

SOCIOLOGICAL DUE PROCESS: EXPLORING SYSTEMIC BIASES IN THE MICHIGAN
FAMILY JUVENILE COURT

By

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ABSTRACT

In this dissertation, I explore systematic and systemic biases in the Michigan Family Juvenile Court system. I incorporate the community capitals framework (CCF) as a heuristic device within a broader Theory of Access to explore, describe, and explain how the socio-legal structure and lack of access to justice interacts with parental and child neglect and abuse across the State of Michigan. Within Michigan's Family Juvenile Courts, identity and social location influence court outcomes, despite foundational legal principles based on concepts of equal justice for all. First, in a case study of Wayne County, I facilitate an examination of how Michigan's largest court judiciary compares to other regions in the state, especially important given that Wayne County contains Michigan's largest African American and Muslim populations. Second, dividing the remaining Michigan counties into six regions, I examine how laws are unevenly applied within and across regions controlling for race, gender, and multiple forms of access to, and deployment of "capital" broadly defined. Lastly, I reveal the unconstitutional practices of courtroom stakeholders despite formal law changes designed to prevent such practices. Both individual and community assets and deficits as well as the positionalities of courtroom stakeholders shape case outcomes, creating differences among similarly situated families. Furthermore, the basis for child removal is sometimes differentially determined across regions. Sociologically extending the concept of access beyond the conventionally narrow use most commonly found in the legal and public policy literature, I address broad societal shortcomings that are reinforced through child neglect and abuse proceedings impacting litigant's lives. summary, this dissertation reveals how courts go beyond recognizable race, class, and gender disparities and shows how discrimination is covert and systemic across the Michigan Family Juvenile judiciary.

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LIST OF ABBREVIATIONS

Department of Health and Human Services/Department of Human Services	DHHS or DHS
Department of Health and Human Services/Department of Human Services	the department

CHAPTER 1-WHEN LIFE GIVES YOU LEMONS, MAKE MIKE’S HARD LEMONADE

INTRODUCTION

“Poverty creates an abrasive interface with society; Pure people are always bumping into sharp legal things.”¹

MEET THE RATTÉ’S (CASE STUDY)

On a Spring Day in Detroit, Michigan, University of Michigan Professor Christopher Ratté took his then seven-year-old son to a baseball game in downtown Comerica Park. This father son outing soured after Ratté unknowingly purchased a Mike’s Hard Lemonade, an alcoholic beverage, for his son. In a series of unfortunate events multiple state actors including police officers, social workers, and courthouse staff intentionally and falsely cast Ratté and later his wife as unfit parents and their son as an abused and neglected child. Ratté’s son was ultimately removed from his and his wife’s care, custody, and control, a constitutional right supported by the 14th Amendment of the United States Constitution. As *Troxel v Granville*, a landmark United States Supreme Court case noted,

“the interest of parents in the care, custody, and control of their children—is perhaps the oldest of the fundamental liberty interest recognized by this court. More than 75 years ago, and *Meyer v Nebraska*, 262 U.S. 390, 399, 401 (1923), we held that the “liberty” protected by the Due Process Clause includes the right of parents to “establish a home and bring up their children” and “to control the education of their own.” Two years later, in *Pierce v Society of Sisters*, 268 U.S. 510, 534-5 (1925), we again held that the “liberty of parents and guardians” includes the right “to direct the upbringing and education of children under their control.” We explain in *Pierce* that “[t]he child is not

¹ Susan S. Silbey, *After Legal Consciousness*, 1 ANN. REV. L. SOC. SCI. 323, 360 (2005).

the creature of the State; those who nurture him and direct his destiny have the right, coupled with the high duty, to recognize and prepare him for additional obligations.” *Id.*, at 535. We returned to the subject and *Prince v Massachusetts*, 321 U.S. 158 (1944), and again confirmed that there is a constitutional dimension to the right of parents to direct the upbringing of their children. “It is cardinal with us that the custody, care and nurture of the child reside first in the parents, whose primary function and freedom include preparation for obligations the state can neither supply nor hinder. ”” *Id.*, at 166. ””

After 3 days in foster care, Ratté’s son was returned to his wife’s care with the assistance of the University of Michigan Law School’s Child Advocacy Clinic Director Don Duquette on the stipulation that Ratté move out of the family’s home. The Michigan emergency removal statute (M.C.L. § 712A.14(1))² and Michigan Court Rule (Mich. Ct. R. 3.963 (A)) that permitted the state to initiate an abuse and neglect proceeding against Ratté authorized authorities to remove a child without court order “whose surroundings are such as to endanger his or her health, morals, or welfare” and made no provisions for a required finding of emergency or other exigent circumstances violating the minimal federal law. What constitutes endangerment to the health, safety, or welfare of a child is subjective and can be culturally different (Pinderhuges 1991). An unsuccessful bid to change the unconstitutional law, led the couple to later file a complaint against the state actors involved after discovering assigned Wayne County Judge Judy Hartsfield, “put in place a process and procedure whereby the individual on duty at the Juvenile Court was mandated to fill-in partially completed, pre-signed orders of removal upon the filing of a

² Any local police officer, sheriff or deputy sheriff, state police officer, county agent or probation officer of any court of record may, without the order of the court, immediately take into custody any child*** whose surroundings are such as to endanger his or her health, morals or welfare.

complaint by the police and to issue such orders as valid court orders to place minors in the custody of D[epartment] [of] [H]uman and [S]ervices”.

Together with his wife and their two children, Ratté, a white, professionally employed³, ivy league educated, middle age, upper-middle class, cisgender male epitomizes a traditional nuclear family. Not the “poor, single parent with limited resources, who sometimes [is] living in inadequate conditions because that’s what[‘s] available”⁴ parent you commonly see enter the child protection system (Guggenheim M 2002). Though recent research calls “class-based visibility bias” an assumption⁵, the literature still supports neglect as synonymous with poor (Guggenheim 2002). As such, unsurprisingly, Professor Duquette noted “class ha[d] something to do with the fact that the child was only in care for two days⁶” when asked about the speed in which the child was returned to Ratté’s wife. Wheeler et al. (1987) tested the hypothesis that “financially and organically stronger parties tend to prevail in litigation against weaker parties . . . because the normative structure of the . . . legal system has favored “the haves” or because judges’ attitudes do, or because stronger parties have strategic and representational advantages in litigation.”

According to Professor Duquette, ““cases of unwarranted emergency removal are common””. In the case of Ratté and his family, the couple had access to what Ratté described as “the resources of the [University of Michigan] behind them” and what Professor Duquette described as “sophisticated legal counsel⁷.” Professor Duquette’s position that “sophisticated” legal counsel

³ Ratté’s professional status as a professor at the University of Michigan was a fact included in the Judge Avern Cohn’s Memorandum and Order Denying Defendant Hartsfield’s Motion to Dismiss (Doc. 63) in the complaint the family filed as a result of the incident.

⁴ <https://www.pbs.org/wgbh/pages/frontline/shows/fostercare/inside/guggenheim.html>

⁵ Kim, Hyunil et al. “An examination of class-based visibility bias in national child maltreatment reporting.” *Child and youth services review* 85 (2018): 165-173.

⁶ The child was placed in foster care for three days and two nights.

⁷ The University of Michigan Law School was ranked 8th overall in the nation at the time of the incident (2008) according to U.S. News & World Report. Currently at the time of this writing 2021, it is ranked 10th.

played a role in the Ratté's legal victory is supported by the literature which suggests "greater legal sophistication and litigation capabilities were the primary source of litigation advantage" (Wheeler et al. 1987).

Although differing in language and terminology, what Professors Ratté and Duquette describe and explain is the concept of access. Despite Ratté's honest mistake and a severe overreaction by state officials, other than for a limited set of purposes, furnishing an alcoholic beverage to a child violates Michigan Laws and raises reasonable questions regarding parental judgment.

Nevertheless, the expediency with which Ratté and his wife regained custody of their child is unusual. Given the disproportionate number of African American, Latino, and Native American children in foster care (Roberts 2002), questions arise regarding how identity and access impact parents' experience with child welfare. While centering a sensationalized media case such as the Ratté family may "obscure systemic issues that profoundly affect child-welfare decision-making" (Robert 2002), the "blatant disregard of existing child welfare laws and policies exist in most other parts of the country" (McGowan and Walsh 2000) and causes concern for families who lack the identity and access as that of the Ratté family.

The relationship between identity and access can be used to both examine the experiences of similarly situated litigants with different experiences in the judicial system and to identify how positionality contributes to case outcomes in the judicial system⁸. When paired with a community development framework, the relationship between identity and access may be governed by practices, legislation, initiatives, movements, administrations, or the like determining the parameters in which access and identity operate.

⁸ The occupation or adoption of a particular position in relation to others, usually with reference to issues of culture, ethnicity, or gender. (Oxford, 2021)

RESEARCH STATEMENTS

To explore, describe and explain the relationship between identity and access within the Michigan judicial system I extend Penchansky and Thomas's (1981) Theory of Access, originally introduced as a measure for customer satisfaction in the medical system to address the following hypotheses:

1. Within the Michigan Juvenile Family Court system, across Michigan counties, welfare laws in child removal proceedings are not applied equally across racial, class, and gender lines.
2. Within the Michigan juvenile family system, during child removal proceedings, the constitutional rights of children and parents continue to be violated despite the precedent-setting 2012 "Mike's Hard Lemonade" case.
3. Since the implementation of the amended child emergency removal laws in Michigan in 2012, the positionalities of child removal stakeholders have influenced both the number of child removal cases and the substance of removable offenses committed by parents.
4. Families' lack of access to justice is influenced by their social and socio-demographic location(s). Families that do not fit the "status quo" disproportionately experience due process violation as they navigate juvenile court.

The Ratté case demonstrates that identity in and of itself is not an absolute to societal privilege. Ratté's experience is counter to what we expect for someone with Ratté's social identity.

Discrimination due to identity is well documented in the judicial system. Black (1989) found that in murder cases, African Americans found guilty of killing whites were more likely to receive the death penalty than if they had killed an African American. In contrast, whites who were found guilty of killing African Americans were less likely to receive the death penalty than if

they had killed another white person. In the era of the Black Lives Matter Movement, lenient prison sentences given to white police officers for the murder of unarmed African American men, while male white mass shooters are arrested unharmed, highlights how identity provides a source of protection in the judicial system. In Ratté's case, though, the Ratté family benefited from several social identities, these social identities did not provide initial protection to them when their son was removed from their care. Arguably however, a case can be made that the Ratté's physical location at the time of the removal (Detroit, Michigan), for reasons I discuss in detail below, may have played a role in the removal as a negative capital essentially working against the Ratté's other identities. Despite the initial lack of protections in the removal of their son, the Ratté's identity in turn provided the family with the necessary access to facilitate their son's quick return. To examine the interplay between identity and access, I look to the community capitals framework (CCF) and the concept of, or the "theory of access."

TOWARD A THEORETICAL FRAMING OF CHILD REMOVAL

My analysis starts with the Community Capitals Framework, which I do not use for analysis purposes, but rather to assist in identifying capital assets and deficits at the macro, meso, and micro level by region.

Established by Flora and Flora's Community Capitals Framework (CCF).

"A community capitals framework was created by Flora and Flora (Iowa State, 2008) to map the strategies and impact capitals are playing in the community's well-being.

Through their research, Flora and Flora identified that if successful communities learned to leverage all of their capitals in a useful way, more vibrant communities emerged. The

seven community capitals are financial, built, social, human, cultural, natural, political and human.”⁹

“The Community Capitals Framework offers a way to analyze community and economic development efforts from a system perspective by identifying the assets in each capital (stock), the types of capital invested (flow), the interaction among the capitals, and the resulting impacts across capitals,”¹⁰ and thus a standalone conceptual framework on its own.

The Theory of Access appears across several different disciplines including public policy, law, property, natural analysts, and more. For this part of the dissertation, I will outline the different theories of access I considered in theorizing what role “access” plays in influencing outcomes in abuse and neglect court. Below, I will outline how various theories of access can be applied to consider the processes of child removal through the court system in Michigan when paired with the CCF framework.

For my purposes, theorizing child removal requires an examination of both legal and social science access theories and concepts. One such concept includes the “access to justice”, derived from the legal literature. Access to justice as discussed by Robinson (2005) involves equalizing the playing field for the less fortunate by using alternate dispute resolution as an alternative to trials and the use of attorneys with seemingly infinite resources. Robinson (2005) also suggests using non lawyer professionals to resolve matters that are typically litigated. Though not theoretical, Robinson’s (2005) work offers initiatives that if implemented are intended to improve outcomes for poor clients.

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https://www.canr.msu.edu/news/what_are_community_capitals#:~:text=What%20are%20community%20capitals%3F%20Community%20capitals,interact%20between%20and%20with%20each%20other.&text=What%20are%20community%20capitals%3F,and%20with%20each%20other.&text=community%20capitals%3F%20Community%20capitals,interact%20between%20and%20with

¹⁰ Emery, Mary, Cornelia Flora. “Spiraling-up: Mapping community transformations with community capitals framework.” Community development 37.1 (2006): 19-35.

Access to justice as discussed by Elizabeth MacDowell (2015 p. 473), another legal concept “argues that access to justice efforts can and should prioritize responses that address the unique, subordinating impacts of these courts, including those relating to race, class and gender bias, state intervention, and the punitive effects of intersecting state systems.” Framed as a “counter hegemonic practice; one that is aimed at challenging dominant ideologies and transforming subordinating systems, as well as delivering legal services”, MacDowell (2015) challenges current access to justice interventions as they have been “largely focused on providing access rather than justice; individualized, case based legal services uninformed by social change goals” aimed at low income, unrepresented litigants. Instead, MacDowell (2015) suggests practical interdisciplinary steps including the implementation of social workers and lay advocates (those with personal experience) for social justice advocacy and doing away with historically biased practices.

For some legal scholars, the concept of access is seemingly one dimensional in the sense that “access” is simply the ability to reach an attorney. This however does not deem the theory useless. Other theories of access, such as the one developed by Ribot and Peluso (2003) understand access as multifaceted. As a legal aid attorney, I am aware that many attorneys understand access as something other than a litigant’s ability to reach an attorney. There are also issues of transportation, finances, technology, education, employment, and trained personnel. In the social sciences, Ribot and Peluso (2003) understand “access to a given resource[] [is] gained, maintained and controlled by different actors through various mechanisms, and is conditioned by structural and relational mechanisms including access to technology, capital, markets, knowledge and social networks.” In their foundational “a theory of access” article, Ribot and Peluso (2003) provide a framework in the form of a grounded analyses to examine

who benefits from “things” and through what processes they are “able” to do so. This is a concept derived from the law. Defined as, “the ability to benefit from “things” including material objects, persons, institutions, and symbols”, the study of access, as used by Ribot and Peluso, is concerned with understanding the ways in which people derive benefit from resources. Ribot and Peluso examine natural resources as their “thing” and the “powers-embodied in and exercised through various mechanisms, processes, and social relations-that affect people’s ability to benefit from resources”. In considering access in relation to the dissertation, I used Ribot and Peluso’s Theory of Access, as a starting point in my analysis. Using Ribot and Peluso, I explored the way in which social identity/social factors, i.e., “things”, and the various ways in which they can grant or limit access to the Family Juvenile Court and its associated services specifically in child removal proceedings depending on the wider social and/or political climate. The “things” I examine are illustrated through features of the CCF and the processes in which individuals are “able” to or alternatively “unable” to benefit from things, are illustrated through the identified dimensions of access: technology, capital, markets, labor and labor opportunities, knowledge, authority, social identity, and the negotiation of other social relations. Different people and institutions hold and can draw on different “bundles of powers” located and constituted with “webs” of powers that configure resource access.

When applied to child removal, authority figures such as police officers and judges, and institutions such as the judicial system use access to authority to discriminatorily filter parents through the child welfare system according to parents’ identity-based access resulting in disproportionate child welfare cases of particular social identities. Under this power dynamic, access is not beneficial for the parents, however, it allows the state to fulfill its *parens patriae*¹¹

¹¹ The authority to provide for the general welfare and intervene when an individual cannot provide for their own or a dependent’s welfare (Fessinger et al. 2020).

interests. Once in the system, parents' lack of access to identity-based privileges limit parents' access to justice through a lack of access to goods/services and other access or lack of access mechanism. Ribot and Peluso's (2003) access analysis: 1) identifies and maps the flow of the particular benefit of interest, 2) identifies the mechanisms by which different actors involved gain control, and maintain the benefit flow and its distribution, and 3) analyzes the power relations underlying the mechanisms of access involved in instances where benefits are derived. Ribot and Peluso's theory of access provided a basis to explore other theoretical concepts in the social sciences that similarly functioned, such as that of Penchansky and Thomas (1981). The theory of access developed by Penchansky and Thomas (1981), provide both a theoretical framework as featured in Ribot and Peluso's (2003) work, as well as practical implementations as featured in legal literature. Both are needed in addressing access inequalities in the judicial system and thus I utilize the theory of access created by Penchansky and Thomas (1981) to explore families lack of access to goods, resources, and services. Upon identifying capitals as they exist across the State of Michigan, Penchansky and Thomas's Theory of Access (1981), originally used as a "general concept that summarize the set of more specific dimensions describing the fit between the patient and the health care system", is used to compliment the CCF to examine how families who lack or possess specific community capitals fare in the judicial system. In adopting Penchansky and Thomas's theory (1981), I exchange patient for litigant and the health care system for the judicial system. At the time in which Penchansky and Thomas (1981) defined "access", the concept itself was said to lack an operational versus political function. In the literature, "access" has multiple definitions and is used synonymously with other terms further complicating its use. Access is defined as a concept representing the degree of fit between the clients and the system (1981). The better the fit, the better the access (Saurman

2015). The same can be said of community capitals. Litigants can possess a capital which traditionally is perceived as a positive asset or a negative capital which is a deficit. Alternatively, one may have access to the same capital and be on opposite ends of the spectrum. Penchansky and Thomas (1981) offer dimensions of access to analyze whether access exist: availability, accessibility, accommodation, affordability, acceptability. A modified version of this theory includes awareness (Saurman 2015). I will provide contexts for the dimensions throughout the dissertation.

Penchansky and Thomas' theory of access has been used to conceptualize problems with access in public health research. I argue the theory of access framework as provided by Penchansky and Thomas (1981) can be adapted to analyze access to the judicial system. The modified version of Penchansky and Thomas' Theory of Access by Saurman (2015) identified a gap in Penchansky and Thomas' theory. Specifically, studies showed that patients were unaware of the existence of emergency mental health services, what they entail, and who they were intended to serve. Thus, the original theory did not account for patient knowledge and the understanding of extent services. Levesque's split model of access posits that the ability to perceive a need for care is crucial to healthcare access. Using the CCF, this can be understood as a lack in human capital. This lack of human capital is due to litigant's lack of knowledge and skills that the state requires them to have to maintain care, custody, and control of their children. The dimensions of access are independent yet interconnected and each is important to assess whether access exist (Saurman 2015). The dimensions of access as originally formulated by Penchansky and Thomas may be omitted, expanded, mislabeled or combined.

Here I argue, when applied to child removal, authority figures such as police officers and judges, and institutions such as the judicial system use access to authority to discriminatorily filter

parents through the child welfare system according to parents' identity-based access resulting in disproportionate child welfare results for those with particular social identities. Under this power dynamic, access is not beneficial for the parents, however, it allows the state to fulfill its *parens patriae*¹² interests. Once in the system, parents' lack of access to identity-based privileges limit parents' access to justice through a lack of access to goods/services and other access or lack of access mechanisms.

Methods of Inquiry

Using a mixed methodological approach, I conducted a content analysis of court orders/opinions from the Michigan Court of Appeals and Michigan Supreme Court by region. This included a case study on Wayne County. I chose Wayne County as a case study due to its high case volume and notoriety. Specifically, judges, police officers, and prosecutors have been publicly ousted for misconduct¹³, perjury¹⁴, short workdays¹⁵, making inappropriate comments¹⁶, and other legal trouble¹⁷. I used the court orders/opinions to examine the basis for child removal cases, the identities and access associated with the removal, and positionality of the authority making figures across time. "Delving into case files is an effective way to examine the issues that caseworkers confront everyday" (Roberts 2002) and "might provide a window into factors that influence decision making (Azar and Benjet 1994). In the special case of Wayne County, which houses the largest courthouse in the state, in terms of case traffic, litigants, judges, and attorneys,

¹² The authority to provide for the general welfare and intervene when an individual cannot provide for their own or a dependent's welfare (Fessinger et al. 2020).

¹³ <https://www.detroitnews.com/story/news/local/wayne-county/2020/11/10/state-panel-charges-wayne-county-judge-tracy-green-misconduct/6238676002/>

¹⁴ <https://www.craigslistdetroit.com/article/20101011/FREE/101019982/former-wayne-county-circuit-court-judge-faces-hearing-over-perjured>

¹⁵ <https://www.wxyz.com/news/local-news/investigations/judge-vonda-evans-defends-short-work-schedule-inside-wayne-county-court>

¹⁶ <https://www.clickondetroit.com/news/local/2020/08/12/wayne-county-judge-accused-of-making-inappropriate-comments-to-prosecutors-attorneys/>

¹⁷ <https://www.wxyz.com/news/wayne-county-judge-goes-on-leave-amid-growing-legal-troubles>

in addition to orders/opinions, I interviewed social service workers and surveyed attorneys across various roles regarding their perception of the child welfare system. I observed 51 hours of termination proceedings at the trial court level across various Michigan regions to examine the basis for child removal cases and the identities, access associated with removal, and positionality of the authority making figure as they exist today.

“Child welfare practice is highly influenced by economic, political, and social trends” (Tracy and Pine 2000). When situated in parental termination cases, the theory of access through a community-based framework can be used in examining who loses their parental rights on a micro, meso, and macro level. Understanding the shortcoming of the judicial system through a sociolegal lens can act as a foundation for change by identifying patterns or a lack of consistency within the family juvenile court across the State of Michigan to preserve the rights of the family unit.

My status as a young, childless, middle class, African American woman attorney influenced my analysis and my data collection. Through my status as an attorney, I have a history of working with social service workers and used my personal and professional connections to recruit other professionals to speak on their experiences. Additionally, I have experienced Child Protective Services (CPS) workers and the Juvenile Family Court in my assigned workload and have previously formed opinions regarding the judicial system and CPS workers and their treatment of my clients who are mostly poor and domestic violence survivors, both social factors that contribute to child removal.

The following outlines the chapters that make up this dissertation:

Chapter 1: When Life Gives you Lemons, make Mike’s Hard Lemonade

In chapter one, I introduced the Ratté family, the inspiration for this dissertation. The Ratté's will appear throughout the dissertation and provide the foundational discussion point for the dissertation. The privilege possessed by the Ratté family is immediately recognized and raises concerns for those of us without access to a knapsack that allow almost immediate access to the front of the line. I also introduced the theory in which I will be working from, a Theory of Access. A theory refined by public policy scholars for use in the medical literature. Lastly, I will introduce my research questions.

Chapter 2: How not to Lose your Kids, a Beginner's Guide

In chapter two, I review the literature associated with child removal and provide a brief history of child welfare law and practices in the United States. This literature review is heavily based on social work literature, a largely empirical pool of research with noticeably absent theoretical discussions. I review literature that appraises race, class, and gender; service delivery; social factors; positionality and attitudinal bias, and due process. Included with these topics is a discussion on cultural competency and factors that often act as the basis for the department's involvement. Although judges are "non-partisan" actors, Black (1989) challenges the notion that judges are impartial actors and asserts that understanding your audience, that is your judge, can improve your chances of winning your case. Like Black (1989), I challenge the impartiality of judges and other child removal stakeholders arguing that their decisions regarding child removal is heavily influenced by their social locations and not necessarily the law, ultimately favoring one demographic group over others. I will discuss how the positionalities of judges, police officers, and child welfare workers influence the decisions they make when removing a child from their parents' care, custody, and control.

Chapter 3: Anything you say or do can be held against you in the Court of YouTube

In chapter three, I outline my research design and sample which includes an explanation of my research site, the impact of COVID 19, and the population of people I am studying. I explain the uniqueness of Detroit, Wayne County in comparison to other areas in the state. I highlight the other areas I will discuss and why I chose to group the counties in the manner chosen.

Chapter 4: A League of its own

In chapter four, I lay out my findings and introduce what capitals families lack. The Wayne County subsection features interview reports of social service workers who work in Wayne County to highlight how social service workers' positionalities influence their decisions as those with the power to impact families. The remaining subsections feature the results of the remaining regions across the states including YouTube observations and compilation of court decisions and orders into broad thematic areas.

Chapter 5: The Tale of Three Families

In chapter five, I bring together the Theory of Access and the Community Capitals Framework (CCF) to explore ways in which families in abuse and neglect cases are impacted. Using CCF as a heuristic tool, I argue that positive and negative community capital determine how families fare in abuse and neglect court and whether their children will be returned to them. I argue that when certain capitals are present or absent in the family's life, we can determine whether family has the access they need whether individual or community wise to have their children returned to the home. I explore if access for those with membership in specific community or groups change based on their county location. Expanding on Black's (1989) work on discrimination in the criminal court, I too ask how extensive is discrimination based on social identity in juvenile court? I hypothesize that discrimination in juvenile court has more to do with gender, class, and other social factors than with race. However, discrimination before a case arrives in court may

have more to do with race, class, gender, and a wide range of social factors. I will discuss what types of social consequences we might expect when those tasked with upholding the Constitution blatantly or carelessly fail to do so. Drawing from Weber's (1965) theory on legitimate authority, I will explore how Courts' failure to uphold due process guarantees, impact people's faith, trust, and obedience to law enforcement bodies. Further, I examine how the people repeatedly denied access to justice through stakeholders' decisions perpetuate a continuing cycle of microaggressions among those in power and those without power, posing a challenge to the continuation of legitimate authority.

Chapter 6: Final Judgment, Case Closes

In chapter six, I discuss my contributions to the scholarship, specifically showing that in family court disparities go beyond the race, class, and gender inequalities that scholars tend to look for. My interviews, surveys, and observations reveal that attorneys can be complacent in the happenings in the courtrooms while social service workers and judges regularly participate in implicit bias. My interviews, surveys, and observations also reveal that child removal is geographically determined. Additionally, my findings reveal that within and across different counties, similarly situated families have different case outcomes.

CHAPTER 2- HOW NOT TO LOSE YOUR KIDS, A BEGINNER'S GUIDE

LITERATURE REVIEW

The literature on child removal in the child welfare system is heavily based in the law and social work disciplines. On the one hand, social work literature includes little theory on the systemic discrimination in the child welfare system while, on the other hand, legal literature on child removal is heavily theorized, yet lacks empirical data. Much of the literature discusses a lack of access one way or the other, mainly without applying a theoretical framework.

In Michigan, from 2014 to 2019, African American children made up approximately 16 percent of the general child population, yet approximately 26 percent of African American children represented the child welfare system¹⁸. Except for mixed-race children, no other race/ethnicity experienced this type of disproportionate representation. The overrepresentation of African American and other children on color in the system is not unique to Michigan (Merritt 2021 and Merritt et al. 2022).

Race, Class, and Gender

The original 1935 Social Security Act and its amendments regulated much of child welfare until the late 1970's. Notably, the Social Security Act used illegitimacy clauses and home suitability standards to discriminate against African American families¹⁹. To mitigate the discriminatory practices created by the Social Security Act, the Flemming Rule²⁰ (1960) prevented states from using legitimacy clauses and suitability standards in allocating funds to poor families. Instead of

¹⁸ <https://www.childtrends.org/publications/state-level-data-for-understanding-child-welfare-in-the-united-states>

¹⁹ Murray, Kasia O., and Sarah Gesiriech. "A brief legislative history of the child welfare system." *research paper, the Pew Commission on Children in Foster Care* (2004).

²⁰ The Flemming Rule came about in response to the Louisiana Department of Health and Human Services removing 23,000 children from roll after determining they were born out of wedlock. A morality violation overwhelming affecting African American mothers.

<https://www.masslegalservices.org/system/files/library/Brief%20Legislative%20History%20of%20Child%20Welfare%20System.pdf>

fixing the problem, the Flemming Rule regressed by requiring abuse and/ or neglect for families to receive services. As a result, “neglect” became the primary reason African American families received support. In 1976, the Child Abuse Prevention and Treatment Act (CAPTA) put forth definitions for abuse and neglect, that while broad, failed to consider how race/ethnicity might differ from the hegemonic parenting style based on traditional white families. Other literature has pointed out how appropriate parenting is equated to “dominant culture [w]hite people in higher echelons of society and among those without lived experiences of overlapping punitive system involvement.” (Merritt 2021; Merritt et al. 2022). The Adoption Assistance and Child Welfare Act (1980) (AACWA) established federal requirements for family preservation. A major feature of AACWA focused on child removal prevention and required states to make “reasonable efforts” to keep children with their biological families before attempting temporary or permanent removal from the home. It would be nearly 20 years before another federal child welfare policy was implemented when in 1997, the Adoption and Safe Families Act (1997) (ASFA), changed the trajectory of child welfare from family preservation to child safety. No longer focused on family preservation, ASFA created unrealistic timelines for families to achieve permanency in the name of child safety. Simultaneously occurring at the time of the “War on Drugs” initiative, poor women of color were disproportionately affected after receiving jail time for drug use. In turn their families were affected when their incarceration period ran against the new time threshold implemented by ASFA.

Williams-Butler et al. (2020) uses Patricia Hill Collins²¹ and Kimberlé Crenshaw²²’s, concept and framework of intersectionality with a critical discourse lens to explain how race, class, and

²¹ Collins, Patricia Hill. *Black Feminist Thought: Knowledge, Consciousness, and the Politics of Empowerment*. Routledge, 2002.

²² Crenshaw, Kimberlé. “Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antidiscrimination Politics.” *U. Chi. Legal f.* (1989): 1939.

gender influenced child welfare policies and the impact these policies had in the lives of African American families. While she does not examine all the policies mentioned above, the analysis does “explore how value-laden language in child welfare policy has contributed to overrepresentation through examination of specific child welfare policies, historical documents, legal documents, and empirical social science texts” and thus can be applied to other written works which fit the criteria. Though the point of these policies were to improve the lives of families, for African American families they increased surveillance and policing of African American families.

Race increases the likelihood of child welfare involvement (Stephens 2021). Despite race contributing to child welfare involvement, “issues surrounding African Americans other communities of color, issues of race, and issues of institutional racism are not adequately mentioned and are sometimes ignored completely” in the literature (Briggs et al. 2021). Due to the limitations of COVID-19 and the nature of document reviewing, this dissertation largely highlights the need for court observations where parents’ race and ethnicity can be properly recorded and analyzed. This in part is due to the court’s belief that families should maintain some privacy on their worst days. This raises the problem of lack of accountability on behalf of the courts and other state actors. I discuss this in detail in forthcoming sections.

Racism, not just race, is a risk factor for child welfare involvement. Parents, instead of the parents’ circumstances that are created from limited access to opportunity and resources as a result of racism, are blamed for what can only be described as parental shortcomings (Stephens 2021). In Merritt’s (2021) study on parents’ lived experiences of racism while involved with child welfare, African American and Hispanic parents expressed feelings of mistreatment and unfair judgment by child welfare workers based on their race/ethnicity. Parents of the same study

expressed concerns that child welfare workers had preconceived notions that parents of color were bad (Merritt 2021; Merritt et al. 2022). This likely derives from eugenics-based theories about the inherent criminality and socially deviant character of certain groups (MacDowell, Elizabeth 2015).

Stereotypes about black men and women as prone to criminality, and black women as morally deficient jezebels and prostitutes have remained consistently prevalent since the time of their inception until today (MacDowell, Elizabeth 2015). These stigmas created a long enduring legacy of race, gender, and class bias in juvenile and child welfare cases that is reflected in historical accounts of the first family courts and continue to present day (MacDowell Elizabeth 2015). Once parents come under the scrutiny of child welfare they are expected to behave and perform perfectly without emotion for the duration of their case and after if services continue (Stephens 2021). This is doubly burdensome for parents of color who report examples of being tone policed by their child welfare worker (Merritt 2021). Black mothers are particularly impacted by denouncements of being aggressive (Merritt 2021). Instead of celebrating parents who get by with so little, the child welfare system disparages parents for being poor and judges them by standards the system created without regard for anyone other than the white middle class (Stephens 2021). Parents must be included in the child removal/child reunification process if it is going to succeed (Stephens 2021; Merritt 2021). Some have access to extended families which remove the formal threat of child welfare services, this is a matter of class and not involving child welfare means there is no expectation of financial support and behavior requirements from the parent (Stephens 2021). The harms of low-income litigants in poor people's court potentially include loss of rights, limited autonomy and privacy, and deprivation of voice. (MacDowell, Elizabeth 2015).

Social Factors

Drug Use/Abuse

In 2004, substance abuse was the third most common client problem across the U. S.²³. Since that time, the prevalence of parental alcohol or drug abuse (AOD) as an identified condition of removal has steadily grown²⁴. In Michigan, alcohol or other drug abuse as an identified condition of removal accounted for 38.2 percent of removals or 2,522 children in 2019, slightly below the national average²⁵. This number is believed to be higher due to a multitude of reasons including a 1) lack of child welfare protocols for screening and assessment regarding identification of substance use disorders, 2) inconsistent protocols regarding data entry systems, 3) discrepancies in how AOD abuse is captured in the state child welfare's data system, and 4) differences in the point at which the AOD abuse is identified and entered in the data system²⁶. Workers cite that parents' unpredictable behavior while under the influence of AOD along with the high chance of relapse make accurate risk assessment challenging (Semidei et al. 2001).

In reality, substance abuse labels are loosely applied in child welfare mainly due to child welfare workers' lack of training on adequately conducting substance abuse assessments (Rittner and Dozier 2000; Semidei et al. 2001). In lieu of conducting proper assessments, the child welfare system relies on the unreliable position of other untrained service providers and if the offending parents' family indicate any of the following: chronic unemployment, frequent moves, poor sanitation, or a lack of food/clothing (Rittner and Dozier 2000). Oliveros et al. (2001) found that

²³ Center for Health Workforce Studies—University at Albany. "Licensed Social Workers Serving Children Adolescents, 2004." (2006).

<https://www.socialworkers.org/LinkClick.aspx?fileticket=r4K7DWvfskk%3d&portalid=0>

²⁴ Adoption and Foster Care Analysis and Reporting System Data, 2000-2019.

²⁵ Adoption and Foster Care Analysis and Reporting System Data, 2019 v1

²⁶ AFCARS Data, 2019 v1

having a substance abuse specialist in child welfare offices proved beneficial for parents in the intake process.

Social Work curriculums and licensure standards do not require substance abuse training for their master's degree program, nor do students typically have prior experience with substance dependent parents (McAlpine et al. 2001). This lack of training continues once workers enter the workforce (Akin and Gregoire 1997). After unsuccessfully mitigating parental drug use/abuse through traditional Juvenile Family Court, some courts began to try a new approach, family drug courts. "Family drug courts seek to improve screening and assessment and provide immediate access to treatment" (Choi 2012). "Family drug courts are designed to help abused and neglected children by addressing parental substance abuse with the context of family court child protection cases," a rehabilitative approach to justice in lieu of the former punitive approach to accommodate the illness model approach (Choi 2012).

In one family drug court model, successful family drug court completion requires: 1) participation for at least one year, a demonstrated specified minimum period of continuous sobriety (at least three months), stable living, and a substantial continuous period where the parent is meeting obligations to the children (Choi 2012). This is only one of several models. As of 2018, more than 350 drug courts existed across the U.S. making it impossible to have consistency among family drug courts (Tabashneck 2018). Some family drug courts focus on the rehabilitative model such as the one described above, while others focus on a punitive model all while claiming to achieve the same goal. For example, some drug courts do not admit parents to family drug court who take methadone or buprenorphine for drug treatment (Tabashneck 2018). Despite an endorsement from the World Health Organization, courts do not find drugs such as methadone or buprenorphine to be appropriate for drug treatment (Tabashneck 2018). Family

drug courts that use punitive models such as the one described in Tabashneck (2018), can be explained in part by America's War on Drugs, an initiative motivated by the economy and racism (Alexander 2012). Drug use, a social problem labeled deviant by the government to regulate and criminalize poor people, overwhelmingly poor people of color²⁷, established addict parents as undeserving of medical treatment and in need of corrective behavior in the form of punishment (Roberts 1990). Parents without legal status are excluded from drug court (Tabashneck 2018) for similar reasons. In "Punishing Drug Addicts Who Have Babies: Women of Color, Equality, and Privacy" (1990), Professor Dorothy Roberts explains how courts are not interested in drug use but using drug use as a way to disproportionately punish and regulate mothers of color, more specifically Black mothers for failing to meet hegemonic parenting standards.

In Maryland, lawmakers passed the Drug Addiction at Birth Act in response to the crack cocaine epidemic (Reese and Burry 2004), a drug stereotypically associated with the African American Community and the poor²⁸. Though drug use in and of itself does not prove whether a parent can provide "ordinary and proper care and attention", the Act "established a presumption that a child born exposed to drugs is not receiving "ordinary and proper care and attention"" allowing hospitals to contact child protective services. This gendered, and though the authors fail to mention it, racially motivated Act failed to make meaningful changes to the existing law (Reese and Burry 2004) other than its increased surveillance against women especially mothers of color. In addition, the Act failed to acknowledge the danger and effect of other widely available and more commonly used substances on babies such as alcohol and tobacco (Reese and Burry 2004).

²⁷ Miller, W.R. (2012). Drug abuse and addiction, sociology of. In *The social history of crime and punishment in American: An encyclopedia* (Vol. 1, pp. 503-504). SAGE Publications, Inc.

²⁸ <https://americanaddictioncenters.org/cocaine-treatment/differences-with-crack>

Women in these circumstances lack access to trustworthy medical care providers (Reese and Burry 2004) and the treatment mothers receive only contributes to the concern regarding the medical treatment provided to African Americans²⁹, but especially birthing women of color³⁰. Without drugs such as Methadone and buprenorphine to wean parents off drugs, parents are unable to meet the time restrictions imposed on them to recover by the Adoption and Safe Families Act and are positioned to lose their children (Tabashneck 2018). Counter to standard Family Juvenile Court, parents are dismissed from Family drug court only after repeated, willful attempts of noncompliance (Choi 2012). “The traditional punitive court model is ill equipped to deal with some of the complex social and psychological issues that bring individuals into the legal system” (Fessinger et al. 2020), unlike tradition punitive courts, drug courts, “acknowledge the meaning and nature of relapse” (Choi 2012). Successful family drug courts take a collaborative approach including the parent, the extended family, the community, and judicial stakeholders, who work together to meet co-occurring mental health issues and multiple drug dependency of parents (Tabashneck 2018). Still, combining child welfare and substance abuse services does not come without challenges. Legal and policy challenges may prevent collaborations from happening (McAlpine et al. 2001). Social workers have a duty to report child abuse and neglect, while medical care providers such as those working in a substance abuse center have confidentiality responsibilities to the parent. Additionally, collaboration involves more than providing resources to parents with substance dependencies with the expectation that parents need to figure out sobriety on their own (McAlpine et al. 2001).

²⁹ Kennedy, Bernice Roberts, Christopher Clomus Mathis, and Angela K. Woods. “African Americans and their distrust of the health care system: healthcare for diverse populations.” *Journal of Cultural Diversity* 14.2 (2007).

³⁰ <https://www.commonwealthfund.org/publications/podcast/2019/oct/how-our-health-care-system-treats-black-mothers-differently>.

Parents who have a substance dependency often have other factors that contribute to or exacerbate their drug use, such as a lack of access to suitable housing, that neither social workers nor drug use specialist can mitigate (McAlpine et al. 2001). In situations where a collaborative approach was not used, parents expressed frustration regarding a lack of access to resources to complete the tasks required of them by child welfare such as transportation and childcare, parents also reported lacking access to knowledge about resources available including the appropriate tools to assist them in maintaining their families (Akin and Gregoire 1997). Even when collaboration is used, specialized service providers were not easily accessible to caseworkers (Semidei et al. 2001). Specialized service workers were scarce in availability, location, and specialization. Specifically, when mothers were the primary care provider and the parent in need of substance abuse treatment, treatment centers did not accommodate common barriers mothers faced in accessing treatment such as childcare and were culturally and linguistically centered toward men (Semidei et al. 2001).

Currently, 20 years after these findings were presented, approximately 51 per cent of treatment centers are specifically tailored for women, only 5 percent of centers for women and men combined provide childcare for clients' children and only 2.5 per cent provided residential beds for clients' children according to the 2020 Data on Substance Abuse Treatment Facilities³¹ across the U.S. In Michigan, there are 455 substance abuse treatment facilities. Specifically, 9 percent offer childcare for clients' children, 56.8 per cent offer domestic violence services, 52.3 per cent offer transportation assistance to treatment, 81.8 per cent offer mental health services, 2.9 offer residential beds for clients' children, and 2 per cent do not offer any ancillary services at all.

³¹ https://www.samhsa.gov/data/sites/default/files/reports/rpt35313/2020_NSSATS_FINAL.pdf

Often, substance abuse is accompanied by mental illness, domestic violence, economic and housing insecurity, and dangerous neighborhood environments (Semidei et al. 2001).

Caseworkers lack the skills not only to diagnose these factors but also lack the skills to treat as well by making the appropriate recommendations (Semidei et al 2001). Collaborating with multiple community partners might be necessary to meet the needs of substance dependent families (McAlpine et al. 2001). If social workers are unaware of parents' time commitments to other agencies parents' progress may suffer (McAlpine et al. 2001). Mirick (2014) found that for substance users, status as a domestic violence survivor negatively impacted service engagement, and workers' lack of training in domestic violence further complicates engagement. To combat this, social workers must learn how to work with other agencies and appropriately respond to families with these challenges for their overall success (McAlpine et al. 2001). A lack of experience and/or training on the part of the social workers, however, make collaboration difficult (McAlpine et al. 2001). If substance dependent families are going to succeed collaboration must happen at the micro, meso, and macro level (McAlpine et al. 2001).

Bureaucratic barriers such as those implemented at the state level and enforced by medical agencies contribute to collaboration difficulty. Rockhill et al. (2008) found poverty to be parents' single largest hurdle in seeking treatment. Public health care recipients were subjected to a problematic practice in which third parties including child welfare were unauthorized to pay co-pays or previous unpaid balances for fear of enabling the parent (Rockhill et al. 2008).

"Child welfare workers, judges, and other professionals are not immune to racism and media stereotyping that suggests African American and Hispanic parents are more likely to be drug involved than their white counterparts" (Azzi-Lessing and Olsen 1996). Caseworkers in Blakey et al. (2020) described drug dependent African American mothers in derogatory, dismissive,

negative, and stereotypical terms. The workers' biased and surely racialized perception of the mothers were in turn used as a basis for removing children from the home when parents did not display what social workers found to be appropriate behavior (Blakey et al. 2020). Blakey et al. (2020) used the familiar fight, flight, freeze, and fright concept through a trauma lens to describe the responses African American mothers use while engaging with child welfare. Not surprisingly, the most common response among mothers was fight next to flight, freeze, and lastly, fright (Blakey et al. 2020). While the authors imply mothers' fear that the system was "out to get them" as an irrational response to their situation, considering the disproportionate number of African American children in the system along with the biased treatment African Americans receive in the child welfare system, these mothers did have some reason to fear the system was indeed "out to get them"³².

Parents relationship and experiences with social workers likely contributed to parents' trauma responses. For example, parents interviewed on child welfare responses to addiction viewed their relationship with their social worker as hurtful and difficult (Akin and Gregoire 1997). Specific incidents cited include feelings of being led astray by child welfare workers, being over promised, threats of child removal, a lack of responsiveness, miscommunication/carelessness on behalf of workers, and unsupportive/uncaring workers. Case workers reported substance abuse cases as the most difficult and frustrating cases to manage (Semidei et al. 2001) even citing fear of working with families with substance dependencies (McAlpine et al. 2001).

Drug use and addiction is widely misunderstood (National Institute on Drug Abuse). It is a disability, often perceived as a choice (National Institute on Drug Abuse). Parents who use or abuse drugs are not immune to factors associated with drug use or abuse just by virtue of their

³² This is noted in the literature as "healthy cultural suspicion." Mirick (2014) citing Boyd-Franklin, N. (2003). *Black Families in Therapy: Understanding the African American Experience*. New York: Guilford Press.

status as parents. Drug addiction is a complex disease and those who use, or abuse drugs do not necessarily lack moral principles or willpower (National Institute on Drug Abuse). Despite its complexity, as I have found through my personal experiences and through my data collection, courts substitute the realities of drug use/abuse for that of its own, removing children from their parents' care after parents fail to meet the law or sometimes the individual court's arbitrary timeline to recovery. Unfortunately for parents, drug use/abuse is not as simple as choosing to stop at a moment's notice, as a result we see parental right termination when parents are unable to kick their habit which can be due to biology, environment, and development (National Institute on Drug Abuse). Drug use and abuse is just one disability I will discuss through this dissertation.

*Parental Disability*³³

In 2004 mental illness was the second most common client problem cited among social workers in child welfare/family across the U.S. (2006)³⁴. Years later, Callow and Jacob (2014), found psychiatric disability to be the most common parental disability among nine other disability categories³⁵ cited for initiating parental termination cases across selected states.

³³ It is important to note that the Americans with Disability Act recognizes drug addiction as a disability. For the purposes of this dissertation, drug use/abuse will be discussed as a separate category to also encompass occasional drug users who are not covered under the Americans with Disability Act. <https://adata.org/factsheet/ada-addiction-and-recovery>

³⁴ Center for Health Workforce Studies—University at Albany. "Licensed Social Workers Serving Children Adolescents, 2004." (2006). <https://www.socialworkers.org/LinkClick.aspx?fileticket=r4K7DWvfskk%3d&portalid=0>

³⁵ Other parental disabilities included: Psychiatric, Intellectual, Physical, Deaf, Blind, Chronic Health, Learning, TBI, Autism, and Cognitive or other. Callow, Ella, and Jean Jacob. "Parental Disability in Child Welfare Systems and Dependency Court: Preliminary Research on the Prevalence of the Population." *Child Welfare*, vol. 93, no. 6, 2014, pp. 73-92.

“Parents with disabilities and their families are frequently, and often unnecessarily, forced into the system, and once involved, lose [parental rights to] their children at disproportionately high rates³⁶.”

i am sam, a 2001 melodrama/drama film starring Sean Penn and Michelle Pfeiffer illustrates the challenges parents with disabilities face when families are funneled through the system due to their disability. While the film is fictionalized the premise is non-fiction and accurately depicts what happens to parents with intellectual disabilities in the child welfare system.

Much like the film, Ackerson (2003) found the system held mentally ill parents out to be flawed and incurable. A parent’s mental state is a determining category in parental termination decisions (Azar and Benjet 1994) and “presumption of unfitness is a common problem for parents with psychiatric disabilities.³⁷” Parents with mental disabilities in the system require guidance from specialist and patience for successful reunification (Lemieux 2001). Lemieux’s (2001) case study showed an intellectually disabled mother reluctant to accept assistance from her case worker due to system failings and the mother’s struggle to acknowledge her personal challenges. Similar to drug dependent parents, parents with mental illnesses are improperly assessed and often encounter biased social workers (Ackerson 2003). General parenting time classes are not equipped to meet the needs of parents, yet courts still carelessly order parents with mental illnesses to participate in the classes without first verifying whether the class can meet the parents’ needs (Ackerson 2003). “Most child welfare and court personnel have no specific training about the effects of mental illness on parenting, the methodology of parenting assessment, or types of rehabilitation for parents with mental disorders” (Jacobsen et al. 1997: pp. 194). Because all mental health illnesses are not the same, courts must recognize that all

³⁶ Chapter 5: The Child Welfare System: Removal, Reunification, and Termination, Nat’l Council on Disability

³⁷ Chapter 5: The Child Welfare System: Removal, Reunification, and Termination, Nat’l Council on Disability

parents with a mental illness cannot be treated the same (Ackerson 2003). This includes understanding that mental illness is not linear thus parents with a mental illness will have highs and lows requiring varying levels of treatment and support (Ackerson 2003). Mental illness is a process and should be understood as ongoing (Ackerson 2003). The mother in Lemieux (2001) did not reunite with her child, however her parental rights were not terminated due in part to the progress she made after developing a relationship with her social worker. The right kind of support from social workers is detrimental for the success of intellectually disabled parents (Lemieux 2001).

Parents with disabilities live in fear that their children will be removed for the smallest infractions that with an able body parent would never cause rise for concern and as a result do not seek help even when needed³⁸. “The child welfare system is fraught with bias and speculation concerning the parenting abilities of people with disabilities.³⁹” Fredrick (2014) shares the story of Erika Johnson, a young blind African American mother from Missouri⁴⁰. The Missouri Department of Health and Human Services removed Johnson and her partner, Blake’s newborn two days after the child’s birth when a lactation nurse observed Erika having difficulty breastfeeding the child. Erika’s partner Blake is also blind. The nurse noted, “the child is without proper custody, support or care due to both parents being blind and they do not have specialized training to assist them.⁴¹” The parents would later learn this “specialized training” meant a 24-hour hired visually able person, an expense the parents could not afford.⁴² According to the

³⁸ Chapter 5: The Child Welfare System: Removal, Reunification, and Termination, Nat’l Council on Disability

³⁹ Chapter 5: The Child Welfare System: Removal, Reunification, and Termination, Nat’l Council on Disability

⁴⁰ <https://web.archive.org/web/20150716062716/http://www.kshb.com/news/local-news/blind-kansas-city-couple-gets-newborn-back-after-57-days>

⁴¹ <https://web.archive.org/web/20150716062716/http://www.kshb.com/news/local-news/blind-kansas-city-couple-gets-newborn-back-after-57-days>

⁴² <https://web.archive.org/web/20150716062716/http://www.kshb.com/news/local-news/blind-kansas-city-couple-gets-newborn-back-after-57-days>

CDC, 60 per cent of mothers do not breastfeed for as long as they intend to due to reasons including, but not limited to issues with lactation and latching⁴³ and unsupportive hospital practices and policies⁴⁴. At less than the national average, African American babies like Erika's daughter are less likely than any other race/ethnicity to be breastfed⁴⁵. Ironical enough, Erika's attempt to participate in hegemonic parenting such as "breast is best," cost Erika and her partner 57 days without their daughter, not allegations of abuse/neglect or "imminent harm/danger" as required by law. Upon observing the mother, a social worker noted, "I can't in good conscious send this baby home with blind parents" (Fredrick 2014). Azar and Benjet (1994) argue, subjectivity, as exhibited by both the social worker and nurse in Erika's case, create an opportunity to mislabel cultural differences as child abuse when the standard of fitness is that of the white middle class, ablism is implied.

Specifically, schemas provide lens for which information is processed and the subsequent response (Azar and Benjet 1994). This includes forming opinions of others (Azar and Benjet 1994). In Erika's case, while the social worker and nurse's response were inexcusable, it is clear they lacked the schema to provide context for parenting while blind. Workers' lack of schema for parents with disability contributes to why concern about parental disability is one of the most frequently listed reasons a child welfare case is opened (Azar and Benjet 1994). With the assistance of an attorney, it would be two months before the parents regained custody of their

⁴³ Odom, Erika C., et al. "Reason for earlier than desired cessation of breastfeeding." *Pediatrics* 131.3 (2013): e726-e732.

⁴⁴ Feltner, Cynthia, et al. "Breastfeeding programs and policies, breastfeeding uptake, and maternal health outcomes in developed countries." (2018).

⁴⁵ "Few non-Hispanic Black infants (75.5%) are ever breastfed compared with Asian infants (92.4%), non-Hispanic White infants (85.3%) and Hispanic infants (85.0%). <https://www.cdc.gov/breastfeeding/data/facts.html>. 83.9 percent of infants are ever breastfed. https://www.cdc.gov/breastfeeding/data/nis_data/results.html

child. The parents planned to sue the State of Missouri for its action, citing a lack of training in their complaint⁴⁶.

“Parents with disabilities do not fit the norms and expectations of the American nuclear family, . . . and often run afoul of presumptions and myths when they have to deal with the child welfare system.”⁴⁷

Disabled parents have more difficulty reunifying with their children (Fredrick 2014; Lemieux 2001). This is particularly the case due to unrealistic Adoption and Safe Families Act of 1997 timelines that do not account for human imperfection and fail to consider medical guidance on mental health behaviors and treatment.⁴⁸ Disability plus poverty is often the basis for child removal, but disability in and of itself is also a basis for removal.⁴⁹ According to the Kundra and Alexander (2009), states use parental disability as a basis for removal if the disability “impacts a parent’s ability to care for his or her child” or as a consideration of fitness. In a study across three states with substantially different populations in terms of race, class, and political orientation, Callow and Jacob (2014) found parents with disabilities were overrepresented in Family Juvenile Court including families living over and under the poverty line. Specifically, African American mothers represent the largest single demographic for parental disability (Callow and Jacob 2014).

Incarceration

Born Behind Bars, is a docuseries inside the “Wee Ones Program,” a program that allows pregnant inmates to raise their children inside a maximum-security prison, at the Indiana

⁴⁶ <https://abcnews.go.com/Health/missouri-takes-baby-blind-parents/story?id=11263491>

⁴⁷ Chapter 5: The Child Welfare System: Removal, Reunification, and Termination, Nat’l Council on Disability

⁴⁸ Chapter 5: The Child Welfare System: Removal, Reunification, and Termination, Nat’l Council on Disability

⁴⁹ Chapter 5: The Child Welfare System: Removal, Reunification, and Termination, Nat’l Council on Disability

Women's Prison⁵⁰. Each year approximately 75,000 women enter American prisons⁵¹. Of the 75,000 women who enter prison, up to 10 percent of them enter pregnant⁵². *Born Behind Bars*, followed several inmates at various stages of the program as they navigated the volatile prison environment while raising their babies with the assistance of guards and other inmate mothers⁵³. For the mothers who did not enter the program, their children entered the foster care system, and some lost their parental rights. In all likelihood, similar programs do not exist for fathers.

"Incarcerated parents face a disproportionate risk of having their parental rights terminated" (Iskikian 2019). A parent's status as an inmate makes them more likely to have their parental rights terminated more so than a parent who is under the state's supervision for physically or sexually assaulting their child (Iskikian 2019). With the enactment of the Adoption and Safe Families Act of 1997 (ASFA), states were authorized to terminate parents' parental rights based on their incarceration alone.

Michigan is one of few states to hold incarceration in and of itself unconstitutional as the sole basis for terminating one's parental rights. This was only after several years of terminating one's parental rights based on incarceration status alone⁵⁴. Other states have made exceptions to the ASFA to mitigate its effect on incarcerated parents, however these exceptions are not well defined, are subjective, and only beneficial to parents who can afford to contribute meaningfully to their child's upbringing (Rippey 2020). Even if a parent can afford to call/video chat their child, write a letter, or is fortunate enough to get to see them in person, there are social costs related to incarcerated parents communicating with their child (Hairston 1998). For some

⁵⁰ <https://www.aetv.com/shows/born-behind-bars>

⁵¹ <https://www.aetv.com/shows/born-behind-bars>

⁵² <https://www.aetv.com/shows/born-behind-bars>

⁵³ <https://www.aetv.com/shows/born-behind-bars>

⁵⁴ *In re Sanders*, 852 N.W.2d 524, 495 Mich. 394 (2014).

parents, poverty and desperation for one's children directly contribute to the crime in which the parent was sentenced (Iskikian 2019). Still, even for parents who committed the crime, parents who are incarcerated for a poverty related crime experience the added stressor of child removal equates to dual punishment (Iskikian 2019).

Gender

Unwed mothers are the social issue of the progressive era (Schreiber 2011). Most children in the child welfare system have non-custodial fathers⁵⁵ (Sonenstein et al. 2002) and even though fathers are substantially less likely to perpetuate child abuse/neglect (Crawford and Bradley 2016), fathers in child welfare are underrepresented and experience gender bias from case workers (Saleh 2013; Sonenstein et al. 2002), service providers, and foster parents (O'Donnell et al. 2005).

