



THE ILLINOIS DCFS SYSTEM, LIKE FOSTER CARE SYSTEMS NATIONWIDE, IS BROKEN

**A REPORT ON HOW THIS SYSTEM FAILS THE CHILDREN
AND FAMILIES IT IS INTENDED TO PROTECT +
RECOMMENDATIONS FOR HOW TO START FIXING IT**

BY THE FUTURE JUSTICE LAWYERS OF CHICAGO - AUGUST 2023



Chicago Appleseed Center for Fair Courts is a volunteer-led, collaborative 501(c)(3) non-profit organization advocating for fair, accessible, and anti-racist courts in Chicago, Cook County, and across the state of Illinois.



The Chicago Council of Lawyers is Chicago's public interest bar association, advocating for the fair and effective administration of justice.

This report was researched and written collaboratively by the members of the Future Justice Lawyers of Chicago with assistance from Hannah Cole and editing by Stephanie Agnew.

FORWARD

This report is authored by the first-ever class of Future Justice Lawyers of Chicago (FJLOC). No FJLOC member is a lawyer or even a law student. Each was enrolled full-time in a Chicago university during the 2022-2023 academic year and plans to attend law school. They learned about the FJLOC during the Fall of 2022 when professors and staff at universities and colleges in Chicago and the surrounding area encouraged their students with interest in law and justice to consider applying to this new program. These academic professionals made the FJLOC possible.

Each student has contributed something different to the FJLOC, but they share a common characteristic. Each is extraordinary. Please take a moment to read the summary statements about each student at the end of this Forward. And please take the time to read their report. At some point along the way, you will be astonished. The FJLOC is a part of the Collaboration for Justice, a shared undertaking by the Chicago Appleseed Center for Fair Courts and The Chicago Council of Lawyers. Chicago Appleseed and The Chicago Council have collaborated to confront systemic problems in our justice system for over 25 years. Their work has earned both organizations a reputation for integrity, creativity, doggedness, and overachieving what one would think they could with the resources they have. Each organization sees the FJLOC as fitting squarely within this tradition, and we are thrilled to have worked with each FJLOC member in this first FJLOC class. We are certain this will not be the last time you will see what they can do.

With the FJLOC, Chicago Appleseed and The Chicago Council offered something that was unavailable elsewhere in Chicago to university and college students. FJLOC members had dozens of meetings with lawyers and law students. They worked directly with highly accomplished attorneys, participated in seminars, and had practical experiences encouraging them to see justice and the law in new and imaginative ways. In return, each FJLOC member committed themselves to satisfying a series of obligations, which included two primary responsibilities: (1) completing at least one individual project addressing an issue of injustice in our community and (2) meaningfully contributing to a group project addressing an issue of injustice.

Each FJLOC member satisfied their obligations in six months, starting from the date of their first meeting in late January. Their individual projects involved court-watching in Cook County and researching and writing about Chicago police disciplinary procedures. Their group project culminated in this report on the DCFS system. The FJLOC members chose DCFS as the focus of their group project, and in doing this, the members knew they would find injustices. They have written this report hoping that you might see what they have seen, which is more than a collection of injustices. FJLOC members' observations are summarized in the title of their report: *Our DCFS System, Like Foster Care Systems Nationwide, is Broken*.

The inspiration for the Future Justice Lawyers of Chicago begins with my mother. My mentioning this may strike some of you as self-indulgent. Perhaps, but this FJLOC report, at its core, is a story about people. It is a story about mothers, fathers, and children, people like you and me who are part of families like yours and mine. Data is important, of course, but data can also interfere with our ability to see those whose lives have meaning, so perhaps acknowledging being inspired by my mother is not misplaced.

As the FJLOC members have done with this report, Martha Schrodts created something incredible. She started teaching at Richland Community College in August 1987. She taught the first nursing classes ever at the school, and she continued teaching there for twenty-five years. When my mother started teaching, Richland offered no nursing or other health services degrees. It now has seven. Richland serves Decatur, Illinois, and surrounding communities. Like so many towns across the

Midwest, Decatur has seen many factory jobs replaced by technology or taken to other places, but people in Central Illinois still need health care. Decatur has two hospitals, dozens of home health providers, and hundreds of practicing physicians. Richland graduates with an associate degree in nursing or another health service field do not need to relocate to get good jobs. Decatur healthcare providers are delighted to hire and employ them.

We may not be surprised that the DCFS system operates so poorly, but what does it say that we are doing so little to fix it, to help perhaps the most vulnerable among us, the children and the families that this system so often harms? Each FJLOC member is young enough to have been subject to the DCFS system last year or, at most, within the last few years. The FJLOC members did their work without any template. No one had ever been a FJLOC member before this year. They did this work without being compensated in any way. None was paid a single cent. None received any help with a job or any other perk. They wrote this report on their own time. They did so while taking full, rigorous course loads, and none ever sought or gave any excuse to avoid writing this report, despite the extraordinary challenge it presented.



The FJLOC members authored this report because the content of their character is off the charts. They care enough to do something about the DCFS system, even when having other existing responsibilities that would overwhelm almost all of us. Their report is now in your hands. Please read it and follow their lead: do something remarkable to help fix the broken DCFS system.

David Schrodt

*Board Member of the National Appleseed Network & Chicago Council of Lawyers
Leader of Collaboration for Justice FJLOC Working Group*

FJLOC MEMBERS + AUTHORS

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Adriana (she/her) is a senior at the University of Illinois at Chicago majoring in Criminology, Law and Justice. She joined FJLOC because the program goals aligned with her values. Adriana wanted to be part of a program dedicated to confronting existing injustices and committed to improving our justice system.

Samantha Corte

Samantha (she/her) is a sophomore at the University of Illinois at Chicago studying Criminology, Law and Justice. Samantha joined the program to learn more about the practice of law and to work on the systemic justice issues in Chicago. Samantha's FJLOC work included performing criminal court-watching and domestic violence court-watching and doing significant research and writing for this report. As a result of participating in FJLOC, Samantha's interest in attending law school has grown.

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Patricia (she/her) is a sophomore at the University of Illinois at Chicago studying Political Science and Economics. At UIC, Patricia participates in Mock Trial and UIC Women's Soccer and is a Lex Fellow. She joined the Future Justice Lawyers of Chicago because of the pressing injustices that she sees many Chicago citizens face in different parts of their lives.

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Elijah (he/him) is a sophomore at the University of Chicago. He is studying Political Science and Race, Diaspora, and Indigeneity. He is the University of Chicago College Council Chair of Student Government and Action Chair of the Organization of Black Students, where he leads initiatives to enhance student welfare and empower marginalized communities. Elijah joined FJLOC to deepen his understanding of impact litigation and engage more meaningfully with the Chicago community.

Hailey Lee

Hyerim (Hailey) (she/her) is a senior at Yonsei University in Seoul, South Korea, studying International Studies and Economics. She participated in the university's exchange program and attended the University of Chicago during the 2022-2023 academic year, where she learned about the Future Justice Lawyers of Chicago. Hailey is interested in international law and human rights. Hailey intends to attend law school in the United States.

Natalie Manley

Natalie Manley (she/her) is a senior at the University of Chicago with a passion for criminal justice issues such as policing alternatives and ending money bail. This year, in addition to being a member of FJLOC, Natalie interned with the Exoneration Project, the Federal Criminal Justice Clinic at the University of Chicago Law School, the Policing Project at NYU School of Law, and the Orleans Public Defenders, which is the public defender's office in New Orleans, Louisiana. Natalie is also an editor at the Chicago Maroon, the captain of the sailing team, and an active member of the University Theater at the University of Chicago.

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Lena (she/her) is a senior at Northwestern University majoring in Asian American Studies with a minor in Legal Studies. At Northwestern, Lena is co-president of the Asian Pacific American Coalition, a sociopolitical group that seeks to fight oppressive forces and provide a space for Asian American students to organize around social justice issues. Outside of school, Lena has worked with a number of advocacy organizations, helping educate communities on topics from gender-based violence to culturally sensitive approaches to mental health.



