

Memorandum in Support of HF 1151/SF 843, Minnesota African American Family Preservation Act

We write this letter to offer our support for HF 1151/SF 843, a legislative measure that seeks to protect African American families by establishing minimum standards to curtail unnecessary and unwarranted state intervention into African American families' lives and to promote stability and security in African American communities. Given the gross racial disparities in the so-called "child welfare system," this bill provides necessary and important protections and considerations for those most vulnerable in the more aptly named family regulation system¹: African American children.

The Bronx Defenders Family Defense Practice: Who We Are

In 2007, The Bronx Defenders became the first institutional provider of representation and advocacy for parents in Bronx County charged with the abuse and neglect of their children. Lawyers, social workers, and parent advocates represent each parent with the ultimate goal of providing the client with the best legal defense and access to family-stabilizing support services. The Bronx Defenders defends families in the poorest congressional district in the nation, amplifying their voice and giving them guidance in an overwhelming system that dismantles their families rather than keeping them whole. By delivering strong, compassionate advocacy and informed referrals to supportive services, The Bronx Defenders has greatly reduced the number of children who are separated from their families by entering the foster care system.

Our multidisciplinary staff of more than 50 attorneys, social workers, and parent advocates is assigned to represent 1,000 to 1,500 new parents each year. During fiscal year 2018, we were assigned to represent 1,585 parents with approximately 3,500 children, representing approximately 80% of the parents charged with abuse and neglect in Bronx County Family Court. In representing these parents, we won 74% of requested hearings, resulting in a judicial ruling that the child will be returned home rather than enter foster care. Additionally, advocacy by our social workers and parent advocates at pre-court filing Child Safety Conferences resulted in children remaining safely at home with their families in at least 65% of the conferences.

It is a widespread misconception that most children are separated from their families in the family regulation system because their parents have abused or abandoned them. Poverty is

¹ Many, including scholar Professor Dorothy Roberts, have come to refer to the so-called "child welfare" system as the family regulation system, given the harms historically and currently perpetuated by the system. See e.g., Dorothy Roberts, "Abolishing Policing Also Means Abolishing Family Regulation," *The Imprint* (June 16, 2020), <https://imprintnews.org/child-welfare-2/abolishing-policing-also-means-abolishing-family-regulation/44480>

actually the leading predictor of family regulation system involvement and studies show that poor families are 22 times more likely to be involved in the family court system.² In fact, allegations of neglect—which often include such issues as a parent’s failure to provide adequate food, shelter or medical care—compose the vast majority of family regulation system cases in the nation. As Risa Kaufman, Director of U.S. Human Rights, and Pilar Herrero, Human Rights Counsel for the Center for Reproductive Rights, correctly point out, “many indigenous mothers and mothers of color have lost custody of their children based on definitions of ‘neglect’ that ‘merely describe what it means to be poor.’”³ Exacerbating the racial disproportionality is federal family regulation system legislation, including the Child Abuse Protection and Treatment Act of 1974, and state family regulation system legislation, which require reporting of alleged child maltreatment. Given these federal and state mandates and the reality that race and poverty are often wrongfully used as proxies for child maltreatment, the Minnesota African American Family Preservation Act is necessary to counteract the disproportionality created by these laws.

While often co-existing with poverty, race is its own social determinant that often drives children into the family regulation system. In her monumental text, *Shattered Bonds*, Dorothy Roberts charts the dramatic decade-over-decade growth in the proportion of Black children in the foster system. Roberts found that Black children are disproportionately likely to be placed in the foster system and that they spend longer periods in the foster system before being reunified with their families.⁴ The rates of foster system involvement for Black children are staggeringly disproportionate to that of white children: by 2009, they were 2.4 times more likely to be in foster care than their share of U.S. children.⁵ As Dorothy Roberts and Lisa Sangoi point out:

“Black people are targeted by every arm of the legal system at disproportionate rates, whether it is Black immigrants for deportation, Black children for suspension in school, or Black adults and youth for arrest and incarceration. Thus, it should come as no surprise that Black families are more commonly targeted for child welfare supervision, child removal, and termination of parental rights. Indeed, we should consider foster care an extension of the same racist carceral regime that includes these other punitive systems.”⁶

² Martin Guggenheim, *General Overview of Child Protection Laws in the United States*, in REPRESENTING PARENTS IN CHILD WELFARE CASES: ADVICE AND GUIDANCE FOR FAMILY DEFENDERS 1, 17 (Martin Guggenheim & Vivek S. Sankaran eds., 2015)

³ Risa Kaufman & Rilar Herrero, *Re: Request for input on extreme poverty and human rights in the United States* 9 (2017).

⁴ Dorothy Roberts, *Shattered Bonds: The Color of Child Welfare*, 23 (2003).

⁵ Joshua Padill, M.A. & Alicia Summers, Ph.D., *Disproportionality Rates for Children of Color in Foster Care*, 1 (2011).

