

**DISENTANGLING POVERTY AND
NEGLECT IN THE CHILD
WELFARE SYSTEM:**

In New Mexico and Beyond

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Contact: Kathleen Sabo, kathleensabocctf@gmail.com

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I. Background

We have to be honest that a large part of the problem is the way we see and judge families that make contact with the system. We see poor and vulnerable families as the 'other.' The role that poverty plays in child welfare decision-making is a topic that has yet to be meaningfully confronted and addressed. Poverty is a risk factor for neglect, but poverty does not equate to neglect. The presence of poverty alone does not mean a child is unsafe, unloved, or that a parent lacks the capacity to care for his or her child.... We must be resoundingly clear that a child should never be removed from his or her family due to poverty alone. We must also be very clear that poverty is disproportionately present in communities of color and that this fact carries direct implications for child welfare.¹

The following statistics provide perspective on poverty, detailing how economic insecurity is widespread, but that families move in and out of poverty²:

- Almost 50% of American families with young children are at risk of poverty before their child enters kindergarten
- More than 50% of all Americans will spend a year in poverty (by age 65)

Experts note that the volatility and turbulence created by entering and leaving poverty may create serious stress for parents and impact parenting. Almost 50% of those who become poor are out of poverty a year later, but more than 50% of those who previously were in poverty will return to poverty within 5 years.³

As of 2021, the Annie E. Casey Foundation's 2023 Kids COUNT data book listed New Mexico's child poverty rate at 24%.⁴ According to the U.S. Census Bureau, the national child poverty rate was 16.9% but there was considerable variation among states, ranging from 8.1% to 27.7%.⁵

For comparison, below is a figure from the U.S. Census Bureau, depicting the child poverty rate by state in 2021:

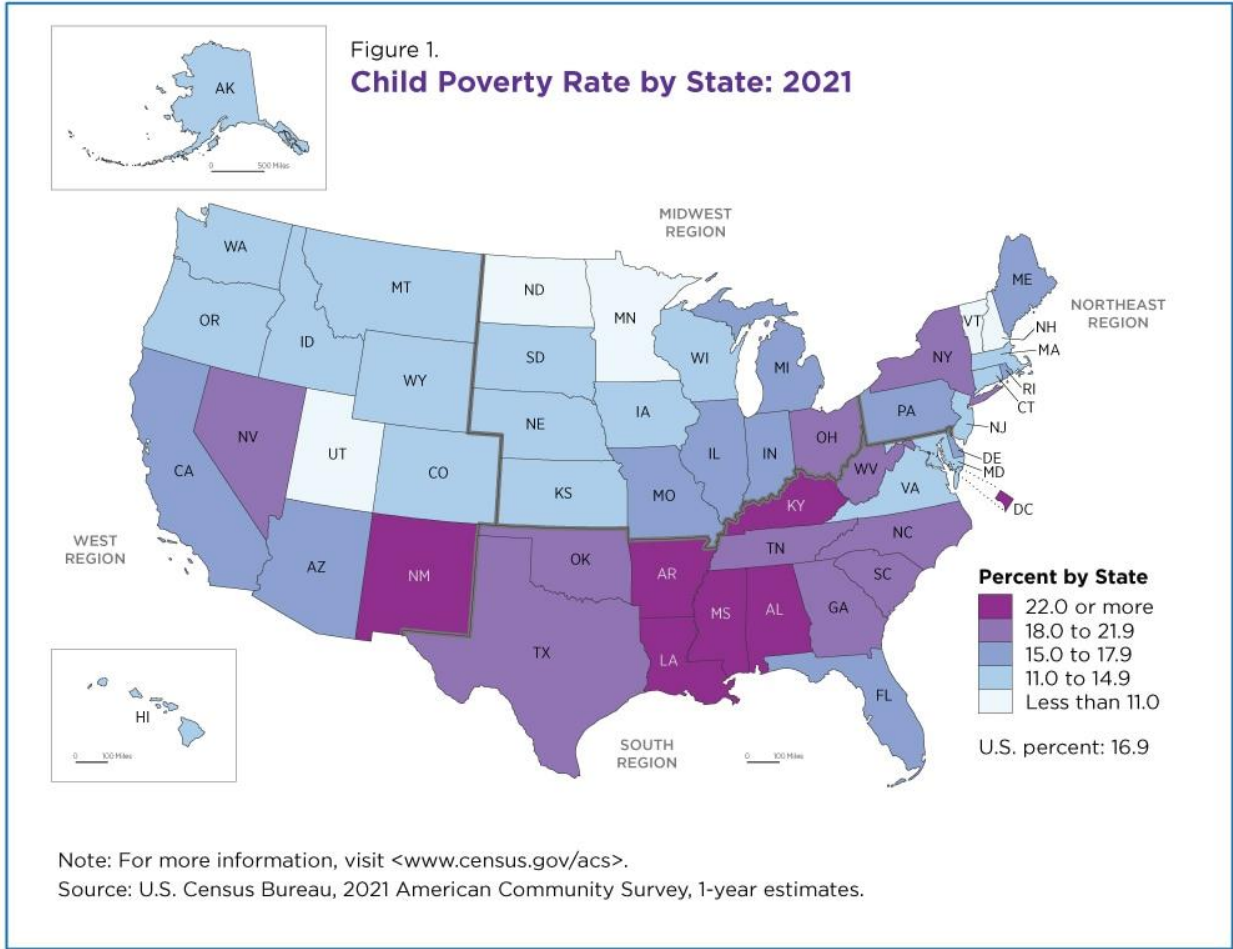
¹ Dr. Jerry Milner, then associate commissioner of the U.S. Children's Bureau and David Kelly, special assistant to the associate commissioner, December 2019 post in [The Children's Bureau Express](#).

² <https://www.chapinhall.org/wp-content/uploads/Economic-Supports-deck.pdf>, p. 29, citing Drake, 2014; Cellini, 2008; Mistry, 2002; and Han, 2021). NOTE: when referring to sources cited in the Chapin Hall presentation, the abbreviated citation used there will be used here – full citations can be found in the Chapin Hall presentation document cited in this footnote and beyond.

³ Id

⁴ <https://assets.aecf.org/m/resourcedoc/aecf-2023kidscountdatabook-2023.pdf>

⁵ <https://www.census.gov/library/stories/2022/10/poverty-rate-varies-by-age-groups.html>



Amidst a national movement to disentangle poverty and neglect, this paper will examine efforts undertaken, or not, by New Mexico and other states, in support of that movement. This paper will look at statutes, rules and regulations, case law, plans for reform and ongoing efforts to find solutions through statutory changes, training, multiple agency coordination and collaboration, multigenerational involvement and increased and/or redirected resources.

With a strong focus on improving outcomes for children in the child welfare system, New Mexico – including the governor, legislators, state agencies, advocates and those with lived experience – could be poised to move forward in enacting reforms that will serve children and families in poverty and in the child welfare system.

II. National Movement

In 2020, a broad coalition of organizations began working together to reform “child welfare systems” into “child and family wellbeing systems.”⁶ This was a different approach to addressing neglect – an approach that offers support to families in need rather than penalize them.⁷

A frequent observation or complaint about the child welfare system is that while it might be designed to protect children, the hunt for child neglect under the current system often polices families for their poverty. Thus, instead of providing the resources families need to escape poverty, the child welfare system subjects them to intense surveillance strategies and the threat of family separation.⁸

It has been noted that, in some instances, when a poor family seeks out the support of social welfare agencies to alleviate their poverty, in some states that request may bring the wrath of the child welfare complex because these workers are mandated reporters. Therefore, in those states, whether families try to provide their children’s basic needs with the assistance of government programs or fail to do so, they will be investigated by child welfare agencies.⁹

According to a November 2022 Human Rights Watch (HRW) report, the most common reason why child welfare agencies become involved with families is neglect, then parental substance use. The HRW reports that most child removals by the U.S. child welfare system do not involve physical abuse, and that only 13 percent of all child removals in 2019 occurred due to physical abuse. HRW notes that, “while definitions can vary from one state to the next, neglect is generally defined as a parent or caregiver failing to provide adequate food, clothing, hygiene, nutrition, shelter, medical care, or supervision in ways that threaten the well-being of the child. This definition is inextricably linked to poverty.”¹⁰

Similarly, Boston University’s Center for Innovation in Social Sciences (CISS), reported that, nationwide, authorities receive reports on more than 3 million of the nation’s 74 million children under 18 every year for suspected child abuse or neglect, with the government determining about 620,000 to be victims. CISS reports that child neglect accounts for 76 percent of these victims, far more prevalent than child physical or sexual abuse. According to CISS, “Its prevalence is

⁶ <https://aphsa.org/APHSABlog/mhhspp/poverty-and-neglect-are-not-the-same.aspx>

⁷ Id

⁸ https://www.bostonglobe.com/2023/03/20/opinion/i-am-survivor-child-welfare-system-family-surveillance-is-not-solution-poverty/?s_campaign=bostonglobe%3Asocialflow%3Atwitter

⁹ Id

¹⁰ <https://www.hrw.org/report/2022/11/17/if-i-wasnt-poor-i-wouldnt-be-unfit/family-separation-crisis-us-child-welfare>

often a direct reflection of poverty in cases in which parents cannot afford to maintain a home, buy food, or pay for essential utilities like power and water.”¹¹

In their November 2022 report, HRW revealed that many people they had interviewed described how circumstances related to poverty, including inadequate resources and housing instability, were used to support a claim of parental unfitness—either to claim neglect allegations or to justify family separation or termination of parental rights.¹²

Additionally, CISS notes that the burdens of chronic poverty may exacerbate other parental risk factors, “like mental health conditions, substance use, domestic violence, and criminal justice involvement—all of which can contribute to the maltreatment of children in complex ways.”¹³

CISS further notes that about one in five US families with children below the poverty line receive benefits through Temporary Assistance for Needy Families, the main social welfare program designed to alleviate poverty in that demographic, with spending on this program having declined by at least 40 percent since its establishment in 1996. TANF cash benefits are determined solely by the states. According to CISS, the benefits range widely from state to state: as CISS reported in June of 2022, the maximum monthly amount of support for a family of three runs as low as \$215 in Alabama and as high as \$1,098 in New Hampshire.¹⁴ Fifteen states spend less than 10% of TANF funds on basic assistance to help families.¹⁵

Research from Chapin Hall, at the University of Chicago, provides the following evidence about the connection between family economic stability and child maltreatment prevention, and details certain responsive state action:

- *In states that imposed total benefit loss as the most severe sanction for not meeting TANF work requirements, from observations from 2004 to 2015, there was a 23.3% increase in substantiated neglect reports, 13.4% increase in foster care entries due to neglect, and a 12.7% increase in total foster care entries.¹⁶ (Nearly half of the states take away TANF benefits from the entire family as the initial punishment if a parent does not meet work requirements.¹⁷)*

¹¹ <https://www.bu.edu/ciss/2022/06/15/pov-us-child-welfare-system-is-falling-short-because-of-persistent-child-poverty/>

¹² <https://www.hrw.org/report/2022/11/17/if-i-wasnt-poor-i-wouldnt-be-unfit/family-separation-crisis-us-child-welfare>

¹³ <https://www.bu.edu/ciss/2022/06/15/pov-us-child-welfare-system-is-falling-short-because-of-persistent-child-poverty/>

¹⁴ Id

¹⁵ <https://www.chapinhall.org/wp-content/uploads/Economic-Supports-deck.pdf>, p. 105, citing <https://www.cbpp.org/research/income-security/state-fact-sheets-how-states-spend-funds-under-the-tanf-block-grant>. As of 2020, only two states had a maximum benefit amount greater than 50% of the federal poverty line. Chapin Hall reports that although several states increased cash benefit amounts in 2021, benefits in most states remained at their lowest value since the program was created in 1996. Ibid, p. 108.

¹⁶ Ibid, p. 50, citing Ginther, 2017

¹⁷ Ibid, p. 51, citing Center on Budget and Policy Priorities (CBPP), 2021

- *Oregon, effective 2023, eliminates full-family sanctions for non-compliance with TANF work requirements and assigns 75% of monthly cash grant to dependent children and prevents sanctions from being applied to that amount.*¹⁸
- *States that implemented TANF time limits of less than 5 years saw an increase, from 2004 to 2015, of 34.4% in substantiated maltreatment reports and 37.3% in substantiated neglect reports.*¹⁹
 - *Rhode Island extended the total amount of time that TANF participants can receive cash assistance from 48 to 60 months (federal maximum lifetime time limit)*²⁰
- *State policies that limit access to TANF benefits - including reducing the maximum allowable cash benefit amount, implementing stricter time limits on receipt of benefits and lower TANF-to-Poverty Ratio (TPR) – measured from 2001 to 2010, are associated with increases in mothers' self-reports of physical child maltreatment.*²¹
- *From 1985 to 2000, reductions in AFDC/TANF cash benefits levels were a main predictor of the dramatic growth in state-level foster care caseloads during this period. A 10% reduction in the average monthly AFDC/TANF cash benefit amount for a family of 3 was associated with a 2.3% increase in the foster care caseload rate.*²²
- *Reductions in state public benefit levels (AFDC/TANF plus the value of food stamps) are associated with higher numbers of children in foster care, while lifetime limits on TANF benefits and sanctions for noncompliance are associated with higher levels of substantiated maltreatment.*²³
- *Children in foster care take longer to reunify with their families when: their families have lower average monthly incomes post placement (every \$100 increase in a mother's post-placement income increases her child's speed of reunification by 6%); their families lose a significant amount of cash assistance post placement; their families must pay the state for the costs of foster care.*²⁴
 - *In Oklahoma, parents receiving TANF benefits when their children are placed into foster care continue to be eligible for monthly cash assistance for up to 4 months if they are actively working to reunify.*²⁵
 - *In Washington State, DCYF will no longer refer parents to child support collection after a child is placed into foster care.*²⁶

¹⁸ <http://www.dhs.state.or.us/policy/selfsufficiency/publications/pt/pt-2022/ss-pt-22-020.pdf>

¹⁹ <https://www.chapinhall.org/wp-content/uploads/Economic-Supports-deck.pdf>, p. 53, citing Ginther, 2017

²⁰ <https://webserver.rilegislature.gov/BillText22/HouseText22/Article-013-SUB-A-as-amended.pdf>

²¹ <https://www.chapinhall.org/wp-content/uploads/Economic-Supports-deck.pdf>, p. 56, citing Spencer, 2021. A \$100 increase in TANF cash benefits is associated with reductions in maternal self-reported physical child maltreatment. Ibid, p. 107, citing Spencer 2021.

²² Ibid, p. 57, citing Swann, 2006. Conversely, a 10% increase in state public benefit levels (AFDC/TANF plus the value of food stamps for a family of four) is predicted to reduce foster care placements by 8%. Ibid, p. 104, citing Paxson, 2003.

²³ Ibid, p. 58, citing Paxson, 2002; Paxson 2003

²⁴ Ibid, p. 24, citing Wells, 2006; Kang, 2016; Cancian, 2017; Howard, 2019

²⁵ <https://oklahoma.gov/okdhs/library/policy/current/oac-340/chapter-75/subchapter-6/parts-5/reunification-services-for-temporary-assistance-for-needy-families-tanf-recipients.html>

²⁶ <https://content.govdelivery.com/accounts/WADEL/bulletins/32abf56#:~:text=Olympia%2C%20WA%20E2%80%93%20Effective%20Sept.,is%20placed%20into%20foster%20care.>

- *California requires child welfare agencies to presume that child support collection is likely to pose a barrier to family reunification.*²⁷

The American Public Human Services Association (APHSA) noted that

Conversely, a less restricted approach to economic supports saw the following gains:

- *A \$1,000 increase in income through the Earned Income Tax Credit is associated with an 8-10% reduction in foster care entry rates.*
- *For every \$1 increase in the minimum wage, there was a 9.6% reduction in neglect reports, primarily for children 12 and under.*
- *States with expanded Medicaid, compared to those without, experienced a decrease in reported neglect. Specifically, there were 422 fewer cases per 100,000 children younger than age 6 for each study year.*
- *In one study, families involved in supportive housing programs experienced a 9% child removal rate. Families in a control group with comparable demographics experienced a 40% removal rate.*
- *Participation in the Special Supplemental Nutrition Program for Women Infants and Children (WIC) is associated with a lower risk of abuse and neglect reports.*²⁸

A study of low-income families with recently closed Child Protective Services (CPS)²⁹ investigations showed that the ability to access sufficient public benefits when negative earnings shocks occur buffers against the risk of child welfare involvement, particularly for families with children ages 0-4. For these families, the buffer was associated with a 12% decrease in risk for CPS involvement and a 50% decrease in risk for physical abuse investigation.³⁰

CISS also notes the following:

The Biden administration also expanded the child tax credit to give most US families \$3,000 for each child from age 6 to 17, and \$3,600 for those under 6. Families obtained half the money in six monthly payments from July to December 2021, with the rest of the money delivered as a lump sum at tax time in 2022.

There are many signs that the child tax credit expansion sharply and quickly reduced child poverty in 2021. But Congress let the program lapse, even as a surge in inflation has taken an especially large toll on the lowest-income Americans. An estimated 17 percent of children in the United States lived in poverty in February 2022, according to Columbia University researchers. Millions of the lowest-income American parents are no

²⁷ https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=202120220AB1686

²⁸ <https://aphsa.org/APHSABlog/mhhspp/poverty-and-neglect-are-not-the-same.aspx>

²⁹ Throughout this paper, the terms “Child Protective Services” and “CPS” are used to denote, generally, those agencies responsible for overseeing the protection of children in each state. In practice, a state agency may have a different name, such as in New Mexico, where the agency is called the “Protective Services Division.”

³⁰ <https://www.chapinhall.org/wp-content/uploads/Economic-Supports-deck.pdf>, p. 21, citing Cai, 2021

longer eligible to get all or even any of the child tax credit. That was also the case before this brief expansion, because of the way it was originally structured.

Restoring a monthly payment approach that benefits all families in poverty, as the Biden administration proposes, would improve the circumstances of most of the families whose children are in foster care or otherwise receiving child welfare services.³¹

The 2023 brief by Chapin Hall, at the University of Chicago, entitled, “Economic and Concrete Supports are Key Ingredients in Programs Designed to Prevent Child Welfare Involvement,”³² discusses the current evidence for the value of such supports as a child welfare prevention service.

