of horror-story anecdotes, in which people who read about her personal story and felt ill-treated in the same way she says she was ill-treated approached her and said: “That’s what happened to me!”

Well, yes. Black families whose children were wrongly taken are not likely to approach a white woman who felt deprived of a Black child to whom she felt entitled and therefore organized a group originally called Foster Lives Matter NC.

That doesn't mean all of those anecdotes are wrong. These systems are arbitrary, capricious and cruel – they routinely err in all directions. But the data show that it is wrongful removal that drives everything else.

Ms. Rhoades also claims – simultaneously – that systems are desperate to rush children back to their homes because of a fanatical desire to preserve families *and* desperate to hold children in foster care because of financial incentives. It's hard to do both at the same time. (And while there are, in fact, all sorts of terrible financial incentives that encourage needless foster care, governments do not make more money simply by holding more children in foster care. They do, however, get a bounty of \$4,000 to \$10,000 in federal funds for every foster child over a baseline number that they rush into an adoptive placement. Details on how financial incentives really work [are available here.](#))

For starters, consider the history of the past several decades. The very problems of prolonged foster care and multiple placements are why the family preservation movement was created in the first place. We recognized that the best way to prevent prolonged foster care was to prevent foster care. We recognized that the best way to prevent multiple placements is to prevent *any* placement. And when there is placement, we were the first to enshrine the goal of quick permanent placement in federal law, through the Adoption Assistance and Child Welfare Act of 1980.

That law was the first to set timelines in federal law – but they were timelines for a decision on permanence that did not preference permanence with strangers and destroying families forever. That law also required states to make “reasonable efforts” – and nothing more – to keep children out of foster care and, once in, to reunify them when safe to do so. But that provision was never enforced.

Instead, and this is the key, as systems were and remain overloaded with false allegations, trivial cases and poverty cases, children are filed away and forgotten as overloaded workers rush on to the next case.

But during the 1990s – a time when one law after another scapegoated poor people, especially poor women – of color, exactly the mythology you heard from Ms. Rhodes dominated public discourse.

So Congress passed the so-called Adoption and Safe Families Act of 1997. It echoed Ms. Rhodes’ arguments and demands that states do things exactly her way: Rush to remove children and then seek only one form of permanence – the paper permanence of adoption by strangers.

It didn’t work.

The best available evidence indicates that ASFA actually slowed down the decline in average length of stay in foster care. Indeed, average length of stay only declined when states finally started taking away fewer children. We also know that ASFA made more likely the worst outcome of all: children “aging out” with no home at all. We estimate that thanks to ASFA, at least [126,000 more children](#) have endured that fate than would have “aged out” had ASFA not been law. (Details and citations for all of this [are available here](#).)

So once again, as with the failed approach to safety, we are being asked to double down on a failed approach instead of embracing far better ways to endure permanence.

But most tragic, the approach enshrined in ASFA and the approach Ms. Rhodes urges you to embrace undermines real permanence: It substitutes an artificial limited white middle-class construct of permanence for the real-life permanence that will be different in different cultures in a diverse United States.

It opted for the paper permanence of adoption, in which often a child is cut off from Mom and Dad to the point of doing everything possible to eradicate them from that child’s life.

But it doesn’t end with the loss of parents. The child may be cut off from siblings. He is likely to be cut off from grandparents, aunts, uncles, teachers, friends, coaches, classmates, mentors, ministers and on and on and on.

Under this bizarre white middle-class concept of permanence, everyone else in a child’s life is deemed so inferior that they count for nothing. So, again, what does that tell us about how

the family police really feel about the children themselves – especially Black, Brown and Native children?

True permanence is *relational* permanence. True permanence means building a system that builds and maintains children’s ties to everyone in their lives who loves and cares about them – instead of throwing them all away.

Instead, the white people’s permanence of the family police says it’s better to place a child in a formal adoption with, say, wealthy total strangers, some of whom might even have an *au pair* to do a lot of the childrearing, instead of in a guardianship arrangement with the child’s own grandparents because, somehow, that’s not permanent enough.

In short, the family police have created a system that prefers nannies to grannies.

And once you cut off a child from their entire former life, what is left for that child if the paper permanence of adoption doesn’t turn out to be permanent after all? What happens when the “forever family” isn’t forever – not even close?

No one keeps good data on how often stranger adoptions fail, but [the limited data we have are alarming](#). And recall that just minutes after Ms. Rhodes urged you to double down on rushing to terminate children’s rights to their parents and get them adopted by strangers, Judge Parker said:

I'm seeing a lot of adoptive parents returning children like they're dogs in a pound. ... [B]ecause they're now teenagers, they're not cute little babies anymore, that you're sending them back and saying, "CPS, come pick them up, or I'm leaving them at the hospital. I'm not going to pick them up."

Poverty

For decades, when reformers have raised the confusion of poverty with neglect, they’ve been met with an argument that boils down to: Well yes, but since we can’t eradicate poverty, we’ll just have to keep taking away all those children!

In fact, America could eradicate poverty if it wanted to. But leaving that aside, vast numbers of children could be spared the enormous emotional trauma of foster care, and the risk of abuse in foster care itself, simply by taking small steps to ameliorate the worst effects of poverty – something I will discuss more fully below.

Poverty and neglect

As is the case in many states, [the definition of “neglect” in North Carolina](#) is breathtakingly broad. For example, a neglected child includes one whose parent: “Does not provide proper care, supervision, or discipline” or “Has not provided or arranged for the

provision of necessary medical or remedial care” or “Creates or allows to be created a living environment that is injurious to the juvenile's welfare.”

In other words, in North Carolina neglect is whatever the caseworker at the door says it is. No wonder it's so easy to confuse poverty with neglect.

Much discussion at the committee's meeting on July 12 concerned whether neglect cases were “just” poverty, with some insisting that there was often another factor, such as substance abuse, domestic violence or mental health issues. Indeed, Prof. Putnam-Hornstein [has gone further](#), telling the *Raleigh News and Observer* that *every* case of neglect involved “serious” substance abuse “serious” domestic violence and/or “serious” mental health problems.

The data do not support such claims.

The best way to understand this is to look not only at what is alleged but what is *not* alleged.

[In North Carolina in 2022](#), in 89 percent of the cases in which children were forced into foster care, there was *not even an allegation* of physical abuse or sexual abuse. So whatever else supposedly existed in addition to poverty, the county DSS bringing the case does not even claim it caused a parent to beat, rape or torture a child.