"For these are all our children. We will all profit by, or pay for, what they become."

James Baldwin

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INTRODUCTION

A child in foster care faces many barriers as they work to become a productive adult. A court has taken them from their family due to allegations of “neglect” or “abuse.” They become part of a judicial system that oversees critically important decisions like where the child lives and what school they attend. A judge decides if and when they can visit their family. In addition to being part of the foster care system, these children frequently face food insecurity and too often become enveloped by the criminal legal system.

In preparing this report, the FJLOC members have researched the DCFS system in Illinois and the foster care systems nationally. They performed an extensive review of publications and interviewed experts. They examined laws, policies, and procedures significantly impacting DCFS and other foster care systems.

The FJLOC members start their report by examining the problem of racial disparities in Chicago’s foster care system and foster care systems nationwide. They then touch on problems within the judicial system regarding foster care proceedings. They next explore relationships between poverty, food insecurity, and foster care, and they conclude their analysis by considering problems that arise when young adults age out of foster care.

The report ends with a Call to Action in which the students make recommendations to help children and families in need as they face challenges presented by the foster care system, such as family separation. Notably, their Call to Action includes an appeal to Chicago lawyers and law firms to invest pro bono resources to bring about reform. The Foster Care system is broken, and it is time for lawyers and future lawyers to help fix it. Lawyers in other states have done this: We can too.

Malcolm Rich

Executive Director, Collaboration for Justice

Chicago Appleseed Center for Fair Courts

Chicago Council of Lawyers

“There’s no doubt that some foster care parents are outstanding, but overall, America’s foster care system is a disgrace. Only about half of foster children finish high school; perhaps 4% earn a B.A. By several estimates, a majority of trafficked girls have been in foster care, or some other part of the child welfare system.”

Nicholas Kristof – The New York Times (July 24, 2023)

CHAPTER 1: Racial Disparities

FACT: Racial disparities are a chronic problem in DCFS and foster care systems nationwide.

Data and related statistics reveal one feature of the foster care system: it includes substantially more children of color than white children on a proportional basis when compared to the demographics of children in the United States. In 2021, a nationwide survey by the US Department of Health and Human Services revealed that 391,098 children and young adults were in foster care.¹ Among them, 168,063 (approximately 43%) were identified as white. Further, 86,645 (approximately 22%) were identified as Black, and 85,215 (approximately 22%) were identified as Hispanic.² The exact numbers vary from year to year, but general trends remain consistent. As such, systemic racial disparities within the system are present.

- Black and Hispanic children comprise approximately 33% of all children in the United States, but they represent approximately 44% of the children in foster care. In comparison, white children comprise around 59% of the children in the United States but only account for 43% of the children in foster care.³
- Nationally, Black families are twice as likely than white families to experience a state authority investigating whether their child should be placed into foster care.⁴ Over 50% of Black children in the U.S. will experience a child welfare investigation before their eighteenth birthday.⁵ Nearly 10% of all Black children are taken from their parents and moved to foster care – twice the rate of white children.⁶ Furthermore, such disparities – while a nationwide issue – are more pronounced in particular cities, such as Chicago.
- According to 2022 Census data, Chicago's population is approximately 29% Black, 33% white (Non-Hispanic or Latino), and 29% Hispanic or Latino.⁷ However, Black children represent 70% of all Cook County foster care system children.⁸ These statistics prompt us to investigate the causes behind racial disparities in the foster care system.

The problem gets worse when we consider larger population trends. Between the years 2019 and 2023, the overall population

¹ Children's Bureau - Administration on Children, Youth and Families. (2021). "The AFCARS Report #29" to the U.S. Department of Health and Human Services, Administration for Children and Families. Retrieved from <https://www.acf.hhs.gov/sites/default/files/documents/cb/afcars-report-29.pdf>

² *Id.*

³ United States Census Bureau. (2022). "QuickFacts: United States." Retrieved from <https://www.census.gov/quickfacts/US>

⁴ Kim, H., Wildeman, C., Jonson-Reid, M., & Drake, B. (2017). Lifetime Prevalence of Investigating Child Maltreatment Among US Children. *A Publication of the American Public Health Association (APHA)* 107(2), 274–280. Retrieved from <https://doi.org/10.2105/ajph.2016.303545>

⁵ *Id.*

⁶ White, S. & Persson, S. (2022). "Racial Discrimination in Child Welfare Is a Human Rights Violation—Let's Talk About It That Way" for americanbar.org. Retrieved from <https://www.americanbar.org/groups/litigation/committees/childrens-rights/articles/2022/fall2022-racial-discrimination-in-child-welfare-is-a-human-rights-violation/>

⁷ United States Census Bureau. (2022). "QuickFacts: Chicago [City], Illinois." Retrieved from <https://www.census.gov/quickfacts/fact/table/chicagocityillinois/PST045222>

⁸ ACLU of Illinois. (2022). Alone Without a Home: A Call to Transform Illinois' Family Regulation System. Retrieved from <https://www.aclu-il.org/en/publications/alone-without-home-call-transform-illinois-family-regulation-system>

of minors in Illinois experienced a gradual decline.⁹ During this same period, the number of children and young adults that DCFS removed from their families increased by 26%.¹⁰ A report by the ACLU of Illinois, citing data from the National Center for Juvenile Justice, highlighted the stark fact that Black youth in Illinois are 25 times more likely than their white peers to be subject to the mechanisms of family regulation.¹¹ From investigations to child removal, Black youth are dramatically over-represented at each stage of the foster care process.

CAUSES:

Intersections of Racism + Federal Laws and Policies

The racial disparities prevalent in the DCFS care system and other foster care systems nationwide do not exist in a vacuum. The foster care system lies on a foundation of unaddressed and ongoing structural racism as upheld by federal and state laws.

For example, the United States became a signatory to the International Convention on the Elimination of All Forms of Racial Discrimination in 1966, joining the global initiative to eradicate structural racism at national and local levels.¹² Despite this international proclamation, DCFS and other foster care systems continue to be implicated in structural racism and policies that have historically penalized people with fewer resources. Examples include the 1994 Child Abuse Prevention and Treatment Act (CAPTA) and the 1997 Adoption and Safe Families Act.

History + Data Reveal the Pervasive, Embedded Reach of Structural Racism

Illinois and Chicago grapple with a long history of laws and policies, such as segregation, redlining, isolation of public housing developments, and disparate allocations of resources, that continue to disadvantage families of color in remarkable ways. In 2022, a staggering 39% of Black and 30% of Latinx residents in Cook County faced financial vulnerability, far surpassing the national average.¹³ Chicago communities of color, in particular, face high unemployment rates, poverty, inadequate housing, and limited access to educational resources.¹⁴ Affluent areas such as Lincoln Park and the Loop boast per capita incomes exceeding \$90,000, while predominantly Black neighborhoods like Englewood and West Garfield Park can have per capita incomes of \$15,000 or less.¹⁵ The COVID-19 pandemic exacerbated this divide, with communities of color on the South and West Sides bearing the brunt of its devastating impacts.¹⁶

The systemic disparities are even more pronounced in the criminal justice system. An analysis of Cook County court data

⁹ *Id.*

¹⁰ Illinois Department of Children and Family Services. (2022). "Budget Proposal Overview - FY 2023" at page 5.

¹¹ *Supra* note 8.

