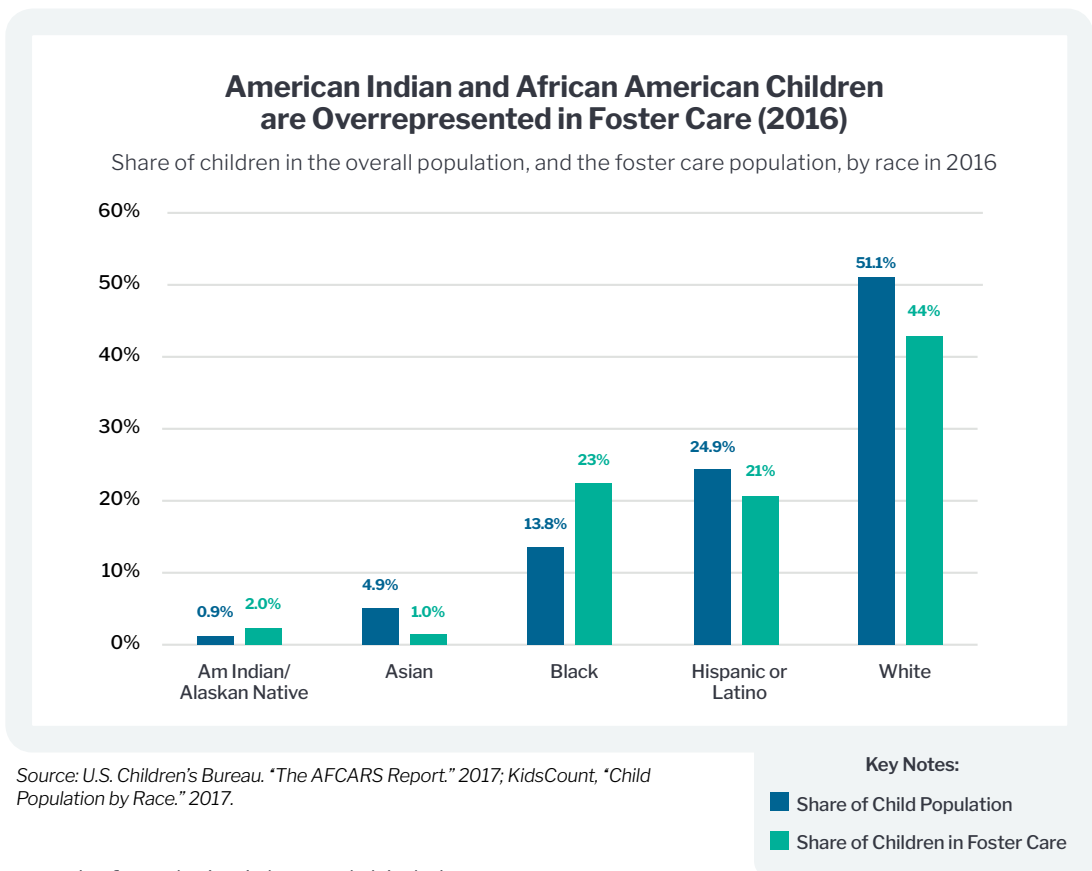


# Child Welfare Policy and Family Separation



While family separation is often the unconsidered consequence of immigration and criminal justice policy, it is the deliberate result of decisions in the child welfare system. In Fiscal Year 2016, the most recent year for which data are available, 437,465 children were removed from their families and placed in foster care—either in family foster homes, group homes, or institutions—according to the Adoption and Foster Care Analysis and Reporting System. African American and American Indian/

Alaskan Native children are both overrepresented among children in foster care. American Indian/Alaskan Native children are less than 1 percent of the child population, but they make up 2 percent of children in foster care. African American children are 14 percent of the child population, but they make up 23 percent of children in foster care.<sup>90</sup> The racial disparities in the cumulative lifetime risk of being placed in foster care are even greater. One study found that 4.9 percent of white children will experience foster care placement before their eighteenth birthday, compared to 15.4 percent of Native American children and 11 percent of black children.<sup>91</sup>