Bias, including that which exists in the makeup of family/juvenile laws is one of many reasons child welfare engagement is low among non-custodial fathers (O'Donnell et al. 2005; Schreiber 2011). One way bias emerges in child welfare is through gatekeeping⁵⁶ (Saleh 2013). Though biological/adoptive mothers traditionally act as gatekeepers (Saleh 2013; O'Donnell et al. 2005; Sonenstein et al. 2002), Saleh (2013) found foster parents also act as barriers against single fathers' access to their children due to stereotypes foster parents held regarding single fathers. Gatekeeping is used by mothers and maternal relatives as an opportunity for revenge and for safety reasons (Saleh 2013; O'Donnell et al. 2005). When safety is at issue case workers abet mothers in their decision to gatekeep by failing to contact fathers (Saleh 2013; Sonenstein et al.

⁵⁵ Biological fathers who do not reside with their children usually because of divorce, separation or a non-marital birth. Sonenstein, Freya, Karin Malm, and Amy Billing. "Study of fathers' involvement in permanency planning and child welfare casework" Washington, DC (2002).

⁵⁶ Mothers or maternal relatives or others close to the father who limit or inhibit father's access to their children for various reasons.

2002). Many workers understood they were not immune to bias and were aware of their own biases against fathers and committed to overcoming them (Saleh 2013).

This is not always the case, O'Donnell et al. (2005) found social workers believed they treated fathers and mothers the same while also admitting frustrations working with fathers and the unique challenges that existed for fathers in the system. Though fathers' experiences in the child welfare system are largely the result of institutional problems, fathers' failure to admit responsibility for their roles in child welfare involvement, fathers' disposition toward mothers' shortcomings as parents, and fathers' ideas about who can be involved in child welfare contribute to fathers' less-than-ideal experience within the system (O'Donnell et al. 2005).

In cases where the father is the non-offender parent, caseworkers fail to prioritize fathers' participation in services and at best include them as an afterthought, if at all (O'Donnell et al. 2005; Campbell et al. 2015), this is particularly true for African American fathers (Schreiber 2011; Sonenstein et al. 2002), who have a simultaneous racial and gendered experience within the system, especially from the court (O'Donnell et al. 2005). Generally, fathers are not considered placement options for children when children are removed from their mothers' care (Campbell et al. 2015), though it is strongly encouraged through federal law, some states, Michigan being one, does not give a preference to non-custodial fathers (Sonenstein et al. 2002). Precluding fathers from the child welfare system is the status quo and a lack of father participation creates less work for social workers (Campbell et al. 2015; Sonenstein et al. 2002). Unsurprisingly, fathers find the child welfare system to be confusing and controlling (O'Donnell et al. 2005).

This is a common response from parents in general regarding child welfare, but for fathers who are less likely to engage with the system i.e., Medicaid, WIC, and TANF, the overall system is

foreign to fathers (Sonenstein et al. 2002; O'Donnell et al. 2005). Instead of placing children with their fathers, which would allow children to largely avoid the system, children are typically placed with other relatives or placed in foster care, a process that requires vetting by child welfare services (Campbell et al. 2015; Sonenstein et al. 2002). Female social workers find working with fathers difficult as society does not recognize them as caregivers (O'Donnell et al. 2005). Their position is in opposition to the literature. Both fathers and mothers have the capacity to provide their children with the necessary emotional support when provided with the tools to do so. When fathers do attempt to participate in services, they are met with suspicion, even when the father is the non-offender parent (O'Donnell et al. 2005; Sonenstein et al. 2002). Social workers maintain harmful stereotypes about fathers and are undereducated about the benefits of utilizing fathers (Schreiber 2011; Sonenstein et al. 2002).

When fathers are included in the parent plan they face additional barriers through a lack of access to services, housing, drug treatment, transitional services, and shelters for fathers and children as they are scarce or simply do not exist (Campbell et al. 2015; Salah 2013; Schreiber 2011; O'Donnell et al. 2005; Sonenstein et al. 2002). Other barriers for fathers included paternity (Saleh 2013; Sonenstein et al. 2002), access to citizenship (Saleh 2013; Sonenstein et al. 2002), and lack of legal representation (Saleh 2013). Social workers are not motivated to do more than the bare minimum with participating fathers and were indifferent to their participation (O'Donnell et al. 2005). Instead of relying on training or data, O'Donnell et al. (2005) and Campbell et al. (2015) found workers relied on their experiences and biases when providing services to fathers. Some workers deny fathers' needs are not met by the system and argue parenting is parenting (O'Donnell et al. 2005). Despite some workers' position that fathers' needs are being met, it is difficult to engage fathers in research to understand their needs, risk

factors, and service delivery (Mirick 2014). The system is set up to accommodate mothers, not fathers, thus services offered are mother focused and are insensitive to fathers' views or experiences (Campbell et al. 2015, Schreiber 2011; O'Donnell et al. 2005). Schreiber (2011) notes, fathers complained of going to therapy and were reluctant to discuss their inner thoughts, similar findings have been identified regarding African Americans (Boyd-Franklin 2013).

Gender-appropriate modification to services including "coaching" referrals to fathers in lieu of therapy may attract more fathers to services (Schreiber 2011) and meet their needs (O'Donnell et al. 2005), although some workers did not see the benefit of tailored services. In addition to a lack of tailored services, the lack of representation in the form of male social workers also presents an access to service issue for fathers (O'Donnell et al. 2005). Specifically, young female social workers reported hostile feelings/behaviors from fathers as well as expressed their own feelings of frustration with fathers in the system (O'Donnell et al. 2005). Male and older female social workers expressed less frustration with father participation. Male social workers specifically saw benefit in tailoring services to fathers. Campbell et al. (2015) found "staff" found value in including fathers in services when they had positive experiences with the father. Campbell et al. (2015) did not collect demographic statistics from its participants, but research shows most social workers are women. Mothers face a unique challenge in the child welfare system that is different from that of fathers, domestic violence. Men and women of color may be particularly vulnerable to the operation of bias in the protection order process, due to stereotypes about survivors and perceptible perpetrators of crime. (MacDowell, Elizabeth 2015). While men can be domestic violence survivors, failure to protect charges are overly attributed to mothers for what the state calls, "engaging in domestic violence." In New York, CPS maintained a practice of taking children into foster care solely because their mothers had been victims of domestic violence, this

is known as failure to protect ⁵⁷ (Baradaran-Robinson 2003). This was specifically the case with African American, Hispanic, poor, and immigrant mothers⁵⁸. A lawsuit ensued and the courts found the Department of Health and Human Services had violated the mothers' substantive and procedural due process rights and their fundamental right to parent under the 14th Amendment of the Constitution⁵⁹.

In addition to the 14th Amendment, Baradaran-Robinson (2003) argues the mothers' 13th and 19th amendments were also violated. Mothers who are domestic violence survivors are dually punished, first by their batterer and second by the system (Baradaran-Robinson 2003).

Baradaran-Robinson (2003) purports punishing battered mothers for abuse committed against them perpetuates slavery-like conditions on behalf of the state by enforcing the batterer's control over the mother and making it less likely the mother will report her abuse and escape

(Baradaran-Robinson 2003). The state's actions against parents of domestic violence are akin to that of slavery, which is prohibited under the 13th amendment (Baradaran-Robinson 2003).

Battered women are often trapped by batterer's violence and threats of physical and legal force against them and their children (Baradaran-Robinson 2003). The parallels continue in the form of substantive due process violations when children are removed from their parents for nothing more than their status as victims (Baradaran-Robinson 2003). When caseworkers remove children, the removal is sometimes accompanied by verbal threats, coercion, blame, and punishment in manner like that of a slave master (Baradaran-Robinson 2003).

⁵⁷ Failure of an individual responsible for the care of a child to take reasonable action to protect that child from maltreatment.

⁵⁸ *Nicholson v. Williams*, 203 F. Supp. 2d 153 (E.D.N.Y. 2002).

⁵⁹ <https://www.nyclu.org/en/cases/nicholson-v-williams-defending-parental-rights-mothers-who-are-domestic-violence-victims>

And once those mothers are in court, women more often than men are victims of demeaning and openly hostile behavior in court proceedings (MacDowell, Elizabeth 2015). The state's decision to punish rather than assist mothers who are abused permits batterers to successfully use threats of legal repercussion to prevent mothers from escaping their abusive circumstances (Baradaran-Robinson 2003). Similarly, women who are held accountable for their batterer's behavior through blame, threats, and punishment, denies women the legal and civil autonomy established though the 19th amendment and other advancements in women's legal status, specifically it invokes the coverture principle that a husband and wife are one and that they must be accountable for each other's crimes (Baradaran-Robinson 2003). This violates the spirit of the 19th amendment as presuming battered mothers and their batterers are one unit deny the battered mother an autonomous legal status. A woman's guarantee of autonomy under the 19th amendment is violated when a state body such as the Department of Health and Human Services uses coverture principles to punish a woman for her husband's acts.

Multiple Barriers

In 2004, psychosocial⁶⁰ stress, which is understood to be any influence . . . from the internal environment or the external environment, which interferes with the satisfaction of basic needs or which disturbs or threatens to disturb stable equilibrium⁶¹, was the most common client problem in child welfare across the U.S.⁶² Psychosocial factors include social situations, relationships, and the pressures, such as competition for education, health care, and other resource; rapid

⁶⁰ The intersection and interaction of social, cultural, and environmental influences on the mind and behavior. American Psychological Association, APA Dictionary of Psychology, edited by Gary R. VandenBos, American Psychological Association, 2015.

⁶¹ Farrell, Walter. "Psychosocial and Other Factors in Black Migration." Negro History Bulletin, vol. 41, no. 2, 198, pp. 812. Citing Langner, Thomas S., and Stanley T. Michael. "Life Stress and Mental Health: II. The Midtown Manhattan Study." (1963).

⁶² Center for Health Workforce Studies—University at Albany. "Licensed Social Workers Serving Children Adolescents, 2004." (2006).
<https://www.socialworkers.org/LinkClick.aspx?fileticket=r4K7DWvfskk%3d&portalid=0>

technological change; work deadlines, and changes in social roles and status (e.g. of women and minority groups)⁶³. Estefan et al. (2013) found that many parents experienced more than one co-occurring stressor. This was particularly true for substance abuse and mental health (Estefan et al. 2012; Stormwell et al. 2018).

For parents in the child welfare system, co-occurring mental health and substance abuse are the norm rather than the exception, while domestic violence and mental health were least likely to co-occur for both mothers and fathers (Stormwell et al. 2008), this was not the case among second generation child welfare mothers who were more likely to report domestic violence and mental health struggles as co-occurring stressors in comparison to first generation child welfare mothers (Fusco 2015). Stormwell et al. (2008) found that parents with co-occurring conditions were significantly more likely to have had prior contact with family court, report a history of substance abuse, suffer from mental health, and been a victim of sexual abuse (Stormwell et al. 2008).

In their study on African American caregivers, Small and Kohl's (2012) compared differences among five categories of substance users to illustrate child welfare outcomes when different psychosocial factors are in play. The relevant categories are as follows: 1) substance abuse only with partner class, 2) multi-problem with no intimate partner violence class, 3) multi-problem with intimate partner violence class, and 4) childhood history of abuse and neglect only class. Caretakers in the substance abuse only with partner class were largely not married, had previous Child Protective Services contact, and their children were removed from the home (Small and Kohl 2012). Caregivers in the multi problem with intimate partner violence class suffered co-occurring mental health problems, were recently incarcerated, had previous Child Protective

⁶³ American, Psychological Association, APA Dictionary of Psychology, edited by Gary R. VandenBos, American Psychological Association, 2015.

Services contact, were young, unmarried but partnered, received low social support from family/friends, yet maintained their children in the home (Small and Kohl 2012).

Caretakers in the multi problem with no intimate partner violence class experienced very similar outcomes to caretakers in the multi problem with intimate partner violence class with a couple of exceptions (Small and Kohl 2012). Specifically, caretakers in the multi problem with no intimate partner violence class experienced their own history of child abuse/neglect and their children were removed from the home (Small and Kohl 2012). Caretakers in the childhood history of abuse and neglect class experienced their own history of child abuse/neglect, were indigent, not romantically partnered, young, had a high school education or less, and had not had previous contact with Child Protective Services (Small and Kohl 2012). Similarly, to the caregivers in the multi problem with intimate partner violence class, caregivers in the caretakers in the childhood history of abuse and neglect class maintained their children in the home (Small and Kohl 2012).

Positionality and Attitudinal Bias

Professionals' positionality can make it difficult to conceptualize how (dis)ability and class related barriers impact treatment and hinder parents' reunification with, or rights to their children (Azzi-Lessing and Olsen 1996; Fredrick 2014). In part, positionality is determined, by one's schema. When social workers, service providers, and the like, lack access to schemas that do not fit within their pre-defined notion of what it means to be a fit parent, the result is often biased behaviors from decision makers (Azar and Benjet 1994). Unlike able bodied parents, disabled parents are scrutinized because their disability "may someday have their physical health and safety threatened," not due to abuse/neglect that has actually occurred (Fredrick 2014). Disabled parents like Erika experience unwarranted investigations from child protective service due to their "visibility" (Fredrick 2014). The response Erika received from hospital staff and social

services is due to a lack of proper skills and training to conduct appropriate parental evaluations (Jacobsen et al. 1997). When asked by social services how might Erika take the baby's temperature or transport the child in case of an emergency, despite giving suitable answers the social worker still concluded Erika and her partner were not equipped to raise their child (Fredrick 2014). In addition to worker bias, application of tools workers use to determine abuse/neglect can be culturally and economically biased (Jacobsen et al. 1997). Tests typically used to measure parent effectiveness were not designed for measuring parental effectiveness (Jacobsen et al. 1997). Despite inadequate parental evaluations, under the direction of Child Protective Services, an agency within the Department of Health and Human Services, these inadequate parental evaluations are conducted and used as a justification for child removal. In turn, courts use these substandard evaluations at the recommendation of the agency with little to no suspicion or oversight and typically grant the agency's request to remove or order services for a family (Jacobsen et al. 1997). The discretion afforded to non-legal professionals and the indeterminacy of legal standards also leaves litigants vulnerable to the infiltration of bias in decision making (MacDowell, Elizabeth 2015).

In Ratté's case, although his son was returned to his mother, the referee in the matter ordered Ratté out of the family home until an investigation could be completed at the recommendation of Child Protective Services. The quasi-judicial figure failed to exercise any independent judgment of her own, in the face of a clear mistake, at the request of the department. Despite a lack of skills or training on behalf of child welfare, courts blindly rubber stamp workers' decisions without further questioning (Jacobsen et al. 1997). I found this to be the case in my experience as a practicing attorney as well. This violation of rights happens in the name of safety (Fredrick 2014), in spite of literature which posits removing a child from their parent for a short period of

time can result in lasting trauma/harm.⁶⁴ Latting (1990) recommends developing social work students' cognitive sophistication as a means of preparing them for the work force through a teaching model the author developed. Latting (1990) argues the widely used approach taught to reduce bias exhortation is ineffective and instead challenges students to confront their own bias in a nonjudgmental way⁶⁵. "The institutionalization of discretionary decision making by probation officers, social workers, and other family court staff complemented doctrinal trends in American family law that have resulted in broad legal standards for judicial decisions regarding the custody and control of children." This gave judges broad discretion on what appropriate maternal fitness should look like.

Service Delivery

The U.S. child welfare system is "culturally incompetent" (Pinderhuges 1991). Taken from the medical literature, "cultural competent agencies are characterized by acceptance and respect for difference, continuing self-assessment regarding culture, careful attention to the dynamics of difference, continuous expansion of cultural knowledge and resources, and a variety of adaptations to service models in order to better meet the needs of minority populations" (Cross 1989). Culturally competent agencies hire unbiased and minority employees, engage with minority communities as a source of knowledge, and understand the intersection between policy and practice (Cross 1989). "Child Welfare Services as delivered are inherently accusatorial and principally initiated as a result of judgments about misunderstood parenting practices despite parents' good intention. Child welfare system professionals guided by state policies and statutes

⁶⁴ Sankaran, Vivek S., and Christopher Church. "Easy come, easy go: The plight of children who spend less than thirty days in foster care." *U. Pa. JL & Soc. Change* 19 (2016): 207.

⁶⁵ Latting, Jean Kantambu. "Identifying the "isms": Enabling social work students to confront their biases." *Journal of Social Work Education* 26.1 (1990): 36-44.

are in a place of power to determine the parenting is appropriate or inappropriate” (Merritt 2021: pp. 68).

Those with power, that is, attorneys and social workers, do not reflect the population of people that they serve. In 2021, the American Bar Association⁶⁶ reported 63 percent of licensed attorneys were male and 85.4 percent of licensed attorneys were white⁶⁷.

The Council on Social Work Education⁶⁸, reported most social workers in child welfare/family were women and non-Hispanic white, 83 percent and 84 percent respectively⁶⁹. “Social workers serving children and adolescents are less diverse than the civilian labor force and the population they serve” (Whitaker et al. 2006: pp. 17). This concept of cultural competency is also found in Merritt et al.’s (2022), work. In a case study conducted by Merritt et al. (2022), the authors presented a case vignette to illustrate a framework to “understand the need for child welfare practitioners to provide culturally aware, structurally competent, individual services to black families instead of using a manualized, one-size-fits-all approach.” Parents discussed the importance of having a family worker who understood their needs and expressed feelings of being disregarded due to the parents’ lack of education when making requests for their families (Merritt et al. 2022). Interestingly enough, the main vignette in this article provided a contrast to what we typically think of when we think of cultural competency, reporting to the researchers the family’s interest in having non-black resources in lieu of black resources due to their past negative experiences with black caseworkers and the like (Merritt et al. 2022).

⁶⁶ The American Bar Association sets the academic standards for law schools, and the formulation of model ethical codes related to the legal professional.

⁶⁷ <https://www.abalegalprofile.com/demographics/>

⁶⁸ The National Association representing social work education in the United States.

⁶⁹ Center for Health Workforce Studies—University at Albany. “Licensed Social Workers Serving Children Adolescents, 2004.” (2006)

The child welfare system is saturated with socioeconomic disadvantaged people, socioeconomic disadvantage people who are disproportionately, male, African American, Hispanic, and Native American (Whitaker et al. 2006). African and Native American's disproportionate numbers in the child welfare system is well established throughout the literature. Still, when presented with the data, some agencies failed to believe that their practices could potentially be contributing to the skewed numbers (Jamieson and Bodonyi 1999). With a "one size fits all" approach, parenting plans typically include parenting classes, homemaking services, advocacy, therapy, and a referral to drug treatment regardless of the individual family's circumstances (Gelles 2003). Cultural competency services are imperative for parents' success in child welfare to combat institutionalized racism and to meet the specific needs of the system's population (Klein 1997). To achieve cultural competency, social workers and attorneys must become knowledgeable about cultural differences including the implications of those differences by consulting knowledgeable managers and evaluators (Klein 1997). Tracy and Pine (2000) argue this knowledge pursuit should start in the classroom. Specifically, since social work programs vary in curriculum, social work programs and agencies must work to include core area content in diversity and work with special populations, values and ethics, human behavior and social environment, and research for a competency-based approach (Tracy and Pine 2000). Similarly, law schools should work to make diversity training apart of the standard curriculum (Frink-Hamlett 2011).

According to the Center for Health Workforce Studies, Black/African American social workers dedicated more of their time on average than White social workers in the following areas: information/referral, screening/assessments., treatment planning, crisis intervention, case management, group counseling, advocacy/community organizing, client education, staff

supervision, program development/management, and home visits, while white social workers dedicated less time to all areas than their Hispanic and Black/African American counterparts⁷⁰. Hispanic social workers performed similarly to Black/African American workers⁷¹. “It is tempting for legislators to believe that new rules alone will improve performance in social service delivery” (McGowan and Walsh 2000: pp. 22). Improvement in service delivery will require more than regulation changes and behavior monitoring to overhaul the bad behaviors woven into fabrics of the bureaucracy (McGowan and Walsh 2000). To improve the child welfare outcomes for minority families, one Washington State County used their county data as a change agent to inform decisions, create new policies, and implement change instead of just an evaluative tool to rectify the disproportionate number of minority families under the supervision of the Department of Health and Human Services (Jamieson and Bodonyi 1999). In this instance, framing the issue was important for service providers to conceptualize how they contributed to child welfare outcomes in their areas to improve service deliveries (Jamieson and Bodonyi 1999). Safety assessments⁷² and risk assessments⁷³ breed social worker bias and contributes to the number of marginalized children in the system. “Many child welfare agencies use safety or risk assessment instruments to help workers assess [and make decisions for] families⁷⁴” (English and Pecora 1994).

⁷⁰ Center for Health Workforce Studies—University at Albany. “Licensed Social Workers Serving Children Adolescents, 2004.” (2006)

https://www.socialworkers.org/LinkClick.aspx?fileticket=mV_QzN0aDzc%3d&portalid=0

⁷¹ Center for Health Workforce Studies—University at Albany. “Licensed Social Workers Serving Children Adolescents, 2004.” (2006)

https://www.socialworkers.org/LinkClick.aspx?fileticket=mV_QzN0aDzc%3d&portalid=0

⁷² The systematic collection of information on threatening family conditions and current, significant, and clearly observable threats to the safety of the child or youth.

<https://www.childwelfare.gov/topics/systemwide/assessment/family-assess/safety/>

⁷³ “The systemic collection of information to determine the degree to which a child is likely to be abused or neglected in the future” (English and Pecora 1994).

⁷⁴ <https://www.childwelfare.gov/topics/systemwide/assessment/family-assess/safety/>

Confirmation bias, a common type of bias used in child welfare decision making, is “a type of processing in which information is selectively gathered to confirm the worker’s previously held notion about the case or family”⁷⁵ (Drivers of Custody Rates in Vermont (2021) citing Platt and Turney 2014). Risk assessments are intended to improve the effectiveness of Child Protective Services investigations and procedures related to service provisions by increasing the thoroughness and consistency of assessment (English and Pecora 1994). English and Pecora (1994) suggests that risk assessments themselves may need to be modified to take culture into consideration. Risk assessments determine whether a safety plan is needed (English and Pecora 1994). If a safety plan is needed, services begin (English and Pecora 1994). “There is a disconnect between the kind of support that would actually help parents and those that are used coercively as hoops parents must jump through to get their children back” (Lipp, C. 2018 pp. 229). “Parents with the least access to resources and privilege are held to standards of perfection when they engage with c[hild] w[elfare]” and are judged by those with the most protections (Stephens 2021 pp. 3). Parents who support their family on limited resources are then deemed neglectful (Stephens 2021).

Callejas et al. (2020) found that during the pandemic, parents lacked access to reliable transportation, employment, housing, food, internet, childcare, basic needs, smartphones, and computers. By extension, while some courts allowed parents to participate in court proceedings by phone, parents who did not have access to the internet or technology also lacked access to the courts, their children, and other court ordered treatment requirements including telehealth and tele-parenting time. The Covid-19 pandemic created access issues the child welfare system has

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<https://legislature.vermont.gov/Documents/2022/WorkGroups/Child%20Protection%20Oversight/Custody%20Issues/W~Jessica%20Strolin-Goltzman~Drivers%20of%20Custody-Final%20Report~10-29-2021.pdf>

never seen. When commenting on the courts' quick adaptation to virtual court, Michigan Supreme Court Chief Justice Bridget McCormick noted, "in three months the courts have changed more than in the last three decades" (Bannon and Keith 2021).

Despite doing the work and completing program requirements, some children remained in foster care while the system waited out the pandemic (Callejas et al. 2020). Still, though parents were unable to regain custody of their children during the early stages of the pandemic, even families with limited internet connection or experience using video platforms, all regarded remote services as a positive to reducing access barriers such as transportation to participate in court (Bannon and Keith 2021; Callejas et al. 2020). Remote services alleviated parent's transportation barrier in addition to scheduling, commuting, and financial barriers, all barriers that previously contributed to parents perceived noncompliant. While the pandemic eased logistics in important ways, it also created anxiety for some parents and other access issues for previously non-essential goods such as smartphones and computers (Callejas et al. 2020).

My personal experience and observations with the family courts presented additional challenges for parents including inflexibility on the court's part regarding internet and technology access and capabilities, a lack of patience on behalf of court personnel for unstable internet connections and unconventional locations litigants chose to attend court from, and an expectation from court personnel that all participants had access to technology and camera capable devices. If a parent is without counsel and they are unable to connect to the court, parents had no other options than to miss court or give courts prior notice that they would need to come to the courthouse to use the courts devices to virtually participate. These barriers were exacerbated for non-English speaking litigants.

Parent partners were essential in assisting parents navigate child welfare and community services during the pandemic especially in the absence of guidance from case workers (Callejas et al. 2020). Child welfare's lack of guidance created chaos for families as they were left in a state of uncertainty while case workers continued to control and hold parents accountable for service requirements, completion times, and degree of parent access (Callejas et al. 2020). Covid-19 challenges coincided with other system challenges, specifically concurrent permanency planning. Concurrent permanency planning places foster children on simultaneous tracks, one track, focuses on family reunification and the other track focuses on adoption (Roberts 2002). Intended to keep children from extended foster care stays, what concurrent permanency planning does instead is create conflict for social workers who are tasked with returning children to their family and finding children an adoptive family at the same time in case the child is unable to return home (Roberts 2002). The conflicting goals are problematic. Concurrent planning only adds to service disconnect given the timeframe imposed on parents to regain custody of their children no matter their circumstances (Lipp 2018). Orsi et al. (2012) found addressing poverty factors contributing to child welfare difficult, due to bureaucracy funding inflexibility. For example, Department of Health and Human Services funds are used to assist children's hosting family to maintain the child in foster care instead of having the flexibility of using those same funds to maintain the same child in their biological family's home to mitigate the circumstance that initially brought the child into care (Lipp 2018) such as a lack of suitable housing or childcare, both poverty related barriers. This was particularly true for families who do not qualify for other government funding sources such as Section 8 or Temporary Assistance for Needy Families but also do not have the ability to meet their own needs (Orsi et al. 2012).

Due Process

The Due Process Clause of the Fourteenth Amendment guarantees that no one shall be, “deprived of life, liberty or property without due process of law.” Due process is concerned with substance and procedure. Substantive due process has been interpreted to include the right to raise one’s children as a parent⁷⁶. Though not absolute⁷⁷, the right to raise one’s child is a fundamental right confirmed by the United States Supreme Court time and time again⁷⁸. In *Troxel v Granville*, Justice O’Conner penned, “the interest of parents in the care, custody, and control of their children-is perhaps the oldest of the fundamental liberty interests recognized by [the] Court.”

The process of removing one’s child and placing them with relatives is often done without court involvement in what author Gupta-Kagan (2020) calls the “hidden foster care system”. Parents who come under the supervision of Child Protective Services (CPS) are not always subjected to a child abuse/neglect petition. In some instances, CPS, provides pre-petition services to mitigate the circumstances which brought the child to the department’s attention when the allegations do not rise to the level in which a petition can be filed. Threatened with the courts, in the hidden foster care system, parents who do not know their rights “consent” to the removal of their child in an attempt to avoid permanent termination of their parental rights (Gupta-Kagan 2020). This pseudo child removal process created by CPS where the agency is the jury, judge, and executioner, is done without judicial oversight, a blatant disregard to both substantive and procedural due process, yet somehow a legal practice.

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https://www.law.cornell.edu/wex/due_process#:~:text=Substantive%20due%20process%20has%20been%20interpreted%20to%20include,and%20to%20raise%20one%27s%20children%20as%20a%20parent.

⁷⁷ Prince v. Massachusetts, 321 U.S. 158 (1944)

⁷⁸ Troxel v Granville, 530 U.S. 57 (2000); Santosky v Kramer, 455 U.S. 745 (1982); Wisconsin v Yoder, 406 U.S., 406 U.S. 205, (1972); Stanley v Illinois, 405 U.S. 645 (1972); Pierce v Society of Sisters, 268 U.S. 510 (1925); Meyer v Nebraska, 262 U.S. 390 (1923)

I would have never believed this could happen if I had not experienced it myself as a practicing attorney. The number of families affected by this practice each year is unknown, the practice is not regulated and thus is not tracked (Gupta-Kagan 2020). This places families in legal limbo, where CPS is involved, CPS is providing services to the family, and CPS has “removed” the child from the home and placed the child with a relative, by “agreement” of the parents, however CPS has declined to file a petition for the court to take jurisdiction over the child as they lack sufficient allegations to do so. When this happens, while the family may avoid the oversight of the court, the family does not benefit from the oversight of the court. This places the child at risk for harm (Gupta-Kagan 2020).

The hidden foster care system is not held to the same standards, nor does the family receive the same level of care as a family whose petition has been accepted by the court. This includes financial assistance for the family caregiver, parenting time for the parent, safety checks for the child, and holding CPS accountable for their actions or inaction (Gupta-Kagan 2020). When the child does not fall within the jurisdiction of the court, though removed from the home, the reunification process does not trigger and thus there is no mechanisms for which the child may return home to their parent. Courts are split on whether the hidden foster care system violates parents’ rights because parents have the option to not cooperate with CPS (Gupta-Kagan 2020). This is hardly the case, framing the situation as optional only gives the illusion of choice. This undoubtedly happens to families of low economic status who cannot afford an attorney (Gupta-Kagan 2020)⁷⁹. Parents who lack child protection law knowledge cannot make an informed decision about whether they should or should not engage with CPS (Gupta-Kagan

⁷⁹ Goodman, B., Goodman, R.D., Hockenberry, J., Lyman, W., WGBH (Television station: Boston, Mass.), WGBH Educational Foundation., & PBS Home Video. (2008). Failure to protect. Alexandria, Va.: WGBH Educational Foundation.

2020). Known as safety plans, an “agreement between CPS authorities and parents intended to keep the child safe” (Gupta-Kagan 2020), in my experience parents are unaware that participation in these plans are optional, violate valid court orders, and are enforced by law enforcement. These plans are introduced to parents by social workers who act on behalf of the state. Social workers take advantage of the power imbalance and exert false authority over parents to infringe on their rights⁸⁰. Parents have two options, 1) agree to our involvement or 2) do not agree to our involvement and we will petition the court for the removal of your child. Parents are thus coerced into the removal of their child through a voluntary power of attorney or the like. However, currently, in Michigan and a few other selected states there is a movement to change that, in June 2021 Wayne County Circuit Court announced a new program, Quality Legal Representation, which will provide parents with free legal services before the state asks a judge to remove a child from the home ⁸¹. The program, while maybe not intentionally, addresses the hidden foster care system.

Theory of Access

In the literature, scholars have used Penchansky and Thomas’s Access of Theory to examine barriers associated with access to mammograms for black women (Aleshire, Mollie E., et al. 2021). Specifically, black women were found to lack accessibility in the form of location of medical providers and transportation to medical providers; affordability in the form of lack of insurance, cost of health care; lack availability in the form of lack of a primary care provider, childcare issues, and adequate information related to mammography; lack of accommodation in

⁸⁰ Goodman, B., Goodman, R.D., Hockenberry, J., Lyman, W., WGBH (Television station: Boston, Mass.), WGBH Educational Foundation., & PBS Home Video. (2008). Failure to protect. Alexandria, Va.: WGBH Educational Foundation.

⁸¹ <https://www.detroitnews.com/story/news/local/wayne-county/2021/06/16/michigan-child-protective-services-free-legal-aid-wayne-county/7716127002/>

the form of health care providers' failure to provide mammography information recommendation, scheduling difficulties/wait times for appointments, and negative experiences within the healthcare system; and lack acceptability in the form of skepticism/mistrust, racism, pain and fear of pain from mammography, fear of mammogram results, embarrassment/breast exposure, fatalism, faith/spirituality and cultural beliefs (Aleshire, Mollie E., et al. 2021). The racial components experienced by black women in the health care system are similar to the racialized experiences of black men, women, and children in the judicial system. These same access barriers accessibility, affordability, availability, accommodation, and acceptability appear in the cases I discuss in the results and discussion section regarding parents who have lost parental rights of their children due to drug use/addiction (Jackson and Shannon 2012). Among pregnant substance users, barriers to substance abuse treatment include a lack of accessibility in the form of my family needs a lot of help, need to be home, had problems with getting transportation, no family support, childcare, struggled because I had to give up friends in [city name] you don't got no friends unless you are using or selling; acceptability in the form of worried about what they would do to my daughter, my family and friends finding out; feeling ashamed, being judge, ashamed; availability in the lack of paperwork at the methadone clinic, waiting period, couldn't find a detox to take me, wouldn't accept pregnant women; and affordability in the lack of money, money, good insurance, financial worries about paying for treatment, and insurance (Jackson and Shannon 2012).

Conclusion

In this chapter, I have reviewed social factors, social identities, social locations, and processes that influence parents' experiences in family juvenile court including race, class, gender, (dis)ability (both physical and mental); incarceration, drug use; and due process, service

delivery, positionality and attitudinal bias, all of which can be sorted under overarching community capital themes. This scholarship takes some of the most cited bases for child removal including mental health and drug use by the parent and tries to identify who is impacted the most by these child removal indicators and why. Despite the over representation of Black and Brown children in the child welfare system, much of the scholarship on child welfare fails to acknowledge or discuss the color of child welfare⁸² in relation to the factors in which children are removed from their home. I do not purport that there is a lack of literature that discusses the disproportionality of Black and Brown children in the system, however I do purport that there is a lack of literature discussing the racial nuances of child removal situated in social factors, identities, and locations. This gap in the literature led to a literature review unable to capture the unique experiences of persons of color impacted by the racialized specificities of child removal indicators such as incarceration, drugs, and disabilities.

In addition to identifying known bases for child removals, a review of the United States' policies, statutes, and practices show how historically federal and state governments have played a significant role in legalizing the racist, classist, and sexist child welfare system we have today with laws that both directly and indirectly impact marginalized families.

This scholarship uncovers how safety institutions such as hospitals and police departments are complacent in child removal, presenting unexpected challenges to families seeking assistance from those positioned to provide help.

The literature presented here demonstrates the system's commitment to retribution instead of rehabilitation, maintaining the status quo that boxes the marginalized into a cycle of economic

⁸² <https://cbexpress.acl.hhs.gov/article/2020/august-september/black-children-are-overrepresented-in-the-foster-care-system-what-should-we-do-about-it/e538c0031b92c150517620efe54bcb65>; <https://www.ncsl.org/research/human-services/disproportionality-and-race-equity-in-child-welfare.aspx>; <https://time.com/5946929/child-welfare-black-families/>;

and social despair. The barriers discussed above illustrate how Flora and Flora's (2004) through CCF neatly categorize the challenges faced by parents into capitals that have the capacity to impact parents on multiple levels.

In this project, I adapt a theory widely used in the medical field to the legal field where many families experience parallel realities in which the poor receive inadequate resources and services as a result of a long history of racial and social economic inequality.

To improve parents' experiences with the welfare system, scholars recommend improved social worker and law curriculums as well as specific on the job training. Some recommendations have now become a requirement. Specifically, the American Bar Association (ABA) now requires that law schools provide "education to law students on bias, cross-cultural competence, and racism" as a graduation condition. Public comments on the new standards indicate the change did not come without its share of challenges.

Given the State of Michigan's stance on parental rights and incarcerated parents, a newly recognized yet long held right, I will be examining whether the juvenile system is circumventing the court by alternate means and continuing what is now considered an unlawful practice, that is, terminating the parental rights of incarcerated parents for no reason other than their incarceration status and factors directly related to their incarceration. Similarly, with the implementation of Michigan's 2018 Regulation and Taxation of Marihuana Act, I am also looking to identify ways in which the juvenile family court will make adjustments to child removal policies where the parent is engaged in illicit and recreational drug use. Likewise, parents who are differently abled have been covered by the Americans with Disability Act (ADA) since the 1990, yet parents who have a physical disability much like Erika and her partner illustrate the way in which those in positions of power abuse their authority and impose their own viewpoints unto those in the

system. If people with a visual handicap are unable to rely on the protections of a well-known and established law, concerns arise for parents suffering from invisible disabilities such as those with mental health. Lastly, while many of the bases for child removal are not explicitly related to poverty, the circumstances of the families within incarceration, disability, drugs, race, and gender show how poverty is an interwoven factor that heavily influences whether a family can meet the state's demands.

The barriers discussed under this subsection illustrate how Flora and Flora's (2004) through CCF neatly categorize the challenges faced by parents into capitals that have the capacity to impact parents on multiple levels.

CHAPTER 3- ANYTHING YOU SAY OR DO CAN BE HELD AGAINST YOU IN THE COURT OF YOUTUBE

DATA AND METHODS

Using digital ethnographic⁸³⁸⁴ methods I explore how a lack of access and identity contribute to systemic biases across Michigan Family Juvenile Courts. I include a case study of the Third Judicial Circuit Court Family Juvenile Division, specific to abuse and neglect cases.

In an imposing north-south facing, marble fronted, oakwood-floored Washington D.C. four-story building resides the Supreme Court of the United States. Many, myself included, have spent hours in line, some even overnight, in the cold rain waiting in hopes for a chance that we will receive a ticket to view the Court in person. Included in the original design of the building, and still visible on the West Pediment reads, “Equal Justice Under the Law.” Located at the main entrance, surrounded by figures representing order, authority, and liberty enthroned, this phrase invokes a sense of fairness, representation, and accessibility. Tasked with being the face of justice for all, the highest court in our country is also replete with systemic bias that benefits some over others.

Unsurprisingly, lower courts struggle with some of the same issues. It is well-established that courts speak through their judgments and decrees⁸⁵. This is the case even if the court makes an oral declaration. Thus, archived documents that detail the courts’ actions in addition to the accounts of court stakeholders including attorneys, litigants, social service workers, and judges through hearings and past experiences provide firsthand knowledge of traditionally closed spaces. Access to this type of information holds the court accountable for its actions providing

⁸³ The ethnographic study of or within digital objects and technologies, in which researchers systematically engage people, places, and cultures through digital platforms and artifacts (Jung and Elwood 2019 citing Murthy 2008).

⁸⁴ The concept of conducting ethnographic studies of or within objects and technology also appears in the literature as: virtual ethnography, connective ethnography, internet ethnography, cyber-ethnography, network ethnography, online ethnography, netnography, webnography, and social media ethnography.

⁸⁵ Hall v. Fortino, 405 N.W.2d 106, 158 Mich. App. 663 (Ct. App. 1986).

public oversight and upholding the court's legitimacy and authority. Using individual cases as units of analysis, I performed covert nonparticipant observations and document analyses as data collection methods as well as a case study of the Family Juvenile Division of the Third Judicial Circuit Court in Wayne County, Michigan, where I triangulated semi structured interviews, surveys, and document analysis as data collection methods.

Courts are public spaces, even more so now that hearings livestream on social media platform YouTube. "Individuals under court supervision are special in that they are in a coercive environment" (Contrino 2018). Due to the nature of virtual observations, it was not appropriate, nor particularly feasible to obtain the informed consent of the individuals I observed. Ethically, however, my case reporting could conceivably amplify the risk of reputational harm to parents, therefore, to protect the privacy of those I observed, I did not record full case names nor any other personal identifying information that could be traced back to those under observation. My case accounts are generalized and are not attributable to any particular family. This is required as, some argue, the nature of open access to the public does not do away with ethics and informed consent and that the decision to forgo informed consent is more difficult than it seems. Other scholars have noted that informed consent is not required to watch the judge (and others) as most courts are public forums and what is observed is activity that participants and non-participants perform in their everyday life (Contrino 2018). Behavior that is public generally does not require informed consent (Contrino 2018). As an officer of the court, it is my belief that court proceedings are public forums. Courts are able to maintain legitimacy when it maintains transparency. As a result, courts must be available for public oversight and scholarly analysis. Still, to improve the confidentiality of observed litigants and attorneys, I grouped observation

data opinions into geographically adjacent regions, compiling counties together. These same groups were used for written court orders/opinions.

Table 3.1 Michigan Counties Grouped by Region

Central Mid	Flint Tri Cities	Northern Lower Peninsula	Upper Peninsula	Southeast	West
Bay Branch Clinton Genesee Grapiot Ingham Ionia Jackson Lapeer Midland Montcalm Shiawassee	Saginaw Sanilac St Clair Tuscola	Antrim Arenac Benzie Charlevoix Emmet Grand Traverse Kalkaska Leelanau Manistee Ogemaw Otsego Wexford	Alger Delta Marquette	Hillsdale Lenawee Livingston Macomb Monroe Oakland Washtenaw	Allegan Barry Berrien Cass Kent Mason Mecosta Muskegon Newaygo Ottawa St. Joseph

Non-Participant Observation

I conducted a covert nonparticipant observational study. Court observations permit measuring actual judicial behavior in lieu of self-reported surveys or case studies (Contrino 2018). Bradley usefully distills observations into three components: 1) descriptive observation, 2) focused observation, and 3) selected observation (Mills and Wiebe 2010). Nonparticipant observation is rarely used alone and is often combined with interviews, document analysis, and surveys, (Mills and Wiebe 2010); I employ each method in this dissertation.

Nonparticipant observation provides unique contextualized insights into events and activities and the meanings that they hold for members of the setting, it enables the researcher to capture the dynamics of participants' interactions with each other and with their work environment, and lastly it provides a different kind and quality of data than those gathered through self-report methods such as surveys or interviews (Mills and Wiebe 2010). While researchers have dubbed

nonparticipant observations as the *only* (emphasis added) viable way to collect data on especially sensitive topics, nonparticipant observation is not without risks (Given, L.M. 2008). Risks involved include observer effect, concerns about the observer's ability to maintain objectivity, and selectivity (Given, L. M. 2008).

The internet has provided new avenues in which nonparticipant observations can be conducted. It is no longer expected that the observer be in the same physical space as those the observer is observing (Given, L.M. 2008). While literature on nonparticipant observations is extensive, literature on how to conduct courtroom observations including appropriate sampling is lacking (Smith 2020). Although some courtroom observations have included research tools such as observation forms to collect and organize data (Contrino 2018), I relied on the note taking skills and case review procedures I developed as an attorney to observe court. The research available on court observations review issues (i.e., legal jargon and difficulty retaining case information) that do not apply to me due to my position as an attorney. Though two studies observing American courts provided information on their sampling, they did not describe the process (Smith 2020). Due to the COVID 19 pandemic, my sampling selections were limited. When sampling guidelines are not clear, data/thematic saturation developed from grounded theory is recommended (Smith 2020 citing Gaskell 2000). While it is impossible to record every detail I observed, as an attorney I have honed my skill regarding court observations thus I did not limit my observations to standardized approaches. Importantly, my role as an attorney requires me to understand both sides of the story in addition to the challenge before the jurist, given my training, I believe my observer bias to be minimal. Observation should end when theoretical saturation is reached (Mills and Wiebe 2010).

I observed approximately 51 hours of various Abuse and Neglect court proceedings on YouTube as the field site across at least 14 counties⁸⁶ in the State of Michigan. In March 2020, courthouses across the United States including those in the State of Michigan began to close to the public due to the COVID-19 pandemic. Pursuant to the Michigan Supreme Court and Michigan Court Rule 8.116 (D)(1), “a court may not limit access by the public to a court proceeding” except otherwise provided by a statute, court rule, written motion, or other limited circumstances. As a result, Michigan Courts were required to make hearings remote for its participants and available for viewing on public platforms. Despite an administrative order, all court proceedings were not immediately available for public viewing, many courts took several weeks to establish an online presence, limiting my study to non-random convenience sampling.

As the prevailing non-random approach, convenience sampling is where units at hand are selected, the method equates to accidental, availability, opportunity, haphazard, or unrestricted sampling (Vehovar et al. 2016). Virtual venues have become one of the most typical formats for sampling (Vehovar et al. 2016). This sampling technique does not give every individual in a population or sampling frame equal chances of being selected and means that the sample may be less representative of the target population compared to random sampling⁸⁷.

I collected a non-random convenience sample of available hearings for three months from May 2020 to July 2020. I used the MiCOURT Virtual Courtroom Directory in conjunction with the posted hearing schedules of individual counties to locate live hearings. Posted schedules provided the day, time, and type of proceeding. Judges hear several different types of proceedings a day, thus even though a court may be live, the court may not be running on time

⁸⁶ Observed counties included Presque Isle, Manistee, Benzie, Alpena, Otsego, Ottawa, Calhoun, Kalamazoo, Oakland, Macomb, Jackson, Genesee, Leelanau, and Gogebic.

⁸⁷ <https://pressbooks.uiowa.edu/ssresearchmethodscommunicationonline/>

thus the schedule assisted me in locating applicable hearings as quickly as possible. As courts became more sophisticated in remote access, accessing live hearings became easier. Several weeks into my observations, most judges had established YouTube pages, to which I subscribed, for the purpose of live streaming and thus when judges went “live” I would receive a notification. I observed hearings in the order they were available to view and prioritized counties in which I had no or little observation hours when possible. While some counties maintained concluded hearings on the court’s YouTube page for a short period following the hearing’s cessation, allowing me to rewind proceedings or view later, most did not and were only available to view in real time. Recordings of the proceedings were not authorized; thus, I took field notes as if the proceedings were in person, noting the participants’ demographics, tone, body language (when available)⁸⁸, language, disposition, and other significant information in anticipation of conducting a discourse and content analysis with my findings. To supplement my field notes I used available court documents, public records⁸⁹, and Facebook to learn additional information about the parties and their history with the court. I uploaded my fieldnotes into the NVivo software⁹⁰. Ideally, I would have conducted in person observations, however, as I finalize my dissertation nearly two years into the COVID 19 pandemic most courtrooms remain closed to the public.

⁸⁸ Some participants participated over audio only.

⁸⁹ I utilized Offender Tracking Information System (OTIS), VINELink, and various county jail databases. OTIS is the Michigan Department of Corrections (MDOC) searchable database, which contains all of the records for prisoners and parolees who are currently under the jurisdiction of the MDOC, as well as those serving a prison sentence but who are out on writ. VineLink is the nation’s leading victim notification system, empowering survivors of crime with the updated custody status and criminal case information they need to remain safe and maintain peace of mind.

⁹⁰ NVivo is a qualitative data analysis computer software package produced by QSR International. NVivo helps qualitative researchers to organize, analyze and find insights in unstructured or qualitative data like interviews, open-ended survey responses, journal articles, social media and web content, where deep levels of analysis on small or large volumes of data are required.

Documentary analysis⁹¹

I conducted a non-random purposive sampling in which I collected a combination of 232 Michigan Court of Appeals and Michigan Supreme Court opinions in various abuse and neglect cases across at least 50 Michigan counties opined from 1911 to 2020 excluding Wayne County and the Indian Child Welfare Act (ICWA) cases. Using Nexis Uni⁹², I filtered cases in the State of Michigan using search terms “termination” and “parental rights” yielding over 9,495 cases. I further narrowed the results by filtering the cases based on publication status “reported”⁹³ yielding approximately 560 results and practice area/topic “family law”⁹⁴ yielding approximately 476. After eliminating false hits and duplicate cases, the total case number for analysis purposes was 232. I uploaded the court opinions into NVivo and coded the opinions using codes and themes from the literature as well as those that arose during the coding process in anticipation of conducting a content and discourse analysis with my findings. Opinions with false hits were deleted and not considered in the final count and occurred slightly over half the time.

CASE STUDY (WAYNE COUNTY, MICHIGAN)

Location-Lincoln Hall of Justice

In terms of case traffic, Third Judicial Circuit, located in Detroit, is the largest circuit court in Michigan. Juvenile Court cases including those involving child abuse and neglect are held in the Lincoln Hall of Justice, one of three buildings that make up the circuit court. A county building

⁹¹ Document analysis also appears in the literature as textual analysis, documentary research, archival research, data archives,

⁹² Replacement for LexisNexis Academic, which provides access to full-text news, business, and legal publication, using a variety of flexible search options. Nexis Uni is a comprehensive resource for U.S. and international companies as well as newspaper articles, transcripts and web news worldwide, along with legal materials from U.S. and international jurisdictions.

⁹³ An unreported case has not been published in a hard copy reporter series (like the West Regional and Federal Reporters).

⁹⁴ Family law is whether categorized into the following subtopics: adoption, child custody, delinquency and dependency, family protection and welfare, guardians, and parental duties and rights.

plagued with parking, heating, cooling, water, and elevator issues. The building is not literally or figuratively accessible for those who use it. Prior to May 2020, cell phones were not permitted in the building. This raised challenges for litigants who needed a personal electronic device to retrieve or store information, access the internet and text, photograph court records, and reproduce court documents, a necessity as the court began its paperless transition well before the pandemic ensued. The change came after the Michigan Supreme Court adopted amendments to the court rules. Prior to this change, cell usage was already permitted in hundreds of courthouses across Michigan, however Third Judicial Circuit resisted the change until the amendment by the Supreme Court became effective. Heavy clothing belts, which in my experience is what would be considered a standard size men's belt, are still prohibited from the courthouse. Though this may initially pose a safety concern, the concern centering belts is not one of which is uniform across Michigan Courts. Additionally, belts give litigants the opportunity to present themselves in a respectable manner and appear polished before the judge. For litigants that have ill-fitting clothing, due to poverty, the use of a belt assists litigants to appear presentable. Possession of a cell phone prior to May 2020 and wearing a standard men's belt would result in litigants returning to their car to dispose of those items which can have financial and time consequences. In January 2019, the most recent data available, Wayne County reported a total caseload of 1,080 child protective cases including pending cases and new filings. Figures for closed cases were not available. Currently, the family juvenile division is comprised of five circuit court judges, one probate judge, and 12 referees. There is a mixture of men and women on the bench. Currently, there are three male and two female judges and seven female and six male referees. There is a mixture of African American and Caucasian jurists, of the Caucasian jurist is a single Referee of Middle Eastern descent. Gender and race and intersectionality on the bench play a large role in

decision making at the trial and federal appellate level⁹⁵⁹⁶. Diverse representation is a human capital.

The court's make up and caseload have gone relatively unchanged since 2013. The highest recorded caseload being 1303 and the lowest 1006 over a six-year period. The years immediately preceding 2021 were not available, however, the number of cases and available staff between 2004 and 2008, 2008 being the year of the Mike's Hard Lemonade Case, saw caseloads between 1709 at its lowest and 2329 at its highest as well as the highest number of jurist and referees. Judges are voted in by the public in general elections or appointed by the governor when a vacancy occurs. Referees are quasi-judicial officials and are hired through the local court. It is unclear whether the fluctuation in court staff coincides with case numbers, budget, both, or neither.

Maintaining the largest courthouse in the state comes with its own challenges in terms of timeliness, case management, and transparency. Wayne County has been a hub for newsworthy cases on child removal for all the wrong reasons. In "Hearings⁹⁷," a chronicle series featured in *The Imprint*⁹⁸ tells the story of Nadia⁹⁹, a Lebanese teenage girl who was removed from her mother's home after Nadia's mother struck her during an argument about a boyfriend Nadia was not supposed to have. This incident of Nadia's mother slapping her was not the family's first investigation with CPS. Despite Nadia and Nadia's mother's respective attorneys request that Nadia be returned home, the state maintained that it was not safe for Nadia to return home.

⁹⁵ Boyd, Christina L. "Representation on the Courts? The Effects of Trial Judges' Sex and Race." *Political Research Quarterly*, vol. 69, no. 4, 2016, pp. 788-799.

⁹⁶ Collins, Todd, and Laura Moyer. "Gender, Race, and Intersectionality on the Federal Appellate Bench." *Political Research Quarterly*, vol. 61, no. 2, [University of Utah, Sage Publications, Inc.], 2008, pp. 219-27.

⁹⁷ A series "where . . . reporters and guest contributors provide an inside look at how child welfare courts function."

⁹⁸ An independent, nonprofit daily news publication dedicated to covering child welfare, juvenile justice, mental health and education issues faced by vulnerable children and families.

⁹⁹ The author of the article changed Nadia's name to protect her privacy.

According to the article's author, the attorney for the department, seemed annoyed at the mother's attorney's insistence that the facts of the case be discussed at the pretrial.

What is most concerning about Nadia's story is not that Nadia was removed from her home, though that is concerning, but that the CPS worker's intentional disregard for the law and her responsibilities as a CPS worker. CPS workers are required to *make reasonable efforts* (emphasis added) to prevent the removal of a child from the home, this is a federal law requirement. In this case however, the CPS worker assigned to Nadia and her family failed to provide services, as required of her, to Nadia's family because in the words of the CPS worker, "I already knew I was recommending removal." Judge Tracey Green, the judge assigned to the matter, reprimanded the CPS worker and stated. "There were no services in place because you decided to recommend removal. I think that's backward." At the time of this hearing, Nadia had been in the state's care for at least four months. Judge Green ordered family therapy so that Nadia could be returned home. Nadia's removal raises questions about social worker's biases. Without reports from news publications like *The Imprint*, we would never learn of the court's day to day processes given the obstacles involved in the average person attending court hearings and would potentially write stories like the Ratté family's off as one-time occurrences.

In April 2020, the Michigan Supreme Court executed an administrative order directing courts across Michigan to hold remote hearings, creating a platform for accessibility like never before. Despite the need for transparency and accountability, Wayne County Juvenile Court did not livestream Juvenile proceedings during the pandemic. Even with the administrative order from the Michigan Supreme Court, Wayne County Juvenile Courts, along with a handful of cases involving Indian/Native American children, joined a small number of counties across the state excusing themselves from the administrative order based on a narrow reading of the rule in favor

of secrecy. In “The Era of Closed Courtrooms Should End,” former judge, James Payne of Indiana advocated in favor of ending closed courtrooms. He noted, “child welfare caseworkers, supervisors, and agency leaders are attacked professionally and personally over a single tragic incident or an instance of repeatedly-occurring abuse and neglect.” Judge Payne’s position regarding the court’s lack of visibility and outlier cases perfectly captures the Ratté family’s experience. Whether the “Mike Hard Lemonade” case, as it has come to be known, is the status quo or a “single tragic incident” can only be explained through a visible court. The public has a “legitimate interest in understanding how . . . [the] court functions.”

Using a triangulation method to compensate for any weaknesses in the data, I conducted semi structured interviews, distributed web surveys, and collected court opinions to analyze Wayne County in absence of participant observation. I discuss each of these here.

Zoom/Telephone Semi Structured Interviews

I conducted 8 semi structured telephone/zoom interviews ranging from 17 minutes to 1.5 hours with Social Service Workers between March and April 2021, using chain referral sampling¹⁰⁰, a subset of the snowball sampling technique, on their experiences working in Wayne County, Michigan. I achieved initial contact with Social Service Workers using my personal/professional connections made over my career as an attorney and graduate student through calls and emails. The interviewees included male, female, African American, Caucasian, and Hispanic participants whose time in the field ranged from two to 17 years. In some instances, the interviewee’s occupation at the time of the interview was their first professional position and for others their occupation at the time of the interview was their nth professional endeavor. Interviewees had

¹⁰⁰ “Relies on a series of participant referrals to others who have experienced the phenomenon of interest; however, multiple networks are strategically accessed to expand the scope of investigation beyond one social network.” Penrod, Janice, et al. “A discussion of chain referral as a method of sampling hard-to-reach populations.” *Journal of Transcultural nursing* 14.2 (2003): 100-107.

experience working for nonprofit organizations and the government under the Department of Health and Human Services, specifically, Child Protective Services (CPS). This nonprobability purposive sampling is ideal for studying sensitive topics and hard to reach populations (Penrod et al. 2003).

Interview questions included questions on interviewees work background, participation in legal proceedings, events witnessed, perceptions of the process, and general ideas about the system. With participants' consent, interviews were audio recorded with a handheld recorder and then transcribed using notes and audio files uploaded onto the NVivo software. Participants were not offered compensation for their participation. Ideally, I would have interviewed more social service workers however COVID presented challenges to access individuals in a way that would not have existed if I were able to network in person.

Surveys

While ideally, I would have made personal contact with attorneys during court proceedings and asked for survey participation to build a rapport and improve participation, however this was not an option due to the COVID 19 pandemic. In lieu of conducting in person interviews and soliciting survey responses through in-person contacts, from January 2021 to February 2021, I distributed 91 surveys via Qualtrics to licensed Michigan attorneys in good standing whose email addresses or websites appeared on the State Bar of Michigan website who practice law in Wayne County, Michigan. The attorneys were filtered by practice area¹⁰¹ and/or section and committee¹⁰². Using the email invitation function in Qualtrics, 14 attorneys at least partially completed the survey which included questions regarding their work history, demographics, and

¹⁰¹ Practices areas included juvenile law, abuse and neglect, children's law, child abuse, and child protective proceedings.

¹⁰² Family and Juvenile was the only applicable section and committee.

knowledge of the Mike Hard Lemonade case. The 16-question survey included multiple choice and matrix table styled questions.