¹² UN General Assembly. (1965). International Convention on the Elimination of All Forms of Racial Discrimination. *United Nations Treaty Series 660* at page 195. Retrieved from <https://www.refworld.org/docid/3ae6b3940.html>

¹³ Chicago Community Trust. (2023) "New Financial Health Data Shows Vast Disparities Across Race and Ethnicity in Chicago" [Press Release]. Retrieved from <https://www.cct.org/press-releases/new-financial-health-data-shows-vast-disparities-across-race-and-ethnicity-in-chicago/>

¹⁴ Singh, S. & Almeida, I. (2022). "Chicago's Biggest Challenges Stem from its History of Segregation" for *Bloomberg*. Retrieved from <https://www.bloomberg.com/news/articles/2022-09-14/chicago-s-biggest-challenges-stem-from-its-history-of-segregation>

¹⁵ *Id.*

¹⁶ *Id.*

revealed that over 60% of criminal cases filed from 2000 to 2018 were against Black individuals.¹⁷ In fact, Black individuals are also 17 times more likely to be incarcerated in the Cook County Jail than their white counterparts.¹⁸ Black people are disproportionately prosecuted for minor offenses, causing trauma in subsequent generations and perpetuating a vicious cycle of incarceration.¹⁹

These glaring racial divides then impact DCFS. Indeed, the racial divide renders minority populations vulnerable targets of a child welfare system that penalizes poverty and remains tainted by racial bias throughout various stages, from reports to investigations to the court processes that remove children from their families.²⁰ The criminal justice system and DCFS often work in tandem. For example, laws restrict individuals with prior felony convictions from fostering or adopting children, even if they are close relatives and fit to care for the child.²¹

Federal Laws + Policies Worsen Racial Disparities

Congress enacted the Child Abuse Prevention and Treatment Act (CAPTA) in 1974 to provide federal funding to state governments to address child neglect and abuse.²² However, in interpreting CAPTA's neglect criteria, state authorities have conflated poverty with neglect, contributing to the disproportionate separation of Black children from their families by the child welfare system. In 2020, over 70% of all children and 63% of Black children placed into the national U.S. foster system were taken from their families for reasons related to neglect.²³ Notably, a January 2021 memo by the U.S. Administration for Children and Families highlighted removals based on neglect disproportionately affect families living in poverty, with families of color being more likely to experience under-resourced conditions.²⁴

CAPTA has also instituted mandatory reporting by states for them to qualify for federal funds, which, consequently, heightened the surveillance and policing of marginalized communities.²⁵ CAPTA requires states to increase their frequency of child welfare involvement to receive federal funding, thereby creating additional incentives for states to create a system that will escalate separating children from their families.²⁶ Since CAPTA was enacted, the number of suspected child welfare cases reported annually skyrocketed from 60,000 reports in 1974 to two million by 1990.²⁷ This dynamic disproportionately harms Black

¹⁷ McGhee, J. & Rutecki, J. (2021). "Fewer People In Cook County are Being Charged with Crimes. Why are Black People Making Up a Larger Share of Defendants?" for *Injustice Watch*. Retrieved from <https://www.injusticewatch.org/news/courts/2021/the-circuit-racial-disparities-explainer/>

¹⁸ *Id.*

¹⁹ Ruddell, B. (2020). "It's Time for Real Sentencing Reform in Illinois" for ACLU of Illinois. Retrieved from <https://www.aclu-il.org/en/news/its-time-real-sentencing-reform-illinois>

²⁰ Hammons, I. (2023). "A Fact: Our Child Welfare System Punishes Poverty, Hurts Children, and Destroys Families" for Children's Rights. Retrieved from <https://www.childrensrights.org/news-voices/a-fact-our-child-welfare-system-punishes-poverty-hurts-children-and-destroys-families>

²¹ New York Bar Association. (2022). Report and Recommendations of the Committee on Families and the Law Racial Justice and Child Welfare. Retrieved from <https://nysba.org/app/uploads/2022/03/Committee-on-Families-and-the-Law-April-2022-approved.pdf>

²² Child Welfare Information Gateway. (2019). "About CAPTA: A Legislative History" [Fact Sheet]. U.S. Department of Health and Human Services, Children's Bureau. Retrieved from <https://www.childwelfare.gov/pubpdfs/about.pdf>

²³ *Supra* note 6.

²⁴ Children's Bureau - Administration on Children, Youth and Families. (2021). "Civil Legal Advocacy to Promote Child and Family Well-Being, Address the Social Determinants of Health, and Enhance Community Resilience." Retrieved from <https://www.acf.hhs.gov/cb/policy-guidance/im-21-02>

²⁵ Copeland, V. & Pendleton, M. (2022). "Surveillance of Black Families in the Family Policing System" for Upend Movement. Retrieved from https://upendmovement.org/wp-content/uploads/2022/06/upEND-Surveillance-06_2022.pdf

²⁶ *Supra* note 22.

²⁷ *Supra* note 6.

families, exacerbating racial disparities within the child welfare system. Research shows reporters are far more likely to screen and report Black families than white families, particularly Black mothers.²⁸ For example, pregnant Black women are four times more likely to be screened for drug use than white women.²⁹ Moreover, mandated reporters are encouraged to err on the side of over-reporting – if a mandated reporter fails to report a case of abuse or neglect, they can be penalized and fined.³⁰ As a result, reporters tend to over-report issues of poverty to child welfare and many view their local child protective services agency as a “sort of all-purpose agency, compensating for what they could not provide.”³¹

The Adoption and Safe Families Act (ASFA) also magnifies racial disparities within the child welfare system. Congress implemented this law in 1997 to expedite permanency for children in foster care, setting a national standard for the final decision on whether to terminate parental rights to be within 15 to 22 months following family separations.³² The strict timeline has proven to be unattainable, particularly for parents in marginalized communities engaged in drug or other rehabilitative programs.³³ It has also caused the emergence of “legal orphans” who have yet to find adoptive guardians but lack legal ties to their biological parents.³⁴ In addition to its incredibly brief parental rights termination time frame, “ASFA currently restricts the placement of children with family members based on certain criminal history criteria, with no best interests or safety exceptions, creating additional obstacles to children living with a family member when a return to their parent is not possible.”³⁵ Consequently, since ASFA’s inception, states have passed laws that follow this framework. For example, New York has passed laws that automatically disqualify those convicted of any one of over 300 felonies, for example, from being a foster or adoptive parent. As a result, children, especially children of color, who would be better served living with families, relatives, and friends, are instead forced to live with strangers or in congregate care facilities.³⁶

Statistics reveal that the system is 2.4 times more likely to sever legal ties between Black families than white families.³⁷ This stark disparity underscores the racially biased impact of federal laws within the child welfare system.

WHAT TO DO?

Changes in Law + Policy Can Help Mitigate Racial Disparities

In the following subsections, we outline proposed changes in law and policy that have been recommended by various organizations or implemented in other jurisdictions. We believe taking these steps would begin to address the racial

²⁸ Children’s Rights. (n.d.). “Fighting Institutional Racism at the Front End of Child Welfare Systems: A CALL TO ACTION.” Retrieved from <https://www.childrensrights.org/wp-content/uploads/2021/05/Childrens-Rights-2021-Call-to-Action-Report.pdf>

²⁹ *Supra* note 6.

³⁰ *Supra* note 22.

³¹ Franck Meyer, A. (2021). Harm Caused by the Adoption and Safe Families Act. *Family Integrity & Justice Quarterly*, Winter 2022. Retrieved from <https://publications.pubknow.com/view/752322160/84/>

³² Sangoi, L. (2020). “How the Foster System Has Become Ground Zero for the U.S. Drug War.” *Movement for Family Power* at page 48. Retrieved from <https://www.movementforfamilypower.org/ground-zero>

³³ *Id.*

³⁴ *Supra* note 6.

³⁵ *Supra* note 21.

³⁶ *Id.*

³⁷ Wildeman, C., et al. (2020). The Cumulative Prevalence of Termination of Parental Rights for U.S. Children, 2000-2016. *Journal of Child Maltreatment*, 25(1), 32-42. Retrieved from <https://doi.org/10.1177/1077559519848499>

disparities and their underlying causes that plague Illinois' foster care system.

Amend CAPTA to Remove its Neglect + Mandated Reporting Clauses

It is no surprise why CAPTA's overly vague and unclear "neglect" clause – which tends to penalize families for being impoverished – disproportionately impacts families of color. The disproportionate number of families of color investigated by DCFS and children of color in the DCFS system is linked inextricably to federal laws and related policies. We believe one way to fix this is by amending CAPTA to remove its problematic provisions. We join with ACLU Illinois and the New York Bar Association, which recommend repealing or revising the CAPTA requirement that conditions federal funding on individual states' inclusion of neglect in their state laws and policies.³⁸

As noted above, CAPTA's "mandated reporting" clause also contributes to racial disparities in foster systems nationwide, substantially increasing the number of cases reported to child welfare agencies. Importantly, mandated reporters are many families' first point of contact with the foster care system, yet these reporters often hold racial biases of their own, largely based on negative stereotypes.³⁹ Thus, to address racial disparities in foster care systems nationwide, several organizations have proposed removing and/or amending the mandated reporter and neglect clauses of CAPTA. We join in supporting this position and think removing or amending the law would benefit Illinois families and youth.

