REPORT: THE WAR ON DRUGS MEETS CHILD WELFARE

(a Drug Policy Alliance publication)

INTRODUCTION

Families should be given the necessary supports and services to ensure they can provide safe, nurturing environments for children. Unfortunately, the United States has adopted a punitive approach to suspected child maltreatment that emphasizes removal of the child instead of providing assistance to keep families together or reunite them after separation. The war on drugs has been a key tool in perpetuating this harmful system, especially against parents of color. Under the logic of the drug war, any drug use – even suspected – is equivalent to child abuse, regardless of context and harm to the child. This "logic" is not based on evidence or data but instead on assumptions that parental drug use automatically harms children; that parents who use drugs cannot be good parents; that the foster care system can provide better care for children; and that it is better to remove children from their parents than to provide support to improve the situation.

The drug war has provided the means and base assumptions to justify removing children from their families. Placing the blame on individual parents and drug use offers an easy scapegoat that detracts from focusing on structural issues like racism, poverty, and lack of supportive services. Child welfare policies enacted under the drug war have wreaked serious harm among primarily low-income families, especially families of color. They have contributed to the United States' alarming distinction as home to the most legally parentless children through termination of parental rights.[1] Separating children from their parents often leads to the very harms from which these policies purport to protect.

In this report we explore how the war on drugs has intersected with the child welfare system over time, both nationally and in New York State. The Drug Policy Alliance offers this report in the hopes that it will lead to a deeper discussion of the individual and collective harms that have been caused by a half-century of the drug war and its infiltration of our child welfare system.

THE FEDERAL STORY

The ramping up of the war on drugs directly correlates with changes in attitudes and policies in child welfare and skyrocketing numbers of children in foster care. This was the outcome of intentional policies that supported removal over keeping families together, equating any drug-related activity with child maltreatment, and mandating that health professionals report any drug involvement to child welfare. Each of these is explored below.

Prioritizing Removal over Family Unity

The purported core function of the child welfare system is to do what is in a child's best interest. However, the child welfare system does not adequately assess whether abuse or harm has been done to a child.[2] The war on drugs bears much of the blame for this tragic reality. Punitive child welfare policies closely track the fearmongering and discrimination against pregnant people who use drugs during the 1980s and 1990s, especially people of color. This led to an explosion in the foster care population and in child removal.

Concerned with increases in the number of children in foster care placement in the 1970s, Congress passed the Adoption Assistance and Child Welfare Act of 1980 (AACWA), whose twin goals were to reduce the number of children in foster care and to support biological family reunification and preservation where possible. The Act required states to use "reasonable efforts" to prevent the removal of children from their homes, and the number of children in foster care began to decline.[3] Then, the crack cocaine panic erupted.

Spurred by the crack cocaine-involved overdose deaths of two famous athletes, Len Bias and Don Rogers, politicians on both sides of the aisle called for an all-out war on drugs, targeting low-income communities of color. *Time Magazine* reported that the crack cocaine "plague" was "tearing our country apart and killing...a whole generation of our children," and the issue of crack cocaine-related child abuse and neglect was a focus of the 1988 election season.[4] Rhetorical attacks by lawmakers and conservative pundits on low-income Black women and their children became relentless. President Ronald Reagan created the caricature of "welfare queens." The emergence of the "crack baby" myth, which was sensationalized by the media, gave drug war proponents a powerful new symbol for justifying a punitive response to drug use. Not only were these women deemed undeserving of sympathy or support; they were "poisoning their babies" and spawning "a bio-underclass" of impaired children "whose biological inferiority [was] stamped at birth."[5]

Child protective services throughout the country responded to the panic, and the number of child removals rose precipitously due to increased criminalization, surveillance, and racially targeted enforcement. The number of children receiving in-home child welfare services declined while the foster care population ballooned.[6*] Between 1982 and 1999, the number of children in foster care increased by 125 percent, from 243,000 to 547,000,[7**] and they were disproportionately Black. The U.S. Department of Health and Human Services reported that "minority children, and in particular [Black] children, are more likely to be in foster care placement than receive in-home services even when they have the same problems and characteristics as white children."[8] The U.S. Government Accountability Office reported that Black children were more than twice as likely to enter foster care compared to white children and that they remained in foster care nine months longer.[9] Removal from the parents' custody has become a routine remedy: 1 in 17 white children, 1 in 9 Black children, and 1 in 7 Native American children were removed from their parents' care between 2000 and 2011.[10]

The child welfare system does not adequately assess whether abuse or harm has been done to a child. The war on drugs bears much of the blame for this tragic reality.