Among other things, Chapin Hall’s brief found:

- *Numerous studies show the detrimental effects of economic hardship and insecurity on family well-being and child welfare involvement. Conversely, and not surprisingly, multiple studies also demonstrate the value of programs that provide economic and concrete supports, be it through direct cash transfers, housing supports, and/or tax credits.*
- *The Family First Prevention Services Act Title IV-E Evidence-based Clearinghouse has already approved programs that include economic and concrete supports as a component or key ingredient. This pattern of intervention development suggests that economic and concrete supports may be a powerful active ingredient or evidence-based kernel in the effectiveness of these programs.*
- *The clear relationship between economic factors and child welfare involvement suggests increased collaboration across child- and family-serving systems (e.g., public health, early childhood, food and housing assistance programs) is needed to make a large impact on preventing child maltreatment and family child welfare involvement.³³*

Chapin Hall interpreted their findings to support the following actions:

- *Prioritize prevention services that provide families with economic and concrete supports when designing and implementing Family First prevention plans.*
- *Include economic and concrete supports as an independent and portable evidence-based service on the Title IV-E Clearinghouse.*
- *Continue building the research base that isolates the effects of economic and concrete supports within prevention programs on mental health, substance use, parenting, and child welfare involvement.*

³¹ <https://www.bu.edu/ciss/2022/06/15/pov-us-child-welfare-system-is-falling-short-because-of-persistent-child-poverty/>

³² https://www.chapinhall.org/wp-content/uploads/ECS-and-FFPSA-Brief_FINAL-4.13.23.pdf

³³ <https://www.chapinhall.org/research/economic-and-concrete-supports-are-key-ingredients-in-programs-designed-to-prevent/>

- *Create programs that center family voice, are highly relational, and involve building community capacity and resources through increased communication and integration across family-serving systems.*³⁴

CCIS also points out another helpful approach: boosting federal funding for child care, which two former Treasury secretaries, Jacob Lew and Robert Rubin, have proposed.³⁵

CCIS notes that

*Parents who are dealing with the child welfare system often need more money than they are getting from low-wage jobs, TANF (Temporary Assistance for Needy Families), and other government benefits. What's more, many have stressful relationships with friends and relatives whose support in the form of child care and other resources can be inconsistent.*³⁶

States and localities have tried new strategies. But, in the words of CCIS, “until the government significantly steps up benefits for low-income families with children, we believe it’s likely that the prevalence of child abuse and neglect will remain unacceptably high.”³⁷

As was reported earlier, almost 50% of those who become poor are out of poverty a year later. But, more than 50% of those who previously left poverty will return to poverty within 5 years. Experts note that “the volatility and turbulence created by entering and leaving poverty may create serious stress for parents and impact parenting.”³⁸

Chapin Hall found an increased risk for child protective services investigations, for low-income families at risk for child welfare involvement who have experienced income instability in the past year (including both earnings and public benefits). They noted that these findings suggest a unique relationship between income instability and child welfare involvement.³⁹

In their March 2023 presentation, “Child and Family Well-being System: Economic & Concrete Supports as a Core Component,”⁴⁰ Chapin Hall reported the following:

Analysis simulating the effects of increased household income under 3 anti-poverty policy packages found they could reduce CPS investigations by 11 to 20% annually (386,000 to 669,000 fewer children investigated per year)

³⁴ <https://www.chapinhall.org/research/economic-and-concrete-supports-are-key-ingredients-in-programs-designed-to-prevent/>

³⁵ <https://www.nytimes.com/2022/05/02/opinion/child-tax-credit.html>

³⁶ <https://www.bu.edu/ciss/2022/06/15/pov-us-child-welfare-system-is-falling-short-because-of-persistent-child-poverty/>

³⁷ *Id*

³⁸ <https://www.chapinhall.org/wp-content/uploads/Economic-Supports-deck.pdf> , p. 29.

³⁹ *Ibid*, p. 31, citing Monahan, 2020

⁴⁰ *Ibid*, p. 35

- *Reductions were particularly large for Black and Latinx children & those living with single parents*
- *Analysis suggests implementation would substantially reduce racial disproportionality in CPS involvement:*
 - *19 to 29% reduction in investigations for Black children*
 - *13 to 24% reduction in investigations for Latinx children*
 - *7 to 13% reduction in investigations for white children*

Chapin Hall listed the 3 anti-poverty policy packages as follows:

National Academy of Sciences Consensus Report (2019)

A Roadmap to Reducing Child Poverty

- Anti-poverty package 2: expansion of EITC & Child and Dependent Care Tax Credit (CDCTC) + universal monthly child allowance
- Anti-poverty package 3: expansion of EITC, CDCTC, Housing Choice Voucher Program & SNAP
- Anti-poverty package 4: expansion of EITC & CDCTC, increase in federal minimum wage (to \$10.25/hr) + monthly child allowance

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In his detailed 2019 law review article, *“Punishing Families for Being Poor: How Child Protection Interventions Threaten the Right to Parent While Impoverished,”* law professor David Pimentel writes

Foster care, along with orphanages, group homes, and other predecessors, were originally used as a “solution” to poverty. When this practice became distasteful, child removal advocates changed the focus to character deficiencies in the parents, which were the supposed root cause of needed food, clothing, shelter, medical care, or supervision to the degree that the child’s health, safety, and well-being are threatened with their poverty. In the 1980s, that theory was replaced by the Medical Model of Child Abuse, which focused on supposed psychological deficiencies of the parents. Perhaps today the psychological deficiencies have been replaced by other alleged parenting problems; however, the underlying connection between neglect and poverty remains. Poverty is evidence of some deficiency, and that deficiency constitutes some form of neglect that justifies government intervention and removal of the child. While the intervening

⁴¹ Id, citing <https://nap.nationalacademies.org/read/25246/chapter/1#iv>

justification may change, the connection between neglect and poverty remains and can be traced all the way back to the beginning of child neglect law.⁴²

Pimentel acknowledges that there are certain situations where intervention, including separating children from their parents, is warranted. These could include when children are victims of physical or sexual abuse. But, he notes, under oft-times vaguely drafted statutes, authorities have broad discretion in deciding when to make that call.⁴³

Pimentel writes

The reasons poor families are singled out for this type of victimization are complex and overlapping, but they start with the conflation of poverty and neglect. Poverty places children at risk, and so does neglect; if the statute defines neglect as exposing a child to risk, then every impecunious parent is a neglectful parent. That problem is compounded by prejudices, biases in detection and reporting, and classist and ethnocentric judgments of the parenting of others.

At the same time, the poor are, by definition, insufficiently resourced to defend themselves or to resist such intrusions. Their rights and their family integrity are casualties of the process, and everyone suffers, including the children whose welfare motivated the intrusions in the first place. Indeed, the ultimate consequence may be a denial of the poor's right to parent at all.⁴⁴

Pimentel reminds the reader that the United States and its states devote “staggering resources” to child protection, “including paying for the systems that separate poor children from their parents. Given the terrible outcomes these systems generate, including but not limited to family separation and foster care, we are overdue to reconsider our approach to the problem.”⁴⁵

Finally, in conclusion, he writes

If one of the primary causes of child suffering is poverty, then it makes little sense to devote our resources to punishing parents for being poor and destroying the already at-risk families. Indeed, the trauma of the separation from their parents typically serves only to compound the harm to the children. If our primary concern is child protection and child welfare, then the focus should be on alleviating the poverty. Public monies would be far better spent on easing the impact of poverty.

Indeed, a society that values children's well-being should work assiduously to preserve and strengthen family relationships. If poverty is straining those families, then the child-welfare priority should be to ease the impact of poverty on that family, and

⁴² <https://digitalcommons.law.ou.edu/cgi/viewcontent.cgi?article=1362&context=olr>, p. 896

⁴³ Ibid, p. 920

⁴⁴ Id

⁴⁵ Id

*therefore on the children affected by it. Punishing poor families for their poverty, labeling it as actionable “neglect,” is a misguided and cruel ideology. We can do better than that, and we owe it to the children to try.*⁴⁶

“There is a fine line between parental neglect of children and societal neglect of families.”

—Teresa Rafael, executive director, Children’s Trust Fund Alliance⁴⁷

III. New Mexico

As reported above, the Annie E. Casey Foundation’s 2023 Kids COUNT data book listed New Mexico’s child poverty rate at 24%, as of 2021.⁴⁸

This statistic, along with high-profile instances of the child welfare system failing particular New Mexican children and youth⁴⁹ has led to intense interest on the part of many to reform or transform the Children, Youth and Families Department (CYFD) and the child welfare system in the state.

In February of 2023, New Mexico’s Governor, Michelle Lujan-Grisham, signed an executive order promising to “transform” the CYFD.⁵⁰

Contained in a press release announcing the signing of the order was the following statement from the co-executive director of NMCAN⁵¹

...

*“NMCAN applauds the governor in her efforts to improve the lives of children and families in a system ill-equipped to meet their true needs. We hope that the newly formed Policy Advisory Council will understand the challenges families are facing,” said Ezra Spitzer, co-executive director of NMCAN. “**Any plan to reduce child neglect must be centered around poverty reduction**, and the governor understands that. The expertise to*

⁴⁶ Ibid, p. 921

⁴⁷ <https://www.childwelfare.gov/pubPDFs/bulletins-poverty-neglect.pdf>

⁴⁸ <https://assets.aecf.org/m/resourcedoc/aecf-2023kidscountdatabook-2023.pdf>

⁴⁹ See, e.g. the Kevin S. lawsuit at <https://kevinsettlement.com/the-lawsuit/> and multiple news stories re: the death of Victoria Martens such as at <https://www.koat.com/article/victoria-martens-new-mexico-timeline-fabian-gonzales-trial/40574942#>, <https://www.trueconsequences.com/cases/nm-forgotten-child-victoria-martens> and https://www.santafenewmexican.com/news/local_news/cyfd-report-in-meetings-with-victoria-martens-no-signs-of-abuse/article_70caeb46-9ca1-5358-8844-ae23b8593095.html

⁵⁰ <https://www.governor.state.nm.us/wp-content/uploads/2023/02/Executive-Order-2023-020.pdf>

⁵¹ NMCAN is a nonprofit that, according to its website, “Since 1990, ... has been leveraging community partnerships to improve children and youth’s experiences in foster care.”

improve CYFD exists here in New Mexico through the voices of young people and families that have experienced these systems.”⁵² (emphasis added)

In addition to the governor, reform has come from and been sought by numerous legislators through the introduction of proposed legislation.⁵³

In 2023, the New Mexico legislature passed and the governor approved a significant expansion of the state’s child tax credit, increasing the credit for the lowest three income levels from \$175 to \$600, \$150 to \$400, and from \$125 to \$200, and providing for an annual adjustment of the credit amounts to account for inflation.⁵⁴

Additionally, on July 20, 2023, New Mexico’s Early Childhood Education and Care Department (ECECD) finalized child care regulations to make child care affordable for most New Mexico families, by expanding income eligibility for child care assistance to families earning up to 400 percent of the federal poverty level (FPL) – approximately \$120k/year for a family of four – and waiving all parent copays, making child care free for most New Mexico families.⁵⁵

There is no doubt that New Mexico and New Mexicans are eager for reform and to build a better future for ALL of New Mexico’s children.

This reform may come through statutory changes, changes to existing rules and regulations and the implementation of new rules and regulations, training, multiple agency coordination and

⁵² <https://www.governor.state.nm.us/2023/02/16/gov-lujan-grisham-signs-executive-order-to-transform-the-children-youth-and-families-department/>

⁵³ See, e.g. 2023’s: **HB 11** (Rep. Tara Jaramillo, Rep. Kathleen Cates, Rep. Reena Szczepanski, Rep. Eleanor Chavez and Rep. Marian Matthews) Relating to Families; Enacting the Office of Child Advocate Act; Providing for the State Child Advocate; Creating the Office of Child Advocate and Establishing the Powers and Duties of that Office; Providing for the Establishment of the State Child Advocate Selection Committee; Amending and Enacting Sections of the NMSA 1978; Making an Appropriation (\$500,000), <https://www.nmlegis.gov/Legislation/Legislation?Chamber=H&LegType=B&LegNo=11&year=23>; **SB 128** (Sen. Katy Duhigg, Sen. Linda Lopez and Sen. Siah Correa Hemphill) Relating to Children; Amending the Family in Need of Court-Ordered Services Act and the Abuse and Neglect Act; Revising Procedures for Placing Children in Protective Custody, <https://www.nmlegis.gov/Legislation/Legislation?Chamber=S&LegType=B&LegNo=128&year=23>; **SB 150** (Sen. Gay Kernan) Relating to Children; Requiring the Children, Youth and Families Department to Conduct Assessments, Provide Services and Conduct an Investigation Upon a Failure to Comply with a Plan of Care, <https://www.nmlegis.gov/Legislation/Legislation?Chamber=S&LegType=B&LegNo=150&year=23>; and **SB 207** (Sen. Gregg Schmedes) Relating to Children; Providing a Best Interests of the Child Standard in Abuse and Neglect Cases, <https://www.nmlegis.gov/Legislation/Legislation?Chamber=S&LegType=B&LegNo=207&year=23>. In addition, NM has also worked to reform the system by creating the Office of Family Representation and Advocacy (www.familyrepresentationnm.org), which began work as a state agency on July 1, 2023.

⁵⁴ See HB 547, 2023, Section 9 at <https://www.nmlegis.gov/Legislation/Legislation?Chamber=H&LegType=B&LegNo=547&year=23>. See also <https://www.governor.state.nm.us/2023/02/16/gov-lujan-grisham-signs-executive-order-to-transform-the-children-youth-and-families-department/>

⁵⁵ <https://www.nmececd.org/child-care-assistance/>

collaboration, the involvement of multiple generations, and an increase or redirection of resources.⁵⁶

Will New Mexico fully embrace the national movement that seeks to offer support for families in need rather than penalize them?

As reported above, while reforms supporting families, such as increasing the child tax credit and raising the income eligibility limit for child care have been implemented, other actions are trending in an opposite direction.

In mid-September, New Mexico’s new Office of Family Representation and Advocacy sought \$1.5 million in emergency funding, stating in an agency filing to the Board of Finance that, “There has been a dramatic and unforeseen increase in the number of abuse/neglect cases being filed by CYFD that required OFRA attorneys.” The agency further stated that, “The increase in case filings occurred after a multi-year downward trend in annual case filings, from 564 in 2018 to 448 in 2022. ...As of the end of July 2023, CYFD had already filed 339 cases statewide, placing it on a firm upward path that will likely exceed the number of new cases in each of the last five calendar years.”

The Albuquerque Journal reported

It wasn’t clear whether CYFD is now removing children from their homes more often or whether abuse and/or neglect is on the rise in New Mexico. A CYFD spokeswoman didn’t immediately respond to Journal questions about the increase.

In recent years, CYFD has been criticized for leaving children in unsafe homes, rather than filing formal court proceedings to remove them for their safety. While such court cases are pending, children may enter foster care or be placed with relatives in lieu of their parents while efforts are made toward family reunification, when possible. Sometimes they end up being adopted.⁵⁷

One might wonder whether socio-economic conditions in New Mexico can support the national movement toward offering support for families rather than penalizing them. Is there the will to find out?

A. Statutes

1. Neglect

⁵⁶ See Section V, *infra*, for a discussion of solutions

⁵⁷ https://www.abqjournal.com/news/local/abuse-and-neglect-cases-up-new-state-agency-needs-more-funds-for-attorneys/article_8c3a2a2c-5322-11ee-be56-af8b3fc54dd2.html

According to an April 2023 report by Child Trends, in New Mexico, 82% of maltreatment of children is neglect, compared to the national average of 76%.⁵⁸

New Mexico’s definition of “neglected child”, found in Section 32A-4-2(G) NMSA 1978, is as follows

*32A-4-2. Definitions.*⁵⁹

...

G. "neglected child" means a child:

- (1) who has been abandoned by the child's parent, guardian or custodian;*
- (2) who is without proper parental care and control or subsistence, education, medical or other care or control necessary for the child's well-being because of the faults or habits of the child's parent, guardian or custodian or the failure or refusal of the parent, guardian or custodian, when able to do so, to provide them;*
- (3) who has been physically or sexually abused, when the child's parent, guardian or custodian knew or should have known of the abuse and failed to take reasonable steps to protect the child from further harm;*
- (4) whose parent, guardian or custodian is unable to discharge that person's responsibilities to and for the child because of incarceration, hospitalization or physical or mental disorder or incapacity; or*
- (5) who has been placed for care or adoption in violation of the law; provided that nothing in the Children's Code shall be construed to imply that a child who is being provided with treatment by spiritual means alone through prayer, in accordance with the tenets and practices of a recognized church or religious denomination, by a duly accredited practitioner thereof is for that reason alone a neglected child within the meaning of the Children's Code; and further provided that no child shall be denied the protection afforded to all children under the Children's Code; ...*

According to the Scan Policies Database, 58% of states exempt from their definition of child maltreatment, “financial inability to provide for a child”.⁶⁰

As the database explains

Federal law is the foundation of the child welfare system, but states determine much of the structure of their own systems. The Child Abuse Prevention and Treatment Act (CAPTA), as amended in 2010, identifies certain acts or behaviors as child maltreatment.

⁵⁸ <https://www.childtrends.org/publications/state-level-data-for-understanding-child-welfare-in-the-united-states>

⁵⁹ <https://www.nmonesource.com/nmos/nmsa/en/item/4389/index.do#!b/32A-4-2>

⁶⁰ <https://www.scanpoliciesdatabase.com/sites/default/files/2022-08/SCAN-Facts-Definitions-2019.pdf>. See, for example, Washington State statute RCW 26.44.020(15), providing in the definition of “negligent treatment or maltreatment” that, “Poverty... does not constitute negligent treatment or maltreatment in and of itself.”

States must comply with the broader CAPTA definitions (see 42 U.S.C.A. § 5106g), but within those parameters, states have their own legal definitions of child abuse and neglect, and they have various policies for reporting and responding to child maltreatment.