Repeal Adoption & Safe Families Act—or At Least Take Action to Challenge It + Related State Laws

While initially passed with the interests of foster children in mind, it is now widely accepted that the Adoption and Safe Families Act has failed to adequately prioritize the well-being of children, particularly children of color. We believe ASFA should be repealed. We believe the harm it causes, as set forth above, far outweighs its benefits.

Additionally, some organizations are making significant progress in challenging ASFA or state laws whose purpose is to function together with ASFA. Advocates in Illinois should follow their lead. For example, the Legal Aid Society of New York recently filed a federal lawsuit arguing that city and state officials "unjustly prohibit relatives from becoming foster parents due to prior criminal offenses and allegations of child abuse and neglect – even when they are decades old or never resulted in a conviction."⁴⁰ The suit further provides that "these practices perpetuate the racially discriminatory impact of the criminal legal system and the child welfare system, which disproportionately police and prosecute communities of color and disproportionately regulate families of color."⁴¹ Finally, the complainants assert how the widespread disqualification of otherwise responsible foster or adoptive parents has a "disproportionate impact on families of color" and thus it "reinforces other discriminatory government practices."⁴² Instead of automatically disqualifying kin and potential foster parents, applicable authorities should put the children's interests first and conduct individual assessments of potential caretakers.

³⁸ *Supra* notes 8 and 21.

³⁹ Ross, J. (2022). "One In Ten Black Children in America are Separated from Their Parents by the Child-Welfare System. A New Book Argues That's No Accident" for *Time*. Retrieved from <https://time.com/6168354/child-welfare-system-dorothy-roberts/>

⁴⁰ Grant, J. (2021). Legal Aid Society, Dechert Sue State, NYC Over Rules that Often Prevent Kin from Fostering Children. *New York Law Journal*. Retrieved from <https://www.law.com/newyorklawjournal/2021/11/11/legal-aid-society-dechert-sue-state-nyc-over-rules-that-often-prevent-kin-from-fostering-children/?slreturn=20230612005833>

⁴¹ *Id.*

⁴² *Id.*

Expand Mutual Aid + Government Support: A COVID-19 Case Study

It is worth noting what happened in New York City during the COVID-19 pandemic when city resources were allocated to support families, not surveil them. We should learn from this lesson, not forget it. Though not an intentional or planned policy, New York City, in effect, abolished its family regulation system during the early months of the COVID-19 pandemic.⁴³ Although many thought that “the pandemic and accompanying social isolation would increase child neglect and abuse,” the opposite proved to be true.⁴⁴ While the New York Office of Children and Family Services was almost entirely shut down, child fatalities fell, as did child neglect and abuse reports.⁴⁵ Additionally, “there was no surge in reports even as mandated reporters began to re-enter the field, nor was there any increase in the rate at which investigations found reports of neglect or abuse to be valid.”⁴⁶

Anna Arons argues that this decrease in neglect and other reports was a result of (1) the expansive mutual aid networks that developed in New York City and distributed “tens of thousands of dollars’ worth of resources to families” and (2) the Cares ACT (what Arons calls “government support without government control”), which provided one-time no-strings-attached stimulus payments to individuals and families below certain income thresholds.⁴⁷ Both offered a glimpse of what happens when struggling families have their basic needs met. These families provided adequate care to their children. New York City offers a compelling case study for what can happen when funds are invested in supporting families rather than in surveillance.

CHAPTER 2: Delays in Foster Care Legal Proceedings

FACT: Foster care legal proceedings extend over a time period far longer than what is necessary or suitable for a child’s best interest.

The central importance of stability in a child’s life seems lost in hearings and delays once the child is placed into DCFS custody or the custody of family welfare organizations in other states. Illinois DCFS can take responsibility for a child through a temporary custody hearing when the agency believes and proves to the court that the child is in danger in their home.⁴⁸ A child removed in this manner must go through multiple court hearings to be reunited with their family. However, courts are not holding these hearings in a timely manner. The child is constantly uncertain about where and with whom they will live. During the waiting period, a judge permits DCFS or another appropriate adult to retain custody of the child.⁴⁹ Children under

⁴³ Arons, A. (2021). An Unintended Abolition: Family Regulation During the COVID-19 Crisis. *SSRN Electronic Journal*, 11(1). Retrieved from <https://doi.org/10.2139/ssrn.3815217>

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ Cook County Public Guardian. (n.d.). “Child Protection Court Process – Cook County Public Guardian.” Retrieved July 25, 2023, from <https://www.publicguardian.org/juvenile-division/child-protection-court-process/#:~:text=A%20temporary%20custody%20hearing%20must>

⁴⁹ *Id.*

DCFS care in this manner are at a high risk of maltreatment.⁵⁰ When children are in DCFS custody for an extended time due to the delay of hearings, they experience higher rates of abuse and neglect within the system, which causes serious long-term harm to the child's well-being.⁵¹

In an ideal timeline in Illinois, the child is removed from their parent's house, and within 48 hours of the removal, a temporary custody hearing occurs.⁵² The purpose of this temporary custody hearing is to determine if there is probable cause to believe the child is in danger and if there is an urgent need to remove the child from home.⁵³ The legal threshold for removal is probable cause, which requires the state to provide sufficient evidence for the court to find that the child is abused or neglected at home.⁵⁴ If the court finds probable cause, then DCFS takes custody of the child. Within 90 to 120 days from the temporary custody hearing, an adjudicatory hearing is supposed to be conducted, and in this adjudicatory hearing, the judge officially concludes if the child has been neglected or abused.⁵⁵ Finally, a disposition hearing is supposed to occur about 30 days after the adjudicatory hearing, and at this hearing, the judge will decide if the child should return home or stay in foster care.⁵⁶ A possible outcome is that the judge terminates parental rights, and a DCFS Guardianship Administrator becomes the child's guardian.⁵⁷ However, the DCFS hearings process rarely occurs within this timeline.⁵⁸

CAUSES: Overwhelmed Workers + Inefficient and Inadequate Services

Delays in DCFS proceedings are caused by a variety of factors, such as overwhelmed DCFS caseworkers, inefficient court processes, inadequate services, and more. In Illinois, many of these court delays can be attributed in some substantial part to DCFS caseworkers carrying heavy caseloads and DCFS being short-staffed.

- As of a recent date in 2023, the Illinois Department of Children and Family Services' child caseload was 20,173 cases.⁵⁹
- To adequately meet the needs of every child, the Child Welfare Task Force for Illinois set standards for how many cases a caseworker should hold. It is recommended that a child protective service investigator should only have 12 active cases per month, and the total number of cases should not exceed 15.⁶⁰ This standard is not close to being met. Some caseworkers reported handling 50 cases at a time.⁶¹

⁵⁰ *Supra* note 8.

⁵¹ *Id.*

⁵² Illinois Legal Aid. (n.d.). DCFS Cases and Child Protection Services. Retrieved July 24, 2023, from <https://www.illinoislegalaid.org/legal-information/dcfs-cases-and-child-protection-services>

⁵³ Child Law Section Council of the Illinois State Bar Association. (2008). Guide for Parents: Juvenile Court Abuse & Neglect Proceedings Illinois State Bar Association Child Law Section Council. Retrieved from <https://www.isba.org/sites/default/files/teachers/publications/abuse.pdf>

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ *Supra* note 52.

⁵⁹ *Supra* note 7.

⁶⁰ University of Illinois Urbana-Champaign Children and Family Research Center. (2020). Child Welfare Workforce Task Force: Literature Review, Employer Survey, and Recommendations. Retrieved from <https://www.ilga.gov/reports/ReportsSubmitted/2329RSGAEmail3961RSGAAttachChild%20Welfare%20Workforce%20Task%20Force%20Final%20Report%20December%202020.pdf>

⁶¹ *Supra* note 7.