Documentary analysis

I conducted a non-random purposive sampling in which I collected a combination of 46 Michigan Court of Appeals and Michigan Supreme Court opinions in various abuse and neglect cases in Wayne County, Michigan opined from 1967 to 2020 excluding cases involving ICWA. Using Nexis Uni¹⁰³, I filtered cases in the State of Michigan by family law using search terms “termination” and “parental rights” yielding approximately 113 reported cases. I uploaded the opinions into NVivo, where I coded the opinions using codes and themes from the literature as well as those that arose during the coding process in anticipation of conducting a content and discourse analysis with my findings. Duplicated opinions and opinions with false hits were deleted and not considered in the final count and occurred slightly more than half the time. In addition to the court opinions, I gathered relevant additional content information such as newspaper articles, websites, podcasts, law, social media sites, various databases, pamphlets, press releases, reports, bills, news stories, memorandums, government documents, online material, resource guides, manuals, and bench cards. These supplemented the data and provided additional context including more details about cases not available in the court records. These were stored together digitally and used when analyzing the primary data.

Conclusion

In this chapter, I have presented my research design and methodological approach to analyzing court proceedings, document analysis, surveys, and interviews. Utilizing an ethnographic

¹⁰³ Replacement for LexisNexis Academic, which provides access to full-text news, business, and legal publication, using a variety of flexible search options. Nexis Uni is a comprehensive resource for U.S. and international companies as well as newspaper articles, transcripts and web news worldwide, along with legal materials from U.S. and international jurisdictions.

approach, I collected qualitative data through 51 hours of participant observation, 8 interviews with social service workers in Detroit, MI, and 14 attorney surveys. I utilized the NVivo qualitative software to analyze the data through coding, organizing, and categorizing the data. I developed themes found in the literature as well as those that came about through the observational data. This design intended to optimize the dissertation limitations due to the COVID 19 pandemic. Through these means I was able to examine 1) whether factually similar cases resulted in different outcomes, 2) whether courts timely implemented changes in the law, 3) how stakeholder positionalities affected case outcomes, and 4) how families social locations impact their access to the court.

CHAPTER 4- A LEAGUE OF ITS OWN

RESULTS/FINDINGS (WAYNE COUNTY)

Wayne County has a poor reputation for both the way its courthouse is managed¹⁰⁴ and for how its public servants behave¹⁰⁵. Throughout the pandemic and after, there has been a growing backlog of cases in every division of the court¹⁰⁶ including in abuse and neglect cases. Some attorneys, attribute the delay to, “the race and economic class of Detroit and Wayne County residents”¹⁰⁷. One attorney specifically noted, “this would never, ever happen out in Oakland County¹⁰⁸ . . . The[] people [out there] would be in such an uproar about this happening that they would immediately have to do something to right this ship.” Another attorney observed, “race and class are factors in how the situation has been allowed to develop (that is delayed case filings) in Wayne County during the pandemic, but nowhere else in Michigan.”¹⁰⁹

Why the “Haves” Come Out Ahead, is a classic *Law and Society* essay that explores “the way in which basic architecture of the legal system creates and limits the possibilities of using the system as a means of redistributive (that is, systemically equalizing) change.” This can be substituted for the CCF, in that, “by analyzing the investments in each of the capitals and the impact generated by that investment,” the CCF, “provides a means by which community researchers and practitioners begin to understand the impact of community development

¹⁰⁴ <https://www.wxyz.com/news/region/detroit/judge-writes-scathing-post-on-facebook-about-conditions-inside-detroit-courthouse>

¹⁰⁵ <https://www.clickondetroit.com/news/local/2020/11/11/wayne-county-judge-accused-of-covering-up-sons-abuse-of-her-grandchildren/>

¹⁰⁶ The two known exceptions are Personal Protection Orders and Emergency Guardianships.

¹⁰⁷ <https://www.freep.com/story/news/local/michigan/detroit/2022/02/14/wayne-county-divorce-backlog-court-clerk-shortage/9251879002/?gnt-cfr=1>

¹⁰⁸ Oakland County is a neighboring County where both the racial and economic class makeup are drastically different than that of Wayne County.

¹⁰⁹ The Detroit Free Press article in which the aforementioned attorneys were interviewed titled, “Wayne County Women and Children Suffer Amid Months-Long Backlog of Divorce Cases” imply that there is also a gender bias layer to the court delays, not just race and class.

policies/strategies on real people and places.” In substituting the legal system for the community, using CCF as a tool can help us to understand how assets or deficits in the form of community capitals increase or decrease family’s access to the justice system using the theory of access. This case study shows that families in Wayne County who come under the court’s jurisdiction lack assets that translate into why the “haves” come out ahead. Borrowing from community sociology literature and research, these assets can be condensed into the seven components of community capital that broadly encompass tangible and intangible assets including: natural, cultural, human, social, political, financial, and built capital that may stand alone but also intersect¹¹⁰. The family in the *Mike’s Hard Lemonade* case, where Judge Judy Hartsfield was found to have maintained a practice of pre stamping child removal orders, is only one of what is believed to be many families impacted by Wayne County’s rubberstamping practice¹¹¹. However, the Ratté family is the only family to have succeeded in its bid in holding Wayne County officials accountable for its actions. Accountability in this case included a change to the Michigan child removal statute in which “imminent” danger became the standard for removing children from their home. This change removed Michigan from a list of states with lax child removal laws making it more difficult for law enforcement to remove children from the home absent “imminent” danger of the child. The Ratté’s are joined by at least two other families that experienced an eerily similar chain of events leading up to the removal of their child(ren) yet experienced vastly different outcomes in their quest to have their children returned to them and the aftermath.

¹¹⁰ Emery, Mary, and Cornelia Flora. "Spiraling-up: Mapping community transformation with community capitals framework." *Community development* 37.1 (2006): 19-35.

¹¹¹ <https://www.youtube.com/watch?v=0nfV1DWKQw8&t=17s>

Three years after the *Mike's Hard Lemonade* Case, an African American mother was criminally charged by Wayne County Prosecutor, Kym Worthy, after the mother engaged in a 10–12-hour standoff with authorities when the Michigan Department of Health and Human Services (hereafter, the department) attempted to forcefully remove her disabled teenage daughter for alleged medical and educational neglect. The story made local and international news. As with the Ratté family, Wayne County authorities attempted to remove the mother's daughter with an order, "stamped with a family court judge's name, and bore both a date stamped and a raised seal." Attorneys attest that the rubberstamping process has been an ongoing practice for a number of years that came to light only after the American Civil Liberties Union (ACLU) assisted the Ratté family in suing Judge Hartsfield and other persons and entities involved in the removal of their son which the court found to violate the mother's constitutional rights. When Maryanne Godboldo sued Wayne County officials for violating her constitutional rights, specifically the 14th¹¹² and fourth¹¹³ amendment, she received no retribution. After a series of remands and reversals on appeal, both the Michigan state and the federal court found in favor of Wayne County, dismissing the claims the Godboldo family attempted to make regarding the violation of their constitutional rights. The Federal Court of Appeals noted, "as the Michigan state courts have already determined, albeit unpersuasively, that there was both probable cause and a valid warrant to take [the minor child] into protective custody" the Godboldo family was estopped¹¹⁴ from what was described as re-litigating the issue on the federal level after Michigan state courts found no violation existed. The Court further noted, "the case may very well have

¹¹² The 14th amendment is the right to care, custody, and control of one's child.

¹¹³ The fourth amendment is the right to unreasonable search and seizure.

¹¹⁴ Estoppel is an equitable doctrine, a bar that prevents one from starting a claim right that contradicts what one has said or done before, or what has been legally established as true. Estoppel may be used as a bar to the re-litigation of issues or as affirmative defense.

been decided differently had this Court been able to address Plaintiffs' constitutional claims." Both the district and circuit court judges assigned to the mother's criminal matter found the removal order violated the mother's constitutional rights. However, their rulings were appealed, and on appeal, the rulings made by the district and circuit court judges were remanded and/or reversed in some aspect, and the criminal prosecution and the abuse and neglect cases moved forward. The minor child in the Godboldo family was returned to her mother and father several weeks later when the court ultimately terminated jurisdiction over the minor child ultimately finding no evidence of educational or medical neglect.

Despite the Court's ruling that the court no longer needed to monitor the medical and education choices of the family, the department appealed the circuit court's decision to terminate jurisdiction over the minor child. Though the department was unsuccessful in its appeal, the department's decision to appeal the circuit court's decision to terminate jurisdiction over the child shows the state's intolerance for impoverished families who fail to follow the status quo style of parenting. Unlike the Ratté family, who possessed natural, cultural, human, political, and financial capital, the Godboldo family lacked access to certain components of community "capital" that aided the Ratté's in obtaining justice. Though the Godboldo family also possessed human and political capital, these capitals presented differently than that of the Ratté family and were on opposite ends of the same spectrum. Both families lacked built capital. When asked about inappropriate behaviors of court removal stakeholders, a victims' services specialist relayed the following about the Lincoln Hall of Justice, the building Family Juvenile court matters are heard,

. . . The condition of the building is just not welcoming . . . its not . . . I don't think [its] protective of family's privacy at times . . . you know? Having to go somewhere and the . .

. possibility of having your children removed and I mean . . . I don't like going to . . .

Lincoln Hall, but . . . just having to go there. And . . . one time I went, there wasn't even a door in the bathroom stall. Like one bathroom. No bathroom stall.

The victims' services specialist position matches the sentiments of others including Judge Karen Braxton, one of the current presiding judges on the Wayne County Family Juvenile Law Bench. Judge Braxton posted on Facebook regarding the conditions of the Lincoln Hall of Justice, "[i]t is a shame that we have to continue to work in these conditions. It is even more shameful that we ask the public to come to court and sit in crowded hallways of a terrible building with no air."¹¹⁵ The conditions of the Lincoln Hall of Justice are not unique to those in family court, also referred to as poor people's court¹¹⁶.

Judge Leslie Kim Smith, whose name appeared on the order which removed the Godboldo minor, was never held accountable and now maintains a civil bench docket in Wayne County. The charges against the mother were eventually dropped after she suffered an aneurysm and was found incompetent to stand trial. While conducting interviews with social service workers, a former Child Protective Services (CPS) investigator referred to the Godboldo case when asked how child removal procedures have changed over time, they stated,

. . . I feel like . . . situations have changed probably for the better . . . over the last several years, there have been . . . court interventions and court rulings that have changed the way in which . . . emergency removals take place . . . I think a few years ago . . . there was like an emergency removal where a CPS was trying, and the police were trying to remove . . . these kids for . . . medical neglect . . . the mother was refusing to do. And like

¹¹⁵ <https://www.wxyz.com/news/region/detroit/judge-writes-scathing-post-on-facebook-about-conditions-inside-detroit-courthouse>

¹¹⁶ Robinson, Robert. "A Theory of Access to Justice. *Journal of the Legal Profession*, 29, 2004-2005, pp. 89-156. HeinOnline.

the mom was like shooting at them from the house or from the porch . . . I believe that case was the . . . catalyst and what changed emergency removals, because it used to be that we would file petitions and um we would fax them to the court and the court would . . . fax us back in emergency removal right away, but they stopped doing that because of that.

One case that did not make the news, but which was also rubberstamped involved an impoverished married couple and their five children. N.B. and S.B, whose children were removed after their teenage son ran away from home and allegations regarding the conditions of the home prompted a visit from an overly zealous CPS worker. Specifically, there were allegations regarding lead-based paint found in the home and the speech of the parties' youngest child. The events in this case occurred approximately two years after the *Mike's Hard Lemonade* case and approximately one year before the events in the Godboldo case. This case involved the same social worker in the Godboldo case and Judge Smith. The parents in this case believed Judge Smith did not personally view the warrant authorizing removal of the couple's children or any other document bearing her stamped signature. The parents argued their 14th and fourth amendment rights were violated when the department removed their children from their home with a facially invalid warrant and searched and seized their home by taking unauthorized photographs of the inside of the home and questioning the minor child for longer than previously consented to by the parents¹¹⁷. The children were returned to their parents approximately six months later after the court found the home's conditions had improved. The Brent family lacked all but human capital and arguably political capital, however their capital still differed even from that of the Godboldo family. Though the Brent family had the benefit of counsel, they lacked

¹¹⁷ This argument has been successfully made in other states. See. *Calabretta v Floyd*, 189 F.3d 808 (9th Cir, 1999).

private counsel and news exposure, different from that of the Ratté and Godboldo family. In the discussion section I will examine how various capitals operationalized for the betterment or detriment of the families discussed.

Other Wayne County judges have faced scrutiny over constitutionally/statutorily questionable courtroom procedures. Judge Sheila Gibson, a former Wayne County Juvenile Judge who now presides over a civil docket, was censured by the Michigan Judicial Tenure Committee for maintaining an unlawful practice of “continuing trials and termination hearings well beyond the requirements of the law”¹¹⁸ when there were pending criminal charges against the children’s parents. Attorneys argued that this was an ongoing practice not unique to Judge Gibson but widespread across the Wayne County juvenile bench as a whole and was a due process violation to both parents and children. Two years later, Judge Gibson was investigated again by the Judicial Tenure Committee after WXYZ-TV (Channel 7) which showed Judge Gibson regularly arriving to the courthouse after her docket started and leaving before the courthouse closed for no less than a week’s time¹¹⁹. Channel 7 began monitoring the judge’s behavior after receiving a tip from a parent whose child was under the court’s jurisdiction. Two interviewees spoke to the bench’s timeliness practices when asked about concerning behaviors they observe while engaging in removal proceedings, a victims’ services specialist said, “the judge gets there like an hour late.” Similar to the victims’ services specialist, a former CPS Investigator reported,

I’ve just seen [a lack of] professionalism from judges in general showing up late . . .

There was a judge that . . . had a history of showing up late to their proceedings . . . I had to file a petition against this mom . . . I believe the hearing was scheduled for like 9:30

¹¹⁸ *In re Gibson*, 854 N.W.2d 76 (Mich. 2013).

¹¹⁹ <https://www.detroitnews.com/story/news/local/wayne-county/2014/09/22/judge-suspended/16066563/>; *In re Gibson*, 852 N.W.2d 891, 497 Mich. 858 (2014).

[a.m.] . . . I sat there to 11 [a.m.] . . . it's a waste of my time because I have other things that I could be doing . . . Very unprofessional . . .

More recently, another Wayne County Juvenile Judge, Tracy Green, introduced above, was found to have lied in a case involving her son's abuse of her grandsons. Judge Green now faces possible sanctions from the Michigan Judicial Tenure Committee for her involvement in the matter. The selected cases feature egregious acts by authority figures entrusted to administer justice, do equal right to the poor and to the rich, and faithfully and impartially discharge and perform all duties under the constitution. Yet, as illustrated by these cases, judges do not always fulfill the duties in which they are sworn under oath to do. While these cases only reveal a few instances of poor judicial behaviors, these behaviors raise questions about the judicial behaviors the public does not see by way of news media. The judicial system impacts everyone. Thus, the constitutional violations occurring against parents in Wayne County abuse and neglect cases should raise cause for concern for everyone as its behavior reflects the court's culture.

Interviews, surveys, court opinions, and supplementary data show that in Wayne County, parents' whose children were removed from the home were removed due to neglect (25 percent), a failure to provide proper care and custody (29 percent), or both (13 percent). The remaining 33 percent are a mixture of various individual factors and circumstances considered in parental termination that I will not consider here. These broad categories can be broken into macro and subsequently micro level community, or system, characteristics that help organize and explain how families interact with, and receive remedies through, the family juvenile court.

I borrow the community capital framework established by Flora and Flora (2008) to show how families who lack certain capitals in the system fair differently than those who possess certain community capitals. Specifically, if justice is blind, factually similar families should receive the

same or similar treatment and remedies from the family juvenile court. However, the data reveals that families receive noticeably different treatment and legal outcomes depending on the family's social identity and social location. Even if families share in a community capital, the family's social identity and social location is likely to determine the impact of the community capital. A review of court opinions supplemented by interviews and surveys by social workers and attorneys respectively show disregard for familial integrity by creating a system of inequality that works for some but not for others. A close look tells a story of a system amok with judgment, due process violations, personal agendas, and a lack of empathy.

To begin, neglect is the primary cited reason for child removal. Neglect encompassed a span of different individual and joint basis for child removal and termination. The most frequently occurring factors included 1) substance abuse and poverty, 2) mental health and poverty, 3) (consequences of) poverty, 4) failure to protect, 5) incarceration, substance abuse, and poverty, 6) poverty and child abandonment, 7) mental health, 8) domestic violence and substance abuse, 9) incarceration, 10) substance abuse and mental health, 11) inability to complete parenting agency plan, and 12) prior terminations.

Likewise, failure to provide proper care and custody is the second most cited reason for child removal which includes many of the same factors included in neglect with minor differences including 1) home conditions and mental health, 2) poverty, 3) poverty and drugs, 4) mental health, 5) mental health and poverty, 6) abandonment, 7) incarceration, and 8) poverty, drugs, and domestic violence.

Interviewees supported the themes found in the court opinions, with three interviewees specifically citing the following themes as basis for removal 1) sexual abuse disclosure, 2) substance abuse, 3) mental health, 4) medical neglect (including dental), 5) home conditions

(including a lack of food), 6) failure to protect, 7) neglect, 8) kids getting out of the house, 9) hygiene of the child, and 10) missing school.

A former CPS Investigator explained that child removal in Detroit, Wayne County and Western Wayne County is determined by race.

the Detroit area is primarily African American . . . due to . . . advancements in the city in the area and gentrification, it's becoming a little bit more mixed and diverse. Western Wayne . . . it was mixed, but it . . . it was primarily white . . . the maltreatments were different you know in the Detroit area . . . you'll see a lot of physical abuse . . . a lot of violence, domestic violence . . . a lot of neglect, um and you'll see your fair amount of sexual abuse. But in Western Wayne . . . your key maltreatments were . . . high amounts of sexual abuse . . . neglect, and a large amount of substance abuse. And every now and then you would get your physical abuse . . .

The data reveals that families experienced poverty in 19 out of 44 cases, or 43 percent of the time. Poverty, both directly and indirectly contributed to child removal more than any other social determiner identified. Poverty presented itself within child removal cases in various forms (discussed in detail below). After poverty, substance abuse including drugs and alcohol emerged as the second most dominant determiner of child removal, (also discussed in detail below). Next, mental health appears as a determiner of child removal in 12 out of 44 cases or 27 percent of the time. Other themes including domestic violence, disability, prior termination, and incarceration, also materialize as determinants of child removal.

In 14 of 44 cases, or 31 percent of the time, substance abuse played an integral role in terminating parental rights. By itself, substance abuse, which includes alcohol, did not prove to be the sole basis for child removal. However, when substance use and/or abuse played a role in

the termination of parental rights, most parents shared a “plus” factor. In 11 of 14 removals, parents whose child removal involved substance abuse were also impoverished. In 2 of 14 removals, parents whose child removal involved substance abuse experienced mental health problems. In the last case, the parents’ rights were terminated solely based on the parents’ drug use. The results from the court opinions were corroborated by the interviews conducted.

Regarding child removal and parental drug use, a former Child Protective Services (CPS) Investigator reported,

“interestingly enough, substance abuse alone is not a reason to remove a child because there are plenty of parents that have substance abuse issues. But there are parents that have . . . substance abuse issues that still parent well, but then there's issues where you have parents that have substance abuse, and it is . . . terribly affecting their ability to safely parent their children.”

The interviewees’ choice of words indicates the worker would support child removal based solely on drug use if permitted but admits drug use does not always impede one’s ability to parent. Another interviewee, a child advocate, noted “it can be very traumatic to take a kid away from their parent even if you don’t think the caregiver is fit . . . even if . . . you have . . . reason to believe . . . that they have issues. I think you see it in . . . people with substance abuse problems.” When asked about a time where a child should have, but was not removed from the home, a different child advocate indicated, “the child was being allowed and encouraged to use substances with the parents.” The three interviewees all having experienced work as a child advocates range in their position on drugs and child removal.

The former CPS investigator above revealed the type of drug use can make a difference in whether a child is removed. In the case of drug addicted born babies, the interviewee revealed

children who test positive for an illicit substance at birth automatically trigger a CPS investigation. Hospitals are mandatory reporters. In one of his last cases, the former investigator shared,

“drug positive babies were always gonna be a[n] open case. Now it's just policy . . . If it's marijuana . . . which a lot of times it was . . . you just open . . . a [CPS] case, you wouldn't put them on central registry, it will be open category three . . . and you just . . . give the family some services to make sure that the parents have everything they need in terms of crib, car seat, food supports . . . make sure they . . . know about the dangers of . . . marijuana parenting and things like that. However, this child was positive for cocaine, marijuana, and some other stuff and it bec[a]me[] a petition.”

Roberts (1990) discusses the racialized implication of drug addicts who give birth. Given the limited discussion on race in the court opinions, interviews, and surveys, I discuss on racialized hospital policies mentioned in the introduction and literature review in briefly in other chapters. The data did not reveal whether the mothers in this project identified as having gave birth to a drug addicted baby were criminalized for birthing a drug addicted baby, although in considering the information provided in the court opinions it is not implied that mothers sampled were arrested or charged for birthing a drug addicted baby.

In a separate instance, the former CPS investigator noted,

“another parent that had multiple . . . prior terminations . . . prior termination is an automatic petition. If you have a new baby . . . doesn't mean that you'll lose the new baby depending on how far your last termination was. And then if your situation has changed and you're a better parent and you've had all . . . this growth . . . they'll come do a safety assessment of your home, look at your situation and then sometimes you can keep the

kid. But if you've got prior termination, and your prior termination was . . . being neglectful, not following through with treatment . . . being a risk to the child, physical abuse, unsafe home . . . if you've had a prior termination and one . . . of those reasons was drug positive baby marijuana. And then you have another baby that's drug positive marijuana and you know that . . . led amongst other things to you losing the right to your last baby . . .”

In 2016, the Michigan Court of Appeals found that terminating parental rights based on prior terminations violated parents’ due process rights¹²⁰. While the instance the interviewee provides above occurred prior to the Court of Appeal’s ruling, the parent above is one of an unknown number of parents to experience a due process violation only for the court to recognize the violation long after the harm occurred. The court opinions collected and analyzed identified four additional cases where prior terminations were a basis for removal, three occurring prior to the change in law and one at approximately the same time as the Court of Appeals ruling. Mothers accounted for three out of four prior terminations in the opinions reviewed and analyzed.

Child removal due to drug use can be mitigated by class. The former CPS investigator explained, “. . . it could be you’re [a] drug addict, your drug addicted baby test positive for a couple of things, but we go to the house, house is immaculate, and you have three other children, teachers have no concerns, you know? And it's like, okay, well, we got to figure out where this is coming from you know cause parenting wise, you're good. But there's this factor of the substance abuse that has the potential to change that. So, let's see how we can address that.”

¹²⁰ *In re Gach*, 889 N.W 2d 707, 315 Mich.App. 83 (Ct. App. 2016).

In the scenario above, the same worker recalled filing a petition for a parent whose child tested positive for different drugs, yet in the later example the worker has essentially described how class mitigates a CPS analysis. This is also evidenced by the number of families in the court opinions who in addition to drug use were also impoverished. The families whose rights were terminated due to drug use can be expressed as lacking human and financial capital. Below, I unpack the role of community capitals in the child removal space.

Class as a mitigating factor appears in other child removal scenarios. In two of the 44 cases with nearly identical facts in which the parents were accused of medical neglect, the family where poverty was not an issue possessed the financial capital to hire world renowned expert witnesses and doctors from around the world to testify regarding a rare genetic disease. The child of the couple who was not impoverished was ultimately returned to the parents, yet when similar facts arose for two impoverished parents, the court denied them expenses to hire experts to testify on their behalf and their parental rights were terminated. On appeal, the court reversed the lower court's decision to terminate the parent's rights finding the court deprived the parents of due process when the court denied the parents' request for an expert witness.

The impact of class reveals itself in the child removal process in various ways. One such way includes parents who lack what is considered suitable housing. In 14 out of 44 cases, parents' housing contributed to the removal of their children. While courts did not explicitly opine that poverty was the basis for removal, the court's strongly worded language shows disdain for the impoverished. Regarding the condition of a parent's home, one judge wrote,

“there were holes in the house in which she and the child were living. Petitioner also alleged that there was no working heat in the home, that the electrical wiring was makeshift, that the roofing structure had fire damage, that respondent had no

documentation to occupy the dwelling, and that respondent had been informed that the dwelling was not safe or suitable for the child but had nevertheless failed to move.”

Other perceived housing deficits by the court included parents’ housekeeping skills, insufficient furnishings, inferior foods, and homelessness.

When asked about, a time in which they were involved in a child removal proceeding, a victim services specialist recalled a time where “deplorable” home conditions led to the amputation of a child’s limbs. When asked whether the family was experiencing poverty, the specialist reported,

“Yeah, I would say [in the] majority of the cases there's a poverty issue, whether it's child abuse, sexual abuse. . . A lot of parents are homeless, so they are staying at somebody's house . . . and then you know the sexual abuse happens . . . I would say a lot of the times it's lack of housing and appropriate childcare.”

The families here lacked access to built, human, and financial capital.

Lastly, poverty manifested itself through multiple-father families. Though uncommon, when multiple-father families existed, multiple-father families were always associated with poverty in five out of five cases.

Relatedly, physical location impacted removals both within and across tri-county lines. When asked about how removals have changed over time a child advocacy program manager shared that in comparison to its sister county,

“(child removals) just d[on]n't seem to happen as much in Oakland County. I don't know if that's . . . tied to socioeconomic status . . . race . . . caseload. I don't [know]. . . what that exactly ties to, but . . . you just d[o]n't see it or hear about it as much.”

Differences also existed among social service counterparts and resources in neighboring counties, a victims’ services advocate noted,

I . . . have had coworkers that work in other counties, and when they start to work here [i.e. Wayne County], they're like so surprised by . . . sometimes the lack of resources or . . . you know . . . like oh, this is what I would have done like you know in . . . this county or . . . in Washtenaw County. Like we would just you know give them this and . . . we can send them to this place to get furniture so they'd have like more resources that would probably make . . . the family less likely to . . . be removed. I think at times too they come in and they have these expectations. They're not thinking about like the demographic differences when it comes to . . . the family. So yeah, you worked in this county where there's probably a little bit more.

This position however is counter to that of a centralized intake worker for CPS who reported,

“Typically, the resources are within . . . the family's . . . reach, so . . . most of the resources that we recommend are within Wayne County so and if . . . there's an issue with the family . . . not getting there or not being able to . . . have the funds or . . . means to . . . access certain resources, . . . we do provide additional . . . help and assistance to make sure the family . . . do[es] get the resources that they need whether that be . . . substance abuse resources whether that be . . . [] for kids . . . food, clothes, things of that nature whatever that family is needing we try to make sure that we do whatever we can to resources and then CPS . . . in the future.”

The first two social service workers' commentary reveals that families outside of Wayne County benefit from the goods and services associated with predominantly white areas including cultural, financial, and political capitals resulting in less child removals in those counties. Though the centralized intake worker paints a different picture than that of the manager and specialist regarding available resources in Wayne County, the intake worker's viewpoint is

consistent with the experiences of certain Wayne County families. The victims' services specialist explained,

“Sometimes I . . . work . . . in another [Wayne County] office. And I will say it's [a] totally different experience there . . . clients are not I wouldn't say like super wealthy, but you know . . . maybe like middle most middle class, you do have some lower class. A lot of them are . . . white and their law enforcement is more involved because they have smaller departments, right? So, they show up and they do their job, and it looks just like it would in like you know a TV show. And the family gets services . . . right away. They sometimes . . . are not getting CPS calls a lot either. So, it might be a case where law enforcement is on, and I might go work there for the day cause they're short staffed or something. And I'm like, if this case was in [Detroit] Wayne County, CPS would have been here. Like, why is there no CPS in this case? . . . [W]hen you try to tell people that, that's what's going on, I think like they're like, you're crazy. You're like, no, I'm seeing it with my own eyes. Like just because they, the CPS worker went to their house and it was nice doesn't mean like, there's not a threat to like you know other children . . . So, I think that that happens a lot where you know it's like, oh, this person is . . . [a] member in the community and you know their teenager just ran away from home with, like an 18-year-old boy. So, you know dad responded appropriately. It's like, so what? Even if mom responded appropriately in [Detroit] Wayne County, she would have a Child Protective Service case . . . So why isn't there one here?

The centralized intake worker clarified the confusion regarding resources in Wayne County. They noted that there was a difference among police officers completing child removals in Detroit Wayne and Livonia (located in Western Wayne County) and other areas of Wayne

County not including Detroit. Though the experience with each department is different the centralized intake worker reported having good experiences as a CPS worker prior to transferring over to centralized intake. While the centralized intake worker reported a good experience working in Wayne County as a CPS worker, they also noted that during removals officers tend to lose patience with emotional parents escalating an already high intensity situation.

While domestic violence can and does occur across all races, classes, and genders, domestic violence overwhelmingly affects women. The consequences which mothers face are exacerbated by race and/or class. This is specifically the case with failure to protect. While not substantial in numbers, six out of 44 cases, involved a failure to protect, of the six parents, five parents were women who were charged with failing to protect their children from the children's fathers or third parties' sexual and or physical abuse¹²¹. When asked about parents charged with failure to protect, when parents too are the victim of the abuse, the former CPS Investigator reported,

“They're a failure to protect by default because they're the parents, but they didn't actually fail to protect because they weren't aware . . . You can be perpetrated by failure to protect only if at any point in time there is evidence that supports you had knowledge of a certain situation in terms of you had knowledge that your child . . . had been sexually abused . . . and you didn't do anything to stop it. You've been in . . . a domestic violence relationship and you fail to protect your children . . . because this incident, they got involved to protect you and they got hurt. And you have stayed in this relationship for quite some time . . . now . . . it is a failure to protect situation because the children were put at risk because one of them was injured trying to help you . . . It gets tricky because . . . the

¹²¹ The exception to this is where both parents for the same case were charged for failing to protect the child from the other parent. In the sixth case the father was charged with failing to protect the child from the mother's alcohol consumption with the child was still in utero.

parent may be a victim . . . And instead of getting them out of that situation or saying, hey, mom, can you take the kids while I'm trying to work through this situation? They didn't do that. And it escalated this time, too, where the boyfriend or the husband is not just attacking mom now the kids are involved, and the kids are getting attacked . . . But . . . you don't automatically remove for that. If mom is saying, I want out of this situation, can you help me? You try to help them . . . If she's persisting on maintaining this unstable, non-safe relationship, these kids got to come out of there . . .”

Here, the former CPS worker is describing what the literature calls the leave ultimatum (Goodmark 2010). Coined by Douglas and Walsh (2010), the leave ultimatum is the demand from caseworkers that mothers either end their relationship with their abusive partners or lose their children. The leave ultimate victim shames the parent, as the former CPS worker does here, an action that also occurs within child removal. In cases where victim shaming occurred the parents were all mothers. In one opinion, the trial court cited the mother’s “decision to continue her relationships with [father 1] and [father 2] despite her claim that they abused her” as a factor in terminating her parental rights. This commentary by the judge represents the disparity in the treatment of low-income litigants in court and are degrading, disheartening, and stigmatize poor people as unworthy of equal justice (MacDowell 2015). It also ignores any benefits mother may perceive she receives from her children’s fathers in the form of a capital. Here, the jurist’s decision to lecture mother regarding her relationship with her children’s father shows how the court infantilize litigants and reinforce notion that low-income people appearing before the court are childish and in need of the state’s supervision (MacDowell 2015). I reviewed several cases both in Wayne and other Michigan counties where victims were subjected to disparaging remarks by the court and/or its stakeholders.

In a second case, among other reasons in which the court ultimately reversed, the mother's rights were terminated after her child witnessed her paramour verbally abuse her. Both mothers were cited as failing to provide proper care and custody to their children. In the latter case the court reversed the mother's termination finding her due process rights had been violated.

In the scenario above provided by the former CPS investigator, the investigator makes assumptions about the mother's access to particular tangible and intangible resources, specifically, human, social, and arguably financial capital. This however is only one position amongst social service workers. The positionality of one's social service worker has the potential to determine whether a parent is charged with a failure to protect. A victim services specialist presented a different perspective regarding failure to protect, they noted,

. . . I would say . . . a lot of times. . . failure to protect is [parents] really not knowing . . . the legal system or really not having a way to . . . have income without . . . the . . . primary breadwinner in the home. If he's . . . the perpetrator, if that's the one that's doing the abuse . . . they may . . . just be protective of them . . . [A]lot of times . . . They have a really long history of trauma . . . just trauma in their country . . . witnessing sexual abuse every single day . . . So, when they get here and you know somebody says or the child tells them, like, hey, this person is touching me, for them, it's just, like, not as bad as what they experienced in . . . their country. So, they may try to resolve it within the family . . . A lot of times there is not like a . . . PSA of what you do when your child discloses sexual abuse . . . So, I think there's this expectation that you know there's just like this pattern that everybody follows. But I talk, and talking to so many parents, they're like, well, I just moved out . . . you know I tr[ied] to go to the police station, but they were busy, and I've never seen that person again. And you know maybe there wasn't

like, penetration. So, they didn't feel like the need to take their child to the hospital . . . or whatever personal decisions they make. And then . . . it might be a failure to protect because they didn't . . . take one of those steps in the process.

In this scenario, the victim service worker confirms a lack of political capital (in instances of undocumented parents), human, social, cultural, and financial capital can contribute to a mother's inability to leave an abusive situation and seek help for her children. Similarly, a program manager at a children's advocacy center expressed the following when asked about a time a child was removed from the home without basis,

"the ones that come to mind most frequently are ones . . . where there was domestic violence in the home . . . There seems to be this tension between wanting to make sure that the children are safe . . . but also understanding whether or not the parent . . . really provides . . . is really like that they would be, I'm trying to think of the best way to put it, like that the children aren't safe with their caregiver. There's a lot of . . . specialists . . . I feel like even law enforcement, too . . . Like there's this idea like that if somebody is a victim of domestic violence, like, they're automatically not keeping their kids safe . . . in my background, having been a domestic violence counselor . . . oftentimes like that survivor, the safest thing is you know for the children to remain. I'll use she just for a victim, just for the purposes of this conversation . . . but they're safest. And so, I think . . . you know I hear just, like, a lot of judgment from specialists about like, well, this was a really bad one or this was happening you know while the kids were in the home . . . and I don't hear as much accountability being put on the perpetrator . . . and especially if the perpetrator is not a parent to those children . . . I feel like they're even harsher with that victim, you know? That maybe if the perpetrator is also a parent, they're like, okay, well,

we'll get that individual out of the picture and the children can stay with the other parent. But . . . I've definitely seen cases where they kind of just deem from the . . . jump . . . that mom isn't fit is . . . under failure to protect, you know? . . . and then if the child discloses that they did witness violence, you know then that just all but confirms what they were thinking."

In the preceding paragraph, the program manager provides an example of confirmation bias as discussed in the literature review. The program manager went on to say,

" . . . I think it's and maybe this is part of what is maybe scariest to me is it's kind of luck of the draw, you know what I mean? So, I, you can't have a one size fits all approach, I think. But then it's also for these families, it's like, well, does your specialist understand domestic violence?"

When asked for clarity on their statement, the program manager confirmed that it depends on the CPS specialist and their training whether a child is removed from the home when domestic violence is present in the home,

" . . . it feels like it's more based on . . . if they have a lot of knowledge about domestic violence, then it seems more like they're coming just like a more educated place about like a more nuanced approach to it. But for people who don't, I mean, it's almost like . . . a layperson, you know, every like victim blaming sentiment that you can hear in the media, you wouldn't expect to also hear those things from people who should be more educated on those issues."

The same interviewee reported that they also found judges' behaviors during child removal proceedings as concerning, they noted, "you would definitely hear judges say you know things that were . . . victim blaming. Or I mean . . . even make an experience

like retraumatizing.”

The issue of victim blaming domestic violence survivors is exemplified by class and/or race,

“ . . . [T]hen, of course . . . race and class also totally play into that, too, right? . . .

[T]hey’re going to treat a middle class or upper middle-class victim of domestic violence that . . . can be very different than how they’re going to treat a lower SES person . . . And then you know a lot of times since that correlates to race . . . I see a lot more . . . African American families, too, where the mother is being judged really harshly . . . about . . .

what was going on in her relationship as it relates to being able to take care of her kids.”

Other gender issues that occurred included incarceration, parentage, and parental fitness. In 5 out of 7 cases where a parent was incarcerated, the father was the incarcerated parent. Similarly, when parental terminations involved failure to protect, while mothers were almost always the parent charged with failing to protect the child, fathers or male familial figures were charged with criminal sexual conduct against the child. The one exception to this involved a mother who committed sexual acts in front of her child. Fathers, unlike mothers, were required to prove parental fitness at the time of birth or the time of the incident which brought the children into care even if the issue which brought the children into care was unrelated to the father. When asked about how the removal process has changed over time a victims’ services specialist discussed how fathers are considered in the removal process,

. . . a lot of times I think they forget about dads you know? . . . That are not maybe not around or not like living with . . . Like I’ve had cases where I’ve had dads present and like oh, no, I don’t need to talk to them, or the dads will come here and not even know what the allegations are. Like they don’t even know that somebody reported you know

their daughter's getting sexually abused . . . like nobody contacted them. So, it would sometimes it takes me and say like, no, you have to tell this person what's going on . . .

So, I think they don't consider all of the caregivers at times, too.

Excluding fathers from reunification services by failing to establish paternity for alleged fathers is a practice I have personally experienced CPS do on a case in which I appeared as counsel.

In *In Re Mays*, the children were removed from the mother's care and custody after the children were found at home alone late into the night. The court applied the one parent doctrine, a law that since has been found unconstitutional to hold the father accountable for the mother's behavior when the father was not involved in the abuse. The court terminated the father's parental rights without determining whether he was fit and without assumption of fitness given to mothers.

In *re AXW* was the exception. Relatedly, in *In Re T* and *In Re LMB*, the children's mother placed the children up for adoption prior to the father establishing paternity. Both fathers at the time of adoption attempted to establish paternity to their children and were made to prove their fitness, a task not required of mothers at the time of birth. In *In Re T*, after establishing a home with the mother and child, the mother placed the child up for adoption. The court determined the father had taken appropriate steps to establish his paternity and denied the department's request to terminate the father's parental rights to make the child available for adoption.

In *In Re LMB* after receiving an initial favorable outcome determining the father had acted appropriately in establishing his paternity, on appeal the Michigan Supreme Court found the father did not properly establish his paternity and allowed the child's adoption to proceed.

Similarly, in *In Re Keifer*, the father in this case was initially denied the right to participate in the proceedings so that he may potentially take care and custody of the child as he had not perfected

his paternity. Upon learning about the termination proceeding the father immediately began to participate yet he was denied the right to counsel. On appeal, the court found at a minimum the father was entitled to counsel before the court could move forward with terminating his parental rights. In *Family Independence Agency v Gilliam (In re Gilliam)*, the court terminated the father's parental rights after a fire broke out at the mother's home and the children were found left alone. Here, the children were not in the father's care at the time of the incident, yet the court required him to prove his fitness before taking care, custody, and control of his children.

In the upcoming chapters, I will address gendered parentage and adoption policies/laws that negatively impact fathers. The fathers in the scenarios described above lacked social and cultural capital. I will expand upon each of these conclusions in the discussion section.

A lack of human capital in the form of mental health also emerged as a factor in child removal. In 12 out of 44 cases, mental health illnesses contributed to child removal spanning across at least 11 mental health conditions. Out of 12 cases, only mothers lost their parental rights due to mental health challenges. Among interviewees, when asked about removals that did not, but should have occurred, a social service supervisor reported, failure to attend to the minor children's mental health as a contributing factor for when removal did not but should have occurred. Conversely, when asked about a time they had participated in a child removal, a victim service specialist reported mental health issues as a factor for families when a home is found in deplorable conditions and that they do refer their client for mental health services.

Approximately half the time mental health and its consequences were the sole basis for child removal. In at least half of the cases involving mental health, mental health illnesses were framed negatively by the courts in its opinions and labeled neglect.

Relatedly, parents with disabilities were also found to have their rights terminated. Framed as a failure to provide proper care and custody, the court ignored and failed to accommodate parents with disabilities in the four cases in which disabilities were present. Specifically, in *In re Hicks/Brown*, the mother suffered from a cognitive disability in addition to a mental health illness. The trial court failed to provide her with accommodations guaranteed by the Americans with Disabilities Act (ADA). On appeal, the court found the department failed in its statutory duties denying mother of her due process rights.

Similarly, in *Family Independence Agency v Weaver (In Re KMP)*, when both parents appeared to suffer from alcoholism, a condition protected by the ADA, the court and the department failed to acknowledge the parents' alcoholism as a disability in need of accommodations. In *In re Brown/Alford/Eubanks*, the court also framed the mother's alcohol abuse, as a problem, but not a disability. Lastly, In *In Re Rippy* the Mother had alcohol problems and was not provided with accommodations. Parents whose rights were terminated struggled to complete the services implemented by the court. Parents with disabilities did not come up in interviews with social service workers. Parents with disabilities lack human capital.

Parents in juvenile court not only had to comply with services ordered for them but benefit from services as well. This presented a challenge for some parents. In four cases, parents were found non-compliant with their service plan and thus their parental rights were permanently terminated. A victim service specialist discussed the challenges of parents completing services the court will likely order and the department will ultimately require for parents to have their children returned to them,

“ . . . I might offer them . . . services for themselves, services for their children . . . But I think that it's really hard for them to even accept these services because there's such a

lack of their basic concrete needs. So, it's hard for me to tell a mom who cannot . . . put food on the table or . . . has five kids and doesn't have transportation, and like can you bring your child here twice a week, or . . . do you have like a private space in your house? . . . So sometimes those needs are a little bit more immediate, and . . . they wouldn't even probably be able to be receptive to . . . mental health services until those needs are met.

In *Family Independence Agency v Pantaleon*, the mother did well with the parent agency plan and during the removal proceedings the child was returned to her care and custody, still the court permanently terminated the mother's rights because she had not fully complied with her parent agency plan. In *In Re A.X.W.*, the non-offending mother was made to prove her fitness to maintain her parental rights. The mother completed all aspects of her parent agency plan except for parenting time, the mother lived out of state. The court terminated the mother's parental rights. On appeal, the court found the mother's constitutional rights had been violated and she was deprived of due process. In *In Re Ingram*, after initially failing to comply with the service plan the parents in the case began substantially complying with the parent agency plan near the close of the case. Though substantial progress had been made in overcoming their drug addiction, the parents had not finished the parenting plan due to their late start and the court held them to be non-compliant. In *Family Independence Agency v Weaver (In Re KMP)*, though the mother made progress in her parenting agency plan, other limitations out of the mother's control caused her to be unable to complete the parent agency plan in its entirety. The mother was found non-compliant.

Even if parents do participate in services, unrealistic expectations implemented by the court, or the department may prevent the parent from having their children returned to them. A children's advocacy center program manager said the following regarding removal processes,

“Sometimes it feels like people are moving very quickly without much intention of, like, what are we really trying to do here . . . and what is really best for the family? . . . I think especially . . . looking in the communities where (child removal) it's happening most you know . . . the African American community, The . . . Latinx community, lower income communities, I mean, they have relationships, you know long standing, damaged relationships with child welfare professionals and law enforcement . . . I think it makes it hard for them to . . . trust, to access, like anything that could be a helpful service . . . if your kids have been taken from you before and . . . you had to jump through a thousand hoops to get them back, you're not looking to those same entities to help you. If you really need help, you know you're not looking to admit to somebody that you're struggling . . . or that you and your kids need support the next time around.”

This was the case with two families who were found to have failed to benefit from services.

In *In Re Timon* the court concluded, “if a parent fails to participate in and benefit from a treatment plan, we will conclude that the parent will not be able to provide a child proper care and custody.” It is unclear whether participating in a parenting plan and child rearing success correlate. In *In Re Brown/Young*, the court noted, “I think the parents may be trying as hard as they're able to care for these children. But, it's clearly not sufficient”, framing the parents efforts as “poor parenting.”

Some parents were found non-compliant and failed to benefit from services. This was the case for two families. In *In re Budd*, although the mother made some progress, the court found the mother failed to comply with services after she was unable to appear for drug testing. The court concluded that mother failed to benefit from the services in part due to the testing and due to the company the mother kept. Reasoning benefiting from services is the only way the court could

measure the parent's parenting abilities though no clear correlation exists between the two.

Similarly, in *In Re Frey*, the parents were described as having been *nearly compliant* (emphasis added), approximately 90 percent according to the court, with their parent agency plan, however the parents missed multiple drug tests. The parents advised a lack of transportation prevented them from being able to fully comply with the parent agency plan and that the resources provided by the court were an inaccessible resource. While it is unclear whether the parents were still using drugs, as discussed above by former CPS investigator, "there are parents that have . . . substance abuse issues that still parent well."

Complying with and benefiting from parenting agency plans can be particularly difficult for parents whose parent agency plan takes a one size fits all approach wasting time and money parents often do not have. This was the case for four families in which the parent agency plan did not coincide with the issues which brought the families to the attention of the department in the first place. Albeit for different reasons, the four sets of parents who experienced an inappropriate parenting plan parental terminations were reversed and/or remanded on appeal.

Parents whose rights were terminated due to challenges with the parent agency plan lacked financial, built, and human capital. Scenarios did exist in which the law was applied evenly between factually similar situated families. In *Family Independence Agency v Gilliam* and *In re AXW*, the law was evenly applied when the children came under the care of the Department for the actions of the custodial parent and the rights to the non-custodial parent were terminated for reasons other than those in which the child(ren) were originally brought into care. In these scenarios, the court remanded back to the trial court for improperly admitting inadmissible evidence. Both sets of parents were separated. The fathers in both these scenarios were involved in drugs, with one being the custodial and one being the non-custodial parent.

Due process violations occurred in 13/44 cases, approximately 29 percent of the time. Common due process violations included failure to provide proper notice (failing to serve (incarcerated) parents/termination without a trial), failure to provide inadequate counsel (improper dismissal of attorneys), and policy/statutory/case law violations (flipping the burden of proof, applying the one parent doctrine, failed to supply reasonable accommodations, improperly admitted evidence, insufficient evidence, fairness principles). Due process violations were more likely to occur in cases where the parental rights of both parents and just the mother's rights were at issue. The community capital deficits for due process violations included financial and human capital. A social service supervisor shared an instance where she felt protocol was not followed, she reported,

. . . I've witnessed proceedings . . . move forward without the . . . caregiver or parent in question . . . being allowed the opportunity to . . . be present . . . these were situations where the caregiver was . . . had different circumstances and they had the documentation and the proof to support that. So, like they were you know receiving medical care in the hospital. They were in . . . a substance abuse treatment program, . . . and you know these things just kept being scheduled without regard to their . . . schedule and the things that they had to do. And so while the parent was attempting to . . . proceed with the court mandated requirements, . . . it conflicted with the scheduling of the proceedings, and the referee you know decided to move forward anyway.

Attorney Responses

Table 1 illustrates the social demographic characteristics of the participating attorneys. The attorney survey consisted of 35 items designed to gather firsthand knowledge from attorneys on their experiences in and attitudes toward the Family Juvenile Court and welfare system. The

survey was created using Qualtrics, comprised of open-ended and Likert scaled questions. The survey was divided into four substantive sections: work history, experiences with the Wayne County Juvenile Family Court and welfare system, views about Michigan’s child removal statute and proceedings, and demographics/background information.

Table 4.1 Surveyed Attorney Demographics

<u>Characteristics</u>	<u>Number</u>	<u>Percentage</u>
<i>Gender</i>		
Male	5	45%
Female	5	45%
Unknown	1	10%
<i>Age</i>		
24-35	2	18%
36-45	1	9.5%
46-55	2	18%
56-65	3	27%
66 or older	2	18%
Unknown	1	9.5%
<i>Race/Ethnicity</i>		
White	6	54%
Black/African American	3	27%
Other	1	9.5%
Unknown	1	9.5%

Three cases were dropped due to non-completion of the survey and could not be factored into the study. These cases did not provide sufficient recordable information on the substantive survey questions or alternatively at some point participants began the survey but did not complete them. 14 attorneys began and submitted the survey, however only 11 attorneys fully completed the survey. The racial/ethnicity percentages above correspond with the demographics of the State Bar of Michigan with the majority of attorneys identifying as males followed by Black/African American, other, and unknown. (See Table 4.1).¹²²

¹²² https://www.michbar.org/demographics#section_demographics_info

Table 4.2 HOW OFTEN, if at all, have you observed the following behaviors DURING CHILD REMOVAL PROCEEDINGS?

	Never	Rarely	Sometimes	Regularly	Frequently	Total		% Never	% Rarely	% Sometimes	% Regularly	% Frequently
Parent experiencing microaggressions	1	3	4	2	1	11		9%	27%	36%	18%	9%
Parent receiving due process	0	0	2	5	3	10		0%	0%	20%	50%	30%
Social services worker following protocol	0	0	4	6	1	11		0%	0%	36%	55%	9%
Social services worker impeding family reunification	1	2	5	2	0	10		10%	20%	50%	20%	0%
Social services worker displaying implicit bias	1	0	7	2	0	10		10%	0%	70%	20%	0%
Prosecutor following the law	0	0	3	4	3	10		0%	0%	30%	40%	30%
Prosecutor impeding family reunification	2	2	4	1	0	9		22%	22%	44%	11%	0%
Prosecutor displaying implicit bias	0	2	6	1	0	9		0%	22%	67%	11%	0%
Judge following the law	0	0	4	3	3	10		0%	0%	40%	30%	30%
Judge impeding family reunification	2	1	5	2	0	10		20%	10%	50%	20%	0%
Judge displaying implicit bias	3	1	5	1	0	10		30%	10%	50%	10%	0%

Table 4.2 illustrates attorneys' experiences with social service workers, judges, and prosecutors during child removal proceedings. The most frequently occurring response showed attorneys *sometimes* observed social service workers displaying implicit bias followed by attorneys *sometimes* observed prosecutors displaying implicit bias during child removal proceedings as the second most frequently occurring response. Most attorneys reported that social service workers regularly follow protocol. The same attorneys also reported that social service workers

sometimes display implicit bias. Similarly, most attorneys reported that prosecutors display implicit bias.

Surveyed attorneys reported higher percentages of observed behaviors in the sometimes, regularly, and frequently categories, with observed behaviors of 50 percent or more occurring exclusively in the sometimes and regularly observed categories.

Table 4.3 Think about all of the CHILD REMOVAL PROCEEDINGS in which you have personally participated. In how many of the proceedings have you directly observed each of the following?

	0 Times	1 Time	2 Times	3 Times	4 Times	5 or more Times	Total	0	1	2	3	4	5 or more
the statute was not followed	3	0	5	1	0	1	10	30%	0%	50%	10%	0%	10%
the child SHOULD HAVE been removed from the home but was NOT removed	6	2	1	0	0	1	10	60%	20%	10%	0%	0%	10%
the child SHOULD NOT HAVE been removed from the home but was removed	3	0	3	1	1	2	10	30%	0%	30%	10%	10%	20%
observed conduct that concerned me	2	0	3	1	0	4	10	20%	0%	30%	10%	0%	40%

Table 4.3 illustrates attorneys' experiences with the application of the child removal statute. The most frequently occurring response showed attorneys never experienced instances where the child should have been removed from the home but was not removed from the home. This was followed by the second most frequently occurring response from attorneys who reported observing instances in which the child removal statute was not followed at least two or more times.

Table 4.4 HOW OFTEN, if at all, have you observed concerning behaviors by the following parties during CHILD REMOVAL PROCEEDINGS?

	Never	Rarely	Sometimes	Regularly	Frequently	Total	% Never	% Rarely	% Sometimes	% Regularly	% Frequently
Social Service Workers	1	1	6	2	1	11	9%	9%	55%	18%	9%
Prosecutors	1	4	4	1	0	10	10%	40%	40%	10%	0%
Judges	2	1	6	0	1	10	20%	10%	60%	0%	10%

Table 4.4 illustrates attorneys' experiences witnessing concerning behaviors from social service workers, prosecutors, and judges. The most frequently occurring response indicated that judges, social service workers, and prosecutors sometimes display behaviors that concerned attorneys during child removal proceedings¹²³. No attorney reported prosecutors frequently, nor did any attorney report that judges regularly displayed concerning behaviors during child removal proceedings.

¹²³ Attorneys reported prosecutors both rarely and sometimes displayed concerning behaviors 40 percent of the time.

Table 4.5 HOW MUCH, if at all, do you think that the following parental characteristics affect how they are treated during child removal proceedings?

	not at all	a little bit	a modest amount	a good deal	very much	Total	% not at all	% a little bit	% a modest amount	% a good deal	% very much
a parents' race or ethnicity	1	1	3	4	2	11	9%	9%	27%	36%	18%
a parents' income or wealth	0	1	2	4	3	10	0%	10%	20%	40%	30%
a parents' gender	1	1	4	2	2	10	10%	10%	40%	20%	20%
a parents' sexual orientation	2	0	5	1	1	9	22%	0%	56%	11%	11%
a parents' occupation	1	0	4	3	2	10	10%	0%	40%	30%	20%
a parents' religious affiliation	4	1	3	0	1	9	44%	11%	33%	0%	11%

Table 4.5 illustrates attorneys' thoughts on the impact parents' characteristic affect their treatment during child removal proceedings. Most attorneys reported parents' characteristics affected their treatment during child removal proceedings either a modest amount or a good deal of the time, with the exception of a parents' religious affiliation. The most frequently occurring response indicated a parents' sexual orientation as a characteristic that affected how parents were treated in child removal proceedings a modest amount. The second most frequently occurring response indicated attorneys thought parents' religious affiliation did not affect parents' treatment during child removal proceedings at all. Attorneys did not report any one characteristic affecting parenting in child removal proceedings a little bit or very much among the most frequently occurring responses.

Table 4.6 To what extent do you DISAGREE or AGREE with each of the following statements?

	strongly disagree	moderately disagree	slightly disagree	Neither disagree nor agree	slightly agree	moderately agree	strongly agree	Total		% strongly disagree	% moderately disagree	% slightly disagree	% Neither disagree nor agree	% slightly agree	% moderately agree	% strongly agree
There is a substantial difference in how child removal proceedings are adjudicated from county to county.	0	0	0	4	0	1	4	9		0%	0%	0%	44%	0%	11%	44%
Children are ALWAYS removed pursuant to the child removal statute	1	1	0	2	2	2	1	9		11%	11%	0%	22%	22%	22%	11%
Children are OFTEN removed for reasons other than those included in the statute	2	1	0	2	2	2	0	9		22%	11%	0%	22%	22%	22%	0%
Child removal statute violations occur FREQUENTLY	2	1	0	3	1	3	0	10		20%	10%	0%	30%	10%	30%	0%

Table 4.6 illustrates attorneys' attitudes toward the application of child removal proceedings. The most frequently occurring response indicates both that attorneys neither agreed nor disagree that there is a substantial difference in how child removal proceedings are adjudicated from county to

county, and they strongly agree that there is a substantial difference in how child removal proceedings are adjudicated from county to county with the same frequency. The second most occurring response indicated that attorneys neither disagree nor agree that child removal statute violations occur frequently, and attorneys moderately agree that child removal statute violations occur frequently with the same frequency. Lastly, attorneys reported with the same frequency that attorneys 1) neither disagree nor agree, slightly agree, and moderately agree that children are always removed pursuant to the child removal statute and children are often removed from reasons other than those included in the statute.

THE COURT FINDS . . . (ACROSS MICHIGAN)

RESULTS/FINDINGS PART II

“To suggest that an indigent parent should have asked for counsel if the assistance of counsel is desired "is to disregard the realities of the culture of poverty.”-- *Reist v Bay Circuit Judge*, 396

Mich. 326 (1976).

In *Reist v Bay Circuit Judge*, 396 Mich. 326 (1976), the majority opined, “poor people are being prevented from seeking review of termination orders because of their poverty.” In 1974, “there were 777 orders permanently terminating parental rights entered by probate courts in Michigan.” This included 356 in Wayne, 22 in Oakland, 25 in Macomb, 25 in Genesee, 35 in Kent, 19 in Muskegon, and 58 in Saginaw County. During this time, no appeals were taken in Wayne, Genesee, Kent, Muskegon, or Oakland County. In 2020, the most recent statistics available, Wayne County alone heard a total of 919 cases at the trial court level. This includes 23 cases in which the petition for removal was dismissed or withdrawn. Macomb nor Oakland County published abuse and neglect statistics for the year 2020. While appeal numbers were not readily

available for all counties, a search for appeals occurring in Wayne County using the Nexis Uni database showed that in 2020 there were at least 91 appeals in Wayne County.