Drug use has become one of the most prevalent allegations in maltreatment investigations, even though the assumption that drug use results in the inability to care for children is not supported by evidence.[11] Some studies estimate that over 80 percent of all foster system cases involve caretaker drug allegations at some point in the case.[12] These allegations often lead to removal of children from their parents. Over one-third of removals in 2016 involved parental alcohol or other drug use as a contributing factor, representing a 17 percent increase from the turn of the century and the largest increase of any reason for removal in the last five years.[13]

This country's foster care system has a long history of dysfunction and abuse. As legal scholar Dorothy Roberts has put it, "[i]f a child survives foster care it's not because of the system, it's despite the system."[14] The issue of our broken foster care system has generated hundreds of books, articles, and reports describing years of failure in a system that has always overwhelmingly targeted poor families.[15] Even though Black children were more likely than white children to enter into the care of relatives (i.e., kinship care),[16***] the number of Black

* The number of families receiving in-home services dropped 58 percent between 1977 and 1994, from 1.2 million to 500,000. In-home, family preservation programs are supposed to provide around-the-clock caseworkers who have only a few cases and spend long hours in the family's home counseling parents, coordinating services, and monitoring children's safety. But they have never been adequately funded or resourced.

** Today, on any given day, there are nearly 438,000 children in foster care in the U.S.

*** Hispanic children were also more likely to use kinship care than whites.

Drug use has become one of the most prevalent allegations in maltreatment investigations, even though the assumption that drug use results in the inability to care for children is not supported by evidence.

children who ended up in foster care far exceeded other racial groups, and the length of time they remained in foster care increased. This "foster care drift" led to calls for federal legislation to limit the time spent in foster care and to promote permanent placements through adoption.[17]

In 1996, in response to the calls to limit time in foster care, the Adoption and Safe Families Act (ASFA) was passed. Designed to promote more timely permanent placements for children in the child welfare system, ASFA was to have a particularly negative impact on parents who were justice-involved. The Act mandated that permanency hearings be held for children who were in out-of-home care for 12 months and that states file a petition to terminate parental rights for children in care for 15 out of the most recent 22 months (i.e., the "15/22 mandate"). Emblematic of this swing away from family reunification as government policy, ASFA provided financial incentives for states to increase the number of children who were adopted.[18] In its comprehensive 2020 report, "How the Foster System Has Become Ground Zero for the U.S. War on Drugs," The Movement for Family Power notes:

> *In the drug war waged by the foster system, the federal government poured unprecedented funds into reimbursing states for the costs of removing children – largely Black, Latinx, American Indian and white children living in poverty – from their parents' care and placing those children into foster homes, and for adopting out children who were in foster care for over 15 months. During this same period, foster system funds for basic necessities for families such as drug treatment and associated healthcare, housing, childcare, and so on remained constant, and a fraction of what was available for removing children from their homes.*[19]

The limited timeframe for reunification and the accelerated timeframe for termination of parental rights put incarcerated parents at serious risk of losing their children. Given the explosion in the number of incarcerated people, due in part to the war on drugs, the ASFA vastly increased the number of children torn from their families.[20] The average time served by people in state prison is 30 months,[21] far exceeding ASFA's 15/22 mandate. Since the passage of ASFA, many states have included parental incarceration as a factor to be considered in terminating parental rights, and some states include it as a basis for suspending reasonable reunification efforts.[22] This is the case even in the absence of any allegation that the children were abused or neglected before their parent was incarcerated. And this is the case even when incarcerated parents, in spite of significant obstacles, maintain contact with their children through telephone calls, letters, and visits.[23]

The "legal orphans" that incarcerated parents leave behind are also at risk; parental incarceration is now recognized as an "adverse childhood experience" distinct from other adverse childhood experiences by the unique combination of trauma, shame, and stigma.[24] Children of incarcerated parents experience significant financial problems, as well as a tremendous sense of loss and high levels of stress. ASFA's rigid timeframes prevent family reunification even when reunification would be in the best interests of the children.

Federal law and rhetoric ensured the child welfare system became a primary front in the war on drugs. Through harsh policies that favor separation and termination of parental rights, combined with hysteria, misinformation about drug use, and racism, our foster system exploded, fueled by claims that parents, particularly parents of color, were not capable of taking care of their children due to drugs. As detailed in the next section, the drug war effectively achieved this by conflating drugs with child maltreatment.

---

* According to the Bureau of Justice Statistics' Survey of Inmates in State and Federal Correctional Facilities, 70 percent of parents in state prison reported exchanging letters with their children, 53 percent had spoken with their children over the telephone, and 42 percent had had a personal visit since admission.

CURRENT STATISTICS

- More than 2.7 million children in the U.S. have an incarcerated parent. That is one in 28 children.[25]
- One in 9 Black children (11 percent), one in 28 Latinx children (3.5 percent), and one in 57 white children (1.8 percent) have an incarcerated parent.[26]
- About half of the children with incarcerated parents are under 10 years old.[27]
- The percentage of children in foster care whose parents' rights have been terminated rose from 10.7 percent in 1998 (60,000 of the 559,000 children in care) to 17 percent in 2007 (84,000 of 496,000).[28]

Equating Parental Drug Involvement with Child Maltreatment

The war on drugs espouses that anything involving drugs is evil and that only total abstinence is acceptable. Therefore, it was natural for drug warriors to equate any parental involvement with drug-related activity as child maltreatment, even if there was no evidence that the child was actually harmed or if the drug-related activity even affected the child. This was accomplished through criminalizing parental drug use and defining it as child maltreatment in law.