Caseworkers are not superhuman. An overloaded caseworker often becomes overwhelmed and struggles to give the time needed for each case they handle. An insufficiently prepared caseworker contributes to delayed hearings and additional hearings, as courts will not be sufficiently informed to resolve complicated matters of probable cause or other legal questions. Further, once caseworkers get overworked, research suggests that each additional case they receive increases the caseworker's early departure from the job by 10%.⁶² Thus, overwhelmed caseworkers lead to a problematic cycle. Caseworkers leave their job because their caseload is too heavy. In turn, this reduces DCFS staffing, which causes the remaining caseworkers to take on more cases.

Judges also play a role in delayed hearings. They do this by issuing numerous continuums, which causes the court proceedings to be delayed and rescheduled for another day.⁶³ University of Chicago Professor Mark Courtney described how multiple individuals must be present for the court hearings to occur, and if one does not show up, a delay will occur:

You have a parent's attorney, you have a State[s] Attorney, sometimes you have a Guardian Ad Litem, the child's attorney, and then you have court-appointed special advocates, and you have a judge, and they should all have to show up in order for there not to be a delay. So why are we surprised that that are often court delays?

Sue Berkowitz, the Director of the South Carolina Appleseed Center, explained in an interview that one missing attorney or one missing party could result in a continuum.⁶⁴ She stated lawyers regularly miss a child's court hearings to attend what they consider to be higher-level court cases. In such instances, the judge issues a continuum, which can remain in place until the lawyer commits to attending the next court hearing.⁶⁵

Inadequate services can also cause a continuum. For example, if the court requests a parent to satisfy a treatment program as a condition for a hearing on whether the parent should regain custody, and the treatment is unavailable because the facility is having delays, this will lead to a longer waiting period for the families to be reunified.⁶⁶ When the parents cannot meet the return conditions, the judge may issue a continuum for up to an additional six months.⁶⁷ Thus, the broader issue of misplaced and mismanaged investment of government resources also delays the process. Professor Courtney explained: "There's a continuation, but it's arguably the whole bureaucracy, the inadequacy of services, that led to this problem."⁶⁸

These delays cause children in DCFS's control to spend more time in the system without a stable housing situation. DCFS is charged with providing stable home situations to protect the physical and emotional well-being of the child.⁶⁹ Yet, these delays result in exactly the opposite. This extended DCFS process instead creates instability, harming the child and preventing the child from returning to normalcy.

The ACLU of Illinois has found that, in addition to the harm caused by the extended proceedings, DCFS

⁶² *Id.*

⁶³ Courtney, M. (2023, July 18). [Interview by S. Corte].

⁶⁴ Berkowitz, S. (2023, June 30). [Interview by S. Corte].

⁶⁵ *Id.*

⁶⁶ *Supra* note 63.

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ Children's Bureau. (2020). How the Child Welfare System Works. Retrieved from <https://www.childwelfare.gov/pubPDFs/cpswork.pdf>

consistently fails to meet the needs of children in its care.⁷⁰ For example, children who are placed in group facilities are at twice the risk of experiencing physical abuse due to a lack of oversight.⁷¹

Youth also have the right to personal relationships, family, and community but DCFS impedes all of this.⁷² For example, low-income families who have lost their children might have trouble attending visitation hours because they lack transportation and have insufficient resources available to fix their predicament.

WHAT TO DO?

Better Options than Court-Mandated Separation + Better Organize Court Hearings

Recommendations from other organizations and actions taken by other states offer potential solutions to delays in DCFS hearings. One solution to helping decrease the number of DCFS cases is to have DCFS change its approach to focus on helping families stay together.

Prioritize Reunification + Voluntary Placements

The ACLU of Illinois has recommended that DCFS be required to provide evidence in court that they have done all they could to keep the child with the family or uninvolved with the court system.⁷³ Another solution is to increase the use of voluntary placements. This happens when a parent, rather than a judge, decides the child is better suited to live elsewhere. This option does not rely on the schedule of judges or lawyers and, therefore, does not slow the process of permanency or reunification.⁷⁴ As Professor Courtney explained:

One approach would be to say to the mom, "You seem like you're really struggling. I'm here, I've heard from your neighbors, I'm worried that I can't leave the child here. [It] is not safe. If we could find you a place to live, we can get you help for some period of time. We'll find a safe place for the child."⁷⁵

Surprisingly, he added, "that option is almost never offered by the child welfare system."⁷⁶

Improve Docket Scheduling

Texas Appleseed has had substantial success in working with Texas law firms to significantly improve the legal system for foster care in Texas.⁷⁷ Texas Appleseed recommends more frequent permanent placement hearings and careful docketing by the judge. Illinois should follow Texas' example. This increases the opportunities for permanency or reunification and provides more opportunities for relevant stakeholders to attend, moving the process forward. Careful docketing also creates a schedule

⁷⁰ *Supra* note 8.

⁷¹ Children's Rights. (2023). The Harms of Institutionalization. Retrieved from <https://www.childrensrights.org/wp-content/uploads/2023/01/The-Harms-of-Institutionalization-2023-Fact-Sheet.pdf>

⁷² *Supra* note 8.

⁷³ *Id.*

⁷⁴ U.S. Department of Health and Human Services. (n.d.). CW Policy Database - Section 8.3A.14 - Policy Questions & Answers. Retrieved July 18, 2023, from https://www.acf.hhs.gov/cwpm/public_html/programs/cb/laws_policies/laws/cwpm/policy_dsp_pf.jsp?citID=10

⁷⁵ *Supra* note 63.

⁷⁶ *Id.*

⁷⁷ Texas Appleseed (n.d.). Foster Care & Courts. Retrieved from <https://www.texasappleseed.org/foster-care-courts>

that affords judges sufficient time to review the case's issues thoroughly, reducing the need for subsequent hearings. Texas Appleseed noted how sensible, fair, and efficient docketing "implies that every child's hearing is allotted the necessary length of time to ensure that all pertinent issues to a particular child's case are discussed, including the child's well-being."⁷⁸ It also improves the child's and each relevant actor's ability to attend court. Children can attend hearings without worrying about missing school or other beneficial commitments with better advance notice. All stakeholders, including parents and parents' attorneys, can take advantage of the additional time to prepare and attend hearings, reducing the need for continuums.⁷⁹

Hold Caseworkers Accountable

Texas Appleseed also recognized that judges need to step in and call out the foster care caseworkers for failing to fulfill their responsibilities. Caseworkers, when they are not prepared, make hearings less productive. For example, one Texas court called out a caseworker who had failed to contact the child and knew little about the child's well-being during the hearing.⁸⁰ Texas Appleseed offers: "The court must consider DFPS accountability when the CVS caseworker has not completed the steps necessary to care for a child's needs or actively move the child into a safe, permanent home, even if the caseworker has a high caseload."⁸¹ Docket scheduling, increased hearings, and advance notice of hearings might lessen the number of continuums, but this alone will be insufficient to solve the extensive delays in the process. As mentioned above, caseworkers are often overwhelmed, sometimes handling 50 cases simultaneously, compared to the recommended 12 to 15 cases. These caseworkers need sufficient time and bandwidth to adequately meet the child's needs.

CHAPTER 3: Poverty + Food Insecurity

FACT: Poverty and food insecurity are gateways into the DCFS system.

Poverty, and the corresponding problem of food insecurity, are chronic in Illinois and throughout the United States. The poverty line in 2023 for a family of four in the United States is \$30,000, and according to the United States Department of Agriculture (USDA), at present more than 34 million people in the United States, including nine million children, are food insecure.⁸² Illinois is not an exception. Prior to the COVID-19 pandemic, 1.6 million Illinoisans were participating in the Supplemental Nutrition Assistance Program (SNAP).⁸³

During the initial months of the pandemic, SNAP applications soared to over 35,000 applications a week, up

⁷⁸ Texas Appleseed. (2010). Improving the Lives of Children in Long-Term Foster Care: The Role of Texas' Courts & Legal System (pp. 1-164). Retrieved from <https://www.texasappleseed.org/sites/default/files/34-FosterCareExecutiveSumWeb.pdf>

⁷⁹ *Id.* at page 99.