The CAPTA defines “child abuse and neglect” as, “Any recent act or failure to act on the part of a parent or caretaker which results in death, serious physical or emotional harm, sexual abuse or exploitation”; or “An act or failure to act which presents an imminent risk of serious harm.”⁶¹

In a specific state profile of New Mexico, the Scan Policies Database reports that New Mexico *does not* have an exemption included in its definition of child maltreatment for “financial issues, financial inability to provide for a child.”⁶²

While it is true that Section 32A-4-2(G) NMSA 1978 does not provide that specific exemption, the statutory section *does* tie neglect to lack of subsistence “because of the faults or habits of the child’s parent, guardian or custodian or the failure or refusal of the parent, guardian or custodian, when able to do so, to provide them...”, and not to the status of being poor, without further inaction.

According to a February 2023 publication by the National Conference of State Legislatures (NCSL)

*Poverty and child neglect are highly correlated and often impact families simultaneously; but poverty does not cause neglect. Experts say it’s more complicated than that. Poverty produces material hardships for families. Such hardships often result in families experiencing [toxic stress](#), which can impede [children’s cognitive development](#) and parents’ capacity to meet the needs of their children. Incapacity to provide is not the same as an unwillingness to provide. This distinction is at the crux of the challenge policymakers face to disentangle poverty from neglect.*⁶³

As the NCSL piece notes, some states have amended their definition of neglect to reflect the capacity of parents and/or to clarify that conditions of poverty alone do not constitute neglect.⁶⁴

⁶¹ 42 U.S.C.A. § 5106g

⁶² <https://www.scanpoliciesdatabase.com/sites/default/files/2023-04/SCAN-Policies-Database-New-Mexico-Profile.pdf>, p. 7

⁶³ <https://www.ncsl.org/state-legislatures-news/details/poverty-and-child-neglect-how-did-we-get-it-wrong>

⁶⁴ For a complete listing of statutes re: child abuse and neglect from each state, see <https://www.childwelfare.gov/topics/systemwide/laws-policies/state/?CWIGFunctionsaction=statestatutes:main.getResults>

In 2022, the Iowa legislature passed IA H 2507 to amend Section 232.2, Code 2022 to add a new subsection 35A, providing

*“Neglect” means the failure on the part of a person responsible for the care of a child to provide for adequate food, shelter, clothing, medical or mental health treatment, supervision, or other care necessary for the child’s health and welfare when financially able to do so or when offered financial or other reasonable means to do so.*⁶⁵

The following states mention “poverty”, specifically, in their statutory definitions and characteristics of poverty and neglect:

Washington

Neglect

Citation: Rev. Code §§ 26.44.020; 9A.42.100

'Negligent treatment or maltreatment' means an act or a failure to act, or the cumulative effects of a pattern of conduct, behavior, or inaction, that evidences a serious disregard of consequences of such magnitude as to constitute a clear and present danger to a child's health, welfare, or safety, including, but not limited to, conduct prohibited under § 9A.42.100 (endangerment with a controlled substance). When considering whether a clear and present danger exists, evidence of a parent's substance abuse as a contributing factor to negligent treatment or maltreatment shall be given great weight.

It is 'endangerment with a controlled substance' if the person knowingly or intentionally permits a dependent child to be exposed to, ingest, inhale, or have contact with methamphetamine or ephedrine, pseudoephedrine, or anhydrous ammonia, including their salts, isomers, and salts of isomers, which are being used in the manufacture of methamphetamine, including its salts, isomers, and salts of isomers.

Exceptions

Citation: Rev. Code §§ 26.44.015; 26.44.020; 9A.16.100

...

The fact that siblings share a bedroom is not, in and of itself, negligent treatment or maltreatment. **Poverty**, experiencing homelessness, or exposure to domestic violence that is perpetrated against someone other than the child does not constitute negligent treatment or maltreatment in and of itself. (emphasis added)

Wisconsin

Neglect

Citation: Ann. Stat. § 48.02

⁶⁵ The entirety of IA H 2507 can be found at https://custom.statenet.com/public/resources.cgi?id=ID:bill:IA2021000H2507&ciq=ncl&client_md=c8bf769b3bd3b5a16f88d2ee694126d1&mode=current_text, while the amended statute, Section 232.2(40) is located at <https://www.legis.iowa.gov/docs/ico/chapter/232.pdf>

'Neglect' means failure, refusal, or inability on the part of a caregiver, for reasons other than **poverty**, to provide necessary care, food, clothing, medical or dental care, or shelter so as to seriously endanger the physical health of the child. (emphasis added)

Exceptions

Citation: Ann. Stat. § 48.02

It is not considered neglect when the failure to provide a child with necessary care, food, clothing, shelter, medical, or dental care is due to **poverty**. (emphasis added)

Examples from other states are as follows:

New York

Citation: Soc. Serv. Law § 371; Family Court Act § 1012

4-a. "Neglected child" means a child less than eighteen years of age

(i) whose physical, mental or emotional condition has been impaired or is in imminent danger of becoming impaired as a result of the failure of his parent or other person legally responsible for his care to exercise a minimum degree of care

(A) in supplying the child with adequate food, clothing, shelter, education, medical or surgical care, though financially able to do so or offered financial or other reasonable means to do so; or...

California

Citation: Welf. & Inst. Code § 300; Pen. Code § 11165.2

A child may be considered dependent under the following circumstances:

- The child has suffered, or there is a substantial risk that the child will suffer, serious physical harm or illness because of the following:
 - The failure or inability of the parent or guardian to adequately supervise or protect the child
 - The willful or negligent failure of the parent or guardian to adequately supervise or protect the child from the conduct of the custodian with whom the child has been left
 - The willful or negligent failure of the parent or guardian to provide the child with adequate food, clothing, shelter, or medical treatment
 - The inability of the parent or guardian to provide regular care for the child due to the parent's or guardian's mental illness, developmental disability, or substance abuse

California Penal Code (PC) Section 270: Child Neglect

If a parent of a minor child willfully omits, without lawful excuse, to furnish necessary clothing, food, shelter or medical attendance, or other remedial care for his or her child, he or she is guilty of a misdemeanor punishable by a fine not exceeding two thousand dollars (\$2,000), or by imprisonment in the county jail not exceeding one year, or by both such fine and imprisonment.

IN PENAL CODE:

PENAL CODE - PEN

PART 4. PREVENTION OF CRIMES AND APPREHENSION OF CRIMINALS [11006 - 14315]

(Part 4 added by Stats. 1953, Ch. 1385.)

TITLE 1. INVESTIGATION AND CONTROL OF CRIMES AND CRIMINALS [11006 - 11482]

(Title 1 added by Stats. 1953, Ch. 1385.)

CHAPTER 2. Control of Crimes and Criminals [11150 - 11199.5]

(Chapter 2 added by Stats. 1953, Ch. 70.)

ARTICLE 2.5. Child Abuse and Neglect Reporting Act [11164 - 11174.3]

(Heading of Article 2.5 amended by Stats. 1987, Ch. 1444, Sec. 1.)

As used in this article, “neglect” means the negligent treatment or the maltreatment of a child by a person responsible for the child’s welfare under circumstances indicating harm or threatened harm to the child’s health or welfare. The term includes both acts and omissions on the part of the responsible person.

(a) “Severe neglect” means the negligent failure of a person having the care or custody of a child to protect the child from severe malnutrition or medically diagnosed nonorganic failure to thrive. “Severe neglect” also means those situations of neglect where any person having the care or custody of a child willfully causes or permits the person or health of the child to be placed in a situation such that their person or health is endangered as proscribed by Section 11165.3, including the intentional failure to provide adequate food, clothing, shelter, or medical care.

(b) “General neglect” means the negligent failure of a person having the care or custody of a child to provide adequate food, clothing, shelter, medical care, or supervision where no physical injury to the child has occurred but the child is at substantial risk of suffering serious physical harm or illness. “General neglect” does not include a parent’s economic disadvantage.

Massachusetts

Citation: Ann. Laws. Ch. 119, § 51A; Code of Mass. Regs. Tit. 110, § 2.00

Child neglect is suspected when a child is suffering physical or emotional injury resulting from neglect, including malnutrition.

In regulation, 110 CMR 2.00: 'Neglect' means failure by a caregiver, either deliberately or through negligence or inability, to take those actions necessary to provide a child with

minimally adequate food, clothing, shelter, medical care, supervision, emotional stability, and growth, or other essential care. This definition is not dependent upon location (i.e., neglect can occur while the child is in an out-of-home or in-home setting).

Exceptions

Citation: Code of Mass. Regs. Tit. 110, § 2.00

It is not considered neglect when the inability to care for the child is due solely to inadequate economic resources or the existence of a handicapping condition.

As of May, 2022, in 27 states, the District of Columbia, Guam and Puerto Rico, financial inability to provide for a child is exempted from the definition of neglect.⁶⁶

2. Reporting

The relevant New Mexico statute reads as follows:

32A-4-3. Duty to report child abuse and child neglect; responsibility to investigate child abuse or neglect; penalty; notification of plan of care.

A. Every person, including a licensed physician; a resident or an intern examining, attending or treating a child; a law enforcement officer; a judge presiding during a proceeding; a registered nurse; a visiting nurse; a school employee; a social worker acting in an official capacity; or a member of the clergy who has information that is not privileged as a matter of law, who knows or has a reasonable suspicion that a child is an abused or a neglected child shall report the matter immediately to:

- (1) a local law enforcement agency;*
- (2) the department; or*
- (3) a tribal law enforcement or social services agency for any Indian child residing in Indian country.*

...⁶⁷

Many have noted that the scope of reporting requirements opens the door for findings of neglect. According to law professor David Pimentel

⁶⁶Alaska, Arkansas, Connecticut, Delaware, Florida, Indiana, Iowa, Kansas, Kentucky, Louisiana, Massachusetts, Michigan, Minnesota, Mississippi, Montana, New Hampshire, New Jersey, New Mexico, New York, North Dakota, Pennsylvania, Rhode Island, South Carolina, Texas, Washington, West Virginia, and Wisconsin.
<https://www.childwelfare.gov/pubpdfs/define.pdf>

⁶⁷ For a chart of New Mexico's mandatory reporting requirement, updated April 2023, see <https://apps.rainn.org/policy/policy-state-laws-export.cfm?state=New%20Mexico&group=4>

Another way that the poor suffer disproportionately in the child protection system comes from biases in detection and reporting of neglect. The idea here is not so much that the rate of neglect and abuse is higher among the poor, but rather that neglect and abuse are simply detected at higher rates among the poor. Roberts suggests that “heightened monitoring of poor families results in the discovery of a great deal of child maltreatment—especially neglect—that would have gone unnoticed had it occurred in the privacy afforded wealthier families.”

Statutes in every state make certain individuals “mandatory reporters” who have a legal obligation to report possible maltreatment when they suspect it, and the poor are far more likely to encounter such mandatory reporters, simply because their lives are more public. Appell explains:

Poor families are more susceptible to state intervention because they . . . are more directly involved with governmental agencies. For example, the state must have probable cause to enter the homes of most Americans, yet women receiving aid to families with dependent children (AFDC) are not entitled to such privacy. In addition to receiving direct public benefits (like AFDC and Medicaid), poor families lead more public lives than their middle-class counterparts: rather than visiting private doctors, poor families are likely to attend public clinics and emergency rooms for routine medical care; rather than hiring contractors to fix their homes, poor families encounter public building inspectors; rather than using their cars to run errands, poor mothers use public transportation.⁶⁸

A person with lived experience suggests that policymakers end family surveillance, in order to help children experiencing poverty, including by repealing mandatory reporting laws which, “pit teachers, doctors, therapists, and other support workers against the families that go to them for support.”⁶⁹

New Mexico’s statute states that, “Every person . . . who knows or has a reasonable suspicion that a child is an abused or a neglected child shall report the matter.”

According to the NCSL, updating mandatory reporting to better respond to complex situations and relationships, including those involving poverty and neglect, is an option. The NCSL reports that Colorado, in proposing and enacting HB 1240 during the 2022 legislative session, attempted to make mandatory systems fairer. Given the evidence of disproportionate impacts of reporting systems on under-resourced communities, the Colorado legislature amended Section 19-3-302 CRS by adding the following language

⁶⁸ <https://digitalcommons.law.ou.edu/cgi/viewcontent.cgi?article=1362&context=olr>, p. 906, citing Annette R. Appell, *Protecting Children or Punishing Mothers: Gender, Race, and Class in the Child Protection System*, 48 S.C. L. REV. 577, 589-90 (1997) (citing In re P.F. & E.F., 638 N.E.2d 716 (Ill. App. Ct. 1994)).

⁶⁹ https://www.bostonglobe.com/2023/03/20/opinion/i-am-survivor-child-welfare-system-family-surveillance-is-not-solution-poverty/?s_campaign=bostonglobe%3Asocialflow%3Atwitter

(2) (a) THE GENERAL ASSEMBLY FURTHER DECLARES THAT REQUIRING PEOPLE TO REPORT KNOWN OR SUSPECTED CHILD ABUSE OR NEGLECT PURSUANT TO THIS PART 3 IMPACTS THE PEOPLE REPORTING AS WELL AS CHILDREN AND FAMILIES. AS A RESULT OF IMPLICIT BIAS, UNDER-RESOURCED COMMUNITIES, COMMUNITIES OF COLOR, AND PERSONS WITH DISABILITIES ARE DISPROPORTIONATELY IMPACTED BY THE MANDATORY REPORTING SYSTEM. TO CREATE A MORE EQUITABLE MANDATORY REPORTING SYSTEM, PEOPLE REQUIRED TO REPORT CHILD ABUSE OR NEGLECT MUST HAVE ACCESS TO NECESSARY RESOURCES TO REPORT CHILD ABUSE OR NEGLECT, INCLUDING BUT NOT LIMITED TO:

(I) SPECIALIZED TRAINING TO ADDRESS AND DECREASE THE DISPROPORTIONATE IMPACT ON UNDER-RESOURCED COMMUNITIES, COMMUNITIES OF COLOR, AND PERSONS WITH DISABILITIES;

(II) STANDARDIZED TRAINING AND MATERIALS; AND

(III) INFORMATION REGARDING OBLIGATIONS AND PROTECTIONS PURSUANT TO THE LAW.

(b) ADDITIONALLY, THROUGH THE CREATION OF A MANDATORY REPORTER TASK FORCE IN THIS PART 3, DIVERSE REPRESENTATIVES FROM STATEWIDE ORGANIZATIONS SERVING FAMILIES AND YOUTH SHALL ANALYZE BEST PRACTICES AND MAY RECOMMEND CHANGES TO TRAINING MATERIALS AND REPORTING PROCEDURES.⁷⁰

The legislation went on to define “implicit bias”, “mandatory reporter” and “medical child abuse,” and to create and set out duties for a task force, the purpose of which is to analyze best practices and recommend changes to training requirements and reporting procedures.⁷¹

The NCSL reports that in 2022 at least eight states enacted legislation addressing mandatory reporting, and, in 2023, at least seven states did so: Arkansas; Hawaii; Kentucky; Michigan; Montana; Oregon; and Texas.⁷²

Montana’s 2023-enacted legislation, MT S 149, established penalties for false reporting in child protective services cases, relates any person who knowingly makes a false report or allegation of child abuse, abandonment, or neglect or makes a report in bad faith is liable to the party or parties against whom the report was made for the amount of actual damages sustained or for statutory damages of specified amount whichever is greater, plus attorney fees and costs.⁷³

⁷⁰https://custom.statenet.com/public/resources.cgi?id=ID:bill:CO2022000H1240&ciq=ncsl&client_md=4e84e6134ddc05a8deb538cdb3e44cc1&mode=current_text . See C.R.S. Section 19-3-302 at <https://www.ncsl.org/human-services/child-welfare-enacted-legislation> for current statutory language.

⁷¹ Id

⁷² See <https://www.ncsl.org/human-services/child-welfare-enacted-legislation> for details

⁷³https://custom.statenet.com/public/resources.cgi?id=ID:bill:MT2023000S149&ciq=ncsl&client_md=b7943da18346e170399d39c4be048d40&mode=current_text

Nebraska's 2022-enacted legislation, NE L 1173, changed provisions relating to reports of child abuse or neglect, as well as created a work group and strategic leadership group for child welfare system reform.⁷⁴

In 2021, Tennessee enacted TN H 723, requiring the Department of Children's Services to publish the guidelines for the best practices for identifying and reporting signs of child abuse, child sexual abuse, and human trafficking in which the victim is a child, on the department's website.⁷⁵

3. Complaints

Child welfare complaints, referrals and preliminary inquiries in New Mexico are governed by Section 32A-4-4 NMSA 1978.

32A-4-4. Complaints; referral; preliminary inquiry.

A. Reports alleging neglect or abuse shall be referred to the department, which shall conduct an investigation to determine the best interests of the child with regard to any action to be taken. The name and information regarding the person making the report shall not be disclosed absent the consent of the informant or a court order.

B. If a report alleging neglect or abuse meets the criteria established pursuant to Section [32A-4-4.1](#) NMSA 1978, the department may assign the case to the multilevel response system.

C. During the investigation of a report alleging neglect or abuse, the matter may be referred to another appropriate agency and conferences may be conducted for the purpose of effecting adjustments or agreements that will obviate the necessity for filing a petition. A representative of the department shall, at the initial time of contact with the party subject to the investigation, advise the party of the reports or allegations made, in a manner that is consistent with laws protecting the rights of the informant. The parties shall be advised of their basic rights and no party may be compelled to appear at any conference, to produce any papers or to visit any place. The investigation shall be completed within a reasonable period of time from the date the report was made.

⁷⁴https://custom.statenet.com/public/resources.cgi?id=ID:bill:NE2021000L1173&ciq=ncsl&client_md=b8b203a1117ded52198bd36555c88237&mode=current_text; the law also established a work group and called for an integrated, evidence-informed approach to transform its child welfare system to "support the well-being, permanency, and safety of children and families in Nebraska's communities."

⁷⁵ https://custom.statenet.com/public/resources.cgi?id=ID:bill:TN2021000H723&cuig=27985fa9-7365-52eb-b485-5ff4ca625062&client_md=3a0f0c7ff8731175367253f181ecdc5&mode=current_text

D. After completion of the investigation on a neglect or abuse report, the department shall either recommend or refuse to recommend the filing of a petition.

E. When a child is taken into custody, the department shall file a petition within three days, unless the provisions of Subsection F of Section [32A-4-7](#) NMSA 1978 apply, in which case the petition shall be filed within five days.