In 2020, the number of child removal orders in Wayne County alone surpassed the number of total removals for Michigan in its entirety less than 50 years ago. The number of termination orders on both the trial and appellate court level have significantly increased over the last 50 years. While *Reist* focuses on how an inability to afford counsel for appellate work debilitates the impoverished from fully utilizing the justice system to their benefit, the inability to retain counsel due to finances, a class identifier, is one of many ways certain families are disadvantaged throughout the parental termination process. Prior to the *Reist* decision, parents were not guaranteed the right to counsel at the appellate stage. Michigan Court Rules and other laws guaranteed the right to counsel at the trial stage prior to *Reist*. Despite these protections, some parents still lack access to counsel on both the trial and appellate court level. This chapter discusses factors that contributed to termination of parental rights. The chapter is solely meant to identify what I determined as a basis for child removal in all other counties. In subsequent chapters, I discuss how the identified capitals work independently and interdependently to influence parental termination cases.

The 83 Michigan counties were grouped into 6 regions across the State of Michigan: West, Northern Lower Peninsula, Flint Tri Cities, Upper Peninsula, Southeast, and Central Mid-Michigan. Counties were grouped together based on their closeness in geographic proximity. Generally, Michigan Courts are bound by state-wide rules, laws, and regulations. Though local court rules may differ from county to county, or even courthouse to courthouse, these rules are not substantive in nature. For example, in Wayne County Third Circuit Court, presumably for

ease and organizational purposes, various color-coded praecipe¹²⁴ forms help to identify what issue is before the court: yellow representing a domestic default judgment; blue represents a contested domestic relations action; and white represents all other civil actions.

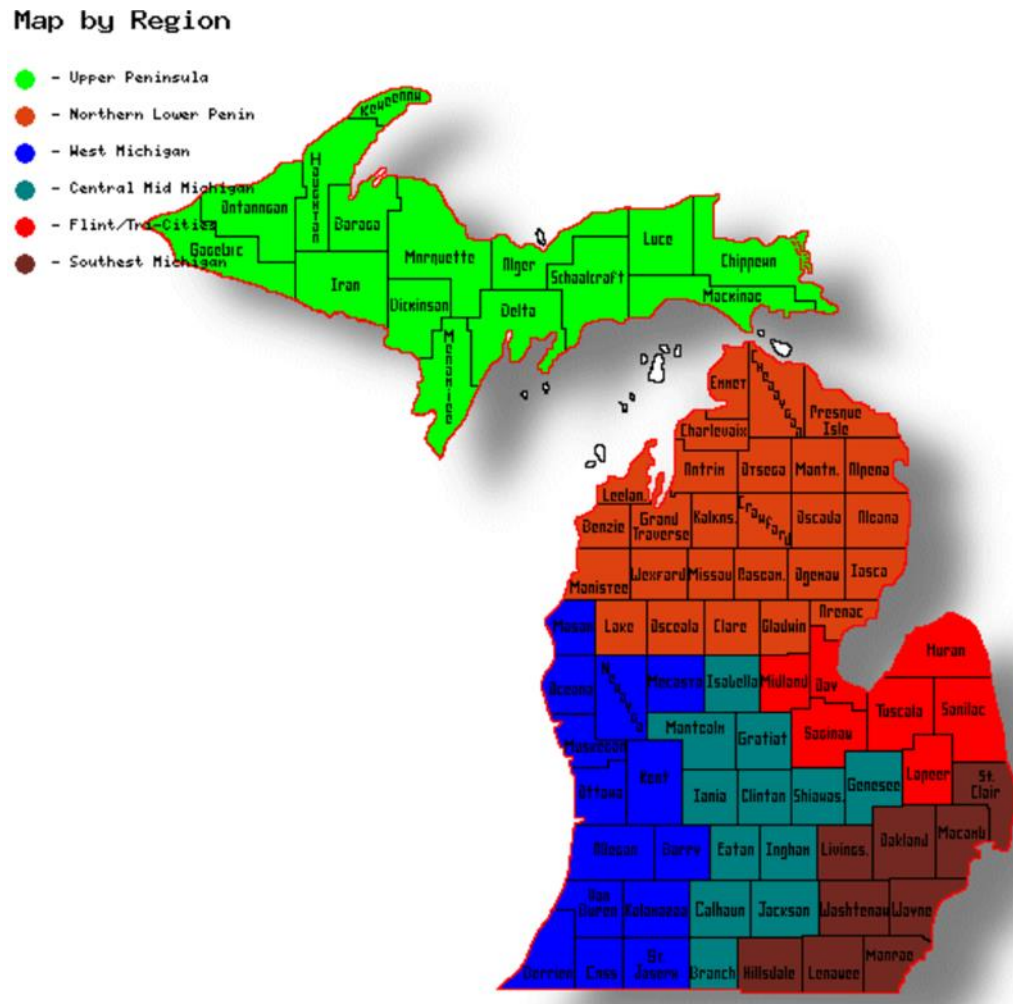


Figure 1 Michigan Counties Colored by Geographical Region

¹²⁴ “One of various kinds of writs that prompt some sort of action. The word comes from the Latin word *praecipio*, meaning “I command (or order) [this]”, and it often appears in the term “writ of praecipe.”

In the US, *praecipies* are writs that have one of the following functions:

1. Commanding a defendant to perform an act or to demonstrate why he or she should not perform that act.
2. Requesting that the court perform some action, such as entering a judgment or setting the date for a trial, and that the clerk of the court issue a writ therefor.”

These local court rules reflect the culture of a particular courthouse or county. Failing to follow a local court rule, you risk delay/rejection of your filings or offending the court staff, both of which can be detrimental to your case. Local court rules are a part of a larger justice culture that includes the court in its entirety as well as outsiders such as police officers, prosecutors/Attorney Guardian Ad Litem (AGAL), and social service workers. I hypothesize that, across regions, various factors including class mitigate the removal, termination, or return of children to their families.

Families' identities permit them access to various capitals. Families that possess certain identities and have access to capitals refrain from ever entering the system or are in the system for a short period of time, while families who lack access to certain identities and capital saturate the system. Which identities and access mitigate child removal and return also vary from region to region depending on the culture of the region. Regionally, I discuss child removal and return in: West, Northern Lower Peninsula, Flint Tri-Cities, Upper Peninsula, Central Mid, and Southeast with additional cross-regional analyses where applicable., I was unable to observe live hearings in all regions thus the results of some regions are based solely on the appeals in the area. I discuss both trial court level and appeal court level cases so as to present as comprehensive coverage as possible. Specifically, while court orders and opinions are an effective way to examine court behaviors, observing cases in real time gives the observer the opportunity to view the court's and litigant's body language, hear the court's and litigant's tone, and pick up on other important details that the court does not capture in its written orders and opinions.

West (W)

At the Circuit Court level for the West (W) Region, I observed 15 cases across three counties and four jurists. In this region, in nine of 15 abuse and neglect cases sampled, both parents' rights were at risk of termination as well as the rights of five mothers and one father. This is the sole

county to have a same sex couple in which both parents were respondents. While parents' sexuality played a role in child removal in other regions, I saw no indication that the parents' sexual orientation in this region contributed to the parents' involvement with the Department of Health and Human Services (henceforth the department) and the court. In seven of 15 cases, substance abuse by the parents contributed to or served as a basis for child removal, three of 15 cases involved an incarcerated parent, six of 15 cases directly related to the parents' poverty, two of 15 cases involved removal due to domestic violence, and two of 15 cases involved the mental health of the parent. Failure to protect appeared the least as a basis for child removal in abuse and neglect cases in this region, occurring a total of one time.

Case observation was via the virtual courtroom during the height of the 2020-21 novel COVID-19 pandemic. Abuse and neglect cases present slightly different in virtual court than they did non-virtually prior to courthouses closing creating unique circumstances for everyone involved. The COVID-19 pandemic (henceforth COVID) challenged parents in this region specifically as it pertained to parents meeting their parenting time obligations as outlined in their parent treatment plans. Parents were expected to engage and maintain the attention of children ranging in age from a few months to preteen. Challenges to engaging in parenting time (as well as court) included Wi-Fi access, equipment access, and equipment functionality. One parent, lacking the ability to connect to Wi-Fi to use the Zoom platform and the ability to dial into the platform to participate in court, relied on minutes she purchased for her mobile phone for its basic dial-out functionality. This mother was unable to participate in court for no more than 10 minutes and the hearing went on without her, the hearing lasted several more minutes after mother's departure. Upon entering the virtual courtroom, mother advised she had been waiting on hold for her case to be called for an appreciable amount of time. While it is unclear exactly how long that was,

mother's comments are a common occurrence. Any minutes the mother had on her phone available to actually participate in the court's proceedings were consumed by the time she spent waiting for her case to be called. Another family missed their court hearing in its entirety due to connectivity issues.

When parents do not attend court or fail to comply with their parent agency treatment plan, failure to appear in court and failure to complete the plan become a basis for continued child removal. One social service worker participating in the court proceedings responsible for providing the parent with services acknowledged how difficult navigating court must be for parents who lack access to the appropriate equipment and technology to access court while others expressed that they felt parents were taking advantage of the situation and using COVID as an excuse to not be held accountable for their lack of progress in their cases. In one rural county in particular, parents as well as attorneys expressed their struggles with connectivity throughout removal proceedings. Some attorneys struggled with device reliability; however, attorneys were given much more grace for their shortcomings in the courtroom than respondent parents. The mother briefly discussed above represents much more than connectivity issues, she and parents similarly situated, present a due process issue due to parents' inability to meaningfully participate in the proceedings due to courthouse closure.

Other due process issues arose including the department's failure to provide parents with the required documentation notifying them of the allegations against them so they may meaningfully participate. Similarly, the department failed to provide timely and appropriate services to a family, delaying the family's reunification. Despite its failure to follow statutory and internal rules regarding reunification services, the department continued to maintain a position that more was needed from a family that had met the reunification threshold. Despite showing no evidence

of a mental illness and having completed the given tasks the department objected to the court terminating jurisdiction of the family because to no fault of the family's own, the department failed to secure a psychological evaluation for the parent. In addition, the department found the parent's criminal history to be a barrier to reunification even after the parent completed the tasks requested of them. The attorney for the parent argued the department wished to throw smoke and mirrors at the court to distract the court from the department's failure to abide by its responsibility to comply with statutory obligations and continue to keep the family apart because the parents did not present as status quo parents.

Rules and regulations exist to protect families, including respondent parents, but these rules and regulations do not always equate to protections. One case intended to provide protections to parents is *Stanley v Illinois*, 405 US 645, a landmark United States Supreme Court case which held that parental unfitness must be established based on individualized proof. In Michigan, *Stanley*, provided the foundation for overturning the one parent doctrine in *In Re Sanders*, which held that due process requires a specific adjudication of a parent's unfitness before the state can infringe the constitutionally protected parent-child relationship. While this protection exists, in this county at least two children came into care for reasons unrelated to the second parent, still the parent unrelated to the events which brought the child into care were made respondents to the abuse and neglect case. Failure to adjudicate parents based on their individual fitness is a violation of *In re Sanders*. Overturning the one parent doctrine presumes that parents are fit unless shown otherwise and the burden of proof is on the State, not the parent, to establish unfitness. Despite this protection, there was no mention of a *In re Sanders* violation throughout either proceeding. On one occasion, the Department of Health and Human Services attempted to thwart an incarcerated parent's parenting time in violation of the Department's own policy, the

worker assigned to the family did not have knowledge regarding the department's policy regarding parenting time and incarcerated parents. Due to this error, the incarcerated parent had not visited with her child since the onset of her incarceration. Parents' marital status was not consistently available and thus not discussed here.

In defiance of the Michigan Supreme Court, one county in this region failed to hold court proceedings online much like Wayne County citing no applicable exception. In 4/15 cases, I was unable to identify the issues which brought the children into care/the issue which brought the children into care was not one in which I recorded, for example sexual abuse.

Families in the west region lack human, political, financial, social, and built capital.

In reviewing appellate decisions, I reviewed 47 written opinions in the West Region across 11 counties. Appeals in this region ranged from as few as one to as many as 18 appeals totaling 47 appeals per county in the region. In this region, in 28 of 47 parental rights termination cases sampled, both parents' rights were terminated as well as the rights of seven mothers and 12 fathers. In 13 of 47 cases, factors based in poverty contributed to the termination of parental rights. Next to poverty, incarceration of the parent appeared as the second most occurring basis for child removal, affecting 10 of 47 families. Failure to protect appeared the least as a basis for termination of parental rights, occurring in 2 of 47 cases. Lastly, in 8 of 47 cases, families were deprived of due process, this number increases by 4 when you include deprivation of counsel in the final number. Racial identifiers were not available in reviewing appellate decisions.

Termination of parental rights were initiated in six cases, due to stepparent adoptions. Two mothers' rights were terminated, and two fathers' rights were terminated due to stepparent adoptions. In addition to the stepparent adoption, one father's rights were terminated after the mother placed the child for adoption unbeknownst to the father. Of all the parental termination

cases due to adoptions, the latter was the only case on appeal after the court declined to terminate the father's parental rights.

Apart from Wayne County, the West Region was the only region where the prosecutor continued to try a set of parents for abuse and neglect at the objection of the Department of Health and Human Services (DHHS). The prosecutor's ability to continue to try a case without the support of the DHHS came after a Court of Appeal's case. In comparison to Wayne County, social service agents and children's representatives interviewed spoke on instances where children were slated to be returned home however the prosecution or jurist in the matter would not endorse the return of the children. While the trial court may not substitute its opinion for that of the department or the prosecutor, children typically come to the attention of the court at the request of the department. This region also exhibited a phenomenon I have entitled "forced divorces." When a minor child is removed from the home due to the actions of the offending parent, the non-offending parent is met with the difficult decision of divorcing their spouse or maintaining custody of their children. While the court and the department are concerned with the safety of the children, the safety of children can be achieved by the least restrictive means. Forced divorces in exchange for returning children to the home raises issues surrounding the constitutional right to marry.

While less common now, during the 1980's, parental rights were terminated due to failure to provide emotional support or emotional neglect. As time moved forward, emotional neglect began to disappear from court opinions as a basis for termination of parental rights. What constitutes emotional abuse or neglect was not always clear nor consistent. Other practices in the 1980's that also appear to have phased in and out over time include anticipatory neglect. Memorialized via case law in the 1970's, the anticipatory neglect doctrine purports how a parent

treats one child is indicative of how that parent may treat other children.

In 1986, in *In re Youmans*, the court terminated the parental rights to some but not all the children, reversing the termination of parental rights to the older children and affirming the termination of parental rights to the youngest child. The children came into care after allegations of the family's home conditions came to the attention of the department. The allegations included complaints of soiled pots and pans, strong urine smells, littered floors, unclean clothes, and access to medications. The Court reversed the termination of parental rights to all the children except for the youngest child citing medical neglect of the youngest child. Despite the conditions of the home the court found no basis to terminate the parent's parental rights due to a lack of cleanliness in the home. Similarly, in *In Re LaFrance* (2014), the decision to terminate the parents' parental rights to the older children were reversed, while the parental rights of the youngest minor child were terminated. The court charged the father with medical neglect of the youngest child after the child accidentally became severely dehydrated¹²⁵.

In comparison to other regions, in the Northern Lower Peninsula (*NLP*), we see consistency regarding termination of parental rights only to the child directly at risk. Also, *In re Ferranti*, a case located in the *NLP* region, while the rights of the parents were ultimately reinstated due to a due process violation made by the court, the court initially terminated the rights only to the youngest child due to medical neglect of the youngest minor child exacerbated by the lack of cleanliness in the home. The court maintained the parental rights of the family's older children. Thus, this appears to be a consistent occurrence across regions.

Also present in this region was victim blaming, a phenomenon first discussed in the literature by

¹²⁵ The due process rights of the mother in this case were violated as the mother was not in the home at the time of the incident and was not adjudicated, yet her rights were still terminated. By the time the court heard the matter, the one parent doctrine had been abolished for a few years, mother did not raise the one parent doctrine defense on appeal. The one parent doctrine is further explored within.

Adorno (1947) and popularized by Ryan (1971), in which a powerless party is held responsible for the actions of those with authority. In the matter of the *Dept. HHS v McCoy (In re Jones)* the court noted, “[mother] continued to involve herself in situations of domestic violence.” In *Dept. HHS v McCoy (In re Jones)*, the primary basis for terminating mother’s parental rights were due to mother’s prior child removals. However, in this matter, the children came into care due to the mother experiencing domestic violence. Absent the domestic violence, the children would not have come to the attention of the department and mother’s prior terminations would not have been used against her.

Prior terminations without due process as a basis for child removal has since been determined unconstitutional, but this was only after countless families had been impacted by the law. A similar set of facts were used as the basis for child removal in *In re Dearmon_Harverson-Dearmon*, where the mother, like the mother in *Dept. HHS v McCoy (In re Jones)*, was victim blamed for her status as a domestic violence survivor. Absent mother’s prior termination, mother’s status as a domestic violence survivor would not have been used as a basis for child removal. Likewise in *In re Plump*, the children in this matter were initially removed after mother smoked marijuana in the presence of the children and provided the same to an unrelated minor. At the time of removal, mother was engaged in an ongoing domestic violence relationship that also served as the basis for removing mother’s older children from her care, custody, and control. Because mother had previously received services for domestic violence regarding her older children the court held, “mother’s own behavior were directly harming the children or exposing them to harm.”

While the court opined that it was “impermissible for a parent’s parental rights to be terminated solely because . . . she was a victim of domestic violence,” the court faulted the mother for

possessing factors associated with being a victim in a domestic violence relationship including drug use, unemployment, and unstable housing. The opinion also lacked any expert testimony regarding the challenges of escaping a domestic violence relationship such as the one Respondent was in. The opinion itself spent little time discussing how mother smoking marijuana in front of her children was a harm to her children any different than that of a cigarette. Research has found that secondhand marijuana smoke and secondhand tobacco smoke are equally dangerous to children's well-being¹²⁶. The exception being marijuana is regarded as in illicit drug while tobacco is not. Despite research indicating that tobacco and marijuana smoke are equally damaging to children, the state of Michigan does not remove children from their parents care due to the parents' tobacco smoking. Marijuana is now legal in Michigan and marijuana usage can no longer serve as a basis for lessening one's parenting time under the Marijuana Act absent unreasonable danger. Though these cases happened prior to changes in law, these families represent casualties of the child welfare system and how a change in the environmental or stakeholder, political or otherwise impacts what is acceptable and unacceptable.

Other themes in this region included terminating the rights of parents who intentionally availed themselves to the system for assistance. Consistently, whenever a parent sought temporary placement of their children in foster care for issues related to financial stability, these parents were met with harsh adversity and blamed for their circumstances. At least two mothers in this region were impacted by this practice. For example, in *In re Moore*, despite having engaged in no real acts of abuse or neglect, after having her "welfare checks" stolen from her mailbox, the mother in *In re Moore* was given an one size fits all parenting time plan in an attempt to address

¹²⁶ <https://health.usnews.com/wellness/articles/2017-01-06/secondhand-marijuana-smoke-and-your-children>

issues out of her control. A victim of her circumstances, the mother in this case lacked a comprehensive secondary education and as a result treated as if she had poor money management skills, instead of a victim of a common practice to make the *LA Times*¹²⁷ and over time changed the way state benefit recipients receive their assistance.

The one parent doctrine, a now unconstitutional practice in Michigan that authorized terminating the parental rights of a non-offending parent based on the actions or inactions of an offending parent emerged in court opinions in the West Region even after the practice had been deemed unconstitutional¹²⁸. Prior to finding the practice unconstitutional, courts terminated the rights of parents using the one parent doctrine without even acknowledging the one parent doctrine was being used against present and nurturing, however poor parents¹²⁹. Post-*In re Sanders*, a Southeast region case, which found the one parent doctrine to be unconstitutional, courts in the West region continued to use the one parent doctrine as a basis for terminating parental rights. One example of this is *In re Kanjia*. In *In re Kanjia*, the child came under the jurisdiction of the court due to the actions of the mother. While the court acknowledged that the father's due process rights were violated, the court still carved out a reason as to why the new law did not apply to the father and terminated the father's parental rights to the child. Prior to *In re Sanders*, several cases including *Family Independence Agency v Bowman (In re CR)* questioned the constitutionality of the one parent doctrine. The court found various reasons to justify the system's failure to hold each parent liable independently for their actions or inactions against the child.

Like the parents in the *Mike Hard Lemonade Case*, the father in *In Re Sanders* was represented

¹²⁷ Mitchell, John L. "County May Stop Sending Welfare Checks by Mail." Los Angeles Times, vol. v114, 3 Mar. 1995.

¹²⁸ *In re LaFrances*

¹²⁹ *Dept of Human Servs v Williams (In re Williams)*

by the sophisticated counsel at the University of Michigan. In preparation for oral arguments, amicus briefs were submitted to the court in support of abolishing the one parent doctrine. One such brief came from Honigman, LLC, a private law firm with University of Michigan educated attorneys detailing the disproportionality effect the one parent doctrine had on the impoverished¹³⁰. *In re Sanders* explicitly overturned *Family Independence Agency v Bowman (In re CR)*. The fathers in *In re CR* and *In re Sanders* had strikingly similar facts including drug use by both parents and no contact with the children's mother. However, the parents in *In re CR* lacked stable housing, an indicator of poverty, and lacked the "sophisticated counsel" from the University of Michigan.

Incarcerated parents also faced challenges and unconstitutional practices regarding parental termination. In Michigan two cases, *In re Pops* and *In re Mason*, Central Mid and Southeast Cases respectively, set the precedent for parental termination regarding incarcerated parents. In *In re Mason*, the court determined incarcerated parents had a right to reasonable reunification efforts, incarceration in and of itself did not warrant termination of parental rights, and an incarcerated parent may achieve proper care and placement through a relative during their incarceration. *In re Pops* emphasized these statutory rights. Even with these cases, when courts have been presented with nearly identical facts, courts have still terminated parental rights. One such example is presented in *In re Whisman*, the father in *Whisman* according to the dissent, "looks a lot like the father in *In re Mason* . . . a case where we held that the trial court had clearly erred by terminating the respondent's parental rights."

In affirming the termination of parental rights in *Whisman*, the majority indicated "we are not persuaded that the questions presented should be reviewed by this Court." Questions it had

¹³⁰ <https://www.honigman.com/pressrelease-693>

seemingly grappled with in *Mason*. Similar to the father in *Pops*, the father in *Whisman* sought to direct the care, custody, and control of his child to that of a family member while he was incarcerated. Still, the trial court over emphasized father's incarceration and terminated the father's rights. Prior to the rulings in *Mason* and *Pops*, application of the rules regarding incarcerated parents were wholly inconsistent across the West Region but the state as well. For example, while *In re Mason* established the reasonable reunification effort requirements on behalf of the Department of Health and Human Services as well as identified the right of parents to participate in termination proceedings, these statutory rules do not apply to parents incarcerated outside the State of Michigan¹³¹.

Despite *In re Mason*, case workers have violated the statutory rights of parents, and courts have endorsed this by affirming the trial court's decision to terminate parents' parental rights on equally questionable grounds. An example of this is *In re Smith* where the department failed to provide reunification services during the father's incarceration, a violation of both *Mason* and *Pops*. Even though the department failed in its statutory duty, the court terminated father's rights based on his rights being previously terminated to another child. Terminating a parent's rights to a child because of prior termination without due process was later found to be unconstitutional¹³². In the opinion the court wrote, "unfortunately for [father], [the department] misunderstood the extent of its obligation to an incarcerated father and determined that it was under no duty to facilitate reunification."

In the West region incarcerated parents' rights were terminated due to incarceration and to prior termination, both reasons Michigan State Courts have found in and of themselves to be unconstitutional bases for terminating parental rights. The *In re Mason* ruling had been in effect

¹³¹ (Family Independence Agency v Davis (In re BAD))

¹³² *In re Gach*, 889 N.W.2d 707, 315 Mich. App. 83 (Ct. App. 2016).

for over a year at the time of the *In re Smith* ruling, thus there was ample time for courts and other stakeholders to familiarize themselves with the rules. The father in *In re Pops* was represented by law professors at the University of Michigan during the initial appeal in which his parental rights were restored. Because father and the minor child struggled after father's parental rights were reinstated, father's rights were again terminated. The Court cited father's marijuana use as the primary basis for terminating father's rights and the strained relationship between he and the minor child, a relationship the court and the department helped to fracture. As of 2008 marijuana became legal in Michigan, the Marijuana Act prohibits the denial of custody of or visitation with a minor child for conduct permitted by the act, absent unreasonable danger to the child.

In re Rood set the precedent for notice for incarcerated parents, a lack of notice is a due process violation. In *In re Rood*, the court and the department failed to give proper notice to father regarding the abuse and neglect proceeding by carelessly sending notices to an address it knew was not valid. At the time of the child's placement, father was incarcerated due to a domestic violence conviction against the mother. Father was later released during the proceedings. The worker cited termination of parental rights was appropriate because father "ha[d] a criminal record and . . . didn't make diligent enough attempts to contact [the department]." On appeal, the court found that the father's rights had been violated.

Prior to *In re Rood*, the court faced similar facts in *In re Mayfield* in which the court sent undeliverable notices to father who was incarcerated. Similar to the father in *Rood*, the court sent notices to a non-existent address and the notices were returned as undeliverable. Still, the court noted the notices were sent to the last known address even though the circumstances alluded to not necessary an incorrect but nonexistent address. Father was incarcerated and expressed an

interest in directing the care and control of the minor child who had come into care due to the actions of the mother. The court nonetheless terminated the father's rights.

In addition to general failure to notice parents who were in state care, the department violated the rights of incarcerated parents by failing to secure their presence at hearings even in cases where the parent was under the jurisdiction of the state in a correctional facility¹³³. Incarcerated parents have also been denied due process by the court's failure to appoint counsel to the indigent¹³⁴. In the matter of *In re Fernandez*, the father's rights were terminated to make the child available for a stepparent adoption based on father's failure to pay child support. The court's comments during oral argument showed a disregard for the parent's rights. In response to processing the orders of termination and adoption the court stated, "well let's do something that isn't quite kosher. What [sic] don't you check, we request that the adoption be completed immediately." The court disregarded procedural steps and intended to make the order of adoption effective immediately. Simultaneously terminating father's rights and implementing an order of adoption limited father's ability to challenge the unlawful termination, had father been appointed an attorney, the father's advocate would have advocated for the court to process the orders properly. In addition to allegations of abuse and neglect on behalf of the state, parents can bring parental termination actions on behalf of their children. In this region, parents brought parental termination hearing for stepparent adoptions. In *Eickoff v Eickoff (In se SMNE)*, mother's rights were terminated for failing to pay child support. In this matter, mother's attempt to maintain a relationship with the child were thwarted by father after the parties' divorce and at the time of divorce mother was unemployed. The parties divorce judgment did not provide for a child support order and was reserved for a later time. In this matter father violated the parenting time

¹³³ *In re Render*, 377 NW 2d 421 (1985)

¹³⁴ *In re Fernandez*, 399 NW 2d 459 (1986)

order by failing to allow mother to exercise parenting time while mother failed to update the court with her employment information. Despite both parents' failure to follow the divorce judgment, only mother was held accountable for her actions resulting in the termination of her parental rights. The court's decision in this region were quite different from that of the court in the Southeast region with similar facts, where the stepparent adoption was reversed due to the bad behaviors of both parents¹³⁵. The other stepparent adoption in this region involved an incarcerated father.

In re Fernandez, the mother intentionally concealed the whereabouts of the father to finalize her child's adoption, terminating the parental rights of her ex-husband. The mother later acknowledged that she possessed knowledge regarding father's whereabouts and father was subsequently given notice regarding the termination proceedings. In other regions parental terminations for stepparent adoptions were upheld for the most part, however as indicated above strikingly similar facts have resulted in different outcomes depending on the region. Lastly, in *Robards v Barlow (In re Barlow)*, youth, region, and marital status determined the parental termination of one father after the child's mother placed the child up for adoption one day after the child's birth. The father was faulted for failing to bond with the child while the child was in foster care and for failing to provide support to the child while in foster care. Unlike mothers, fathers are required to prove their fitness before they are awarded custody of their children when the child is placed for adoption. This arguably is a violation of *Stanley*.

The families in this region lacked a combination of cultural, human, political, and financial capital. These observations will be discussed in detail in the upcoming discussion chapters of the dissertation.

¹³⁵ *In re Kaiser*, 222 Mich App 619

Northern Lower Peninsula (NLP)

One case in this region was a post termination hearing, thus there was little discussion on the factors that brought the children into care. As a result, I deleted the case from my observational data. As discussed in an earlier chapter, during the early days of the pandemic, courts were required to move court proceedings to an online platform. For various reasons including training court personnel on the required technology or in some cases such as Wayne County, a narrow reading of the administrative order requiring courts to make their courtrooms public, some courthouses simply did not adhere to the streaming requirement and thus abuse and neglect proceedings for some regions did not make hearings available for public viewing.

In reviewing appellate decisions, I reviewed 17 written opinions in the Northern Lower Peninsula (NLP) region across 12 counties. Appeals in this region ranged from one to three appeals totaling 17 appeals in the region. In this region, in eight of 17 parental rights termination cases sampled, both parents' rights were terminated as well as the rights of four mothers and five fathers. In four of 17 families, the mental health of the parent served as the basis for the child's removal from the home. Following mental health, poverty-based circumstances were the most common basis for termination of parental rights, affecting three of 17 families. Incarceration, failure to protect, and substance abuse were least likely to appear as a basis for child removal, occurring two times each in 17 cases. Lastly, in 5 of 17 cases, families experienced a due process violation, this number rises to 6 when deprivation of counsel is included in the total number. Racial identifiers were not available in reviewing appellate decisions. Terminations due to stepparent adoptions did not occur in this region.

As in the *West Region*, parents in the NLP region faced microaggressions/bias and/or discrimination from the court based on their returning citizen or domestic violence survivor

status. *In re Farris*, a multiple father family, the court removed the youngest children from mother and the youngest children's father's care after failing to provide necessary medical care to the youngest children. The older children were later removed after witnessing a domestic dispute between mother and the youngest children's father. However, throughout the case, the children's medical needs became secondary to mother's mental health issues, unstable housing (a poverty indicator), and drug use, all common factors associated with domestic violence victims (Najavits, Lisa M., et al. 2004; Baker, Charlene K., et al. 2010; Ferrari, Giulia, et al. 2014) as well as the youngest children's father's drug use.

However, in terminating the mother's parental rights, the court placed emphasis on mother's status as a domestic violence survivor. Instead of requiring the batterer to take responsibility for his actions, the mother was faulted for putting herself in situations where her children could witness her being abused. The abusive father was praised for his positive parenting skills and consistent discipline despite his violent tendencies. Although mother and the youngest children's father resided together at the time of removal, the court and the department framed the couple's unstable housing issue as that of the mother alone. No positive attributes were attributed to mother, and the court's language regarding acts of domestic violence committed against the mother focused on the inactions of mother versus the actions of father. There was no mention of father's behavior other than to mention he had a history of violence with the mother and there is no record that father was made to take any corrective action for his violent behavior against mother. Similarly situated to the youngest children's father, the oldest child's father also had a criminal record and history of domestic violence against the children's mother.

However, despite having nothing to do with the reason in which the children came into care the oldest child's father's rights were terminated despite his successful participation in drug free

probation and completing domestic violence classes unlike the father of the youngest children. The court and the department continued to villainize the oldest child's father for his past transgressions in which he completed his sentence and meaningfully participated in society and the rearing of his child. For unknown reasons, the youngest children's father did not receive the same treatment from the court as that of the oldest child's father despite the fathers' similar criminal records, drug use, and bouts of domestic violence against the children's mother. In this case, the mother and oldest child's father experienced some form of victim blaming, mother in the traditional sense and the father in a less apparent way. Regarding the oldest child's father, the one parent doctrine provided the basis for terminating the father's rights despite having nothing to do with the reason in which the child was removed from the home. The father in this matter joins a long list of parents whose rights were terminated under a now unconstitutional law that held both parents accountable for the actions of the other parent.

Aside from victim blaming, there were little to no common trends or themes within this region among cases. However, the cases in this region have a wide range of unique circumstances as well as cases with commonalities and dissimilarities with cases in other regions. For example, one father fell victim to a law that gives biological fathers little to no remedy to establish paternity to their child if a mother's husband claims the child as his own. When these scenarios occur, biological fathers' parental rights are terminated de facto by the child's mother. This de facto termination is mostly consistent across other regions. Other incidents of termination by parties other than the department of health and human services involve situations where other family members requested termination of a parents' parental rights. The two examples in this region include *In re Nelson* and *Ernst v Flynn (In re Ernst)*, in these cases, the parents directed the care, custody, and control of their children to other family members during periods of

instability. Once the parents reestablished themselves and sought to regain physical possession of their children, parents were met with abuse and neglect suits. The contention of directing the care, custody and control of one's children without involvement from the state is one many parents face on multiple levels.

Similar to *In re Smith*, *In re Whisman*, *In re Pops*, and *In re Mason*, located respectively in the W, W, CM, and SE regions, the father in *In re DMK* was denied the right to participate in the termination proceedings from jail as well as direct the care, custody, and control of his child. Likewise, the parents in *Dep't of Human Servs. v Hansen (In re Hansen)*, while incarcerated directed the care, custody, and control of their child to a relative and still had their rights terminated solely due to their incarceration. While the court in *In re Whisman* and *Smith* found this to be improper and a violation of due process, the fathers' rights remained terminated on other grounds and the court found the due process violation to be harmless error. In this region, the termination of father's rights in *In re DMK* as well as the parental rights of the parents in *In re Hansen* were reversed/vacated after the court on the appellate level found the parent's due process rights had been violated based on the *In re Mason* ruling.

Consistently, across the state when parents sought help from the Department for periods of instability, instead of receiving assistance, parents' parental rights were terminated. See *In re Moore* above in the W region. In one of the few incidents in which a parent's immigration status played a role in termination of parental rights, a father's immigration status prevented the father from maintaining lawful residencies and employment. Although the father had the desire to work, his immigration status complicated his ability to care for the child despite doing so for most of the child's life without incident. When father sought assistance from the Department of Health and Human Services his rights were terminated thereafter. Similarly, in *In re Kellogg*, the

mother requested the assistance of the Department of Health and Human Services while she recovered from her mental health illness and substance addiction in rehab. The court instead terminated her parental rights. Having committed no real acts of abuse or neglect the court reversed the termination of mother's parental rights. The stance purported by the court that parents must maintain status quo parenting leaves no room for nontraditional families and assumes traditional families do not encounter struggles that land families in abuse and neglect court.

This is made even more evident by examples such as *Jewell v Grand Traverse County Probate Judge*, where a minor child was removed from the home after the mother suffered a mental health episode after the death of her husband. This section is filled with accounts of parents' who are involved with the abuse and neglect system due to circumstances beyond their control including domestic violence, mental illness, housing insecurity, and immigration status. The *NLP* was the only region in which poverty was not the most frequently occurring basis for child removal. Families in this region lacked cultural and social capital. Racial identifiers were not available. In the upcoming two chapters, I will extensively examine the community capitals at play for these families

Flint Tri Cities (FTC)

I did not observe cases on the Circuit Court Level in the Flint Tri City region as cases were not available for observation. In reviewing appellate decisions, I reviewed 16 written opinions in the *Flint Tri Cities* (FTC) region across four counties. Appeals in this region ranged from as few as two to as many as eight appeals per county totaling 16 appeals in the region. In this region, in eight of 16 parental rights termination cases sampled, both parents' rights were terminated as well as the rights of four mothers and four fathers. In eight of 16 cases, factors based in poverty

contributed to the termination of parental rights. Next to poverty, the mental health of the parent appeared as the second most occurring basis for child removal, affecting five of 16 families. Less than model parent and failure to protect appeared the least as a basis for termination of parental rights appearing one time each of the sampled cases. Lastly, in three of 16 cases families were deprived of due process. In the FTC region, four fathers' rights were terminated to accommodate an adoption at the objection of the father. In three of the four adoptions in this region three were due to a contested stepparent adoption and one was at the request of the mother to place the child for adoption. Of the four adoptions, all four terminations that occurred to accommodate an adoption occurred in a single county.

Of the sampled cases in the FTC region, the one parent doctrine appeared one time in *Luna v Regnier (In re Regnier)*. In *In re Regnier*, after the children were found living with father in what the mother described as deplorable living conditions, the children were removed from the father's care and placed in foster care. While mother's parental rights were not initially terminated, the children were not placed with mother upon their removal from father's home and mother's parenting time was suspended based on the allegations in father's home to which mother was not involved. The department later filed a case against mother for failing to participate in the abuse and neglect proceedings, which ultimately led to the termination of mother's parental rights. A blatant violation of mother's due process rights in lieu of the abolition of the one parent doctrine, on appeal the court reversed the termination of mother's parental rights.

While the court does not explicitly mention it, in *In re Richardson* the court applied the now defunct one parent doctrine to father upon taking jurisdiction over the children after they were removed from mother's care. Not only were father's due process rights violated as a result of the

one parent doctrine, but in line with both the W and the NLP regions, father's rights in the FTC region were terminated based on his incarceration, denying him the ability to direct the care, custody, and control of his children, a precedent established and emphasized by *In re Mason/In re Pops* respectively.

Also, in *In re Richardson*, the children were removed from the mother due to mother's drug use. The petition cited father's incarceration as the sole basis for its request to terminate father's parental rights. At the appellate level, the court reversed the termination of father's parental rights. While mother did not face the due process and statutory rights denied to father, mother did face challenges on her own resulting in the restoration of her parental rights. The mother in *In re Richardson* faced microaggressions and bias from the court due to what it called her "illegal drug lifestyle," substituting the opinion of medical professionals for that of its own, the court instructed the mother to stop using medical marijuana against her doctor's recommendation. The judge's personal opinion regarding marijuana contrasted both with mother's doctor but also the Marijuana Act in place that prohibits the denial of custody of or visitation with a minor child for conduct permitted by the act, absent unreasonable danger to the child. Despite mother's debilitating seizures the court framed mother's unemployment as a choice and shamed her for receiving social security disability benefits.

Applying for social security benefits is a long and tedious process which involves an in-depth review of one's medical history and requires the approval of the State of Michigan and often the assistance of an attorney. On appeal, the court found that "drug use alone, in the absence of any connection to abuse or neglect, cannot justify termination solely through operation of the doctrine of anticipatory neglect." The court's demeanor toward mother displays disdain for both the poor and families who otherwise do not fit within the status quo of parenting, an attitude

consistently shown across several regions.

In other instances of bias and microaggression, victim shaming continued within this region as it relates to domestic violence survivors. In *In re Miller*, after reporting her live in partner's abuse, mother's rights were terminated for failing to stop father's abuse of the children when she herself was a victim of father's abuse. After detailing the horrific acts against the children at the hands of father and glossing over the domestic violence between the parents that occurred in front of the children at the hands of father, the court noted, "[mother] actively contributed to the problem by returning to the home with the children after being in an assault crisis center and after having professional advice not to allow [father] access to the children. Clearly, the petition was sufficient as to [mother]." This framing by the court shows little regard to a mother who testified to lacking access to a phone and transportation, key items needed for escaping a batterer. Despite having access to a shelter, the mother in this matter ultimately returned home with the children. While mother's behavior might seemingly appear concerning, mother's behavior aligns with that of a domestic violence victim (Yamawaki, Niwako, et al. 2012). While father was also held accountable for his actions, removing father from the home would have achieved the state's goal of keeping the children safe in lieu of terminating mother's rights as well. The opinion made no mention of expert testimony regarding domestic violence survivors and their behaviors. The mother's rights in this case remained terminated.

Similar to the children in *In re Richardson*, the children in *In re Wangler/Paschke* were brought to the attention of the court after reports that mother was using heroin and was involved in a domestic violence incident with her boyfriend. The opinion failed to detail how mother's drug use impacted the children or hold mother's live in partner responsible for their abusive behavior. Regarding mother, the court noted, "[mother] . . . could not provide a safe environment for the

minor children.” The children in this matter were placed with their respective fathers and grandparents throughout the termination proceedings thus terminating the mother’s rights was not the only way in which the court could achieve its goal to maintain the children’s safety. *In re Richardson*, decided approximately four years after *In re Wangler/Paschke* established that, “[d]rug use alone, in the absence of any connection to abuse or neglect cannot justify termination solely through operation of the doctrine of anticipatory neglect. The parents *In re Richardson* were alleged to be using marijuana as well as cocaine and their parental rights were restored, the parents in *In re Wangler/Paschke* were alleged to be using heroin and their rights remained terminated. Prior to the ruling in *In re Wangler/Paschke*, in *In re Plump* discussed above in the W Region, the court also established that it is “impermissible for a parent’s parental rights to be terminated solely because . . . she was a victim of domestic violence.” The mother’s parental rights in *In re Wangler/Paschke* were restored after the Michigan Supreme Court found mother’s due process rights were violated on other grounds. Regionally, despite being bound by the same laws regarding drugs and domestic violence in parental termination proceedings, courts lacked consistency in its rulings. All three mothers discussed under this section as well as the father in *In re Richardson* were impoverished and faced barriers as a result.

Much like the West region, fathers in FTC region experienced termination of parental rights due to contested (stepparent) adoptions at the objection of the father. Poverty and other gender unique circumstances played an unfortunate role in terminating the parental rights of fathers. Specifically, *In re Hill*, father’s rights were terminated for a stepparent adoption after father failed to pay for expenses related to the child’s birth, a DNA test, and all other related medical expenses incurred by the minor child. Father reported that he failed to financially support the child because he could not afford it having spent approximately half of the child’s life

incarcerated. Upon his release from prison, father reported his attempts to visit with the child were thwarted by the child's mother. The Court found that father failed to not only support the child but also failed to maintain a relationship with the child and as a result terminated his parental rights making the child available for a stepparent adoption. Similarly, in *In re O.E.S.*, over father's objections, father's parental rights were terminated at mother's request to place the child up for adoption almost immediately after the child's birth. After learning of mother's pregnancy, father questioned whether he was the child's biological father and as a result did not financially support the mother during her pregnancy. After the birth of the child, father was court ordered to complete genetic testing however father was unable to pay for the DNA test until approximately six months after he was ordered to do so.

As written, the law classifies fathers into two categories, 1) do-something and 2) do-nothing fathers. Whether a father financially provides for a child (including the period prior to the child's birth) and maintains a relationship with the child, influences whether a parent's rights will be terminated upon the adoption of the child. These rules are different for mothers. In this case, because father was unable to confirm that he was the child's biological father for several months after the child's birth, father was categorized as a do-nothing father for his failure to support mother through her pregnancy despite having no way of knowing whether or not he had fathered the child. In turn, the court terminated the father's parental rights freeing the child for adoption by an adoptive couple finding father had failed to both financially support as well as establish a relationship with the child.

The adoptive laws as written create gender bias as these rules would never apply to a mother. The father in this matter was made to prove that custody of his child, a child under the age of one, was in the child's best interest. Upon giving birth, mothers are not held to this same

standard. Non married fathers have repeatedly fought for the rights to their non marital biological children i.e., *Michael H. v. Gerald D.* and *Stanley v. Illinois*. In instances of adoptions, fathers are required to prove their fitness, even in situations where mother does not have a desire to parent the child and places the child up for adoption, the father does not have the option to care for the child without question; he must first prove his fitness to parent his child. Circumstances of poverty and deception are consistent among fathers whose parental rights are terminated due to an adoption and the opportunity to receive assistance from governmental funded programs such as Women, Infants, and Children, popularly known as W.I.C, to raise children and bodily autonomy afforded to woman are challenges that fathers are unable to overcome and are punished as a result.

In another case, *In the Matter of Kozak*, after a one-night stand mother became pregnant by a man other than her husband. The couple placed the child for adoption asserting the biological father's whereabouts were unknown. The biological father came forward and attempted to assert his parentage only to have his rights terminated at the trial court level and reversed at the appellate level due to the couple's deception. While the court determined that there was not enough evidence to terminate the father's parental rights based on the evidence, the court still terminated father's right finding a termination of father's rights was in the best interest of the child. Fathers' rights were consistently terminated in favor of laws that favor the mother or laws that are inherently biased due to gender. Similarly situated cases appear in forthcoming regions. Racial identifiers were not available. The observed lack of financial and cultural capital will be discussed thoroughly in the two upcoming discussion sections.

Upper Peninsula

I did not observe cases on the Circuit Court Level in the Upper Peninsula region as cases were

not available for observation. In reviewing appellate decisions, I reviewed four written opinions in the *Upper Peninsula* (UP) Region across three counties. The *UP* consists of 15 counties yet had the least number of appeals throughout the regions analyzed, with the most recent appeal occurring in 2016 among the sampled cases. Though only causational, this is an important observation because a 2010 report to Congress from the Administration for Children and Families stated that rural communities reported higher incidences for all categories of maltreatment except educational neglect than in urban counties¹³⁶. Poverty, low education levels, unemployment, and substance use and addiction are all factors identified as characteristics of rural communities¹³⁷ thus the lack of appeals raises concerns about families access. The aforementioned report went on to discuss other challenges in rural areas such as travel distances and lack of public transportation, access to mobile phones and internet service, and limited access to caseworkers with skills and ability¹³⁸. The inaccessibility of skilled caseworkers was due to a lack of cultural competency and number of available case workers in the area¹³⁹. This child welfare report is the only literature this researcher found that reserved space to highlight the role of social capital and community building in conjunction with a discussion on a lack of assets¹⁴⁰. In total, across three counties the *UP* Region had four appeals. Counties in this region had one or two appeals per county. In this region, both parents i.e., the mother and father's parental rights were both terminated. Three of four sets of parents were married to one another even if separated at the time of the termination and the last set of parents were never married.

¹³⁶ https://www.acf.hhs.gov/sites/default/files/documents/opre/nis4_report_congress_full_pdf_jan2010.pdf

¹³⁷ Child Welfare Information Gateway. (2018). *Rural child welfare practice*. Washington, DC: U.S. Department of Health and Human Services, Children's Bureau.

¹³⁸ Child Welfare Information Gateway. (2018). *Rural child welfare practice*. Washington, DC: U.S. Department of Health and Human Services, Children's Bureau.

¹³⁹ Child Welfare Information Gateway. (2018). *Rural child welfare practice*. Washington, DC: U.S. Department of Health and Human Services, Children's Bureau.

¹⁴⁰ Child Welfare Information Gateway. (2018). *Rural child welfare practice*. Washington, DC: U.S. Department of Health and Human Services, Children's Bureau.

There were no racial identifiers. The sole commonality among the parents in this region was poverty. Specifically in three of four cases, poverty contributed to child removal from the home. Aside from poverty, families in this region did not share similar bases for termination of parental rights.

Poverty was illustrated through a lack of food and inadequate housing. Other reasons for child removal and termination other than poverty included mental health, substance abuse, prior termination, failure to protect, and other reasons not coded. In comparison to other regions, the *UP* region was consistent in at least one regard, specifically, the *UP* region aligned with the *West* region in its practice of solely removing the child at issue from the home. For example, *In re Kantola*, the parents' parental rights to the parties female minor children were terminated after the children suffered physical, sexual, emotional, and verbal abuse. However, the family's male minor child was not subjected to the same type of treatment as his sisters and remained in the home with the parents. However, unlike in the *West* region, the father in *In re Kantola*, was alleged to have committed sexual abuse against the daughters and the mother denied the existence of the abuse, despite this, one child remained in the home and the prosecutor did not move to terminate the father's rights to all the children involved. Instead, father was sent to counseling, not prison, and the mother was not charged with a failure to protect for remaining married to the father. Thus, the phenomenon of forced divorce did not occur here as it did in other regions. This implies that mothers are not treated the same across the board regarding failure to protect and crimes are not charged the same throughout the region.

Although I cannot be sure, this, almost preferential treatment given by the court and other stakeholders implies a community capital that I am not privy to, such as race or a different set of values endorsed by the community as a whole. In this region, though father's alleged assault

against the children constitutes a crime, father was treated as if he needed treatment instead of incarceration. While unclear, the court and the department's response could be attributed to the region's culture. Of the families in the region, one family's due process rights were violated after the court failed to inform mother of her rights. The children initially came into care due to mother's drug use, incarceration, and unstable housing. In another case, *In re King*, the family came under the court's jurisdiction after the family missed a benefits appointment scheduled by the department. In comparison to other regions, the family in this case maintained household cleanliness standards similar to the families in the West region specifically *In re Youmans* and *In re Ferranti*. In the West region matters, the state of the home was not enough to terminate the parents' parental rights to all of the children, only the children who required special care due to medical conditions. In this region, however, the parents' parental rights to both children were terminated, including the child who did not have a medical need. Lastly, cases in the UP region showed how families could not reliably count on the court to consistently rule the same in matters with substantive similarities. Specifically, in *In re Schmeltzer*, the parents suffered from a mental health illness, however, one judge in particular changed his position on parents' culpability regarding abuse and neglect including parents with mental health illnesses. Previously, in *In re Youmans*, a West Region case, the same judge on the *In re Schmeltzer* now supported an opinion different from his previously rulings upsetting the court's predictability. Families in this region lacked financial and built capital. Given the literature, it is reasonable to expect that there would be more appeals in which parents' rights were terminated due to poverty, low education levels, unemployment, and substance use and addiction. While it is unclear why there are less appeals in this region despite its geographic location, I will discuss the capitals in depth in the next two chapters. Terminations due to stepparent adoptions did not occur in this

region.

Central Mid (CM)

At the Circuit Court level for the Central Mid (CM) Region, I observed 14 cases across one county and two jurists. In this region, in 10 of 14 abuse and neglect cases sampled, both parents' rights were at risk of termination as well as the rights of three mothers and one father. One county in this region specialized in Baby and Drug Court, a specialized docket within the judicial system providing infant mental health services for infants and toddlers under the jurisdiction of the family court because of substantiated abuse and/or neglect. Baby Court is designed to increase reunification as an outcome and to reduce the time to permanency decisions. This is done in conjunction with abuse and neglect court and increases the parents' accountability. This increased accountability increases the chances that a child will return to the home.

Michigan implemented baby courts after various jurists across the state saw a need for a specialized docket¹⁴¹. The baby court model used in Michigan is mirrored after the country's original baby court pioneered in Florida courts¹⁴². Baby courts are only available in a limited number of counties due to funding¹⁴³. Overall, the program is designed to reduce multiple placements in foster care, reduce the length of time to permanency decisions, and accomplish stable reunifications for families in abuse and neglect court¹⁴⁴. Similarly, Sobriety/Drug Court, also known as Family Dependency Treatment Courts (FTC), "use a multidisciplinary, collaborative approach to serve families with substance use disorders and who were involved with the child welfare system."¹⁴⁵ "When FTC's intervene effectively, children spend less time in

¹⁴¹ <https://mi-aimh.org/babycourtsinmichigan/>

¹⁴² <https://mi-aimh.org/babycourtsinmichigan/>

¹⁴³ <https://mi-aimh.org/babycourtsinmichigan/>

¹⁴⁴ <https://mi-aimh.org/babycourtsinmichigan/>

¹⁴⁵ <https://ncsacw.acf.hhs.gov/topics/family-treatment-courts.aspx>

out of home placement and find permanency more quickly.”

In comparison to families who receive conventional treatments, families in abuse and neglect court who simultaneously participate in family treatment courts enter treatment more quickly, stay longer, complete treatment at higher rates, receive more court review hearings, and reunite with their children more often¹⁴⁶. The drug treatment court emphasizes the importance of human capital. “The underlying belief in this approach is that drug and or alcohol addicted offenders are likely to reoffend unless they are equipped with the skills to address their substance use disorder¹⁴⁷.”

Funding for these specialty courts come from grants in which the recipient county is responsible for applying and subsequently renewing the grant to maintain funding for their specialty courts¹⁴⁸. Of the families in this region, four families were enrolled in Baby Court and another family was recommended for Drug Court. In six of 14 cases, substance abuse by the parent contributed to or served as a basis for the child removal and in five of 14 cases involved the mental health of the parent. This region was the only region in which parents despite the issue in which their children were under the court’s jurisdiction was allowed to continue working on themselves while their children remained in their care in lieu of foster care or relative placement. Originating in Florida courts in 1989, drug courts across the country have grown¹⁴⁹. The thought behind drug court is that litigants need treatment, not institutionalized confinement¹⁵⁰. These programs are voluntary¹⁵¹. Michigan founded its first drug court in 1993¹⁵².

¹⁴⁶ <https://ncsacw.acf.hhs.gov/topics/family-treatment-courts.aspx>

¹⁴⁷ <https://www.courts.michigan.gov/4ad888/siteassets/publications/manuals/psc/dc-planningimplementation.pdf>

¹⁴⁸ <https://www.courts.michigan.gov/4ad888/siteassets/publications/manuals/psc/dc-planningimplementation.pdf>

¹⁴⁹ https://www.mlive.com/politics/2012/05/michigan_drug_courts_a_win-win.html

¹⁵⁰ https://www.mlive.com/politics/2012/05/michigan_drug_courts_a_win-win.html

¹⁵¹ https://www.mlive.com/politics/2012/05/michigan_drug_courts_a_win-win.html

¹⁵² <https://www.detroitnews.com/story/news/special-reports/2019/10/11/michigan-treatment-courts-rehabilitation-not-retribution/1717843001/>

In reviewing appellate decisions, I reviewed 45 written opinions in the *CM* region across 12 counties. Appeals in this region ranged from as few as one to as many as 10 appeals per county totaling 45 appeals in the region. In this region, in 24 of 45 parental rights termination cases sampled, both parents' rights were terminated as well as the rights of 12 mothers and nine fathers. In 17 of 45 cases, factors based in poverty contributed to the termination of parental rights. Next to poverty, the mental health of the parent appeared as the second most occurring basis for child removal, affecting 14 of 45 families. The parent's age appeared the least as a basis for termination of parental rights occurring once. The parent's age factored into the court's decision in one other case in the *W* region regarding an adoption. Lastly, in 9 of 45 cases families were deprived of due process rights, this number rises by 4 when deprivation of counsel is included in the total number. Racial identifiers were not available. No terminations occurred in this region due to stepparent adoptions. Families in this region lacked financial, social, human, and political capital.

In the *CM* region, while poverty presented itself in various ways impacting parents' treatment in the court, such as a lack of resources, another way poverty presented itself was through incarceration. In *In re Adrianson*, upon her incarceration, a divorced mother contacted the department informing them she needed assistance as she did not have money to purchase food or fuel oil to heat her home. Mother was arrested after writing bad checks. Mother's children were removed from her home, and she was directed to do "several things, including cooperating with a therapist and finding a suitable apartment." Of the many tasks required of mother she was unable to complete two.

Consequently, instead of receiving the assistance she sought to improve the lives of her children, her rights were permanently terminated. Included in the department's request to take the children

into care was an allegation that mother was a lesbian, and her children may have witnessed a fight between mother and her lover. Other allegations in the petition included “inadequate housing conditions,” specifically, old clothes and pieces of broken furniture on the front porch and the home’s size. Lastly, mother was accused of medical neglect for an incident in which one of the minor children in the year prior to mother’s contact with the department suffered from scabies and mother failed to fill the child’s prescription for 16 days. Considering the number of financial barriers mother presented, it is concerning to think that the court failed to consider whether mother failed to fill the child’s prescription due to a lack of transportation or finances. While incarcerated, mother attempted to direct the care, custody, and control of her children, however at the time this case was before the court, the right to direct the care, custody, and control of one’s children through placement had yet to materialize into a recognizable right, despite the fact that the general right to direct the care, custody, and control of one’s children has been a recognized constitutional right since the 1920’s.

In *In re Curry*, decided in the same county, at approximately the same time as *In re Adrianson*, the court continued in its quest to terminate the parental rights of incarcerated parents. In *In re Curry*, after their respective incarcerations, the parents in *In re Curry* placed their children under the care, custody, and control of their parents. Upon learning of the parents’ incarceration for drugs and a life imprisonment, the court moved to remove the children from their grandparents and place the children with their aunt and uncle. The parents’ parental rights were terminated. On appeal, the Court of Appeals reversed the parents’ parental termination and established that incarceration was insufficient for terminating one’s parental rights and interfering with a parent’s constitutional right to care, custody, and control of their children.