⁶ Dorothy Roberts & Lisa Sangoi, *Black Families Matter: How The Child Welfare System Punishes Poor Families of Color*, *The Appeal* (Mar. 26, 2018),

We support the passage of HF 1151/SF 843 to combat the systemic violence wrought on African American families in Minnesota and to protect these families against the racial bias inherent in the family regulation system in America.

African American Families are Disproportionately Targeted by the Family Regulation System

The forced and violent separation of Black families is deeply embedded in America's history. As noted by Henry Fernandez, co-founder of the African American Research Collaborative and a senior fellow at the Center for American Progress, "Along with ongoing rape and the use of the whip to discipline human beings, destroying families is one of the worst things done during slavery. The federal government maintained these evils through the fugitive slave laws and other rules which defined African Americans as property with which a slave owner could do what they wanted."⁷ Family separation in today's modern family regulation system continues to destabilize and separate Black families with disastrous consequences for children, families, and entire communities, and while this testimony does not analogize current tactics to past atrocities, it does acknowledge the historical context. Alarming, there is a strong correlation between race and the likelihood that the state will interfere in a family's life.

Further, the COVID-19 pandemic has laid bare race disparities and inequities at every level, including in our health, education, and employment systems. African Americans continue to watch an unrelenting parade of videos of their lives being brutally ended at the hands of law enforcement, with little to no consequence. Less visible, but no less inhumane, are the separations of thousands of African American children from their parents at the hands of so-called "child protection" officials for reasons rooted in poverty. Like the deaths of African American people at the hands of police, the separation of African American families is caused and justified by centuries of racism and economic inequality in this country. African American families conclude, with considerable supporting evidence, that their lives and their family bonds do not matter as much as those of white families.

Research has consistently shown that children of all races and ethnicities are equally likely to be abused or neglected; however, African American children are significantly more

<https://theappeal.org/black-families-matter-how-the-child-welfare-system-punishes-poor-families-of-color-33ad20e2882e/>.

⁷ DeNeen L. Brown, 'Barbaric': America's cruel history of separating children from their parents, WaPo (May 31, 2018),

https://www.washingtonpost.com/news/retropolis/wp/2018/05/31/barbaric-americas-cruel-history-of-separating-children-from-their-parents/?noredirect=on&utm_term=.3833ed584ec1

likely to be represented in the family regulation system than their white peers.⁸ As direct service providers to parents in New York City, we see first-hand the disproportionate representation of African American families in the family regulation system. In New York City, African American children are more likely to be involved in the family regulation system than white children at each and every decision point: African American children are 6.3 times more likely to be involved in a report of abuse or neglect than white children, 7.5 times more likely to be involved a report found to be a credible by the family regulation agency, and 11.4 times more likely to be placed in the foster system.⁹ Moreover, in New York City, and New York State as a whole, African American children remain in the foster system longer, on average, than white children.¹⁰

Our experience in New York City is not an anomaly; these disparities exist nationwide. From the outset, mandated reporters, including teachers, doctors, social service providers, etc., are more likely to report African American families to child maltreatment hotlines.¹¹ Following that report, family regulation agencies are less likely to offer African American families in-home preventive services that could mitigate perceived the need for removal.¹² As such, family regulation agencies more routinely remove African American children from their homes, even when there is no apparent imminent risk of harm.¹³ Despite the fact that African American children make up only 15.1% of the United States' total child population, African American children account for 23% of the children in the foster system, versus white children, who represent 72.8% of the United States' total children, yet account for 44% of the children in the foster system.¹⁴ Strikingly, between 2000 and 2011, one in nine African American children were removed from their parents' care; white children, on the other hand, were removed from their parents' care at a rate of one out of seventeen.¹⁵ Indeed, the disproportionality of African American children are in the foster system is even greater than that of Indigenous children who represent two percent of

⁸ U.S. Gov't Accountability Office, GAO-07-816, African American Children in Foster Care: Additional HHS Assistance Needed to Help State Reduce the Proportion in Care 8 (2007), available at <https://www.gao.gov/assets/gao-07-816.pdf>.

⁹ Vajeera Dorabawila & Nicole D'Anna, *Disproportionate Minority Representation (DMR) in Child Welfare and Juvenile Justice Systems Report 2014, Part IV*, Page 7 (2015).

¹⁰ See *id.* at 10.

¹¹ Jessica Dixon, *The African American Child Welfare Act: A Legal Redress for African American Disproportionality in Child Protection Cases*, 10 Berkeley J. Afr.-Am. L. & Pol'y 109, 117 (2008).

¹² *Supra*, note 1.

¹³ *Id.*

¹⁴ POP3 RACE AND HISPANIC ORIGIN COMPOSITION: PERCENTAGE OF U.S. CHILDREN AGES 0–17 BY RACE AND HISPANIC ORIGIN, 1980–2017 AND PROJECTED 2018–2050, <https://www.childstats.gov/americaschildren/tables/pop3.asp>; Children's Bureau, U.S. Dep't of Health & Human Servs., *The AFCARS REPORT: PRELIMINARY FY ESTIMATES AS OF OCTOBER 20, 2017(24)* Page 1 (2017).

