

RACE, POVERTY, AND NEGLECT

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I. INTRODUCTION

In the early 1600s, poor children in England were removed from their homes under the guise of child welfare. Several centuries later, poor children in the United States are still being removed from their homes under child welfare laws. Because minorities are disproportionately poor, their children are removed in disproportionate numbers despite the fact that minority parents do not abuse or neglect more frequently than white parents.

The link between poverty and foster care in the United States can be traced back to English law,¹ which allowed the government to separate poor children from their families.² Conversely, wealthy English parents were separated from their children only in extreme cases.³

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1. 43 Eliz. 1, c.2 (1601), cited in Judith Areen, *Intervention Between Parent and Child: A Reappraisal of the State's Role in Child Abuse and Neglect Cases*, 63 GEO. L. J. 887, 895 (1975).

2. Patricia A. Schene, *Past, Present, and Future Roles of Child Protective Services*, FUTURE CHILD.: PROTECTING CHILD. FROM ABUSE & NEGLECT, Spring 1998, at 23, 25.

3. Areen, *supra* note 1, at 899.

The history of United States child abuse and neglect laws is similar to that of England. For example, despite its original intention to prevent abuse, the New York Society for the Prevention of Cruelty to Children dealt primarily with poverty, not abuse.⁴ In fact, New York State did not remove the category of destitute children from its neglect statute until 1962.⁵

Modern child abuse laws continue to encourage separation of children from their families. In 1980, three-quarters of all federally-funded child welfare expenditures were spent on foster care.⁶ Although the Adoption Assistance and Child Welfare Act of 1980 changed the focus of child welfare to family rehabilitation and reunification,⁷ federal funding still encourages foster care.⁸ By encouraging expedited resolution of abuse and neglect cases, the Adoption and Safe Families Act⁹ encourages the separation of children from their families to become permanent.¹⁰

Consistent with its origins, the current child welfare system continues to remove more poor children from their families than their wealthier counterparts. Maltreatment rates for poor children are over twenty times greater than those of middle class or wealthy families.¹¹ As a result, the impact of maltreatment laws is not felt equally by all races—the large number of poor charged with

4. In its first months of operation, twenty cases involved abuse and over forty involved poverty. *Id.* at 903-04 n.94. (citing N.Y. SOC'Y FOR PREVENTION CRUELTY TO CHILD., FIRST ANN. REP. 30-31 (1876)).

5. *See* Areen, *supra* note 1, at 910-11 (citing 1962 N.Y. Laws, ch. 686, art. III, § 312(a)).

6. Schene, *supra* note 2, at 29.

7. Adoption Assistance and Child Welfare Act of 1980, Pub. L. No. 96-272, 94 Stat. 500.

8. CONNA CRAIG & DEREK HERBERT, INSTITUTE FOR CHILDREN, NATIONAL CENTER FOR POLICY ANALYSIS, THE STATE OF THE CHILDREN, AN EXAMINATION OF GOVERNMENT-RUN FOSTER CARE, NCPA POLICY REPORT NO. 210 (1997), *available at* <http://www.ncpa.org/-ncpa/studies/s210/s210.html> (last visited Sept. 15, 2001).

9. Adoption and Safe Families Act of 1997, Pub. L. No. 105-89, 11 Stat. 2115.

10. The Adoption and Safe Families Act (ASFA) was enacted in reaction to the perception that federal requirements that "reasonable efforts" be made to reunify families before termination of parental rights were resulting in extended foster care stays for maltreated children. ASFA expedites termination procedures, and allows for concurrent planning for termination during reunification efforts. *Id.*

11. ANDREA J. SEDLAK & DIANE D. BROADHURST, U.S. DEP'T OF HEALTH & HUMAN SERVICES, ADMINISTRATION FOR CHILDREN AND FAMILIES, ADMINISTRATION ON CHILDREN YOUTH & FAMILIES, NATIONAL CENTER ON CHILD ABUSE AND NEGLECT, THE THIRD NATIONAL INCIDENCE STUDY OF CHILD ABUSE AND NEGLECT 5-4 (1996), *available at* <http://calib.com/nccanch/pubs/statinfo/nis3.cfm> (last visited Sept. 20, 2001).

maltreatment results in a disparate impact on minorities. Despite the fact that child maltreatment occurs with the same frequency in all races,¹² the percentage of African-American and Native-American children in the child welfare system is greater than the percentage of those groups in the general population.¹³ Given the over-representation of minorities living in poverty, it is not surprising that a disproportionate number of minorities are charged with child maltreatment.

To compound the problem, fewer African-American children are reunited with their families than whites and Latinos,¹⁴ and the adoption rate for minorities in foster care is substantially lower than that for Caucasian children.¹⁵ This results in an inordinate number of black children who are left with no families at all.

Given the history of the child welfare system and current statistics on child maltreatment and removal in this country, the child protection scheme is suspect. Separation of children from maltreating parents is certainly necessary in some cases, but removal because of poverty is unacceptable. If the biological family is seriously injuring the child, then the child needs to be removed and sent to a safe place to prevent further damage; however, if the child is not being maltreated or if the maltreatment is not as harmful as the effect of removal, the system causes more harm than good. The damage caused by unnecessarily removing children from their families is especially invidious when one notes that it hurts minority families more than whites.

We need to understand better the correlation between poverty and maltreatment if we are to improve the system and truly protect

12. *Id.* at 4-29.

13. National Clearinghouse on Child Abuse and Neglect, *National Child Abuse & Neglect Statistical Fact Sheet*, at <http://www.calib.com/nccanch/puns/stats.htm> (last modified Nov. 10, 1998). According to the 2000 census, 12.8% of the United States population was African-American and 0.9% of the population was Native-American. U.S. CENSUS BUREAU, RESIDENT POPULATION ESTIMATES OF THE UNITED STATES BY SEX, RACE, AND HISPANIC ORIGIN, at <http://www.census.gov/population/estimates/action/intfile3-1.text> (last visited Sept. 20, 2001). In Minnesota, children of color were over-represented in the "out-of-home" placement system compared to the general population. Minn. Dep't of Human Services, *Foster Care and Out-of-Home Placement in Minn.*, at <http://www.dhs.state.mn.us/newsroom/facts/fosterca2.htm> (last visited Sept. 20, 2001).

14. Richard P. Barth, *Effects of Age and Race on the Odds of Adoption versus Remaining in Long-Term Out-of-Home Care*, LXXVI CHILD WELFARE 285, 288 (1997).

15. S. Finch et al., *Factors Associated with the Discharge of Children from Foster Care*, 22 SOC. WORK RES. & ABSTRACTS 10, 10-18 (1986), cited in Barth, *supra* note 14, at 286.

minority and poor children. Does poverty cause maltreatment? Do the problems that cause maltreatment also cause poverty? Are certain types of maltreatment more closely correlated with poverty than others? Are minorities charged with maltreatment more often than whites because of racial discrimination? What are the effects of different types of maltreatment and of removal? What kinds of maltreatment require removal? Failure to gain a better understanding of the answers to these questions and to change the system to comport with what we know about poverty and maltreatment can only contribute to a bleak future for the minority community.