- Perhaps more surprising to those conditioned by stereotypes, 56% of cases *did not involve even an allegation* of substance abuse. Not simply no proof, not even an allegation. (Children can be forced into foster care long before a court ever decides if an allegation is true.) And not just no allegation of “serious” substance abuse, no allegation of *any* substance abuse.

That leaves a whole lot of cases in which, in fact, poverty itself is confused with neglect. And, indeed, [study after study](#) has shown this for decades.

But what about where one of those other factors is present? There, too, though the problem may not be “just” poverty the solution often still is money.

- In cases of domestic violence, the worst thing you can do to a child is take that child from the non-offending parent. For the child, [as one expert has said](#), it's “tantamount to pouring salt into an open wound.” He testified in a lawsuit that ultimately led New York's highest court to rule that taking away children on these grounds is illegal in that state. (NCCPR's Vice President was co-counsel for plaintiffs in this lawsuit.)

To understand what can be done instead, consider the point made by another witness on July 12: Domestic abuse victims with money can flee their abusers.

But the harm done by the current system doesn't stop there. There's something else that stops domestic violence victims from leaving their abusers: the fear that when they flee, a "mandated reporter" will call DSS and DSS will take the children - as happened [in this North Carolina case](#).

A survey of more than 3,000 domestic violence survivors found that fully half said having a mandated reporter contact either police or child protective services [made things "much worse."](#) Another 12 percent said it made things "a little worse." Only 15 percent said the intervention triggered by mandatory reporting made things any better.

The current system doesn't protect children from domestic violence, it makes them more vulnerable to domestic violence. Because yes, domestic violence cases often are poverty cases and yes, the solution is money. Remove the abuser from the home not the child (there is a ready-made vehicle for this known as "arrest" and a readily available placement, known as "jail") and provide the survivor with the money needed to become self-supporting.

- *Substance use.* As noted above, a majority of North Carolina cases involve no allegation of any form of substance use. Where that is an allegation, it often involves parents who have, in fact, controlled their addiction – through [medication-assisted treatment](#). Other cases involve marijuana use, including medical marijuana. And still others involve people driven to self-medicate by despair brought on by, yes, poverty. In one of many cheap shots this committee heard from one speaker from the political extreme right, it was suggested that affluent Americans simply decide one day it would be fun to become drug addicts and rush to impoverish themselves.

She and other speakers also sought to conjure a mental image of every parent who uses drugs as hooked on fentanyl and passed out after an overdose. This is a throwback to the same kind of ugly stereotyping we saw in the hysteria over so-called ["crack babies"](#) in the 1980s.

Neither claim is true.

In fact, it's the other way around – depressed and desperate, poor people sometimes turn for solace to drugs. And as we've seen, most drug abuse does not fit the stereotype.

So once again, we see a solution in money – both to ease the stresses that may lead to substance use and, in those cases where substance use genuinely compromises parenting, to buy drug treatment.

Once again, research supports this approach. In August, the respected children's issues research organization ChildTrends published an issue brief on what works and what doesn't when the issue is substance use during pregnancy. Their [review of the research found](#):

Data show that certain policies are associated with positive and negative outcomes. For example, in states that consider prenatal substance use to be a crime, the policy is associated with a 45 percent increase in overdose deaths among pregnant women, following implementation of this criminalization. Among all policies that involve child welfare and/or law enforcement, data suggest these policies are associated with no decrease in prenatal substance use, less use of prenatal care and addiction treatment, a 10-18 percent increase in babies born exposed, and more children entering foster care.

In contrast, policies that fund treatment for prenatal substance use are associated with a 45 percent decrease in overdose deaths for pregnant women, and those that prioritize treatment access in cases of prenatal substance use are associated with more prenatal care use and healthier birth outcomes.

● *Mental illness.* Blaming problems rooted in societal failure and income inequality on mental illness is a staple of right-wing ideology. After every mass shooting, in response to calls to finally curb America's obsession with guns, we hear instead that it's a mental health problem.

And it's what we say whenever we don't want to face up to what we do to poor people. In the 1980s, when Ronald Reagan's budget cuts caused massive increases in homelessness, his administration said: No, no, they're all mentally ill. But as Ann Braden Johnson pointed out in her landmark book at the time, [*Out of Bedlam*](#), most were not. And, as she also pointed out – being homeless can cause mental illness.

And so we hear that child neglect is not just poverty, it's also a mental health problem.

This all was addressed well by the head of Missouri's child welfare agency, Darrell Missey who said:

"We know that addiction and mental illness occur in affluent communities just like they do in poorer neighborhoods, but rates of removal among the poor are astronomically higher. If the deprivations of poverty are addressed, people can often address these other problems and keep their families intact. We must do everything we can to make sure that poorer families have that same opportunity."

Case in point: a woman who raised her children in my neighborhood in Alexandria, Virginia, decades before I moved here. Were she poor and Black, tabloid newspapers would have called her a "druggie mom." She was addicted to prescription opioids. And she was an alcoholic. "I liked alcohol, it made me feel warm," she would later say. "And I loved pills. They took away my tension and my pain." On top of that, this addict had serious mental health issues.

But no one took away her children. Child protective services in Alexandria probably never even knocked at her door. And when, in 1974, her husband suddenly got a new job and

they had to move across the river to D.C., CPS didn't knock here, either. At least I doubt they ever showed up at 1600 Pennsylvania Ave. to check on that "druggie mom" -- [Betty Ford](#).

Because she had the money to deal with her problems and raise her children safely.

When Betty Ford publicly confronted her addiction and worked to help others she was hailed as a hero – no one took a cheap shot at her "bad choices."

A system that was not permeated with class bias and racial bias would apply the Betty Ford Standard to poor people.

The Betty Ford example also illustrates why the whole question of whether a given case is "just" poverty may be irrelevant. Because there's a much simpler, and much more useful definition of a "poverty case": If the solution is money, the problem is poverty.

And [study after study](#) is telling us the solution is money.

You heard it claimed that, well, the improvements caused by reducing poverty are relatively small. But that, too, is misleading.

First, some studies show big changes. [Three major studies](#) have found that 30% of America's foster children could be home right now if their parents simply had decent housing – and housing vouchers cost a lot less than foster care.

Another study found that, among homeless families who received housing vouchers foster care entries [were cut by more than 50%](#). (An intriguing finding from that study: When the families got the vouchers but also had to endure a social work intervention it didn't work as well.)

Still another study found that for every \$1-an-hour increase in the minimum wage, neglect reports declined by 9.6%. So, what would, say, a \$5-an-hour increase in the minimum wage do?