At times, intervention in families is necessary for children's safety, but as research has shown, removing children from their families causes significant short-term distress and can have long-lasting negative

consequences.<sup>92</sup> Children often experience the physical separation from their caregivers as rejection or loss and do not understand why it has occurred. Removal and placement in foster care and subsequent placement changes may affect a child's ability to form healthy attachments.<sup>93</sup> Because of discretion built into the system, some case managers remove children more frequently than others, regardless of families' circumstances. One study looking at children who were assigned case managers who had higher rates of removing children from their homes found that those children "have higher delinquency rates, along with some evidence of higher teen birth rates and lower earnings."<sup>94</sup> Surveys have found that nearly one-third of homeless youth and well over half of victims of child trafficking had experience in foster care.<sup>95</sup> The Midwest Study, the largest longitudinal survey of youth ageing out of the foster care system, found that former foster youth were significantly less likely to be employed, have health insurance, and have a college degree than their peers who had not been in foster care, and they were significantly more likely to experience economic hardship.<sup>96</sup> Over half of youth surveyed had been arrested, and one-fifth reported being convicted of a crime.<sup>97</sup>

The extent to which children of color are overrepresented in the child welfare system—what is referred to in the field as “disproportionality,” or the difference in the share of children of a particular race or ethnicity in the overall population compared to their share in the child welfare system—varies across states and localities. Nationally, Black or African Americans and American Indians/Alaskan Natives are significantly more likely to be removed from their families than white, Asian, and Hispanic children,<sup>98</sup> but Hispanic children are over-represented in the foster care system in some states—and the number of states in which Hispanic/Latino children are overrepresented has grown over the last decade and a half.<sup>99</sup>

Because families involved in the child welfare system are also likely to be living in poverty and face other barriers, it has been hard for researchers to disentangle the causes of these racial disparities.<sup>100</sup> For many years, national studies found little-to-no difference in the

incidence of maltreatment between children of different racial groups, but the most recent federally-funded National Incidence Studies of Child Abuse and Neglect indicated that Black children experience maltreatment at higher rates than white children across several categories of maltreatment.<sup>101</sup> One reason may be that African American children are more likely to experience the most significant risk factor for maltreatment: poverty. The majority of poor families never come to the attention of the child welfare system, but poverty is still the best



predictor of abuse and neglect.<sup>102</sup> High poverty rates mean these families are less likely to have access to necessary resources such as stable housing, counseling, and childcare services, without which they may be determined to be neglectful by the child welfare system.<sup>103</sup>

The child welfare system also is designed in a way that invites bias and discrimination. Not only are the definitions of maltreatment written primarily by white people, applying their own ideas of what constitutes maltreatment, but as legal scholar and child welfare expert Dorothy Roberts has observed, “Vague definitions of neglect, unbridled discretion, and lack of training form a dangerous combination in the hands of caseworkers charged with deciding the fate of families.”<sup>104</sup> Studies have found systemic bias among people who report children to the child welfare system. One study of toddlers who were hospitalized in Philadelphia for bone fractures found that children of color were more likely to be reported for suspected physical abuse than white children, even after controlling for the likelihood of the child's particular injury stemming from abuse.<sup>105</sup> Other studies have found that race may influence a child welfare caseworkers' “threshold” for removing a child from their family. When African American children are removed

from their homes, they on average are assessed by caseworkers to have lower risk at the time of removal than white children removed from their homes.<sup>106</sup> In-depth studies of state and local child welfare systems have found that African American families do not receive supports that could “prevent or divert their involvement with the child protective system” and that they suffer the consequences of widespread beliefs that “African American children are better off away from their families and communities.”<sup>107</sup>

Once they are removed from their families, children of color also experience worse outcomes within the foster care system. There are shortages of people of color as well as speakers of Spanish and other languages who are licensed to be foster parents.<sup>108</sup> In particular, the over-incarceration of people of color has led to a smaller pool of available people who can serve as kinship caregivers for children of color who become involved in the child welfare system, because of child welfare policies that prohibit people with criminal histories from being foster parents.<sup>109</sup> In part as a result, children of color spend more time in out-of-home care, they change placements more frequently, they are less likely to receive necessary services, they are less likely to reunify with their families, and they are more likely to age out

**As William Pryor Letchworth, the most famous advocate of children’s causes at the time, declared in 1874, “If you want to break up pauperism, you must transplant [the child].... When parents cannot protect their child, cannot feed, cannot clothe it, cannot keep it from evil influence, and are perhaps degrading it by their own example, it is the duty of every true man to step forward to save it.”**

of foster care.<sup>110</sup> More than 30 percent of Hispanic and Native American youth who have experienced foster care are parents at age 21. More than 60 percent of African American and Latino youth in foster care “have crossed paths with the criminal justice system.”<sup>111</sup>