F. When the department files a petition, it shall simultaneously provide to the office of family representation and advocacy, and if a child is an Indian child, to the child's Indian nation, tribe or pueblo:

(1) the petition;

(2) the name, telephone numbers and addresses of each respondent; and

(3) the names, dates of birth and placement information for each child who is a subject of the petition, including:

(a) the type of placement; and

(b) the name, telephone number and address for the person or entity that holds the license for each child's placement.

G. If a petition is not filed in a timely manner, the child shall be released to the child's parent, guardian or custodian.

In some states, CPS workers are trained to and given the latitude and necessary information to refer families to resources that will assist them.

Vermont, for example, has set up a multidimensional diversion system that refers families to:

- Economic support services (TANF)
- Family resource centers
- Differential response systems.⁷⁶

Montana's House Bill 37, proposed in 2022, expanded "reasonable efforts required to prevent removal" to include identifying community resources (housing, financial, transportation, mental health & substance abuse services) and actively assisting families to access these resources.⁷⁷

⁷⁶ <https://www.chapinhall.org/wp-content/uploads/Economic-Supports-deck.pdf>, p. 15, citing DeGuerre, 2021; Feely, 2020; <https://www.acf.hhs.gov/sites/default/files/documents/cb/cm2019.pdf>. See Section V (D) re: "Differential Response with Concrete Supports" – families with screened in CPS reports who are not determined to be high risk can be diverted from CPS investigations and instead connected with services and supports to meet their needs.

⁷⁷ <https://www.chapinhall.org/wp-content/uploads/Economic-Supports-deck.pdf>, p. 14; Note: the Montana governor vetoed the legislation on 5/11/23 and a veto override failed in the legislature on 6/9/23. [https://laws.leg.mt.gov/legprd/LAW0203W\\$BSRV.ActionQuery?P_SESS=20231&P_BLTP_BILL_TYP_CD=HB&P_BILL](https://laws.leg.mt.gov/legprd/LAW0203W$BSRV.ActionQuery?P_SESS=20231&P_BLTP_BILL_TYP_CD=HB&P_BILL)

Additionally, programs exist such as [the SEEK Project](#) which trains health professionals to screen for parental risk factors and then refer the family to appropriate resources to address the problems.⁷⁸

In addition to statutory directives, the New Mexico Administrative Code (NMAC) contains rules and regulations governing actions to be taken by those investigating child abuse and neglect reports and providing child protective services, including resource referral.⁷⁹ Currently beyond the scope of this report is an analysis and exploration of these rules and regulations, the materials referred to in the same, and how they are applied in the field.⁸⁰

B. Case Law

In *State ex rel. Children, Youth & Families Dept. v. Shawna C.*, 2005-NMCA-066, 137 N.M. 687, 114 P.3d 367, the New Mexico Court of Appeals was tasked with ruling whether the state's Abuse and Neglect Act, Section 32A-4-1 NMSA 1978 was unconstitutionally vague.

In holding that the Act was not unconstitutionally vague, the court stated

{30} An unfavorable personal status, such as low IQ, poverty, mental illness, incarceration, prior convictions, or addiction, is therefore relevant only to the extent that it prompts either the harms defined as abuse, or the neglect which is defined as the failure to provide "proper parental care and control" or an inability "to discharge his responsibilities to and for the child." In re Adoption of J.J.B., 119 N.M. 638, 646, 894 P.2d 994, 1002 (1995) (stating that to comport with due process, parental unfitness must be shown "by proof of substantive criteria demonstrating parental inadequacy or conduct detrimental to the child"). While such statuses, particularly if extreme in nature, may well lead to neglect or abuse as defined by the Act, we emphasize that the focus should be on the acts or omissions of the parents in their caretaking function and not on apparent shortcomings of a given parent due to his or her unfavorable status. While no child would ask to have a poor, incarcerated, or addicted parent, poverty, incarceration, or addiction alone do not perforce equate to neglect as set out in the statute. See State ex rel. Children, Youth & Families Dep't v. Joe R. 1996-NMCA-091, ¶ 9, 122 N.M. 284, 923 P.2d 1169 (holding that father's conviction for murdering child's mother, and subsequent incarceration for life, did not establish neglect as a matter of law), rev'd on other grounds, 1997-NMSC-038. Thus, we conclude that the Act does not permit a court to find

NO=37&P BILL DFT NO=&P CHPT NO=&Z ACTION=Find&P ENTY ID SEQ2=&P SBJT SBJ CD=&P ENTY ID SE
Q

⁷⁸ <https://www.umms.org/childrens/health-services/child-protection/seek-project>

⁷⁹In New Mexico, Section 8.10.2.10(l) of the New Mexico Administrative Code (NMAC) requires Protective Services Division intake workers to send all screened out reports to the New Mexico family resource connection (NMFRC) supervisor.

⁸⁰ See Appendix A for relevant portions of the New Mexico Administrative Code (NMAC)

abuse or neglect based solely on a parent's status. Here, the State showed that Mother's status renders her unable to care for Child, and neglect was properly found under Section 32A-4-2(E)(4). The fact that this inability may spring from a mental disability is relevant under Section 32A-4-2(E)(4) only because the State showed that Mother is "unable to discharge [her] responsibilities to and for the child." Since the statute requires a clear and convincing showing of an inability to parent in the specified circumstances, there is no basis for a court to find neglect solely based upon a parent's unfavorable status, and the district court did not do so in Mother's case.⁸¹

The relevant portion of Section 32A-4-2 NMSA 1978 reads:

32A-4-2. Definitions.⁸²

...

G. "neglected child" means a child:

- (1) who has been abandoned by the child's parent, guardian or custodian;*
- (2) who is without proper parental care and control or subsistence, education, medical or other care or control necessary for the child's well-being because of the faults or habits of the child's parent, guardian or custodian or the failure or refusal of the parent, guardian or custodian, when able to do so, to provide them;*
- (3) who has been physically or sexually abused, when the child's parent, guardian or custodian knew or should have known of the abuse and failed to take reasonable steps to protect the child from further harm;*
- (4) whose parent, guardian or custodian is unable to discharge that person's responsibilities to and for the child because of incarceration, hospitalization or physical or mental disorder or incapacity; or...*

In *State ex rel. CYFD v. Amanda H.*, 2007-NMCA-029, paragraphs 21-31, 141 N.M. 299⁸³, the Court of Appeals reversed an adjudication of neglect under what is now Section 32A-4-2(G)(2) (then (E)(2)), because of insufficient evidence. As summarized,

The evidence showed that the baby's positive toxicology result was a likely false positive, that mother's admitted use of illegal drugs during the first trimester of her pregnancy did not cause the baby to be born with a drug addiction or any other health problem, and that mother's history of violence, past drug addiction, and criminality had not rendered her unable to properly care for her child. The court held that the evidence was not clear and convincing that mother either intentionally or negligently disregarded her child's well-being and needs, as required by Section 32A-4-2(E)(2) (now (G)(2)), or that she was unable to provide proper parental care under Section 32A-4-2(E)(4) (now (G)(4)). On its own, risk of future neglect is not evidence of neglect as defined in these statutes.⁸⁴

⁸¹ <https://www.nmonesource.com/nmos/nmca/en/item/390718/index.do>, paragraph 30.

⁸² <https://www.nmonesource.com/nmos/nmsa/en/item/4389/index.do#!b/32A-4-2>

⁸³ <https://casetext.com/case/state-v-amanda-h>

⁸⁴ <https://childlaw.unm.edu/assets/docs/2018-child-welfare-handbook.pdf>, p. 17-8

While not addressing poverty, the court's holding that a finding of intentional or negligent disregard of a child's well-being and needs under Section 32A-4-2(G)(2) NMSA 1978 needs to be supported by clear and convincing evidence, and that risk of future neglect is not evidence of neglect as defined by the statute, is relevant.⁸⁵

IV. Other States⁸⁶

Alabama⁸⁷

Alaska⁸⁸

Arizona⁸⁹

Arkansas⁹⁰

California⁹¹

Colorado⁹²

In August of 2020, Colorado published a draft of its Family First Prevention Plan.⁹³ In 2022, Colorado's Family First Plan was approved.⁹⁴ Colorado's progress on implementing its plan can be tracked on its Family First dashboard.⁹⁵

⁸⁵ "For evidence to be clear and convincing, it must instantly tilt the scales in the affirmative when weighed against the evidence in opposition and the fact finder's mind is left with an abiding conviction that the evidence is true." *In re Termination of Parental Rights of Eventyr J.*, 120 N.M. 463, 466, 902 P.2d 1066, 1069 (Ct.App. 1995) (internal quotation marks and citation omitted).

⁸⁶ This section provides footnoted guidance to where each state listed is mentioned in this report. Additionally, Colorado's Family First Prevention Plan is highlighted.

⁸⁷ See Section II and Section V(E)

⁸⁸ See Section III(A)(1) and Section V(E)

⁸⁹ See Section V(B) and (E)

⁹⁰ See Section III(A)(1)

⁹¹ See Section II, Section III (A)(1), and Section V (D)

⁹² See Sections III(A)(2), V(C) and V(D)

⁹³ The Family First Prevention Services Act (Family First) is a federal law that allows local child welfare agencies to use federal funding to pay for services that keep kids safe, growing up in their families.

Family First provides Colorado the opportunity to: Reshape child welfare and provide more proactive services, so more children and youth can grow up with their family; Partner with community-based service providers to respond to the individual needs of children, youth and families; Provide treatment in a setting that is designed to provide a higher level of care. See also, <https://www.acf.hhs.gov/cb/title-iv-e-prevention-program> and <https://thehill.com/opinion/civil-rights/3951473-five-years-on-the-family-first-act-has-failed-in-its-aims/>

⁹⁴ Colorado's 5-Year Family First Prevention Plan, approved by the federal government on September 28, 2022, can be downloaded from <https://co4kids.org/prevention-services/>

⁹⁵ <https://co4kids.org/professional-resources/family-first/family-first-dashboard/>. Additionally, general information about Family First in Colorado can be found at <https://co4kids.org/professional-resources/family-first/> and information about prevention services can be found at <https://co4kids.org/prevention-services/>.

As the 2018 New Mexico Child Welfare Handbook notes

The Family First Prevention Services Act, enacted in February 2018 as part of the Bipartisan Budget Act, P.L. 115-123, makes a number of changes to federal child welfare policy. The two biggest changes are the following:

Funding for Prevention Services. *The new law offers Title IV-E funding for time-limited (one year) prevention services for mental health and substance abuse treatment and in-home parent skill-based programs to prevent the use of foster care in the first place. For states and tribes that elect to participate, this funding would be available for a child who is a “candidate for foster care”, for the parents or relative caregivers for a child who is a “candidate for foster care” and for youth in foster care who are pregnant or already parents. As noted, states and tribes must elect to participate in this new program, which requires 50% state match.*

Limit on Congregate Care. *The second big component of the new law is that it will limit the state’s ability to use congregate foster care, such as group homes. No Title IV-E funds will be permitted to be used for a child placed in congregate care beginning the third week of that placement. There will be exceptions, of course, including an exception for a “qualified residential treatment program”, which will have to meet a number of requirements to qualify for the exception.*

This limitation on congregate care does not take effect until October 2019, although states may apply for a two year delay beyond that. If a state requests a two year delay, that will also delay state access to Title IV-E funding for prevention services.⁹⁶

Further

As mentioned, states can now draw in IV-E dollars to help pay for services aimed at preventing the need to place children into foster care in some cases where abuse or neglect has been investigated. It is not primary prevention money to help families before abuse or neglect is reported; rather, this new funding can be seen as support for the federal requirement that states make reasonable efforts to prevent the removal of children into foster care.

Only services and program models approved by a newly formed clearinghouse are fundable through this change; more on that process later. Unlike IV-E foster care, there are no conditions or eligibility rules around which kids the prevention money can be spent on.

But states cannot just start billing the feds for reimbursement willy-nilly for the prevention services. They must submit a five-year plan that outlines what services they intended to use, how they define eligibility for the services, and more. Until that plan is approved, no IV-E foster care prevention funds will flow, which means that as of October

⁹⁶ <https://childlaw.unm.edu/assets/docs/2018-child-welfare-handbook.pdf>, p. 36-12

1, any state without an approved plan is facing the funding restrictions of Family First without availing themselves of the incentives.⁹⁷

Acknowledging a significant transformation of the state's child welfare system, Colorado's draft plan noted that

Colorado's child welfare system is in the midst of a significant transformation. Over the last several years, there has been an intentional shift to focus on proactively strengthening families through prevention and early intervention strategies, on keeping families together safely, and when necessary, placing children and youth in family-like settings. This redirection has helped reduce deep child welfare system penetration and produced positive change for the state's most vulnerable children, youth, and families. Colorado is committed to continuing this trajectory and ensuring that all children, youth, and families have timely access to community services and supports that meet their needs and promote safety and well-being.⁹⁸

The draft plan also noted the following

Historically, Colorado's child welfare system has provided services and support to children, youth, and families through three different program areas:

- *Program Area 4: Youth in conflict services are provided to reduce or eliminate conflicts between a child/youth and their family members, which may include the community, when those conflicts affect the child/youth's well-being, the normal functioning of the family, or the well-being of the community.*
- *Program Area 5: Child protection services are provided to protect children/youth whose physical, mental, or emotional well-being is threatened by the actions or omissions of parents, legal guardians or custodians, or persons responsible for providing out-of-home care.*
- *Program Area 6: Services to children/youth and families in need of adoption assistance, relative guardianship assistance, or Medicaid-only services, or to children/youth for whom the goal is no longer reunification.⁹⁹*

In 2011, a new program area (Program Area 3 or PA3) was created to allow county departments to provide prevention and early intervention services with existing state funding sources, such as the State Child Welfare Block and Core Services Program allocations.

⁹⁷ <https://imprintnews.org/youth-services-insider/family-first-act-where-things-stand-takes-effect/58660>. October 1, 2021 was the federal implementation deadline for all states to comply with congregate care provisions of the law. The expanded entitlement for prevention services is voluntary and conditional upon approval of a state's Title IV-E Prevention Program Plan. See https://coloradohsda.org/wp-content/uploads/2022/11/FF_Guidebook_3.4-1.pdf

⁹⁸ https://www.familyfirstact.org/sites/default/files/FF_PreventionPlan_Feb2022-watermark.pdf

⁹⁹ Id

In Colorado, PA3 services can be provided under the following circumstances:

- After a referral has been screened out;
- When an assessment does not require child protection services; or
- When a child welfare case is closed but additional supports are needed to improve a family's protective factors, reduce the possibility of recurrence of abuse or neglect, and prevent the family's deeper involvement in the child welfare system.¹⁰⁰

According to the Colorado Department of Human Services,

PA3 services are optional, offered as 100% voluntary to a family, and based on county-by-county available funding and ability to provide preventive services. While the legislation was similar to Family First in its approach, no additional funds were allocated by the state legislature so the impact of PA3 has been somewhat limited and inconsistent across the state. Colorado sees Family First as a means to considerably expand this prevention work.¹⁰¹

Colorado has created a Family First Prevention Services Act Implementation team, the purpose of which is to

...implement the "Colorado Family First Prevention Services Act: A Road Map to the Future," created by the Family First Prevention Services Act Advisory Committee. The Family First Implementation Team is responsible to develop, deploy and monitor a plan to implement the specific defined topic area recommendations and activities within the Road Map. Objectives and outcomes include:

- *Ensuring Colorado Family First vision/values are being upheld*
- *Defining/prioritizing areas of focus*
- *Identifying and recruiting needed people for participation in implementation workgroups*
- *Assuring an evaluation component accompanies implementation*
- *Monitoring and reporting on implementation progress (use of data)*
- *Developing and implementing a communication and education plan*
- *Communicating and coordinating with Colorado Department of Human Services, Advisory Committee and The Delivery of Child Welfare Services Task Force¹⁰²*

In contrast, as of July 2023, New Mexico's Children, Youth and Families (CYFD) had submitted a second version of its prevention plan, but it had not yet been approved.¹⁰³

CYFD reports, however, that it has had the Community Based Prevention, Intervention and Reunification (CBPIR) providers for several years now. These providers are providing family

¹⁰⁰ Id

¹⁰¹ Id

¹⁰² <https://cdhs.colorado.gov/family-first-prevention-services-act-implementation-team>

¹⁰³ See the status of submitted Title IV-E Prevention Program 5-Year Plans at <https://www.acf.hhs.gov/cb/data/status-submitted-title-iv-e-prevention-program-five-year-plans>

support services utilizing evidence-based or evidence-informed models. According to CYFD, it also has implemented other programs to support families in the area of prevention.