And then there was the giant real-world experiment we all came through: COVID-19. The fearmongers said there would be a ["pandemic of child abuse."](#) On the contrary: Because of COVID family police agencies had to step back, community-based community-run mutual aid organizations stepped up and the federal government stepped in with the best "preventive service" of all: no-strings-attached cash. The result: multiple forms of child abuse declined – including one of the most serious: abusive head trauma.

We know what works to reduce child maltreatment in all its forms. We should not let everything from ideology to middle-class rescue fantasies stand in the way.

Fatalities and neglect

You also may hear that neglect supposedly is more dangerous than abuse because, it is claimed, more children die of neglect. Because determining if a death is due to neglect is so subjective, this is not necessarily the case – but let’s assume that it is. It’s still grossly misleading.

What those making this claim fail to tell you is that the odds of a child “known-to-the-system” dying of what family policing agencies call neglect actually are dramatically *lower* than the odds of a child known to the system dying of what such agencies call abuse.

Here’s why: Most of the time the caseworkers are not investigating neglect at all — they’ve investigating poverty.

You might be able to make a case that in those rare cases when there is actual honest-to-God neglect — children locked in closets, or starved, or where there’s a meth lab in the basement — such cases are more dangerous than typical cases of physical abuse, which can often involve a spanking that leaves a bruise. But the overwhelming majority of the time, horrific cases of starvation and the like are *not* what caseworkers are investigating. Because most of the time they’re investigating poverty, such investigations are far less likely to involve a child who later dies than an investigation involving abuse. In other words, any given abuse allegation is extremely unlikely to involve a fatality. Any given neglect allegation is even less likely to involve a fatality.

So if we want to have a better chance of finding those few neglect cases that really are like the horror stories, we have to get what has been called “junk neglect” out of the system. There’s [a more detailed explanation and data here](#).

One occasionally also still hears a line that goes back at least 40 years: The vast majority of poor people don’t neglect their children. That is absolutely correct. But the vast majority of poor people accused of neglect *also* don’t neglect their children. That’s the whole point.

To an enormous degree, which poor person is investigated and “substantiated” because of her or his poverty and which never sees a family police caseworker depends on random chance: which one has a doctor or teacher who understands the difference between poverty and neglect and so does not call the hotline, and which one has a doctor or a teacher who either doesn’t know the difference or knows the difference but makes a “CYA” referral anyway. Or it may depend on which caseworker shows up at the door and what mood s/he is in.

And as noted earlier for a majority of Black families, a caseworker *will* show up at the door. Again, [I address this in more detail here](#).

What we know about the inherent harm of foster care

As people have begun to catch on to the enormous harm of family separation, defenders of the status quo have changed tactics – sometimes. They offer a token acknowledgment that family separation is traumatic – what in debaters’ terms is called a “give” and what journalists call a “to-be-sure” paragraph. Then they rush to invoke horror stories to convince us that the children’s own homes must be worse.

In the horror story cases, that’s true. But as we’ve seen, most cases are nothing like the horror stories. So the question is: What about typical cases?

This committee heard about [studies by MIT Prof. Joseph Doyle](#). The studies, massive in size and scope, found that, in cases that are closer to typical cases, children left in their own homes fared better in later life even than comparably-maltreated children placed in foster care.

Children left in their own homes are far less likely to become pregnant as teenagers, far less likely to wind up in the juvenile justice system, less likely to be arrested as adults and far more likely to hold a job for at least three months than comparably-maltreated children who were placed in foster care.

You also heard Prof. Putnam Hornstein falsely claim that Prof. Doyle’s studies had been “debunked” (language which, I would argue, violates this committee’s rules about statements that defame or degrade).

They have not.

This false claim bears close examination.

There is nothing unusual about different studies drawing different conclusions. In this case, [the study](#) referenced while defaming and degrading Prof. Doyle found foster care brought alleged improvements in safety and slight gains in children’s school test scores. But the measure of safety was alleged recurrence of abuse or “neglect” – the same highly-subjective judgments that lead to so much wrongful removal in the first place. Workers may well be biased in a way that makes them less likely to check the “substantiated” box on a form claiming neglect for a child they had “rescued” through foster care.

Note that Prof. Doyle’s measures are, by and large, more objective.

More significant, the authors of the study did not attribute this alleged gain or the educational gains to foster care. In fact, the gains didn’t come while the children were in foster care – they came after reunification! The authors speculate that the families managed to cobble together help while their children were in foster care. So instead of concluding: Let’s put more

children in foster care, the obvious conclusion should be: Let's provide families the help *without* putting the children in foster care.

In addition, gains after reunification are of particularly limited value in North Carolina – because 59 percent of foster children are never reunified.

But there is another reason why citing this study is absurd: The authors say the difference between their findings and Prof. Doyle's is not that Doyle was wrong (much less "debunked") it's that the number of children in foster care is declining and the time spent in foster care is being reduced.

Now consider: Prof. Putnam-Hornstein also said at a meeting in Pennsylvania on Dec. 9, 2021: "I think it is possible we don't place enough children in foster care or early enough." Or consider her proposal, co-authored with Naomi Schaefer Riley, to vastly expand surveillance by requiring that every child not otherwise seen by a mandated reporter produce their children for child abuse inspections whenever they reapply for public benefits. So not all families, only a certain category of family.

Thus, if North Carolina and the rest of America do what Prof. Putnam-Hornstein wants, the alleged gains cited by Prof. Putnam-Hornstein would be wiped out. In contrast, any improvement in foster care, as the very study cited by Prof. Putnam-Hornstein concedes, requires that there be less foster care!

In addition:

- This study is an outlier. [Study after study](#), using a variety of methodologies from a variety of different scholars reaches similar conclusions to the Doyle studies: That in typical cases, the children left in their own homes typically did better.

- The bar set for foster care to supposedly be "successful" is incredibly low. As noted above, these studies did not compare foster care to families that actually got real help; they compare foster care to the families who usually get little or nothing – a bunch of referral slips and a set of hoops to jump through that can make things worse. Yet still, foster care was a worse option. This says a lot about how toxic foster care is as an intervention and why, though it is necessary in a small number of cases, this toxic intervention should be used sparingly and in small doses.

And finally, we come back to the question of burden of proof. The burden of proof should always rest with those who believe children don't belong in their families. The existence of a study or studies that allegedly partially contradict the massive evidence of the greater harm of foster care does not meet that burden.

Child welfare and race

At one meeting a member of the committee posed the question “Is this a civil rights issue?” I believe this is a question best answered with a question:

Is policing a civil rights issue? However much people may disagree about what to do about it, I think few would doubt that in 2024 America policing is a civil rights issue. Everything from anecdotes – if you really want to just call George Floyd and the many others like him “anecdotes” -- to statistics on police practices such as stop-and-frisk make clear that racial bias is a major problem in policing.