II. STATISTICS

Although a majority of families charged with maltreatment are white, a disproportionate number are minority.¹⁶ In 1997, 1,054,000 children (fifteen of every one thousand children) were confirmed victims of child abuse or neglect.¹⁷ The percentage of African-American and Native-American children who were purportedly maltreated was nearly twice the proportion of those children in the general population.¹⁸ Despite the disproportion of

16. See MINN. DEP'T OF HUMAN SERVICES, CHILD MALTREATMENT: A 1999 MINN. REPORT (1999), available at <http://www.dhs.state.mn.us/childint/Research/Maltreatment/99maltreatment.htm> (last visited Sept. 20, 2001) ("[Minnesota c]hildren of color continue to be disproportionately represented as determined victims in the child protection system.") [hereinafter MINN. MALTREATMENT REPORT]. It should be noted that although statistics are helpful in determining child abuse trends, they are not precise. Definitional problems as well as the necessity for estimation caused by incomplete information, different computation procedures used by various reporting agencies, duplication and other statistical problems make the data imprecise.

17. National Committee to Prevent Child Abuse, *Child Abuse and Neglect Statistics*, at <http://www.childabuse.org/facts97.html> (last modified April 1998) [hereinafter *Child Abuse and Neglect Statistics*]. In Minnesota, over eleven thousand children were abused or neglected in 1999. Minn. Dep't of Human Services, *Child Abuse, Neglect Prevention: Protecting Minnesota Children*, at <http://www.dhs.state.mn.us/newsroom/facts/childabu2.htm> (last visited Sept. 20, 2001).

18. In 1996, fifty-three percent of maltreated children were white, twenty-seven percent African-American, eleven percent Hispanic, two percent Native-American, and one percent Asian American. National Clearinghouse on Child Abuse and Neglect, *supra* note 13. In Minnesota during 1999, fifty-three percent of maltreated child victims were white, twenty-six percent were African-American, nine percent were Hispanic, nine percent were Native American, and four percent were Asian American. Minn. Dep't of Human Services, *Child Abuse, Neglect Prevention: Protecting Minnesota Children*, at <http://www.dhs.state.mn.us/newsroom/>

minority children deemed maltreated by the child welfare system, the Third National Incidence Study of Child Abuse and Neglect (NIS-3), commissioned by the U.S. Congress, found that all races had the same maltreatment rates.¹⁹ Not only is the rate of initial maltreatment the same, but the rate of repeat abuse appears to be the same as well.²⁰ More recent studies confirm the NIS-3 finding that the rate of maltreatment is the same for all races. A 1999 study found no significant difference in the incidence of neglect, physical abuse, sexual abuse or emotional abuse between Caucasian and African-American families.²¹ Similarly, a narrower study of shaken baby syndrome found no statistically significant difference in the rate of white and non-white victims.²²

Many studies conducted by different groups have repeatedly confirmed a connection between poverty and child maltreatment rates. Although the NIS-3 found no statistically significant difference in the rates of fatal injury or emotional neglect among income groups,²³ significant differences were found in all other categories of maltreatment. Total maltreatment rates for families earning less than \$15,000 per year were forty-seven out of every one thousand children (nearly one in twenty-one low income children) compared to only 2.1 of every one thousand children living in families earning more than \$30,000 per year.²⁴ The rate differences are staggering, and the prognosis for poor children appears bleak.

When the poverty rate for minority children is added to the rate of maltreatment by poor families, the impact on the minority community becomes clear. In 1999, about seventeen percent of American children lived in families with incomes below the federal poverty level.²⁵ Broken down by race, approximately thirty-three

facts/childabu2.htm (last visited Sept. 20, 2001). However, the child maltreatment incidence rate was ten times higher in the African-American population, and eight times higher for Native-American children than white children. *Id.*

19. SEDLAK & BROADHURST, *supra* note 11, at 4-29.

20. Howard B. Levy et al., *Reabuse Rates in a Sample of Children Followed for 5 Years After Discharge From a Child Abuse Inpatient Assessment Program*, 19 CHILD ABUSE & NEGLECT 1363, 1370 (1995).

21. Leeann R. Mraovich & Josephine F. Wilson, *Patterns of Child Abuse and Neglect Associated with Chronological Age of Children Living in a Midwestern County*, 23 CHILD ABUSE & NEGLECT 899, 901 (1999).

22. Sara H. Sinal et al., *Is Race or Ethnicity a Predictive Factor in Shaken Baby Syndrome?*, 24 CHILD ABUSE & NEGLECT 1241, 1244 (2000).

23. SEDLAK & BROADHURST, *supra* note 11, at 5-2.

24. *Id.* at 5-4.

25. National Center for Children in Poverty, *Child Poverty Fact Sheet*, at

percent of African-American children and thirty percent of Latino children live in poverty compared to only nine percent of white children.²⁶ Thus, the high numbers of maltreated minority children may be due to the high levels of poverty in minority families. One may also argue that racial prejudice results in increased numbers of minorities accused of maltreatment, which then skews the maltreatment rates of the poor, but studies have not borne out this latter theory.²⁷

The correlation between poverty and child maltreatment is more revealing when it is broken down by case type. Although the media focuses attention on sensational cases of severe physical abuse, and legislation treats abuse and neglect identically, most maltreatment cases—fifty-four percent—involve neglect.²⁸ Only twenty-two percent of cases consist of physical abuse and only eight percent involve sexual abuse.²⁹ Further, although all maltreatment rises with poverty, the increase in the rate of neglect that accompanies poverty is twice the increase in the rate of physical abuse attributed to poverty.³⁰ The import of the abundance of neglect cases becomes clear when we note that despite the fact that removal is more readily justifiable in abuse cases (definitions are more clear and harm more obvious), most removals involve neglect.³¹ In other words, it appears that the system, true to its

<http://cpmnet.columbia.edu/dept/nccp/ycpf.html> (last visited June 2001); U.S. CENSUS BUREAU, POVERTY 1999 TABLE A: PEOPLE AND FAMILIES IN POVERTY BY SELECTED CHARACTERISTICS (1999), available at <http://www.census.gov/hhes/poverty/poverty99/pv99est1.html>.

26. National Center for Children in Poverty, *supra* note 25; U.S. CENSUS BUREAU, *supra* note 25.

27. See *infra* notes 41-63 and accompanying text.

28. *Child Abuse and Neglect Statistics*, *supra* note 17. Minnesota statistics show that seventy-two percent of maltreatment cases involved neglect in 1999. MINN. MALTREATMENT REPORT, *supra* note 16.

29. *Child Abuse and Neglect Statistics*, *supra* note 17. Minnesota numbers reveal that twenty-five percent of cases consist of physical abuse and seven percent involve sexual abuse. MINN. MALTREATMENT REPORT, *supra* note 16.

30. See Bong Joo Lee & M. Goerge, *Poverty, Early Childbearing, and Child Maltreatment: A Multinomial Analysis*, 21 CHILD & YOUTH SERVICES REV. 755, 768 (1999) (stating that children in high-poverty areas (rates equal to or higher than forty percent) were three times as likely to be substantiated causes of sexual or other abuse and six times as likely to be cases of neglect than children in low poverty areas (rates below ten percent)).

31. See, e.g., Uma A. Segal & Sanford Schwartz, *Factors Affecting Placement Decisions of Children Following Short-Term Emergency Care*, 9 CHILD ABUSE & NEGLECT 543, 547 (1985) (stating only forty-six percent of neglected or incorrigible children were returned to the setting from which they were referred, while forty-nine percent of abused children were so returned); Mitchell Katz et al., *Returning*

origins, is removing children simply because they are poor, and because minority children are more likely to be poor, an inordinate number of them are being separated from their families without sufficient reason.