⁸⁰ *Supra* note 77.

⁸¹ *Id.*

⁸² U.S. Department of Health and Human Services. (2023). Household/Family Size. Retrieved from <https://aspe.hhs.gov/sites/default/files/documents/1c92a9207f3ed5915ca020d58fe77696/detailed-guidelines-2023.pdf>

⁸³ Illinois Department of Commerce & Economic Opportunity. (2022). "Gov. Pritzker Signs Legislation to Fight Food Insecurity and Increase Availability of Healthy Options" [Press Release, June 9, 2022]. Retrieved from <https://dceo.illinois.gov/news/press-release.25024.html>

from an average of 9,000 weekly. In April 2020, food insecurity doubled in the U.S. population and tripled for Illinois households with kids.⁸⁴

Food insecurity has become such a concern that it prompted government action. In March 2021, Governor Pritzker created the Illinois Commission to End Hunger, a group that consists of stakeholders dedicated to ending food insecurity in the state.⁸⁵

→ Nearly 21,000 children reside in foster care in Illinois, and food insecurity is frequently the way they are introduced to DCFS.⁸⁶

State laws define neglect as the failure of a parent or caregiver to provide needed food, shelter, clothing, medical care, or supervision to the degree that a child's health, safety, and well-being are threatened.⁸⁷ DCFS itself recognizes that in many cases, food insecurity in families is a main source of what later gets labeled as neglect.⁸⁸

CAUSES:

Poverty + Food Insecurity are Foundational to Other Troubles

Food insecurity is closely linked to child maltreatment, and both problems can increase the risk that children will be investigated by DCFS.⁸⁹ Using Illinois statewide data from 2011-2018, a study published in 2022 examined the correlation between food insecurity and child maltreatment report (CMR) rates within zip codes throughout the state. Researchers found that community food insecurity is correlated with increased CMR rates, demonstrating that community food insecurity is a risk factor for parental neglect.⁹⁰ A second study showed a clear relationship between food insecurity and child adversity. Through interviews with 21 caregivers, researchers found that most participants who had experienced food insecurity had also experienced emotional and physical abuse and neglect. The study found that food insecurity is linked to adverse experiences, such as poor school performance and trouble maintaining employment. This suggests that families stressed about insufficient resources for food experience almost limitless negative consequences.⁹¹

Experienced leaders with extensive experience in foster care matters confirm that food insecurity is almost always a symptom of poverty. Kate Murphy is the Director of Child Protection Policy at Texas Care for Children, a statewide, nonprofit, nonpartisan multi-issue children's policy organization. Ms. Murphy leads her organization's work on child abuse and neglect prevention and its work on foster care reform. Ms. Murphy explained: "It's hard to meet basic needs of your children if you're unable to

⁸⁴ Illinois Department of Natural Resources. (2021). "Gov. Pritzker Announces Roadmap to Address Hunger and Poverty Across the State" [Press Release, March 11, 2021]. Retrieved from <https://www.illinois.gov/news/press-release.22925.html#:~:text=The%20new%20plan%2C%20titled%20%22From,promoting%20equitable%20access%20to%20food.>

⁸⁵ Kim, H., Wildeman, C., Jonson-Reid, M., & Drake, B. (2017). Lifetime Prevalence of Investigating Child Maltreatment Among US Children. *A Publication of the APHA 107*(2), 274-280. Retrieved from <https://doi.org/10.2105/ajph.2016.303545>

⁸⁶ *Supra* note 22.

⁸⁷ *Id.*

⁸⁸ Kim, H., Gundersen, C., & Windsor, L. (2022). Community Food Insecurity Predicts Child Maltreatment Report Rates Across Illinois Zip Codes, 2011-2018. *Annals Of Epidemiology 73*, 30-37. Retrieved from <https://pubmed.ncbi.nlm.nih.gov/35718099/>

⁸⁹ *Id.*

⁹⁰ *Id.*

⁹¹ Chilton, M., Knowles, M., Rabinowich, J., & Arnold, K. T. (2015). The Relationship Between Childhood Adversity and Food Insecurity: "It's Like A Bird Nesting In Your Head." *Public Health Nutrition, 18*(14), 2643-2653. Retrieved from <https://doi.org/10.1017/S1368980014003036>

afford them. Texas state law says that a child cannot be removed and placed in foster care and a parent's rights cannot be terminated due to poverty, but we definitely still see kids coming into care for reasons related to poverty, and food security is a key part of that."⁹² Sue Berkowitz, the Director of South Carolina Appleseed, which has devoted substantial resources to addressing problems with the South Carolina foster care system, shared Ms. Murphy's perspective. Ms. Berkowitz observed: "What I've learned over the years from doing this work is that poverty is often how the government suddenly engages in people's lives."⁹³

WHAT TO DO?

Promote Kin as Caregivers + Increase Resources for Families in Need

One way to help break the links between poverty, food insecurity, and foster care is to place more children with kinship caregivers. Decades of research repeatedly confirm that children who cannot remain with their parents thrive when raised by relatives and close family friends.⁹⁴ An attorney, Ms. Berkowitz, filed a class action lawsuit in 2015 against the state of South Carolina, claiming that the South Carolina Department of Social Services had been "neglecting the children that have been in their care for decades."⁹⁵ She stated that rather than provide families with resources earlier on that would alleviate poverty, the government steps in only when they believe the situation has gotten out of hand.⁹⁶

Utilize Kinship Supports

Ms. Berkowitz recognizes that there is nothing in South Carolina's code of laws that puts forth poverty as a reason for children to be removed from their families, but the impact of poverty can lead to neglect under the law, which eventually calls attention to the family. Ms. Berkowitz filed the lawsuit against South Carolina partly because its Department of Social Services was not prioritizing keeping children with their families. She mentioned that once kids were brought in, the South Carolina DSS wasn't doing anything at all with kinship care or placement.⁹⁷ Despite the benefits of placing children with kin, Ms. Berkowitz observed that in South Carolina, "There was an overreliance on group, home, and congregate care versus family care (including kinship care)."⁹⁸ She noted this was true even with the common understanding that "It's traumatic to be taken from your biological family"⁹⁹ Compared to children in non-kinship care, children being raised by relatives have more stability, higher levels of permanency, and better behavioral and mental health outcomes.¹⁰⁰

Ease Poverty Conditions

Another solution is to provide more resources for struggling families before poverty creates conditions that might be considered neglectful. Ms. Berkowitz offered: "The parents are already struggling because of not having the resources that

⁹² Murphy, K. (2023, July 7). [Interview by L. Rhie].

⁹³ Berkowitz, S. (2023, June 30). [Interview by L. Rhie].

⁹⁴ The Annie E. Casey Foundation. (2022). "Children in Kinship Care." KIDS COUNT Data Center. Retrieved from <https://datacenter.aecf.org/data/tables/10455-children-in-kinship-care#detailed/1/any/false/2479>

⁹⁵ *Supra* note 92.

⁹⁶ *Id.*

⁹⁷ *Id.*

⁹⁸ *Id.*

⁹⁹ *Id.*

¹⁰⁰ Generations United. (2018). Fact Sheet: Children Thrive in Grandfamilies. Retrieved from <https://www.gu.org/resources/children-thrive-in-grandfamilies/>

they need, but instead of offering those resources to try to keep families together, you're much more likely to see that child removed."¹⁰¹ Research indicates that children with grandparents who receive services and support – such as kinship navigator programs for financial and legal assistance, housing, health services, and food and nutrition benefits – experience better outcomes than those raised with grandparents not receiving the same assistance.¹⁰² The State of Texas recognized the benefits of both kinship care and increased resources in a recent legislative session where the state legislature passed a law that focused on how kinship families can connect to food stamps and other services so that children can stay with relatives.¹⁰³

Federal nutrition programs – including SNAP, WIC (the Special Supplemental Nutrition Assistance Program for Women, Infants, and Children), and the National School Lunch Program (NSLP) – help provide food resources on a broad scale. Community services like food banks and meal programs adjust to local needs. A myriad of national and local organizations focus on the many different aspects of addressing food insecurity, all of which can help keep children out of poverty in the first place. Nevertheless, those programs often fall short of keeping children from being swept into the foster care system.