DSS agencies like to cloak what they do in the rhetoric of benevolence. But they too are police agencies, indeed in poor communities of color they often are referred to as the family police.

These agencies actually have more power than the police in blue uniforms.

DSS can give you all sorts of flow charts outlining how the system supposedly works, they can make claims about due process and say over and over that “a judge has to approve everything we do.” That’s the Disney version. (Next time someone from DSS gives you that line about judges, ask them for stats on how often the judges say “no.”) Here’s the reality:

The family police can search any home without a warrant – and stripsearch any child — based solely on an anonymous telephone tip. The DSS worker can remove the child on the spot if s/he claims it’s an emergency [entirely on her or his own authority](#). Then the child can be detained for 24 hours without so much as a hearing – even longer if DSS gets an after-the-fact *ex parte* order, where no one tells the other side of the story. The family then has to fight to get the child back. But if they’re poor, they probably won’t even meet their assigned counsel until just before the hearing, making a serious defense at that stage nearly impossible. And you’ve heard enough about the state of family defense in North Carolina to know that, in parts of the state, a serious defense may never be possible.

From then on, at almost every stage, the standard of proof is not “beyond a reasonable doubt” as would be required to convict a child murderer in a criminal case or even “clear and convincing” but merely “preponderance of the evidence,” the lowest standard in American jurisprudence, the same one used to determine which insurance company pays for a fender-bender.

Presiding is a judge who knows that if s/he sends one child home and something goes wrong her or his career may be over. But if s/he rubber-stamps DSS and holds hundreds of children in foster care needlessly the children will suffer terribly, but the judge is safe.

And to top it off, almost all records are secret.

To its credit, North Carolina at least has open court hearings in these cases, but even here, judges sometimes flagrantly abuse their discretion to close them again. As foster parent Ryan O'Donnell told the committee:

[O]ur courts increasingly seal courtrooms from the public, denying the press access, and threatening jail time if parents speak out.

The last time we showed up for court, we were greeted by more than a dozen armed officers outside of the Durham County Courtroom.

Perhaps the judge didn't want anyone to see her "yelling" and "screaming" – but, [as WBTV reported](#), it could be heard even through the closed courtroom doors. And that is not the only example of a North Carolina Judge [abusing discretion](#) to hide what really goes on from the public.

In summary: A police officer can see a Black teenager on the street, throw him up against a wall and frisk him. A family police officer can march right into that same teenager's home, stripsearch him – and walk out with him.

So yes, that's a civil rights issue.

But much of America's child welfare establishment remains – to use one of their own favorite phrases – "in denial" about racial bias in child welfare.

This is a picture from the Twitter feed of Prof. Deadric Williams, during one of his lectures at the University of Tennessee. Take a close look at the cartoon on the right. As he explains: "This is a slide I use to describe scholars looking for variables to account for the 'racial gap' in a given outcome."

This is a slide I use to describe scholars looking for variables to account for the "racial gap" in a given outcome.



And so we see desperate efforts to deny racism in child welfare that fly in the face of common sense – and of research.

Let's start with the common sense:

I am old enough to remember when the family policing establishment denied that poverty had anything to do with who was surveilled and who was consigned to the chaos of foster care.

It was only when Black scholars and Black visionaries; people such as Prof. Dorothy Roberts, (recently recognized with a MacArthur Foundation “Genius Grant”) documented the pervasive racism of family policing systems that the fallback position became: “No, no! We’re not taking all those children because they’re Black; we’re taking them because they’re poor!” Or the most recent version: “There *used* to be racism in America (not anymore, of course) and that made Black people bad parents so, gosh darn it, we have to take away their kids – or at least keep them under constant surveillance.”

If there's really no racism in child welfare, then surely the child welfare establishment has a moral obligation to reveal the secret. What is the secret sauce that makes practitioners of child welfare better than their counterparts in every other aspect of American life:

After all, the president of the International Association of Chiefs of Police has [admitted there is racism in policing - and apologized](#). And it's not just police.

- We know there is [racism in medicine](#).
- We know there is [racism in science](#).
- We know there is [racism in journalism](#)
- We know there is [racism in academic publishing](#).
- We know there is [racism in everything else in academia](#).
- We know there is [racism in housing](#).
- We know there is [racism in hiring](#).
- We know there is [racism in who gets followed around by store security](#).
- We know there is [racism in who can hail a cab](#).
- And sometimes, the racism is - literally - [at our fingertips](#).

Yet somehow, we are told, “child welfare” is the one field filled with people so noble, and so good and so skilled, that it is magically immune. Surely the rest of society would benefit if practitioners would just reveal the secret!

Unless, of course, they’re wrong.

Lately the “caucus of denial” has been touting a single study that purports to show that all the differences in rates of foster care for Black children are due to factors other than race. The methodological errors, bad data and bizarre assumptions underlying that study [are discussed in detail here](#).

In contrast, there is a wealth of rigorous research that factors in all the other variables and finds that, over and above all those variables, there are differences in reporting, substantiation and removal that can only be accounted for due to racial bias. You can [find summaries of some of those studies here](#).

In one of the most recent, a New York City think tank looked at investigations and foster-care placements [by zip code](#). What they found is that affluence protects white families from family policing, but not Black families. The study found that

Latino, White and Asian children all show lower investigation rates in neighborhoods where child poverty is lower. Neighborhood child poverty rates do not appear to have the same protective effect for Black children. In fact, Black children face extremely high investigation rates in dozens of well-off and majority-white neighborhoods, such as Brooklyn Heights or Boerum Hill.

In other words, if, instead of being a sitcom, *The Jeffersons* been a *real* New York City family, the family police would have spent all those years trying to put Lionel in foster care.

And perhaps the most pristine of these studies is one of the simplest: Caseworkers were given hypothetical cases that were identical – except for the race of the family. Consistently the workers said the children were more “at risk” if the family was described as Black.

The claim that those of us who see racial bias in child welfare are basing our argument *solely* on disparities is false. It is based on a vastly stronger evidence base than the evidence base for, say, mandatory reporting, or foster care, or residential treatment or so much else pushed relentlessly by the family policing establishment.

The bottom line is this: When we look at a system that investigates more than half of all Black families in America, and throws huge numbers of Black children into foster care and ask: Is it poverty or is it racism? The answer is: Yes.

When the problem is right in the room

As some on this committee know far better than I, American racism no longer typically comes dressed in a sheet and a ready-to-burn cross. It's more subtle, and often not even conscious. It can be part of the mindset even of people of good will. Consider what has happened at meetings of this committee.