The problem for minority children does not end with their disproportionate classification as maltreated. In addition to being removed from their homes more often than white children,³² removal of African-American children is more likely to become permanent. Recent statistics show that although both Caucasian and African-American children enter foster care at approximately the same rate they leave foster care, instead of being returned home, a higher percentage of African-Americans were adopted out of foster care than Caucasians.³³ In addition, a disproportionate number of African-American children were waiting for adoption and/or had parents whose rights were terminated.³⁴

In a 1997 article, Richard Barth reported on the effects of age and race on adoption for children in foster care.³⁵ Barth's study spanned six years and covered all children who entered out-of-home care in California after 1988, including a group of nearly 4,000 African-American and Hispanic children.³⁶ During that period, only forty-one percent of African-American children were reunited with their families, although fifty-eight percent of their

Children Home: Clinical Decision Making in Cases of Child Abuse and Neglect, 56 AM. J. ORTHOPSYCHIATRY 253, 257 (1986) (stating the severity of the child's condition with the outcome).

32. MINN. DEP'T OF HUMAN SERVICES, 1998 CHILDREN IN OUT-OF-HOME CARE REPORT (1998), available at <http://www.dhs.state.mn.us/childint/Research/outofhome98/indicator1.htm> (last visited Sept. 20, 2001). Minnesota children of color are removed from the home at higher rates than the general population. *Id.* For example, while African-American children made up four percent of the general population in 1998, twenty-two percent of children in foster care were African-American. *Id.*

33. U.S. DEPT. OF HEALTH & HUMAN SERVICES, ADMINISTRATION FOR CHILDREN AND FAMILIES, ADMINISTRATION ON CHILDREN, YOUTH AND FAMILIES, CHILDREN'S BUREAU, THE AFCARS REPORT (2001), available at <http://www.acf.dhhs.gov/programs/cb/publications/afcars/june2001.pdf> (last visited Sept. 30, 2001). Although more Whites (forty-two percent compared to twenty-nine percent Black) exited foster care during the period reported on, a higher percentage of Blacks were adopted out (forty-five percent Black compared to thirty-eight percent White). *Id.*

34. *Id.* Forty-two percent of Black children had parental rights terminated or were waiting for adoption compared to thirty-two percent of White foster children. *Id.*

35. Barth, *supra* note 14.

36. *Id.* at 288.

white counterparts and fifty-seven percent of the Hispanic children were sent home.³⁷ At six years after placement, twenty-four percent of the Caucasian children were adopted, but only sixteen percent of African-American children and seventeen percent of Hispanic children were adopted.³⁸ Not only were African-Americans returned home less often, but they were also more likely to languish in foster care waiting for a family to adopt them after the system terminated the rights of the only parents they were ever likely to have.

The loss of family for African-Americans is more likely to become permanent than for whites or even other minorities. If we are to help these children, we must understand more than statistical correlations of race, poverty and maltreatment.³⁹ We need to establish causation and to identify factors that can counteract the ill effects of poverty and maltreatment.

Current research on child maltreatment can be criticized for a number of reasons. Most studies on the effects of child abuse and neglect consist of children in the clinical setting—those children who have suffered most severely from maltreatment. They therefore may not represent the majority of children who are maltreated. Study populations culled from government agencies may skew data because they tend to consist primarily of lower socioeconomic groups and single mothers with little education.⁴⁰ Neglect and abuse at different periods of a child's development may have different effects, yet most studies do not control for timing of maltreatment. Chronicity may also play a part in the effect of abuse and neglect, yet most studies do not test for that factor either. Lack of control groups and small sample sizes also present problems in some studies. Nonetheless, this research provides us with the only clues we have about the effects of race, poverty and neglect on children. The following sections examine some of these studies.

37. *Id.* at 292-93.

38. *Id.* at 288.

39. Minnesota attempts to address the unique child maltreatment problem among the African-American population through the efforts of the Children of Color outreach program where aspects of cultural heritage are the focus. Minn. Dep't of Human Services, *Children of Color Outreach*, at <http://www.dhs.mn.state.us/childint/Programs/ChildofColor/default.htm> (last visited Sept. 20, 2001).

40. Julie Crouch & Joel Milner, *Effects of Child Neglect on Children*, 20 CRIM. JUST. & BEHAV. 49, 51 (1993).

III. RESEARCH ON RACE

If the rate of child maltreatment is the same for all races, why, then, is a disproportion of minority children involved in the child protection system? Several explanations have been proffered. One is that the system and workers are racist and therefore more willing to charge minority families and remove their children. Minority families are not seen as valuable, and minority parents are presumed incompetent. Another theory posits that minority families are more likely to be reported and investigated because they are more likely to be poor and therefore under the scrutiny of government welfare officials. In other words, the problem arises because of increased government intrusion into the lives of poor families. A third possibility is that the phenomenon is merely a corollary to poverty. Poverty increases the likelihood of child maltreatment. Because more minorities are poor, more will mistreat their children. Finally, the problem may be one of class bias rather than race bias. The vague definition of neglect allows middle-class child care professionals to impose their standards on the poor. In essence, bias against the poor, or at least a lack of understanding of poverty and the "culture" of poverty together with a vague definition of neglect, leads to charges of maltreatment where there is none. This last theory is hard to test.

The argument that racism is a factor in the large numbers of minorities in the child protection system appears to be supported by the latest NIS report (NIS-3). The NIS-3 concluded that different races receive differential attention at some point in the process of referral, investigation, and service allocation⁴¹ despite the fact that there is no difference in the rate of abuse by race.⁴² The NIS-3 also concluded that a re-analysis of the NIS-2 study data indicated young minority children were more likely to be investigated than white children.⁴³ Although analysis of the statistics alone would indicate differential treatment on the basis of race, other explanations like differential treatment of the poor and higher scrutinization of poor families may also explain the data.

NIS-3 discounts the explanation of lower income family scrutinization by governmental agencies as a reason for the disproportionate rates of minority children in the system. It states

41. SEDLAK & BROADHURST, *supra* note 11, at 4-30.

42. *Id.*

43. *Id.* at 4-30 n.7.

that fifty-nine percent of their sample was reported by public school officials who see children from all income levels.⁴⁴ Hospital personnel also accounted for a large part of child maltreatment reports.⁴⁵ Despite the NIS-3 conclusion, it is possible that hospital and school officials are more willing to report abuse or neglect in lower socio-economic families. Early studies on mandatory reporting of child abuse found that doctors were less likely to report suspected abuse in middle-class families than in poor families.⁴⁶ Thus, the differential attention the NIS-3 observed may be due to poverty and not race.

Bias in filing initial child abuse reports has been posited as a cause of the large number of minority children in the system. If minorities are reported for maltreatment more often than whites, it might be because of racism, it might occur because of other factors that bring minorities to the attention of authorities, or it might result from the fact that poor people are more likely to be reported and minorities are more likely to be poor. Studies on this phenomenon do not provide clear answers.

Some studies have noted differential reporting rates for blacks and whites. In a 1990 Florida study, African-American women were reported for substance abuse during pregnancy at approximately ten times the rate of white women although the rate of substance abuse in those two groups was approximately the same.⁴⁷ Another study confirmed that although the use of drugs by pregnant women was similar for black and white women, nearly twice as many pregnant black women were reported.⁴⁸ Although one study found differential reporting rates between African-American and Caucasian pregnant women, all of the reported women in that study were of lower socio-economic status.⁴⁹ Thus, the reports may have been based on poverty status rather than race. Early studies of abuse and neglect reporting patterns and recognition showed that children of lower socio-economic parents were more likely to be

44. *Id.* at 5-52.

45. *Id.*

46. Jessica Daniel et al., *Child Abuse and Accidents in Black families: A Controlled Comparative Study*, 53 AM. J. ORTHOPSYCHIATRY 645, 646 (1983).