During the late 1980s, more than 200 criminal prosecutions were initiated against pregnant people, mostly people of color, in close to 20 states. The charges included assault with a deadly weapon (i.e., crack cocaine), felony child neglect, and endangering the welfare of an unborn child.[29] A low-income Black woman in Florida was convicted under a drug trafficking statute for delivering drugs to her infant through the umbilical cord.[30] In South Carolina, 18 Black women were charged with criminal neglect of their fetuses, and within days of giving birth, they were arrested and jailed until they could make bail.[31] Their newborn babies were taken into "protective custody" by the state.[32] These cases were prosecuted in the absence of any evidence of harm or neglect.

In 2006, Alabama passed a "chemical endangerment" law to punish people for bringing children to places where controlled substances are produced or distributed, such as methamphetamine laboratories.[33] But prosecutors have extended the intent of that law far beyond its initial purpose. Between 2006 and 2015, prosecutors used the chemical endangerment law to bring charges against more than 400 people who were pregnant or who had newly given birth and tested positive for a controlled substance.[34] Many of these people still carried their pregnancy to term and delivered healthy babies.[35] Today, 19 states and the District of Columbia consider substance use during pregnancy to be child abuse under civil child welfare statutes, and three consider it grounds for civil commitment.[36]

Often a finding of maltreatment based on parental drug use is based on a drug test alone rather than on any demonstrated harm to the child.[37] These tests may be required by child welfare agencies or family courts, or they could come from other sources, such as criminal investigations or tests conducted by healthcare providers. Drug tests can only determine if a person has a drug metabolite in their system. They cannot tell how much of a drug was consumed, how intoxicated the person became, or whether the person has a substance use disorder. Drug tests certainly cannot determine if drug use impacted the ability to care for children. Yet, the simple presence of drugs in a drug test is a common reason relied on by child welfare agencies across the country to sustain a finding of child maltreatment.[38]

By equating any drug-related activity with child maltreatment, child welfare agencies can easily justify removing children from parents' care based on drug allegations or positive drug tests. With this groundwork in place, federal and state governments used another tool to begin maltreatment investigations: mandatory reporting requirements.

Mandatory Reporting Requirements

Through requirements to report any possible drug exposure to child welfare agencies, physicians and other healthcare professionals have been conscripted to wage the drug war against their patients. Federal law and policy has been a major reason for states adopting these negative policies.

In 2003, Congress amended the Child Abuse Prevention and Treatment Act (CAPTA) to require physicians to report to child protective services all patients who gave birth to "infants born and identified as being affected by

Today, 19 states and the District of Columbia consider substance use during pregnancy to be child abuse under civil child welfare statutes, and three consider it grounds for civil commitment.

illegal substance abuse or withdrawal symptoms resulting from prenatal drug exposure."[39] This imprecise "drug-affected" standard was broad enough to be interpreted to encompass babies who had been exposed to maternal drug use (revealed by toxicology testing), but who showed no symptoms of exposure and did not appear to be at risk of abuse or neglect. It was up to each state to develop a testing and reporting protocol. CAPTA did not preempt a state's law on what constituted child abuse or required criminal prosecution, but CAPTA did condition a state's receipt of federal child abuse prevention funds on the enforcement of the reporting provision.[40]

States had already legislated in this area well before the CAPTA amendment was adopted. Eight states required mandatory reporting of positive maternal toxicology results to child protective services, and two-thirds of the states reported positive newborn toxicology results to child protective services.[41] Immediately after Congress adopted the amendment, many states had to act to bring their laws and procedures into line with the reporting requirements. Today, half of all states and the District of Columbia require doctors to report any suspicion of drug use to child welfare authorities.[42] At least half of reports to child protective services about newborns exposed to drugs in utero come from medical professionals.[43]

These laws and rules disproportionately impact people of color. Years of research show that race is a primary determinant of the difference in decision-making outcomes among child welfare professionals and collaborating systems.[44] In one early study, pregnant Black women were almost 10 times more likely than white women to be reported to child protective services, even though the rate of drug use among the two groups was essentially the same.[45] Another study found that school and medical personnel over-reported families of color to child welfare agencies and suggested that school personnel confused factors associated with poverty as child maltreatment and medical personnel made assumptions about drug use among pregnant Black women.[46]

Physician reporting requirements also put healthcare providers in an ethical bind by pitting them against the interests of their patients and discouraging people from seeking prenatal care, putting both parents and babies at risk. The American College of Obstetricians and Gynecologists (ACOG) has been on record in opposing the requirements since they were introduced. In its most recent statement on the issue, ACOG explains:

> *"Although legal action against women who abuse drugs prenatally is taken with the intent to produce healthy birth outcomes, negative results are frequently cited. Incarceration and the threat of incarceration have proved to be ineffective in reducing the incidence of alcohol or drug abuse. Legally mandated testing and reporting puts the therapeutic relationship between the obstetrician-gynecologist and the patient at risk, potentially placing the physician in an adversarial relationship with the patient. In one study, women who used drugs did not trust health care providers to protect them from the social and legal consequences of identification and avoided or emotionally disengaged from prenatal care. Studies indicate that prenatal care greatly reduces the negative effects of substance use during pregnancy, including decreased risks of low birth weight and prematurity. Drug enforcement policies that deter women from seeking prenatal care are contrary to the welfare of the [parent] and fetus."*[47]

As with so many of the ill-advised, counterproductive policies generated by the war on drugs, the response has only made a complex problem worse with the catastrophic consequence of further endangering parental and child health.