One reason the existing food security organizations sometimes fall short is that barriers sometimes prevent families from fully taking advantage of their resources. These barriers include a lack of awareness that the programs exist, the stigma around program participation, the inadequacy of benefits that lessens the attractiveness of the programs, unnecessary administrative burdens, and various eligibility criteria that keep out low-income individuals.¹⁰⁴ Thus, something as simple as increasing awareness of the reduced cost or free food benefits can increase their value. Transportation is often cited as a significant obstacle to accessing food resources, and assistance programs established to address that broadly, like United Way's "Ride United," can support families in need of food and other essential items.¹⁰⁵

Perhaps the best solution is to provide families with concrete support. Both Ms. Berkowitz and Ms. Murphy emphasized that poverty is a key reason parents cannot care for their children and that food insecurity is a symptom of poverty.¹⁰⁶ Ms. Murphy pointed to Texas correcting its previously outdated poverty threshold, which prevented struggling families from getting help and indirectly pushed more kids into the foster system. Ms. Berkowitz highlighted South Carolina's Temporary Assistance for Needy Families (TANF) program, which is designed to help low-income families with children achieve economic self-sufficiency.¹⁰⁷

There are many resources to help support those struggling with food insecurity, but real barriers exist that can keep struggling families from accessing these resources. More effort should be put into removing these barriers so that struggling parents and kinship caregivers can access the resources that can help keep children from entering foster care in the first place.

¹⁰¹ *Supra* note 92.

¹⁰² *Supra* note 22.

¹⁰³ *Supra* note 90.

¹⁰⁴ Food Research and Action Center. (n.d.). Barriers That Prevent Low-Income People From Gaining Access to Food and Nutrition Programs. Retrieved from <https://www.hungercenter.org/wp-content/uploads/2011/07/Barriers-to-Food-and-Nutrition-Programs-FRAC.pdf>

¹⁰⁵ *Supra* note 3.

¹⁰⁶ *Supra* note 91.

¹⁰⁷ *Id.*

CHAPTER 4: Aging Out of Foster Care

FACT: Young adults that “age out” of the foster care often experience homelessness, are undereducated, and struggle with employment.

Young adults that age out of foster care do not transition into an easy life. Often their challenges become much more substantial. Aging out occurs when a person reaches 18 and becomes ineligible for foster care services.¹⁰⁸ The Federal Fostering Connections to Success and Increasing Adoptions Act of 2008 allows states to extend benefits after turning 18 until the age of 21, which effectively extends the date that young adults age out of foster care. The available services under the Federal Fostering Connections Act include counseling or advocacy, family planning, daycare for the children of unmarried youth, and “maintenance payments or foster family home, relative home, or residential care payment.”¹⁰⁹

CAUSES: States’ Policies + The Lack of a Safety Net

States can make the choice to extend these services in their jurisdiction until the young adult reaches the age of 19, 20, or 21. Illinois has extended them for young adults until they reach the age of 21.¹¹⁰

→ Studies consistently show that adults who spent time in foster care have a high risk of being homeless at least part of the time after they age out. One study reported that “between 11% and 37% of youth aging out experience homelessness one or more times in the years following their transition, and an additional 25–50% experience housing instability.”¹¹¹

Research also suggests that aged-out foster care youth struggle more with self-sufficiency, including educational or vocational success, as compared to adults in the general population that did not experience foster care.

→ One study found that only 7.2% of the foster care population went on to obtain their bachelor's degree, whereas 24.4% of the general population of comparable age range earned their bachelor's degree.¹¹² Further, just over 3% of people with histories in the foster care system received a vocational certificate or license.¹¹³

These educational disparities also subsequently affect employment. According to Professor Courtney, “[a] youth with some

¹⁰⁸ Courtney, M. (2023, July 18). [Interview by P. Georgiou].

¹⁰⁹ *Supra* note 22.

¹¹⁰ Children and Family Services Act, 20 ILCS 505/ (2018).

¹¹¹ Shah, M., et al. (2016). Predicting Homelessness among Emerging Adults Aging Out of Foster Care. *American Journal of Community Psychology*, 60(1-2), 33–43. Retrieved from <https://doi.org/10.1002/ajcp.12098>

¹¹² Gypen, L., Et Al. (2017). Outcomes of Children Who Grew Up in Foster Care: Systematic-Review. *Children And Youth Services Review* 76, 74–83. Retrieved from <https://doi.org/10.1016/J.Childyouth.2017.02.03>

¹¹³ *Id.*

college attendance or an associate's degree is nearly four times as likely to be employed."¹¹⁴ This makes sense. Foster care individuals who aged out are less likely to receive their degrees. And without the benefits of the education that the degree represents, individuals who experienced foster care are also more likely to experience employment instability.

WHAT TO DO?

More Frequent Contact + Better Supports for Young Adults

Illinois allows people aging out of the foster care system to retain access to services until age 21. Under the current system, young adults in the DCFS system visit with their social worker monthly for well-being check-ins.¹¹⁵ In contrast, young adults outside the foster care system likely communicate with their parents or guardians frequently during each month.

To improve outcomes for youth aging out of foster care, more frequent contact with adults who can help young adults transition out of the system and more support tailored to the needs of individual young people is necessary.

Professor Courtney offered two ways to help young adults better prepare for aging out while still in the foster care system. One solution to DCFS's minimal engagement is offered by LifeSet, a community-based program that regularly meets with young adults in the foster care system, connecting them to financial, housing, and educational resources. According to its website, LifeSet workers' consistent contact with young adults improved the mental health of young adults transitioning from foster care by 13%, increased employment by 7%, and reduced homelessness by 22%.¹¹⁶ The one-on-one engagement model with a professional who specializes in young adult transitions bridges the gap between the government services offered and the productive implementation of those resources. LifeSet exists in Illinois and increasing support for it or modeling DCFS services after its system, with an increased frequency of visits, would better support the young adult population in DCFS.

To supplement increased visits with a caring adult, Professor Courtney also highlighted the need for young adult-focused programs in addition to programs aimed at children. He emphasized: "We don't really have much policy focused on young adults. We don't have a focused mental health policy for young adults. We have really weak job training and maintenance programs."¹¹⁷ According to Professor Courtney, mental health resources for young adults remain limited despite the significant number of young people emerging from the system with behavioral health issues.¹¹⁸ The existing options available are either programs geared toward children or adults. The social workers themselves also have less experience with young adults. Social workers often enter the foster care field to interact with and help children, not young adults.¹¹⁹ Therefore, in addition to increased interaction and check-ins, social workers should also receive training in assisting young adults to address their unique situations.

¹¹⁴ Hook, J. L. & Courtney, M. E. (2011). Employment Outcomes of Former Foster Youth as Young Adults: The Importance of Human, Personal, and Social Capital. *Children and Youth Services Review*, 33(10), 1855–1865. Retrieved from <https://doi.org/10.1016/j.childyouth.2011.05.004>

¹¹⁵ *Supra* note 107.

¹¹⁶ LifeSet. (n.d.). LifeSet: The Gift of a Good Start. Youth Villages. Retrieved from <https://youthvillages.org/services/lifaset/>

¹¹⁷ *Supra* note 107.

¹¹⁸ *Id.*

¹¹⁹ *Id.*

CONCLUSION

Our research has led us to conclude that Illinois' DCFS system is, at best, dysfunctional. Indeed, FJLOC believes it is accurate to say that DCFS, like other foster care systems nationwide, is broken. It doesn't have to be this way. Leaders in our state, including the Governor, our two Senators, our Representatives, state representatives, state senators, mayors, religious leaders, business executives, health care executives, leaders in academia, doctors, and lawyers, can all help Illinois act. Illinois citizens throughout the state can object to our state-funded system too often failing and, in fact, often doing harm to the children and their families it is supposed to serve and help.