The problem of disproportionality in the child welfare system has proven so intransigent in part because the roots of these disparities are deep. The child welfare system, from the very beginning, saw its role as removing poor children from their families. Orphanages were among the first institutions developed to serve children, and by the late nineteenth century many children living in them were not, in fact, orphans, but rather had parents who were poor.<sup>112</sup> Charities in New York, Boston, and other East Coast cities sent thousands of poor children on “orphan trains” to towns in the Midwest, where they were assigned foster families—some of whom loved them as their own and others of whom used them as “slave farm labor.”<sup>113</sup> Reformers in this period explicitly called for breaking up families in order to fight “pauperism.” As William Pryor Letchworth, the most famous advocate of children’s causes at the time, declared in 1874, “If you want to break up pauperism, you must transplant [the child].... When parents cannot protect their child, cannot feed, cannot clothe it, cannot keep it from evil influence, and are perhaps degrading it by their own example, it is the duty of every true man to step forward to save it.”<sup>114</sup> The first institutions devoted to child protection, the Societies for the Prevention of Cruelty to Children, were established during these years and focused on “rescuing” children “from their abusive parents or employers and removing them to another family or to institutions.”<sup>115</sup> By the early twentieth century, reformers were beginning to doubt the efficacy of breaking up families in order to help children, but child welfare practice continued to see its primary function as separating families.<sup>116</sup>

Children of color were, for the most part, excluded from the developing public child welfare system, but other public institutions with which they came into contact separated them from their families at high rates.<sup>117</sup> A Children’s Bureau report observed that from 1750 to 1960, “the black child’s chance of ‘receiving care’ from a correctional facility was still much greater than that of receiving any other type of care.”<sup>118</sup> For American Indians, the United States undertook a concerted campaign to remove children from their families in order to facilitate their “assimilation.” Since the colonial era, settlers had advocated for the separation of American Indian children from their parents and communities so they could be “civilized” and “Christianized.”<sup>119</sup> Starting in 1879 and continuing well through the twentieth century,

children as young as five years old were packed off to boarding schools so they could learn how to act like people of European descent.<sup>120</sup> Assimilation-focused education policy complemented policies that stripped American Indian communities of their land: both shared the goal of eliminating Native cultures. Boarding school administrators discouraged visits home, prohibited children from speaking their native languages, and they “intercepted letters from children documenting homesickness and health problems to prevent parental requests for visits.”<sup>121</sup> As a result, children were often separated from their families for years at a time.<sup>122</sup>

After World War II, as the civil rights movement demanded the integration of public institutions, the formal child welfare system increasingly served children of color alongside white children. The result was continued family break up. For American Indians, policymakers focused increasingly on placing children in white families, through adoption and foster care. Starting in 1959, the Indian Adoption Project, part of the Bureau of Indian Affairs’ (BIA) larger effort to undermine tribal sovereignty and erase American Indian cultures, purposefully placed American Indians in white homes. As part of the project, BIA and state social workers cajoled and coerced unmarried American Indian mothers to give their infants up for adoption. As Cheryl DeCoteau, a member of the Sisseton-Wahpeton tribe in South Dakota, reported, when she was pregnant a social worker “kept coming over to the house...every week... and they kept talking to me and asking if I would give him up for adoption and said that it would be best. They kept coming and coming and finally when I did have him, [the social worker] came to the hospital. After I came home with the baby, [the social worker] come over to the

**As Cheryl DeCoteau, a member of the Sisseton-Wahpeton tribe in South Dakota, reported, when she was pregnant a social worker “kept coming over to the house... every week...and they kept talking to me and asking if I would give him up for adoption and said that it would be best. They kept coming and coming and finally when I did have him, [the social worker] came to the hospital. After I came home with the baby, [the social worker] come over to the house.**

house. He asked me if I would give him up for adoption and I said no.”<sup>123</sup> Independent of the Indian Adoption Project, state child welfare systems placed hundreds of American Indian children in foster or adoptive homes annually.<sup>124</sup> Though extended families played a crucial role in raising children in many American Indian cultures, social workers viewed leaving a child with people outside the nuclear family as neglect and grounds for

**Surveys in 1969 and 1974 documented that between 25 and 35 percent of all American Indian children were placed in foster or adoptive homes or institutions.**

terminating parental rights.<sup>125</sup> Surveys in 1969 and 1974 documented that between 25 and 35 percent of all American Indian children were placed in foster or adoptive homes or institutions.<sup>126</sup>