The explosion in the number of children in foster care and parents facing termination of parental rights is directly related to the war on drugs. Drug war logic equates anything involving drugs with child maltreament and requires authority figures, including health professionals, to report people to child welfare for suspected drug involvement. This perverted system has torn apart families, especially families of color, and made the U.S. holder of the disgraceful title of the country with the most legally parentless children. New York's story, sadly, follows closely with what has happened at the national level.

WHAT DOES SCIENCE SAY?

Q. Is there such a thing as a "crack baby"?

A. No. As Deborah Frank, M.D., a Professor of Pediatrics at the Boston University School of Medicine testified at a U.S. Sentencing Commission hearing in 2002, "[b]ased on years of careful research, we conclude the crack baby is a grotesque media stereotype, not a scientific diagnosis."[48] A comprehensive study of the medical evidence found that, "there is no convincing evidence that prenatal cocaine exposure is associated with any developmental toxicity difference in severity, scope, or kind from the sequelae of many other risk factors." Without knowing that cocaine was used by their mothers, clinicians could not distinguish so-called "crack-addicted babies" from babies born to comparable mothers who had never used cocaine.[49]

Q. Does prenatal exposure to marijuana cause significant negative outcomes?

A. No. According to Dr. Peter A. Fried, a leading researcher in the field, "the use of marijuana during pregnancy...has not been shown by any objective research to result in abuse or neglect. There have been a few reports of mild negative effects in high-risk populations on the birth weight or birth length of newborns, but in those studies, these effects were no longer present after a few months."[50]

Q. Does prenatal exposure to methamphetamine cause harm to exposed babies?

A. No. The American College of Obstetrics and Gynecology has concluded that, "the effects of maternal methamphetamine use cannot be separated from other factors" and that there "is no syndrome or disorder that can specifically be identified for babies who were exposed in utero to methamphetamine."[51]

Q. Does prenatal exposure to opioids cause lasting problems?

A. Prenatal exposure to opioids, most commonly heroin and oxycodone, is not associated with birth defects. Moreover, there is no scientific evidence that growth and development are compromised by exposure to opioids. Some newborns with prenatal opioid exposure may experience withdrawal symptoms at birth. For those newborns, safe and effective treatment can be instituted in the nursery setting.[52]

Q. What is the relationship between parental and caregiver substance use and child maltreatment?

A. It's not clear. A literature review of peer-reviewed articles shows that "when it comes to studies specifically examining combined caregiver substance misuse and child maltreatment, the reliance is on very weak and largely dichotomous measures." In other words, since substance use and child maltreatment have been studied in isolation from possible co-occurring factors that could be more significant, such as poverty, criminalization, domestic violence, depression, anxiety, and other mental health challenges, evidence on the relationship between caregiver substance use and child maltreatment is inconclusive.[53]

CASE STUDY: THE NEW YORK STORY

Targeted drug law enforcement

New York State was already on a drug war footing when crack cocaine arrived. In 1973, the Rockefeller Drug Laws and the Second Felony Offender Laws were adopted, giving the state the distinction of having the toughest mandatory drug sentencing laws in the country.[54] Changes in drug law enforcement in the 1980s and 1990s swept tens of thousands of people who use drugs into the criminal legal system. In the early 1980s, the New York City Police Department began a campaign of massive street sweeps in low-income Black and Latinx neighborhoods. In January 1984, the NYPD launched Operation Pressure Point on the Lower East Side, assigning hundreds of uniformed and plainclothes officers to the area. For the first six weeks, they averaged 65 arrests per day.[55] Most of the people arrested were small-time sellers and buyers. By August 1986, the police had made a total of 21,000 arrests.[56] In 1988, the NYPD launched a new anti-drug program called the Tactical Narcotics Team (TNT) in low-income communities of color throughout the city. TNT flooded the streets with investigators and undercover officers who conducted so-called "buy bust" operations, arresting mostly low-level drug sellers.[57] Similar police tactics were employed in urban centers throughout the state. Drug arrests, prosecutions, and prison sentences soared.