Over and over, families came forward to tell you about the worst days of their lives – experiences of incalculable trauma. Think about how much courage that took. (You heard complaints about how foster parents are treated; in particular how they face retaliation. I believe those stories. But now consider: Those are foster parents – the system *needs* them; imagine for a moment the risks taken by a birth parent who comes forward.)

Yet they did. And they were backed up by multiple professionals and, in one case, [a foster parent](#) who fought a long battle on behalf of his foster child, who needed to be with his birth father, a man who had done nothing wrong and simply stepped up to take care of his son.

But these brave souls were defamed and degraded by two members of this committee.

In one instance, after many committee members clearly were moved by these stories a committee member who was unmoved felt the need to resort to broad-brush defamation and degradation. He said this:

*“[W]e can't take every story we heard at face value. Senator Grafstein said we have to drill down, and we are going to drill down. **I've done some drilling down, and believe me, not all those stories are as clear cut as they sounded** [Emphasis added].*

That raises some questions. North Carolina has no law permitting child welfare agencies to respond when parents say they've been wronged. (I believe there should be such laws, something discussed in detail below but that would involve a formal response, presumably with supporting documentation, to which families and their lawyers could respond in turn.)

In the absence of such laws, one can only wonder who this committee member spoke to and what they told him. We don't know if this committee member targeted those who were formal witnesses or the many others who told their stories during comment periods.

So far, there has been no public explanation of how the committee member reached his conclusion, whether there is specific evidence or simply the usual party line from agencies: “Oh there's really so much more to it, and we wish we can tell you, but we can't – so just trust us.”

In the absence of evidence, this statement amounts to: These overwhelmingly nonwhite families simply can't be trusted.

The other incident is one to which I alluded at the start of this testimony. Once again, the accounts of one family after another were dismissed and each and every one was denigrated for their alleged “bad choices.” Or as this committee member put it:

[I]t seems like to me that in these cases the ball starts rolling with parents making bad choices that lead to abuse and neglect. My question is, ... is there anything that from where you sit, that the law can do to hold parents more accountable to incentivize better behavior among parents, so these cases don't arise?

So they come forward to tell heartbreaking stories, only to be met with a staple of right-wing ideology: Anything that happens to a poor person is a poor person’s fault, it all comes down to their own bad choices. Now consider the racial implications: Those caught up in this system are disproportionately Black. So what this committee member is really saying is that there is something about Black people that makes them disproportionately prone to making bad choices.

I believe that, in keeping with the committee’s own rules about defamation and degradation the committee should schedule an additional public forum at which the families who spoke previously and who have been tarred with such a broad brush by two committee members have a chance to speak again, defend themselves and reclaim some of the dignity that has been taken from them.

And this is not the end of the matter when it comes to questions about subtle forms of unintended racial bias.

Let’s return to the testimony of Ginger Rhoades.

The death of George Floyd led to the Black Lives Matter movement. Those hostile to the message that America needs a reminder that yes, Black Lives Matter, took to attaching the words “lives matter” to others: All Lives Matter and Blue Lives Matter are prominent examples. It is, in itself an act of disrespect. So what does it say when a group of affluent white foster parents who feel they were deprived of Black children to whom they felt entitled originally name their organization “Foster Lives Matter NC”

It is also disturbing to see someone who is going to court to demand the right to take someone else’s Black child forever so dismissive of the importance of race as a matter of history and culture. Repeatedly she dismisses racial differences as nothing more than a matter of “skin matching,” almost as if Black people are just white people with a natural suntan. As once again some members of this committee know far better than I – because, unlike me, they have lived it - it is so much more.

The hierarchy of harm

All substitute care does harm. In some cases removing a child from the home is essential anyway because leaving the child in the home may cause more harm. It is for this reason that three of the leading 20th-century scholars of child welfare, Joseph Goldstein, Anna Freud and

Albert J. Solnit suggested that the very phrase “best interests of the child” be replaced by the phrase “least detrimental alternative.” Unfortunately because of all that vast power and no accountability, the field of “child welfare” has become far too arrogant to take such a humble phrase to heart.

Research is clear that when it comes to the harm of substitute care, there is a hierarchy of harm: The least harmful, by far, is kinship foster care -- placement with relatives.

But once again, Ginger Rhodes is smearing families, this time extended families. Once again her anecdotes are contradicted by data. Rhodes tells us that, yes, kinship care can be better, sometimes, but those kin had better get plenty of vetting because ...

“Many times, what we're seeing is that there are a lot of unsafe reasons that these children should not be with these families. There are generational mental illness and instability, and so it doesn't always work to the best interest of the child.”

Unfortunately, the North Carolina child welfare establishment seems to share Rhoads’ biases and stereotypes. North Carolina uses kinship foster care, at a rate [nearly 30% below the national average](#).

Yet Rhodes is pushing legislation that includes a clause, originated by a right-wing group in Arizona, that would undermine kinship care still further and give stranger foster parents an incentive to do just what she claims to oppose – [prolong the time children spend in foster care](#). (See p.3 of the bill, lines 19-21.)

Multiple studies find that kinship foster care is the least detrimental alternative when it comes to children’s well-being stability – and safety. ChildTrends has [an excellent review of the literature](#), with special emphasis on a recent study from North Carolina. [Another review of the literature](#), summarizing 102 studies finds that

Current best evidence suggests that children in kinship foster care may do better than children in traditional foster care in terms of their behavioural development, mental health functioning, and placement stability.

And I hope that Rhoads, who rightly urges us to give more weight to what children know they need, will read a just-released report from the foster youth-run organization Think of Us. It’s called [Kin, First and Foremost](#).

Though this should go without saying, the kinship care that is beneficial is kinship foster care that is open, above-board, and where at least the minimal due process rights now available to families are preserved. I am not talking about the hidden foster care that made Cherokee County the [center of a national scandal](#) and even led to criminal charges.

Kinship foster care is far better than what should be called “stranger care” with an unrelated foster family. As noted earlier, multiple studies find abuse in one-quarter to one-third of family foster homes – and for various methodological reasons, [discussed here](#), those figures are probably understatements. So of anything, it’s strangers who need an extra level of vetting.

The worst option, by far, is “congregate care” – group homes and institutions that often operate under the euphemism “residential treatment.” For starters, the rate of abuse in such places is even worse than the rate in family foster homes.

In 2021, Think of Us [issued a scathing report](#) documenting physical, sexual and emotional abuse, along with a litany of other horrors, in institutional placements. That same year, Children’s Rights [issued a similar report](#), documenting restraints, seclusion and other maltreatment and showing how such places “feed the sex-trafficking pipeline.”