47. Lenette Azzi-Lessing & Lenore Olsen, *Substance Abuse-Affected Families in The Child Welfare System: New Challenges, New Alliances*, 41 SOC. WORK 15, 19 (1996).

48. Ana Novoa, *Count the Brown Faces: Where is the 'Family' in the Family Law of Child Protective Services*, 1 SCHOLAR 5, 17 (1999) (citing Ira Chasnoff et al., *The Prevalence of Illicit-Drug or Alcohol Use During Pregnancy and Discrepancies in Mandatory Reporting in Pinellas County Florida*, 322 NEW ENG. J. MED. 1202, 1203-06 (1990)).

49. *Id.*

reported as being abused even when they suffered the same injuries as children in better economic circumstances.⁵⁰ Again, because minorities are disproportionately poor they may be more likely to be reported for child maltreatment.

Other studies did not find differential reporting or treatment of minorities. A 1996 study in western New York state showed all children were slightly more likely to be reported by mandatory reporters—doctors, social workers, teachers and other professionals required to report by law—than by permissive reporters.⁵¹ However, African-Americans were most likely to be reported by non-parent relatives (twenty-four percent for blacks and thirteen percent for whites), while Caucasians were most likely to be reported by law enforcement, a friend or neighbor (seventeen percent for whites, eight percent and six percent respectively for blacks).⁵² If there was racial bias in reporting, it would more likely come from non-relatives, but that group reported most often on Caucasians, not African-Americans. Analyzing data on mandatory reporters, the author noted about twice as many reports on African-American families originated from medical sources,⁵³ but twice as many reports on Caucasian families were made by law enforcement personnel.⁵⁴ Most medical reports came from hospitals or clinics which the authors posit would be used more frequently by poor African-Americans.⁵⁵ Again, poverty may play a part in reporting, and it does not appear that race bias accounts for the overly large proportion of African-American families in the system.

Another study measuring substantiation and provision of services, rather than reporting rates, found no difference in the rate between African-Americans and Caucasians of unsubstantiated, substantiated and closed (maltreatment occurred but nothing more needed to be done), and substantiated and open (further supervision by child protection officials was needed) cases.⁵⁶ In addition, a prior substantiated report of maltreatment was more likely to lead to substantiation of a present report in

50. Daniel, *supra* note 46.

51. Murray Levine et al., *African-American Families and Child Protection*, 18 CHILD. & YOUTH SERVICES REV. 693, 699 (1996).

52. *Id.* at 700.

53. *Id.*

54. *Id.* at 701.

55. *Id.* at 701.

56. *Id.* at 705.

Caucasian children than in African-American children.⁵⁷ The opposite would be expected if racial bias was involved in the substantiation decision. Services were offered with the same frequency to both races,⁵⁸ although Caucasians were more likely to be referred for counseling.⁵⁹ Overall, the investigators found that African-American families were not handled differently than Caucasians.⁶⁰

Contrary to the NIS-3 conclusion, a number of studies conducted to measure racial prejudice by child welfare professionals reached the conclusion that racial bias was not the cause of increased numbers of minorities in the child welfare system. In a study conducted in Pittsburgh between 1986 and 1989, researchers found that there was no significant difference in the likelihood that a case of neglect would be confirmed for African-American as compared to Caucasian families.⁶¹ Although the rate of neglect was the same for African-Americans and Caucasians in that study,⁶² African-Americans were disproportionately represented in cases referred to the county for neglect (twelve to thirteen percent of the county population but forty-three percent of the neglect cases).⁶³ Thus, the study sample was consistent with NIS-3 data in that there was a disproportion of minorities in the system, but the study disproves bias on the part of child welfare workers who determined whether a case was confirmed. If child welfare workers had been biased, the rate of confirmed cases for minorities would have been higher than that for Caucasians.

Other studies have gone beyond examining statistics to test racial bias through hypothetical cases presented to child welfare professionals. A 1995 Canadian study presented police officers and social workers with a removal decision on a hypothetical case that included unsubstantiated vague accusations of neglect.⁶⁴ Age, race

57. *Id.*

58. *Id.* at 703.

59. *Id.*

60. *Id.* at 707. The authors caution about methodology issues, but the study appears to provide valuable insight nonetheless. *See id.*

61. Edward Saunders et al., *Racial Inequality & Child Neglect: Findings in a Metropolitan Area*, 72 CHILD WELFARE 341, 345 (1993).

62. *Id.* at 350.

63. *Id.* at 345.

64. David R. Mandel et al., *Reasoning About the Removal of a Child from Home: A Comparison of Police Officers and Social Workers*, 25 J. APPLIED SOC. PSYCHOL. 906, 908 (1995) (“The vague allegations of neglect included a “messy” house, “little food in the refrigerator” and “scrapes and bruises on elbows and knees”).

and socioeconomic status were changed to test the effect of those factors on removal decisions. The authors found that when the child was older⁶⁵ and lived in a predominantly black lower-class neighborhood, police and social workers were less likely to agree with removal.⁶⁶ If the social workers were biased against blacks, the opposite would have been found. One can argue about whether this result shows reverse prejudice is involved (less is expected from black families), that social workers are actually more aware of the daily realities and problems of being poor (sometimes poor parents have no choice but to leave a child unattended), or that social workers believe poor black children are more capable of taking care of themselves. In any event, the attitude of the social workers in this study does not support the bias theory. When read together, these studies seem to negate the theory of race bias to explain the disproportion of minorities in the child welfare system.

On the other hand, a number of studies appear to support the theory that the cause of the minority over-representation in the system is the disproportionate number of poor minorities. In other words, neglect is related to poverty, not minority status.⁶⁷ When comparing the ratio of racial minorities living in poverty in a particular county with the proportion of minority children in the child welfare population in that county, one study found consistency.⁶⁸ African-American children were disproportionately represented in maltreatment cases when compared to their proportion of the general population, but their representation in these cases was proportionate to their ratio of the poor population of the county studied. In addition to the NIS-3 statistics cited above, one study, comparing black families whose children entered the hospital because of accidents with those who were hospitalized for abuse, concluded that abusing parents were poor, of lower occupational status, socially isolated and depressed.⁶⁹ Thus, even within the black community, poverty is associated with

65. *Id.* (stating eleven- to twelve-years-old as opposed to six- to seven-years-old).

66. *Id.* at 917-18.

67. Elizabeth Jones & Karen McCurdy, *The Links Between Types of Maltreatment and Demographic Characteristics of Children*, 16 CHILD ABUSE & NEGLECT 201, 213 (1992).

68. Levine, *supra* note 51, at 705-06.

69. Daniel, *supra* note 46, at 650-51. Interestingly, there was no difference in the frequency with which both groups spanked their children, but non-abusive mothers reported they felt guilty for punishing their children more often than abusive mothers. *Id.* at 651.

maltreatment.

IV. RESEARCH ON POVERTY

Recent studies seem to point to poverty as a more likely cause of the disproportionate numbers of maltreated minority children than biased reporters and child protective service workers. NIS-3 statistics and those of other studies repeatedly link poverty with child abuse and neglect.⁷⁰ Severe violence towards children is more common in families with income below the poverty level.⁷¹ Over the past decade, rates of persistent poverty and child abuse have both increased.⁷² However, statistical tests merely demonstrate a connection between poverty and child maltreatment. They do not prove cause and effect. Given that most poor parents do not abuse or neglect their children, poverty status alone does not explain child maltreatment. Although minorities do not abuse their children at a higher rate than whites, because minorities are disproportionately poor, the answer to why more poor parents than wealthy parents abuse is crucial to the well-being of the minority community.