In *In re McBride*, the children were brought into the care of the department after mother’s brief

incarceration. During mother's incarceration she sought to direct her children's care, custody, and control to their grandmother. The court denied mother's request finding the grandmother to be inappropriate placement. The children were not returned to mother upon her release from jail and the termination proceedings against mother continued. From the initial time in which the children came under the court's jurisdiction and throughout the termination proceedings against mother, the father in this matter was completing a prison sentence. Upon learning of the termination proceedings father was denied his right to direct the care, custody, and control of his children through his sister, was denied the right to participate in the proceedings, was denied a right to counsel, and stood victim to the one parent doctrine which at the time had not been overturned. Both father and mother's parental rights remained terminated only for the rights to materialize years later.

Similarly, in *In re Ovalle* father was completing a 20 year jail sentence when his children were removed from his ex-wife's care due to mother's alleged drug habit. Father was not given the opportunity to participate in the proceedings and upon his request to direct the care, custody, and control of his children his request was denied by the court. Terminating parents' parental rights based on a parent's incarceration and interfering with a parent's constitutional right to direct the care, custody, and control of one's child came to a halt nearly 35 years after the decisions in *In re Curry* and *Adrianson* and seven years after *In re McBride* when the court heard *In re Pops*, a case brought by professors at the University of Michigan. In *In re Pops*, after engaging in a high-speed chase with his young child, a father was arrested and found to have marijuana in his vehicle. During his incarceration, father sought to place his child with his mother. Much like the mother in *In re Adrianson* and the parents in *In re Curry*, the department found the father's care arrangement to be unacceptable and inappropriate prompting the child's placement in foster care.

On appeal, the appeals court reversed the termination of father's parental rights and established not only was incarceration an insufficient basis for terminating a parent's parental rights, but a parent had a right to direct the care, custody, and control of one's child absent interference from the state.

The scenario in *In re McBride* which allowed the court to proceed in its termination against father without first adjudicating him is based on the one parent doctrine. Other parents suffered from the same fate. In *In re Krupa*, the children were initially removed from the home due to conditions in the mother's home. Specifically, the mother smoked marijuana, was homeless, and used a belt to discipline the children. The Court then proceeded to terminate father's parental rights although he had not committed any acts of abuse or neglect against the child. At the trial court level, the court emphasized father's untidy home, his playful relationship with the children, his failure to complete services in conflict with his work schedule, allowing his brother to watch his children on one occasion, and enrolling the children in school two days after the start of the semester. The Court of Appeals noted,

“to affirm the trial court's holding would be to condone the State's permanent removal of children from a parent who is otherwise meeting the basic obligations of a parent, because [father], a young, single, fully employed father has difficulty maintaining a clean home. This is not meant to distract from the poor conditions inside the home, but is instead a recognition that more than what was presented at the termination hearing is required before the State should be permitted to permanently cut the legal ties between a parent and his children.”

Unfortunately, this case was again appealed to the Michigan Supreme Court, which

reversed the decision of the Court of Appeals reinstating the trial court's decision to terminate the father's parental rights. The Michigan Supreme Court declined to hear oral arguments and instead issued an order which read, "the Court of Appeals misapplied the clear error standard by engaging in improper fact-finding and substituting its judgment for that of the trial court." The job of the appeals court is not to relitigate cases but to review decisions made by trial court judges for factual and legal errors. The problem however, as illustrated in this case, arises when upon review of the record the Court of Appeals believes a decision was made outside the bounds of the law, such as in this case, and the court reverses the decision of the trial court. The issue is further complicated when the Supreme Court finds the trial court's decision to be within the bounds of the law and affirms the decision of the trial court. Factual issues are in the eye of the beholder, leaving room for discretion. In this case, while the Court of Appeals believed father to be meeting at a minimal, his child's most basic needs, the trial court and by extension the Michigan Supreme Court emphasized father's less than perfect qualities stated by the trial court as well as condemned father for working in the fast-food industry, thus failing to reach his full potential and failing to apply himself by attaining higher education in the form of a trade. This court's decision to terminate the father's parental rights based on the lack of cleanliness in the home is in opposition to cases in the *W* region where the parent's parental rights were terminated when the home's cleanliness was at issue. In the *W* region, when the home's cleanliness contributed to the termination of the parent's parental rights, parent's rights were terminated only to the child who exhibited special needs.

Three years after the decision in *In re McBride*, the Court heard *In re Sanders*, yet another University of Michigan headed appeal in which the court reversed 70 years of unconstitutional due process violations. In *In re Sanders*, the minor children were removed from the mother's

care after mother birthed a child with drugs in the child's system at the time of birth. The children were then placed with father. After the children were placed with father, father tested positive for cocaine while the children were under his care. The court failed to adjudicate father as well as failed to demonstrate how father's drug use established abuse or neglect of the children. After the children were removed from father's care, the children were then placed with their maternal aunt, father requested the children be placed with their grandmother with whom he lived. The court declined to adjudicate father and court ordered his participation in a parent agency plan without determining whether father was fit. The Michigan Supreme Court found,

“application of the one-parent doctrine impermissibly infringes the fundamental rights of unadjudicated parents with providing adequate process, and the doctrine is consequently unconstitutional under the Due Process Clause of the 14th Amendment. Due process requires a specific adjudication of a parent's unfitness before the state can infringe that parent's constitutionally protected parent-child relationship.”

The children were returned to father's care after the court's ruling. As *In re Sanders* played out in the courtroom, other families in the region were challenging the constitutionality of the one parent doctrine. In *In re Slater*, mother's rights were terminated after a non-parent adult was adjudicated for acts of abuse and neglect against her children. The case was held in abeyance pending the outcome of *In re Sanders*.

Even parents who have committed egregious acts against their children are owed due process and without due process termination of parental rights should be reversed. In *In re SLH*, father sexually assaulted his minor child however the court failed to adjudicate father and took jurisdiction over the children based solely on mother's testimony of the sexual assault. This is the reverse of the one parent doctrine where the parent who did not commit an act of abuse or

neglect against the child is adjudicated for acts in which they cannot testify to. In addition to the unconstitutional practices discussed above, the court violated parents' due process rights through other means. One way this was achieved was through depriving impoverished parents with equal access to the appellate process by denying them funds for transcripts, an integral part of challenging the trial court's decision.

Just as incarceration and poverty act as a barrier to maintaining one's parental rights, one's gender can also impact whether parents maintain their parental rights to their children. In *In LAF v BJJ (In re RFF)*, a teenage father's rights were terminated after mother placed the child up for adoption immediately after the child's birth. Mother thwarted father's participation in her pregnancy intentionally hiding her pregnancy and withholding information relating to the child's birth. As a result, father was significantly underinformed and intentionally misled about what would happen with the child. Father did not financially provide for the child during mother's pregnancy, nor establish a relationship with the child after being misled about his obligations. Father's failure to financially provide for the child and establish a relationship with the child categorized him as a do-nothing parent. The law as written does not provide provisions for fathers such as the father in *In re RFF*. When determining the best interest of the child, the father was criticized for failing to express love for the child versus responsibility and obligation, only having the capacity to love the child as a brother versus a father due to his youth, failing to raise the child in a religion, working a low wage job, and overall having the demeanor of a teenager. Relatedly, in *Vois v. Department of Human Services*, abuse and neglect proceedings were held against a mother and her husband. During the proceedings it became clear that mother's husband was not the child's biological father. The biological father in this matter attempted to assert his rights to the child to prevent the child from entering foster care, however due to mother's

marriage, the biological father was required to overcome the marital presumption. Father planned to overcome the marital presumption through mother's testimony regarding the parties' extramarital affair. Father's attempt to establish paternity to his child were thwarted by the prosecutor who threatened to charge mother with adultery if she testified to the child's biological parentage. Father's rights were involuntarily terminated as a result. Relatedly, in *In re Minors*, a married woman relinquished her child through the Safe Delivery of Newborns Law which allows parents to safely leave their child with the authorities without having to participate in legal proceedings. In this case, the mother did so unbeknownst to her husband. Upon learning his wife relinquished the parties' child to the authorities, the father attempted to retrieve the child, the child had been placed for adoption and because of the parents' marital status, the mother's choice to surrender the child extended to the father and thus father's parental rights were involuntarily terminated.

For several decades into the formation of the child welfare system, parents were awarded a great deal of leniency when seeking the return of their children to their care. This has fluctuated over time, at the expense of the parent. For example, in *Bates v Wells*, the child came under the court's jurisdiction after he was born with drugs in his system. The child was later found abandoned by the police. The child entered foster care where he remained with the family for seven years. Mother's rights were eventually terminated; however, the court reversed its decision to terminate mother's parental rights after she reentered the child's life and the court found she had reformed to the point where there was no longer a basis for terminating her parental rights. As time moves on parents lose more and more of their constitutional right to parent their children for less serious allegations.

Many of the cases in Central Mid were brought to the court for less than model parenting.

Parents who failed to exhibit model parenting were met with different challenges and faced criticism through the court and department in its attempt to over police parenting in the name of *parens patriae*. *In re White*, mother's children came under the court's jurisdiction after mother's former husband assaulted mother's daughter, mother's housing instability, and mother's dating choices. Other than the behavior of mother's former husband, the opinion makes no mention of mother's inappropriate actions against the children. The court and the department failed to acknowledge how mother's physical disability limited her access and instead placed blame on mother for the actions of her former husband and noted she lost her parental rights "by continuing to invite strange men into her home" and her failure to complete services.

In *Family Independent Agency v Glass (In re AH)*, mother's parental rights were terminated after it was alleged that mother had a history of mental health issues in which she did not treat, mother had a history of arrests, mother left her children in the care and custody of her live-in boyfriend who had an arrest history, and that mother had previous run ins with the department with her older children. The department argued the children were at risk of harm yet failed to show how the children had actually been harmed while in the care of mother. In *In re Hudson*, the children came under the court's jurisdiction after the department alleged the parents maintained deplorable housing conditions, used drugs in the home, failed to pick up the children from school, and had prior contact with the department. Throughout the allegations against mother, she lacked counsel, the court's failure to appoint mother an attorney violated her due process rights. In the court's removal order, the court noted the home was appropriate and there was no risk to the children in the home however the children were being removed due to "additional family members continued to frequent the home" and mother's drug use. The court found a strong argument could have been made that removal from the home was never appropriate. The

Supreme Court found on appeal, “this case is part of a disturbing and recent patterns of trial courts’ failure to appoint counsel and untimely appointment of counsel to represent parents in child protective proceedings.”

In *In re Ross*, the children came under the court’s jurisdiction after allegations that mother had a history of drinking and using marijuana, suffered depression, mother lacked independent housing, educationally neglected their children due to an observed speech delay, and had a dysfunctional relationship with the children’s father. At the end of trial, the AGAL noted “I have not seen anything in my viewings that concerns me about mother’s parenting skills.” By the end of the termination proceedings, mother gained lawful employment, improved her relationship with the children’s father, maintained independent housing, and stopped using her prescribed medications against the advice of her doctors at the bequest of court ordered service providers, yet her rights were still terminated. The Court of Appeals reversed the termination only for the Supreme Court of Michigan to reinstate the trial court’s order terminating mother’s parental rights.

In *In re Dahms*, mother’s parental rights were terminated after her children were observed acting like wild dogs by barking incessantly and eating off their plates without using utensils. Other allegations reported that the children were found improperly clothed and playing in the street or in neighbors’ yards while mother slept. Mother who suffered from childhood trauma was court ordered to attend therapy. Mother’s therapist made a recommended treatment plan over the course of two to three years. The court found that despite mother’s treatment plan, nowhere in the course of her treatment would she be able to care for her children as she attended treatment and terminated mother’s rights.

In *In re Ovalle*, the children were removed a total of three times, the opinion did not discuss what

the issues regarding safety were and instead terminated mother's rights after mother allegedly failed to attend counseling/therapy or job training. In *In re Tedder*, mother suffered from an obvious mental illness or psychological disorder, mother's displayed behaviors prompted the involvement of the department despite no allegations of abuse or neglect toward the child. Prior to removal, mother's home was found to be adequate and throughout the proceedings mother strictly adhered to the court's order. Still the department took issue with what was described as mother's inconsistent parenting, unstable/unsuitable housing, and mother's personality traits in which she continuously received professional treatment for and concluded that mother's behavior rose to the level of emotional abuse. On appeal, the court reversed the termination of mother's parental rights opining, "we know of no parent who is perfect all of the time. The instances cited by the probate court . . . are the results of honest mistakes or related to [mother's] characterological disorder."

Similarly, in *In re Kellogg*, mother's parental rights were terminated on the basis of emotional neglect. Mother suffered from a psychological disorder in addition to anxiety and depression. The court took jurisdiction after allegations that the mother yelled and swore at the children causing one of the children a mental injury. There were no allegations of physical violence. The court found one of the children to have special needs and thus reversed the trial court's termination order regarding the minor child that did not have special needs. The court found that mother's behavior made her a less than ideal parent but that her behavior did not rise to the level of terminating her parental rights as "parents . . . are allowed to have some difficulties managing the wants of and control of their children." This case shares an interesting similarity to *In re Tedder* in that the court found issue with the parents' decision to underuse daycare/preschool services when neither are a requirement of the law.

In re Bailey, the parents were mentally retarded adults, the child also suffered from mental retardation. The child was removed from the parents care almost immediately after the child's birth. In *In re Franzel*, mother displayed behavior we now associate with postpartum depression. In an attempt to collect herself, mother requested her children be placed by the department. Despite seeking assistance mother's rights were terminated. The court cited that mother failed to care for the needs of her younger child and lacked affection, mother showed affection for her older child (showing affection for one child over another appears in *In re Kellogg*) was unmarried and receiving state assistance.

In another instance regarding the mental health of the parent, the court reversed the termination of parental rights in *Family Independence Agency v Boursaw* (*In re Boursaw*), the mother suffered from a personality disorder. Upon taking jurisdiction the court listed mother's mental health, smoking, failure to maintain a clean residence, and inability to maintain employment as a basis for removing the child. The Court reversed the termination distinguishing mother's facts from the mother in *In re Dahms* though both mothers were in need of continued therapy before the court was willing to return the children to their custody and care.

In *In re Gass*, mother suffered from epilepsy, the court labeled mother's disorder a mental illness and terminated mother's rights absent any harm to the child. This region is severely split in its decisions regarding mental illnesses. Moving away from mental illnesses and less than perfect parents we move towards simply less than model parents. In *In re LaFlure*, after working a shift as a cocktail waitress, mother failed to timely relieve the babysitter. The sitter contacted the police. Upon arrival the police found the home filthy and opted to immediately remove the child from the mother's care. The termination was later reversed but not before the department found other things in an attempt to terminate mother's rights including her number of marriages and the

fact that she entertained late into the evening. In the next chapter, I will examine the interplays of built, political, and social capital the families lacked within this region.

Southeast (SE)

At the Circuit Court level for the Southeast Region, I observed 21 cases across one county and five jurists. I observed one other county however there was not enough substantive information to keep the case as an observational point and thus it was deleted. In this region, in eight of 21 abuse and neglect cases sampled, both parents' rights were at risk of termination as well as the rights of eight mothers and five fathers. In eight of 21 cases substance abuse by the parent contributed to or served as a basis for the child removal, in eight of 21 cases poverty related issues served as a basis or contributed to the child removal, in six of 21 cases incarceration served as a contributing factor or basis for child removal in, and in six of 21 cases the mental health of the parent contributed to or served as a basis for removal. Prior termination and failure to protect appeared as the least likely basis for child removal occurring twice and once respectively.

In the SE region COVID-19 related technology challenges such as a lack of phones, unemployment challenges, and housing shortage challenges were apparent. Here the department seemed to remove children from their home based on situations that were no longer appropriate for child removal given the state of the country at this moment in time. In one case, the worker's testimony suggested the reason for the child's removal was due to the parent's inability/failure to financially provide for the child. In response to the worker's testimony, the Court indicated that it appeared the department was attempting to remove the children due to the parents' financial instability and if so, the law that permitted the state to remove children on that basis had changed and was no longer an appropriate basis to remove a child. This same jurist shamed a mother who

was clearly financially struggling and advised the mother after listening to the case worker's testimony that, "we don't send children to dirty homes." In this case, the child was removed from the home after Adult Protective Services was called on mother's behalf. Mother has several roommates, and it was believed that mother was being taken advantage of by her roommates. Mother was faulted for not having a car (mother rode her bike everywhere), the amount/type of animals in the home (mother maintained snakes), and the cleanliness of her home (mother and her roommates were renovating the home). The judge went so far as to ask the department to look into whether mother is violating some type of ordinance due to the amount/type of animals she possessed in the home. Prior to the judge expressing concern, the workers responsible for mother's case did not believe mother's pets to be an issue. Despite having appropriate furniture for the child with sufficient food, income through social security, and no other threats to the child, the court and the department were still not prepared to send the child home to his mother. In a different case, the department cited the parent's money management skills as a basis for the child's continued removal from the home. The judge who heard the case regarding money management made no note to the department that money management was an inappropriate reason to keep a child from the home. In a separate case, the department attempted to use incarceration as a basis for continued removal of a child from a father who was unrelated to the removal other than being in jail. I also observed this happen in other cases within this region where the father is in jail but not a respondent and the children remain in foster care. In the case where the father was unrelated to the reason that brought the child into care the court reprimanded the state for violating *In re Sanders*, a case discussed at length which rids of the one parent doctrine.

In reviewing appellate decisions, I reviewed 61 written opinions in the Southeast Region (S)

across seven counties. Wayne County was not included and was analyzed separately. Appeals in this region ranged from as few as two to as many as 27 appeals per county totaling 61 appeals in this region. In this region, in 27 of 61 appeals, both parents' rights were terminated as well as the rights of 13 mothers and 21 fathers. In 16 of 61 cases, factors based in poverty contributed to the termination of parental rights. Next to poverty, a parent's failure to protect appeared as the second most occurring basis for child removal, affecting 10 of 61 cases. Delinquency of the minor and prior termination appeared the least as a basis for termination of parental rights. In this region, nine fathers' rights were terminated to accommodate a contested adoption by a stepparent or at the request of the mother and mothers experienced a contested adoption at the request of fathers in one case. In 10 of 61 cases, families were deprived of due process, this number increases to 13 when you include deprivation of counsel in the final number. Families in this region lacked social, built, and financial capital.

Victim shaming by the court is consistent among most of the regions in Michigan. In *Family Independence Agency v Sours (In Re Sours)*, father accidentally struck the parties' minor child during a domestic dispute with the children's mother resulting in the minor child receiving a black eye. Having struck mother on several prior occasions, mother reported father to the authorities. After mother failed to participate in the prosecution of father and allowed him back into the home, the department petitioned the court to remove the children from the home. Mother was criticized by the court, opining, "the court first became involved in this case because of a "classic" situation involving an alcoholic, abusive father and a submissive mother." Mother was accused of failing to protect the children and arrested for failing to testify against her batterer. The Court of Appeals reversed the trial court's termination of mother's parental rights, finding that there was no evidence of long-term abuse against the children however the Michigan

Supreme Court reversed the Court of Appeals decision and reinstated the trial court's ruling terminating the parent's parental rights. When mothers follow through on personal Protection Order Or in this mother's case participating in the prosecuting her partner, this "is considered proof that the mother has made reasonable efforts to prevent the child from being abused or neglected as a result of exposure to violence" (Goodmark 2010). Mother lacked employment, independent housing, and a car, yet the court viewed these challenges as "minuscule" and spent more time concerned about mother's alleged attitude problem.

In the *Department of Human Services v Engle (In re Engle)*, mother's parental rights were terminated after father sexually assaulted the children. Having known about the abuse, mother was charged with failing to protect the children. Having also experienced abuse at the hands of her husband, mother reported that she was brainwashed and spent many years being controlled by her husband. It was clear the mother feared her husband due to his abusive behavior and spent many years being dominated and oppressed by him. Mother divorced father, however, on appeal, the Court of Appeal reversed the trial court's decision terminating mother's parental rights.

Unfortunately, the Court of Appeal's decision was reversed and the trial court's decision to terminate mother's parental rights were upheld. Mother suffered from a disability recognized by the ADA, yet she did not receive services that accommodated her disability. Other incidents of failure to protect include a mother whose parental rights were terminated after her child sustained serious injuries while in the care of her boyfriend (*In re Bidwell*) and in one of the few cases in which a father was charged with a failure to protect, in *In re Draper*, father's rights were terminated after his wife spanked the children. The children initially came into care after suffering abuse in their mother's care during father's incarceration. Father having nothing to do with the initial removal, father fell victim to the one parent doctrine. This was several decades

prior to the reversal of the one parent doctrine yet the court at the time recognized father had been deprived of due process. The Court of Appeals reversed the decision calling father a less than model parent. It is important to note spanking at the time nor in the present is considered an illegal action.

While not substantial in this region, the court did display a contempt for parents who rejected the court's definition on status quo parenting. For example, in *In re Smith*, mother received state aid and her husband worked. As a result, mother did not work, nor did she have the desire to work. Mother was able to maintain her household with the assistance she received from the state and her husband's income. Despite having a child with a physical disability who required additional care, the department held mother's refusal to work against her. Although it is typically acceptable to stay home and care for one's children, in this mother's case because she received aid, the court rejected mother's desire to adhere to a traditional parenting role because it thought she should work. Originally brought into care due to his extensive medical problems, the child lived in a home with his mother and 11 other people. There was no room in the home for the child's medical equipment however mother was able to receive Section 8 assistance and eventually moved into a home to accommodate her son. Unfortunately, the child succumbed to their medical illness and died before the end of the appeal. Despite this, the court continued with the appeal to account for collateral legal consequences mother might face because of the termination. Mother suffered from several mental health illnesses.

In all instances where a parent has requested assistance from the department, the parents eventually have their parental rights terminated. In *In re Kurzawa*, a set of blind parents reached out to the department for temporary placement for their incorrigible teen while they sought improved housing. The Court terminated the parents' parental rights. The decision to terminate

was reversed on appeal. Similarly, in *Russell v Miller*, mother lacked housing and requested a temporary guardianship for her child. The court granted the request and ordered mother to pay child support to the guardian. Upon obtaining appropriate housing, mother sought to have her child returned to her, however mother was required to meet a mountain of tasks prior to having her child returned to her including a psychological evaluation when there were no mental health issues. The court permanently terminated mother's parental rights for failing to abide by the court's return plan despite a lack of allegations of abuse and neglect. In *In re Trejo*, after divorcing the children's father, mother was unable to maintain appropriate housing for her and the children. Mother contacted the department and requested temporary placement of her children out of concern she could not appropriately parent them at the time. Despite a lack of allegation involving abuse and neglect, mother's rights were terminated. Father in this matter who also struggled financially also lost his parental rights due to insufficient housing. The court admonished father for failing to participate in the parenting time however father missed scheduled appointments because the appointments conflicted with his work schedule, a requirement to survive.

Lastly, stepparent adoptions, *In re Kaiser*, is a stark contrast from the case in the W Region regarding a termination due to a stepparent adoption. In the former, mother's rights were terminated after father thwarted mother's ability to communicate with the children and mother failed to pay child support. In the parties' divorce, mother was not ordered to pay support nor was she given parenting time. The court reversed the termination based on father and his wife's behavior. In *In re P*, only the second matter in which father's rights were not terminated at the trial court level, mother gave up her parental rights and placed the child up for adoption. Approximately 10 days after the baby was given up for adoption, father asserted his rights. The

trial court did not terminate at the trial court level. On appeal the court found placing the child with its father to be in the child's best interest. Unlike all the other cases where the child was placed for adoption and the best interest of the child were considered, in this case, there was no discussion as to whether father supported the child during mother's pregnancy or whether father established a relationship with the child during the short time the child had been alive, these experiences are vastly different in comparison to fathers in other regions. The court noted,

“The father's diligent efforts to secure custody in this case indicates his sincere desire to assert his rights to fatherhood. The current trend of legal thinking focuses on the proposition that sense of punitive father has statutory duties toward his child born out of wedlock then he should also, assuming he is a fit and proper person, have corresponding rights of custody. This logic has merit, but even more convincing to this court is the intangible concept of a father's natural love and affection for his child. Such a concept entails rights of the highest order, rights which should not be subject to easy elimination by actions of a third party. It is apparent by the actions of the father in this case that he has diligently attempted to assert and thus preserve his rights.”

However, similar to fathers in other regions, the rights to biological fathers were terminated where the child had a legal father through the mother's marriage or otherwise, and the biological father had no prior knowledge of the child's existence. Legal recourse was sparse for fathers who had no knowledge of their child's existence during the mother's pregnancy or if they found out about their child at a different time. When recourse was provided, this recourse was in stark contrast to the law as it was written. Fathers were faulted for failing to establish a relationship with their children and failing to provide financial support when there were competing court orders preventing them from doing just that (*Blackburn v Debeliso*), making father's easy targets

for involuntary parental termination. Even when fathers did finally support the mother prior to the adoption, termination of father's rights prevailed most of the time. The issue with the legal vs the biological father now raises new legal issues as the argument that a child cannot have two fathers is stale. Previously a child could not have two legal fathers, this is no longer true.

CHAPTER 5- THE TALE OF THREE FAMILIES

WAYNE COUNTY DISCUSSION

Parents are disadvantaged through the legal system based on their access/lack of access to community capitals. Parents with almost identical fact patterns, bound by the same set of rules see fluctuations in the applications of these rules. Differential treatment based on race, class, and gender is not a new phenomenon in or out of the justice system. Society is saturated with blatant examples of inequalities. Conversely, the abuse and neglect court is an inconspicuous, though not closed, space with a hidden operations manual that determines outcomes in the same way race, class, and gender do to create inequalities for families. This operations manual can be visualized through the use of the community capitals framework and theorized through the concept of access.

This study provides an additional tool to understand less obvious obstacles families face in maintaining their families and attempts to connect seemingly different yet intertwined fields: community development, and health policy and health services to explain a phenomenon at the intersection of law and sociology. Across regions and within region by county-specific themes, I now discuss how the theory of access using the community capitals framework explains how children are removed from their parent's care and parents' parental rights are terminated based on specific factors or attributes already present in the parents' life at the time of removal or termination. In the Wayne County results section, I introduced three families, the Ratté, Godboldo, and Brent family. I also briefly introduced Nadia; a teenage girl ready to return to the care of her family. These families endured and experienced very different paths and outcomes in the Wayne County Juvenile Court in their journey to have their families reunited. Using the

theory of access, I discuss how access to or lack of access to community capital hindered or assisted these families.

I adopt the definitions of access as defined and Thomas and Penchansky, The Concept of Access: Definition and Relationship to Consumer Satisfaction. Table 5.1 illustrates the dimensions of access as presented by Thomas and Penchansky as well as the modifications contributed by scholar Emily Saurman.

Table 5.1 The Dimensions of Access

Dimension of Access	Definition	Components and Examples
Availability	Supply and demand, an available service has sufficient services and resources to meet the volume and needs of the litigants and community served	The relationship of the volume and type of existing services (and resources) to the litigants' volume and types of needs. It refers to the adequacy of the supply of social workers, caseworkers, prosecutors, AGAL, and attorneys; of facilities such as the courthouse; and of specialized programs and services such as specialty court (e.g., family dependency court and baby court).
Acceptability	Litigant perception, an acceptable service response to the attitude of the system and the litigant regarding characteristics of the service and social or cultural concerns.	The relationship of litigants' attitudes about personal and practice characteristics of existing providers, as well as to provider attitudes about acceptable personal characteristics of litigants. In the literature, the term appears to be used most often to refer to specific consumer reaction to such provider attributes as age, sex, ethnicity, type of facility, neighborhood of facility, or religious affiliation of facility or provider. In turn, providers have attitudes about the preferred attributes of clients or their financing mechanisms. Providers either may be unwilling to serve certain types of litigants (e.g., warfare patients) or, through accommodation, make themselves more or less available.

Table 5.1 (cont'd)

Adequacy (Accommodation)	Organization, an adequate service is well organized to accept litigants, and litigants are able to use the service. Considerations of adequacy include hours of operation (after hour services), referral or appointment systems, and facility structures (wheelchair access).	The relationship between the manner in which the resources are organized to accept litigants (including appointment systems, hours of operation, walk in facilities, telephone services) and the litigants' ability to accommodate to these factors and the litigants' perception of their appropriateness
Affordability	Financial incidental costs, an affordable service examines the direct cost for both the service provider and the litigant.	The relationship of prices of services and providers' insurance or deposit requirements to the litigants' income, ability to pay, and existing health insurance. Litigant perception of worth relative to total cost is a concern here, as is litigants' knowledge of price, total cost and possible credit arrangements.
Accessibility	Location, an accessible service is within reasonable proximity to the litigate in terms of time and distance.	The relationship between the location of the resource and the location of litigants, taking account of litigants' transportation resources and travel time, distance and cost.
Awareness	Communication and Information	A service maintains awareness through effective communication and information strategies with relevant users (judges, attorneys, prosecutors, AGAL, social workers, case workers, etc.), including consideration of context and system literacy.

RATTE, GODBOLDO, AND BRENT (SELECTED WAYNE COUNTY CASES)

Social Capital

Group membership is a community capital (Flora and Flora 2008; 2013). In terms of the judicial system, race, specifically whites, are often privileged in terms of sentencing; (Alexander 2012),

police brutality; (Lowery 2016 citing Fatal Shootings by US Police Officers in 2015: A Bird's Eye View) and the death penalty; (Philips, S and Marceau, J 2020). For my purposes, this concept of race as a good remains the same. In the case of the Ratté family, the family's community capital worked in their favor in expeditiously securing the return of their minor child. Professor Ratté and his wife, a white heterosexual couple belonging to at least the upper middle-class typify the standard traditional family. The Ratté family identifies or at least are perceived to belong to multiple groups which historically have been deemed the status quo. The privilege that accompanies the status quo is what McIntosh (1989) describes as an invisible weightless knapsack of special provisions, maps, passports, codebooks, visas, clothes, tools and blank checks that whites, men, heterosexual couples, and the upper middle class can count on every day to use to their advantage. Belonging to these groups pave the way for members of these groups to further benefit from other community capitals (Emery and Flora 2006).

Kimberlé Crenshaw (1989) coined "intersectionality" to explain how courts frame and interpret the stories of Black women plaintiffs. Crenshaw tells the stories of Black women who sought to have their identities as Black women recognized as a unique class in employment suits, as they faced combined race and sex discrimination. Crenshaw further argued that the court's refusal to acknowledge Black women's unique experiences implies that the

"boundaries of sex and race discrimination doctrine are defined respectively by white women's and Black men's experiences. Under this view, Black women are protected only to the extent that their experiences coincide with those of either of the two groups. Where their experiences are distinct, Black women can expect little protection."

Crenshaw illustrated how antidiscrimination doctrine created a dilemma for Black women and how new lenses were needed to capture these experiences.

It is unclear whether Maryanne Godboldo experienced double-discrimination—the combined effects of practices which discriminate based on race and based on sex, or discrimination as a Black woman—not the sum of race and sex discrimination (Crenshaw 1989). However, what is clear is that Maryanne Godboldo lacked the social capital possessed by the Ratté family in the form of race, gender, economic class, and marital status. Leo Ratté was returned to his mother, Claire Zimmerman, a cisgender white woman within 48-72 hours after the state removed the child from his father. Conversely, in *In re Godboldo*, the minor child was not placed with her father during the entirety of the case despite her father's active role in the child's life prior to the state removing the child from her mother's care. The Ratté family used their connections existing among people and organizations to help secure the return of their child. The University of Michigan Law School, and by extension the University of Michigan (U of M) in which Ratté and Zimmerman were employed as professors, rallied behind the Ratté family, with its resources of brilliant legal minds, financial, or otherwise to swiftly have the child returned in what I can advise through personal experience was record time. While social capital includes close ties that build community cohesion (bonding) as well as weaker ties with local and outside people and organizations that help promote broad-based action on key matters (bridging), an asset used by Godboldo as rallies and fundraisers were held in her honor, the type of asset available to Godboldo and the type of asset available to Ratté are of different magnitudes and appear on opposite ends of the same spectrum having different outcomes.

Nathaniel Brent and his wife, a white couple from a working to lower middle-class background did not reap the same benefits as the Ratté family though they share some of the same group memberships. In the case of the Brent family, despite identifying or at least appearing white, the Brent's economic class complicated the Brent's white privilege. White poverty and white

privilege present a cognitive dissonance (Blacksher and Valles 2021). While whiteness typically affords the invisible privileges discussed by McIntosh (1989), there are circumstances where the benefits of whiteness are outweighed by other overwhelming factors such as poverty (Blacksher and Valles 2021). Dissimilar to poor African Americans, poor whites are not geographically concentrated (Badger, E 2015). Thus, despite poverty, poor whites are more likely to live in neighborhoods that lessen the effects of their poverty and as a result poor whites benefit from the built, financial, natural, cultural, and social capital of those neighborhoods and do not experience the double burden of poverty experienced by poor African Americans (Badger, E 2015). Conversely, when white families are found in extremely poor neighborhoods such as Detroit's Delray neighborhood like the Brent family, whiteness does not provide the same protections that typically come to mind when we think of white privilege (Badger, E 2015).

In terms of access, the Ratté family possessed accessibility. A service is accessible when it is within reasonable proximity to the litigant in terms of time and distance (Saurman 2015). In the case of the Ratté family, a phone call from the chair of Professor Ratté's department to the Director of U of M's legal clinic on a Saturday morning, positioned the Ratté's at arm's length of the legal minds at one of the country's top 10 law schools. This connection is the direct result of the parents' status as University of Michigan professors. This is an access barrier that both the Brent and Godboldo family faced, despite being similarly situated. This accessibility translates into social capital. Professor "Ratté said that he and his wife know they were lucky to have the resources of the U-M behind them."

Human Capital

Unlike the Ratté family, the Godboldo family also lacked human capital. In *In re Godboldo*, the child came under the court's jurisdiction after the child's mother declined to continue

administering Risperdal¹⁵³ to the minor child against the prescribing doctor's recommendation. Mother reported witnessing her child experience adverse side effects to the drug and sought alternative remedies for her child's medical conditions. Mother reported to the medical center her decision to cease administering the drug to the child and thereafter the medical center contacted CPS alleging medical neglect against the mother. Health, more specifically good health, is a human capital and in this case, the family lacked human capital in terms of the child's health, but the family's lack of education provided another forum in which the family lacked human capital. Also, unlike the Ratté family, the mother in *In re Godboldo* lacked post-secondary education. Her decision to not medicate her child is a right as a parent, however, mother's decision to do just that was undermined by both medical professionals and the state.

When parents are accused of medical neglect it suggests the parent is not acting in the child's best interest or is not competent enough to make decisions regarding the child's health. It is important to note that the medication prescribed to the child was not for a life-threatening diagnosis or to protect the immediate health of the child. Mother's lack of education coupled with her poverty in the eyes of the state and the mandated reporters the family encountered made mother a less than reputable person to make decisions regarding her daughter's medical needs. To date, thousands have sued the makers of Risperdal due to false marketing as a drug for children with psychiatric disorders and alarming side effects including the rapid weight gain Godboldo reported her daughter experienced. After removing the minor child, mother was also accused of educational neglect as mother home schooled the child at the recommendation of the child's primary care provider. Mother's decision to challenge the status quo in regarding medication administration and home schooling made mother ripe to be on the receiving end of

¹⁵³ Risperidone is used to treat certain mental/mood disorders (such as schizophrenia, bipolar disorder, irritability associated with autistic disorder.)

implicit bias. Only after the court heard from mother's sister, who possessed secondary education and a teaching certificate from Wayne State University did the Court then terminate jurisdiction over the child. The testimony of the sister provided legitimacy and authority that the mother alone did not have. The state appealed the trial court's decision to return the child home to her parents.

The lack of access in the case of the Godboldo family can be discussed threefold: acceptability, affordability, and awareness. Starting with affordability, the mother in Godboldo cared for her disabled child full time including home schooling the child thus she did not possess employment outside of the home. Had mother been able to afford private mental health services due to employment or private insurance, it is possible mother would have received better services.

Mother's lack in skills and education, contributed to mother's inability to maintain private insurance or work. As a result, mother was required to use public mental health services.

Mother's lack in human capital, directly related to mother's lack in financial capital.

In terms of acceptability an acceptable service responds to the attitude of the provider and the litigant regarding characteristics of the service and social or cultural concerns. The mother in Godboldo was not given an acceptable service from the court nor the mental health care provider treating her daughter. Godboldo sought mental health services for her daughter after she began noticing behavior changes in the child. After the child began to receive services, mother noted that the child's symptoms worsened. Mother concluded the only change was the child's medication. The clinic's attitude toward mother is a catch-22. Mother was qualified enough as a parent to determine that there was something wrong with her child and needed treatment, yet mother was not qualified to determine that the treatment being provided to her daughter was harmful. Mother's decision to question the authority of the center meant she was committing

medical neglect and should receive oversight from the system. Equipped with the right to make medical decisions for her child, the state further challenged mother's authority when it authorized the removal of the child based on the allegation of neglect. Mother's decision to wean the child from the medication and mother's standoff with the police demonstrate that mother did not find the services acceptable.

Lastly, awareness. Mother in Godboldo opted for alternative options for her daughter. This was rejected by the center. Despite advising mother that she was entitled to cease treatment at any time, this was not in fact true. Upon mother's decision to cease the medication mother was instead met with an abuse and neglect allegation. A service maintains awareness through effective communication and information strategies with relative users.

Financial Capital

Some of the elements of affordability include the relationship of prices of services and the provider, the deposit requirements to the litigants' income, or ability to pay (Penchansky and Thomas 1981). The mother in the Godboldo case lived near Linwood and Joy Road, one of the poorer neighborhoods in Detroit. Despite mother's poverty, mother's social capital extended into financial capital allowing mother to receive donations to retain private counsel. The Brent family, however, lacked both social and financial capital and as a result was appointed counsel by the court. While the Ratté family could afford private counsel, the Ratté's social capital provided them with presumably free services from the professors at the University of Michigan Law School and after the return of the child was represented by the Michigan American Civil Liberties Union (ACLU). The Ratté's also possessed financial security, a luxury that most families do not have when it comes to taking the time off from work to be in court.

In terms of access, the Ratté family possessed affordability while the Godboldo and Brent family did not. The Ratté family likely did not incur a cost for their legal representation. The Ratté's were represented by both attorneys at the University of Michigan Law School Legal Clinic and the ACLU. The ACLU, counsel for some of this country's landmark cases, is a nonprofit organization that does not charge its litigants, while the University of Michigan Law School professors in the clinic are paid a salary by the university and typically do not charge additional fees for their services. The Brent family received court appointed counsel, and the mother in Godboldo held fundraisers, rallies, and benefits to raise money to offset the cost of a retained attorney.

On average, in Michigan an inexpensive attorney costs approximately \$250 per hour. This is after paying the initial retainer fee which can on average range from \$2500 to \$7500. The mother in Godboldo required two attorneys, one for her abuse and neglect case and one for the criminal case that arose from the abuse and neglect case. In abuse and neglect cases, parents are responsible for the fees associated with their children's attorney. Though appointed attorneys typically work for a reduced rate, the cost of an attorney is still typically a financial burden for the indigent. The attorney appointed to the parents typically come at no cost to the parent. However, this lack of cost comes at a price in the form of overworked and underpaid attorneys. After the Brent's children were returned to the home, the Brent's sued various state actors in pro per (representing oneself) to no avail.

Given that the law is vast and complicated, it is unlikely litigants willingly sought suit against state actors without the benefit of counsel. More likely, the Brent's were unable to afford legal counsel. Likewise, the Brents lived in a home laced with lead paint. The cost to extract lead from a home also comes at a hefty price. It is unclear whether the Brent family had the paint

professionally removed, or not, but either way the children were returned only after the conditions of the home had improved. This implies the family was required to remedy the paint issue. In terms of the fit between the litigant and the system, the Ratté family possessed the best fit, receiving an exceptional service free of charge. Absent the Ratté family's social capital the two University of Michigan professors were financially capable of hiring private counsel. The Brent family however possessed the worst fit, that is, an appointed attorney and the eventual return of their children with continued oversight by the state even after the children were returned home. Unlike the Ratté's, the Brent family, not for a lack of trying, received no financial compensation for the unlawful removal of their children.

Lastly, the Godboldo family possessed a medium fit. The court terminated jurisdiction over the minor child after a few weeks and the child was placed with family in the interim. Absent the Godboldo's poverty, it is likely the Godboldo family would have never come in contact with the courts for medical and educational neglect. The child in the Godboldo family was receiving services from New Oakland Family Center, a mental health facility known to assist low-income individuals. An argument can be made that due to Godboldo's social class, her authority to treat her daughter was undermined by the staff, calling CPS after Godboldo informed the staff she would be weaning her child from the Center's prescribed medication. The mother's visibility to the system positioned the family to additional surveillance by the system. Like the parents in the Brent matter, the mother in Godboldo was also unsuccessful in her quest to receive compensation for the taking of her daughter. Neither the Godboldo nor Brent family possessed the ability to pay for retained counsel on their own accord. In general, the cost to retain private counsel is a pricey endeavor. These facts support the theory that both the Godboldo and Brent family lacked access through financial capital. Although the mother in Godboldo was able to

retain counsel this was due to mothers' social, human, and political capital. "The dimensions of access are not easily separated" (Penchansky and Thomas 1981). The attorney who handled the Ratté's case stated,

"Class has something to do with the fact that the child was only in care for two days."

What the referee said was that she would have kept the case for at least a week while the department completed the investigation. . . . if you're not sophisticated, the system isn't set up to give you very much of a chance to work against the ritual that's ordinarily done."

This remark illustrates how financial, human, and political capital are intertwined and impact access.

Political Capital

The Ratté family sued, settled, and changed legislation surrounding child removal. Both the Godboldo and Brent families faced difficulty in advancing their suits against city officials. Not only did the Brent and Godboldo family have problems in advancing their suits, but Maryanne Godboldo was also criminally charged for acting on her right to protect her child. Access to organizations, in the Ratté's case the University of Michigan Law School also falls under political capital. The University of Michigan not only has a voice but there is power in their voice stemming from its financial, human, and social capital giving them the power to influence decisions. And although Maryann Godboldo used community organizing to garner support and attention around her cause, Godboldo's support system did not hold the same established power as that of the University of Michigan thus it had the voice but lacked the power to force change to the system, a component of political capital.

This form of access is encompassed by accessibility, availability, and adequacy. Parents have their children removed from their care, custody, and control every day. “Cases of unwarranted emergency removal are common.¹⁵⁴” Despite this, the incident involving the Ratté family made both, state and national news. This in part is due to the family’s accessibility to institutions with power and voice such as the U of M. After unsuccessfully, advocating for change, the family moved to sue city officials for their part in the removal of their child. The notoriety already achieved by this family’s status as described by McIntosh (1989) made the family the perfect test case to incite change across the State of Michigan. Best explained using the term “missing white woman syndrome” though the term was coined in the context of missing person cases, “missing white woman syndrome” has also been used to explain excessive media coverage of crimes where the suspect is a person of color.

Ratté and Godboldo both received media coverage, however this coverage manifested differently for both families. In Godboldo’s case, news media reports on Godboldo focused on the “standoff” in which Godboldo allegedly had with the police, not the fact that her child was being removed from her home due to mother’s decision to not medicate the child with what mother believed to be harmful medicines. The coverage on Ratté included discussion surrounding “dad’s mistake” and subsequently the family’s successful lawsuit against city officials. Even without the assistance of the ACLU, the Ratté still had access to financial resources which could have aided them in their suit if the suit had not been taken up by the ACLU.

Likewise, access in terms of availability also played a part in the Ratté’s political capital. In terms of availability, both the U of M and the ACLU were available to meet the needs.

Specifically, a service is available when the service has sufficient services and resources to meet

¹⁵⁴ https://www.mlive.com/news/2008/04/dads_simple_mistake_leads_to_s.html

the volume and needs of the litigants and communities served. In my experience as a litigator, while it is not ideal to appear before the court with 3 days' worth of prep time, it is possible. This possibility, however, comes with possessing the necessities to do just that. In the case of the Ratté family, the clinic director appeared in circuit court on the family's behalf on the Monday following the Friday incident, with resources such as the one's provided by the U of M in the form of intellect, legal material, and labor, the U of M was available to provide sufficient services and resources to meet the need of the family. The wealth of services provided by the U of M could accommodate the needs of the family without sacrificing the needs of others. Lastly, adequacy (accommodation).

The University of Michigan Law Clinic, with more than 45 years of experience, specializes in issues on child welfare. A service is well organized to accept litigants, and litigants are able to use the services. Considerations of adequacy include hours of operation (after-hour services), referral, or appointment systems. As explained by Ratté's attorney, the Director of U of M's legal clinic, "[I] got a call from the chair of Ratté's U of M department at 9 a.m., the next day. Duquette spent most of that day on the phone, trying to get Leo back into his parents' custody." The process of securing an attorney for someone without access requires more effort than a call to the University of Michigan's legal clinic. Both the Brent and Godboldo families lacked the type of access explained here due to their lack of political capital.

Built Capital

Neglect is often characterized by physical inadequacies of the home (May et al. 2018). This was the case for the Brent family. When the Brent children were removed from the Brent's home, the Brent home located in the Delray neighborhood of southwest Detroit was once called "the closest

thing to a ghost town within a city” by the Detroit Metro Times¹⁵⁵. Most of the homes in Detroit were built before the 1978 lead ban, the Brent’s purchased their home approximately eleven years later in 1989. In 1978, the federal government banned consumer use of lead-based paint.¹⁵⁶ “When the paint peels and cracks, it makes lead dust. Children can be poisoned when they swallow or breathe in lead dust.¹⁵⁷” Homes built before 1978, are more likely to have lead-based paint¹⁵⁸. “Lead can enter drinking water through corrosion of plumbing materials, especially where the water has high assisted or low mineral content that corrodes pipes and fixtures.

A less expensive method to rid homes of lead-based paint is to paint over the lead-based paint with newer paint¹⁵⁹, however the cost of painting over lead-based paint can still be quite expensive. Homes built before 1986 or more likely to have lead pipes, fixtures and solders.¹⁶⁰” These homes, and many like it around the city are covered in lead-based paint and the cost to remove the lead often exceeds the value of the home. Though the Brents originally came to the attention of the department after their oldest child ran away from home, arriving at a police station late at night with minimal clothing on, the decision to remove the children came after the department viewed the home, citing lead-based paint and the speech impediment of the couple’s youngest child as a basis for removal.

Many older Detroit homes are replete with lead pipes. Lead poisoning in children present as development delays and learning difficulties (The Mayo Clinic). “Children growing up in disadvantaged neighborhoods are at heightened risk for poor cognitive, school readiness, and

¹⁵⁵ <https://web.archive.org/web/20120527165310/http://www2.metrotimes.com/news/story.asp?id=14470>

¹⁵⁶ <https://www.epa.gov/lead/protect-your-family-sources-lead>

¹⁵⁷ <https://www.cdc.gov/nceh/lead/prevention/infographic-lead-in-environment.htm>

¹⁵⁸ <https://www.epa.gov/lead/protect-your-family-sources-lead>

¹⁵⁹ <https://www.epa.gov/lead/protect-your-family-sources-lead>

¹⁶⁰ <https://www.epa.gov/lead/protect-your-family-sources-lead>

physical health outcomes, even after accounting for socioeconomic factors” (May et al. 2018 citing Chen & Paterson, 2006; Jeon, Buettner & Hur, 2014; Leventhal & Brooks-Gun, 2000; Roy, McCoy & Ravner, 2014). Despite this, the Brent’s were held liable for a systemic issue largely out of their control. At the time the children were removed from the Brent’s home, the neighborhood had been divested of its public library and local schools. Disadvantage was directly and negatively linked with the overall sanitation, furnishings, and safety of the home physical environment for children (May et al 2018). The Brent children were ultimately returned to the home approximately three months after initial removal after “conditions of the home improved.”

Occupying their home for 20 plus years, the Brent family experienced most of the turmoil related to the neighborhood making the family prime candidates for CPS involvement due to circumstances related to poverty. The University of Michigan identified poor air quality as one of the neighborhood’s most pressing problems in addition to all the other systemic issues the neighborhood faced¹⁶¹. The pollutants in the air according to residents at the time caused physical harm to residents and surrounding vegetation. Class action lawsuits were filed against the plants in the area believed to be causing the problem. A now demolished neighborhood, the most recent statistics show that in 1999, 20.9 percent of households earned less than \$5000 a year, 19.6 percent of households earned \$5000-\$9999 a year, 66.2 percent of houses were built before 1940, 50 percent of people were living below the poverty line, and 50 percent of the people on the neighborhood were people of color.

Living through this, the Brent family represent white poverty. The kind of poverty that extends into the streets and through the hospitals, schools, and grocery stores. “Jacqueline Collins, the

¹⁶¹ <http://websites.umich.edu/~snre492/Jones/delray.htm>

director of Delray United Action Council, a local organization . . . told the Detroit News that biggest problems for Delray were pollution, unemployment and lack of transportation.” This in its totality represents a lack of built capital. Here access in terms of accessibility, availability, and affordability likely impacted the Brent family. An argument can also be made for a lack of access through awareness. The court opinion detailed the conditions of the home including, “holes in the plaster walls, mold, a lighting fixture with dangling wires, and water damage.” The couple’s 11-year-old child slept in an unfinished basement bedroom on a mattress on the concrete floor, with paint peeling from the cinderblock walls.

The conditions of the home do not tell the story of neglectful parents, but parents who are unable to afford repairs to fix the physical condition of their home because they lack financial capital to mitigate their built capital. Similarly, given the family’s lack in financial capital, it is unlikely the family could have sold their home to relocate into more acceptable housing. Even if the family were in a position to relocate, with more than 80 percent of Detroit’s homes infested with lead, the family would have still lacked suitable housing had they relocated to another Detroit home given the city’s low stock of acceptable and appropriate homes.

The City of Detroit is and remains unable to meet the supply and demand needs in regard to safe and appropriate housing. While the housing stock in Detroit has been dire for some time, including the time in which the Brent family appeared before the Court, the housing crisis in Detroit is not unique to Detroit and spans across the State of Michigan. The family faced affordability (due to the direct costs of home repairs), availability (given Detroit’s insufficient housing stock), and accessibility (given the lack of housing located within a reasonable proximity in terms of time and distance across the State of Michigan) hurdles, all dimensions of access.

The lead in the family's home doubled as a lack in human and built capital. The Brent's were aware at the time of removal that one of their children tested positive for lead poisoning. As previously noted, at the time the department removed the children from the home, the Delray neighborhood had been stripped of both the local school and library. The family's circumstances suggest the family lacked access in the form of awareness, meaning the family lacked communication and information. It is important to note that while the Brent's were offered services by the department to remedy their child's lead poisoning, the family declined. The family's apprehension to accept CPS services can be explained by the family's prior CPS involvement which did not result in a substantiated abuse and neglect case. The family lived in the same lead-based paint home during the family's last contact with CPS. It was not until 2016, that the Detroit Health Department developed a coalition of city departments and community partners to coordinate lead prevention and removal in the city¹⁶². Thus, at the time the Brent children were removed from the home, the family lacked a trusted and open resource that provided awareness through effective communication and information strategies with relevant users including consideration of context and health literacy. The Ratté nor the Godboldo family experienced a lack of access to built capital.

EAST VS WEST, MY HOOD IS BETTER THAN YOURS

WAYNE COUNTY (DETROIT AND WESTERN WAYNE COUNTY)

Social Capital

A lack of social capital, race and class specifically led to the backlog of cases in Wayne County during the 'pandemic and contribute to the disparity between families in Detroit Wayne and Western Wayne. A former CPS Investigator described how negative social capital in the form of

¹⁶² <https://detroitmi.gov/departments/water-and-sewerage-department/dwsd-projects/making-detroit-lead-safe>

race, gender, and class play out in removals:

“... [T]hen, of course ... race and class also totally play into that, too, right? ...

[T]hey're going to treat a middle class or upper middle-class victim of domestic violence that ... can be very different than how they're going to treat a lower SES person ... And then you know a lot of times since that correlates to race ... I see a lot more ... African American families, too, where the mother is being judged really harshly ... about ... what was going on in her relationship as it relates to being able to take care of her kids.”

Another social service specialist,

“(child removals) just d[on]n't seem to happen as much in Oakland County. I don't know if that's ... tied to socioeconomic status ... race ... caseload. I don't [know]. ... what that exactly ties to, but ... you just d[o]n't see it or hear about it as much.”

Lastly,

“Sometimes I ... work ... in another [Wayne County] office. And I will say it's [a] totally different experience there ... clients are not I wouldn't say like super wealthy, but you know ... maybe like middle most middle class, you do have some lower class. A lot of them are ... white and their law enforcement is more involved because they have smaller departments, right? So, they show up and they do their job, and it looks just like it would in like you know a TV show. And the family gets services ... right away. They sometimes ... are not getting CPS calls a lot either. So, it might be a case where law enforcement is on, and I might go work there for the day cause they're short staffed or something. And I'm like, if this case was in [Detroit] Wayne County, CPS would have been here. Like, why is there no CPS in this case? ... [W]hen you try to tell people that, that's what's going on, I think like they're like, you're crazy. You're like, no, I'm seeing it

with my own eyes. Like just because they the CPS worker went to their house and it was nice doesn't mean like, there's not a threat to like you know other children . . . So, I think that, that happens a lot where you know it's like, oh, this person is . . . member in the community and you know their teenager just ran away from home with, like an 18 you're old boy. So, you know dad responded appropriately. It's like, so what? Even if mom responded appropriately in [Detroit] Wayne County, she would have a Child Protective Service case . . . So why isn't there one here?

Class as a mitigating factor appears in other child removal scenarios. In two of the 44 cases with nearly identical facts in which the parents were accused of medical neglect, the family where poverty was not an issue possessed the financial capital to hire world renowned expert witnesses and doctors from around the world to testify regarding a rare genetic disease. The child of the couple who was not impoverished was returned to the parents, yet when similar facts arose for two impoverished parents, the court denied them expenses to hire experts to testify on their behalf and their parental rights were terminated. On appeal, the court reversed the lower court's decision to terminate the parent's rights, finding the court deprived the parents of due process when the court denied the parents' request for an expert witness.

The impact of class revealed itself in the child removal process in numerous ways. One such way includes parents who lack what is considered suitable housing. In 14 out of 44 cases, parents' housing contributed to the removal of their children. While courts did not explicitly opine that poverty was the basis for removal, the court's strongly worded language shows its disdain for the impoverished.

Other perceived housing deficits by the court included parents' housekeeping skills, insufficient furnishings, inferior foods, and homelessness. Relatedly, physical location impacted removals

both within and across tri-county lines. When asked about how removals have changed over time a child advocacy program manager shared that in comparison to its sister county less removals occurred in neighboring Oakland County.

In general, the COVID pandemic exacerbated the deplorable living conditions for many who live in public housing. Throughout the pandemic, maintenance workers halted routine maintenance and only responded to emergency calls¹⁶³, the issue of deplorable housing conditions existed prior to the pandemic¹⁶⁴. As discussed above, financial capital tied to low wage income and un/under employment contribute to a lack of access to housing, impacting parents in abuse and neglect court.

However, financial capital tied to wage earnings is also influenced by race and class disparity. Parents in Detroit have historically and continue to be plagued with race and class barriers in housing largely due to behaviors of the federal government (Weaver 1948, 1967). Race and class directly impact family's access to housing in terms of accessibility. The physical location of available housing to those in Detroit is due to its history of white flight. Acceptability also plays a role in that the houses that are available are not acceptable to families as they do not meet family's most basic lodging needs. Both parents and courts find parents' housing accommodations to be subpar. Due to wage discrimination, parents in the city, especially parents of color, cannot afford housing in the city. Yet this systemic issue is attributed to the personal attributes of the parent instead of the system issue that it is.