Connecticut¹⁰⁴

Delaware¹⁰⁵

Florida¹⁰⁶

Georgia¹⁰⁷

Hawaii¹⁰⁸

Illinois¹⁰⁹

Indiana¹¹⁰

Iowa¹¹¹

Kansas¹¹²

Kentucky¹¹³

Louisiana¹¹⁴

Maryland¹¹⁵

Massachusetts¹¹⁶

Michigan¹¹⁷

Minnesota¹¹⁸

¹⁰⁴ See Section III(A)(1), Section V(D) and Section V(E)(12)

¹⁰⁵ See Section III(A)(1) and Section V(E)

¹⁰⁶ See Section III(A)(1)

¹⁰⁷ Section V(D)

¹⁰⁸ Section 3(A)(2)

¹⁰⁹ See Section V(E)(14)

¹¹⁰ See Section III(A)(1) and Section V(D)

¹¹¹ See Section III(A)(1)

¹¹² See Section III(A)(1)

¹¹³ See Section III(A)(1) and Section V(A) and (E)(14)

¹¹⁴ See Section III(A)(1) and Section V(D) and (E)

¹¹⁵ See Section V(D)

¹¹⁶ See Section III(A)(1) and Section III(A)(2)

¹¹⁷ See Section III(A)(1)

¹¹⁸ See Section III(A)(1) and Section V(D)

Mississippi¹¹⁹

Montana¹²⁰

Nebraska¹²¹

Nevada¹²²

New Hampshire¹²³

New Jersey¹²⁴

New Mexico¹²⁵

New York¹²⁶

North Dakota¹²⁷

Ohio¹²⁸

Oklahoma¹²⁹

Oregon¹³⁰

Pennsylvania¹³¹

Rhode Island¹³²

South Carolina¹³³

¹¹⁹ See Section III(A)(1) and Section V(E)

¹²⁰ See Section III(A)(1) and Section V(A)

¹²¹ See Section III(A)(2)

¹²² See Section V(E)

¹²³ See Section II and Section III(A)(1)

¹²⁴ See Section III(A)(1) and Section V(D) and (E)

¹²⁵ See Section I, Section III, Section III(A)(1), (2) and (3), Section III(B), Section IV, Section V(A), (B), (C), (E) and (E)(10), Section 6 and Appendix A

¹²⁶ See Section III(A)(1) and Section V(B)

¹²⁷ See Section III(A)(1)

¹²⁸ See Section V(D)

¹²⁹ See Section II

¹³⁰ See Section II, Section III(A)(2) and Section V(D) and (E)(9)

¹³¹ See Section III(A)(1) and Section 5(D)

¹³² See Section II, Section III(A)(1) and Section V(C)

¹³³ Section III(A)(1)

South Dakota¹³⁴

Tennessee¹³⁵

Texas¹³⁶

Utah¹³⁷

Vermont¹³⁸

Virginia¹³⁹

Washington State¹⁴⁰

West Virginia¹⁴¹

Wisconsin¹⁴²

V. Solutions

A. Definitions

Some states have definitions of “neglect” that exempt poverty, other states have definitions of “neglect” that include poverty, while a third class of states exclude poverty when no fault of the child’s caregiver(s).¹⁴³

Chapin Hall posits that inclusion of income-related factors in definitions of neglect without exemptions may funnel families into the child welfare system. They opine, however, that poverty exemptions in neglect statutes don’t guarantee a sharp reduction in neglect cases, “without strategic practices, preponderance of evidence standard for substantiation [and] assessing neglect through a harm specification lens”.¹⁴⁴

¹³⁴ See Section V(E)

¹³⁵ See Section III(A)(2) and Section 5(D)

¹³⁶ See Section III(A)(1) and (2) and Section V(D) and (E)

¹³⁷ See Section V(D)

¹³⁸ See Section III(A)(3) and Section 5(C)

¹³⁹ See Section III(A)(1) and Section V(D)(1)

¹⁴⁰ See Section II, Section III(A)(1) and Section V(A) and (D)

¹⁴¹ See Section III(A)(1)

¹⁴² See Section III(A)(1), Section V(D) and V(E)(4) and V(E)(12)

¹⁴³ For a complete catalogue of all state definitions of “neglect”, see <https://www.childwelfare.gov/topics/systemwide/laws-policies/state/?CWIGFunctionsaction=statestatutes:main.getResults>

¹⁴⁴ <https://www.chapinhall.org/wp-content/uploads/Economic-Supports-deck.pdf>, p. 13, citing DeGuerre, 2021

Nevertheless, a policy approach to reducing poverty-related neglect is to ensure that every State explicitly excludes poverty-related conditions from its statutory definition of neglect or maltreatment. As an example, Washington State's 2022 Keeping Families Together Act ensures that children cannot be separated from their families solely on the basis of community or family poverty or inadequate housing.

Washington State statute RCW 13.34.065, governing shelter care, hearing, recommendation as to further need, and release, effective July 1, 2023, provides, in part

...

(5)(a) The court shall release a child alleged to be dependent to the care, custody, and control of the child's parent, guardian, or legal custodian unless the court finds there is reasonable cause to believe that:

(i) After consideration of the specific services that have been provided, reasonable efforts have been made to prevent or eliminate the need for removal of the child from the child's home and to make it possible for the child to return home; and

(ii)(A) The child has no parent, guardian, or legal custodian to provide supervision and care for such child; or

*(B)(I) Removal of the child is necessary to prevent imminent physical harm due to child abuse or neglect, including that which results from sexual abuse, sexual exploitation, or a pattern of severe neglect, notwithstanding an order entered pursuant to RCW 26.44.063. The evidence must show a causal relationship between the particular conditions in the home and imminent physical harm to the child. **The existence of community or family poverty, isolation, single parenthood, age of the parent, crowded or inadequate housing, substance abuse, prenatal drug or alcohol exposure, mental illness, disability or special needs of the parent or child, or nonconforming social behavior does not by itself constitute imminent physical harm;**...¹⁴⁵ (Emphasis added)*

Similar legislation has been passed or proposed in other States, as follows:

Kentucky – Senate Bill 8 (2022)

- Narrows definition of neglect to situations where child's welfare is harmed or threatened with harm by parent due to inadequate care, supervision, food, clothing, shelter, education or medical care necessary for the child's well-being when financially able to do so or offered financial or other means to do so

Montana – House Bill 37 (proposed 2022)

- Prohibits removal solely due to parental substance use, disorderly living conditions or economic status and expands "reasonable efforts required to prevent removal" to include identifying community resources (housing, financial, transportation, mental health & substance abuse services) and actively assisting families to access these resources.¹⁴⁶

¹⁴⁵ <https://app.leg.wa.gov/rcw/default.aspx?cite=13.34.065>

¹⁴⁶ <https://www.chapinhall.org/wp-content/uploads/Economic-Supports-deck.pdf>, p. 14; Note: the Montana governor vetoed the legislation on 5/11/23 and a veto override failed in the legislature on 6/9/23.

[https://laws.leg.mt.gov/legprd/LAW0203W\\$BSRV.ActionQuery?P_SESS=20231&P_BLTP_BILL_TYP_CD=HB&P_BILL_NO=37&P_BILL_DFT_NO=&P_CHPT_NO=&Z_ACTION=Find&P_ENTY_ID_SEQ2=&P_SBJT_SBJ_CD=&P_ENTY_ID_SE](https://laws.leg.mt.gov/legprd/LAW0203W$BSRV.ActionQuery?P_SESS=20231&P_BLTP_BILL_TYP_CD=HB&P_BILL_NO=37&P_BILL_DFT_NO=&P_CHPT_NO=&Z_ACTION=Find&P_ENTY_ID_SEQ2=&P_SBJT_SBJ_CD=&P_ENTY_ID_SE)
Q

As law professor David Pimentel notes

*The legal standards for a finding of neglect, or for an intervention in the family, are often vague, and yet they have been upheld despite their vagueness. This vagueness is a problem for parents, who are left without clear guidance as to what is permissible and what is not. But vagueness is also a problem for the state authorities, as they are left to trust their instincts in determining when it is appropriate to intrude upon the otherwise sacred space between parent and child. Statutes that use "risk of harm" or other broad terms do not help parents, authorities, or potential reporters. Every parenting decision involves some level of risk.*¹⁴⁷

As noted in Section III(B), above, in *State ex rel. Children, Youth & Families Dept. v. Shawna C.*, 2005-NMCA-066, 137 N.M. 687, 114 P.3d 367, the New Mexico Court of Appeals was tasked with ruling whether the state's Abuse and Neglect Act, Section 32A-4-1 NMSA 1978 was unconstitutionally vague.

The mother challenged the Act as being "void for vagueness" as applied to her, claiming that the phrase "without proper parental care . . . because of the faults or habits of the child's parent" in Section 32A-4-2(E)(2) (now (G)(2), among other phrases, failed to give parents notice of what conduct is prohibited and vest "entirely too much discretion" in CYFD and the district court in determinations of parental unfitness.¹⁴⁸

The court summarized the void-for-vagueness doctrine, applied the doctrine to the Act, and concluded that it is not unconstitutionally vague. In doing so, the court concluded

{38} ... that the Act does not encourage standardless or arbitrary enforcement of the law. The United States Supreme Court has noted that "the more important aspect of the vagueness doctrine is not actual notice, but the other principal element of the doctrine [-] the requirement that a legislature establish minimal guidelines to govern law enforcement." Kolender, 461 U.S. at 358 (internal quotation marks and citation). Where a law does not provide "minimal guidelines, a . . . statute may permit a standardless sweep [that] allows policemen, prosecutors, and juries to pursue their personal predilections." Id. (internal quotation marks and citation omitted). Since CYFD performs the law enforcement function under the Act, we therefore ask whether the relevant portions of the Act provide it with "carte blanche" that would permit "arbitrary or standardless enforcement power." Laguna, 1999-NMCA-152, ¶ 33.

{39} In our view, the phrases "without proper parental care and control . . . because of the faults or habits of the child's parent" in Section 32A-4-2(E)(2), "unable to discharge his responsibilities . . . because of . . . mental disorder" in Section 32A-4-2(E)(4), and "at risk of suffering serious harm" in Section 32A-4-2(B)(1) provide adequate standards to guide CYFD in its enforcement activities and do not invite or encourage arbitrary enforcement. Law enforcement always "requires the exercise of some degree of police judgment." Grayned, 408 U.S. at 114. We are not faced here with anything like the kind

¹⁴⁷ Pimentel, p. 895

¹⁴⁸ <https://www.nmonesource.com/nmos/nmca/en/item/390718/index.do>, paragraph 31.

of sweeping laws that have been struck down because they provide "no standards" to guide law enforcement and permit enforcers to effectively do as they please. See Papachristou v. City of Jacksonville, 405 U.S. 156, 170 (1972) (stating that where there are no standards governing the exercise of the discretion granted by a law, "the scheme permits and encourages an arbitrary and discriminatory enforcement"). In addition, our prior decisions do not reveal a chronic over-reaching or propensity by CYFD to use the Act as an arbitrary basis to act against parents based upon mere disapproval of their lifestyle. The Act's language is broad enough to cover the myriad harms that may confront children, but not so broad and standardless to give CYFD carte blanche to file petitions against any parent it chooses. See In re J.L.B., 594 P.2d at 1135 (upholding the Montana neglect act because there was no pattern of over-broad interpretation and the language was broad enough to include important harms to children).¹⁴⁹

B. Training

From the time a complaint of neglect is received, there is human involvement in decision-making about how to move forward in investigating and resolving situations involving reported neglect of children.

Personnel could be trained to recognize when families could use support and be authorized to direct them to those supports.¹⁵⁰

In 2016, Arizona enacted AZ H 2522, providing for, among other things, training for the Department of Child Safety's investigators in forensic interviewing, processes, and protocols.¹⁵¹

Colorado, as reported previously in Section III(A)(2), enacted HB 1240 during the 2022 legislative session, creating the Mandatory Reporter Task Force in the Office of the Child Protection Ombudsman. The law's purpose is to analyze best practices and recommend changes to training requirements and reporting procedures.¹⁵²

An analysis of the training offered to New Mexico's CYFD workers, including case workers, intake workers, investigators, etc. is beyond the scope of this report.

C. Multiple Agency Coordination and Collaboration

¹⁴⁹ Ibid, paragraphs 38 and 39

¹⁵⁰ See Section V (D) re: "Differential Response with Concrete Supports" – families with screened in CPS reports who are not determined to be high risk can be diverted from CPS investigations and instead connected with services and supports to meet their needs.

¹⁵¹https://custom.statenet.com/public/resources.cgi?id=ID:bill:AZ2016000H2522&ciq=ncsl&client_md=b106f0db3a2851ec06619b26fa3287b9&mode=current_text

¹⁵²https://custom.statenet.com/public/resources.cgi?id=ID:bill:CO2022000H1240&ciq=ncsl&client_md=4e84e6134ddc05a8deb538cdb3e44cc1&mode=current_text

In some states, coordination between multiple agencies is already occurring.¹⁵³

Chapin Hall reports that while Vermont has the highest rate of child maltreatment rates in the country, the state has the lowest rate of screened-in neglect cases (1.5%). They report that Vermont has created an “economic firewall” through:

- ***Interagency collaboration & service coordination:*** *Co-location of CPS with economic services & early child development divisions*
- *Providing all CPS district directors with direct access to **family preservation flexible funds** to prevent removal*
- ***Multidimensional diversion system*** *that refers families to:*
 - ✓ *Economic support services (TANF)*
 - ✓ *Family resource centers*
 - ✓ *Differential response systems*¹⁵⁴

Chapin Hall provides as an example, the Family Resource Center(FRC) in Teller County, Colorado, that connects families who have been screened out of child welfare to community resources, family support services & financial assistance. They report that after a formal partnership between child welfare and FRC was established, the county saw a 63% reduction in its child maltreatment rate and saved an estimated \$2.5 million in 2018. For every \$1 invested, they note, the savings to child welfare in terms of fewer cases of maltreatment was \$2.92 in the county.¹⁵⁵

Colorado has also created a Family First Prevention Services Act Implementation Team, consisting of members from advocacy groups, municipal and county officials and representatives from state agencies, including the Division of Youth Services, the State Court Administrator’s Office, the Office of Behavioral Health, the Division of Child Welfare, the Department of Child Welfare, the Office of Early Childhood, and the Office of Children, Youth and Families.¹⁵⁶

In 2018, Rhode Island enacted RI S 2683, establishing standards for children's advocacy centers, community-based organizations that provide a child friendly, safe, and neutral location from which a multidisciplinary team would act in response to child abuse allegations, provide numerous victim support services such as, forensic interviews, medical evaluation and treatment, intervention through specialized mental health services, and victim advocacy during legal proceedings.¹⁵⁷

As of April 2023, in New Mexico, CYFD was developing and building out “family resource centers” throughout the state, through community-based contracts – built by the community for

¹⁵³ See examples below and those found in Section V(D), infra, e.g. the example from Washington State

¹⁵⁴ <https://www.chapinhall.org/wp-content/uploads/Economic-Supports-deck.pdf>, p. 15, citing DeGuerre, 2021; Feely, 2020; <https://www.acf.hhs.gov/sites/default/files/documents/cb/cm2019.pdf>

¹⁵⁵ <https://www.chapinhall.org/wp-content/uploads/Economic-Supports-deck.pdf>, p. 158, citing Omni, 2021

¹⁵⁶ <https://cdhs.colorado.gov/family-first-prevention-services-act-implementation-team>

¹⁵⁷ [https://custom.statenet.com/public/resources.cgi?id=ID:bill:RI2017000S2683&ciq=mbengue\\$&client_md=8d4ec6ae0caf85e142c5b5d62431717e&mode=current_text](https://custom.statenet.com/public/resources.cgi?id=ID:bill:RI2017000S2683&ciq=mbengue$&client_md=8d4ec6ae0caf85e142c5b5d62431717e&mode=current_text)

the unique needs of the community. These centers will provide child care, food pantries, and therapy sessions.

As mentioned above, CPS workers can be trained to access services provided by multiple agencies, when a differential response is appropriate.

D. Multigenerational Involvement

Much attention is rightly paid to breaking the cycle of poverty in families, and thus reducing child welfare agency involvement.¹⁵⁸

Research suggests that multigenerational approaches can help interrupt economic and social barriers to many families' economic mobility and increased well-being and carry long-term benefits.¹⁵⁹

The multigenerational approach focuses on addressing the needs of the whole family through services integration designed to alleviate poverty. The approach may be referred to as the “whole family”¹⁶⁰ approach or the “two-generation” approach (2Gen). Both the Aspen Institute and the Annie E. Casey Foundation have advocated for multigenerational approach use to alleviate poverty.¹⁶¹

*The multigenerational model integrates child-focused services, parent and caregiver services, and adult-focused services. Services for children often aim to improve school readiness, while services for adults target economic assets such as housing, job readiness, and health and well-being. Other services may include child and family social groups, support services for caregivers, and respite services.*¹⁶²

While a key goal of many human service programs is to provide important supports to families with low incomes to help them on their path to economic security, most programs take a child- or parent/caregiver- focused approach rather than a family-based approach.

A program providing workforce training for a parent, for example, may not provide the child care necessary to allow the parent to be able to attend the training or to work a job once the training is complete. This barrier—the need for child care—will limit the

¹⁵⁸ https://www.nationalassembly.org/wp-content/uploads/2018/05/BreakingTheCycleOfPovertyInYoungFamilies_FullReport_April2015.pdf

¹⁵⁹ https://cms.childtrends.org/wp-content/uploads/2023/03/Aspen2Gen_ChildTrends_March2023.pdf

¹⁶⁰ <https://wholefamilyguide.org/what-is-whole-family/>

¹⁶¹ <https://www.ruralhealthinfo.org/toolkits/services-integration/2/multigenerational>; *Creating Opportunity for Families, a two-generation approach*, <https://assets.aecf.org/m/resourcedoc/aecf-CreatingOpportunityforFamilies-2014.pdf>; *Two-Generation Approaches*, <https://www.aecf.org/topics/two-generation-approaches>; *The 2Gen Approach*, <https://ascend.aspeninstitute.org/2gen-approach/>; *State of the Field: Two-Generation Approaches to Family Well-Being*, <https://ascend.aspeninstitute.org/state-of-the-field-two-generation-approaches-to-family-well-being/>

¹⁶² <https://www.ruralhealthinfo.org/toolkits/services-integration/2/multigenerational>

effectiveness of the workforce program in helping a parent secure employment. The desire to improve the effectiveness and efficiency of efforts to support families has brought increased interest in two-generation (2Gen) approaches to programming. A 2Gen approach explicitly recognizes the interlinked nature of parents' and their children's lives and that a family will be most likely to thrive when programs can simultaneously support the needs of both parents (or caregivers) and their children. Recent research suggests that 2Gen approaches to human service programming can have positive long-term benefits.