Rising prison population

Beginning in the mid-1980s, New York's female prison population grew swiftly, from 1,000 in 1984 to 1,700 in 1988 to 2,500 in 1989 and eventually to its peak of 3,728 in 1996, the year the federal Adoption and Safe Families Act, with its limited timeframe for reunification and the accelerated timeframe for termination of parental rights, was enacted.[58] Most of these people were parents of minor children.[59] Drug convictions were the principal driver of this dramatic increase. In 1980, 11 percent of New York's total prison commitments were for drug law violations, and 57 percent were for violent offenses. By 1997, those figures were reversed: 47 percent and 28 percent, respectively.[60]

Increased surveillance of families of color

With increased, targeted drug law enforcement in low-income communities and communities of color, increasing numbers of mostly poor and mostly Black families were coming to the attention of child protective services. The state's Social Service Law's definition of "neglected child" covers when the neglect was caused by the misuse of drugs or alcohol "to the extent that [a parent] loses self-control of [their actions]."[61] This definition, which is often applied in a racially discriminatory way, leaves significant discretion to child welfare agencies.[62] Once identified as neglectful by a "mandated reporter" – e.g., a social worker, mental health counselor, physician, hospital personnel, teacher – a report must be immediately filed with Child Protective Services (CPS).[63*] CPS must then initiate an investigation within 24 hours and, if the suspicion is confirmed, the investigator must file a petition charging abuse or neglect with the Family Court. During the 1980s and 1990s, the number of neglect petitions and children in foster care increased dramatically due to enhanced emphasis on parental drug activity, not actual harm to the child, as maltreatment: real or suspected substance use was a factor in as many as half of the petitions.[64] By 1987, New York City's child welfare system was said to be "in crisis," with "foster-care children being bounced from home to home and institution to institution in far greater numbers and under more chaotic conditions than officials, caseworkers, and other experts can recall."[65]

* The law identifies more than 30 occupations as mandated reporters.

"But when there's a mother struggling with an addiction, struggling with herself, but is not abusive towards her kids, then the system has to help better that situation. Help the mother as well as the child...What would have helped me most is compassion for my mom."

"When I was five, my mother's parental rights were terminated. I wasn't even allowed to be by her in the courtroom. But I just knew from her expression, her tears, begging the judge, what had happened... They picked me up and just carried me away. Me screaming and yelling, 'Mommy, I'm sorry, I won't be bad again.' All the system saw was a drug-addicted mother...They wanted to protect little Ahmad...There are mothers out there that are abusive to their kids, so the system has to step in and do something about that. That's understood. But when there's a mother struggling with an addiction, struggling with herself, but is not abusive towards her kids, then the system has to help better that situation. Help the mother as well as the child...What would have helped me most is compassion for my mom." —Ahmad, 21 years old[66]

The crisis persisted for years through various mayoral administrations. In the peak year of 1999, there were 48,029 children in foster care in New York, a disproportionate percentage of whom were Black.[67] Even today, nearly half of removals of children under one month old in New York City's Bronx are due to drug use during pregnancy.[68] The city's flailing child welfare system drew protracted lawsuits and stinging criticism from child welfare advocates.[69] In 2002, Public Advocate Betsy Gotbaum issued a critique entitled, "Families at Risk: A Report on New York City's Child Welfare Services."[70] The report confirmed that the city's Administration for Children's Services (ACS) was "overwhelmed by the sheer volume of cases," and that there were insufficient numbers of caseworkers, attorneys, and judges to manage the situation. But the report also criticized the "culture of the system" which "undermines the goals of protecting children and strengthening families."

New York's aggressive drug law enforcement has resulted in an enormous number of people, primarily people of color, arrested and incarcerated for drug law violations. In concert, child welfare systems in the state increased scrutiny of parental drug activity, falsely equating any use with child maltreatment. This led to thousands of families being torn apart over the past several decades, and New York is still grappling with the consequences.

> *"Child protective investigations are initiated within a punitive framework, which includes prosecutorial family court proceedings. These investigations focus on proving or disproving incidents of wrongdoing. The practice emphasizes family weaknesses as opposed to using family strengths to correct the problems. The resulting mistrust can lead to poor communication and lack of cooperation between the parties. Interviews with parents served by the Child Welfare Project reveal that the investigation process itself can be harmful to children and families, and there are often stories about unnecessarily harsh interventions."*
> *– from "Families at Risk: A Report on New York City's Child Welfare Services"*[71]

Parents in need of services were understandably reluctant to apply for them.[72] The child welfare system's culture of punishment, encouraged by the war on drugs and its "crack babies" and "crack moms" stereotypes, harmed the very people it was intended to help.

Decreased funding for social services

It is true that the introduction of crack cocaine had a harmful effect on many individuals, families, and communities. But it is also true that the crisis happened in the context of grinding poverty and severe cutbacks in social services, including preventive services. In 1990, 40 percent of New York City's children were living in poverty, roughly double the rate for children living elsewhere in the country.[73] At that time, the city and the state were still in the grip of a deep recession. New York State was experiencing a $1.5 billion budget gap, and social service funding was on the chopping block. Governor Mario Cuomo's budget that year called for a $67 million reduction in spending on social programs, including Medicaid.[74] Services for people seeking treatment for substance use disorders were especially scarce. Spared from the chopping block, however, was the corrections budget; between 1983 and 1994, Governor Mario Cuomo authorized the construction of 29 new prisons at a cost of $7 billion.[75]

New York's aggressive drug law enforcement has resulted in an enormous number of people, primarily people of color, arrested and incarcerated for drug law violations. In concert, child welfare systems in the state increased scrutiny of parental drug activity, falsely equating any use with child maltreatment. This led to thousands of families being torn apart over the past several decades, and New York is still grappling with the consequences. Fortunately, advocates have been able to bring positive changes in recent years.