Gender also acted as a negative social capital in terms of domestic violence. While any race, gender, or creed can be affected by domestic violence and acknowledging domestic violence

¹⁶³ <https://thewash.org/2020/09/29/pandemic-enhances-deplorable-conditions-in-public-housing/>

¹⁶⁴ <https://www.clickondetroit.com/news/local/2022/10/17/single-moms-evicted-from-rentals-after-living-in-deplorable-conditions/>

reports involving men are severely underreported, domestic violence is a gendered crime. Similarly, gender also acts as a negative capital for fathers in danger of having their parental rights terminated. For mothers whose children were removed due to domestic violence, courts failed to consider mothers' lack of social capital. "Personal history and related human resources, community context and women's place in the broader social structure do make a difference in whether they try to manage without help and in the type of help they try to obtain" (Bui and Morash 2007). Mothers engaged in domestic violence relationships with their partner while not all the time, for most cases experienced victim blaming. Courts however failed to see how women's lack in social capital, that is, their network of friends and family or lack thereof, their history of trust with the system, their fear of retaliation, their access to community resources, their access to services, and religion could all influence a woman's decision to leave and abuse situation and that is not as simple as leaving the relationship or acquiring a protective order. A former CPS worker illustrated how the system struggles with seeing domestic violence as anything other than cut and dry:

"You've been in . . . a domestic violence relationship and you fail to protect your children . . . because this incident, they got involved to protect you and they got hurt. And you have stayed in this relationship for quite some time . . . now . . . it is a failure to protect situation because the children were put at risk because one of them was injured trying to help you . . . It gets tricky because . . . the parent may be a victim . . . And instead of getting them out of that situation or saying, hey, mom, can you take the kids while I'm trying to work through this situation? They didn't do that. And it escalated this time, too, where the boyfriend or the husband is not just attacking mom now the kids are involved, and the kids are getting attacked . . . But . . . you don't automatically remove for that. If

mom is saying, I want out of this situation, can you help me? You try to help them . . . If she's persisting on maintaining this unstable, non-safe relationship, these kids got to come out of there . . .”

The former CPS worker's position that a mother's "persistence" on staying in an "unstable" and "non-safe" relationship and mom's failure to ask her mother to take the kids while she sorts things out at home makes numerous assumptions about mothers' access to social networks. Isolation from one's family is a prominent tactic in a batterer's toolkit. However, in contrast, there are some workers who grasp the circumstances of families holistically. In discussing domestic violence, a program manager stated the following,

“the ones that come to mind most frequently are ones . . . where there was domestic violence in the home . . . There seems to be this tension between wanting to make sure that the children are safe . . . but also understanding whether or not the parent . . . really provides . . . is really like that they would be, I'm trying to think of the best way to put it, like that the children aren't safe with their caregiver. There's a lot of . . . specialists . . . I feel like even law enforcement, too . . . Like there's this idea like that if somebody is a victim of domestic violence, like, they're automatically not keeping their kids safe . . . in my background, having been a domestic violence counselor . . . oftentimes like that survivor, the safest thing is you know for the children to remain. I'll use she just for a victim, just for the purposes of this conversation . . . but they're safest. And so, I think . . . you know I hear just, like, a lot of judgment from specialists about like, well, this was a really bad one or this was happening you know while the kids were in the home . . . and I don't hear as much accountability being put on the perpetrator . . . and especially if the perpetrator is not a parent to those children . . . I feel like they're even harsher with that

victim, you know? That maybe if the perpetrator is also a parent, they're like, okay, well, we'll get that individual out of the picture and the children can stay with the other parent. But . . . I've definitely seen cases where they kind of just deem from the . . . jump . . . that mom isn't fit is . . . under failure to protect, you know? . . . and then if the child discloses that they did witness violence, you know then that just all but confirms what they were thinking.”

The program manager expresses their understanding of the intersectional challenges associated with different capitals, recognizing the limitations and resources victims of domestic violence must confront.

In one court opinion, the trial court cited the mother’s “decision to continue her relationships with [father 1] and [father 2] despite her claim that they abused her” as a factor in terminating her parental rights. In a second case, among other reasons in which the court reversed, the mother’s rights were terminated after her child witnessed her paramour verbally abuse her. Both mothers were cited as having failed to provide proper care and custody to their children. In the latter case, the court reversed the mother’s termination, finding her due process rights had been violated.

Above, the court makes assumptions about the mother’s intersectional access to human and cultural capital in which I will discuss explicitly further down. One specialist identified multiple capital barriers while discussing domestic violence:

. . . I would say . . . a lot of times. . . failure to protect is [parents] really not knowing . . . the legal system or really not having a way to . . . have income without . . . the . . . primary breadwinner in the home. If he’s . . . the perpetrator, if that's the one that's doing the abuse . . . they may . . . just be protective of them . . . [A]lot of times . . . They have a

really long history of trauma . . . just trauma in their country . . . witnessing sexual abuse every single day . . . So, when they get here and you know somebody says or the child tells them, like, hey, this person is touching me, for them, it's just, like, not as bad as what they experienced in . . . their country. So, they may try to resolve it within the family . . . A lot of times there is not like a . . . PSA of what you do when your child discloses sexual abuse . . . So, I think there's this expectation that you know there's just like this pattern that everybody follows. But I talk and talking to so many parents, they're like, well, I just moved out . . . you know I tr[ie]d to go to the police station, but they were busy, and I've never seen that person again. And you know maybe there wasn't like, penetration. So, they didn't feel like the need to take their child to the hospital . . . or whatever personal decisions they make. And then . . . it might be a failure to protect because they didn't . . . take one of those steps in the process.

The specialist identifies, a lack of human capital in the form of education about the system and how it operates, a lack of financial/social capital in the form of income, a lack of human/social/financial capital in the form of protecting the batterer due to family preservation and not wanting their partner to “get in trouble”, a lack of social/cultural capital in the form of immigration, and a lack of social capital in the form of self-esteem and embarrassment.

When domestic violence survivors return to their batterers or fail to leave at all, the “application of the law and poor People's Court may turn on judicial assessment of whether litigants performed their identity according to prevailing norms of acceptable behavior for poor people or other determinative characteristics” (MacDowell 2015). Studies support that mothers’ past relationships with social services serves as a basis for mother's apprehension to involve the department when they are the victim of domestic violence (Douglas and Walsh 2010). Help

seekers, as found here, as well as in the literature demonstrate that when mother sought help for domestic violence or otherwise, the contacts resulted in instances of child removal (Douglas and Walsh 2010). A domestic violence survivors' relationship with the department can also be determined by her race. (Douglas and Walsh 2010).

When mothers are faced with the leave ultimatum, there are a lot of assumptions in play regarding mother's access. When the department advises the mother that she must leave her abusive partner the department haphazardly assumes 1) that mother will be able to obtain a personal protection order, 2) that the order if granted will provide the relief in which the mother is seeking, and 3) that the personal protection order will keep the abuser away from the mother (Goodmark 2010). even if mother does successfully receive the order there is still the barrier of serving the personal protection order which is a financial cost to the mother and the possibility that the father will evade service exist (Goodmark 2010). The mothers in the social service workers' vignettes lack access in the form of awareness, affordability, and adequacy.

Information and communication are attributes of awareness.

In the case of Wayne County mothers, it is clear that the department has failed to educate it's workers on the multilayer dynamics of domestic violence. Only workers who had previous training in domestic violence understood how domestic violence operated in child and abuse cases. Douglas and Welch (2010) advocate that better educated and better supervised child protective workers can improve mother's access to justice. The abuse and neglect system itself, including judges, prosecutors, and attorneys in this county showed an obvious lack of communication and information regarding domestic violence. This is my personal experience as well.

Next, while affordability is not initially a concern one thinks of in terms of a Personal Protection Order, service of Personal Protection Orders can range from approximately \$30 to upwards of \$100 depending on how many attempts the court officer made prior to actually serving the PPO. Since it is difficult for mothers to simply relocate with their children, mothers often lack access to available shelters, independent housing from their abusers, or a relative's home. Even victims of domestic violence have difficulty in getting the court to order exclusive use of the home. If the parties are not married there is no expectation that the abuser continue to pay for household necessities, and if the parties are married there is still no guarantee that the batterer will follow the court's orders. Lastly, mothers in domestic violence situations and abuse and neglect court lack adequacy. It is apparent that the department makes theoretical recommendations regarding what steps the parents should take with no regards to how these things will play out in reality. If a parent is unable to use the service because it is not well organized, it is inadequate.

Fathers also experienced negative social capital regarding their gender. In most cases, where fathers were the non-respondent parent when the children were removed from mother's care or when fathers' rights were being terminated for a stepparent or parent-initiated adoption, fathers were made to prove their fitness. A hurdle mothers are never required to overcome in this context. One victim's services specialist had this to say about fathers.

. . . a lot of times I think they forget about dads you know? . . . That are not maybe not around or not like living with . . . Like I've had cases where I've had dads present and like oh, no, I don't need to talk to them, or the dads will come here and not even know what the allegations are. Like they don't even know that somebody reported you know their daughter's getting sexually abused . . . like nobody contacted them. So, it would

sometimes it takes me and say like, no, you have to tell this person what's going on . . .

So I think they don't consider all of the caregivers at times, too.

In both Wayne cases sampled pertaining adoptions, after the mothers placed the child up for adoption each father attempted to establish paternity and raise the child on their own as the biological parent. In one of the two cases at the trial court level, the court denied father's attempts to establish paternity and allow the adoption to proceed. At the appellate stage, this decision was reversed. In the second case, the father was allowed to establish paternity and halt the adoption, however at the appellate stage, the decision was overturned. After the birth of a child, mothers unlike fathers are never questioned regarding their fitness to raise their child absent some extraordinary circumstance like drug positive at birth. Still, testing positive for drugs at birth is no longer a basis for parental termination without more. Whether or not a parent is fit only pertains to fathers in this regard. In these circumstances, a father's gender, an attribute typically regarded as a positive trait, acts as a negative capital against the best interest of the father.

According to the National Responsible Fatherhood Clearinghouse,¹⁶⁵ some specific "barriers to a father's involvement in the child welfare system include "difficulty identifying or locating fathers, a father's inability to establish paternity, financial insecurity, substance abuse, incarceration, [troubled] relationship with the child's mother or lack of confidence in parenting skills. Additionally institutional barriers to fathers' involvements in the child welfare system include negative stereotypes about fathers, a lack of staff capacity and time, and lack of resources to refer fathers for help." access issues experienced by fathers in Wayne County are

¹⁶⁵ The national responsible fatherhood clearinghouse is an office of family assistance OFA funded national resource for fathers, practitioners, program slash federal grantees, states, and the public at large who are serving or interested in supporting strong fathers and families.

also found in the literature specifically fathers lack accessibility to fatherhood programs, lack access to childcare experience, and lack access to education.

For men who are concerned about their child being placed for adoption there are several steps of father must take, steps a mother would never have to take, to secure their right to parent: 1) registering with the punitive father registry, 2) providing financial support during the pregnancy and apply for child support services and 3) legally established paternity in relation to the child, and 4) continually reach out to adoption attorneys or agencies.

By way of their gender, fathers lack the following: awareness, adequacy, and affordability.

Communication and information lacked for fathers whose children were placed up for adoption whether it be a stepparent adoption or a parent-initiated adoption. This lack of communication and information initiated from father's own lack of knowledge, mothers' intentional deception, and adoption agencies coerciveness. Fathers who were unable to care for the mother during her pregnancy, provide for the child in this short time before the child was placed with a different family, or the fathers' inability to pay for a DNA test or file for a complaint for paternity speaks to the affordability challenges fathers' encounter.

Both the literature and interviews with social service workers reveal that the department is often unprepared to include fathers in the abuse and neglect process. The department is not prepared to accept fathers and provide fathers with services. One challenge fathers' face include fathers' status as the putative versus the legal father. In my own casework, I have observed situations where a father is known to the department however because the father is not the legal father due to his failure to establish paternity even if the father has taken an interest and being active in the child's life the father's status as a putative father is used as an excuse to justify the department's decision to not include the father as per law they are only required to include a legal father.

Lastly, trust is a component of social capital that occurs in the literature with domestic violence survivors (Douglas and Walsh 2010) and while that is the case here as well, a lack of trust also occurred between public agencies and benefactors. When parents have a history with social services as an entity there to assist them, when that trust is violated by the department and other social service agencies, parents lose access to a social connection in the community. One social service specialist explained the following:

“Sometimes it feels like people are moving very quickly without much intention of, like, what are we really trying to do here . . . and what is really best for the family? . . . I think especially . . . looking in the communities where (child removal) it's happening most you know . . . the African American community, The . . . Latinx community, lower income communities, I mean, they have relationships, you know long standing, damaged relationships with child welfare professionals and law enforcement . . . I think it makes it hard for them to . . . trust, to access, like anything that could be a helpful service . . . if your kids have been taken from you before and . . . you had to jump through a thousand hoops to get them back, you're not looking to those same entities to help you. If you really need help, you know you're not looking to admit to somebody that you're struggling . . . or that you and your kids need support the next time around.”

When seeking help is used as an opportunity to police domestic violence survivors or other vulnerable populations these services are in fact unacceptable to domestic violence survivors.

Acceptability in terms of access response to the attitude of the provider and the litigant regarding characteristics of the service and social or cultural concerns. For example, if a litigant is unable to trust the social service provider for fear of having their children removed this makes the

service unacceptable and thus the parent lacks access due to their status as a domestic violence survivor.

Human Capital

In Wayne County, a lack of human capital presented itself as a lack of education, skills, and health of the parent. A consistent perceived deficit to the court included parent housekeeping skills. Domestic violence survivors also lacked human capital in that those around them lacked the education on domestic violence to assist the parents. As noted in the social capital section, leaving a domestic violence situation is not as simple as leaving the abusive relationship and seeking a protection order, if it were that simple, we would likely see a decrease in murder suicide where domestic violence is at issue. A program manager explained how proper education on domestic violence impacts victims.

“ . . . it feels like it's more based on . . . if they have a lot of knowledge about domestic violence, then it seems more like they're coming just like a more educated place about like a more nuanced approach to it. But for people who don't, I mean, it's almost like . . . a layperson, you know, every like victim blaming sentiment that you can hear in the media, you wouldn't expect to also hear those things from people who should be more educated on those issues.”

The same interviewee reported that they also found judges' behaviors during child removal proceedings as concerning, they noted, “you would definitely hear judges say you know things that were . . . victim blaming. Or I mean . . . even make an experience like retraumatizing.” As briefly discussed in the social capital section, this lack of awareness on the part of court stakeholders is a detriment to parents in abuse and neglect cases. While I did not investigate reasons in which those in power victim shame, I can only hope that it is due to the courts and

other stakeholders lack of awareness of effective information. mothers who do not know their rights or options are also affected by a lack of communication and information Regarding domestic violence and child custody. As a domestic violence attorney in the beginning of my career, I would often hear my clients' raise concerns that batterers would take full custody of the children if they tried to leave. This misinformation from batterers is difficult to overcome as a service provider.

Parents who struggled with mental health illnesses lacked good health and support needed to raise their children. Similarly, parents with physical disabilities and ailments covered by the Americans with Disability Act struggled with meeting expectations such as completing their parenting agency plan as the court works under irrelevant time constraints set by the law instead of within the parameters of medical experts.

Under the political capital section, I briefly mentioned parents' lack of access to human capital in regard to housing. In Detroit, the 36th District Court houses the landlord tenant docket where on any average day in which the court is opened, five landlord tenant judges can be seen hearing hundreds of eviction cases. Some of those cases are cases in which families have been subjected to deplorable living conditions. The people who typically appear in landlord tenant court are low income and cannot afford to pay their rent and by extension unable to afford an attorney.

During most of the COVID-19 pandemic, there were several federal and state rental assistance programs. These programs were statewide however low-income litigants in Detroit particularly faced barriers in obtaining access to the guaranteed money (Eisenberg and Brantley 2022).

Litigants were often unaware that the programs existed and prior to the fund's existence, litigants were often unaware of their rights as tenants. Families with abuse and neglect cases within

Wayne County who also faced eviction cases would have had their eviction matter heard at 36th District Court.

Parents in danger of eviction lack voice and power in that they are unaware of the protections available to them as tenants. Often times, tenants have the power to raise defenses against landlords who engage in unlawful practices including self-help evictions, retaliatory evictions, and improper notice. Parents who lack access to attorneys who have the power to influence and enforce rules, regulations, and standards, lack communication and information. During the pandemic, eviction moratoriums kept families that would otherwise be displaced due to evictions in their homes.

Prior to the moratorium, families at risk of eviction were simply displaced. If families were unable to find alternative housing a landlord could move to have a sheriff execute a writ and have the tenants belonging placed on the street. Low-income families with children at risk of evictions lack good mental and physical health. Common health consequences for low-income families with children experiencing eviction include depression, detectable HIV, increased emergency room visits, drug relapses, suicide, anxiety, insomnia, and drug and alcohol related deaths (Himmelstein and Desmond 2021). “Despite their high need for mental health services, children and families living in poverty are least likely to be connected with high quality mental health care” (Hodgkins et al. 2017).

Throughout the opinions, the court shows a lack in cultural competency by failing to acknowledge parents’ mental health struggles via various systemic, culture, and individual barriers to accessing mental health care. The stigma of receiving mental health care, especially the case of African American and Hispanic families, is not as simple as receiving and benefiting from services as the courts require that you do. Mothers especially have been found in research

to avoid seeking care in order to avoid being labeled as crazy and their children removed from their care (Himmelstein and Desmond 2021). While it is unclear if mother's failure to seek mental health services contribute to the removal of their children or if receiving mental health services and then being diagnosed with a mental illness contribute to child removal, research has found some truth in mother's thought process (Himmelstein and Desmond 2021). As a result, low-income parents have a mistrust of the mental health care system (Himmelstein and Desmond 2021).

Parents also face cultural incompetent providers who are less inclined to provide personalized mental health services to low-income families (Himmelstein and Desmond 2021). This is believed to be due to providers' lack of training in servicing low-income individuals.

Communication, bias, discrimination, and other practical barriers also affect access to mental health services (Himmelstein and Desmond 2021). One of the most obvious being a lack of health care insurance or limits in providers who provide services to families with public insurance (Himmelstein and Desmond 2021). Other issues include clinic hours which often do not meet the needs of low-income shift workers as well as long wait lists (Himmelstein and Desmond 2021).

These barriers unseen by the court create barriers in parents' quest to have their children returned to their care and custody. Parents in abuse and neglect court have mental health and/or physical health challenges, especially physical health challenges related to drug and alcohol use and abuse. Courts fail to acknowledge the barriers associated with low-income families' access to mental health services. It is more likely that families are facing common barriers found within the literature noted above including acceptability due to cultural differences, availability given the number of providers who service low-income families and take their insurance, adequacy

given the lack of after hour services for those who work low-income shift positions, and awareness including communication and information about the benefits of mental health and drug rehabilitation than simply failing to participate.

Financial Capital

The impact of class revealed itself in the child removal process in various ways in Detroit. One such way includes parents who lack what is considered suitable housing. Here, I discuss how a lack of financial capital contributes to family's contacts with Child Protective Services.

Similarly, while a lack of suitable housing can double as built capital, the court opinions I reviewed in Detroit suggest families in Detroit are confined to subpar living conditions due to poverty, because they are un- or underemployed. I discuss built capital in a subsection below. In 14 out of 44 cases, parents' housing contributed to the removal of their children. While courts did not explicitly opine that poverty was the basis for removal, the court's strongly worded language shows its disdain for the impoverished. Regarding the condition of a parent's home, one judge wrote,

“there were holes in the house in which she and the child were living. Petitioner also alleged that there was no working heat in the home, that the electrical wiring was makeshift, that the roofing structure had fire damage, that respondent had no documentation to occupy the dwelling, and that respondent had been informed that the dwelling was not safe or suitable for the child but had nevertheless failed to move.”

Here, the court has described an uninhabitable home, this may be the case as mother may also be squatting. The court's language indicates that mother has made an intentional choice to maintain residency in a home that fails to meet the basic needs of her and her child, however, this is unlikely the case. The mother described in the case above most likely is impoverished and is

unable to make the repairs to the home herself due to costs or relocate to desirable housing for a multitude of unknown reasons. Other identified housing and housing related deficits cited by the court and stakeholders related to poverty include insufficient furnishing, insufficient food, and homelessness.

When asked about a time in which they were involved in a child removal proceeding, a victim services specialist recalled a time where “deplorable” home conditions led to the amputation of a child’s limb. When I asked whether the family was experiencing poverty, the specialist reported,

“Yeah, I would say [in the] majority of the cases there's a poverty issue . . . A lot of parents are homeless, so they are staying at somebody's house . . . and then you know the sexual abuse happens . . . I would say a lot of the times it's lack of housing and appropriate childcare.”

In this case, the family lacked heat in the home and the minor child used the warm water flowing from the hot water tank to keep warm. From there, the child caught an infection leading to the amputation of their foot.

These families demonstrate an obvious lack of access in the form of affordability. Affordability is the direct cost for a good. In Detroit, city wages are low. According to Census data, the median income in the city is \$32,498¹⁶⁶. A third of the city’s residents live in poverty¹⁶⁷. “Over half of households with incomes below \$35,000 pay over 30% of their household income on housing costs. According to the city of Detroit inclusionary housing study, only 23% of units are affordable to extremely low-income households.”¹⁶⁸ Low wages indicate a lack in financial

¹⁶⁶ <https://www.census.gov/quickfacts/detroitcitymichigan>

¹⁶⁷ <https://www.crainsdetroit.com/crains-forum/metro-detroit-housing-market-short-affordable-homes>

¹⁶⁸ <https://hip.datadrivendetroit.org/pages/info-action-briefs/what-does-affordability-mean-detroit/#:~:text=Affordability%20by%20the%20Numbers%20Detroit%E2%80%99s%20housing%20is%20split,30%25%20of%20their%20household%20income%20on%20housing%20costs.>

capital. Though Detroit home prices are lower than other places when other capitals such as human and built capital are taken into consideration, safe and affordable rentals are out of reach for many Detroit residents¹⁶⁹. Families with children do not choose to live in deplorable conditions as suggested by the judge in the case above, families simply cannot afford appropriate housing due to low wages, rent, taxes, and other factors such as car insurance. Other indicators such as credit score and access to credit also directly impact Detroit access to housing¹⁷⁰.

These are only the challenges that land a family in abuse and neglect court. Once the family has a case, the family experiences an additional set of challenges. Prior to COVID, once parents have an abuse and neglect case, getting to the courthouse presents a financial burden if you were a litigant living at or below the poverty line. Depending on how close or how far you park to the courthouse, parking could cost as little as \$3.00 if you park prior to 8:00 a.m. over a half a mile away from the courthouse, \$3.00 if you cross a freeway, or for an unknown amount you can park across the street from the courthouse. Based on my own experience of parking in downtown Detroit for court, I know that parking across the street from the courthouse can cost as much as \$30.00. In lieu of parking, parents could ride the bus, costing \$2.00 for four hours, or hire a ride share company and pay by the mile. While that may not seem like a lot, according to the US Census, between 2016-2020 only about 53.5 percent of the population was employed with a median income of \$32,498¹⁷¹.

In Detroit, in addition to the actual monetary costs associated with going to court, families also incur costs associated with taking time off work to attend court proceedings. On average, absent

¹⁶⁹ <https://www.crainsdetroit.com/crains-forum/metro-detroit-housing-market-short-affordable-homes>

¹⁷⁰ <https://hip.datadrivendetroit.org/pages/info-action-briefs/what-does-affordability-mean-detroit/financial-health-detroit-residents/>

¹⁷¹ <https://www.census.gov/quickfacts/detroitcitymichigan>

a trial, court proceedings in abuse and neglect cases take no more than 30 minutes per family¹⁷². However, including the time in which it takes to find parking, walk to the courthouse, and wait for your case to be called, parents could spend half their workday or more at the courthouse waiting to be seen by the judge.

These factors are exacerbated by the individual behavior of judges that show a disregard for families and stakeholders' time. A former CPS Investigator I interviewed framed this as "unprofessional," however this behavior goes beyond professionalism and causes financial harm to families already enduring a traumatic experience. The former CPS worker stated, "judges in general show[] up late . . . I believe the hearing was scheduled for like 9:30 [a.m.] . . . I sat there to 11 [a.m.] . . . it's a waste of my time because I have other things that I could be doing." Unlike the former CPS Investigator who was paid to sit in the courtroom despite their frustrations regarding the court's timeliness, for the parents who take off work to be in court their livelihoods are interrupted. Here, the old adage of time is money is particularly fitting. The costs referred to within are in addition to the court costs families incur once a case starts, like the fees associated with the child's Guardian Ad Litem (GAL).

Most discussion on taking off of work for court centers on jury duty, however the same access challenges that arise for jurors who are summoned to court to fulfill their civil duty apply to parents engaged in abuse and neglect court as well. These challenges include a lack of wages, and for some, a lack of wages for already low wage paying jobs. As described by the CPS Investigator above, some judges arrive to the courthouse well after court is scheduled to begin. The Investigator I interviewed reported waiting an hour and a half for the judge to arrive. Even in situations where a parent is paid a salary, if a salary wage parent is due to be in court, the worker

¹⁷² This figure is based on both personal experience as well as the observation hours I conducted in other counties.

was likely required to use their vacation or sick leave to attend the court's proceedings. Due to the unpredictability of court, even for attorneys, it is impossible to know when your case will be called and when the proceedings will. Thus, in terms of income, low-income families who are hourly wage earners cannot afford to miss work in order to come to court. This is an indicator of a lack of access to affordability due to a lack in financial capital. Low wage earners are impacted by additional costs to attend court by getting to court whether it is paying for parking or the bus. Other costs such as gas, insurance, and car maintenance also play a role in getting to court. I will discuss the challenges associated with car ownership in Detroit in the next subsection.

Political Capital

One of the many facets to Detroit's ongoing public transit failures is in part due to a history filled with among other things racism and a lack of money and power. Similar arguments can be made about the judicial system in Detroit. In its most simple form, political capital is the lack of inclusion, voice, and power of the people. On a more complex level, political capital is, the ability of the government to garner resources for the community; the ability to influence and enforce rules, regulations, and standards; and having access to individuals and groups with the power to influence decisions. Think the Ratté family. On one level, the everyday litigant appearing in Detroit for an abuse and neglect matter lack political capital, however, the lack of political capital in Detroit flows beyond the litigants into the community itself much like class does as it pertains to social capital.

In a previous chapter, I introduced Judge Shelia Gibson, a judge reprimanded by the Michigan Tenure Commission after 1) maintaining unlawful practices in her courtroom and 2) failing to complete a full day's work over an extended period. Judge Gibson received a censure and 30 days without pay. While news reporters received tips regarding judge's conduct from parents

who were left waiting on judge to fulfil her civil duty, the consequences for judge's misconduct left the judge in a position of authority where she could continue to abuse her power. A Michigan Circuit Court Judge receives an annual salary of \$145,608. This salary is in addition to expense reimbursements. The Michigan Supreme Court rejected the Commission's recommendations that included nothing more than a reprimand. Despite parents' ability to mobilize and tell their story to a local news station, the parents were unable to make substantive traction in regard to holding their elected officials accountable. Judge Gibson still sits on the Circuit Court bench. Judge Hartsfield, the judge in the Ratté, Godboldo, and Brent family cases did not see public consequences for her actions, she did however settle with the Ratté family for an undisclosed amount.

Judge Braxton represents an example of how a lack of political capital stretches out into the community. Despite her status as a judge, not even Judge Braxton's public reprimand of her employer garnered enough traction for any action beyond lip service from those in power to make tangible change. The proposed criminal justice complex, north of downtown Detroit, was one many thought the Hall of Justice should be relocated to, to improve the experiences of the public and the working conditions of judge's and other court staff¹⁷³. However, while talks about potentially relocating the Hall of Justice have been swirling around for years, prior to Judge Braxton's scathing post and prior to talks on the new criminal justice complex, the Hall of Justice was noticeably missing from the plans associated with the criminal justice complex, although at the time it was believed that the construction of the state-of-the-art facility would require the demolition of the Hall of Justice to move forward¹⁷⁴. The proposal includes updated

¹⁷³ <https://www.freep.com/story/news/local/michigan/wayne/2017/02/28/legal-stakeholders-weigh-proposed-justice-complex/98522928/>

¹⁷⁴ <https://www.freep.com/story/news/local/michigan/wayne/2017/02/28/legal-stakeholders-weigh-proposed-justice-complex/98522928/>

facilities for the criminal court, sheriff/prosecutor's office, and a new jail for adults/adolescents¹⁷⁵. The building problems associated with the Hall of Justice have been at issue for many years, yet as talks continued on the fate of Dan Gilbert's project, construction began, and the Hall of Justice went untouched. This researcher has been unable to locate any updated discussions regarding the fate of the Lincoln Hall of Justice.

Since the onset of COVID, there has been a backlog of cases in every division of the circuit court including the juvenile division which oversees abuse and neglect cases. Well over two years into the pandemic, litigators including myself, are just now starting to see relief. However, there are still challenges for litigants as the courthouse still remains largely closed to the public. Though the building is opened, and people are there, unless you are tuned into a vibrant legal circle, everyday litigants could not possibly keep up with the day-to-day changes of the circuit court which include restrictions on which days you can file in person and which departments require an appointment.

While surrounding counties have adopted a hybrid plan which includes both in person and virtual court participation, Wayne County continues to operate at less than full capacity. As for the abuse and neglect division of the circuit court, I can only speculate what is going on based on experience and the happenings of the surrounding Wayne County courts. Despite explicit direction from the Michigan Supreme Court, Wayne County Juvenile Court decided to hold its abuse and neglect cases offline, limiting the public's access, a move the surrounding counties did not make.

As discussed throughout, building issues in Detroit are not exclusive to the courthouse but also span across Detroit's housing pool. The Building, Safety, Engineering, and Environmental

¹⁷⁵ <https://www.freep.com/story/news/local/michigan/wayne/2017/02/28/legal-stakeholders-weigh-proposed-justice-complex/98522928/>

Department (BSEED), made up of several divisions including the property maintenance division is comprised of several subdivisions and ensures compliance for commercial and residential properties, and is responsible for enforcing the Property Maintenance Code & Rental Ordinance. Landlords are required to provide safe, quality housing to their tenants. Landlords must have the property which is being leased registered with the city and possess a valid certificate of compliance, showing that the property meets city building and maintenance standards.

One function of BSEED includes ticketing landlords and property owners for homes for lack of compliance. If property owners do not remedy the reason behind the ticket, the City of Detroit has the authority to file a lawsuit against the property owner for nuisance abatement. The problem, however, lies in the follow through. Parents who live in deplorable housing such as the mother described above lack human and political capital. This political capital deficiency is due to a lack of awareness, availability, and adequacy (accommodation). When landlords fail to maintain their rental properties in accordance with the local compliance rules, residents have the ability to report their noncompliance to the city after first making an attempt to rectify the issue with the landlord. This however is often a fruitless effort as landlords often ignore tickets issued to them by BSEED.

The appropriate response to a landlord's failure to mitigate the source of the BSEED ticket or the ticket itself is to impede the landlord's ability to use the property as rental property or sue the property manager. In theory these are appropriate practices, but in reality, the payment of the ticket is not enforced, and the lawsuits are infrequent making the system inadequate leaving the tenant with little remedy. Instead of fixing the habitability issues associated with rental properties, when tenants assert their rights to habitable housing, landlords will evict tenants who

are month to month tenants, common in the City of Detroit or file suit for nonpayment of rent. When landlords fail to maintain habitable homes, tenants may withhold rent as a civil remedy to protect their rights as tenants. However, this sometimes backfires. In practice it is much easier for a landlord to evict a complaining tenant and move another family in, than to fix the home's habitability. Tenants often lack power and voice in asserting their rights without the assistance of an attorney. In these instances, physical access to an attorney often lacks for people who are at or below the poverty line. Many tenants are unaware that rent withholding is an appropriate defense to uninhabitable living conditions. Tenants who are unaware of their rights lack access in the form of awareness due to insufficient information about their rights as tenants. Tenants also lack access to legal services as the available attorneys working for legal aids specifically in Detroit's landlord tenant courts are not able to meet the demand of the community¹⁷⁶. Families are also unavailable to afford private counsel to remedy these issues as well as pay to rectify the habitability issues and deduct from the rent cost.

Built Capital

As mentioned in the previous section, it is believed that many of Detroit's homes have lead infested paint and pipes¹⁷⁷. In Detroit, 80 percent of housing units were built before 1960¹⁷⁸. "The Detroit Water and Sewage Department estimates there are more than 80,000 lead service lines in the city. In Detroit, lead service lines are most likely to be found in single family homes built before 1945.¹⁷⁹" Currently, there is a movement in the city to remove lead-based paint

¹⁷⁶ <https://michiganchronicle.com/2021/04/08/death-and-dying-in-detroit-black-women-struggle-amidst-housing-crisis/>

¹⁷⁷ <https://www.onedetroitpbs.org/partner-content/great-lakes-now-partner-content/great-lakes-now-hazardous-housing-environmental-issues-in-older-homes-could-lead-to-health-issues/>

¹⁷⁸ <https://www.onedetroitpbs.org/partner-content/great-lakes-now-partner-content/great-lakes-now-hazardous-housing-environmental-issues-in-older-homes-could-lead-to-health-issues/>

¹⁷⁹ <https://detroitmi.gov/departments/water-and-sewerage-department/dwsd-projects/making-detroit-lead-safe#:~:text=Due%20to%20the%20older%20housing%20stock%20in%20the,approved%20a%20long-sought%20tougher%20ordinance%20regarding%20rental%20units.>

hazards in homes¹⁸⁰. Slumlords rent to families who have no other option for their families and profit from their despair, while most renters report that their landlords are responsive to their repair requests, this is not the case for families living in inadequate housing¹⁸¹. It is estimated that 37,630 households or 90,690 (13%) Detroiters live in inadequate housing¹⁸². “Housing [is] considered inadequate if it has major problems with electrical needs including exposed wires, furnace or other heating problems, or a lack of hot or running water in the past year.¹⁸³” In addition to structural issues, families also reported issues with rodents and problematic vegetation¹⁸⁴.

Families with children, families living at or under the poverty line, and families of color are more likely to be living in homes considered inadequate¹⁸⁵. The mother discussed in the section above unfortunately is not unique in that she was subjected to living where “there were holes in the house”, “that the electrical wiring was makeshift, “that the roofing structure had fire damage, “that the dwelling was not safe”, and “there was no working heat in the home.” The lack of heat can be attributed to failure to pay the bill, but the lack of heat could also be from a nonworking water tank, a responsibility of the landlord if mother were renting her home. It is possible that many families, even those who do not live at or below the poverty line lack sufficient built capital to have their children removed from their home, yet child removal is not happening to everyone, just certain populations.

¹⁸⁰ <https://detroitmi.gov/departments/housing-and-revitalization-department/residents/detroit-leads-a-safe-housing>
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¹⁸² <https://detroitssurvey.umich.edu/wp-content/uploads/2021/10/DMACS-ARPA-funds-to-meet-home-repair-needs-reduced.pdf>

¹⁸³ <https://www.detroitnews.com/story/news/local/detroit-city/2021/10/21/um-report-estimates-more-than-90-000-detroiters-living-bad-housing/6107480001/>

¹⁸⁴ <https://detroitssurvey.umich.edu/wp-content/uploads/2021/10/DMACS-ARPA-funds-to-meet-home-repair-needs-reduced.pdf>

¹⁸⁵ <https://detroitssurvey.umich.edu/wp-content/uploads/2021/10/DMACS-ARPA-funds-to-meet-home-repair-needs-reduced.pdf>

As discussed above in the case of the Brent family, the housing crisis in part due to the lead infestation has stripped Detroit families of access to accessible, affordable, and available housing. All dimensions of access. Under the financial capital section, I identified how a family's lack in financial capital could impact the family's inability to maintain housing due to a lack in financial capital in the form of affordability. Affordability, however, is only one part of parent's access challenges. As highlighted in the example above, family's homes are laden with system barriers that existed well before parents moved into the home. A parent in the mother's situation above would have no control over the condition of the roof or the house's wiring. This home and many like it are one of Detroit's dilapidated houses rented in the City of Detroit. Families are subjected to caved in ceiling, rodents/roaches, leaking radiators, leaks, lead, defective guardrails, and shift in the foundation. Some of these issues are known to jumpstart illnesses. The city has attempted to hold landlords accountable for maintaining building safety standards, but I can advise from personal experience that the effort has gone nowhere. These conditions also deprive families of access to accessible and available housing, issues outside the direct control of the parents. Parents report that when landlords do come out to assess damage to their homes, they sometimes take pictures and never return, that's even if they address the issue at all.

Parents also encounter another set of problems associated with a lack of built capital, a lack of transportation. In September 2018, Detroit announced a strategic plan to address the transportation challenges of residents¹⁸⁶. Specifically, the plan addresses challenges including updates to the bus system and neighborhood traffic calming projects to help Detroiters connect to jobs, affordable housing, and more over four years¹⁸⁷. The movement came after several

¹⁸⁶ <https://detroitmi.gov/news/city-detroit-announces-strategic-plan-address-detroiters-transportation-challenges>

¹⁸⁷ <https://detroitmi.gov/news/city-detroit-announces-strategic-plan-address-detroiters-transportation-challenges>

concerns expressing dissatisfaction with the lack of ease, safety, and affordability getting around the city¹⁸⁸. It costs more to own a vehicle in Detroit than any other major US city, according to the city the cause of this is high insurance¹⁸⁹. This creates accessibility challenges for residents who can afford a vehicle but cannot afford the protection to insure it. In 2014, it was estimated that about 80 percent of Detroit households lacked access to a vehicle¹⁹⁰.

And as for public transportation, which has a long problematic history, Detroit's public transit system as it is today, is a shell of its 1950's self¹⁹¹. *How Detroit ended up with the worst public transit*, a piece appearing in the *Detroit Metro Times*, gives anecdotes from Detroiters who summarize their Detroit Department of Transportation experiences as: long rides, long waits, overcrowded, short staff, lacking street furniture, and unreliable. These challenges of Detroit's public transit run deep into the city's history, a history of racism, class, and power¹⁹². The city's lack of transportation is another accessibility issues parents in Detroit face as far as meeting the court's expectations. Parents are expected to maintain employment, make it to multiple appointments in a limited amount of time, and be timely while doing so. That is difficult to accomplish in a city where there is a dire need for functional and inexpensive transportation. Throughout several opinions discussed, parents highlight their difficulty in maintaining employment, attending parenting time, or making it to various appointments due to a lack of transportation. The court shows an apparent lack of comprehension of the world around it when it suggests "bus tickets" were provided and used the department's issuance of bus tickets as a reason for why the parent had no excuse to miss their appointments or maintain a job.

¹⁸⁸ <https://detroitmi.gov/news/city-detroit-announces-strategic-plan-address-detroiters-transportation-challenges>

¹⁸⁹ <https://detroitmi.gov/sites/detroitmi.localhost/files/2018-10/Detroit-Strategic-Plan-For-Transportation.pdf>

¹⁹⁰ <https://www.metrotimes.com/news/how-detroit-ended-up-with-the-worst-public-transit-2143889>

¹⁹¹ <https://www.metrotimes.com/news/how-detroit-ended-up-with-the-worst-public-transit-2143889>

¹⁹² <https://www.metrotimes.com/news/how-detroit-ended-up-with-the-worst-public-transit-2143889>

For some families, access in regard to transportation is a lack of access to affordable and accessible transportation. Due to the high cost of car insurance in Detroit, parents are unable to actually drive cars they otherwise would be able to afford due to unaffordable insurance.

Similarly given the challenges associated with Detroit's bus lines that is waits, staff shortages, and time to destination, Detroit bus transportation is inaccessible as parents cannot easily use it in terms of time and distance.

Prior to the pandemic, the physical courthouse represented a lack of built capital for anyone entering the building. The infrastructure, the parking, the bus line, the location, the building habitability all speak to the negative capital permeating the city as a whole.

. . . The condition of the building is just not welcoming . . . its not . . . I don't think [its] protective of family's privacy at times . . . you know? Having to go somewhere and the . . . possibility of having your children removed and I mean . . . I don't like going to . . . Lincoln Hall, but . . . just having to go there. And . . . one time I went, there wasn't even a door in the bathroom stall. Like one bathroom. No bathroom stall.

This victims' service specialist's sentiment is shared by one of the courthouse's judges.

"[i]t is a shame that we have to continue to work in these conditions. It is even more shameful that we ask the public to come to court and sit in crowded hallways of a terrible building with no air."¹⁹³ Judge Braxton is referring to the unbearable conditions of the building. It is ironic that CPS removes children from homes plagued with the same structural issues as the courthouse from which the orders of removal come from, yet one is appropriate for children and the other is not. These complaints made by Judge Braxton were made approximately four years ago, and while COVID interrupted the ebb and flow of life for everyone, public discussions to improve

¹⁹³ <https://www.wxyz.com/news/region/detroit/judge-writes-scathing-post-on-facebook-about-conditions-inside-detroit-courthouse>

conditions at the Lincoln Hall of Justice have fizzled and no changes have come to fruition regarding previous improvement plans. The conditions of the Lincoln Hall of Justice did not happen overnight, these issues have been mounting for several years, perhaps even decades. The lack of progress on the building's improvement raises serious questions about litigant's lack of political capital.

Currently the Lincoln Hall of Justice remains closed to the public and physical transit to the building is not a challenge, but COVID has created new struggles. As Detroit courts remain almost completely online, there is a population of litigants without a computer and without a broadband internet subscription¹⁹⁴¹⁹⁵. While the number of litigants is not exclusive to those in abuse neglect court, it is an access issue that at a minimum deserves recognition. Litigants' lack of a computer and/or broadband internet is intensified when coupled with the number of litigants who are unable to operate the technology, an issue I will expand upon more during the human capital discussion.

The Lincoln Hall of Justice lacks access in the form of adequacy (accommodation) and availability. The vignette shared by Judge Braxton and the victim specialist I interviewed detail how the court lacks the physical capacity to accommodate the people in which it is designated to serve. Service is adequate (accommodation) when well organized to accept litigants and litigants are able to use the services. Considerations of adequacy include hours of operation, referral or appointment systems, and facility structures. In the Lincoln Hall of Justice, the space is tight, the space is unwelcoming, and the space has insufficient seating.

As of this writing, the courthouse is unavailable to litigants as its completely virtual presence does not meet the supply and demand of the community it is serving. Likewise, though litigants

¹⁹⁴ <https://www.census.gov/quickfacts/fact/table/detroitcitymichigan,US/IPE120221>

¹⁹⁵ It is unclear whether computer includes smartphones and other devices such as tablets.

and stakeholders have case call times, as expressed by the Former CPS Investigator I interviewed, despite her 9:00 a.m. call time, the judge did not arrive to take the bench until 11:30 a.m.. When this happens litigants and the like are forced to wait on the judge with no recourse. This deems the service inadequate and does not accommodate its users. Transitioning court to a strictly virtual platform has done little to fix this. Litigants still sit in the virtual waiting room for hours waiting for their case to be called without any indication of when their case might be called, this is perhaps the biggest downfall to virtual court. Online court has created access issues in terms of awareness because now litigants lack communication and information regarding the status of their case.

BLIND JUSTICE?

DISCUSSION (W, NLP, FTC, UP, CM AND SE MICHIGAN)

Adequacy (Accommodation)

A service is adequate when it is well organized. An organized service is able to accept litigants/parents and litigants/parents are able to use the service. The relationship between the manner in which the resources are organized to accept litigants' and the litigants' ability to accommodate to these factors and the litigants' perception of their appropriateness. In the case of abuse and neglect court, parents interface with multiple entities, especially those intended to resolve the social issue experienced by the parent which initially brought their child to the court's attention. Several programs (WIC for example) exist to assist mothers in achieving and maintaining status quo parenting, however those same programs do not exist for fathers who are similarly situated. Or, for programs that are not based on gender, such as SNAP, fathers underutilize the program. While there is little data, on men's participation in SNAP, consider this, "in FY 2018, women were about 63 percent of nonelderly adult SNAP recipients and over

six in ten (61 percent) of SNAP households with children were headed by a single adult 91 percent of which were headed by women.”¹⁹⁶ It is not clear why a discrepancy exist between men and women’s use of programs intended to alleviate hardship, however identified barriers to SNAP include 1) misinformation, 2) computer access, 3) stigma, 4) application difficulties, and 5) lack of awareness¹⁹⁷. Similar inferences can be drawn about other public assistance programs such as the Housing Choice Voucher Program (Section 8). “As of 2020, 78 percent of families with vouchers nationwide had a female head of household and 37 percent had a female head of household with children.”¹⁹⁸

Programs in Michigan specifically intended for fathers are insufficient in their services and resources to meet the needs of fathers. Even if programs do exist, the programs can do little good if litigants/parents are unable to utilize the service for one reason or another. For fathers, a lack of experience with the system through public assistance programs give fathers little knowledge or literacy on the ins and outs of the system.

Fathers are not recognized as caregivers, thus services intended to develop those skills are both inadequate in substance and unavailable in numbers. For fathers who are provided with the desired tools, if fathers are unable to put their proverbial skills to the test, by practicing on their own children the services become unacceptable.

Caregiver stigma extends beyond society into the home. For example, the court terminated a father’s parental rights emphasizing father’s untidy home, his parenting of the children, and his failure to complete services in conflict with his work schedule. Father lacked technical skills and the court thought father should apply himself more. Up until the time the department got

¹⁹⁶ <https://nwlc.org/wp-content/uploads/2020/10/Gender-and-Racial-Justice-in-SNAP.pdf>

¹⁹⁷ <https://www.projectbread.org/uploads/attachments/ckrupoiyh0lbg9havs9lxj2-boston-snap-survey-research-brief-2021.pdf>

¹⁹⁸ <https://www.naacpldf.org/housing-discrimination-report/>

involved, father was not the children's primary care provider and thus had little experience with their day-to-day care. As a result, father presented as a less than model parent. Still, father was willing and available to care for the needs of his children. In *In re Hudson* the parents' maintained deplorable housing conditions, used drugs in the home, and failed to pick the children up from school. Though there was no risk to returning the children to the home, the court found mother continued to allow other family members to frequent the home and thus terminated both parents' parental rights on this basis. On appeal the court opined that the removal was inappropriate from the start.

When home cleanliness is a barrier to family reunification, the department will often arrange for the family to receive housekeeping services to teach the parent how to maintain the home. In the case of the first family, these services were not offered to the father. Father was also criticized in how he parented his children, yet the court did not indicate father's parenting was harmful or inappropriate, just not on par with what the court deems status quo parenting. Lastly, the court took issue with father's failure to complete recommended services, even though those services interfered with father's ability to provide for the family. If father had failed to maintain employment, it is likely the court would have taken issue with father's lack of employment as well. Father did not benefit from public assistance likely due to his income or some other barrier associated with public benefit recipients. Similarly, due to father's status as an hourly employee, it is unlikely that father maintained any control over his schedule, limiting his ability to meet court obligations due to program restrictions such as hours of operation. Given father's new responsibility as a single full-time parent, father likely found the courts' requirements to be inconvenient and dissatisfactory, making his experience inadequate.

Parenting time courses are a part of the court's standardized parent improvement plans, it is likely the court ordered parenting time classes for both families however, due to father's new commitments and work schedule, it is unlikely father was unable to attend the classes when offered. When ordering life and parenting skill courses, courts must order available resources in that they are barrier free. Parents must also be in a space to accept these services; it does not serve parents or children for courts to order services that parents are unable to accept due to other barriers including accessibility or the inadequacy of the service.

Immigrant parents faced similar barriers in accessing convenient services set up to service their needs. Due to their immigration status, immigrant parents faced challenges accessing the services that could have potentially assisted them in retaining custody of their children. Specifically, non-profit organizations and state assistance typically used to assist parents with their barriers are commonly restricted from servicing immigrants making them ineligible for needed services. Thus, although the services are there, immigrant parents are unable to utilize services. These services can include but are not limited to access to government documents in order to make appointments, obtain a car, or obtain a house. These access limitations require immigrant parents to use less effective means to gain access to the services they need. Despite having cared for the child without incident throughout the child's life, one father's immigration status hindered father from maintaining stable housing. Father's status as an immigrant limited father's access to basic services including social services that could have assisted him in raising his child and the authority to work. Much like the W region, in this region, parents who availed themselves to the state for assistance were unable to trust the system. Trust acted in the inverse for those who believe the system provides resources for families in need.

Social services offered by the state to parents in need are not made available to immigrant parents. That is, immigrant parents lack access to available services and resources to meet the needs of their children. For similar reasons, immigrant parents' available employment opportunities are limited due to their status. Because parents are unable to work, they are unable to afford their children's needs. Even if parents do have access to services, parents may still lack access if parents are unaware of the services available to them or the rights they possess (Earner 2007). Mutual cultural misunderstandings between families and caseworkers also serves as an awareness issue (Earner 2007). Relatedly, immigrant parents with different cultures are likely unable to accept the services provided by the departments and the courts given its disposition on immigrant parents.

While other studies show that one's immigration status causes mistrust among government entities (Earner 2007), that was not always the case for parents who found themselves in abuse and neglect court. Instead, parents without access issues related to their immigration status expressed their inability to access services due to language barriers preventing immigrant parents from accessing convenient services.

These families lack time, experience, skills, education, and good health, making it difficult for them to navigate the court's requirements and abide by its expectation. Men, by way of their fatherhood, and immigrants due to their status face barriers to successfully participate in abuse and neglect court due to limited-service opportunities available to them.

Awareness

The awareness dimension of access, communication and information, emphasizes that a service maintains awareness through effective communication and information strategies with the required people including consideration of context and system literacy. In regard to awareness, it

is helpful to consider parents' experiences given their access to both social and human capital.

For parents in abuse and neglect court, communication and information are a reciprocal act between the courts and the respondent parent, the respondent parent and various court designees, or respondent parents and non-respondent parents.

As mentioned above, for fathers, fatherhood can act as a negative social capital influencing fathers' access to and involvement in the juvenile family system. Specifically, when fathers maintained tumultuous (or nonexistent) relationships with their children's mother, mothers, adoption agencies, and sometimes the court were able to conceal information or intentionally mislead fathers regarding their rights to their children. This included misinformation about the child's existence or concealing the mother's marital status from the father. This gatekeeping created circumstances in which fathers' lack of involvement due to their lack of information and lack of appropriate communication made them participants in family juvenile court by default. Though in general, identifying with the male gender acts as a benefit in many social settings, in cases of paternity; adoption; and abuse and neglect matters, the male gender functions as a negative social capital. Fathers experienced stepparent or mother-initiated adoptions in X out of X regions. Stepparent adoptions occurred largely after a period in which the father did not provide financial or emotional support to the mother while the child was in utero or after the birth of the child. Fathers reported having no knowledge of their children's existence.

In one particular case, father was led to believe that his child's mother terminated her pregnancy and thus he had no actual knowledge that there was a child to be cared for financially or emotionally. The court found on appeal that mothers have no duty to alert fathers of live births.

Fairness is not a factor that the court can consider as, "the Adoption Code simply did not account for a situation where a father had no notice of his child's birth." Stepparent adoptions were less

common among mothers and out of X stepparent adoptions where the mother was the parent at risk of having her parental rights terminated, only X mother's rights were terminated. Thus, even when similarly situated, outcomes for mothers and fathers are drastically different when parents' rights are terminated due to a stepparent adoption with fathers being substantially disadvantaged. The disadvantage fathers experience due to a stepparent adoption extends to a mother-initiated adoption as well.

For example, biological fathers receive little recourse when they unknowingly fathered a child with a married woman or simply unknowingly fathered a child. In these cases, when a mother chooses to place a child up for adoption or marry soon after the birth of the child, mother's actions create challenges for biological fathers who wish to parent their children. Fathers who found themselves in these situations were not in a position to remedy issues related to their parentage due to laws that favor the sanctity of marriage. Deception in adoptions primarily affected fathers. Without communication from their children's mothers, fathers are left without the appropriate information to participate in parenting. Even when a father is married to the mother of his children, marital status could still be used against fathers when children were placed up for adoption by their wives without their consent. Adoption agencies and the law are complacent in mothers' deception and nonresponsive to fathers' attitudes regarding the characteristics of the service and social or cultural concerns.

When fathers failed to bond with their children due to a strained or nonexistent relationship with the child's mother, courts framed this as failing to maintain a relationship with the child. This was the case even if fathers were incarcerated. Even if father did not know of, or lacked access to the child due to a lack of social and human capital affecting father's awareness, these circumstances were rarely considered by the court. The law surrounding paternity establishment

or one's responsibility for financially/emotionally supporting one's children (especially while incarcerated) are complex and difficult to understand for the lay person.

When an abuse and neglect case was brought against a legal but not biological father, the biological father who had no prior knowledge of the child's existence was stripped of his parental rights. The court's majority opinion noted, "you cannot have a legal father and a punitive [sic] father." The court's dissenting judges raised, "it was troubling that the law should be interpreted to mean that [biological father] had no opportunity to establish paternity. In this case, mother was married, meaning the child was born with a legal father. The biological father missed his opportunity to challenge the legal father's parentage and the court did not authorize the father to do so during the abuse and neglect proceedings. Courts expect fathers to engage in proactive and affirmative action, even if the opportunity never presents itself to do so. While men are more likely to access their social capital in comparison to women (Parks-Yancy et al. 2007); the welfare system is set up to assist mothers who are state aid recipients to achieve or maintain status quo parenting expectations in a manner that does not exist for fathers. Fathers' inexperience with the "system" provides some explanation as to why fathers seemed hesitant to engage with the system given their lack of personal experience or in contrast their experience with the system through the department of corrections. This lack of access was compounded when fathers were simultaneously impacted by financial capital/affordability. In a forthcoming subsection I will discuss the complexity of awareness X affordability in the context of stepparent and mother-initiated adoptions.

Though stepparent adoptions largely impacted fathers, one case occurred in which a mother lost her parental rights to a stepparent adoption. The mother in *In re Kaiser* was similarly situated to the mother in *Eickoff v Eickoff (In re S.M.N.E)* where mother's tumultuous relationship with

father caused a breakdown in the relationship with the children, the court did not consider the bad acts of the parents in its decision to terminate mother's parental rights as it had in *Eickoff v Eickoff (In re S.M.N.E)*.

Parents lack of awareness extend beyond actual knowledge of laws and procedures and is also a factor courts scrutinize in the home. Specifically, parents lacked access through a lack of human capital, in particular, they lacked "skills" or "know-how" regarding housekeeping and child rearing expectations situating parents for system intrusion.

A lack of proper and or appropriate parenting skills was apparent in the west, and several other regions.

Specifically, one mother was said to have,

" . . . abandoned [the] minor child without proper food, clothing or without proper instructions at a friend's house for a two day period . . . failed to properly feed [the] child causing medical problems to-wit: digestive disorder . . . failed to respond to [the] child's physical need's: to wit: properly feed or clothe child during the night . . .failed to respond to the child's emotional needs."

The issues highlighted by the court do not demonstrate that of a physically abusive parent intentionally or obviously harming their child due to some impairment, but that of a parent who thinks it appropriate to behave in this manner due to unknown reasons. Failing to properly feed a child, failure to properly feed or clothe the child during the night, and failing to leave instructions with a friend are the actions of an inexperienced parent or learned behavior. These are skills that parents can achieve through a generalized parenting time course.

Bad parenting can be passed down generationally¹⁹⁹. This is one reason the literature associates with less than model parenting²⁰⁰. Parents are likely to implement the same parenting skills they observed in their own childhood into their parenting²⁰¹. Though parents can recognize how they pass their own trauma down to their children, parents do not have the tools to remedy the issue²⁰². Researchers suggest that if children's primary care physicians inquired about the emotional health of parents at the time of children's appointments, physicians could help assist in identifying resources that parents lack²⁰³. However, parents are not being asked about their mental health and the cycle of bad parenting continues²⁰⁴. These parents too lack awareness in the form of communication and information. Without dialogue with children's doctors, parents are unable to break the cycle of bad parenting and will pass these same skills onto their children. In reality, parents must master new skills for child rearing, yet some parents never acquire these skills. Other realities of society include reduced opportunities to gain experience informally about infant care through raising young relatives or being around friends with babies because Americans are having fewer children than in past generations²⁰⁵.