Earlier this year, the U.S. Senate Finance Committee issued a report, called [“Warehouses of Neglect,”](#) which found “physical, sexual, and emotional abuse at the hands of staff and peers, improperly executed and overused restraint and seclusion, [and] inadequate treatment and supervision.”

News organizations have exposed rampant abuse at institutions in [Arizona](#), [Kentucky](#), [Tennessee](#), [Indiana](#), [Utah](#), [Oklahoma](#), [Washington state](#), [Arkansas](#), [Rhode Island](#), [Connecticut](#), [New York](#) – and [North Carolina](#).

But even where there is no physical or sexual abuse alleged in these places, congregate care should be abolished because congregate care is inherently harmful. There is nothing congregate care can do that can’t be done better – and at less cost – through community-based alternatives. You’ll find a summary of the research – and a response to all the usual excuses for congregate care [on NCCPR’s website here](#).

So it was disturbing to hear Prof. Putnam-Hornstein suggest even more North Carolina children should be in group homes and institutions. Her comment about what she euphemistically called “non-family foster care” and stability showed a misunderstanding both of congregate care and of stability. [Here’s what she said](#):

When we look at a point-in-time snapshot of where children are placed in foster care, we see very significant reductions in the use of non-family foster care settings. Back in the late 90s and early 2000s, close to a quarter of children in foster care were in non-family settings. This is down a full 10 percentage points today. Again, the shift towards family setting is a good thing, or seemingly a good thing, but as with all changes, there can be unintended consequences. When I looked at data for the amount of placement moves a child experiences and placement disruptions in foster care, we see that moves for children has increased significantly. This suggests to me that our initial placement settings may not be meeting the needs of a growing number of children and youth.

Some context: As of Sept. 30, 2022, [12% of North Carolina foster children](#) were in group homes or institutions – that is a rate more than 30% above the national average. If there's a stability problem in North Carolina foster care it might be because, as noted above, North Carolina uses the most stable form of foster care, kinship foster care, at a rate nearly 30% *below* the national average.

And when it comes to stability, it's the *people* in a child's life who make for stability or the lack of it, not the bricks and mortar. At some institutions, children have to deal with a different shift of staff every eight hours, and another group on weekends. Where the children live in so-called cottages with so-called house parents, even before COVID, those house parents were quitting every year or so. Now the turnover probably is higher. And in some institutions, as children grow older they are moved from one "cottage" to another.

For all these reasons, institutionalization is at least as unstable as a succession of foster homes.

Rylan's Law and visitation

There is a cliché in the legal community to the effect that "hard cases make bad law." I would add a corollary: Horror story cases make horrible law.

The first thing to note about Rylan's law is that, from all available evidence, it didn't work. Rylan's law was supposed to prevent child abuse tragedies. If, in fact, child abuse deaths have increased in North Carolina, then the best available evidence suggests that at best Rylan's Law failed and at worst it backfired – adding to the workload of caseworkers and making it even more likely that the next Rylan Ott would be missed.

Indeed, it's hard to see how Rylan's Law would have prevented the death of Rylan Ott. He wandered away and drowned after he was returned home. Had there been a couple of structured, pre-scheduled visits beforehand would caseworkers, through some sort of psychic power, have divined that at some point in the future Rylan would be left alone, wander away and drown?

No, we can't be certain of this. But if the burden of proof should always rest with those who believe children don't belong with their families, then the burden of proof should rest with proponents to show that Rylan's Law is working. They have not made their burden.

Meanwhile, Rylan's Law has done enormous additional harm to children. That's because of the enormous importance of visitation to children who have been torn from everyone they know and love.

The family policing system's typical approach to visitation aptly illustrates the extent to which it is a parent punishment system, not a child welfare system. Too often visits are used as

rewards and punishments – to see if those bad parents really deserve to see their children. Or they may be used to punish parents for speaking up for their children.

In the case cited at the very beginning of this statement, the one in which cancer was confused with neglect, *NC Newslines* reports:

*When [the mother] visited S.S. in the South Carolina treatment facility [to which she'd been sent from North Carolina], she found bruises [and] bite marks on her daughter that the staff could not explain and reported symptoms she suspected were the result of overmedication. **Moore County responded by telling the facility to limit parental visits, the lawsuit says.** [Emphasis added.]*

Even the term “visitation” implies that parents and/or children are, somehow, prisoners and are to be treated as such. A better term is “family time.” Because with visitation as currently structured, once again, when the system takes a swing at “bad parents” the blow lands on the children. (In some cases, the children are attacked directly. Group homes and institutions sometimes use visits as rewards and punishments to keep children docile for their institutional minders.)

Casey Family Programs [has a comprehensive review](#) of the scholarly literature on visitation and why it is essential for children.

Casey outlines best practice. Rylan’s law is worst practice – further limiting visits while accomplishing nothing in return. Therefore, the visitation provisions of Rylan’s Law should be repealed.

Indeed, it appears that this provision had become a source of embarrassment to some Rylan’s Law proponents. During his presentation, Rep. Donnie Loftis spoke only of Rylan’s law provisions encouraging regionalization and consistency. He did not bring up the visitation provision at all.

Is anyplace doing better?

At one meeting, a member of the committee asked if there was any state or locality that is doing a better job, and if North Carolina could learn from such a place. The answer is yes, no, and it depends on when you ask.

When it comes to large-scale change, there is a tragic pattern. People of goodwill work for years to craft ways to curb the overreach of child protective services. There is ample documentation that these changes make children safer. Then there is a horrible death of a child “known to the system.” The reforms are scapegoated. Whether at the behest of media or politicians or both, there is a foster-care panic – the sharp sudden increase in children torn from

everyone they know and love cited in the comment from Prof. Kelley Fong quoted above.

Even when no new laws are passed, the terror of being on the front page or the homepage if there is another tragedy, scares everyone in the system into taking even more children unnecessarily.

So we can say that there was a time when one [could have pointed to Maine](#) as a leader – its child welfare reforms were singled out by the Annie E. Casey Foundation. They also were a finalist for the Harvard Kennedy School of Government’s Innovations in American Government awards. Then demagogic politicians exploited high-profile tragedies to [roll back reforms](#). Much the same happened in Florida, though there it was demagogic media. The journalists win awards, the politicians get to grind out press releases about “cracking down on child abuse” and the system gets ever bigger. Everyone wins – except the children and their families.

So the paradox is, Maine and Florida have lessons for North Carolina – even though Maine and Florida turned their backs on their own success.