WHERE WE ARE TODAY

After years of dogged advocacy and activism by drug policy and criminal legal reform organizations and parent advocates, there have been some hopeful changes in New York. Following on the heels of the historic repeal of the Rockefeller Drug Laws in 2009, on June 15, 2010, the state adopted the ASFA Expanded Discretion Bill.[76] The law allows foster care agencies to refrain from filing for termination of parental rights when the petition is based solely on the fact that a child's parent is in prison or in a residential treatment program or if a parent's prior incarceration or program participation was a significant factor in why the child was in foster care for 15 of the

last 22 months.[77] It also requires foster care agencies to inform parents in prison and residential drug treatment programs of their rights and provides referrals to social services and family visiting programs.[78]

Sentencing reform has led to a significant decline in the state's incarcerated population in general, and among women specifically. Although the number is still too high, today there are 1,000 fewer women in state prisons than there were in 1996.[79] Because of the growing influence of the formerly incarcerated people's movement, the government is now funding reentry organizations that help people coming out of jail and prison with family reunification, and the New York Reentry Roundtable, spearheaded by the Community Service Society and including 60 stakeholder organizations, targets "family connections" as one of its priorities.[80]

While still deficient in many ways, New York City's Administration for Children's Services is striving to improve its services and outcomes. In 2016, at the urging of the City Council, Mayor de Blasio formed the Interagency Foster Care Task Force, which is charged with making recommendations. At the end of 2019, there were fewer than 8,000 children in foster care, less than one-fifth the number 25 years ago, and many more families were receiving preventive services. Fewer children are entering foster care each year, and they are spending less time there. The number of children who stay in the foster system for more than two years dropped by 22 percent from 2017 to 2019.[81]

In November 2020, New York City's Health and Hospitals Corporation, which operates the city's public hospitals and clinics, announced that it would end its policy of drug testing pregnant patients without their written consent. This represents a significant reform and a victory for activists who have been fighting hard to end the practice for years. These discriminatory drug tests of the mostly Black and Brown people who give birth in the city's public hospitals have been responsible for an estimated 50 percent of the removals of babies under the age of one month.[82] The new policy acknowledges that the use of drugs during pregnancy is a medical issue that should be assessed for the purposes of linking people to treatment, if necessary.

At the same time, the City's Commission on Human Rights opened an investigation into three private hospitals to determine if there was evidence of racial bias in who was tested for substances and reported to child welfare authorities.[83] The investigation was applauded by advocates for pregnant people of color.[84]

New York has made significant strides towards reducing its foster care population and child removals due to parental drug related-activity. However, it still has a long way to go to provide the dignity that all families deserve and establish a system that values family unity and providing supportive services to keep families together.

CONCLUSION

On December 28, 2018, *The New York Times* published an extraordinary apology, claiming responsibility for the role the media played in stoking the crack cocaine hysteria of the 1980s and 1990s and highlighting the difference in the treatment of Black parents then and white parents now during this current overdose crisis.[85] While this mea culpa was long overdue, the attitudes, policies, and laws of that time wrought nearly 40 years of suffering through the prioritization of removal of children, particularly children of color, from their families due to drug allegations without evidence of harm. Many of these outgrowths of the drug war continue to wreak harm today across the country. We must uproot the drug war from our child welfare systems and provide the support families need to stay together and thrive.

Acknowledgments

Almost five years after Drug Policy Alliance's "White Faces, Black Lives" conference and 50 years after Richard Nixon's declaration of the war on drugs, DPA releases these historical reports and accompanying resources to document the massive reach of the drug war, both within and beyond the criminal legal system. As more and more of the public calls for an end to decades of punitive drug policy, we must understand the deep roots of the drug war across systems, and we must stay attuned to ways in which the drug war warps and sinks its roots deeper into our lives.

In 2016, DPA's New York Policy Office and the Department of Research and Academic Engagement hosted "White Faces, Black Lives," a conference that convened organizers, researchers, and policymakers to combat the increasingly popular but misguided viewpoint that we were entering a kinder, gentler era of the drug war because the face of the opioid crisis was white. Black people, particularly Black people who use drugs and their family members, knew that not only were Black people being impacted by the overdose crisis but that, despite decades of positive reforms, the drug war was far from over. After meetings with people directly impacted by the drug war and family law, education, employment, immigrant, housing, treatment, and justice movement partners, DPA then launched "Color of Pain," a website documenting the role of racism in drug policy and mapping the wide scope of the drug war.