The 2Gen lens does not just apply to programming. It also provides a roadmap for the types of characteristics policymakers, researchers, and program evaluators should pay attention to if they want to assess whether families have what they need to thrive. Two-generation approaches generally focus on six domains that, combined, can help families achieve economic stability: (1) physical and mental health, (2) early childhood education, (3) postsecondary and employment pathways, (4) economic assets, (5) K-12 education, and (6) social capital.¹⁶³

Examples of use of the approach from various states¹⁶⁴:

California¹⁶⁵

Colorado

The Colorado Department of Human Services reports that it uses a two-generation approach to guide all of its services, noting that, “The two-gen approach encourages CDHS programs to

¹⁶³*Data on Families With Low Incomes Across America Can Inform Two-Generation approaches*, https://cms.childtrends.org/wp-content/uploads/2023/03/Aspen2Gen_ChildTrends_March2023.pdf. The Academy for Professional Excellence at the San Diego State University School of Social Work, in its 2017 *SACHS Review of the Research: Innovative Approaches to Reducing Poverty*, describes “social capital” as building on resilience and manifesting itself as “peer support; contact with family, friends, and neighbors; participation in community and faith-based organizations; school and workplace contacts; leadership and empowerment programs; use of case managers or career coaches; and other social networks such as cohort models and learning communities. Such support appears to be a powerful success factor in programs that help move families beyond poverty. Social Capital builds on the strength and resilience of families, bolstering the aspirations parents have for their children.” <https://theacademy.sdsu.edu/wp-content/uploads/2017/02/sachs-poverty-report-feb-2017-2.pdf>

¹⁶⁴ Several state programs are highlighted and links are provided in footnotes for information about each state listed. For additional, earlier state efforts, see <https://theacademy.sdsu.edu/wp-content/uploads/2017/02/sachs-poverty-report-feb-2017-2.pdf>, pp. 39-45. For a brief spotlight on how state leaders agree that the 2Gen approach to fighting poverty is working, see <https://spotlightonpoverty.org/spotlight-exclusives/state-leaders-agree-two-generation-approach-fighting-poverty-working/>. For state and local examples of 2Gen approaches, see <https://www.childwelfare.gov/topics/preventing/promoting/two-gen/state/>. See also, generally [https://www.childwelfare.gov/topics/preventing/promoting/two-gen/#:~:text=The%20two%2Dgeneration%20\(2Gen\),%2C%20resiliency%2C%20and%20parental%20capacity](https://www.childwelfare.gov/topics/preventing/promoting/two-gen/#:~:text=The%20two%2Dgeneration%20(2Gen),%2C%20resiliency%2C%20and%20parental%20capacity)

¹⁶⁵ <https://friendsla.org/how-it-works/2gen>

serve children and their caregivers together, to harness the family's full potential and to put the entire family on a path to permanent economic security.”¹⁶⁶

The department further explains that

*When programs and policies are designed with the whole family's educational and economic future in mind, and families are assisted to reach the social networks and resources they need to be successful in life, opportunity becomes a family tradition. Fragmented approaches to serving families that separately address the needs of children and their caregivers can leave either the child or the caregiver behind, reducing the likelihood of success for all members of the family. The two-gen approach brings all family members along together, assesses all family members together and provides all family members with opportunities, together, to be successful.*¹⁶⁷

The Department explains that the two-generation approach is in action across Colorado and serves clients and providers together, and provides information about several areas where 2Gen is having an impact on Coloradans, including:

- Division of Youth Services
- Child Support Services
- Family Voice Council
- Working Together Project¹⁶⁸

The Department references the Colorado Guide to 2Gen,¹⁶⁹ explaining that it

*...provides a roadmap for the next phase of the state's efforts to ensure that all Colorado families and children are valued, healthy, and thriving. This guide was published in June 2017 with the work of many groups and individuals who have been instrumental in revolutionizing 2Gen approaches in Colorado. The guide is grounded in the excellent work that has been done in the state and strategies that cut across sectors, nonprofits, the business community, state and local governments, and philanthropic partners to lift up Colorado families. The Colorado Guide to 2Gen represents Colorado's commitment to becoming a state in which all families can attain economic security and educational success.*¹⁷⁰

The Department acknowledges that many individuals and teams help make the two-generation approach a successful reality for Coloradans, and provides the following list of partners and resources that aid in the approach:

¹⁶⁶ <https://cdhs.colorado.gov/about-cdhs/featured-initiatives/two-generation-approach-in-colorado>

¹⁶⁷ Id. For more information about two-gen efforts at CDHS, contact Family and Community Engagement Director Chelsey Hall at chelsey.hall@state.co.us or 303.866.5310.

¹⁶⁸ <https://cdhs.colorado.gov/about-cdhs/featured-initiatives/two-generation-approach-in-colorado>

¹⁶⁹ <https://drive.google.com/file/d/1J4C84Ym9y5TztQp-oqCryG5abT0IMxE1/view>

¹⁷⁰ <https://cdhs.colorado.gov/about-cdhs/featured-initiatives/two-generation-approach-in-colorado>

Ascend at the Aspen Institute

- Ascend Messaging Guide and Tip Sheet

Center for Law and Social Policy (CLASP)

- CLASP infographic: 2016 Census Data on Poverty

FrameWorks Institute

- FrameWorks Institute report: Framing Two-Generation Strategies

National Governors Association

Arapahoe County Department of Human Services and Family Tree's Generational Opportunities to Achieve Long-Term Success (GOALS) Program

The Bell Policy Center

- Bell Policy Center report: Bound to Succeed: An Environmental Scan of Two-Generation Approaches to Education in Colorado
- Op-ed by Bell Policy Center president: Close the growing economic divide by teaching two generations at once

Colorado Children's Campaign

Family Resource Center Association¹⁷¹

EXAMPLE: The Health Resources and Services Administration's (HRSA's) Maternal, Infant and Early Childhood Home Visiting (MIECHV) Program innovation award to the Colorado Department of Human Services, Office of Early Childhood, created Working Together, a two-generation approach to integrating education and employment into home visiting.

Colorado implemented the innovation award in a geographically isolated area in the state, the San Luis Valley. Located between two mountain ranges, this valley is primarily a farming community, with high rates of substance use, and a homelessness rate that is 10 times higher than the national average. Families experience many challenges in this high-needs community, including housing and food insecurity. There is no public transportation; if a family's car breaks down, family members cannot get to school or work. Many families have no safety net, so an unplanned car repair can cause a crisis as family members have to choose between paying for the repair or for rent or food.

The premise behind Working Together is that two-generation programming is the best way to help children thrive. Working Together services, funded by a number of sources, include home visiting, GED training and testing, college certificate programs, associate's degree programs, workforce services, financial literacy training, high-quality

¹⁷¹ Id

*early care and learning, transportation, and connections to community partners who provide food and emergency services.*¹⁷²

The key takeaways for the Colorado program’s 2Gen success:

- Connect with a wide variety of organizations
- Follow an established framework (in this instance, the 5 core elements of “collective impact”).
- Be on the lookout for unexpected opportunities; think and engage more broadly than you typically do.
- Think broadly about funding.
- Know that there will be challenges— and that some of them will seem insurmountable.
- Work together to get more ideas on the table of how to support families.¹⁷³

Connecticut¹⁷⁴

Georgia¹⁷⁵

Indiana

EXAMPLE: In 2011, Goodwill of Central & Southern Indiana (GCSI) and Nurse-Family Partnership (NFP) Indiana came together under one roof to form a MIECHV Local Implementing Agency (LIA). Each of these two organizations provided complementary expertise. Nurse-Family Partnership (NFP) brought its expertise in home visiting, health services, and early childhood development. Goodwill brought its expertise in adult education and workforce development.

Originally funded solely through MIECHV, GCSI’s home visiting program had an initial funded enrollment of 600 families. Additional funding streams, including state general revenue, Title V block grant resources, private funding, and funding from several hospital and community foundations for nurses, resulted in the current funded capacity of 1,475 families in a 30-county area that includes urban, suburban, and rural sites.

According to Betsy Delgado, Vice-President of Mission and Education, Goodwill of Southern and Central Indiana, before coming together as an LIA, both NFP Indiana and GCSI independently recognized the value and potential impact of a two-generation approach to working with at-risk families and their children. Says Delgado, “If the whole family is given opportunities, the result has an impact for generations to come. A parent

¹⁷² <https://mchb.hrsa.gov/sites/default/files/mchb/programs-impact/hv-two-generation-resource.pdf>

¹⁷³ Id

¹⁷⁴ <https://ctcwcs.files.wordpress.com/2016/09/2-gen-report.pdf>; and <https://ctcwcs.com/two-generational/>

¹⁷⁵ <https://www.clasp.org/sites/default/files/publications/2018/02/PACTT%20The%20Role%20of%20State%20Agencies.pdf>; <https://gbpi.org/a-two-generation-approach/>; <http://georgiavoices.org/wp-content/uploads/2Gen-Approach-Factsheet.pdf>

who has a high school diploma, advanced certification, a livable wage, and a skill set for engaging with their children sets a totally different trajectory for the family.”

Through GCSI’s co-located provision of home visiting, education, and employment support, participants have seamless access to services to meet their goals in education, health and well-being, and economic stability.¹⁷⁶

The key takeaways for the Indiana program’s 2Gen success:

- Look for potential partners with aligned missions, visions, and goals but different expertise.
- Coordinate services.
- Seek outside expertise and listen to many voices.
- Build referral pipelines by reaching out to a wide range of organizations with overlapping missions and populations served.
- Consider how to integrate data, and use data for long-term follow-up.
- Become experts in building relationships.¹⁷⁷

Maryland

EXAMPLE: Founded in 1965, the Garrett County Community Action Committee (GCCAC) is a nonprofit organization that serves all of Garrett County, Maryland, located west of Maryland’s Appalachian Mountains.

With 190 staff members, the agency offers a diverse portfolio of 42 programs and services that focus on early education, child care, transportation, asset development, stabilization, services for the elderly, nutrition, and housing. Data from 2017 show that the agency is working with one in three households and one in four county residents. GCCAC has operated Head Start and Early Head Start Centers since its founding. These centers serve nearly 300 families—children and adults—which the agency recognizes as its two-generation population.

Following a strategic planning process in 2009, GCCAC underwent a paradigm shift in how programs and services were categorized and delivered. The strategic planning process revealed that while GCCAC was very good at administering services and programs, the agency’s programs and services operated in silos, which made it difficult to track the impact of the efforts and outcomes related of these services. With support from the Board of Directors, GCCAC’s President led the process of transforming the agency. GCCAC set two parallel goals: to become a more evidence-based agency, and to better enable families to realize their aspirations while also achieving a higher level of economic security. GCCAC decided to develop and implement a two-generation approach, in which the agency strives to more intentionally link and bundle high-quality, intensive services and programs for children and families.¹⁷⁸

¹⁷⁶ <https://mchb.hrsa.gov/sites/default/files/mchb/programs-impact/hv-two-generation-resource.pdf>

¹⁷⁷ Id

¹⁷⁸ Id

The key takeaways for the Maryland program's 2Gen success:

- Allow time for change to take hold.
- Be aware that a change in approach can impact the entire organization's culture and structure.
- Provide ongoing communication and consistent messaging during times of change.
- Integrate services and minimize duplication.
- Use technology to collect and share accurate and complete data.
- Seek and use outside support.¹⁷⁹

Minnesota¹⁸⁰

New Jersey¹⁸¹

New York¹⁸²

Ohio¹⁸³

Oregon¹⁸⁴

Tennessee¹⁸⁵

Texas¹⁸⁶

Utah¹⁸⁷

¹⁷⁹ Id. As for outside support, The Annie E. Casey Foundation and Ascend at the Aspen Institute all played a critical role in the agency's transformation through grant funding to support technical assistance, redesign staff positions, and expand data-collection and analysis capacity. GCCAC was also selected as one of 10 demonstration sites for Rural IMPACT, an initiative of the White House Rural Council, with support and involvement from the American Academy of Pediatrics, the Kellogg Foundation, and the National Community Action Partnership. Participation in these initiatives allowed the agency to continue to learn and share on a regular basis.

¹⁸⁰ <https://mn.gov/dhs/whole-family-systems/>;
<https://www.clasp.org/sites/default/files/publications/2018/02/PACTT%20The%20Role%20of%20State%20Agencies.pdf>; <https://mn.gov/dhs/2-generation/about/> ;
<https://www.ramseycounty.us/sites/default/files/Work%20with%20Ramsey/Building%20Blocks%20with%20Resources%20and%20Definition%202.14.19.pdf>

¹⁸¹ <https://www.clasp.org/sites/default/files/publications/2018/02/PACTT%20The%20Role%20of%20State%20Agencies.pdf>

¹⁸² <https://assets.aecf.org/m/resourcedoc/urban-developingtwomenapproaches-2021.pdf>

¹⁸³ <https://assets.aecf.org/m/resourcedoc/urban-developingtwomenapproaches-2021.pdf>

¹⁸⁴ <https://www.clasp.org/sites/default/files/publications/2018/02/PACTT%20The%20Role%20of%20State%20Agencies.pdf>

¹⁸⁵ <https://www.tncourts.gov/news/2021/03/08/family-preservation-initiative-promises-new-solutions-help-vulnerable-children-and> ; <https://www.tn.gov/humanservices/building-a-thriving-tennessee-through-2gen1.html>

¹⁸⁶ <https://assets.aecf.org/m/resourcedoc/urban-developingtwomenapproaches-2021.pdf>

¹⁸⁷ <https://ascend-resources.aspeninstitute.org/resources/states-leading-the-way-practical-solutions-that-lift-up-children-and-families/>

Virginia¹⁸⁸

Washington State

EXAMPLE: Beginning in 2014, the Washington State Temporary Assistance for Needy Families (TANF) program began partnering with home visiting programs throughout the state. In Washington, multiple public funding sources are braided to support home visiting through the Home Visiting Services Account (HVSA).

The state's legislature created the program by linking home visiting to one of TANF's core purposes: reduce the dependency of needy parents by promoting job preparation and employment. The state legislature also directs a portion of state dollars to support home visiting services for families that are receiving TANF funds.

Home visiting and TANF work represent a collaborative effort among the Department of Social and Health Services; the Economic Services Administration; the Community Services Division; the Department of Children, Youth, and Families; and Thrive Washington. These state-level stakeholders envisioned an innovative partnership to strengthen ties between public assistance programs and programs that serve young children and their families. Both TANF and home visiting leaders were looking for ways for families to be successful in education, employment, and parenting paths, knowing that the three are intertwined. These leaders also saw the need for a two-generation approach to enable them to reach their goals.

In the HVSA program, eligible families that receive TANF funds are offered the opportunity to participate in home visiting services. To preserve the voluntary nature of home visiting, TANF Community Service Workers provide families with a menu of support options to choose from, including home visiting. Community Services Office (CSO) staff use a script and a decision-making tool to help parents understand the variety of available options. (CSO staff also let families know that they may drop out at any time without penalty.)

Services provided through TANF and home visiting are coordinated. Home visiting can meet state-level WorkFirst participation requirements. TANF recipients develop an Individual Responsibility Plan (IRP) that helps families develop and reach personal and family goals. If a family chooses home visiting services, participation in home visiting is included in their IRP and followed by a CSO case manager. With parental consent, home visitors may have access to the IRP so families are not developing duplicative goals and plans and the services that families receive can be coordinated.

There were many details to flesh out to design a seamless process for referring TANF clients for home visiting services. Stakeholders were engaged in process mapping to address issues of how to know when there were vacancies, whom to refer and when; who

¹⁸⁸ <https://vakids.org/our-news/blog/families-work-everything-works-better-two-generation-approach>

would make referrals; how to make sure that referrals went both ways; and what the pros and cons were of using technology for referrals. They also designed processes to ensure speedy enrollment and to share information between programs while respecting confidentiality. Sometimes these processes have to be revisited when there is staff or leadership turnover in the home visiting programs or CSOs.

The state provided professional development so that home visitors understood WorkFirst requirements, and the TANF Community Services Office (CSO) staff understood the home visiting program. To foster ongoing communication, staff from the CSO and home visiting programs were encouraged to attend each other's important meetings, such as CSO local planning area meetings, and to serve on each other's advisory boards. Programs communicate regularly about enrollment and disenrollment within specified timelines, and many use the shared client database to compare notes about the families they mutually serve.¹⁸⁹

The key takeaways for the Washington State program's 2Gen success:

- Establish a strong governance and leadership structure.
- Begin with the premise (and promise) that the partnership will work.
- Allow adequate time for planning.
- Engage all stakeholders in the process.
- Provide resources to support planning and implementation.
- Start small and then grow, based on lessons learned.¹⁹⁰

Wisconsin¹⁹¹

The Aspen Institute released “Policy Ideas and Principles to Advance Two-Generation Efforts” in 2014, yet the following principles to guide 2Gen policies are still pertinent:

1. Measure and account for outcomes for both children and their parents;
2. Engage and listen to the voices of families;
3. Foster innovation and evidence together;
4. Align and link systems and funding streams;
5. Prioritize intentional implementation;
6. Ensure equity.¹⁹²

The Aspen Institute document also contains the following “to do” list for achieving better outcomes in 2Gen programs¹⁹³:

¹⁸⁹ <https://mchb.hrsa.gov/sites/default/files/mchb/programs-impact/hv-two-generation-resource.pdf>

¹⁹⁰ Id

¹⁹¹ <https://www.unitedwaydanecounty.org/2gen/>; <https://www.publicnewsservice.org/2014-11-12/childrens-issues/two-generation-approach-to-poverty-can-make-a-difference-in-wisconsin/a42773-1>;
<https://kidsforward.org/assets/WCCF-Child-Poverty-Report-52745-final.pdf>;

<https://www.educateschools.org/partnerships-deliver-on-quality-early-learning-in-wisconsin-colorado-2/>

¹⁹² See <https://ascend-resources.aspeninstitute.org/resources/top-ten-for-2gen-policy-ideas-and-principles-to-advance-two-generation-efforts/> to download the referenced document.

¹⁹³ Id

Low-income families have shown strong resilience despite great odds. This resilience should be encouraged in any new vision for effective approaches to education, economic assets, human services, and health and well-being that are based on strengths and assets rather than deficits.

The top 10 policies to promote two-generation strategies:

1. Help Head Start and Early Head Start fulfill their two-generation missions by strengthening family supports and increasing the emphasis on parents, not only in their role as mothers and fathers but also as breadwinners.
2. Reform the Child Care Development Block Grant to increase access to and quality of early childhood settings for children and to ensure greater access to job training and education for parents.
3. Increase efforts to support economic security outcomes in home visiting programs.
4. Promote cross-system collaboration and partnership among human services agencies and institutions of higher education, especially community colleges, to increase bundled services and access to benefits for low-income students, many of whom are parents.
5. Increase postsecondary education access and completion through institutional financial aid reform and policies that more accurately reflect the needs of enrolled student parents, a growing national demographic.
6. Use the 2014 Workforce Innovation and Opportunity Act (WIOA) to allow for state and local changes that enable two-generation support.
7. Redesign Temporary Assistance for Needy Families (TANF) for 21st century families — mothers or fathers, married or single.
8. Strengthen family connections through support and promotion of work opportunities for noncustodial parents.
9. Leverage provisions of the Affordable Care Act to improve economic security and family health and well-being.
10. Maximize opportunities for whole-family diagnosis and treatment for mental health.