Additionally, women's hospital stays are shortening in length thus limiting women's access to gain parenting care skills²⁰⁶. In society the opportunity to gain experience about proper and

¹⁹⁹ <https://www.nbcnews.com/health/kids-health/poor-parenting-can-be-passed-generation-generation-study-n566036>

²⁰⁰ <https://www.nbcnews.com/health/kids-health/poor-parenting-can-be-passed-generation-generation-study-n566036>

²⁰¹ <https://www.nbcnews.com/health/kids-health/poor-parenting-can-be-passed-generation-generation-study-n566036>

²⁰² <https://www.nbcnews.com/health/kids-health/poor-parenting-can-be-passed-generation-generation-study-n566036>

²⁰³ <https://www.nbcnews.com/health/kids-health/poor-parenting-can-be-passed-generation-generation-study-n566036>

²⁰⁴ <https://www.nbcnews.com/health/kids-health/poor-parenting-can-be-passed-generation-generation-study-n566036>

²⁰⁵ <https://www.washingtonpost.com/posteverything/wp/2014/10/02/most-new-parents-are-totally-unprepared-for-their-new-babies/>

²⁰⁶ <https://www.washingtonpost.com/posteverything/wp/2014/10/02/most-new-parents-are-totally-unprepared-for-their-new-babies/>

appropriate parenting skills are lessening. It appears however that courts recognize this even if they are unaware of the reason behind it, as court ordered parenting time classes are found in numerous court opinions. The concern about some of the parenting classes ordered by the court include relevance to parents needs and cost²⁰⁷. The commonsense behaviors that we expect people to have are in reality not common. When classes are provided to parents however, the classes are inadequate or cost inefficient rendering the classes inaccessible and thus unusable for parents.

Several regions heard cases in which the parents' homes were described as deplorable. The dialogue between the court and families exhibited not necessarily the family's refusal to maintain a clean home but the family's inability to keep the home clean as they lacked the skill set to do so. Living conditions are associated with health (Barrow and Pollack 2022; Gu and Ming 2021 Palacios et al. 2021; Abdi et al. 2021). The west region provides context to this conclusion. The allegations in *In re Youmans* included concerns over,

“dirty dishes, pots, and pans piled in [the] kitchen sink. They were covered with old food scraps which appeared to be moldy and spoiled. A strong smell, similar to that of human urine, was found throughout the house. Numerous piles of dirty clothes in the bathroom. Floors in the house were covered with dirt, cigarette butts, wood scrapes, food scraps, and particles.” The mother in this case left the family home and announced that she would not be returning to the home and “that she would never clean the house.” The court determined that both parents suffered from a mental illness.

Similarly, in *In re Webster* the allegations included, “inadequate housing arrangements for the child, who was sleeping in the closet on dirty blankets thrown on a filthy floor smelling of

²⁰⁷ <https://www.washingtonpost.com/posteverything/wp/2014/10/02/most-new-parents-are-totally-unprepared-for-their-new-babies/>

animal urine and littered with dog food and cereal boxes.” The court identified mother as emotionally unstable after learning she had previously attempted to jump out of a moving truck twice. Mother displayed other disturbing behaviors including a request that the child’s pet be appointed an attorney and advising a neighbor her child had been taken so his body parts could be harvested. These parents demonstrate a clear lack of life skills, parenting skills, and good health. However, the court framed the parents’ lack of cooperation as a choice, in lieu of a force out of the parent’s control, the court opinioned,

“[t]he evidence showed that the child has been living with respondents in an unfit home amid animal and other filth, with inadequate sleeping arrangements, and was malnourished. The evidence also exposed respondent’s bizarre ideation and behavior, their refusal to alter their conduct and improve the child’s living conditions, and their refusal to submit to psychological evaluation and counseling or cooperate with the court in any manner at all.”

Though the court failed to recognize that the parents’ lacked the life skills needed to maintain a clean home, the concept is not foreign to the court and in other cases the court has attempted to directly address the lack of skills a parent possesses.

Research shows that parents with substance abuse and mental illness only improved home hazards and cleanliness after comprehensive targeted therapy (Romero et al. 2010). The same researchers found that some identified home hazards and cleanliness issues are not that of the parent and lie with the landlord. Romero et al.’s (2010) findings are consistent with my experience in landlord tenant court. Specifically, tenants are unaware of their habitability rights in their rental property. In complicated cases, where the basis for child removal is multi-faceted, parents respond positively to evidence-based treatments where parents’ underlying, and less

obvious struggles are also addressed. This evidence-based treatment requires a comprehensive assessment that goes beyond the court's basis one size fits all treatment plan. These skills are hard to teach and develop in the traditional classroom settings. Parents are unable to benefit from more specialized services that are not widely available.

The ability to maintain a clean house is a life skill which is grossly unaccounted for in abuse and neglect court. Parents who found themselves living in undesirable living conditions were given instructions to clean up the home without more, more being instructions on how to clean and maintain a home.

The children in *In re Newman* were removed due to inadequate housing conditions. The family's home was described as "dirty, unsafe, and unsanitary." To provide the children with adequate housing, the parents moved and made efforts to clean up the home. The parents struggled with managing the family's personal hygiene including the children's reoccurring head lice. The new home was found cluttered with dirty clothing, garbage, dirty pots and pans, and debris. The children wore dirty clothing, had strong body odor, and went hungry. The court found that the parents have "repeatedly failed to maintain their home so as to make it fit for habitation by the children. There is no question that respondents have a problem in this regard. Their home has repeatedly been found to be cluttered and dirty." The parents in this case clearly struggled with the skills necessary to maintain their home. In addition, the parents struggled with poverty, the opinion mentions the parents heating their home with a stove and space heater. The opinion made no mention of services provided to the parents that would assist with their house keeping skills.

On some occasions the court did provide more than instructions to families in need of guidance. The allegations in *In re Sprite* included a criticism of mother's caretaking skills, specifically, the

children were observed to have headlice and poor hygiene, the court responded by providing the parents with life skill courses. Despite being equipped with the needed classes the parents were unable to make the necessary changes to regain custody of their children. The court found that the parents participated in the courses and were capable of gaining adequate parenting skills yet failed to do so.

These cases all occurred around the same time, each including elements of mental illness and inadequate home conditions. While it is unclear why these parents received different responses from the court with some having their termination reversed, except for their youngest child, as in the case of *In re Yousman*, and terminations being affirmed in other cases, we can look to other factors such as bias among social service workers and the court, and legal representation to explain the different outcomes in factually similar cases. Here, parents' lacked access to social service workers and other professionals with awareness of specialized information strategies to assist parents with multilayered barriers.

In *In re King*, the court noted mother's home was "always filthy, littered with trash and feces", mother "left the children unattended for long periods of time, did not change their diapers, and did not feed them adequately", and "[mother] ha[d] been repeatedly evicted from her apartments." In response to the challenges in the home, the department offered the parents support services, the parents failed to follow through with their appointment and their children were removed shortly after. In this case, mother was unsuccessful in completing parenting classes, education mother undoubtedly needed in addition to instructions on housekeeping. While the court focused on mother's parenting skills and mother's inadequate housing, the court's opinion lacks any mention of mental health resources for the family.

If mother was unable to maintain a clean home, it is possible mother suffered from an undiagnosed mental illness that needed addressing prior to addressing any of mother's other challenges. Relatedly, In *In re Schmeltzer*, the parents previously lost their parental rights due to mother's mental illness. Father in the matter was found to have intentionally "wedged [the minor child] into a corner of her crib with one leg pushed down between the mattress and a crib side" to prevent the child from crying. The parents were also alleged to not be adequately feeding, bathing, or diapering the child. Mother having mental health issues herself was expected to intervene in father's behavior, father too having mental health challenges. The personality and mental disorders the parents were diagnosed with today would unlikely stand as a basis for child removal provided proper treatment. The appeal makes no mention of the services provided to the parents. The court noted, "their adherence to instructions given by outside care providers has been haphazard, they have failed to follow some instructions, such as sterilizing the baby bottles, while adhering too rigidly to others, such as limiting the amount of [the child's] formula to that initially recommended by the pediatrician, thus resulting in her early lack of development. The court cast doubt over mother's declaration, that with the help of medication she was now able to care for the child, due to mother being classified by Social Security Administration as mentally disabled and receiving government assistance for support.

In *In re Adrianson* one of the minor children contracted scabies. The child likely contracted scabies from a lack of cleanliness in mother's home and a lack of house cleaning skills. The mother in *In re Krupa* lacked human capital in that she disciplined the minor children with a belt. Discipline is a learned behavior; mother likely spanked her child because she understood this as an appropriate discipline tool. Given mother's circumstances it is unlikely that she was up to date

with the most recent child psychology literature which suggests that spanking causes long lasting damage to a child's psyche.

In *In re Dahms*, mother's parental rights were terminated after her children were observed barking incessantly like wild dogs and eating off their plates without using utensils. Other allegations reported that the children were found improperly clothed and playing in the street or in neighbor's yard while mother slept. Mother who suffered from childhood trauma was court ordered to attend therapy. Mother's therapist made a recommended treatment plan over the course of two to three years however the court found that despite mother's treatment plan mother would be unable to care for her children as she attended treatment and terminated mother's rights.

In re Kellogg, the court took jurisdiction after allegations that the mother yelled and swore at the children causing one of the children a mental injury. Mental injury, a common removal factor in a minority of regions, with some trial court decisions reversed on appeal while others were upheld, changed as our understanding of mental health increased causing a shift in the way parents were treated. *In re Boursaw*, the mother suffered from a personality disorder. Upon taking jurisdiction of the child, the court listed mother's mental health, smoking, failure to maintain a clean residence, and inability to maintain employment as a basis for removing the child. The same problems were found in *In re LaFlure*, in that case, the home was found filthy, and the child was removed immediately without first providing services to the family.

Lastly, I discuss a lack of awareness as it pertains to domestic violence survivors. Much like mental health, the information or lack thereof on parenting and domestic violence penalizes those who are impacted by actions out of their control.

When presented with instances of domestic violence, courts and the department demonstrated how much courts and social service workers lack adequate training on domestic violence and domestic violence survivors as well as demonstrated how a domestic violence survivor's lack in social capital impacts her human capital²⁰⁸. In cases of domestic violence, victim parents were deprived of expert witness testimony regarding domestic violence. Likewise, only in rare circumstances were parents with drug addictions or mental illnesses given the benefit of expert testimony to testify regarding the recovery process of a drug addict or parent-child attachments, especially when parents presented with mental illnesses causing them to respond to circumstances differently than expected.

In *Dept of Human Services v McCoy*, the court opined of a domestic violence survivor, “she continued to involve herself in situations of domestic violence.” In this case, due to a prior termination case, the child was removed from the mother's care a few short months after the child's birth. In addition to her status as a domestic violence victim, mother struggled with her physical health, living HIV positive, and possessing poor mental health, both of which were held against her. Despite acknowledging mother's positive steps toward “controlling [her] anger and emotional control” mother was faulted for failing to completely resolve these issues. Similarly, the mother *In Re Ferris* also experienced domestic violence in which the court victim blamed her for. The court noted that mother “continued to place herself in situations that would expose the children to domestic violence.” The court's response to mother in *In re Ferris* is reminiscent of the cases in New York where mothers' parental rights were terminated due to the domestic violence of their partners.

²⁰⁸ Domestic violence can happen to any gender, race, religion, or social economic status. Throughout this dissertation I will use pronouns she/her/hers when discussing domestic violence as the majority of domestic violence victims and survivors identify as woman.

Results from Bui and Morash's (2007) work in the Vietnamese American community on domestic violence survivors are not unique to Vietnamese American women. Experience as a poverty attorney has given me direct experience with domestic violence survivors such as the women in Bui and Morash's (2007) study. The findings in Bui and Morash (2007) and my experience share commonalities as outlined in the paragraph below. The court in this region victim blamed both mothers for their "participation" in their domestic violence relationships instead of holding the batterers responsible for their behaviors. The court failed to question the barriers in which these mothers who lacked health, income, and housing likely encountered while abused.

According to the National Coalition Against Domestic Violence, leaving a batterer is not always the best option (Also see Campbell et al. 2003). Abusers go to extremes to prevent the victim from leaving and leaving an abuser is the most dangerous time for a domestic violence survivor (Also see Campbell et al. 2003). Batterers often make threats to kill their partners or the parties' children when victims threaten to leave the relationship. Other common threats include taking the children in a custody battle, ruining their victims financially, and so forth. Other barriers to domestic violence include a lack of support from family and friends, concerns over maintaining the household, a victim's lack of knowledge about the court system, a victim's lack of knowledge about social services available to them, past negative experiences with law enforcement, having nowhere to escape to, fear of homelessness, the desire to keep their families intact, desire to not get their partner in trouble, and a belief that a sheet of paper (Personal Protection Order) cannot keep them safe.

The mother in *In re Gach* experienced similar re victimization from the court after accusing mother of maintaining a relationship with her older child's father who at the time was

incarcerated. Mother's use of a medical marijuana card gave the court the additional ammunition it needed to terminate mother's parental rights. At the court of appeals level, the court reversed the decision to terminate mother's parental rights.

Affordability

In Michigan, financial issues and financial instability to provide for a child are exceptions to child removal. However, in many parental termination cases, the underlying basis for removal are undeniably related to financial capital. Affordability, perhaps the most self-explanatory social capital and dimension of access is the direct cost for both the service provider and the litigant. An affordable service examines the relationship of prices and services and the litigants' income, ability to pay, and litigants' perception of worth relative to the total cost at issue. Financial problems are an identified risk factor related to a family's inability to provide sufficient financial resources to meet minimum needs²⁰⁹ that may increase the likelihood of abuse and neglect. Nationwide, with 28 states reporting, 40,866 victims of abuse and neglect have financial problems as a caregiver risk factor. Arizona has the highest reported number of victims in a single state with financial problem as a caregiver risk factor for 4,960 children. Michigan has a reported 566 victims with financial problems as a caregiver risk factor out of 26,932 children and Nevada has the lowest with 70 victims with financial problems as a caregiver risk factor. Financial problems were most evident among fathers who lost their children due to stepparent and mother-initiated adoptions, incarcerated/returning citizen parents, underage parents, unemployed parents, and parents receiving state aid. Fathers who fail to financially support their children are at risk of having their parental rights terminated due to stepparent or mother-initiated adoptions. This lack of financial capital plays a critical role in undermining the relationships of

²⁰⁹ <https://www.acf.hhs.gov/sites/default/files/documents/cb/cm2020.pdf>

fathers who are incapacitated due to incarceration or otherwise financially unable to provide for their children. As of 2022, upon learning a parent is incarcerated, the court automatically sets an incarcerated parent's court ordered child support obligation to zero. Phone, internet, and mail are standard forms of communication for incarcerated individuals; however, these all require money. If parents lack income and they are not otherwise supplied income from family and friends, incarcerated parents do not possess the means to communicate with their children to maintain a relationship with them. While some parents do earn income while incarcerated, as in the case of *In re Caldwell*, this income is not substantial and is typically used for prison essentials, not intended for outside use. The court in *In re Caldwell* rejected this notion and concluded, "although sometimes difficult, and incarcerated parent is generally capable of satisfying the support and contact requirements of the statute." In this father's case, the court found,

"[Father] had the ability to assist in supporting his son. [Father] initially earned \$50 monthly in a prison apprenticeship program, and thereafter earned \$150 monthly by the time of the termination hearing. Although responded testified that he could not send money outside the prison, he conceded that other prisoners with support obligations arranged for the prison to honor income withholding orders. [Father] did not pursue this avenue of payment even after obtaining a reduction in his support obligation."

Toiletry essentials such as sanitary napkins, shampoo, deodorants, soap, toothpaste, and toilet paper, are often not provided or are inadequately provided to inmates, forcing inmates to buy their own necessities with money they earn on the inside or with money sent by loved ones, which may cause a financial burden to the family, all to achieve basic self-care. Financial capital/affordability is also considered prior to the child's birth. Fathers who are unable to

provide financial assistance to their children's mother while the child is in utero or their children during incarceration almost always experienced parental termination.

In *In re Sanchez*, mother sought to terminate her ex-husband's parental rights to their child.

Father was incarcerated at the time and as a result had limited communication with the child and did not provide financial support for the child. Father did receive some income, though not substantial, during father's incarceration. After father's release he was unemployed and remained unable to financially provide for the child. The trial court stated, "as meager as the income was in prison, it certainly would not be beyond the father who was concerned with his son's welfare to send some token to the mother for the child's benefit." Father was denied the right of counsel. On that basis, the court of appeals reversed the termination of father's parental rights. Absent the court violating father's due process rights, the court of appeals would have likely upheld the trial court's decision to terminate father's parental rights. Father did not attempt to have his child support payments lowered on the basis of his incarceration.

The father in *In re Talh*, also failed to financially support his child causing the child's mother to petition the court for a stepparent adoption. Similar to the father in *In re Caldwell*, the father in *In re Talh* requested a reduction in his child support prior to father's incarceration. However, different from the father in *In re Caldwell*, the support obligation for the father in *In re Talh* was set to zero. Thus, although father did not actually financially support the minor child, under father's new child support order, father complied with the support order when he paid zero dollars in child support and thus the court *could not* terminate father's parental rights. In *In re Talh*, the court was yet again faced with a ruling in which from the context, the court believed it came to the correct legal conclusion albeit what it considered for the wrong reasons. Presented with a termination of parental rights barrier in an adoption context such as the conundrum in *In*

re AJR, for in our case the second time in the sample, the court again opined recommendations to avoid this type of outcome in the future. The court opined, “we affirm, but we urge the legislature to revisit the statute in question to account for situations such as the present one” where parents can circumvent the support provision of the statute by having their child support lowered to zero due to their incarceration.

From the court’s purview, such outcomes do not fall within the spirit of what the drafters intended. The court noted, “It seems ill-advised indeed for a person to fail to provide child support, accrue arrearages, and then fail to fall within the parameters of the statute because of criminal actions leading to his or her incarceration and a resultant modification (to zero) of an earlier child support order.” If courts were to adopt this reasoning, poor incarcerated parents would likely almost always lose their parental rights for failure to support the minor child. For one father in the Flint-Tri Cities region, after he was unable to pay for a DNA test and the child’s other medical expenses, father’s rights were terminated for a stepparent adoption. Father was incarcerated shortly after the child’s birth and as a result had no income, nonetheless without confirmation that the child was biologically his child or assistance from the court, father was obligated to provide financial assistance to the child. Even when the mother does not want to keep the child, fathers are not given the same biological benefit as mothers. In a case where the mother and her husband sought to place the non-marital child up for adoption, father attempted to assert his rights to the child only for the child to be placed up for adoption and his rights were subsequently terminated. Affordability, as discussed across several regions is a common barrier among fathers (National Responsible Fatherhood Clearinghouse). Fathers who did not have support orders were still disadvantaged by an obligation to support the child even if the father

was unaware if the child was his, or father was unaware he was responsible for supporting the child in utero.

Similarly, underage fathers lacked access to financial capital as they were often restricted to low wage paying jobs and were not received as responsible and capable of caring for a child even if the father had the assistance of their own parents. Courts also scrutinized fathers' for relying on other family members to assist in financially supporting their children. In *Blackburn v Debeliso*, similarly situated to the father in *In re P*, father lived with and financially provided for the minor child from the time of birth until mother moved out of the home subsequently requesting a Personal Protection Order, limiting father's contact with mother. The court concluded that because father lived with his parents, it was father's parents and not father that provided necessities to the child. The question of who provided essentials to the child in *In re P* never came up. In one case, where a mother had access to familial support the court criticized mother for failing to utilize her familial support system in caring for her children, essentially holding the family financially responsible for the mother's children. Fathers in general lacked communication and information about their rights and do not receive adequate services from the adoption agencies.

While *Eickoff v Eickoff (In re S.M.N.E)*, involves a case in which a mother's parental rights were terminated, I discuss this case here to emphasize how cases with the same underlying facts can have different outcomes. In *Eickoff v Eickoff (In re S.M.N.E)*, despite having a child support order of zero like the father in *In re Talh*, the court in *Eickoff* further inquired into mother's ability to pay child support and terminated her parental rights for failure to pay support since the court determined she possessed the capacity to pay support.

Financial capital resources of working-class people are of lesser quality and quantity than middle class people” (Parks-Yancy et al. 2007 citing Elliott 1999). This is evidenced throughout several regions where middle class to upper middle-class families are noticeably missing from abuse and neglect court, and where status bought attorneys credibility regarding their internet stability during virtual hearings but not similarly situated parents. Most parents across the state via public assistance or financial problems, lacked financial capital in that they lived at or below the poverty line due to a lack of employment or minimal wage employment. COVID substantially impacted parents’ ability to work not only because businesses were closed but also due to school closures. While we may not think of school as free childcare, it is reasonably referred to in the literature as such, giving parents’ access to financial capital (Parks-Yancy et al. 2007 citing Elliott 1999).

Parents’ economic class was evidenced by their appointed legal representation, as only indigent parents are eligible for appointed legal representation. Most parents across several regions had the benefit of appointed counsel. While appointed attorneys are in no way inferior to privately retained attorneys, appointed attorneys, both parents’ and child(ren)’s, are generally overworked and underpaid. The debate over appointed versus retained counsel is important, not because one is better than the other or suits have different outcomes, but because depending on the circumstances, the type of counsel one has does bring about some case differences (Cohen 2014). Parents’ income not only impacted their ability to retain private counsel but also impacted their ability to fully participate in their court proceedings. Un- or underemployed parents in more rural regions struggled with access to material items such as access to increased pre-paid minutes, a cell phone plan with an unlimited minutes package, device reliability, and device functionality. A mother in the Western region discussed above in the results section who did not have sufficient

minutes on her phone to participate in court lacked access to financial capital. To understand the severity of mother's poverty, consider the following, MetroPCS' least inexpensive phone plan costs \$30 a month. This plan provides the basic functions of a phone including call, text, and internet access. If mother did not consistently have access to \$30 to pay her cell phone bill each month, using a prepaid card to utilize her phone as needed would be one way for mother to connect to the outside world as well as avoid the initial service charges associated with a phone plan and the purchase of the phone. Pre-paid cell phones can be purchased at retailers for \$20.00. With children attending virtual school full time or going to school on a hybrid schedule, parents were unable to work. In other words, parents could not afford for their children to stay home. Prior to COVID, parents stayed home with their children when their children were not of school age however, COVID created circumstances where parents' inability to send the children to school, made school and inadequate service as it did not meet the needs of parents and arguably did not meet the needs of children. Even if parents had access to remote work, gaps in the virtual school day and technology challenges for children still created access issues for parents to bring in an income. As discussed in other sections, parents' income lead to other financial constraints such as housing. Internet challenges made the court inaccessible and there seemed to be no alternatives to appearing virtually as implemented by other courthouses to address family's insufficient technology challenges in more rural areas.

As discussed previously, capitals often overlap and intersect as is the case regarding the mother in *In re Hill*. Mother was unable to maintain housing due to her inconsistent income. It is possible that mother's inability to maintain full time employment is related to mother's drug use and criminal history. Mother's limited access to financial capital also affected mother's human capital. Though mother wanted to continue with substance abuse therapy, she could not afford it

and it was not otherwise offered to her. In *In re King*, mother could not afford to adequately feed her children or provide them with necessary furniture, the family failed to meet with the department for support and received an abuse and neglect case. Lastly, in *In re Schmeltzer*, mother's status as a social security recipient was used against her. In denying mother's appeal to reverse the termination of her parental rights the court opined that mother's continued receipt of social security benefits implied that mother had not improved. These are all straightforward examples of access barriers related to financial and incidental costs.

In *In re Hill* mother's social economic status contributed to mother's lack of access to built capital. Due to mother's incarcerations, mother was unable to maintain employment long enough to maintain housing. It is also possible that mother's incarcerations limited mother's access to certain jobs. Parents social economic status revealed itself in a lack of food in the home, inadequate housing and need for public assistance. In this case the parents lack of social capital, that is economic class directly relates to the parent's financial and built capital. The access in this case is limited by affordability, mother simply could not afford to maintain housing. In addition to the costs associated with a home, the mother's incarceration made housing unavailable to mother. Incarceration is a barrier to not only housing but specifically public housing.

The mother in *In re Adrianson* was arrested for writing bad checks, likely to feed her family and obtain fuel to heat the home. The removal petition also noted that the home was littered with old clothes and broken pieces of furniture. Mother failed to fill the child's prescription for an unknown reason, but it would not be surprising if it were mother's lack of financial capital given the other indicators provided within, specifically that mother was financially struggling. When parents did not have money, the court denied them access to transcripts limiting their ability to participate in the appeal process.

The mother in *In re Ross* initially lacked a job and could not meet the court's requirement to care for the child. Additionally, un and underemployment impacted parent's financial capital, mother in *In re Boursaw* was unable to maintain employment and the mother in *In re LaFlure* worked as a cocktail waitress. Parents who are un and underemployed are unable to afford the requirements implemented by the court. This is a straightforward lack of affordability. Affordability often bleeds into other access dimensions such as availability.

As discussed above the mother in *Dept of Human Servs v Davis (In re LE)* struggled with drugs and suitable housing, however, mother had no income other than child support and so mother was not able to find suitable housing because she could not afford suitable housing. Mother and her children lived without the basic necessities including heat, electricity, food, furniture, and clean clothes. The father in the case was homeless at the time of removal and received disability. Similarly, the mother in *In re Affleck*, only maintained part time employment and was unable to financially support the children. Mother was attending substance abuse treatment in addition to her other court ordered requirements, thus it was difficult to maintain full time employment.

After divorcing her husband like many women who go through a divorce, the mother in *In re Trejo*, had trouble providing suitable housing and care for the children due to financial reasons²¹⁰. The majority opinion as well as the dissent spend a substantial amount of time discussing mother's failed attempts to retain housing and the "assistance" she received from the department in terms of receiving housing lists, but nowhere in the opinion did anyone discuss assisting mother obtain public assistance or employment skills so she could afford housing.

Mother's caseworker testified to the court that mother never produced any "viable excuse" as to

²¹⁰ <https://www.divorcemag.com/blog/5-financial-challenges-women-face-during-after-divorce#:~:text=Going%20to%20court%20increases%20your%20attorney%20fees%20and,court%20reporting%20services%2C%20and%20other%20miscellaneous%20court%20expenses.>

why she could not obtain housing and assumed it was due to mother's finances. Despite receiving a list for low-income housing mother remained unsuccessful in securing housing. At the time of the removal hearing mother allegedly secured housing however no one on the state's side confirmed this. Father was also unable to provide the children with suitable housing. In *In re Utrera*, mother voluntarily entered a guardianship for her child because she lacked housing. Mother was required to pay child support despite already struggling financially to support herself and the child. The guardianship further disadvantaged mother and failed to provide the support she needed to get herself together, this is reminiscent of parents who lose their rights after seeking out the department for help. Mother in *Dept of Human Servs v Davis (In re LE)*, suffered from a drug addiction and had no income other than her child support. Mother could not afford to pay the heat or electricity bill in her home. Mother suffered from a drug addiction and the court directed mother to obtain employment, eventually mother did obtain employment however shortly after obtaining employment she lost it. Mother eventually obtained part time employment making \$600 a month. Mother had six children and could not afford appropriate housing with her income. The father in this matter was wholly dependent upon his mother after his benefits were terminated due to his incarcerations.

In *Family Independence Agency v Miller (In re Sherman)*, mother was required to submit to drug tests, a cost to mother. Mother forged the tests because she could not afford them. In *re Affleck*, mother worked part time at a restaurant and could not financially support the children or afford housing. The home in *Dept of Human Servs v Jenks (In re Jenks)* lacked running water and was described as a "filthy" pop up camper, that was both deplorable and uninhabitable. This could double as a built capital issue. The mother managed to secure a two-bedroom apartment at the

time of the termination. However, mother did not have the income to maintain the housing as she was unable to work due to an automobile accident.

Financial capital limited parents' access in ways other than built capital. Financial costs also prevented parents from fully participating in court ordered services when they were responsible for the costs of the services like in the case of drug testing. Drug testing at a facility can cost upwards of \$50 and low costs at home drug tests are both new and not accepted by the court. Fifty dollars to an already struggling parent is a considerable amount of money to spend weekly or even monthly. Parents also lacked employment skills after going bouts outside of the workforce, parents were unable to secure employment due to their court obligations. Parents court obligations meant that parents had limited time to work and without more than a GED or high school education were confined to working minimum wage employment with inflexible schedules. These types of employers do not allow for sick and/or vacation days. This made employment unavailable to parents as the available jobs could not meet the needs of the parent. As a result, parents did not find these jobs to be acceptable or adequate as they failed to meet the parents' needs. Services like guardianship proved to be insufficient for parents when courts ordered that already struggling parents provide child support to their children. Parents faced a catch-22 as they sought assistance from the court due to their financial instability and as a consequence became responsible to maintain support of their child through a support order or risks having your parental rights terminated. The mother in *In re Utrera* started and ended in the exact same place as a result of seeking assistance. Other unforeseen circumstances such as incarceration created financial barriers for families. Even though the father in this matter received disability benefits, incarceration is a qualifier to making the funds unavailable since disability and incarceration are both state funded entities.

Incarcerated parents experienced consistent challenges in their pursuit to assert their rights to the care, custody, and control of their children. In part, the barriers faced by incarcerated parents can be attributed to their lack of political capital, that is their lack of inclusion, voice, and power. Specifically, parents in this region were excluded from meaningfully participating in court proceedings, a constitutional right, when the department failed to properly serve parents with notice of proceedings and failed to provide documentation detailing the allegations against the parent(s). Further shortcomings of the state include its failure to uphold its statutory duty to incarcerated parents by failing to provide timely reunification services to families, delaying family's reunification or failing to provide reunification services at all. An example of this is *In re Smith*. In *In re Smith*, the court opined, “unfortunately for [father], [the department] misunderstood the extent of its obligation to an incarcerated father and determined that it was under no duty to facilitate reunification.”

Despite case law establishing father's right to reunification services and his right to direct the care, custody, and control of his children, the appellate court considered the department's behavior to be harmless error and upheld the trial court's decision to terminate father's parental rights, despite father having had nothing to do with the reason in which the children were brought into care. The father in *In re Smith* represents an incarcerated parent's inability to influence and enforce rules, regulations, and standards. A victim of the one parent doctrine, the father in *In re Smith*, lacked access to individuals and groups such as those the Ratté family and the father in *In re Sanders* possessed through U of M. *In re Sanders* explicitly overturned the *In re CR* ruling. The justices in *In re Sanders* were faced with a mirror set of facts in *In re CR*, the only thing having changed between the time in which *In re CR* was decided and the time in

which *In re Mason* was decided is time. This time includes a change in justices, a change in the political climate, and the change in legal counsel.

The parental rights of the father in *In re Whisman* were terminated after the child came under state jurisdiction due to the actions of the mother. Father attempted to direct the care, custody, and control of his child by placing the child with his mother, having had nothing to do with the reason for which the child came into care, a right determined by the *In re Mason* court. The court, however, distinguished father from the father in *In re Mason* reasoning that father had voluntarily given up his rights to another one of his children. Justice McCormack wrote a dissent in which he expressed his dissatisfaction with the court's decision to support a ruling in which a father's parental rights were terminated solely due to his incarceration despite clear case law. The father in *Whisman* like many fathers before and after him, are continuously stigmatized for their past transgressions. In the case of another incarcerated father asserting his parental rights, the father in *In re Rood* face the same barriers as the father before him. After the children came into care due to mother's actions, and incarcerated father attempted to assert his rights to the care, custody, and control of his child. Though less than an ideal parent father was not associated with the reason in which the children came into care. Though father served his time, the department attempted to use the reason in which father was incarcerated for to deny his right to his child. The one parent doctrine also involved parents who were not incarcerated, such was the case in *In re Kanjia*. In *In re Kanjia*, the children were brought into care due to mother's actions. The only allegation against the father included the fact that he was the father. Due to the one parent doctrine, the court attempted to adjudicate father based on mother's actions. The court reversed the termination of father's parental rights after the one parent doctrine was struck down in *In re*

Sanders. Other issues not unique to incarcerated parents but exacerbated by parents' incarceration included proper notice, such was the case in *in re Mayfield*.

In the west region, social service workers failed to abide by established constitutional rights but also its internal policies, specifically those pertaining to parenting time. Courts consistently do not hold the department accountable for its failure to provide appropriate and timely services to families. A common right denied to incarcerated parents included deprivation of meaningful access to court proceedings, specifically the court failed to timely appoint counsel to represent parents' interests. In general, incarcerated parents are treated like second class citizens and have little protections or means to enforce laws intended to protect them. Incarcerated parents also lacked the ability to enforce already established laws as well as encountered regular acts of stigmatization for their criminal history.

Because incarcerated parents are often disenfranchised these parents will never receive the opportunity to improve the circumstances of similarly situated parents. The court and the department frequently failed to abide by statutory, constitutional, and internal policies, yet the court saw these shortcomings as harmless error. From prison, parents were unable to advocate for themselves which made it easy for the court and department to exclude parents. The court consistently carved out exceptions to eliminate incarcerated parents from benefiting from the ruling in *In re Mason*. In addition to issues associated with incarcerated parents, courts in this region also failed to follow the administrative orders established by the Michigan Supreme Court to hold court proceedings online during the pandemic, finding yet another way to ignore established guidelines.

Parents in this region lacked access due to awareness, affordability, acceptability, and accessibility. Because incarcerated parents have limited access to the outside world, they cannot

easily receive information on the court's proceedings when the incarcerated parent is not the respondent parent in the abuse and neglect case. These parents receive ineffective communication and information from court stakeholders and are shuttered out of the process. Affordability is also an issue. Non respondent parents are not entitled to counsel thus these parents are responsible for retaining their own attorneys because they are not a party to the case, incarcerated parents seeking to protect their rights and interests are best served to retain counsel of their own. However financial costs are likely a barrier to this. Lastly, there is acceptability, even when incarcerated parents are included in reunification services, these services are inadequate and thus unacceptable when the court deems the department's failure to involve incarcerated parents in reunification services as a misunderstanding of their statutory duties and harmless error.

Several regions illustrate financial capital (financial and incidental costs) directly related to access to built capital. The conditions of the home described within illustrate the parents' poverty. In addition to the physical observations of the home, homes across regions also lacked basic necessities such as food, electricity, and heat. Parents whose homes were described as deplorable showed a clear inability to improve their circumstances. With the exception of the mother and *In re Gach*, Parents in this region were limited in their ability to improve their circumstances. Even in the *Gach* matter, the mother in the matter was completing home repairs on her own and did not notice the child had escaped from the home after working a long shift and subsequently assisting her adult children in getting to work. Mother still illustrates how available income can impede built capital.

Accessibility

Accessibility is concerned with the location of a good or service. If a good or service is accessible, it is within a reasonable proximity to the litigant in terms of time and distance and also considers transportation resources. Incarcerated parents, mainly fathers, recovering addicts, differently abled parents, and impoverished parents are most affected by the court and its designees' inaccessibility. Incarcerated fathers located in rural communities do not have easy access to their children. Visits with incarcerated parents for children are far and few in between and typically not encouraged. They require the cooperation of other family members who have the ability to transport themselves and the children to the detention center which adds an affordability element. In addition to physical distance due to incarceration, mothers' gatekept children from fathers' by moving the children's whereabouts to unknown and sometimes out of state locations in contrast to the parties' custody and parenting time order. Though solitary confinement is designed to punish the criminal for their acts, children are caught in the crossfire having little contact with their parents due to location and costs.

Parents located in rural areas much like the West region have challenges with availability and accessibility of services and to travel distances in rural communities (Belanger et al. 2008). However, accessibility and affordability barriers for parents with substance abuse disorders are not unique to rural areas (Bosk et al. 2022 citing Substance Abuse and Mental Health Services Administration, 2018; Cook et al. 2017; Schuler et al., 2015). This is particularly true for accessing physical and mental health services (Belanger et al. 2008). For minorities, the burden is compounded as they not only face the same challenges as those experiencing substance abuse in a rural area but experience lower quality services when the services are available (Bosk et al. 2022 citing Creedon and Cook 2016; Cook et al., 2017). "Rural areas often face a shortage of health care professionals, managed care plans and/or providers, and particularly health providers

who accept Medicaid” (Belanger et al. 2008). When parents are required to travel to receive services, the lack of funds, cost, availability, and reimbursement for travel to available and accessible providers is an additional challenge (Belanger et al. 2008). In general, rural areas noted that unavailable or inaccessible services included: dental care, health care, physical examinations, providers who accept Medicaid, emergency services, specialized treatments, substance abuse treatments, mental health services for adults, mental health crisis intervention, public (versus private) services, home-based services, counseling and parenting classes, and providers who speak languages necessary for care (Belanger et al. 2008). Other human capital challenges included difficulty in training staff because of the distance and specialized trainers, and the cost of travel for trainings (Belanger et al. 2008). The lack of human capital in rural areas specifically are mostly layered including access issues in awareness, adequacy, affordability, availability, and accessibility. While courts can order parents to mental health and substance abuse treatment, courts have no control over the supply of these needs in the community. Yet, courts will still blindly order parents to treatment without considering barriers outside of the court’s, parents’, and department’s control. Rural areas lack access to services within a reasonable proximity to the parent in terms of time and distance (location); lack access to sufficient services and resources to meet the volume and needs of the parents and the rest of the community (supply and demand); lack access to affordable services in examining the direct costs for both the service providers and parents; lack access to adequate services well organized to accept parents, and parents are able to use the services (organization); and lack access to awareness through effective communication and information strategies when they do not receive the needed services (communication and information). Only Washington recorded mental illness data as a caregiver risk factor with the potential for child abuse and neglect.

Acceptability

Acceptability is the relationship between the litigants' attitude about personal and practice characteristics of an existing provider as well as the providers' attitude about the litigants' personal characteristics. A service is acceptable when it responds to both the attitudes of the litigant and the provider, taking social and cultural concerns into account. As a poverty attorney, I often encounter examples of cases where parents who suffer from mental illness are harshly judged and not given adequate time to remedy a situation in which they have little to no control over. Domestic violence survivors often receive the same treatment. Incarcerated fathers' inmate status further complicates their status as caregivers and contributes to the lack of services they receive while incarcerated. "The definition entails a dual process in which both the litigants' and court stakeholders' perceptions, biases, and discrimination shape access" to the judicial system. The 1980's presents a long history of parents losing their parental rights solely due to mental illness. In one example, *In re Banas*, mother suffered from mental illness. After having a particularly difficult time raising her child, mother placed her child with a friend who also happened to be a social worker. The state removed the child from mother's chosen placement, denying her, her constitutional right to direct the care, custody, and control over her child. In *In Render*, the child was placed in foster care after mother's long history of mental illness. The parents in *In re Storms*, shared a similar fate after their child was removed shortly after the child's birth due to the parents' mental deficiencies²¹¹. And, *In re Drones*, mother suffered from extensive mental health issues which led to the termination of parental rights of her first child. Upon becoming pregnant a second time, mother's rights to her newborn were terminated the day of the child's birth. Mother was never given the opportunity to raise her second child. Though

²¹¹ Courts use mental illnesses and mental capacity as one in the same.

the trial court reversed the termination, this outcome is quite different from a similar case discussed. The mother in *In re Hatcher* suffered from a mental illness and father suffered from a drug addiction, still the parents' voluntarily placed the child with family after the child's birth, nonetheless both parents' rights were terminated. The mother in *In re Hatcher* like the mother in *In re Banas*, both acted in the best interests of their children. Despite this, they were policed by the department and stripped of their rights to direct their child's care, custody, and control due to their mental illnesses.

In *In re Ovalle*, the children were removed three times, the court opinion did not discuss what the issues regarding safety were and instead terminated mother's rights after mother allegedly failed to attend counseling/therapy or job training. In *In re Tedder*, mother suffered from an obvious mental illness or psychological disorder. Mother displayed behaviors that prompted the involvement of the department despite no allegations of abuse or neglect toward the child. Prior to removal, mother's home was found to be adequate and throughout the proceedings mother strictly adhered to the court's order. Still, the department took issue with what was described as mother's inconsistent parenting, unstable/unsuitable housing, and mother's personality traits in which she continuously received professional treatment for and concluded that mother's behavior rose to the level of emotional abuse.

Mothers in particular need support to manage the suffering associated with child removal (Honey et al. 2021). Mothers who suffer from mental illness already had chaotic lives prior to their children being removed, the actual removal of the children only adds to this chaos (Honey et al. 2021). Mothers in this situation need help developing adaptive coping strategies in lieu of maladaptive strategies (Honey et al. 2021). In my current position, I have had the opportunity to observe several families where the primary care provider suffers from an untreated or

undiagnosed mental health illness. Parents I observe with mental illness need extreme hand holding when parents are not treating. These parents are often overwhelmed and hopeless. The process of child removal for a parent who is not treating their mental illness is a very aggressive and abrasive endeavor. Parents are referred for services, however the instructions given to parents experiencing a mental health crisis requires a support system that encompasses more than policing. There is no one checking to see whether or not parents are taking their medication or providing other intense in-home services to the mother.

The current trajectory of child removal for parents with mental illnesses solely focuses on the actual mental illness and ignores the concurrent issues that arise once the children are actually removed from the home. These mothers are in need of support, and they may not be in a position to seek or find it for themselves (Honey et al. 2021). Proactive and persistent support is needed as parents who initially lose their children due to a mental illness may not be able to accept the support initially offered (Honey et al. 2021). All counties do not offer problem solving courts such as mental health treatment court, offered in some Michigan counties when parents mental health is an underlying contributor to the parents' legal problems. Thus, for parents who suffer from mental illnesses, the abrasive nature of abuse and neglect court set parents who are in need of a warm, nurturing, and caring environment up for failure. Parents who did not immediately overcome their mental health crisis found themselves facing termination of their parental rights. Once a child comes under the jurisdiction of a court under an abuse and neglect petition parents are on a restricted timeline to remedy the issue in which the child was brought into care. However, this timeline does not align with the fluctuating path to recovery. Parents receiving mental health treatment can only accept treatment once they are prepared to do so. The child welfare system is not situated to accept flawed parents and give parents little time to make

atonements for their missteps before permanently severing their parental rights to their children . When courts order services it typically triages the situation addressing the parents' immediate visible symptoms. When the primary mental health and/or substance abuse issue is not first addressed parents are unlikely to succeed even when parents are given the tools they need to succeed. There often isn't enough time for the parents to improve and meet the courts' expectations. Mental illness is not a caregiver risk factor that is widely documented. Washington state is the only state to this researcher's knowledge to record data on mental illness as a caregiver risk factor for child abuse and neglect.

In many regions the same was true for parents who suffered from drug addictions or used drugs recreationally. In a case where mother suffered from a debilitating disorder in which she managed her pain using medical marijuana, the court substituted its opinion for that of mother's medical provider and instructed her to cease her marijuana usage or risk her rights being terminated. Mother's rights were terminated due to her "illegal drug lifestyle." On appeal, mother's rights were reinstated as her drug use did not actually place the children in danger. In the same case, in which the mother was criticized for using medical marijuana, father was incarcerated and was not involved with the reasons the child came into care. Father was denied the right to direct the care, custody, and control of the child despite having a relationship with the child prior to his incarceration for reasons solely related to father's incarceration. At the time the children were removed from their mother's care, the case law on incarcerated parents and abuse/neglect cases had long been established. Still father lacked the power and voice to enforce the case law meant to protect his interests.

Drug and alcohol abuse are both identified caregiver risk factors that may increase the likelihood of child abuse and neglect. The second largest percentage of victims with caregiver risk factors

are those reported with drug abuse. In 41 reporting states, 121,215 victims or 26.4% have the drug abuse caregiver risk factor. Of 26,932 victims in Michigan, 6,746 victims are impacted by the drug abuse caregiver risk factor. Comparatively, there are 13,651 victims impacted by the drug abuse caretaker risk factor in Texas and 116 victims impacted by the drug abuse caregiver risk factor in Pennsylvania. As for alcohol abuse, in 34 reporting states, 57,560 victims have the alcohol abuse caregiver risk factor. Of 26,932 victims in Michigan, 4,220 victims in Michigan are impacted by the alcohol abuse caregiver risk factor. Comparatively, New York has the highest number of victims impacted by the alcohol abuse caregiver risk factor impacting 11,047 victims, while out of 26,932 victims 4,220 victims are impacted by the caregiver alcohol abuse risk factor in Michigan. New Hampshire has the lowest reported number of victims impacted by the alcohol abuse caregiver risk factor with a reported 105 victims impacted.

In *Family Independence Agency v Kucharski (In re JK)*, the court removed mother's children after mother admitted to smoking marijuana. Other than occasionally dabbling in marijuana usage, there were no identifiable basis for the child's removal. The department alleged and the court endorsed removing the child for generalized issues such as mother's alleged inattentiveness to her child's needs, mother's failure to redirect the child's behavior, the child's resistance to interacting with mother, and mother's failure to address the child's speech impediment. Mother was subjected to a parent agency plan to address issues mother did not have. The trial court also made a finding that mother had failed to bond with or become attached to her child.

Unlike the other cases presented in this region, this case was unique in that it failed to identify a known basis for which a child could be removed from their parent's care, custody, and control. Mother presented as a less than model parent and lacked many of the human and social capitals needed to protect her interests. One of the most concerning issues in mother's case involved the

court's lack of education and blind reliance on social service workers with non-specialized education. The case worker in *In re JK* raised a concern regarding mother and child's attachment and bonding. The court record made no indication that the social worker was an appropriate person to make this type of assessment. Mother's therapist and several other social service workers assigned to work with mother testified counter to that of the case worker. Despite acknowledging that mother had made significant improvement her rights were terminated. Among the many trivial issues, the court identified as barriers to mother's reunification included a criticism that mother brought inappropriate candy to her parenting time visits. The court discounted the testimony of mother's specialist who was found to not specialize in bonding and attachment and relied on the testimony of the case worker who was also not specialized in bonding and attachment. The court also relied on the testimony of a therapist hired by the state who observed mother and the child interact once for less than one hour. The appellate court not only agreed with the trial court but allowed the child to be adopted during mother's appeal to the state supreme court.

The State Supreme Court reversed the decisions of the trial and appellate court. Prior to the 1980's, the use of social workers as expert witnesses was uncommon (Mason, Maryann 1992). As a litigator I have concerns given my professional experience with social workers qualifying as expert witnesses. Expertise is a high threshold that takes many years of formal education and experience to attain, something the average social worker does not have. I did not locate any peer review articles that discussed the consequences of using social workers as expert witnesses. The articles I did find, however, were all published in social work journals and encouraged and praised the use of social workers as expert witnesses. The typical qualifications for a social worker in CPS cases include a general social science bachelor's degree. For certain parents, this

lack of qualified social workers presents as a lack in human capital. Specifically, the lack of diverse representation among social workers. Interviews with Black social workers revealed the system's anti-black organizational culture directly and negatively impacted the experience of family members and care givers of black children in the system (Montgomery 2022). "They don't understand us and are afraid of us" presented as a common discord among workers referring to their interactions with non-Black workers and superiors (Montgomery 2022). Fletcher (2020) suggests altering attitudes about race through a specialized educational, self-awareness experience to lessen the removal of African American children from their homes. This training as well as an increase in Black social workers would provide access to information and communication social workers previously lacked contributing to the disproportionate rate in which African American children are removed from the home.

In the Dept of Human Servs v Hawthorne, the children were removed from mother's care due to domestic violence and drug use. At the termination hearing the court primarily focused on mother's drug use and her prior relapses. At the time of termination, mother had been sober for one year's time. Still the court terminated mother's parental rights. At the appellate level, the court discussed how mother's drug use impacted her ability to access her human capital.

"She complied with the primary element of her parent agency agreement, which was sobriety. Furthermore, she obtained employment and completed parenting classes.

Respondent was a person who had no evident personality disorders. She also had the ability to maintain good employment. She was also, if she abstained from drug use, able to learn good parenting skills and able to provide for the children's need."

Recognizing that relapse is part of the process, the court of appeals reversed the trial court's decision terminating mother's parental rights. This decision was appealed to the Supreme Court

of Michigan who again terminated mother's parental rights. Similarly, In *In re Affleck*, the children were removed after the parent's "had a multiple day bender in a hotel room with the children present, during which episode parents drank alcohol, used illicit substance, and was arrested for possession of Xanax and heroin." Mother relapsed several times during rehab.

In the *Dept of Human Servs v Davis (In re LE)*, Mother also struggled with a drug addiction, having birthed three children with cocaine in their system. The father in the case also suffered from a drug addiction reporting that he used drugs since his youth, drank daily, and used cocaine two or three times a month since his late teens.

Michigan has a reporting statute for children born with drugs in their system however it is unclear what the policies on hospital testing are. Interviews with social service workers show that drug birthed babies does not mean removal but could nonetheless result in a case for services. In 2020, 42,821 infants were reported to CPS for infants with prenatal substance exposure. Michigan had the highest percent. With 49 states reporting in total, Michigan ranked the highest for infants flagged for prenatal substance exposure. This includes alcohol, illegal and legal drug abuse, and alcohol and drug abuse. Ohio was the only other state to come close with a 1025 baby difference. Michigan reported 8032 babies exposed at birth. Florida, Maryland, and Montana reported birth exposure in the single digits. This indicates that the state and/or hospital lack or do not racially test mothers for substances after birth causing the hospital to report them. Across the nation of the 42,821 children referred for substance exposure 88.9 percent were due to drug exposure.

Fathers experienced gender discrimination in which they were held to standards that were rarely if ever applied to mothers. Specifically, *In re RFF*, an adoption matter, the age of the father and his failure to identify with a religion contributed to the court's decision to terminate his parental

rights. The court also took issue with the fact that it perceived father's relationship with the child to be more on par with a sibling relationship than a parent child relationship. In one of the few cases in which father's rights were not terminated, *In re P*, the father with the help of his parents, both mother and father were minors, filed a custody action shortly after the child's birth. The court found,

the father's diligent efforts to secure custody in this case indicates his sincere desire to assert his rights of fatherhood. The current trend of legal thinking focuses on the proposition that since the putative father has statutory duties towards his child born out of wedlock then he should also, assuming he is [a] fit and proper person, have corresponding rights of custody. This logic has merit, but even more convincing to this court is the intangible concept of a father's natural love and affection for his child.

Father's experience is counter to the experiences within where fathers acted within a reasonable time after the birth of their child to assert their parental rights and were met with barriers including failing to support the mother during pregnancy and failing to establish a relationship with the infant. In this case there was no discussion on whether father was a do nothing versus a do something father, the only thing the court considered was whether the father was fit and proper. Dissimilar to other cases where the father's age, lack of religion, family arrangement, and mother's dishonesty were held against the father, the father in *In re P* was not subjected to those barriers.

The father in *In re Krupa* worked in the fast-food industry and continued to work minimum wage jobs afterwards. The court perceived father's employment negatively, insinuating that he failed to apply himself. Despite having suitable housing, the court determined that father's mobile home

was unsuitable given father's potential. Father was also dinged for his marital status. None of these characteristics can be interpreted as abuse or neglect.

In re B, one of only a handful of cases in the sample in which a parent's nationality was used against them, the parents in *In re B* were intentionally deported by the state in order to terminate the parents' parental rights. On the appellate level the court reversed the parent's termination finding that the state had failed to meet its burden establishing grounds for termination of parental rights.

While other parents such as the mother in *In re Adrianson* contacted the department for assistance for her children and was met with an abuse and neglect case. Mother was also chastised for being in a "homosexual relationship" and her children witnessing a fight between mother and her lover. While this case was heard long before LGBTQIA+ members established rights for themselves, the court's framing shows an intolerance of families that are not white and heterosexual. Similarly, in *in re White*, mother had a physical disability that the court attempted to use as a basis as to why mother could not care for her own children. Those who are differently abled have their own cultures and customs to which the court is often oblivious. Other incidents of violated trust include, in *In re Kurzawa*. In *In re Kurzawa*, the parents who were both blind sought to improve their living situation with their child. Instead of receiving the help the parents needed, the parents' parental rights were terminated. The parents' termination was reversed at the appellate court level, as disability in and of itself is not an appropriate basis for parental termination any more than one's sexual orientation or immigration status. Any caregiver disability, a caregiver's characteristic, disability, problem, or environment, which could tend to decrease the ability to provide adequate care for a child is an identified caregiver risk factor with the potential for abuse and neglect. Caregiver disabilities include any of the six: intellectual

disability, emotional disturbance, visual or hearing impairment, learning disability, physical disability, and other medical condition. Under this broad definition, mental illness could arguably be considered a parental disability however, mental illness was separately recorded. The catch all “other medical condition” could mean anything from asthma to diabetes. With 30 states reporting, the District of Columbia (DC) reported the highest percentage of victims with a caregiver disability at 48.5 percent of children at risk of abuse and neglect. Connecticut and Washington state tied for the lowest reported percentage of victims with the caregiver disability risk factor at two percent of children at risk of abuse and neglect. Michigan reported 6.1 percent of victims with the caregiver disability risk factor and the nationwide average for victims with the caregiver disability risk factor is 10.7 percent.

Reliability and trustworthiness are additional components of acceptability (Barrow and Pollack 2022). For parents with a history with the welfare system, as illustrated above, the state has been a place to seek housing (Section 8), food (SNAP/WIC), and cash (TANF), thus it is not unreasonable for parents to seek out the state in their time of need. For some parents however, this built trust led parents astray once parents came to the attention of the Department of Health and Human Services. For example, in *Family Independence Agency v Sours (In re Sours)*, the minor child was hurt after he was accidentally struck by father during one of father’s fits of violent rage. Mother reported the abuse however, mother ultimately decided not to cooperate and allowed father to move back into the home. Shortly after mother returned home, the state removed the children from mother’s care. Upon the birth of a new child, having already violated mother’s trust once before, mother intentionally withheld her new baby from the department by hiding him under blankets during a home visit from the department. Due to the infant’s health

issues the court concluded that mother's attempt to hide the baby from them arose to medical neglect.

Incarcerated fathers in the Northern Lower Peninsula region faced the same struggles as incarcerated fathers in other regions. Fathers lacked access to voice, power, and inclusion. Like the fathers in other regions, the parental rights of fathers in this region were terminated due to their incarceration. By the time the fathers' parental rights in this region were terminated, *In re Mason*, the decision that established incarceration as an insufficient basis for parental termination and established incarcerated parents' rights to reunification services had been settled as Michigan law, yet the trial court and the department failed to follow the established law and the father's rights were terminated based on these now impermissible reasons. Represented by appointed counsel, the fathers still lacked access to individuals and groups with the power to influence decisions and were unable to influence and enforce rules, regulations, and standards. The reason behind terminating the parental rights of incarcerated parents is based on the assertion that incarcerated parents cannot provide emotional and financial support to their children and children need permanency. Courts have established however that children's permanency may be obtained through alternative means. Still, courts and the department attempt to terminate parental rights even when parents have found alternative means of providing care to their children. Incarcerated parents face access issues of accessibility, affordability, and availability.

Though fathers possessed counsel, fathers lacked the counsel capable of influencing decisions and enforcing rules, such as the attorneys at the University of Michigan School of Law. This demonstrates parents' lack availability and affordability to what has previously been described as sophisticated counsel. While the father in *In re Farris* was not incarcerated, father had a

substantial criminal history in which the court attempted to use against him in terminating his parental rights. On appeal the court reinstated father's parental rights on the basis of *in re Mason*. Incarcerated parents or parents with a history of criminality faced the same barriers in and out of prison. These parents are not allowed to fully return to society even after serving their time. In *In re Hill*, mother's incarceration was listed as a barrier to reunification. At the time of mother's incarceration and at the time the children were removed from mother's care, mother was not given the opportunity to direct the care, custody, and control of her children. Incarcerated parents' ability to direct the care, custody, and control of their children is a right that had long been established at the time of mother's case yet there was no discussion on enforcing that rule. Mother's incarceration presented accessibility, awareness, acceptability, availability, affordability, and adequacy challenges. The mother in *In re Hill* was limited in her location given the distance between her and her children during her incarceration periods. Incarcerated parents are largely unaware of their rights and are unable to advocate for themselves. Without sufficient income incarcerated parents are unable to retain private counsel.