The publication of "Uprooting the Drug War" is possible because of a rich legacy of writers, thinkers, partners, and doers within and beyond the drug policy reform movement. This project - and past, present, and future organizing and advocacy to end the drug war - is enriched by the experience and expertise of people who use drugs, incarcerated and formerly incarcerated people, and all people harmed by the drug war. A profound thank you to Elizabeth Brico, Lauren Johnson, Steven Mangual, Miguel Perez Jr., Emily Ramos, and Jasmin Reggler for sharing and documenting their stories in these reports of how the drug war has impacted their lives and the lives of their loved ones. Deep gratitude to our movement partners who shared their insight and expertise and were willing to review drafts of these reports and provide indispensable feedback: Mizue Aizeki, Erin Burn-Maine, Gabrielle de la Guéronnière, Jeanette Estima, Tommasina Faratro, Kesi Foster, Nancy Ginsburg, Shayna Kessler, Emma Ketteringham, Amber Khan, Pamela Lachman, Marie Mark, Roberta "Toni" Meyers Douglas, Erin Miles Cloud, Tracie Gardner, Johanna Miller, Jeffrey A. Nemetsky, Victoria Palacio, Lisa Sangoi, Christopher Watler, and Alison Wilkey. We are also grateful to the organizations who took part in building our understanding in so many areas: Bronx Defenders, Brooklyn Community Housing and Services, Center for Employment Opportunities, Federation of Protestant Welfare Agencies, Immigrant Defense Project, John Jay College Institute for Justice and Opportunity, Legal Action Center, Legal Aid Society, Make the Road New York, Movement for Family Power, National Advocates for Pregnant Women, New York Civil Liberties Union, and Vera Institute. Current and former members of DPA's New York Policy Office conceptualized this project and saw it through until its publication: thank you to Chris Alexander, Kassandra Frederique, Dionna King, Kristen Maye, Melissa Moore, Elena Riecke, Christiana Taylor, and Tejas Venkat-Ramani. Members of DPA's Policy Team Aliza Cohen, Lindsay LaSalle, Jules Netherland, and Kellen Russoniello assisted in editing these reports. DPA expresses profound appreciation to Loren Siegel, a longtime DPA thought partner and the principal author of these historical reports.

Principal Author: Loren Siegel

Endnotes

1 Chris Gottlieb, "The Lessons of Mass Incarceration for Child Welfare," *Amsterdam News*, February 1, 2018, http://amsterdamnews.com/news/2018/ feb/01/lessons-mass-incarceration-child-welfare/?page=2 (accessed December 31, 2019).

2 Movement for Family Power, "'Whatever they do, I'm her comfort, I'm her protector': How the Foster System Has Become Ground Zero for the U.S. Drug War," Movement for Family Power, June 2020, https://static1.squarespace.com/static/5be5ed0fd274cb7c8a5d0cba/t/5eead939ca509d4e36a89277/1592449422870/MFP+Drug+War+Foster+System+Report.pdf.

3 Emily Kernan and Jennifer E. Lansford, "Providing for the Best Interests of the? The Adoptions and Safe Families Act of 1997," *Journal of Applied Developmental Psychology* 25, no 5 (September 2004) 523–4539, https://www.researchgate.net/publication/223263489_Providing_for_the_best_interests_of_the_child_The_Adoption_and_Safe_Families_Act_of_1997.

4 Craig Reinarman and Harry Levine, "The Crack Attack," in *Crack in America*, ed. Craig Reinarman and Harry G. Levine, 21 (Berkeley, CA: University of California Press, 1997).

5 Editorial Board, "Slandering the Unborn," *New York Times*, December 28, 2018, https://www.nytimes.com/interactive/2018/12/28/opinion/crack-babies-racism.html.

6 Center on Addiction and Substance Abuse, "No Safe Haven: Children of Substance-Abusing Parents," Center on Addiction and Substance Abuse, January 1999, iii; and Dorothy Roberts, *Shattered Bonds: The Color of Child Welfare* (London: Civitas, 2002), 15. Roberts, *Shattered Bonds*, 135.

7 Sarah McCue Horwitz, Kathleen M. B. Balestracci, and Mark D. Simms, "Foster Care Placement Improves Children's Functioning," *Archives of Pediatrics & Adolescent Medicine* 155, no. 11 (November 2001): 1255–1260; and Children's Rights, "Foster Care," https://www.childrensrights.org/newsroom/fact-sheets/foster-care (accessed January 26, 2021).

8 Dorothy Roberts, *Shattered Bonds: The Color of Child Welfare* (London: Civitas, 2002), 17.

9 U.S. Government Accountability Office, "African American Children in Foster Care," U.S. Government Accountability Office, July 2007, https://www.gao.gov/assets/270/263615.pdf.

10 Christopher Wildeman and Natalia Emanuel, "Cumulative Risks of Foster Care Placement by Age 18 for U.S. Children," *PLoS ONE 9* (2014): 2000–2011.

11 John L. Doris, Victoria Meguid, Margaret Thomas, Steven Blatt, and John Eckenrode, "Prenatal Cocaine Exposure and Child Welfare Outcomes," *Child Maltreatment* 11, no. 4 (November 2006): 326–337, https://doi.org/10.1177/1077559506293462; Michele Staton-Tindall, Ginny Sprang, James Clark, Robert Walker, and Carlton D. Craig, "Caregiver Substance Use and Child Outcomes: A Systematic Review," *Journal of Social Work Practice in the Addictions* 13, no. 1 (January 2013): 6–31; and Movement for Family Power, "'Whatever they do, I'm her comfort, I'm her protector': How the Foster System Has Become Ground Zero for the U.S. Drug War," Movement for Family Power, June 2020, https://static1.squarespace.com/static/5be5ed0fd274cb7c8a5d0cba/t/5eead939ca509d4e36a89277/1592449422870/MFP+Drug+War+Foster+System+Report.pdf.