Several theories may explain the increased rate of maltreatment among the poor. One may argue that the greater stress of poverty, the dangerous neighborhoods in which poor people generally reside, and the lack of money for adequate child care, food, medical care, and housing, all contribute to the likelihood that a poor parent will not have the energy or time to properly care for her children or will be more likely to lose her temper and inappropriately discipline her children.⁷³ On the other hand, it is possible that some of the problems that cause poverty such as drug abuse, poor interpersonal skills, and criminal or violent behavior also cause child maltreatment.⁷⁴ For example, a parent with a substance abuse problem will be poor and not likely to properly care for her children while she is high. Similarly, a

70. See *supra* notes 23-31 and accompanying text. See also Candace Kruttschnitt et al., *The Economic Environment of Child Abuse*, 41 SOC. PROBS. 299 (1994).

71. Kruttschnitt, *supra* note 70, at 300.

72. *Id.* at 301.

73. MINN. MALTREATMENT REPORT, *supra* note 16 (stating that poor families without basic necessities may not be able to care for children because of the family's unmet needs).

74. *Cf. id.* (stating unmet needs could cause stress, which could lead to maltreatment).

parent who lacks interpersonal skills would be unable to get or keep a decent job and is likely to have the same problem relating to her child as she does relating to other people. Thus, the parent is both poor and neglectful without poverty directly causing the neglect. The NIS-3 report concedes that poverty is associated with other factors, including substance abuse, which may cause maltreatment.⁷⁵ A third possibility is that poverty acts along with other problems such as lack of an adequate support system to cause an increased likelihood of maltreatment. A final argument is that many children are in the system because of cultural or middle-class bias that results in inappropriate findings of neglect.⁷⁶ In other words, children are being removed because they are poor, not because they have been maltreated. All of these theories appear to be partially correct.

If the connection between neglect and poverty is higher than that between other types of abuse and poverty, it may mean that the lack of resources (money for basic needs, medical care, child care, etc.) connected with poverty causes neglect, or it may point to middle-class bias. As it happens, the correlation between poverty and neglect is greater than that between poverty and other types of maltreatment.⁷⁷ Increases in substantiated neglect have occurred primarily in poor areas while abuse increases occurred across all socio-economic levels.⁷⁸ Although substantiated cases of abuse were about three times as frequent in poor communities, substantiated neglect cases in poor communities were nearly six times more frequent than in more affluent communities.⁷⁹ African-Americans had higher rates of substantiated neglect, which is consistent with the correlation between poverty and neglect and the high proportion of African-Americans living in poverty.⁸⁰

In one study, reports of maltreatment were compared with census data for poor areas in Missouri.⁸¹ Increased poverty

75. SEDLAK & BROADHURST, *supra* note 11, at 5-54.

76. For a discussion of how child protection workers might better accommodate cultural diversity without endangering children, see Jill Korbin & James Spilsbury, *Cultural Competence and Child Neglect*, in NEGLECTED CHILD.: RES., PRAC., & POL'Y 69-88 (Howard Dubowitz ed., 1999).

77. Brett Drake & Shanta Pandey, *Understanding the Relationship Between Neighborhood Poverty and Specific Types of Child Maltreatment*, 20 CHILD ABUSE & NEGLECT 1003, 1012 (1996).

78. Lee & Goerge, *supra* note 30, at 768.

79. *Id.*

80. *Id.* at 776.

81. Drake & Pandey, *supra* note 77, at 1003-04.

correlated not only with higher numbers of reports but also with higher substantiation rates for physical abuse and neglect.⁸² Substantiation rates of sexual abuse were relatively level for all income groups, but substantiation rates sorted by income varied widely for physical abuse and neglect.⁸³ Neglect was more highly correlated to poverty than other types of maltreatment.⁸⁴ There is no way to test whether this data is the result of middle-class bias or poverty, but it tends to support the “lack of resources” theory.

The fact that most poor people do not abuse their children might point to the fallacy of the theory that the stress of poverty causes maltreatment. However, if the poorest people have higher rates of abuse or neglect, it might mean that poverty is a strong contributing factor to maltreatment and, at the deepest levels of poverty where stress is highest, it leads to abuse. In one study of chronic neglect, researchers found that although the income of chronically neglecting families was not significantly different from that of newly neglecting families, the chronic families supported more members on that income so that they were effectively poorer,⁸⁵ “considerably poorer than the average for their neighborhoods.”⁸⁶ For example, while about eighty-six percent of the chronically neglecting families had enough money to pay rent and eighty-four percent had enough to pay for food, seventy-one percent could not afford a babysitter, forty-three percent could not pay utility bills, and thirty-one percent could not afford medical treatment.⁸⁷ To put this in perspective, statistics for the locale (Pittsburgh) at the time of the study indicated that an average family of 3.1 people had income of \$20,971 per year and the federal poverty level for a family of four was \$11,650, but the families in the study averaged 3.8 people on income of \$7,476.⁸⁸ Chronically neglecting families were also less educated and more likely to be unemployed.⁸⁹ Overall, newly neglecting families could be distinguished from chronically neglecting families in that the new neglect involved parents who were facing a crisis and were

82. *Id.* at 1011.

83. *Id.* at 1011-12.

84. *Id.* at 1012.

85. Kristine Nelson et al., *Chronic Child Neglect in Perspective*, 38 SOC. WORK 661, 665-66 (1993).

86. *Id.* at 666.

87. *Id.*

88. *Id.* at 668.

89. *Id.* at 669.

isolated from family and friends.⁹⁰

It can be argued that this study supports the theory that poverty causes maltreatment given that families with the highest levels of poverty would suffer the most stress and, indeed, those families chronically maltreated their children. It can also be argued that the fact that these families could not provide basic necessities to their children caused child protective services personnel to find that they neglected their children. Finally, the study does not rule out the possibility that intractable problems (lack of education and poor job skills) that cause extreme poverty contribute to maltreatment. The lack of a support network for newly neglecting families may also indicate that poverty in conjunction with other problems causes child maltreatment.

Several studies have attempted to further refine the correlation between poverty and child maltreatment by comparing persistent poverty with temporary poverty. An understanding of the effects of chronic poverty on child maltreatment is especially important to minorities given that African-American children are more likely to be poor for multiple years than white children.⁹¹

In one study of child fatalities in Philadelphia designed to measure the effects of prolonged poverty versus short-term economic stress on physical child abuse,⁹² researchers found that poor children are nearly twice as likely to suffer severe abuse as children who do not live in poverty.⁹³ Sixty-four percent of the sample who repeatedly abused their children were of extremely low socioeconomic status.⁹⁴ The study suggests that long term poverty is related to the risk of recurrent abuse more than poverty at the time of the maltreatment.⁹⁵ However, once parental criminality and domestic violence were factored, the relationship between recurrent abuse and chronic poverty was not clear.⁹⁶ Specifically, it was not clear whether parental violence caused poverty and child abuse or whether the stress of parental poverty caused violent behavior. Again, the correlation of maltreatment to poverty is

90. *Id.*

91. GREG DUNCAN, CONSEQUENCES OF GROWING UP POOR 5 (1997).

92. Kruttschnitt, *supra* note 70, at 299.

93. *Id.* at 306.

94. *Id.* at 300 (discussing a study reported by James Weston). For more details on Weston's research, see JAMES T. WESTON, THE BATTERED CHILD, THE PATHOLOGY OF CHILD ABUSE 241 (Helfner & Kempe eds., 3d ed. 1980).

95. Kruttschnitt, *supra* note 70, at 309.

96. *Id.*

clear, but causation is not.