Alabama also was once a national leader – as [this front-page New York Times story](#) makes clear. The reforms were court-ordered thanks to a lawsuit that demanded the state rebuild its system to emphasize safe, proven alternatives to foster care. (A member of NCCPR’s Board of Directors was co-counsel for the plaintiffs.) But eventually, the court monitors leave, inertia sets in and there is backsliding. But Alabama still does better than most states. And while data are old are incomplete, it appears Alabama *may* do it [without spending](#) proportionately any more than North Carolina. So real change can be accomplished without spending vast amounts of additional money.

But the fact that there are no model systems doesn’t mean there are no models. States have taken steps to make their systems less bad, and North Carolina can learn from them.

You heard a lot about one of those steps: High-quality interdisciplinary legal representation. No, this is not to get “bad parents” off. Rather it’s to bring together a team that can craft alternatives to the cookie-cutter “service plans” doled out by DSS agencies.

It’s been proven to work. [An intensive study](#) of New York City’s model found that it reduced time spent in foster care – with no compromise of safety. They could not measure the effect on entries because in New York lawyers are not automatically assigned until after a court petition has been filed, which often means after a child already is in foster care. New York reportedly is moving in that direction. (Other states, such as New Jersey, already are providing this kind of “pre-petition” representation).

The New York study also indicated that this model is likely to save money, because needless foster care is so expensive. And in many, though not all, cases, the federal government will reimburse North Carolina for [50% of the cost](#).

The American Bar Association's [Family Justice Initiative](#), which brings together lawyers for children and for parents, has more documentation concerning the success of this model.

Two other examples were cited earlier in this statement.

- No one would say the Texas foster care system is a model of anything except failure. Foster care in Texas is a hellscape. So no one should try to imitate that system once children are taken. But Texas has done one thing right: put a new focus on keeping children out of the system by changing laws to curb the power of its family police agency. And as noted above, child abuse deaths decreased.

- We also can learn from that giant real-world “natural experiment” noted earlier – COVID, and what worked then to make children safer.

Abolish child welfare ransom

It was good to see how shocked committee members were to learn that impoverished parents actually are forced to make so-called “child support” payments to the agencies that have taken their children. I hope the committee will be even more shocked to know that DSS agencies can use the failure to make these payments as the reason – the only reason – to terminate children’s rights to their parents forever – and the North Carolina Supreme Court [thinks that’s just fine](#).

Many states impose these payments, but some have stopped – thanks to public pressure sparked largely by [excellent reporting from NPR](#). That reporting revealed what common sense suggests: If you take children from people who are poor and make them even poorer, that will make it harder for their children to be reunited with them, prolonging foster care.

It doesn’t even make sense financially: The expenditure it takes to collect the money – and the increased time in foster care – costs more than states can collect.

But this was never really about money: it was another illustration of how birth families are considered subhuman and need to be punished. And, as with Rylan’s Law and visitation, once again, as family police systems take a swing at so-called “bad parents” the blow lands on the children.

So of course these forced payments should be abolished. If DSS or any county agency tells you the federal government requires them to collect this money, as NPR reported, [that is simply not true](#). Indeed, California, Colorado and New York City have banned the practice.

And one more thing: don’t use the euphemism “child support.” When someone takes your child and makes you pay money to get the child back there is only one proper term for the payment: Ransom.

The need for full transparency

You have heard calls for more transparency, and as discussed above, seen the harm that comes when there is a lack of genuine, complete transparency. But too often those making the calls are selective about what they really want to allow you to know. They want you to know all the details about deaths of children “known to the system.” I agree. But often they want it to end there. They don’t want you to know about the everyday horror of wrongful removal.

But the errors of family policing go in all directions; so, too, must transparency.

Here’s what that means:

As noted earlier, to its credit, North Carolina courts are presumed open in family policing cases. Many other states do this as well. And because some of them are among the largest, such as New York, Florida and Texas, NCCPR estimates that at least 40% of America’s foster children live in states where these hearings are open. None of the fears of opponents has come to pass.

Judges have the discretion to close all or part of some cases. Some such discretion is necessary. But, as noted above, North Carolina judges have nearly unlimited discretion, and some have abused it. So there must be curbs on judicial discretion to close these hearings and [gag participants and even journalists](#). There needs to be strong legislative language concerning the very limited circumstances under which portions of hearings can be closed. And there must be provision of a swift appeals mechanism.

But open hearings are not enough. There also needs to be a strong rebuttable presumption that most case records are open. Of course that can’t apply to all records. But there are plenty of case records that can be revealed – such as, for example, if a worker simply cut-and-pasted an evaluation from one case to another – without compromising children’s privacy.

Full transparency also involves – ironically – giving child welfare agencies more power, in one specific respect. But it’s an increase in power they don’t really want. Because giving them this power will deprive them of the veto of silence.

When families come forward to say they have been wronged, the agencies typically offer the boilerplate response mentioned earlier, something like this: “Oh, there’s so much more to it, and we wish we can tell you, really we do, but we just can’t. Those gosh darn confidentiality laws won’t let us.” Too often, journalists and others examining these systems accept this veto of silence and don’t pursue investigations of families’ complaints. Fortunately, some, such as Jeffrey Billman of The Assembly and Nick Ochsner of WBTV are undeterred – pulling together enough from documents legally provided by families, in some cases from civil lawsuits, and also from those court hearings that are open to document the accuracy of families’ complaints. They have overridden the veto of silence.

But agencies can still insist there's "more to it" and those who want desperately to believe in the current horrible system will gladly buy it.

But there is a solution. Confidentiality laws were not handed down on tablets from Mount Sinai. They were passed by the legislature, almost certainly with strong guidance from state DSS and its local counterparts. So if they're so upset about being silenced, and there's really "more to it" why don't they ask the legislature to simply change the law?

In [New York](#) and [Arizona](#), for example, when families say they have been wronged, agencies are then largely free to tell their side of the story. Under this approach, agency leaders carefully examine their files, make disclosures that don't compromise privacy and do it with supporting documentation – which, in turn, can be challenged by families and their lawyers.

But of course, agencies don't really want this freedom. In New York City, for example, their family police agency, the Administration for Children's Services, often falsely claims they can't talk when they really can. Unfortunately, reporters rarely click on the link above to see the New York statute for themselves, so they accept the false claim.

As far as I know, North Carolina DSS has not even asked for this freedom. And no wonder. Agencies want to be able to claim they can't respond – they want that veto of silence. Because often they have no legitimate response.