A Call to Action

Our report shows that these families do not have the time, money, personal energy, or other resources to advocate for themselves. They often just get by. We can and should do more to help them. We ask that you consider this report a call to action to do just that.

For the Chicago Legal Community

Appleseed Centers throughout the Appleseed Network have taken different approaches to address failures in the foster care systems in their jurisdictions. As our report shows, we interviewed attorneys at some of these centers to get a better understanding of how foster care systems function - and too often fail to function well. Appleseed Centers have instituted litigation, advocated for legislative changes, and performed different sorts of policy work in their respective jurisdictions.

We want to highlight one approach that we, as students who plan to attend law school, find especially attractive. Texas Appleseed's method for confronting problems with Texas foster care resulted in vast improvements to the state's courts that handle foster care matters and the legal process for such matters. It offers a model we can easily replicate in Illinois. Law firms in Texas contributed meaningful time and immense talent to work with Texas Appleseed in conducting an extensive review of the foster care legal system and the courts operating in it. Their work included interviews and data research. It was designed to identify strengths and weaknesses in their system. It included reviewing policies and procedures and, from this work, developing recommendations. Texas Appleseed supported this work and helped coordinate it. The work of the law firms in Texas was the critical force that made their legal system for foster care better for Texas children and their families.

We call on Chicago law firms and the larger legal community to do in Illinois what law firms did in Texas.

We know from our work on this report that Chicago Appleseed and the Chicago Council of Lawyers will collaborate with you and support you. We ask Chicago law firms and the larger Chicago legal community to act so that our state provides better care and support to perhaps our most vulnerable citizens, who cannot advocate for themselves.

For Illinois Leaders + Citizens

We have highlighted in this report the laws and policies that cause children of color to be placed disproportionately into the DCFS system and to suffer disproportionately once in the system. We believe this long-standing problem of children of color being the subjects of the system to such a remarkable degree needs to be addressed. Indeed, we consider that the system's recurring injuries on children of color, who are not much younger than us, need urgent attention and action. FJLOC stands with

other prominent organizations such as ACLU Illinois and the New York Bar Association and agrees that Congress needs to remove the neglect and mandated reporting clauses from CAPTA.

FJLOC also supports implementing and changing policies that would help mitigate the effects chronic social, economic, and criminal disparities embedded in the DCFS system have on children and families of color.

In this regard, DCFS should prioritize kinship placements when family reunification is not viable. Illinois should remove restrictions and constraints on prospective caretakers, and Illinois leaders should advocate for the federal government to do the same. Congressional repeal of the 1997 Adoption and Safe Families Act, which disproportionately affects communities of color, would be a good first step. We believe the time has come to cease being silent, acting as if everything is okay. Lawyers and advocates must shed light on the issues plaguing the foster care system. Only through increased visibility and committed action can we move forward in rectifying the prevailing disparities in the foster care system and ensure a just and equitable future for Illinois children.

We believe DCFS needs to change its policies to recognize the benefits of family reunification after a child has been separated from their family, and courts need to prioritize timely, productive hearings. The ACLU of Illinois has proposed that DCFS create services to help reunify families as soon as possible upon a child's removal from their family. FJLOC supports this proposal. Illinois and DCFS should promote adequate services to address the needs of the families that will help the child avoid any unnecessary trauma caused by extended time in DCFS care. Illinois must prioritize redirecting funds to support DCFS workers attempting to reunify families and bolster the resources offered to families. These changes in funding would prevent delays in DCFS proceedings by assisting social workers with their caseload, helping judges avoid granting continuances, and ensuring parents have access to required services for reunification. Courts can also implement changes by implementing careful docketing and more frequent hearings.

We support changes to the system that helps judges allot an appropriate amount of time to hear cases, provide stakeholders with adequate notice of hearings, and offer more opportunities to check in.

Reform must also continue for people that age out of the foster care system. Illinois is among the more progressive states in one respect in that it allows young people to benefit from DCFS services until they turn 21, but further resources and support are needed to help them transition into independent adulthood. Illinois lawmakers should prioritize investment in programs such as LifeSet, which provide young adults with specialists that are attuned to the challenges young adults have with housing, mental health, education, and employment. Moreover, Illinois should provide more resources to directly address the needs of young adults in foster care. Foster care is primarily a child-focused system, but it also includes young adults, who are often underserved in the current system. For example, mental health services in the system highlight the experiences of children, not young adults, who need help becoming independent, starting secondary education, or entering the workforce. By expanding the resources targeted specifically at young adults, DCFS workers, and other resource specialists can provide more thorough support for everyone involved in the system.

Getting Started

FJLOC offers a specific first step Illinois can take to improve the existing DCFS system. The Collaboration for Justice – a link between the Chicago Council of Lawyers and the Chicago Appleseed Center for Fair Courts - supported the ACLU of Illinois and their coalition partners in advancing Senate Bill SB1478, Counsel for Kids in DCFS Care, this last legislative session. The bill

did not pass this session, but FJLOC supports the Collaboration for Justice's continuing commitment to seeing through a new bill having the same purpose, which is to establish that youth in certain foster care proceedings have a right to their own counsel.

SB1478 would have established a right to client-directed counsel for adolescents and young adults in Illinois legal proceedings whenever the court is deciding whether such adolescents and young adults are neglected or abused. The bill included the creation of the "Due Process for Youth Oversight Commission" to oversee the implementation of a youth's statutory right to counsel in these abuse and neglect court proceedings. The legislation had the support of local organizations: the ACLU of Illinois, National Association of Social Workers (Illinois Chapter), Ascend Justice, the Illinois Coalition Against Domestic Violence, and the Chicago Coalition for the Homeless, as well as national groups: Foster Care Alumni of America, Counsel for Kids, National Association of Counsel for Children, and One Hope United. Unfortunately, it faced opposition from Cook County's Office of the Public Guardian, as well as local and state bar groups.¹²⁰ As young adults who recently were of age to be in these proceedings, we strongly disagree with the notion that adolescents and young adults should not receive the benefit of their own counsel in these legal proceedings whose very purpose is to decide what is in the best interests of such individuals.

We consider this right to a lawyer essential to ensuring equal justice for youth who are involved in DCFS. Indeed, Illinois is one of only 7 states in the entire nation that does not guarantee counsel to any youth involved in foster care proceedings.¹²¹ It is time for that to change.

The factual record and the existing data confirm that establishing this right to counsel will benefit the children and families involved in the foster care system. And it will save Illinois money. Children represented by specially trained legal counsel are 40% more likely to leave the foster care system within their first six months, they experience 45% higher reunification rate with their biological parents, they have a 30% reduction in the rate of placement moves, and they have a 65% reduction in the rate of unnecessary school moves.¹²² Providing legal representation to youth in foster care proceedings improves case outcomes and reduces foster care costs. This right to counsel is a nationally-recognized best practice, as evidenced by the 43 states who have established this right in some manner for youth involved in foster care. FJLOC believes Illinois can get started on improving the foster care system by following this best practice and enacting a law that gives youth the right to representation in foster care proceedings that make fundamental decisions about their lives.

We can do this. Let's start taking steps to help the children and their families who are subject to the DCFS system but don't have the resources to improve this system which too often fails them.

¹²⁰ Monkus, E. (2023). "Support for SB 1478: Right to Counsel for Youth in Foster Care." Chicago Appleseed Center for Fair Courts. Retrieved from <https://www.chicagoappleseed.org/2023/03/02/support-for-sb-1478-hearing/>

¹²¹ ACLU of Illinois. (2023). "SB 1478: Right to Counsel for DCFS Youth." Retrieved from <https://www.aclu-il.org/en/legislation/sb-1478-right-counsel-dcfs-youth#:~:text=Illinois%20is%20currently%20just%20one>

¹²² These statistics are provided by the ACLU of Illinois and the Illinois Chapter of the National Association of Social Workers (NASW).

FUTURE JUSTICE LAWYERS

CHICAGO APPLESEED & CHICAGO COUNCIL OF LAWYERS