A number of studies have focused on the effect of a lack of social support for maltreating parents. Hashima and Amato studied the effects of poverty and social support on negative parenting. They defined “unsupportive parenting” as self-reported frequency of hitting, yelling, lack of praise, and lack of hugging.⁹⁷ In a random national sample, they found that the perception of inadequate social support was associated with unsupportive parenting in low income families but not in middle-class families.⁹⁸ However *actual* help with baby-sitting and child care resulted in lower levels of unsupportive parental behavior regardless of income level.⁹⁹ This result may be supported as well by another study in which low income single mothers with low levels of social support and high levels of crises were more likely to be reported for child maltreatment.¹⁰⁰ The study shows the effect of poverty in that the lack of social support in middle-class families did not have the same negative effect on parenting as it did in poor families. In addition, child care assistance helped families at all income levels. Thus, the lack of a social support system and the lack of child care may explain why some poor parents maltreat their children while others do not.

It appears that no study proves definitively which, if any, of the above theories is correct. In all likelihood, each theory is somewhat true. Clearly more research needs to be done to better understand the connection between poverty and child maltreatment.

V. EFFECTS OF NEGLECT, POVERTY, AND REMOVAL

Despite the possible contributing factor of poverty, children who are being physically or sexually abused need to be removed from their families for their own safety.¹⁰¹ However, the case for removal of neglected children is less clear.¹⁰² Although neglected children can suffer serious physical injury or death, for example,

97. Patricia Hashima & Paul Amato, *Poverty, Social Support and Parental Behavior*, 65 CHILD. DEV. 394, 396 (1994).

98. *Id.* at 400.

99. *Id.*

100. Jonathan Kotch et al., *Risk of Child Abuse or Neglect in a Cohort of Low Income Children*, 19 CHILD ABUSE & NEGLECT 1115, 1126 (1995).

101. In 1999, 530 physical abuse victims and 149 sexual abuse victims were placed out-of-home in Minnesota. MINN. MALTREATMENT REPORT, *supra* note 16.

102. Despite lack of clarity, 1,886 Minnesota child neglect victims were removed in 1999. *Id.*

when a young child is left unattended, serious physical injury rarely occurs as a result of neglect. Given the high rate of poverty associated with neglect, the lack of studies on neglected children (as opposed to maltreated children in general), and the lack of a clear consistent definition of neglect, it is difficult to determine exactly what functions are impaired by poverty as opposed to neglect. If there are no serious long-term negative effects of neglect separate from those of poverty, it can be argued that removal of children from their families for neglect is not appropriate except in the most compelling circumstances. Thus, we need to examine the effects of neglect, poverty and removal to evaluate current child protection policies.

Neglected children “may suffer significant short-term and longer-term cognitive, emotional, and social problems.”¹⁰³ Poor school performance is closely associated with neglect.¹⁰⁴ Studies suggest that neglected children may suffer from intellectual and language delays,¹⁰⁵ but the lack of matched samples in most of these studies make “it difficult to discern any independent effects attributable to child neglect.”¹⁰⁶ Findings on the effect of neglect on behavior problems including aggression are mixed.¹⁰⁷ Neglected children appear to have increased coping difficulties.¹⁰⁸ Nonetheless, there is no clear link between neglect and criminality. Less than twenty percent of neglected children are arrested for juvenile or adult crimes and most neglect does not appear to be transmitted from generation to generation.¹⁰⁹

Poverty affects children in ways similar to neglect. Poverty negatively affects cognitive functioning, academic achievement, self-esteem, social development, and self-control.¹¹⁰ Poor children are more likely to have learning disabilities and emotional and

103. James Gaudin Jr., *Child Neglect: Short-Term and Long-Term Outcomes*, NEGLECTED CHILD.: RES., PRAC., & POL'Y 104, 104 (Howard Dubowitz ed., 1999).

104. NATIONAL RESEARCH COUNCIL, COMMISSION ON BEHAVIOR & SOCIAL SCIENCE & EDUCATION, UNDERSTANDING CHILD ABUSE AND NEGLECT 212 (1993), *available at* <http://www.nap.edu/openbook/0309048893/html>.

105. Crouch & Milner, *supra* note 40, at 56.

106. *Id.* at 57; *see also* Gaudin Jr., *supra* note 103, at 100-01.

107. Crouch & Milner, *supra* note 40, at 59; *see also* Gaudin Jr., *supra* note 103, at 102.

108. Crouch & Milner, *supra* note 40, at 63.

109. Gaudin Jr., *supra* note 103, at 104.

110. Thomas Hanson et al., *Economic Resources, Parental Practices, and Children's Well-being*, in CONSEQUENCES OF GROWING UP POOR, *supra* note 91, at 190.

behavioral problems.¹¹¹ Verbal ability is more likely to be affected by poverty than problem behavior or mental health.¹¹² Chronic poverty appears to have a stronger negative impact than temporary poverty. Children raised in persistent poverty exhibited lower intelligence test scores than those who were not poor for long periods of time.¹¹³

Depth of poverty is important as well. Those who are poorest fare the worst in terms of intellectual and educational achievement.¹¹⁴ As discussed above, chronic poverty and depth of poverty are associated with chronic neglect as well as negative cognitive effects on children. In sum, the effects of poverty are strikingly similar to the effects of neglect, although some authors claim the negative effects of neglect are greater than those of poverty alone.

Removal has negative effects on children as well.¹¹⁵ Children in foster care exhibit high rates of emotional, behavioral and developmental problems.¹¹⁶ Attachment theory points to the need for children to bond with their adult care-givers in order for them to develop self-esteem.¹¹⁷ Multiple placements are common in foster care. These disruptions in bonding have negative emotional consequences for the children in foster care.¹¹⁸ Further, children who “age out of the system” (reach the age of majority while in foster care) are “over-represented among welfare recipients, prison inmates and the homeless.”¹¹⁹ On some occasions, children are maltreated in foster care.¹²⁰ Reports on how children fare in foster

111. Greg J. Duncan & Jeanne Brooks-Gunn, *Family Poverty, Welfare Reform, and Child Development*, 71 CHILD DEV. 188, 188 (2000).

112. *Id.* at 189.

113. *Id.*

114. *Id.*

115. See Minn. Dep't of Human Services, *Children's Services Key Issues*, at <http://www.dhs.state.mn.us/childint/keyissues.htm> (last visited Sept. 20, 2001) (recognizing that children thrive in stable, permanent homes).

116. Linnea Klee et al., *Foster Care's Youngest: A Preliminary Report*, 67 AM. J. ORTHOPSYCHIATRY 290, 291 (1997).

117. AMERICAN ACADEMY OF PEDIATRICS, COMMITTEE ON EARLY CHILDHOOD, ADOPTION, AND DEPENDENT CARE, DEVELOPMENTAL ISSUES FOR YOUNG CHILDREN IN FOSTER CARE, 1145-50 n.21 (2000), available at <http://www.aap.org/policy/re0012.html>.

118. *Id.* at n.22.

119. CRAIG & HERBERT, *supra* note 8.

120. See Mary Benedict et al., *Types and Frequency of Child Maltreatment by Family Foster Care Providers in an Urban Population*, 18 CHILD ABUSE & NEGLECT 577 (1994); Mary Benedict et al., *The Reported Health & Functioning of Children Maltreated While in Family Foster Care*, 20 CHILD ABUSE & NEGLECT 561 (1996).

care are not helpful in determining what effect foster care has on neglected children because these reports do not separate out neglected children from abused children. Even if neglected children experience improved educational performance after they are removed from their homes, the negative effect of removal likely outweighs any intellectual impairment that may have been caused by neglect.