Additionally, the Brookings Institute has identified 5 2Gen policies to improve mobility¹⁹⁴:

1. Home Visiting Programs: Programs such as the Nurse Family Partnership or Parents as Teachers pair parents with home visitors who both assess the well-being of the child and teach the parents best parenting practices. Virginia's Comprehensive Health Investment Project (CHIP) combines this approach with home visitors who assist the parents in self-sufficiency goals (e.g., getting a GED).

2. Training Health Professionals to Identify Risk Factors: Pediatricians are often well-positioned to assess children's well-being, but do not ask about parental risk factors to

¹⁹⁴ <https://www.brookings.edu/articles/5-policies-that-help-children-by-helping-their-parents/>

children's health, such as smoking. One example is the SEEK Project which trains health professionals to screen for parental risk factors and then refer the family to appropriate resources to address the problems.

3. Streamline the Process for Accessing Benefits: Child- and adult-focused state and federal agencies should make it easier for families to understand the overlap in the programs and access benefits available to them. For example, Louisiana uses SNAP eligibility data as an automatic enrollment tool for their Children's Health Insurance Program.

4. Connect Fathers to their Kids: Our country's child support system is broken – too many fathers disengage from the labor market because of the disincentives to work put in place by child support requirements. A series of pilot programs are trying to incentivize job training and labor force participation for fathers while also improving their parenting skills.

5. Childcare and Family Leave: Family-friendly policies on the parts of state and businesses, such as paid family leave, flexible work schedules, and access to high quality child care, make it easier for low-income families to earn a living without sacrificing their ability to provide the emotional and developmental support their children need in their early years.

E. Resource Redirection

It seems we have an interesting habit here in the United States of, more oft than not, allocating the most resources at the end of a series of events, when the most drastic thing has happened, rather than allocating sufficient resources for prevention of the drastic outcome.¹⁹⁵

For many years, the preferred solution has been to remove children from their parent(s) and families and place them in foster care, while punishing parents for neglect and sometimes for poverty, and requiring them to jump through numerous hoops to (in some cases) regain custody of their children.

We ARE seeing a movement – through 2Gen and otherwise – toward resource allocation aimed at supporting families and keeping them together, but is it enough and is it taking effect rapidly enough?

The Family First Prevention Services Act (FFPSA), enacted in 2018, and discussed previously in Section IV, provides money for prevention services...but, as of 2023, 46 states had submitted a plan – all but Alabama, Alaska, South Dakota and Texas – and 39 states have had a plan

¹⁹⁵ Think of the money spent on incarceration rather than education, nutrition and food assistance, housing, vocational training, child care, health insurance, etc.

approved by the federal government for use of funds for prevention services. New Mexico’s plan has been submitted but has not yet been approved.¹⁹⁶

Is it foolish to think that if “we” allocated more resources for education, nutrition and food assistance, housing, vocational training, child care, health insurance, etc. – or even Universal Basic Income (UBI)¹⁹⁷ – in many cases parents and caregivers would be better able to care for their children and thus retain custody of them?

[T]he poor are, by definition, insufficiently resourced to defend themselves or to resist such intrusions. Their rights and their family integrity are casualties of the process, and everyone suffers, including the children whose welfare motivated the intrusions in the first place. Indeed, the ultimate consequence may be a denial of the poor’s right to parent at all.

The United States and its several states devote staggering resources to the cause of child protection, including paying for the systems that separate poor children from their parents. Given the terrible outcomes these systems generate, including but not limited to family separation and foster care, we are overdue to reconsider our approach to the problem.¹⁹⁸

If one of the primary causes of child suffering is poverty, then it makes little sense to devote our resources to punishing parents for being poor and destroying the already at-risk families. Indeed, the trauma of the separation from their parents typically serves only to compound the harm to the children. If our primary concern is child protection and child welfare, then the focus should be on alleviating the poverty. Public monies would be far better spent on easing the impact of poverty.¹⁹⁹

According to a February 2023 bulletin from the Child Welfare Information Gateway, U.S. Dept. of Health and Human Services, Administration for Children and Families, Children’s Bureau, 75% of child welfare cases each year involve reports of neglect and result in family separation in thousands of cases.²⁰⁰ (60% of substantiated CPS responses nationally involve neglect only.²⁰¹) The Bureau reports that although the rates have decreased significantly in the past 30 years for most types of maltreatment, rates of neglect remain high and have fluctuated only slightly.²⁰²

¹⁹⁶ <https://www.acf.hhs.gov/cb/data/status-submitted-title-iv-e-prevention-program-five-year-plans> . New Mexico is joined by Arizona, Delaware, Louisiana, Mississippi, Nevada and New Jersey in having submitted a plan but still awaiting approval.

¹⁹⁷ See info re: Stockton and Cherokee Indians, etc., <https://www.chapinhall.org/wp-content/uploads/Economic-Supports-deck.pdf>, and pp. 127 - 131

¹⁹⁸ Federal, State, and local agencies spent about \$29.1 billion in 2014 fiscal year. CHILD TRENDS, CHILD WELFARE FINANCING SFY 2014: NATIONAL OVERVIEW (2016), <https://www.childtrends.org/wp-content/uploads/2016/10/2016-52ChildWelfareFinancingSFY2014Overview-1.pdf> .

¹⁹⁹ David Pimentel, <https://digitalcommons.law.ou.edu/cgi/viewcontent.cgi?article=1362&context=olr>

²⁰⁰ <https://www.acf.hhs.gov/sites/default/files/documents/cb/cm2020.pdf>

²⁰¹ <https://www.acf.hhs.gov/sites/default/files/documents/cb/cm2019.pdf>

²⁰² <https://www.childtrends.org/publications/state-level-data-for-understanding-child-welfare-in-the-united-states>

Persistently high rates of neglect, and the potentially serious consequences of both neglect and family separation by the child protection system, point to the need for more effective prevention and early intervention strategies.

In the past, prevention strategies have often focused on family-level issues and dynamics, but the role of poverty, and the systemic factors that make escaping poverty difficult for families, cannot be ignored. Research tells us that families who are experiencing poverty are far more likely to be reported to child protective services (CPS) than families with more resources, but it does not tell us why this is the case. What is increasingly clear is that helping families move out of poverty decreases the risk to children (Rostad et al., 2017).²⁰³

Chapin Hall reports that if low-income families experience at least one material hardship (including food, housing, utilities and medical hardship), those families have a 3 times higher likelihood of a neglect investigation, and a 4 times higher likelihood of a physical abuse investigation. They further report that if low-income families experience *multiple* types of material hardship – after experiencing no hardships – they have a 4 times higher likelihood of a CPS investigation, and a 7 times higher likelihood of a physical abuse investigation.²⁰⁴ To give context, Chapin Hall reports that in 2018, almost 70% of families with incomes below 200% of the federal poverty line reported experiencing a material hardship in the past year (difficulty paying for housing, utilities, food or medical care).²⁰⁵

Chapin Hall reports that the strongest predictors of investigated neglect reports are as follows:

- Food pantry use
- Difficulty paying rent
- Inability to receive medical care for sick family member
- Cutting meals
- Short duration of residence
- Utility shutoffs
- Public benefit receipt²⁰⁶

Some examples of Economic & Concrete Supports include:

❖ Cash assistance ❖ Emergency funds ❖ Direct cash transfers ❖ Earned Income Tax Credit ❖ Child Tax Credit ❖ TANF benefits ❖ Employment ❖ Income ❖ Flexible funds ❖ In-kind benefits ❖ Child care ❖ Housing supports ❖ SNAP ❖ WIC ❖ Medicaid ❖ Unemployment benefits ❖ Legal support ❖ Rental assistance ❖ Utility assistance ❖ Furniture & equipment ❖ Transportation ❖ Food ❖ Clothing²⁰⁷

²⁰³ <https://www.childwelfare.gov/pubPDFs/bulletins-poverty-neglect.pdf>

²⁰⁴ <https://www.chapinhall.org/wp-content/uploads/Economic-Supports-deck.pdf>, p. 18, citing Yang 2015

²⁰⁵ Ibid, p. 17, citing Urban Institute, 2018

²⁰⁶ Ibid, p.19, citing Conrad-Hiebner, 2020 systematic review; and Slack, 2011 cross-study comparison

²⁰⁷ Id

Two organizations, the American Academy of Pediatrics and the Centers for Disease Control and Prevention (CDC), have published cross-systems recommendations to strengthen economic and concrete supports to families:

American Academy of Pediatrics²⁰⁸

Build upon the goals of Family First by expanding the scope of services eligible for federal reimbursement to include:

- *Time-limited cash assistance to help low-income families meet concrete needs & minimize poverty-related neglect cases*
- *Services that address behavioral health, housing instability & domestic violence*

Centers for Disease Control and Prevention (CDC)²⁰⁹

- *Evidence-based strategies to help prevent child abuse and neglect must include strengthening economic supports to families*
- *Policies that improve the socioeconomic conditions of families have the largest impacts on health*

Studies detailing the effects of various economic supports have shown the following:

1. Child Care

- For every additional child care concern reported by families receiving TANF, the risk of supervisory child neglect increases by 20%
- Mothers entering substance use treatment who have difficulty securing child care are 82% more likely to self-report child neglect (compared to mothers entering treatment who don't have this difficulty)
 - Difficulty finding child care was a stronger predictor of maternal neglect than almost any other factor measured in this study, including mental health & (Yang, 2016) severity of drug use
- For working mothers who are low income:
 - Instability in child care arrangements is associated with increased risk for self-reported physical & psychological aggression toward their children
 - Not having access to emergency child care is associated with increased risk for self-reported neglectful behavior (especially for single mothers)
 - Waitlists to access subsidized child care are associated with an increase in child maltreatment investigations²¹⁰

2. Employment

²⁰⁸ <https://www.aap.org/en/advocacy/child-welfare-report/final-recommendations/>

²⁰⁹ <https://www.cdc.gov/violenceprevention/pdf/can-prevention-technical-package.pdf>

²¹⁰ <https://www.chapinhall.org/wp-content/uploads/Economic-Supports-deck.pdf>, pp. 59-61, citing Yang, 2016; Cash, 2003; Ha, 2019; Klevens, 2015; ASPE, 2020; and CLASP, 2019. Only 14% of children eligible for child care assistance receive it due to funding shortfalls. Low-income families who pay for child care spend an average of 30% of their household income on child care.

- A 1% increase in the monthly unemployment rate in an urban midwestern county is associated with an increase of 61 screened-in child maltreatment reports (excluding “neglect only” reports)
- A 1% increase in the county unemployment rate is associated with a 20% increase in substantiated neglect reports²¹¹

3. Subsidized Gasoline

- A \$1.00 increase in the price of gas for a state with 100,000 children is associated with an additional 642 child maltreatment referrals (controlling for demographic and other economic variables)²¹²

4. Housing

- Housing stress, including homelessness, eviction, foreclosure filing, housing instability/multiple moves and inadequate housing is associated with increased likelihood of the following child welfare involvement: caregiver self-reported child maltreatment; CPS investigations; substantiated CPS reports and foster care placement²¹³
- Inadequate housing contributes to the risk of entering foster care for 1 out of every 6 children involved in CPS investigations
- Self-reported housing instability in urban areas is associated with increased risk for neglect (above and beyond poverty)
- Each additional eviction filing (per 100 occupied units in a block group) is associated with a 2% increase in child maltreatment reports (primarily neglect)
- Households that will experience a foreclosure filing in next 6–12 months are at 70% greater risk of a CPS investigation (compared to households that will not)
- Increases in current and prior-year mortgage foreclosure rates are associated with increases in investigated & substantiated child maltreatment
 - 1% increase in the prior-year foreclosure rate is associated with a 7.3% increase in substantiations.
- Increases in mortgage delinquency & foreclosure rates are associated with increases in hospital admissions for:
 - Physical abuse of children < 6 years old
 - Traumatic brain injury for infants less than one year old (non-birth and non-motor vehicle crash related)²¹⁴

5. Minimum Wage Increase²¹⁵

- From 2004 to 2013:
 - States that increased the minimum wage beyond \$7.25 per hour experienced a decline in child maltreatment reports

²¹¹ Ibid, p. 62; Weiner, 2020; Brown, 2020, national data set 2004-2012

²¹² McLaughlin, 2017

²¹³ HUD, 2022; NCTSN, 2005; Chandler, 2022 – systematic review

²¹⁴ <https://www.chapinhall.org/wp-content/uploads/Economic-Supports-deck.pdf>, p. 65-69, citing Fowler, 2013; Warren, 2015; Bullinger, 2021; Lundberg, 2019; Berger, 2015 – Wisconsin data 2008-2011; Frioux, 2014 – Pennsylvania county-level data 2000-2010; and Wood, 2012 – using data from 38 hospitals 2000-]

²¹⁵ Ibid, p. 79-80, citing Raissian, 2017; and Schnieder, 2021

- Every \$1 increase in minimum wage was associated with a 9.6% decline in neglect reports (primarily for children under 12)
- Increasing a city's minimum wage is associated with reductions in self-reported physical & psychological aggression by parents towards their children (compared to cities that do not change minimum wage)

6. Paid Family Leave²¹⁶

- Compared to states with non PFL policy, the implementation of California's 2004 PFL policy (up to 12 weeks of partially paid leave), was associated with a decrease in hospital admissions for abusive head trauma among children less than 1 year old and less than 2 years old.

7. Unemployment Benefits²¹⁷

- States that extended the duration of unemployment benefits at the onset of the Great Recession (2007-2009) saw smaller increases in substantiated neglect reports (compared to states that didn't extend unemployment benefits)

8. Medicaid Expansion²¹⁸

- The rate of screened-in neglect reports for children < age 6 decreased in states that expanded Medicaid, but increased in states that did not expand Medicaid (from 2013 to 2016)
 - If non-expansion states had expanded Medicaid, there would have been almost 125,000 fewer screened-in neglect referrals for children < age 6 in the U.S. (from 2014 through 2016)
- States that newly expanded Medicaid in 2014 were associated with reductions in the average rate of child neglect reports per state-year:
 - 13% reduction for children ages 0-5
 - 15% reduction for children ages 6-12 ➢ 16% reduction for children ages 13-17
 (compared to states that did not expand Medicaid from 2008 to 2018)

9. Continuity of Medicaid Benefits²¹⁹

- States with policies that facilitate continuity of eligibility for Medicaid/Children's Health Insurance Program (CHIP) are associated with lower child maltreatment investigation rates (compared to states without continuous eligibility)
 - Oregon – Medicaid Waiver (approved 2022)²²⁰
 - First state in the nation to receive federal approval for continuous Medicaid coverage for children until age 6
 - Individuals ages 6+ will have two years of continuous Medicaid enrollment, even if their household income fluctuates

²¹⁶ Ibid, p. 82, citing Klevens, 2016

²¹⁷ Ibid, p. 84, citing Brown, 2020

²¹⁸ Ibid, p. 86-87, citing Brown, 2019; McGinty, 2022; and Urban Institute, 2021

²¹⁹ Ibid, p. 91, citing Klevens, 2015; and KFF, 2021

²²⁰ <https://www.oregon.gov/oha/hsd/medicaid-policy/pages/waiver-renewal.aspx#:~:text=The%202022%2D2027%20waiver%20also,from%20birth%20to%20age%2021.>

10. Child Care Subsidies²²¹

- States with Child Care & Development Fund (CCDF) program policies that make child care subsidies more accessible to child welfare-supervised families are associated with lower child removal rates (compared to other states)
- Each additional month that mothers who are low income receive a child care subsidy is associated with:
 - 16% decrease in the odds of a neglect report
 - 14% decrease in the odds of a physical abuse report (in the following 12 months)
- Child care investments* included in Build Back Better (proposed 2020-2021, \$273 billion for child care for children up to age 6 and \$109 billion for free and universal preschool) would be associated with a:
 - 6.4% reduction in CPS investigations
 - 6% reduction in substantiated child maltreatment
 - 3.1% reduction in foster care placements
 - 11.6% reduction in child fatalities due to maltreatment
- New Mexico
 - From 2022 to 2023, child care will be free for most families (family of four earning up to about \$111,000)
 - Goal is to develop a free, universal child care system
 - In November 2022, New Mexico overwhelmingly approved a ballot measure guaranteeing a constitutional right to early childhood education
 - It will create a dedicated funding stream (from the state's Land Grant Permanent Fund) for universal preschool and child care & bolster home-visiting programs for new parents
- High-Quality Child Care
 - Reduces likelihood of child welfare involvement
 - ✓ Children who attended Early Head Start had fewer child welfare encounters between ages 5 and 9 (compared to those who didn't attend)
 - Reduces likelihood of foster care entry
 - ✓ Children (ages 0–5) who participated in Head Start & were referred to child welfare for suspected maltreatment were 93% less likely to enter foster care (compared to children who did not receive any early childhood education service)
 - Helps prevent child maltreatment
 - ✓ Children who participated in Chicago Child-Parent Center preschool:
 - 52% less likely to be victims of confirmed maltreatment by age 17
 - Lower rates of reported neglect (compared to non-participating peers)

²²¹ <https://www.chapinhall.org/wp-content/uploads/Economic-Supports-deck.pdf>, pp. 94-98 citing Meloy, 2015; Yang, 2019; Puls, 2022; Reynolds, 2003; Green, 2014; and Klein, 2017

11. Supportive Housing²²²

- Children of child welfare-involved families who face housing instability and receive a supportive housing program (housing voucher + case management) experience:
 - Fewer removals (9% vs. 40% in business-as-usual control group after 2 years)
 - Lower prevalence of substantiated maltreatment (8% vs. 26% in control group after 18 months)
 - Increased reunification (30% vs. 9% in control group after 2 years)

12. Permanent Housing Subsidies²²³

- HUD's Family Options Study found that homeless families referred for permanent housing subsidies self-reported:
 - 50% fewer foster care placements (1.9% vs. 5% in the control group experienced at least 1 placement in the last 6 months)
 - Lower rates of psychological distress
 - Less intimate partner violence
 - Fewer child behavior problems
 - Greater housing stability & food security (compared to a business-as-usual control group of homeless families at the 20-month follow-up)
 - Connecticut: Head Start on Housing Program²²⁴ (2022) Cross-agency collaboration that provides federal housing vouchers to families with young children participating in Head Start programs
 - Wisconsin: Family Keys Pilot Program²²⁵ (2022) Provides short-term housing funds to families with children at risk of removal due to housing insecurity & to families unable to reunify due to inadequate housing
 - Short-term housing funds will be used for hotel costs, short-term rentals & expenses related to finding and