Availability

Availability is concerned with supply and demand. Specifically, whether the services parents need are readily available in terms of facilities, trained personnel and the like in the community and that those services are easily accessible. For many parents, specialty courts are a need many parents would benefit from while participating in abuse and neglect court. The West region was the only region observed by this researcher to have specialty courts available to parents.²¹²

Specialty courts such as mental health, drug, and baby courts in conjunction with abuse and neglect are not a requirement and absent in most courts. Specialty courts are often dependent

²¹² Several counties across Michigan have specialty court including Wayne County, however the West Region was the only region where specialty court data was available to watch during the data collection period.

upon a grant award and a dedicated jurist responsible for upholding the requirements of the grant. Specialty courts aggressively attack the caregiver risk factor with regularly scheduled check ins to measure parents' progress. Court dates are more frequent, and parents are rewarded for the triumphs and humanized for their failures. Specialty courts provide the type of support mentioned in Honey et al. (2021). Due to the limited availability of specialty courts across the state, acceptance into these programs are selective and as a result many parents who have the potential to benefit from such services are never given the opportunity. For parents who were engaged in specialty courts, the court appeared satisfied with the parents' progress and when the court was not satisfied with parents' progress, the process for reprimanding the parent remained respectful and supportive. In addition to court programs for parents, parent partners were an additional need parents would benefit from while participating in abuse and neglect court only offered in select counties. Families in the W and other regions lacked parent partners, parents who have firsthand (successful) experience with the child welfare system. Parent partners provide additional (peer) support to parents facing termination of their parental rights and are typically employed with nonprofit organizations that partner with the court. Parent partners were in most regions in which specialized courts were provided as an option for parents facing mental health and addiction hurdles. In regions where parent partners did not exist such as the W region, parents lacked a vital resource that has shown to increase parents' success in regaining custody of their children (Capacity Building Center for States 2016). This absent resource can be framed as lacking the close ties that build community cohesion. Whether a region has parent partners relate back to human, social, cultural, and financial capital available in the community. Pre-pandemic challenges for parents who lacked built capital would have likely had issues related to transportation. COVID, however, presented first time challenges for everyone involved

in abuse and neglect court. Parents as well as the court and its stakeholders received little guidance in the early days of the pandemic and parents with risk factors experienced setbacks as a result. Despite being in need of the most help, researchers found that parents with substance use problems were less likely to receive services than parents without substance use problems during the pandemic (Casanueva et al. 2022). Other exacerbated features of the pandemic include access to housing. Parents in this region expressed having saved money to obtain housing but being unable to find not only available but affordable housing, causing them to live with family where there was not enough space for the children. The hunt for a home is not a unique challenge, yet it is one courts will hold parents accountable for. According to the National Low Income Housing Coalition, there is a shortage of affordable rental homes as well as a shortage of affordable, but not available rental homes (2021). Nationally, of every 100 rental units, only 36 were affordable and available for extremely low-income renters. Michigan is below the national average with 35 affordable and available rental units for every 100 households living at or below the extremely low-income threshold. Though not explicitly mentioned by parents in this region, other, not necessarily unseen, yet ignored barriers to securing home rentals include past evictions (Roesch-Knapp 2020), a criminal record (Roesch-Knapp 2020), a history of drug or alcohol use (Curtis et al. 2013), and low credit scores (Brydolf-Hoewitz 2020 and Spader 2010).

Most of the factors listed within as barriers to housing security are factors possessed by families found in abuse and neglect court. Matthew Desmond's (2016) work makes some of the same findings. One of Desmond's (2016) recommendations to curb the effects of housing insecurity is to implement the right to counsel. A movement which currently exists in a handful of major cities including New York, San Francisco, Cleveland, and more recently Detroit, the right to

counsel provides access to free attorneys for tenants in danger of losing their housing. Access to attorneys, may include accessibility, availability, acceptability, adequacy, and awareness challenges.

Though access to free attorneys would improve tenants' chances of staying in their homes (Desmond 2016), access to attorneys does not remedy the national housing shortage or low-income wages also responsible for family's lack in built capital. Families who faced housing and internet challenges in this region faced accessibility and availability issues. Specifically, despite having access to financial capital, housing simply was not available to families during the pandemic. Housing that may have been available was inaccessible due to its location, possibly adding new challenges such as transportation issues. Even if parents were able to move outside of the immediate vicinity, they risk having easy access to their children, their employers, and other resources in the neighborhood needed for them to succeed. Internet challenges also raise concerns regarding accessibility and availability.

Awareness X Acceptability X Adequacy (Accommodation)

Some parents experienced overlapping access issues, which exacerbated their experiences in abuse and neglect court. For one mother, of the services/obligations ordered by the court mother was ordered to participate in drug screens, not use controlled substances outside of her prescriptions, participate in a substance abuse assessment, and participate in substance abuse counseling. The court failed to offer mother services to assist her in obtaining suitable housing or employment. The court paints a picture of an overwhelmed mother who lacks life skills and consequently is suffering from a triad of problems impacting her in multiple ways. Mothers' who live with mental illness and child removal have been shown to experience 1) chaotic lives pre-removal; pain and loss; protecting themselves; and constrained mothering (Honey et al. 2021).

Despite decades of child removal involving parents and mental health, Honey et al. (2021) reports their study as the first to examine the experiences of mothers who live with mental illness and whose children are removed from their care by child protective services. The authors conclude that mothers need support to manage the suffering associated with child removal in their chaotic lives. Given mother's issues without first addressing mother's mental health issues it is possible that she was unable to accept the substance abuse rehab being offered to her. Specifically, in *In Re Ferris*, the mother suffered from a multitude of issues including the domestic violence discussed above, however the court's primary basis for removing the children included mothers drug use and mother's mental illness. Mother's substance abuse in part was due to a physical injury in which her vertebrae was crushed, it was clear mother suffered from pain management skills.

In other instances, children were removed from the home chiefly due to the parents' mental illness which caused a trickle-down effect to other areas in the parent's life. The mother in *Family Independence Agency v Sayers-Gazella* suffered from a mental illness and was unable to maintain consistent housing. However, the children were removed two days after the children were born and mother was never given the opportunity to raise them. Another mother who suffered from mental illness experienced the same fate when her children were removed from her care three days after the children were born. In another case, a mother lived in a homeless shelter, the court deemed this housing as unsuitable. Mother had a history of mental illness including harming her children when she was not medicated. Even if parents are actively managing their mental health symptoms, the court may still move to terminate the parents' parental rights if the parents' prognosis does not satisfy the court. One court terminated the parental rights of a parent actively receiving treatment for their mental health after their care

provider indicated the parent would need to seek outpatient mental health care for approximately two years.

Mental health and drug use represent an acceptability access issue. The court and the department find mental illness and drug abuse as unacceptable characteristics for parents to have. Parents with these qualities are characterized as inadequate. The recovery element for mental illness and drug dependency is one the court finds unacceptable. On average, it takes two years for a drug addict to recover, the law, however only, authorizes parents 18 months to stabilize whatever issue they are experiencing prior to permanently severing a family's ties. Thus, parents who are suffering from caregiver disabilities are not given quality access to the judicial system as they are unable to abide by the courts trajectory for recovery. This is to achieve the court's goal of permanency. A goal that is often not met as children often linger in foster care after their parents' parental rights have been terminated.

Affordability X Availability

In many regions, affordability and availability overlap. This is particularly true of parents who lacked access to built capital. Parents' built capital included lack of housing and lack of suitable housing. A lack of housing or a lack of suitable housing were tied to financial capital and access to affordability as well as human capital and a lack of communication and information in the form of awareness and availability. Many parents experienced the same issues regarding housing. Mother in *In re Adrianson* lacked adequate housing at the time the children came into care. Similarly, mother in *In re Krupa* was homeless at the time of the children's removal. The father in *In re Krupa*, lacked access to appropriate housing according to the court as he lived in a mobile home. The mother in *In re White* also had unstable housing. The parents in *In re Hudson* maintained "deplorable housing conditions." In *Russell v Miller (In re Utrera)*, the condition of

the home contributed to the children's ongoing removal from the home. The worker in the case reported to the court that mother's home "had a very unpleasant odor, and clothing, debris, papers, and materials from various projects were strewn about the house." And in *In re Ross*, the children came under the court's jurisdiction after allegations that mother lacked independent housing. Lastly, the parents in *In re Tedder* lacked unstable/unsuitable housing.

Homelessness is not a choice (Averitt 2003). The literature describes many barriers including access challenges directly related to built capital (eviction, transportation, and affordable housing) and access challenges indirectly related to built capital including financial capital (loss in second income, affordable housing, inflexible employment, lack of time, lack in public assistance, and loss in employment), human capital (loss in childcare, safety concerns, lack in public assistance, feelings of helplessness and hopelessness), social capital (lack in family support and single parenthood), political capital (eviction and threat of litigation), and cultural capital (lack in values, norms, beliefs, and traditions) that particularly impact mothers' access to housing (Averitt 2003). Lack of access to built capital for these families are a result of availability (affordable housing stock), acceptability (the court found a mother staying in a homeless shelter and a father living in a mobile home to have unsuitable housing), affordability (financial and incidental costs to housing), and awareness (house cleaning demonstrations).

In addition to the issues described above, the mother in *In re Hill* also lacked access to transportation, a feature of built capital. The court discussed the department's attempt to resolve some of mother's built capital through bus passes and bus tickets, however the court failed to acknowledge whether mother was able to utilize the bus tickets. Upon mother's release from prison, mother was provided with assistance with employment, yet it still failed to assist mother in resolving the identified housing barrier. Mother eventually obtained housing however her

rights were still terminated. The mother in *In re King* was repeatedly evicted and was unable to maintain a stable home for the children “due to her own misconduct.”

Prior evictions are a serious barrier to future housing (see Desmond 2016). While finances and other costs are clear access issues to built capital, incarceration and substance use also presented as a potential barrier. Incarceration limits the availability of housing for returning citizens. This is especially true for returning citizens in public housing. Parents are not provided with an adequate or acceptable service when they are limited by the community. Parents who were previously incarcerated or recovering drug addicts had difficulty in securing housing as the available housing stock is low for these families. Parents needed the appropriate social history to get into acceptable housing, parents needed to be located in the general vicinity of their children, and parents still needed to afford their home. It is often unlawful to discriminate against those who have a criminal history or substance use in housing.

The mother’s rights in *Dept of Human Servs v Davis (In re LE)* were terminated after mother “failed to obtain suitable housing.” The complaint for parental termination alleged mother’s, “home was dirty, had no heat or electricity, and there was minimum food; And that the children were wearing dirty clothes and sleeping on dirty sheets on the living room floor.”

Mother unsuccessfully sought housing throughout the duration of her case however mother had several criminal convictions due to her drug use which likely impacted her pursuit of housing if she were banned from public housing as a result of her convictions or her arrests just violated the standard of community therefore making her ineligible for affordable housing. The court does not give these realities any consideration.

Inadequate housing accounted for 8.2 percent of caregiver abuse and neglect risk factors nationwide. Inadequate housing is related to substandard, overcrowded, or unsafe housing

conditions including homelessness. Arizona held the highest percentage for caregiver risk factor with 29.9 percent of victims impacted by the caregiver risk factor and New Mexico reported the lowest percentage of impacted victims with 3.2 percent of the (or 1,347) victims affected. Michigan reported 5 percent of victims were impacted by the inadequate housing caregiver risk factor. 36 states reported data for the caregiver inadequate housing risk factor with a total of 31,657 victims²¹³. The access framework has been applied to the intersection of housing and health (Barrow and Pollack 2022). The authors identify available housing as “the supply of housing units at different price points across different neighborhoods relative to the increasing demand for affordable housing based on changing demographic and economic conditions.” Under the affordability dimension of access, in housing, affordability is “the balance of housing prices and client income” (Barrow and Pollack 2022).

Accessibility X Affordability

In *In re Brosseit*, pursuant to the parent’s Judgment of Divorce, father did not see or provide financial support for the child. The facts in *In re Brosseit*, and the facts in *In re Sanchez* are similar such that the parties’ custody provisions contributed to the parent’s failure to see or support the child. However, only in the latter were the parent’s parental rights restored.

Similarly, after the parties divorced, the father in *In re Martyn* was responsible for maintaining a relationship with the child along with paying support. The child’s mother in the case dictated to father where the child could reside while under father’s care impeding father’s ability to see the child. Regarding support, father had bouts of unemployment and sustained a career ending injury at some point. Father did not request his child support be modified for the duration of his injury.

²¹³ <https://www.acf.hhs.gov/sites/default/files/documents/cb/cm2020.pdf>

It is likely father was unaware such a request could be made. Despite this, the court found a basis to terminate father's parental rights to the child.

The father in *In re Simon* was also limited by the terms listed in the judgment of divorce, specifically do to father's alcoholism, father was not authorized contact with the child. In addition, father was poor. He was confined to renting a bedroom for lodging and borrowing money to get to work and for other necessities. Thus, father failed to meet the threshold requiring parents to both support and maintain a relationship with the child. Despite the confines of his Judgment of Divorce, father was held responsible for failing to maintain a relationship with his children even with the order preventing him from doing so. Lastly, in *In re Stowe*, after the death of their mother, mother's husband at the time of her death petitioned the court to terminate father's parental rights so that he may adopt them. Father was alleged to have failed to support and maintain contact with the children.

Adequacy (Accommodation) X Affordability

The adequacy and affordability dimensions of access can simultaneously impact a family involved with or on the verge of involvement with the family juvenile court. An adequate service is well organized to accept litigants/parents, and litigants/parents are able to use the services. An affordable service examines the direct costs for both the service provider and the litigant/parent. Alternatively, litigants/parents' lack of access to one dimension can serve as the precursor for their lack of access to another dimension. In the contexts of abuse and neglect court, parents who entrusted their hardships to the department experienced trust as a negative social capital. For our purposes, "social capital is the term given to the relationships among people in a social group (e.g., family, community, society or group based on other forms of affiliation) from which benefits or resources (e.g., information, influence or opportunity) may be exchanged among

group members (Parks-Yancy et al. 2007 citing Burt 1992; Granovetter 1973; Portes 1998; Adler and Kwon 2022).” When a social capital functions in reverse of an asset, it is as if the individual lacked the asset to begin with. For some Michigan families involved with the family juvenile system, trust acted as a negative social capital when parents intentionally availed themselves to the department for assistance during periods of (financial) instability. Instead of receiving the help sought, parents were instead met with petitions for abuse and neglect due to their poverty. This “erosion of “state social capital””, that is, the formal organizations presumed to provide civic goods and services (welfare, housing, and health care) have turned into instruments of surveillance, suspicion, and exclusion rather than vehicles of social integration and trust-building” (Wacquant 1998). The services offered by the state become inaccessible when parents’ use of the service invite unwarranted state interference in exchange for housing security, no longer meeting the needs of the parent. Alternatively, it can be argued that access to public institutions such as the Department of Health and Human Services function as negative social capital (Wacquant 1998) as interactions with them risk an interruption to family life. The National Child Abuse and Neglect Data System (NCANDS) identifies public assistance as a caregiver risk factor that may increase the likelihood of child abuse and neglect. NCANDS defines public assistance as a risk factor related [to] the family’s participation in social services programs, including Temporary Assistance for Needy Families (TANF); General Assistance; Medicaid; Social Security Income (SSI); Special Supplement Income; and Special Supplement Nutrition Program for Women, Infants, and Children (WIC); etc. In 2020, of the 26,932 Michigan children identified as victims of child abuse and neglect, 18,411 of those children had a caregiver with the public assistance risk factor. Michigan holds the highest number of children with a caregiver risk factor. Comparatively, across 29 reporting states, 83,897 victims (23.57

percent) have the public assistance caregiver risk factor. After parents' trust is violated, it is unlikely that, that parent will return to the department in the future when in need of assistance. Discussed together in the literature with financial capital (Parks-Yancy et al. 2007), social capital has been shown to differ for gender and class groups, with men more likely to use social capital resources than women (Parks-Yancy et al. 2007), and lower social economic groups forced to use state social capital.

Domestic violence survivors are another group of people in which negative social capital was illustrated. According to NCANDS, "the largest percentage of victims with caregiver risk factors are those reported with domestic violence." In 37 reporting states, 125,538 victims (28.7 percent) have the domestic violence caregiver factor. Comparatively in Michigan, of the 26,932 identified victims, 8,816 victims have the domestic violence caregiver risk factor. Parents who are domestic violence survivors, much like aid recipients, turn to state entities (i.e., the courts, police, doctors) when seeking assistance for crimes committed against them. However, for some parents, especially parents who lack financial stability, involving the state can result in instances of victim blaming or disappointment for adverse legal outcomes. These interactions create a lack of trust manifested through a breakdown in the communication and relationship between parents and social service providers. Domestic violence survivors face more than the obvious surface level challenges in not only reporting domestic violence but leaving a domestic violence situation. These challenges are exacerbated when survivor parents do not have access to a supportive network nor a system that can provide them with the needed relief.

Awareness X Availability X Accessibility

The circumstances surrounding the removal of the children in *In re B* are reminiscent of the anecdote provided by a social service worker in Wayne County. Specifically, the worker

discussed the challenges under documented families face when a child is sexually assaulted.

Parents often do not know what to do due to the language and culture differences and are condemned as a result. The worker went on to say that Spanish speaking families are often not provided an interpreter at court or at the scene, the parents are undereducated and thus do not understand what is happening and are not given culturally appropriate services.

Families lack the knowledge and resources they need, but families lack language as well. In one case in which an under documented family was deported in the midst of their abuse and neglect case at the bequest of the department. The appeals court noted,

“petitioner made meager attempts to provide services and made little effort to locate Spanish speaking assistance for respondents . . . It is evident from the record that petitioner, itself, reported responded to ICE . . . If the family court had not continued to exercise jurisdiction over the children in this case, respondents would have been able to take the children with them to Guatemala, and there would have arisen no cause for termination of parental rights. However, the court’s continued exercise of jurisdiction made it all but certain that respondents would be permanently separated from their children and that respondents would become unable to provide proper care and custody.”

After the family’s deportation, the case worker was unable to find any services for the family in their native country. The case worker in the case testified that she believed it was petitioner’s intention to have the respondents deported all along.

Under documented families lacked information regarding their rights and the child protective service process itself. Additionally, the families did not receive services prior to their deportation, nor did they receive services upon their deportation due to the location of the services or the simple lack of services, the family could not reach the services. The cultural

difference between the two countries made it likely that the parents could not receive the services required by the department because they were unavailable. Lastly, because services were not prepared to receive clients, services were inadequate.

Immigrant families experience with the department can be traumatic. In the case of the family discussed above, the family was catapulted into the system having little experience with the American judicial system especially experience with knowing their rights. The social workers and the courts took advantage of the family's lack of human capital. In addition to not understanding the system, the family lacked the language to comprehend what was going on or advocate for themselves. The inability to communicate with the department due to a language barrier is a lack in cultural capital. The appellate court reprimanded the department for taking advantage of the parents' immigration status, the departments' behavior is parallel to the idea behind child welfare that middle class or white families can raise children better than poor black and brown people. Immigrant parents are treated as less than in the courts due to their non-citizen status. The parents' inability to utilize the system for their good due to their status is a lack in their social capital which doubles as a lack of political capital.

Acceptability X Affordability X Awareness

Like immigrants, domestic violence survivors are also a vulnerable population susceptible to the court's bias. In previous subsections, I discussed how the court's lack of information on domestic violence and domestic violence survivors disadvantages and punishes the survivor for being abused. Here, I consider how domestic violence is multiplied when survivors lack access to other community capitals, which has the potential to exacerbate any concurrent barriers domestic violence survivors face while in the system with their children. For example, as discussed above in *Family Independence Agency v Sours (In re Sours)*, the minor child was hurt after he was

accidentally struck by father during one of father's fits of violent rage. Mother reported the abuse however, mother ultimately decided not to cooperate and allowed father to move back into the home. The opinion makes no mention of testimony by a domestic violence specialist and fails to acknowledge how mother's behavior is consistent with domestic violence survivors who are concerned with how their bills will get paid, maintaining their families, community backlash, and not getting their partners into trouble. In this case, the mother lacked employment and housing separate from her batterer, both common concerns among domestic violence survivors who allow their batterers to return to the home such as in this case. After mother decided not to participate in father's prosecution, the court issued a bench warrant for her arrest essentially re victimizing the mother after she reached out for help. The court concluded that mother "failed to separate herself from the perpetrators of this abuse" and called mother's circumstances "'classic' situation involving an alcoholic and abusive father and a submissive mother." Mother was ordered to take parenting classes and counseling, after the department accused mother of packing the children inappropriate treats and inadequate clothing when the state came to remove the children from the home. After her children were removed mother became depressed. Mother expressed severe despair after her last child was removed from her care however the court ignored this noting mother "disappeared." The court continued to police mother in other ways noting that mother "has taken up plan [sic] to marry a 22-year-old person, who's not only extremely young, but also has a problem with alcohol."

The mother in this case struggled with multiple access issues that stemmed from her status as a domestic violence survivor. Mother lacked financial and built capital. Mother likely allowed her abusive partner to return to the home because she could not afford for him to be out of the home. Whether mother's batterer was the breadwinner or contributed to the household, mother was

financially dependent upon her batterer. Financial abuse is one of the most overlooked forms of domestic violence. Similarly, if mother were unable to afford her already established home, for those same reasons it is likely she would have been unable to attain new independent housing. Lastly, as a domestic violence survivor, mother was less likely to tap into her social capital because she lacked bonds as a result of her domestic violence relationship.

Accessibility X Availability

In terms of access, particularly during COVID, domestic violence survivors' advocates described access issues including technology, transportation, and employment (Ragavan, M. I. et al. 2022). These goods can be categorized as access to built and human capital. These access issues are rooted in accessibility and availability. More specifically, survivors lacked access to cell phones and internet. Survivors facing xenophobia, homophobia, and those living with a disability doubly faced the same challenges with even less resources and access (Ragavan, M. I. et al. 2022). Survivors in these circumstances were unable to safely access information resources due to confidentiality concerns that arise with virtual service delivery (Ragavan, M. I. et al. 2022). For domestic violence survivors, a lack of access to those living outside of the immediate households created scenarios in which survivors were unable to seek refuge elsewhere or get their partners to leave the home creating isolation and loneliness (Ragavan, M. I. et al. 2022). These lack of bonds/relationships demonstrate a lack of social capital for survivors.

Built capital, which is sometimes grouped with financial capital, presented itself within this region differently than it likely would have absent the pandemic. Specifically, located in a more rural area in the state, parents and stakeholders in the W region dealt with issues related to the internet. As outlined in the results section, parents and attorneys dealt with unstable internet connections making it difficult for both to participate in court proceedings as they lacked the

needed infrastructure to maintain the increased usage of the internet by everyone around them or alternatively litigants and attorneys in some counties in the region simply lacked access to broadband internet (Perrin 2019; Belanger et al. 2008).

Awareness X Affordability X Adequacy (Accommodation)

In *Linden v Mattson*, prior to mother placing the child up for adoption, father filed an intent to claim paternity. Mother intentionally withheld information regarding the child's birth from father and denied father access to the child after the child's birth. Father attempted to send mother financial assistance throughout her pregnancy and after the child's birth to no avail. The court, however, found that father did not provide substantial support to mother and child, nor did father establish a relationship with the child. Father's efforts to be present in the child's life were framed as ingenuine. The court at the trial court level stated,

I will say, frankly, this case seems to have been engineered during this period of time which is disturbing to me but to the extent that the engineering involved sending certified mail with -- and then claiming that the impeding was that a person did not go to get the certified mail, I do not find that there is impeding as provided by --by the case law.

On appeal the court acknowledge father's attempt to assert his right to his child and efforts to financially provide for the child. The Court of Appeals granted father's permission to proceed in his paternity action and dismiss the action of adoption. In *In re MGR*, the child in this matter was immediately placed up for adoption by the mother. Subsequently, father filed a paternity action seeking custody of the child. On the trial court level, the court determined father was a do something father and declined to terminate his rights, the Court of Appeals came to the same conclusion, the State Supreme Court however reversed the decision and terminated father's rights determining that father did not provide financial support to mother during her pregnancy

despite welcoming mother to stay with him and his family and subsequently renting an apartment together. Father ceased his efforts to provide support after mother threatened a PPO. A fact that was held against father.

Fathers whose children were placed for adoption encounter situations where mothers could deny their attempts to provide financial assistance, physically withheld the child as well as information on the child's location. The system is set up to undervalue father's relationships with children.

While it is possible that mothers can lose their parental rights to stepparent adoption this overwhelmingly occurs to fathers. When father's parental rights are terminated after the father has taken the expected actions his lack of social and political capital impede his ability to access his children.

Domestic violence survivors lack several dimensions of access including affordability, availability, acceptability, adequacy, and awareness. When survivors depend on their batterers to financially contribute to the home it is difficult for them to maintain their homes without a second income. When survivors are vulnerable from their desires to provide the needs and wants of their children, they are more inclined to allow their batterer back in the home and fail to follow through with prosecution due to financial and incidental costs of maintaining a home. When shelters or alternative housing placements with family or friends are not available for survivors and their children this creates an ideal environment for the survivor to return home even if not in her and her children's best interest. Survivors must be ready to accept the services being offered to them. Leaving a domestic violence relationship is not as simple as ending the relationship. Survivors have attachments to their batterers and like ending any relationship, emotional turmoil comes with that. When provided with services, service providers must be prepared to accept survivors including their emotional state as well as supply other emotional

needs of the domestic violence survivor. Service risk being inadequate when the service is not prepared to accept the client and potentially her children. Lastly, survivors are sometimes unaware of the resources available to them or lack information on how to obtain a personal protection order or maintain custody of their children.

Acceptability X Awareness

Dept of Human Servs v Jenks (In re Jenks), “mother ha[d] a history of choosing violent and abusive partners. Both fathers of her children are convicted child abusers, and both engaged in domestic violence against (sic) mother” the court’s language suggested that mother had experienced trauma in her own childhood and was reluctant to engage in therapy. The court spoke of mother’s community specifically the ability of her family to assist her in paying her rent, the court however also noted that mother had management skills and her judgment was inadequate to maintain housing in the future. The court indicated that mother lacked basic life management skills, lack of self-awareness, and any insight to conduct herself differently in the future to avoid past conduct. This is one of few examples in which the court not only recognized the lack of human capital but provided the appropriate resources to mitigate the issues in which the parent was having. Unfortunately, mother's mental health prevented her from retaining and using the tools she was equipped with.

Mothers who are victims of domestic violence lack the social connections needed to escape domestic violence relationships and as a result lack social capital. Mothers were victim blamed and the court failed to recognize how other variables factor into a woman’s decision to leave an abusive relationship. In one case, after a mother returned home to her batterer the court stated, “she actively contributed to the problem by returning to the home with the children after being in an assault crisis center and after having professional advice not to allow [father] access to the

children. Clearly, the petition was sufficient as to [mother]." In this case, the court solely focused on mother returning to the home and not why she returned to the home. Domestic violence survivors are often threatened by their abusers after they leave the home, are subjected to judgment, and worry about their stability of themselves and their children. Despite being out of the home, when domestic violence survivors lack social connections and social networks that can assist the survivor in leaving an abusive relationship, the survivor will incur barriers in permanently removing themselves from the harmful situation. In another instance mother suffered from abuse at the hands of the father. The court failed to recognize the lack of social capital mother possessed in the form of mother's mental health, housekeeping, and poverty and her rights were terminated. This lack of access is based in a lack of awareness. Mothers who lack relationships, lack communication and information on the resources available to them.

Likewise, in *In re BZ*, the concerns which led to removal included "playful" behaviors between the parents which were perceived as violent to others. The parents' interactions with each other were issues raised by the court in the parents' prior abuse and neglect case that the court determined parents failed to remedy. In addition to her status as a domestic violence victim, mother in the case struggled with her mental health and financial stability which included securing housing away from the father. However, both mothers' behaviors align with that of a domestic violence victim as addressed in the literature.

Availability X Affordability X Accessibility

After the mother in *In re Sours* left her home with father, mother could only move to her brother's home. Mother's un and underemployment suggests that mother was unable to obtain independent housing on her own. Mother was also incarcerated at some point during the proceedings which could have impacted mother's access to both housing and employment to retain housing. In *In re Gach*, a case handled by professors at the University of Michigan, mother

had a prior termination as a result, upon a home visit initiated after the child was found unattended, the court focused on the conditions of mother's home. Specifically, the court noted, "the home was dirty, all the carpet has been removed, and floorboards are exposed. The couch has a huge rip in it . . . There is dirt and grime all in the home." Based on the appearance of the home, the department made assumptions about mother and removed the child on an emergency basis and immediately began removal proceedings due to mother's prior parental termination. The caseworker stated that had it not been for the previous terminations that mother would have just received services and an abuse and neglect case would have never transpired. This region illustrated the difficulty of securing affordable, accessible, and available housing. Parents also lacked access to affordable, accessible, and available transportation. Lack of transportation is a lack in built capital. Parents who could not finance a car or incidental costs associated with car ownership were required to rely on public transportation. The southeast region of the state maintains some of the same issues possessed by transit riders in the City of Detroit, unreliable, inconvenient, long rides, etc. Conditions that make using public transportation inaccessible as parents are unable to actually utilize the service. Receipt of bus fare does not resolve the issues of parents regarding public transportation though it does remove one barrier, it does little to assist with the others. Parents are expected to meet multiple obligations while using public transportation in a short period of time. Getting around on the bus to complete the parents' parent treatment plan can be an exhausting endeavor leaving little time for anything else.

Acceptability X Accessibility

In *Dept of Human Servs v Smyth (In re Smyth) (O'Berry)*, mother's lack of transportation limited mother's ability to participate in the Parent-Agency Agreement required by the department and

the court. Though the majority opinion praised mother for her efforts in completing what was asked of her, mother was not completely successful in her quest to regain her children, her success was deemed “too little, too late.” Since mother was not 100 percent compliant her rights were terminated. The court’s opinion made no mention of its attempt to assist mother in her transportation challenges and even if the court and the department did arrange for mother to receive bus tickets, it is possible that mother would have still run into challenges based on the area she lived in. Thus, mother’s lack in built capital, largely a systemic issue hindered mother in her quest to retain custody of her children.

Affordability X Adequacy (Accommodation)

I discussed many of the stepparent and mother-initiated adoptions under the affordability and affordability x availability subsection. Here however, I discuss adoption when adequacy is a factor to examine the unintentional gender bias fathers primarily experience. When fathers do not financially support their children due to incarceration or insufficient information regarding the child’s existence, we are setting a trend in which we undervalue the importance and value of parents, but especially fathers’ constitutional rights to their children.

Creating this system has the likelihood of doing one of two things, 1) terminate parents parental rights solely due to their incarceration while framing it as a parent’s failure to provide the child with financial support and/or 2) create a subsection of debtor’s prison, where incarcerated parent’s parental rights are permanently severed because of an inability to financially support them. In *In re Fernandez*, the father’s parental rights were terminated at the trial court level and reversed on the appellate level after father’s incarceration kept him from substantially supporting and communicating with the child. What is concerning about the history of this case is not that father’s parental rights were terminated, but that the court flagrantly and effortlessly violated

father's constitutional rights by failing to appoint an attorney to protect father's interests and advocate on his behalf. The judge stated on the record,

“Well let's do something that isn't quite kosher. What [sic] don't you check, we request that the adoption be completed immediately. Well wait a minute, you've got to have a reason for that. Okay, what will happen once I terminate the non-custodial parent's rights as I sign an order ordering the Department of Social Services to make a home investigation, then you will have to file motion for immediate confirmation whenever that's done. And I'm sure that that recommendation will be that it be immediately confirmed.”

The court's demeanor toward incarcerated non-custodial parents such as the father in *In re Fernandez*, more so relates to father's lack in political capital but is at least worth a mention but has social capital elements as well.

In re Dawson, though father's parental rights were not terminated, this is one of few cases in which gender did not act as a negative social capital, however I chose to illustrate this case here to highlight 1) how father's social economic class which afforded father the opportunity to take out a home mortgage loan likely impacted the overall outcome in father's case and 2) highlight the difference between the father in *In re Dawson* and factually similar cases with different outcomes.

In *In re Dawson*, after learning of mother's pregnancy, father took steps to make permanent arrangements for the child and the child's mother. Specifically, father took out a home mortgage loan and began the process of purchasing a home for the three of them to share together.

Thereafter, mother informed father of her desire to have an abortion and left the relationship.

Ultimately, mother birthed the child and decided to place the child up for adoption. Upon

learning mother planned to deliver the child, father attempted to assert his rights to the child and filed a petition to claim paternity. Upon the child's birth, the child was immediately placed with the adoptive parents impeding father's ability to establish a connection with the child, one of the requirements fathers must overcome in establishing parental rights to their child born out of wedlock.

Though father failed to substantially support the mother during her pregnancy, the second requirement fathers must overcome to establish their parental rights, due to the belief the mother terminated her pregnancy, the court found that it was in the child's best interest to place the child with the father. The court also noted "we feel compelled to express our concern that § 39, as written, does not account for such a situation" where a father is intentionally misled about terminating a pregnancy, and the child's birth. The father's situation in *In re Dawson* is not unique, however, as I discuss throughout this and other regions below, father in *In re Dawson* is a rarity, likely do to father's membership in at least the middle class.

Additionally, like the only other mother in the sample at risk of losing her parental rights to a stepparent adoption, *In re Kaiser* located in the SE region, the mother in *Eickoff* reported father prevented her from having regular contact with the children. However, in *In re Kaiser*, mother's rights were not terminated for failure to support the child or maintain a relationship with the children, even though she did neither, as required by the statute. Instead, the court reasoned both parents behaved less than admirably toward each other and as a result the court declined to reward one parent's behavior over the other. The *Eickoff* court on the other hand concluded that if father was thwarting mother's parenting time, mother should have utilized the court to rectify her challenges with receiving parenting time. Lastly, in *Moore v Newton (In re Newton)*, despite failing to financially support the child as required by statute, the parental rights of father in

Moore v Newton were not terminated. In the case of *Eickoff* and *In re Caldwell*, the court found inconsequential factors to distinguish what failure to support meant, causing the court's rulings to be inconsistent across the state.

Acceptability X (Adequacy) Accommodation

Education neglect is not included in the states definition of neglect, yet we have terminated parental rights over educational neglect before. On appeal the decision to terminate a parent's parental rights was reversed. In *In re Ross*, the children came under the court's jurisdiction after allegations that mother had a history of drinking and using marijuana, suffered depression, mother lacked independent housing, educationally neglected the children due to an observed speech delay, and had a dysfunctional relationship with the children's father. Mother stopped using her medication as prescribed by her medical care physicians to appease the court. When parents have a litany of problems it makes the court's justification for terminating the parents' parental rights easier however, here mother had a lack of built and human capital, that is address may have preserved the mother's parental right.

Availability X Acceptability

In *In re Farris*, mother was unemployed and struggled with housing stability for over two years. At the time of the children's removal, mother was in danger of being evicted. Mother's pursuit to secure stable housing was exacerbated by her children's medical condition which determined where mother could and could not live. Even when mother did find housing the court did not find the housing suitable for mother's children. In addition to housing, mother also faced a transportation barrier. Mother lacked transportation and as a result was unable to attend her children's medical appointments as ordered by the court. While the children's foster parents did offer to take the parents with them to the children's medical appointments, the court made no

provisions to assist the parents in rectifying their transportation barriers which existed for more than just going to the children's doctor's appointments.

In addition to the children's doctors' appointments, mother was expected to participate in several services which undoubtedly required the use of a car or public transportation, neither of which the court addressed. The court solely relied on the parents to navigate the issue with the foster parent. In terminating mother's parental rights, despite failing to identify transportation as a barrier so mother could receive services the court cited mother's transportation barrier as a reason for terminating her parental rights. Mother experienced a clear lack of availability, acceptability, adequacy, and affordability. The court in this matter faulted the parents for failing to attend the children's doctor's appointments after the foster parent offered to take the parents to the appointments with her. It is clear the parents in this matter found this arrangement unacceptable. The court ignored the characteristics of the service and any social or cultural concerns of the parents.

Similarly, the parents were expected to rely on public transportation to attend the children's appointments as well as any other appointments required of the court and other daily tasks requiring transportation. The court simply supplied bus tickets or advised the parents that they should have requested bus tickets, this however does not acknowledge availability or adequacy issues. Lastly, parents' lack of transportation and housing insecurity is directly tied to affordability and the financial and incidental costs associated with car and home ownership.

Parenting and mental health services are in a position to assist mothers to develop adaptive coping strategies and minimize maladaptive strategies (Honey et al. 2021). Parents across several regions lacked access in the form of availability to this type of support. The court acknowledged the parent's shortcomings but there is no mention of parenting or mental health services, instead

the court solely focused on mother's drug usage, a habit mother likely developed as a result of her diminished physical health. The resources mother needed were not provided to her and given the array of issues described by the court possessed by mother, it is also possible that mother did not possess the awareness needed to seek out these resources or afford these resources on her own.

CHAPTER 6- FINAL JUDGMENT, CASE CLOSED

CONCLUSION

The legal system is nothing if not utterly lacking uniformity (Rubinson 2005). This is abundantly clear as we begin to see the unraveling of landmark cases at the Supreme Court level. As I write this conclusion, the following come to mind as legal protections that no longer exist, *Miranda Rights (Vega v Tekoh)*, the separation of church and state (*Kennedy v Bremerton School District*), and access to health care (*Dobbs v Jackson Women's Health Organization*), all precedents that just this past session have been upended. Child removal laws impacting parental termination, are not exempt from this back and forth.

In April 2022, author/activist Marc Lamont Hill interviewed legal scholar and sociologist, Dorothy Roberts on her most recent work *Torn Apart: how the child welfare system destroys black families and how abolition can build a safer world*. Professor Roberts recalled the inspiration for writing on child welfare occurred almost 20 years prior when she sought to highlight the racial inequality of the child welfare system. After releasing *Shattered Bonds: the color of child welfare*, and working to reform the system for the proceeding 20 years she came to realize that the system had not changed in over 20 years. The child welfare system is disproportionately saturated with low-income African American children due to the policing of African Americans for the last 400 years (Roberts 2002). The welfare system was designed for impoverished people (Roberts 2022). Poverty is disproportionately present in communities of color and that carries direct implications for child welfare²¹⁴. As I continue to practice law, Professor Roberts' revelation becomes more apparent to me.

²¹⁴ <https://imprintnews.org/child-welfare-2/time-for-child-welfare-system-to-stop-confusing-poverty-with-neglect/40222#:~:text=The%20role%20that%20poverty%20plays%20in%20child%20welfare,capacity%20to%20care%20for%20his%20or%20her%20child.>

I embarked on this dissertation looking to explore what if any inconsistencies occurred in the application of our child removal laws within and across the same geographical space. I hypothesized that a parents' success in abuse and neglect court depended upon the type of access available to the parent. Up until 2012, Michigan maintained some of the country's most lenient child removal laws. This began to change after Michigan lawmakers adopted legislation making it more difficult to remove a child from their home if the child was not at risk of immediate danger. Given Michigan's wave of strengthened child removal laws in favor of parents over the years including the abolition of the one parent doctrine, I sought to examine how parents fared before and after changes in the law were made using court orders and opinions.

I found that in comparison to other states, Michigan had substantially more victims with public assistance as a caregiver risk factor for abuse and neglect and ranked the highest for reported infants born with prenatal substance exposure. In contrast, Michigan reported very few caregivers with the financial problem, inadequate housing, and any caregiver disability risk factor. It is difficult to make accurate state comparisons for caregiver risk factors as all states do not track data on caregiver risk factors. Despite this, upon examination of court files, in Michigan, parents most commonly lost their parental rights due to: mental illness, substance abuse, domestic violence, incarceration, poverty (financial problems, inadequate housing, public assistance), and a combination of the listed factors.

"In five states, a parent's rights cannot be terminated if the sole reason the parent has not provided adequate care is due to poverty."²¹⁵ Michigan is not one of the five states. However, as

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https://www.childwelfare.gov/pubpdfs/groundtermin.pdf#:~:text=In%20six%20States%20and%20the%20Virgin%20Islands%2C%20the,serious%20emotional%20or%20physical%20harm%20to%20the%20child.https://www.mlive.com/news/detroit/2009/08/too_poor_to_parent_critics_say.htmlhttps://www.childwelfare.gov/pubpdfs/groundtermin.pdf#:~:text=In%20six%20States%20and%20the%20Virgin%20Islands%2C%20the,serious%20emotional%20or%20physical%20harm%20to%20the%20child.

illustrated by a judge above, when it appeared as if the department was attempting to remove a child due to a family's financial instability, the judge noted that the law which permitted children's removal from the home on that basis had changed and was no longer permissible. Despite this, we however continue to confuse poverty with neglect²¹⁶. Michigan removes children for abuse and/or neglect. Overwhelmingly, children are removed from their homes for poverty disguised as neglect. These issues are typically associated with other social ills such as domestic violence, substance abuse, mental illness, and incarceration which are further complicated by parents' race and gender. When these social ills accompany neglect, that is, the "failure to provide adequate food, clothing, shelter, or medical care" removing children from their home becomes all the more justifiable.²¹⁷

Across different regions, more rural areas such as the West, Northern Lower Peninsula, Upper Peninsula, and Central Mid-Michigan experienced similar access issues to families in Southeast and Flint Tri Cities, however the similarities ranged in severity. For example, while families may have experienced a lack of access (availability x affordability) to built capital in rural versus urban areas, families in rural areas dealt with a lack of existing infrastructure and costs while families in urban areas dealt with a lack of livable/suitable housing and costs. Housing security is one of the main reasons children are removed from their families and placed in to foster care (Roberts 2022). However, housing security is widely a systemic issue out of parents' control. Members of the Michigan State Bar Children's Law Section wrote in an amicus brief in support of a mother appealing the termination of her parental rights, "we must avoid setting a trend that condones termination of parental rights as [a] legally appropriate remedy based on poverty-

²¹⁶ <https://imprintnews.org/child-welfare-2/time-for-child-welfare-system-to-stop-confusing-poverty-with-neglect/40222#:~:text=The%20role%20that%20poverty%20plays%20in%20child%20welfare,capacity%20to%20care%20for%20his%20or%20her%20child.>

²¹⁷ https://www.mlive.com/news/detroit/2009/08/too_poor_to_parent_critics_say.html

related concerns alone. Nor can we impose unreasonable requirements, such as total financial independence and independent home ownership, as prerequisites for maintaining parental rights.”²¹⁸

Cases in which parents suffered from a litany of poverty related issues worsened by their gender and/or race were quite typical across the state. There were few cases in which the termination of the parents’ parental rights were reversed on appeal. Even when cases were reversed on appeal at the Court of Appeals level, cases were sometimes again appealed to the Michigan Supreme Court where the trial court’s decision to terminate the parents’ parental rights was upheld. Parents with identified abuse and neglect risk factors experienced a system that lacked awareness and adequacy (accommodation). Parents who had experienced domestic violence were victim blamed for their batterers’ behaviors, while substance users and mentally ill parents were required to undermine their recovery process to meet the court’s reunification requirements. Likewise, incarcerated parents were expected to provide financial assistance to children sometimes absent a support order and were condemned for failing to maintain a relationship with their children during their incarceration period.

While I was not always able to identify parents’ race in written opinions/orders, when I was able to, for example the Detroit case studies, a clear disadvantage existed for the mother in *In re Godboldo* and the parents in *In re Brent*, a Black mother and poor white couple respectively, in comparison to the Ratté family. These parents had different types of access available to them, which guided their abuse and neglect case experience. The same way poverty in communities of color have a direct implication for child welfare, the same can be said for incarcerated parents, substance users, and those who are mentally ill. “Black Americans are incarcerated in state

²¹⁸ https://www.mlive.com/news/detroit/2009/08/too_poor_to_parent_critics_say.html

prisons at nearly five times the rate of white Americans” (Nellis 2021). In Michigan more than half the prison population is Black (Nellis 2021). “Black Americans are less likely to finish substance use disorder treatment and are more likely to be asked to leave before treatment is complete compared to their white counterparts” in part due to a “lack of cultural competency in the healthcare work force”²¹⁹. Lastly, despite having poorer mental health, Blacks are less likely to seek mental health treatment than whites (Henry et al. 2020).

Even though white children, especially poor white children, exist in the system or experience neglect we do not see them (Roberts 2002), in part due to access. In talks with CPS workers, Roberts found that CPS workers avoid entering more wealthier neighborhoods not because abuse and neglect do not exist but middle class, especially middle-class whites quickly “lawyer up.” Parents regularly experience fourth amendment violations but are unaware. Basic constitutional rights are often forgotten in family law (Roberts 2022).

This study shed light on the need for educating the bench. The court was found repeatedly shaming parents for actions out of the parents’ control. Judges are responsible for displaying impartiality, yet on more than one occasion we see judges advising parents on ways to circumvent the system to achieve their desired legal outcome. I found that courts did not always uphold case law and even when clear case law applied, jurists found ways to narrowly distinguish parents from precedent cases intended to protect parents’ parental rights. Similarly, I found that cases with the same underlying facts were decided differently not only within the state but sometimes within the same region.

The available data shows that only a few states report on important risk factors such as mental health. Honey et al. (2021) reported being the first study of its kind to examine mothers living

²¹⁹ <https://healthpolicy.usc.edu/evidence-base/racial-disparities-in-accessing-treatment-for-substance-use-highlights-work-to-be-done/>

with a mental illness whose children are removed by the state. Relatedly, there are risk factors such as incarceration that do not appear to be measured at all. We need a better understanding of the reasons in which children are removed from the home and the characteristics of the parent. Currently, we know that, across the nation more than one half (52 percent) of perpetrators are female and 41.1 percent of perpetrators are male. Whites make up 48.4 percent of perpetrators, followed by African Americans and Hispanics both at 20 percent. These statistics and findings easily conclude that there is more work to be done.

POLICY AND PRACTICAL IMPLICATIONS

Welfare reconstruction laws are used to incentivize states to push children out of welfare and into adoptive homes (Roberts 2002). Despite the expenses associated with foster care, federal funding is structured to make it easier for states to pay for removing children from their home instead of using less expensive intervention means such as programs like Michigan Families First²²⁰. Richard Wexler, a vocal critic of Michigan's child welfare system wrote, "for every dollar the federal government spends on safe, proven alternatives to foster care, it spends at least nine dollars in foster care and at least three dollars more on adoption."²²¹ This figure does not include additional court costs such as ordered counseling and medical treatment totaling nearly a \$47 difference a day per person in foster care²²². "When a family can't afford food, or can't wash their clothes because the water is turned off, the official reason children are removed from those homes is because of neglect . . . but the real reason is poverty."²²³

²²⁰ https://www.mlive.com/news/detroit/2009/08/too_poor_to_parent_critics_say.html

²²¹ https://www.mlive.com/news/detroit/2009/08/too_poor_to_parent_critics_say.html

²²² https://www.mlive.com/news/detroit/2009/08/too_poor_to_parent_critics_say.html

²²³ https://www.mlive.com/news/detroit/2009/08/too_poor_to_parent_critics_say.html

If the court requires you to attend counseling and substance abuse treatment, how can you do those things and hold down a job or two?²²⁴

In the era of child safety, it is more expensive to keep families apart than it is to safely reunify them. It is time for our country to abort the current child welfare system and refocus on family preservation and reunification given the uptick in impoverished children due to the pandemic, overwhelmed courts, undeniable system disparities, and new information.

SUGGESTIONS FOR PRACTITIONERS

Some suggestions to achieve this include increasing ways for parents who have had their parental rights terminated restored. Approximately half of the states allow children who linger in foster care the opportunity to return home to their parents after termination has occurred if the children are not placed with a permanent family within a certain time frame²²⁵. Currently, Michigan is not one of those states. Additionally, Michigan should adopt a practice of including children in the decision to terminate parents' parental rights. In six states, the court will not terminate parental rights over the objection of an older child²²⁶. An older child can be as young as 10 years of age²²⁷. Michigan already exercises this practice in guardianship procedures, even if failure to grant the guardianship is not in the best interest of the child.

²²⁴ https://www.mlive.com/news/detroit/2009/08/too_poor_to_parent_critics_say.html
²²⁵

<https://www.childwelfare.gov/pubpdfs/groundtermin.pdf#:~:text=In%20six%20States%20and%20the%20Virgin%20Islands%2C%20the,serious%20emotional%20or%20physical%20harm%20to%20the%20child.>
²²⁶

<https://www.childwelfare.gov/pubpdfs/groundtermin.pdf#:~:text=In%20six%20States%20and%20the%20Virgin%20Islands%2C%20the,serious%20emotional%20or%20physical%20harm%20to%20the%20child.>
²²⁷

<https://www.childwelfare.gov/pubpdfs/groundtermin.pdf#:~:text=In%20six%20States%20and%20the%20Virgin%20Islands%2C%20the,serious%20emotional%20or%20physical%20harm%20to%20the%20child.>

SCHOLARLY CONTRIBUTIONS

Most literature on child removal is based in legal scholarship. Given the importance of race and gender in the law, it is important to consider these issues from a sociological perspective.

Likewise, as courts do not recognize socio-economic status as a protected class under anti-discrimination laws, intersectional work like this is needed to highlight the disparities in legally driven spaces such as child welfare.

This dissertation highlights the need for a shift in societal thinking of what constitutes abuse and neglect. One particularly concerning finding shows a pattern of paternal terminations with little to no recourse. This suggests that fathers are disposable and provide no value to their children.

DIRECTION FOR FUTURE RESEARCH

In conducting my literature review I was surprised to see the lack of literature on child removal risk factors and racial disparities. Though court orders/opinions are regarded as the best way to obtain data on court behaviors and judges, there are exceptions to this. As an attorney, I found parents often experience due process violations prior to stepping into the courthouse. This information would not be documented in a court or opinion and would be best captured by attorneys or parents themselves. Future research should focus on firsthand accounts of both parent advocates and parents themselves.

Given the disproportionate disparity of Black children in the child welfare system. I found it concerning that the data on risk factors as it relates to black children were not more prominent or discussed more widely among scholars.

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APPENDIX A: INTERVIEW QUESTIONS TO SOCIAL SERVICE WORKERS

Background

I'd like to start off with a few questions about your general work background and experiences.

1. How long have you been working in a social service capacity?
2. In what social service capacities have you worked?
 - a. For each position, please indicate how long you worked in that particular capacity.
3. What is your current social service position?
 - a. How long have you worked in this position?
4. What is your service area?
 - a. In which Michigan counties do you normally work?
 - b. Has this changed over time?

Participation in Proceedings

Now, I'd like to ask you a few questions specifically about your participation in selected proceedings.

5. Have you personally participated, in any capacity, in an emergency child removal proceeding?
 - a. If no, have you ever observed child removal proceedings?
 - i. Tell me about your observations, as well as you can remember them.
 - b. If yes, in what capacity have you participated?
 - ii. Tell me about these times when you have participated, as well as you can remember them.
6. Have you ever testified as a witness on behalf of the DHHS?
 - a. If yes, tell me about those experiences.

Witnessed Events

In the next group of questions, I'd like to ask you about what you may have witnessed during your time as a social services worker. Given the sensitivity of this information, please refrain from mentioning the specific names, dates, and identities of each instance.

7. Have you witnessed any instances where you believed a child was removed without basis?
 - a. If so, tell me about the most memorable instances in this regard.

8. Have you witnessed any instances where you believed a child should not have been removed?
 - a. If so, tell me about the most memorable instances in this regard.
9. Have you witnessed any removal procedures where protocol was not followed?
 - a. If so, tell me about the times when you witnessed this.
 - b. What protocols were not followed?
 - c. Who did not follow them?
 - d. How often have you witnessed this type of behavior?
10. What have you done when protocol is not followed in removal procedures?
11. Have you ever not followed protocol for any reason?
 - a. If so, tell me what you can about what happened and why?
 - b. Was this inadvertent or did you purposely not follow protocol?
12. Think about all of the parties to emergency removal hearings: judges, attorneys, police officers, and other social service workers. What kinds of concerning behaviors have you witnessed in such proceedings?
 - a. Which parties tend to perform which behaviors?
 - b. What patterns have you noticed?

Key Perceptions

As a social services professional, you likely have informed opinions about how emergency child removal proceedings may vary over time and across jurisdiction. In the following questions, I would like you to share with me your expertise on this matter.

13. Think about the 2012 Mike's Hard Lemonade decision. In your informed opinion, how, if at all, do you think emergency child removal proceedings have changed since this decision?
14. [If you have worked in more than one county] In your informed opinion, how, if at all, do emergency child removal proceedings differ across those counties where you have worked?

Ending

15. Do you have any other ideas about emergency child removal proceedings that you would like to share?
16. Is there anything else that you think I should know?

APPENDIX B: ATTORNEY SURVEY

This survey will be completely confidential. No personal information including name and phone number will be shared with others, and your responses will be used for research purposes. Thank you for your participation.

A. Background Information

Please fill in the answer that best describes you.

1. Age: _____
2. Gender: a. Male b. Female c. Other (please specify) _____
3. Race/Ethnicity:
 - a. Caucasian b. African American/Black c. Hispanic/Latino d. Asian and Pacific Islander
 - e. Native American/American Indians f. Others(please specify)
4. Counties of practice other than Wayne: _____
5. Years of Practice (Juvenile Law): 1-5 years, 6-10 years; >10 years
6. In what capacity have you practiced juvenile law (check all that apply)? a) prosecutor; b) attorney at litem; c) attorney for offending parent; d) attorney for non-offending parent
7. In any capacity, have you participated in, an emergency child removal proceeding? 0 = no; 1= yes

B. Experience in and Attitude toward Wayne County Juvenile Family Court and Welfare System

Read the following question about your experience in and attitude toward Wayne County Juvenile Family Court and Welfare System. Please answer the level that you agree or disagree for each statement. (1=completely disagree, 2=disagree, 3=neither agree nor disagree, 4=agree, 5=completely agree)

Statement Questions	1	2	3	4	5
	Completely Disagree				Completely Agree
1. There is a substantial difference in the way child removal proceedings are adjudicated from county to county.	1	2	3	4	5
2. Social demographics (i.e. race, class, gender, and other social identities) contribute to treatment parents receive during child removal proceedings.	1	2	3	4	5
3. You are familiar with the changes made to the Michigan emergency child removal statute “Leo’s Law ²²⁸ .”	1	2	3	4	5
4. A recognizable change occurred in the process of child removal cases after the implementation of the Leo’s Law ²²⁹ .	1	2	3	4	5
5. A substantial change occurred in the process of child removal cases after the implementation of Leo’s Law ²³⁰ .	1	2	3	4	5
6. Leo’s Law ²³¹ negatively impacted family reunification efforts	1	2	3	4	5
7. Leo’s Law ²³² positively impacted family reunification efforts.	1	2	3	4	5
8. I have participated in child removal proceedings where the statute was not followed.	1.	2	3	4	5
9. Children are always removed pursuant to the child removal statute.	1	2	3	4	5

²²⁸ 2012 Public Act 163 (SB 320): Standards for Placing a Child in Foster Care/Emergency Removal Process

²²⁹ 2012 Public Act 163 (SB 320): Standards for Placing a Child in Foster Care/Emergency Removal Process

²³⁰ 2012 Public Act 163 (SB 320): Standards for Placing a Child in Foster Care/Emergency Removal Process

²³¹ 2012 Public Act 163 (SB 320): Standards for Placing a Child in Foster Care/Emergency Removal Process

²³² 2012 Public Act 163 (SB 320): Standards for Placing a Child in Foster Care/Emergency Removal Process

10. Children are removed for reasons other than those listed in the statute.	1	2	3	4	5
11. I have participated in a child removal proceeding where the child should have been removed from the home but was not.	1	2	3	4	5
12. I have participated in a child removal proceeding where the child should NOT have been removed from the home but was removed from the home.	1	2	3	4	5
13. I have observed conduct during child removal proceedings that concerned me.	1	2	3	4	5
14. The behavior of some judges during child removal proceedings has concern me.	1	2	3	4	5
15. Some prosecutors have displayed behavior during child removal proceedings that concerned me.	1	2	3	4	5
16. Some social service workers have displayed behaviors during child removal proceedings that concerned me.	1	2	3	4	5
17. I have taken appropriate action when I observed behaviors that concerned me.	1	2	3	4	5
18. Statute violations occur all the time	1	2	3	4	5

Read the following questions about your experience in and attitude toward Wayne County Juvenile Family Court and Welfare System. Please answer the level that you agree or disagree for each statement. (1=Never, 2=Rarely, 3=Sometimes, 4=Often, 5=Always)

Statement Questions	Never Always				
19. Parents receive due process during child removal proceedings	1	2	3	4	5

20. I witness microaggressions toward parents during child removal proceedings.	1	2	3	4	5
21. Social Services workers follow protocol for removing children.	1	2	3	4	5
22. Social Service workers impede family reunification.	1	2	3	4	5
23. Social Service workers exhibit implicit bias in abuse and neglect cases	1	2	3	4	5
24. Most Judges follow the law in their rulings in neglect and abuse cases.	1	2	3	4	5
25. Some Judges impede family reunification.	1	2	3	4	5
26. Prosecutors follow the law in prosecuting child removal cases.	1	2	3	4	5
27. Prosecutors impede family reunification	1	2	3	4	5
28. Prosecutors exhibit implicit bias in neglect and abuse cases.	1	2	3	4	5

C. Conclusion

7. Is there is anything else you think I should know