Although it is often claimed that neglect is just as harmful to children as abuse, studies have not confirmed these claims. Neglected children do not fare as well as non-maltreated children in a number of ways, most of which relate to intellect and educational achievement. Poor children in general exhibit similar intellectual and educational problems. Even if neglect increases the negative effects of poverty, if it does not do so appreciably or if those effects are not as damaging as problems caused by removal, one may argue that removal is inappropriate in most neglect cases.

VI. FACTORS AFFECTING REMOVAL

Given that most children in the child welfare system are victims of neglect, that neglect is closely associated with poverty, that the negative effects of neglect are difficult to prove, that poverty alone may cause some of the ill effects associated with child neglect, and that removal has serious negative consequences for the child, removal of children from poor parents for neglect should be heavily scrutinized and generally not permitted. Statutes require that children be in imminent danger of harm before they can be removed and that reasonable efforts should be expended to avoid removal.¹²¹

121. See, e.g., IOWA CODE § 232.78 (2000); IOWA CODE § 232.95 (2000); MINN. STAT. § 260C.148 (2000). Minnesota section 260C.148 provides an “immediate and present danger” standard:

The local welfare agency may bring an emergency petition on behalf of minor family or household members seeking relief from acts of domestic child abuse. The petition shall be brought according to section 260C.141 and shall allege the existence of or immediate and present danger of domestic child abuse. The court has jurisdiction over the parties to a domestic child abuse matter notwithstanding that there is a parent in the child’s household who is willing to enforce the court’s order and accept services on behalf of the family.

Id.; see also MINN. STAT. § 260C.175 (2000) (setting forth procedures for taking children into custody); MINN. STAT. § 260C.007, subd. 4 (2000) (including in the definition of a “child in need of protection or services” as a child who has been abandoned, abused, and/or neglected).

If children are being removed from their homes to protect them from imminent harm, one would expect that children who have already suffered a serious physical injury would be more likely to be removed than children who have not suffered an obvious injury. Surprisingly, that is not the case. A number of studies have found that family income, not severity of maltreatment, was the most predictive factor of child placement in foster care.¹²² In one study examining several factors in placement decisions, the fact that a child was sent to an emergency treatment center for physical or sexual abuse was the weakest predictor of later placement in foster care. In other words, children who were physically or sexually abused were not more likely to be removed from their homes.¹²³ Another study of children, referring to a hospital child abuse team, found that severity of the injury was not related to placement and that physical injury decreased the likelihood of an out-of-home placement.¹²⁴ Overall, children with non-physical injuries were more likely to be removed from their homes.¹²⁵ One study found that "only 25% of children classified as neglected by a protective services agency suffered immediate physical harm."¹²⁶ If children are not being consistently removed to protect them from physical abuse, it is hard to justify removing most neglected children for their own protection when the negative effects of neglect are not as certain as those of abuse that leads to a hospital visit.

If children fare better when they are removed from their homes, one may argue that removal is a positive event for neglected children. However, the negative effects of removal must be weighed against any positive effect on school performance or other behavior. A child who has been adjudicated neglected will, in all likelihood, miss her family and feel a sense of loss when separated,

122. Mary Keegan Eamon, *Poverty and Placement of Intensive Family Preservation Services*, 11 CHILD & ADOLESCENT SOC. WORK J. 349, 354 (1994).

123. Segal & Schwartz, *supra* note 31, at 547.

124. *See, e.g.*, Katz et al., *supra* note 31, at 257. This study also found that poor families were less likely to lose their children for neglect than more affluent families but more likely to lose their children for physical abuse than their more affluent counterparts. *Id.* at 259.

125. *See, e.g.*, *id.* at 260.

126. Howard Dubowitz et al., *A Conceptual Definition of Child Neglect*, 20 CRIM. JUST. & BEHAV. 8, 17 (1993) (citing Zuravin, *Child Abuse, Child Neglect and Maternal Depression: Is There a Connection?*, in National Center on Child Abuse & Neglect, *Child Neglect monograph: Proceedings from a symposium* (1988)).

no matter how much better conditions may be in a foster home.¹²⁷ Even physically abused children miss their families. In addition, neglected children will suffer permanent loss if their parents' rights are terminated, especially the large number of black children who will never be adopted. Finally, if any positive effects of foster care are due solely to the removal of poverty, removal cannot be justified solely on the basis of poverty even if it has some positive effect on the child.

VII. TREATMENT

One can argue that poverty will always exist, but if we do not try to alleviate some of the problems caused by poverty, how can we justify removing children from their families? Many critics of the child welfare system argue that, in addition to doing little about the problem of poverty, and despite federal requirements that "reasonable efforts" be expended to keep a family together before a child is removed and before parental rights are terminated, we are not doing enough to help the families whose children we remove. Statistics appear to substantiate these claims.

Foster care placement as a "treatment" for child maltreatment has risen dramatically from thirty percent of children in the system in 1977 to fifty percent in 1997.¹²⁸ However, the number of children receiving services has dropped substantially since 1977, when 1.8 million children received services, to approximately 1 million children in 1994.¹²⁹ This occurred despite the fact that nearly the same number of children were in foster care in both years.¹³⁰

One study found that, although the most frequent reason for referral for neglect was inadequate supervision of preschool

127. See Penny Ruff Johnson et al., *Family Foster Care Placement: The Child's Perspective*, 74 CHILD WELFARE 959, 967 (1995) (reporting that almost all children in the study said they missed their parents, and fifty-six percent said they miss their parents most of the time).

128. Ching-Tung Wang, Ph.D., Center on Child Abuse & Prevention, Program Nat'l Committee To Prevent Child Abuse, *Current Trends in Child Abuse Reporting and Fatalities: The Results of the 1997 Annual Fifty State Survey (working paper no. 808)*, at <http://www.childabuse.org/50data97.html>. Approximately 11,470 children were under the care of foster families in Minnesota during 2000. Minn. Dep't of Human Services, *Foster Care and Out-of-Home Placement in Minn.*, at <http://www.dhs.state.mn.us/newsroom/facts/fosterca2.htm> (last visited Sept. 20, 2001).

129. Ching-Tung Wang, *supra* note 128.

130. *Id.*

children, a little under eleven percent of the families received day care assistance.¹³¹ Despite the large percentage of child welfare cases involving substance abuse,¹³² less than five percent of the families received substance abuse treatment.¹³³ Thus, service is falling at the same time that the number of families in the system is increasing.

Intervention strategies and treatment programs to alleviate child maltreatment have had mixed results. If we don't know what will be effective and if not much has been effective to date, it may be argued that criticism about state efforts is misplaced. In one project aimed at increasing family reunification, although intensive efforts were helpful, reunification was impossible despite serious efforts in a significant percentage of cases.¹³⁴ Factors that indicated a small likelihood of success were severe abuse, school problems, and few socio-economic resources, in that order.¹³⁵ It seems that severe poverty plays an important role in who can benefit from therapy as well as who is likely to maltreat, although the question arises once again of whether intractable parental problems result in poverty and difficulty in treatment or whether the depth of poverty causes the decreased likelihood of treatment success.