²²² <https://www.chapinhall.org/wp-content/uploads/Economic-Supports-deck.pdf>, p. 100, citing Farrell, 2018; and RCT

²²³ Ibid, p. 101, citing Gubits, 2015; and RCT

²²⁴ https://portal.ct.gov/Office-of-the-Governor/News/Press-Releases/2022/06-2022/Governor-Lamont-Announces-Expansion-of-Head-Start-On-Housing?utm_medium=email&utm_campaign=Governor%20Lamont%20Announces%20Expansion%20of%20Head%20Start%20on%20Housing%20A%20State%20Pilot%20Program%20Increasing%20Access%20to%20Permanent%20Housing%20for%20Families%20With%20Young%20Children&utm_content=Governor%20Lamont%20Announces%20Expansion%20of%20Head%20Start%20on%20Housing%20A%20State%20Pilot%20Program%20Increasing%20Access%20to%20Permanent%20Housing%20for%20Families%20With%20Young%20Children+CID_2e8a9c5485429033efecb6f36d3997f4&utm_source=Office%20of%20the%20Governor%20Campaign%20Monitor&utm_term=Governor%20Lamont%20Announces%20Expansion%20of%20Head%20Start%20on%20Housing%20A%20State%20Pilot%20Program%20Increasing%20Access%20to%20Permanent%20Housing%20for%20Families%20With%20Young%20Children%20%E2%80%8B%20%E2%80%8B

²²⁵ https://lacrossetribune.com/community/couleecourier/county-approves-funds-to-provide-short-term-housing-to-child-welfare-families/article_ae190eb8-4a42-11ed-a5e2-dbeeda26887b.html?utm_medium=email&utm_source=govdelivery

maintaining housing (security deposits, housing application fees, utility costs)

13. Differential Response with Concrete Supports²²⁶

- Low-income families who receive Differential Response (DR) with concrete supports, as compared to low-income families who receive DR without any concrete supports, are less likely to experience a subsequent maltreatment report* (43.2% v. 52.7%) (concrete supports included housing, rent, utilities, food or clothing, appliances, furniture or home repair & other financial help)
- Families with screened-in reports who are assigned to a Differential Response (DR) track & tend to receive more concrete supports, as compared to families assigned to the traditional track who receive fewer concrete supports, have a lower risk of subsequent:
 - Accepted maltreatment reports
 - Child removals & placements

14. Home-Based Services Programs²²⁷

- Families with open child welfare cases (mostly neglect) who receive a home-based services program with concrete supports are 17% less likely to experience a subsequent child maltreatment report (during the first year) (compared to families who receive the program without any concrete supports)
- For families who report difficulty paying bills prior to receiving a home-based services program with concrete supports:
 - Provision of clothing/furniture/supplies or housing assistance is associated with a reduced likelihood of subsequent substantiated maltreatment
 - Provision of cash assistance or clothing/ furniture/supplies is associated with a reduced likelihood of a subsequent foster care placement
- Illinois: Norman Services for Family Preservation.²²⁸ Families whose children are at risk of removal due to lack of food, clothing, housing or other basic human needs are referred by child welfare to this family preservation program which provides:
 - Emergency cash assistance for: Security deposit and/or first month's rent • Housing repairs • Utilities • Food • Clothing • Furniture and/or equipment • Transportation
 - Assistance finding housing
 - Waiver to allow families to apply for TANF if working towards reunification

²²⁶Chapin Hall explains that under differential response, families with screened-in CPS reports who are determined not to be high risk are diverted from CPS investigations and instead connected with services to meet their needs. <https://www.chapinhall.org/wp-content/uploads/Economic-Supports-deck.pdf>, pp. 117-118, citing Loman, 2012; and RCT

²²⁷ Ibid, pp. 119-122, citing Rostad, 2017; and Ryan, 2004

²²⁸ <https://dcfs.illinois.gov/>

- Kentucky: SFY 2022 budget State budget included \$1,000 in flexible funds for families participating in Kentucky’s family preservation program to meet Out-of-home concrete needs & prevent removal²²⁹

As detailed previously in Section II, while an increase in TANF benefits – as well as more creative use of TANF benefits – has been shown to improve child welfare, Chapin Hall also reports that states with more generous Supplemental Nutrition Assistance Program (SNAP) policies have experienced large reductions in CPS reports (i.e. reduction of 352 reports per 100,000 children), fewer substantiated reports for neglect in particular, and fewer foster care placements, from 2004 to 2016, compared to states with less generous SNAP policies.²³⁰

According to Chapin Hall, from 2004 to 2016

- *Every 5% increase in the number of families receiving SNAP benefits was associated with an 8% to 14% reduction in CPS & foster care caseloads*
- *Cumulative effect: implementation of multiple more generous SNAP policies was associated with larger reductions in child welfare involvement*
- *Estimated reductions in CPS reports & substantiations were particularly large among states offering transitional SNAP benefits to families leaving TANF²³¹*

Chapin Hall reports that children from low-income families who participate in SNAP or the Special Supplemental Nutrition Program for Women, Infants and Children (WIC), jointly or alone, have a lower risk of substantiated maltreatment reports, compared to children from low-income families who don’t participate in either program.²³² They suggest that states reduce the administrative burden for SNAP – barriers that increase the costs of applying for and maintaining enrollment in public benefit programs – and report that 33 states have done so, including New Mexico.²³³

While resource redirection is proposed, some feel it is not the only step necessary.

*[F]or families living in entrenched poverty, the direct investment of financial resources does not address the foundational challenges these families confront when living in poverty generation after generation. In contrast absolute mobility from poverty occurs when a person or family’s situation improves in absolute terms: their income rises, their life becomes more stable, and they gain a greater sense of dignity or control. ...
[D]elivering services through a flexible, family-centered, two-generation lens (serving*

²²⁹ Kentucky Interim Joint Committee on Health, Welfare & Family Services, July 21, 2021, <https://ket.org/legislature/archives/2021/interim/interim-joint-committee-on-health-welfare-family-services-179167>

²³⁰ <https://www.chapinhall.org/wp-content/uploads/Economic-Supports-deck.pdf>, p. 111, citing Johnson-Motoyama, 2022. SNAP policy choices reviewed in the cited study included: increasing income limits under broad-based categorical eligibility (BBCE); excluding legally obligated child support payments from total income; providing transitional SNAP benefits to families leaving TANF; and using simplified reporting option for changes in household circumstances. Ibid, p. 113.

²³¹ Ibid, p. 112, citing Johnson-Motoyama, 2022

²³² Ibid, p. 115, citing Lee, 2007.

²³³ Ibid, p. 116, citing PN3, 2022.

*both children and their parents intentionally and simultaneously) while also modifying policies to remove barriers to self-sufficiency can help families make the lasting transition away from public assistance program reliance to self-sufficiency.*²³⁴

VI. Conclusion

Many states are enacting programs and policies that are in alignment with the national movement to support families in need rather than penalize them. This includes New Mexico. While several actions taken by the state are noted in this report, it is impossible to know and to report upon the full range of programs and policies being implemented by state and local agencies in alignment with the national movement.

What has also been noted, however, is the recently reported trend in New Mexico of increasing numbers of abuse and neglect cases being filed and more children being removed from the custody of their families.²³⁵ This information appears to show New Mexico trending in an opposite direction from the national movement, as New Mexico works to strike a balance between supporting families and keeping them together, and keeping children safe.

As noted throughout this report, solutions to the problem of poverty and neglect entanglement can and are occurring in multiple ways:

- Changing the definition of “neglect” to exclude problems related solely to poverty and for which there is no available assistance
- Moving money from surveillance activities and unwarranted foster care to providing resources to families that will help alleviate poverty
- Retraining intake personnel and case workers and investigators to recognize when resources to alleviate poverty will resolve issues and give these workers the power to refer families to these resources
- Removing some mandated reporter requirements
- Involving multiple generations
- Involving multiple agencies

In New Mexico, a very important question is where the resources for new programs can be found. Can New Mexico avail itself of more outside funding? (As other states have done and as is noted in this report?) Can resource reallocation provide necessary funding?²³⁶

²³⁴ <https://theacademy.sdsu.edu/wp-content/uploads/2017/02/sachs-poverty-report-feb-2017-2.pdf> , acknowledging the following source: Ellwood, D., Bogle, M., Acs, G., Mikelson, K., & Popkin, S. (2016). Creating Mobility from Poverty: An Overview of Strategies. US Partnership on Mobility from Poverty. Retrieved from <http://www.urban.org/sites/default/files/alfresco/publication-pdfs/2000906-Creating-Mobility-from-Poverty-An-Overview-of-Strategies.pdf>

²³⁵ See discussion, Section III, supra

²³⁶ As of December 2022, New Mexico’s CYFD was reporting 509 vacancies, of which 443 were in the department’s Juvenile Justice Services and Protective Services divisions. The Protective Services Division, tasked with

The concern for and actions taken in support of New Mexico’s children – whether from legislators, advocates, state agency workers, those with lived experience, citizens or the governor – is overwhelming.

Perhaps information in this report, however, can provide a roadmap or augment existing roadmaps for how best to care for ALL of our children.

investigating reports of abuse or neglect, and to take action to prevent additional harm, was short 211 employees, primarily social and case workers. CYFD was asking the Legislature to approve an 11.8% budget increase, from more than \$346 million to more than \$386 million, including \$27 million more for the Protective Services Division. <https://sourcenm.com/2022/12/15/to-fill-empty-social-work-positions-cyfd-secretary-requests-a-bigger-budget/>

APPENDIX A

Relevant New Mexico Rules and Regulations Pertaining to Abuse and Neglect

I. New Mexico Administrative Code (NMAC)²³⁷

8.8.2.7 DEFINITIONS:

...

D. "Child abuse and neglect check" is a review of the PSD family automated client tracking system, also known as FACTS, or another state's central abuse or neglect registry to determine if there have been any previous referrals on the family to this state's or any other state's child protective services division.

...

J. "FACTS" refers to the family automated client tracking system (FACTS), the official data management system for CYFD.

K. "NCANDS" refers to the national child abuse and neglect data system (NCANDS), a voluntary national data collection and analysis system created in response to the requirements of the Child Abuse Prevention and Treatment Act.

8.8.2.8 PROTECTIVE SERVICES DIVISION:

The protective services division is New Mexico's officially designated child welfare agency, responsible for providing child protective services to individuals and families.

A. PSD shall be responsible for administering and supervising the state of New Mexico's child welfare services plan pursuant to Section 422(a) of the Social Security Act, 42 U.S.C. 622(a), and the agency responsible for the state plans under Title IV-B and IV-E of the Social Security Act and the social services block grant program pursuant to Title XX.

B. The protective services division shall maintain community based offices and maintains a toll free number that is posted in protective services division offices. Access to emergency protective services is available 24 hours a day, seven days a week.

8.8.2.12 PROVISION OF SERVICES:

A. PSD shall make reasonable efforts to protect reported children from abuse and neglect, and when safely possible, to preserve the integrity of the family unit.

²³⁷ https://www.nmonesource.com/nmos/nmac/en/nav_date.do

B. Provision of services is based upon the results of the assessment of the safety of the child, an assessment of the risk to the child, the protective capacities of the parent or guardian, and the availability of services.

C. Services shall be provided in a setting most consistent with the least restrictive alternatives and the case plan developed.

D. Provision of services shall not be dependent upon income certification or recertification for persons receiving the following services:

- (1) child protective services;
- (2) youth services;
- (3) in-home services;
- (4) child protective services childcare;
- (5) permanency planning service for children; or
- (6) adoption services for children.

E. PSD shall provide services in accordance with the Americans with Disabilities Act (ADA).

F. There shall be no residency or citizenship requirements for the provision of protective services.

G. Protective services shall be provided when indicated (see Subsection B above) to children who are infected with a communicable disease. PSD staff and providers use universal precautions for the prevention of communicable disease.

8.8.2.15 CONFIDENTIALITY:

All PSD staff and CFYD contractors shall maintain confidentiality of records and information in accordance with the laws and regulations that apply to specific services.

A. Abuse and neglect records: Abuse and neglect records are confidential pursuant to the New Mexico Children's Code 32A-4-33(A) NMSA. CYFD may release the identity of a reporting party only with the reporting party's consent or with a court order (See Protective Services Legal Policies, Subsection A of [8.10.7.10](#) NMAC).

8.8.2.20 FAMILY CENTERED MEETINGS:

The family-centered meeting (FCM) is a facilitated meeting where PSD workers and supervisors shall meet with parents, guardians, and other for the purpose of safety planning, case planning and decision making.

CHAPTER 10: CHILD PROTECTIVE SERVICES
PART 1: GENERAL PROVISIONS [RESERVED]
PART 2: PROTECTIVE SERVICES INTAKE

8.10.2.1 *ISSUING AGENCY:*

Children, Youth and Families Department (CYFD), Protective Services Division (PSD).

8.10.2.7 *DEFINITIONS:*

B. "Child abuse and neglect check" is a review of the PSD family automated client tracking system, also known as FACTS, or another state's central abuse or neglect registry to determine if there have been any previous referrals on the family to this state's or any other state's child protective services division.

...

G. "Complicating factors" are conditions that make it difficult for a caregiver to create safety for their child, but do not by themselves constitute imminent danger. Refer to the *structure decision making manual*²³⁸ to review the list of complicating factors protective services workers use in the *New Mexico child safety and risk tool*. (emphasis added)

...

J. "Danger indicators" are conditions resulting in a child being exposed to harm or injury and was placed at risk of harm or injury that could occur immediately. Refer to the structured decision making manual to review the list of the ten identified danger indicators protective services workers use in the *New Mexico safety and risk assessment tool*. (emphasis added)

...

O. "Impending danger" is when a child is living in a state of danger or position of continual danger due to a family circumstance or behavior. The threat caused by the circumstance or behavior is not presently occurring, but it can be anticipated to have severe effects on a child at any time.

...

U. "Present danger" means immediate, significant and observable severe harm or threat of immediate and severe harm that is presently occurring to a child and requires an immediate protective services response.

...

²³⁸ <https://www.cyfd.nm.gov/wp-content/uploads/2023/05/SDM-New-Mexico-Policy-and-Procedures-Manual.pdf>, including pp. 8, 32 and 47

AA. "Report" is a verbal or written presentation of information alleging child abuse or neglect that is received by an intake worker.

BB. "Reporter" refers to any individual who has contacted statewide central intake (SCI) to make a report of alleged child abuse or neglect.

...

EE. "Screened in report" is a report that has met PSD's criteria for acceptance for investigation.

FF. "Screened out report" is a report that has not met PSD's criteria for acceptance for investigation.

GG. "Statewide central intake (SCI)" is the unit within PSD whose responsibilities may include, but are not limited to receiving and screening reports of alleged child abuse or neglect and prioritizing and assigning accepted reports to the appropriate county office for investigation.

HH. "Witness" refers to a person who has a firsthand account of an event that is relevant to a PSD abuse and neglect investigation.

8.10.2.8 PURPOSE OF INTAKE SERVICES:

The purpose of child protective services intake is to:

- A.** receive reports of alleged child abuse or neglect;
- B.** determine if the situation reported may constitute abuse or neglect as defined by the Children's Code, Subsection B of Section 32A-4-2 and Subsection E of Section 32A-4 NMSA 1978;
- C.** determine if an investigation by PSD and a referral to another agency is warranted;
- D.** determine if a referral to the New Mexico family resource connection (NMFRC) program is warranted; and
- E.** receive reports of incidents involving children in placements and determine if such reports warrant an investigation.

8.10.2.10 PROVISION OF INTAKE SERVICES:

A. PSD intake workers shall be available to receive reports of suspected child abuse or neglect 24 hours a day, seven days a week, including reports involving suspected abuse or neglect of children in PSD custody.

B. PSD intake workers shall accept reports from individuals wishing to remain anonymous.

C. Intake services shall be conducted by CYFD employees designated as PSD intake workers.

D. PSD intake workers shall collect sufficient information from the reporter in order to make a screening decision.

E. PSD intake workers shall assign a priority to screened-in reports as outlined in [8.10.2.13](#) NMAC.

F. PSD intake supervisors shall review all screening and prioritization decisions.

G. Once approved by the PSD intake supervisor, the intake worker shall assign screened-in, prioritized reports to the appropriate county office for investigation within the timelines established by PSD.

H. Designated PSD intake workers may complete a national crime information center (NCIC) check on alleged perpetrators of child abuse or neglect.

I. PSD intake workers shall send all screened out reports to the New Mexico family resource connection (NMFRC) supervisor.

8.10.2.12 INTAKE SCREENING DECISION:

A. PSD intake workers make screening decisions on all reports received. Screening decisions shall be made on all reports within established time frames. All screening decisions are staffed with an intake supervisor.

B. PSD intake workers shall use information received from the reporting source, information from collateral contacts as available, and results of the abuse and neglect check to assist in making the intake screening decision.

C. PSD intake workers utilize **the *New Mexico safety tool*** to determine the priority of the screened-in report. (emphasis added)

D. PSD intake workers shall ask the reporting source for contact information and shall inform the reporting source of the intake screening decision, if requested by the reporting source.

8.10.2.13 PRIORITIZATION:

Intake workers shall prioritize accepted reports as follows:

A. Emergency report (E): A report alleging a danger indicator involving a vulnerable child, including but not limited to an abandoned infant or child, any physical injury to an infant, a potentially life threatening situation, recent sexual abuse, a law enforcement request for immediate response, and recent serious trauma, such as a head injury, burns, or broken bones. An emergency report requires an investigation be initiated within three hours of the SCI supervisor's screening decision.

B. Priority one report (P1): A report alleging physical injury involving a vulnerable child who is in a safe environment at the time of the report, or a report alleging a danger indicator involving a vulnerable child but where the alleged perpetrator will not have access to the child for the next 24 hours. A priority one report requires an investigation be initiated within 24 hours of the SCI supervisor's screening decision.

C. Priority two report (P2): A report alleging danger indicators involving a vulnerable child with no immediate concern for the child's safety. This may include, but is not limited to, alleged physical abuse with no indication of injury or alleged abuse or neglect where the alleged perpetrator no longer has access to the child or a protective parent guardian or custodian has already intervened. A priority two report requires an investigation be initiated within five calendar days of the SCI supervisor's screening decision.