¹⁵ Movement For Family Power et al., *"Whatever They Do, I'm Her Comfort, I'm her Protector."* *How the Foster System Has Become Ground Zero For The U.S. Drug War* 12 (June 2020), available at <https://static1.squarespace.com/static/5be5ed0fd274cb7c8a5d0c8a/t/5eead939ca509d4e36a89277/1592449422870/MFP+Drug+War+Foster+System+Report.pdf>.

the children in the foster system, but represent less than one percent of the children in the United States.¹⁶ These disparities exist in Minnesota, and at alarming rates.¹⁷

Children Suffer Irreversible Harm when Separated, Even Temporarily, from their Families

The policies and practices of the family regulation system, which overwhelmingly target African American families with family separation and ultimately family dissolution, create, in many cases, an intergenerational cycle of trauma. Not only does the initial family regulation involvement cause many parents to become homeless, derail their efforts to secure permanent housing, and cause them to lose employment and public benefits by virtue of having their children removed, but the trauma suffered by their children makes it more likely that those children, down the line, will become involved in the family regulation system themselves.¹⁸

Separating a child from their family causes serious psychological trauma, and these harms are disproportionately inflicted upon children in African American communities. As Vivek Sankaran and Christopher Church point out, research establishes that “physical placement into foster a foster home, as well as subsequent placement changes have been shown to negatively impact a child’s ability to form healthy attachments.”¹⁹ The harm caused by even short placements in foster care cannot be underestimated; for example, there is evidence establishing a “negative association between the number of unique caregivers for children and positive neuropsychological outcomes related to executive functioning, which may limit [children’s] capacity for social and emotional functioning, adaptive coping, self regulation, decision making, developing secure attachments, and maintaining healthy relationships.”²⁰ Moreover, studies have shown that young adults who were in the foster system were more likely to become involved in the criminal legal system when compared to their peers who had been similarly neglected but had remained home with their families.²¹

The large scale removals of African-American children from their families causes collateral damage to these communities. Professor Dorothy Roberts observed that high levels of

¹⁶ See U.S. Gov’t Accountability Office, GAO-07-816, *supra* note 8 at 12-13.

¹⁷ Minnesota Department of Human Services, Children and Family Services Administration, Child Safety and Permanency Division, *Minnesota’s Out-of-home Care and Permanency Report*, 2016, https://mn.gov/dhs/assets/2017-10-out-of-home-care-and-permanency-report_tcm1053-321462.pdf

¹⁸ See generally, David Dante Troutt, *Trapped in Tragedies: Childhood Trauma, Spatial Inequality, and Law*, 101 Marq. L. Rev. 601 (2018).

¹⁹ Vivek S. Sankaran & Christopher Church, *Easy Come, Easy Go: The Plight of Children Who Spend Less Than Thirty Days in Foster Care*, 19.3 Univ. of Pennsylvania J. of L. & Social Change 207, 212 (2016).

²⁰ See *id.*, citing Philip A. Fisher et al., *Mitigating HPA Axis Dysregulation Associated with Placement Changes in Foster Care*, 36 PSYCHONEUROENDOCRINOLOGY 531, 532 (2011).

²¹ Joseph J. Doyle, *Child Protection and Adult Crime: Using Investigator Assignment to Estimate Causal Effects of Foster Care*, 116 J. Political Econ. 746, 760-1 (2008).

family regulation system activity in certain communities negatively affected neighborhood relations and norms: it increased tension between neighbors, led to a feeling of constant surveillance and suspicion, interfered with parental authority, and undermined neighbors ability to resolve conflicts on their own.²² Family regulation system surveillance, monitoring, and control weakens communities; the harms are suffered by the whole community, not just those families who become directly involved with the family regulation system.

Finally, even when families are successful in achieving reunification, they continue to live with the collateral consequences of having been ensnared in the family regulation system. Having a family regulation system record can severely limit a parent's employment opportunities, increases the likelihood of future child protective surveillance, and can be used against a parent that comes back into contact with the family regulation system. In New York State, parents who have neglect or abuse proceedings brought against them are required to navigate a separate administrative review process in order to clear their family regulation record, even if that case was ultimately dismissed in court. Again, racial disparities persist; administrative judges are less likely to grant an African American parent's request to overturn a report of abuse or neglect. In 2017 only 31% of African American parents' requests were granted, as compared to 41% of white parents' requests.²³

Removing a child from their home is a drastic, life-altering event, compared often to the civil death penalty, that should be avoided whenever possible. It has been used all too often with African American families. This Bill provides extra protections to those most vulnerable to state-mandated separation from their parents, Black children, and should be enacted by the Minnesota State Legislature.

²² Dorothy E. Roberts, "The Racial Geography of Child Welfare: Toward a New Research Paradigm," 87 *Child Welfare* 125-150 (2008).

²³ Office of Children and Family Services Bureau of Research, Evaluation and Performance Analytics, *Demographic Data for Unique Requestors that Requested an Administrative Review and Overturned*.