It is possible that the lack of treatment success might be reversed by trying different intervention tactics. For example, when therapy was aimed at children instead of parents, more than seventy percent of neglected and abused children in one sample showed improvement in all areas of functioning measured by the

131. Nelson, *supra* note 85, at 667. Cf. Minn. Dep't of Human Services, *Foster Care and Out-of-Home Placement in Minn.*, at <http://www.dhs.state.mn.us/newsroom/facts/fosterca2.htm> (last visited Sept. 20, 2001) (stating that fifty-six percent of Minnesota children in foster care were there due to "abuse or neglect, parents' death, illness, disability, abandonment, incarceration, substance abuse, temporary absence, inability to cope, inadequate housing or termination of parents' rights.")

132. Approximately forty to eighty percent of Minnesota children in welfare are in families with substance abuse issues. Minn. Dep't of Human Services, *Children's Services Key Issues*, at <http://www.dhs.state.mn.us/childint/keyissues.htm> (last visited Sept. 20, 2001).

133. Nelson, *supra* note 85, at 667. Minnesota seeks to provide "long-term, comprehensive planning and services" to reduce recurring substance abuse. Minn. Dep't of Human Services, *Children's Services Key Issues*, at <http://www.dhs.state.mn.us/childint/keyissues/htm> (last visited Sept. 20, 2001).

134. Richard P. Barth et al., *Contributors to Reunification or Permanent Out-of-Home Care for Physically Abused Children*, 9 J. SOC. SERV. RES. 31, 41 (1985-86).

135. *Id.*

studies.¹³⁶ In other studies aimed at correcting specific behaviors, positive results were obtained and maintained for forty-two weeks after the program ended.¹³⁷

One study found that the negative effects of poverty can be mediated by other factors such as cognitive stimulation and parenting style.¹³⁸ However, another study found that good parenting has less beneficial effects on poor children than on those from higher economic families.¹³⁹ The authors of the latter study admit to problems with their research model.¹⁴⁰

Clearly, more work needs to be done to determine to what extent negative outcomes for children are caused by poverty and neglect and how and to what extent government programs can combat those negative effects and protect and nurture children. To the extent we can aim child protection programs at children to remedy the negative effects of neglect and poverty and towards giving poor parents access to mediating conditions that would lower the likelihood of maltreatment, we need to change the focus of child protection efforts. It can be argued that removal in all but the most severe neglect cases (such as failure to thrive or abandonment) is not good for children and that removal without more is not helpful to the children the system aims to protect.¹⁴¹ Certainly, a sizeable portion of the large proportion of child welfare money that now goes to foster care would be better spent in

136. James M. Gaudin Jr., *Effective Intervention with Neglectful Families*, 20 CRIM. JUST. & BEHAV. 66, 83 (1993) (citing DARO, CONFRONTING CHILD ABUSE (1988)). It should be noted that these studies involved both abused and neglected children. *See id.*

137. *Id.* at 74. Minnesota has adopted an "Alternative Response Program" in which social workers take a holistic approach to helping families. Minn. Dep't of Human Services, *Alternative Response Program Reaching Out to Support Families*, at <http://www.dhs.state.mn.us/newsroom/facts/ARPFact.htm> (last visited Sept. 20, 2001). Family strengths are identified, while child safety and risks are examined. *Id.* The Alternative Response Program takes a community-based approach. *Id.* This program was newly implemented in 1999. MINN. MALTREATMENT REPORT, *supra* note 16.

138. Guang Guo & Kathleen Mullan Harris, *The Mechanisms Mediating the Effects of Poverty on Children's Intellectual Development*, 37 DEMOGRAPHY 431, 443 (2000).

139. Hanson et al., *supra* note 110, in Duncan & Brooks-Gunn, *supra* note 111, at 219.

140. *Id.* in Duncan & Brooks-Gunn, *supra* note 111, at 221.

141. An example of a Minnesota program that does more than remove children is the "Children of Color Outreach" program. Minn. Dep't of Human Services, *Children of Color Outreach*, at <http://www.dhs.state.mn.us/childint/Programs/ChildofColor/default.htm> (last visited Sept. 20, 2001). The program provides services to strengthen families as a cultural unit. *Id.*

other ways if the government truly wants to protect children.

VIII. CONCLUSION

The United States has a history of separating poor children from their families under the guise of child welfare. Have we rationalized and institutionalized that separation in the name of neglect to the point where we can no longer see it for what it is? Worse yet, have we added to the already heavy burden of the minority community by doing so?

Statistics tell us that poor parents maltreat their children more often than middle class and wealthy parents. The disproportionate numbers of minority parents charged with maltreating their children is not due to any increased maltreatment by minorities, nor does racial bias adequately explain this phenomenon. Minority children are disproportionately poor and, consequently, they are over-represented in the child welfare population.

Many authors have argued, on the basis of the correlation between poverty and maltreatment, that alleviation of poverty would greatly decrease the problem of child maltreatment. It is entirely possible, and likely, that some maltreatment could be averted through financial programs for the poor, especially for the chronically poor and those in the most dire financial straits. The provision of reliable child care and adequate housing and medical care would likely eliminate some potential maltreatment cases. However, most poor parents do not maltreat their children, and it is likely that factors in addition to or other than poverty may cause child maltreatment. What then should be done about neglected children?

Child welfare laws treat abuse and neglect the same. Abuse and neglect are not the same. They result from different causes, respond to different treatments and require different action on the part of the state. Although maltreatment rates increase with poverty, the connection between poverty and neglect is much stronger than that between poverty and abuse. Although there are some problems with defining physical abuse—such as delineating between permissible corporal punishment and impermissible abuse—physical abuse is generally easier to discern than neglect. The definition of harmful neglect is neither clear nor uniformly accepted. Definitional vagaries and the frequent use of a threat of harm instead of proof of definitive past harm make neglect more readily susceptible to bias—racial bias or “middle-class bias”—that

reflects cultural differences rather than actual harmful situations. Thus, removal of poor children for neglect should be heavily scrutinized to avoid its disparate impact on minorities.

The most common intervention in child welfare cases is removal of children to foster care. Children are separated from their parents ostensibly to protect those children from abuse, but removal is not based on severity of injury or proven physical injuries. Instead, removal appears to be related to poverty. In fact, despite similar maltreatment rates, different states remove children with differing frequency.¹⁴² Nobody would dispute that a child who has been severely physically injured should be removed from his parents for his protection. If a child is beaten, the damage is clear. Although neglect can cause physical harm (a child left unattended can hurt herself), most children are not removed for physical harm that has already occurred. In addition, otherwise good parents can momentarily neglect their children and not pose a future threat that would require removal.

It is possible that psychological injuries may be worse than physical injuries, but the psychological effects of neglect are not readily distinguishable from those of poverty. Poor children in general have learning and self-esteem problems. Even if some allegedly neglected children fare better in school when they are moved to foster homes, we need to ask if better performance is the result of improved socio-economic conditions or services provided in foster homes that were not available in biological homes. Perhaps everyone would reach their full potential more readily if they could reap the educational benefits that money can buy, but we would not send children to the most affluent families simply for that reason. Additionally, if the removal causes more negative effects than the original neglect, by exacerbating or causing attachment disorders, removal is not for the child's benefit. The need to remove a neglected child to protect him or her is therefore not as clear as for other types of maltreatment.

Much more work needs to be done to understand the causes and effects of poverty and neglect and how to obviate the negative effects of each on children. In the meantime, because the effects of neglect absent poverty are not yet clear, because minorities are disproportionately being removed from their families for what may

142. Martin Guggenheim, *Somebody's Children: Sustaining the Family's Place in Child Welfare Policy*, 113 HARV. L. REV. 1716, 1725 (2000).

be poverty without proof they are being critically harmed by their families, serious thought should be given to curbing the practice of removal of neglected children from their homes. It is hard to believe such a policy would cause more harm than the current policy of removal and termination.