In those rare cases where the agency really is right, the public needs to know it. In the many more cases where a family that has taken the enormous risk of going public with their story is right, the public needs to know that as well – without being hindered by an agency's veto of silence, and without anyone simply taking the agency at its word when it claims there is "more to it."

For both reasons, this committee should urge the Legislature to enact laws similar to those in New York and Arizona.

Other recommendations

Recommendations have been included throughout the body of this report, rather than in a separate section. But two items did not come up elsewhere:

Representation for children. Earlier this statement discussed representation for parents. But what about representation for children in North Carolina? This is that one point on which Ginger Rhoads and I agree. Because right now children have no representation in North Carolina.

That Guardian *ad litem* who stands up and may purport to represent the child actually is representing only himself and, often, his own whims and prejudices. That's because GALs are

mandated to provide so-called “best interests representation.” In other words, they are tasked with deciding what *they* think is in the child’s “best interests” and making the strongest possible case for it, no matter what the child actually wants.

So if, say, a Black child desperately wants to return home, but his white, middle-class guardian *ad litem* thinks that child should stay in foster care, then tough luck kid: *You are silenced.* (The reverse also is true. If a child wants to stay in foster care and the guardian *ad litem* thinks the child should return home, the child also is silenced. That is equally wrong.)

Oh no, say defenders of this system, that’s not true: GALs still tell the judge what the child wants.

Next time you hear that one, imagine that you are on trial for some heinous crime, facing decades in prison. Your lawyer gets up and says: “Well, your honor, I am obligated to tell you that my client says he’s innocent – but I think he’s guilty as sin and you should throw the book at him!” Would you be satisfied with that kind of representation?

Children need a *real* voice in court. Instead of a GAL, every child needs a lawyer who will fight *not* for what the lawyer wants, but for what the child wants – it’s called “expressed wishes representation.” That’s the view of the [American Bar Association](#), and in some states that’s already required for any child old enough to express a rational preference.

Even for the youngest children, there’s [an alternative](#) to GAL-style “best interests” representation, known as “legal interests representation.”

The objection to expressed wishes representation is that children might want something that is not good for them. (Somehow this claim seems to come up far more often when the children want to go home.) That is true. But the fact that a child wants something and has someone advocating for it doesn’t mean s/he will get it. Rather, it means that all sides will have someone vigorously advocating for what they want. That is the best way for the judge to get at the truth and decide what is best for the child – and that is what judges are for.

It also means that even when young people don’t get what they want, they at least know they had someone in their corner fighting for them. And that in itself can cushion some of the blow from foster care placement.

Mandatory reporting

Mandatory reporting should be eliminated because, once again, the research is clear: It’s backfired. It makes children less safe. And mandatory reporting does the most harm in states like North Carolina, where everyone is a mandatory reporter.

Eliminating mandatory reporting does not mean eliminating reporting; it means leaving professionals free to exercise their professional judgment. Eliminating mandatory reporting is

essential because [research has shown](#) that mandatory reporting drives families away from asking for help and deluges workers with false reports and poverty cases, leaving them less time to find children in real danger. That's why one after another, leading scholars who once championed mandatory reporting turned against it. You can read all about the history of mandated reporting, how it was put in place with no evidence it would work, how it backfired and why so many onetime proponents have now changed their minds [in this NCCPR Issue Paper](#).

And if anyone tells you mandatory reporting can't be eliminated because of the federal Child Abuse Prevention and Treatment Act, it's not true. The only penalty for ignoring CAPTA (assuming the federal government even tried to withhold the money) is losing an amount of money so small lobbyists refer to such amounts as "budget dust." In North Carolina, in 2022, the amount was [under \\$2.9 million](#) – the state would save far more by eliminating the false reports generated by mandated reporters who are reporting only because they fear penalties for failure to report – in other words, CYA referrals.

CYA referrals also are one of the reasons why you can't solve this problem with the all-purpose child welfare system panacea: more "training." For starters, you can't very well make every adult in North Carolina take a training course. And for professionals, even if the training were perfect, it wouldn't deal with the fear factor noted above.

At a bare minimum, if the committee cannot bring itself to recommend elimination of mandatory reporting, it should recommend giving mandatory reporters an "off-ramp." In other words, a mandatory reporter (which in North Carolina is everyone) who used an alternative to calling the family police agency, perhaps calling a foodbank if a child is hungry, for example, should be immune from any penalty for failure to report.

Consistency is not enough

There was much discussion of the lack of consistency among counties. Among the few areas of consensus is the idea that North Carolina should not be running 100 separate family policing fiefdoms each going its own way. But consistency alone is not enough. If the system is made more uniform, but now everyone is doing the wrong thing, what have you accomplished? The move to more consistency must be accompanied by substantive change at both the state and local level.

Restoring trust

Early on in your deliberations, one committee member asked if trust can be rebuilt. She posed this question:

It seems there's a huge gap here between even the language that people are using: child welfare versus family policing. Are we ever going to be able to get to a point where there is trust between these families who the system was built to look out for the children? ... [W]hat will it take to get the trust between the system and families?

I believe the first step in any such process now must rest with the committee itself. Unfortunately, despite the best efforts of a majority of this committee, the behavior of two committee members cited earlier has made the committee come across as *part* of the system rather than an investigator of that system.

So I repeat my recommendation that families who were defamed and degraded by those comments be given a chance to respond and that the committee majority apologize for the defamatory and degrading remarks.

Otherwise, for all its excellent intentions, the committee risks leaving a wider gap in trust than the one it found.

Aim High

There was some discussion among the committee about what may or may not be a “realistic” recommendation. After all, it was suggested, we can’t very recommend wiping out poverty. It was suggested that anything that might involve more money might be unrealistic.

In fact, an enormous amount can be done simply by alleviating the worst effects of poverty, and that can be cost-neutral or save money in reduced foster care costs.

More generally, though, please don’t assume that anything is impossible forever. Even for things that clearly are impossible right now, your recommendations can be valuable for years, even decades to come.

I have been following these issues for nearly 50 years, first as a reporter, now as an advocate. In just the past few years I’ve had so many I-never-thought-it-would-happen-in-my-lifetime moments I’ve lost track of them all. The work of your New York counterpart is one example. The fact that, at long last, the value of mandatory reporting is being questioned is another. The existence of high-quality family defense is another, those new laws in Texas represent still another, along with new laws in California and Minnesota.

So I hope this committee will be guided by the famous words of Albie Sachs: “All revolutions are impossible until they happen. Then they become inevitable.”

*-These data come from two federal databases. The most recent figures are readily available online, but older data are not. NCCPR has these data and will gladly make them available on request.