African American children were also increasingly removed from their families by the child welfare system in the mid-twentieth century. Precise data on disproportionality in these years is scarce, but the problems were so clear by 1972 that child welfare scholars Andrew Billingsley and Jeanne Giovannoni declared that “the system of child welfare services in this country is failing Black children” because it was ripping families apart.<sup>127</sup> That year, the National Association of Black Social Workers condemned the rapid growth of “transracial adoptions” and called the placement of black children in white families a form of cultural “genocide.” Black children should be placed with black families, they argued, so that the children can develop a healthy racial identity and learn how to survive in a racist society.<sup>128</sup> Over the next several decades, however, transracial adoptions declined but did not disappear, and more and more children receiving child welfare services were placed in out-of-home care.<sup>129</sup> The Child Abuse Prevention and Treatment Act, passed in 1974, signaled a Congressional commitment to the child protection approach and required states to have a procedure in place to respond to allegations of abuse and neglect and ensure children’s safety in order to receive federal funds.<sup>130</sup> The result, as child welfare expert Dorothy Roberts has written, was to transform the child welfare system “from a social service system that tried to

help needy families to a child protection system that investigates allegations of abuse and neglect.”<sup>131</sup> In the years that followed, the total number of children served by the system fell as fewer received services while living at home. The number of children in foster care and the share of Black in foster care, however, “exploded.”<sup>132</sup>

Over the last several decades, there have been attempts to reform the system to limit family separation and mitigate the harm for families of color. The Indian Child Welfare Act, passed by Congress at the urging of social workers and community activists in 1978, has given tribes jurisdiction over many child welfare matters and sought to limit the involuntary removal of Indian children from Indian homes and the involuntary termination of parental rights.<sup>133</sup> More recently, the U.S. Congress embraced this approach for all families when it passed the Family First Prevention Services Act in February 2018, which funds services to prevent or limit the use of foster care. Jerry Milner, Acting Commissioner of the Administration for Children Youth and Families, has promoted this approach within his agency, stating last year that the child welfare system should change its focus to “primary prevention of maltreatment and unnecessary removal of children from their families.”<sup>134</sup>

But significant work remains to be done to overcome this history and realize this vision. Five year old Deja was living with her mother in an apartment in Brooklyn when she wandered off one night after being put to bed. Deja’s mother, Maisha Joefield, was in the bathtub with earphones on at the time, and when Deja could not find her she set out to find her grandmother, who lived in the neighborhood. When a passerby encountered Deja on the sidewalk at midnight, he called Child Protective Services. Maisha was arrested for endangering the welfare of her daughter, and Deja was sent to foster care. The case record revealed the incident for what it was: a horrifying accident. Deja’s pediatrician noted that her mother was “very attentive” and had significant family support. But the agency still pushed for her longer-term removal. This is how Maisha understood the situation: “they factored in my age [she was 25 at the time], where I lived, and they put me in a box.” They may also have factored in the fact that she was African American. In Deja’s case, the judge decided that “the risk of emotional harm in removal” outweighed her risk at home, and Deja was returned to her mother’s care

after four days. But the effects of the brief removal were lasting. Maisha, a former day care provider, could not work with children because her name was placed on a state registry of child abusers. According to Maisha, the experience also “changed” her daughter. After she came home, “she was always second-guessing if she did something wrong, if I was mad at her.” Several months later, when caseworkers checked in with teachers at Deja’s school, they said that they had no concerns about her mother’s care, but Deja was “not doing as well as she used to before she was removed from her home.”<sup>135</sup>

As a lawyer at Brooklyn Defender Services observed, reflecting on Maisha and Deja’s case, “There’s this judgment that these mothers don’t have the ability to make decisions about their kids, and in that, society both infantilizes them and holds them to superhuman standards. In another community, your kid’s found outside looking for you because you’re in the bathtub, it’s ‘Oh, my God’” — a story to tell later, he said. “In a poor community, it’s called endangering the welfare of your child.”<sup>136</sup> This is particularly true in poor communities of color, like Maisha and Deja’s. As the New York Times reported in the article recounting Maisha and Deja’s experience “In interviews, dozens of lawyers working on these cases say the removals punish parents who have few resources. Their clients are predominantly poor black and Hispanic women, they say, and the criminalization of their parenting choices has led some to nickname the practice: Jane Crow.”<sup>137</sup>