12 Nancy K. Young, Sharon M. Boles, and Cathleen Otero, "Parental Substance Use Disorders and Child Maltreatment: Overlap, Gaps, and Opportunities," *Child Maltreatment* 12 (2007): 137–149.

13 National Center on Substance Abuse and Child Welfare, "Child Welfare and Alcohol & Drug Use Statistics," https://ncsacw.samhsa.gov/research/child-welfare-and-treatment-statistics.aspx (accessed January 26, 2021).

14 Dorothy Roberts, *Shattered Bonds: The Color of Child Welfare* (London: Civitas, 2002), 223, quoting author Jennifer Toth.

15 National Center on Substance Abuse and Child Welfare, "Child Welfare and Alcohol & Drug Use Statistics," https://ncsacw.samhsa.gov/research/child-welfare-and-treatment-statistics.aspx (accessed January 12, 2021).

16 National Center on Substance Abuse and Child Welfare, "Child Welfare and Alcohol & Drug Use Statistics," https://www.gao.gov/assets/270/263615.pdf (accessed January 26, 2021).

17 Anna Rockhill, Beth L. Green, and Carrie Furrer, "Is the Adoption and Safe Families Act Influencing Child Welfare Outcomes for Families with Substance Abuse Issues?" *Child Maltreatment* 12, no. 1 (February 1, 2007): 7–19.

18 Anna Rockhill, Beth L. Green, and Carrie Furrer, "Is the Adoption and Safe Families Act Influencing Child Welfare Outcomes for Families with Substance Abuse Issues?" *Child Maltreatment* 12, no. 1 (February 1, 2007): 7–19; and Children's Bureau, "Title IV-E Foster Care," U.S. Department of Health & Human Services, May 17, 2012, https://www.acf.hhs.gov/cb/resource/title-ive-foster-care.

19 Movement for Family Power, "'Whatever they do, I'm her comfort, I'm her protector': How the Foster System Has Become Ground Zero for the U.S. Drug War," Movement for Family Power, June 2020, https://static1.squarespace.com/static/5be5ed0fd274cb7c8a5d0cba/t/5eead939ca509d4e36a89277/1592449422870/MFP+Drug+War+Foster+System+Report.pdf.

20 Marc Mauer, Cathy Potler, and Richard Wolf, "Gender and Justice: Women, Drugs, and Sentencing Policy," The Sentencing Project, November 1999, https://static.prisonpolicy.org/scans/sp/genderandjustice.pdf.

21 Danielle Kaeble, "Time Served in Prison, 2016," Bureau of Justice Statistics, November 29, 2018, https://www.bjs.gov/index.cfm?ty=pbdetail&iid=6446.

22 *Ibid.*

23 Lauren E. Glaze and Laura M. Maruschak, "Parents in Prison and Their Minor Children," Bureau of Justice Statistics Special Report, March 30, 2010, https://www.bjs.gov/content/pub/pdf/pptmc.pdf.

24 Creasie Finney Hairston, "Focus on Children with Incarcerated Parents," Annie E. Casey Foundation, October 2007, https://repositories.lib.utexas.edu/bitstream/handle/2152/15158/AECasey_Children_IncParents.pdf?sequence=2.

25 National Resource Center in Children & Families of the Incarcerated, "Children and Families of the Incarcerated Fact Sheet," Rutgers University, https://nrccfi.camden.rutgers.edu/files/nrccfi-fact-sheet-2014.pdf (accessed January 26, 2021).

26 *Ibid.*

27 *Ibid.*

28 Olivia Golden and Jennifer Ehrle Macomber, "Intentions and Results: A Look Back at the Adoptions and Safe Families Act," Urban Institute, December 11, 2009, 122, https://www.urban.org/research/publication/intentions-and-results-look-back-adoption-and-safe-families-act/view/full_report.

29 Loren Siegel, "The Pregnancy Police Fight the War on Drugs," in *Crack in America*, ed. Craig Reinarman and Harry G. Levine, 21 (Berkeley, CA: University of California Press, 1997).

30 *Ibid.*

31 *Ibid.*

32 *Ibid.*

33 Nina Martin and Amy Yurkanin. "Special report: Alabama leads nation in turning pregnant women into felons." AL.com (Birmingham, AL), September 23, 2015, https://www.al.com/news/2015/09/when_the_womb_is_a_crime_scene.html.

34 *Ibid.*

35 *Ibid.*

36 Movement for Family Power, "'Whatever they do, I'm her comfort, I'm her protector': How the Foster System Has Become Ground Zero for the U.S. Drug War," Movement for Family Power, June 2020, https://static1.squarespace.com/static/5be5ed0fd274cb7c8a5d0cba/t/5eead939ca509d4e36a89277/1592449422870/MFP+Drug+War+Foster+System+Report.pdf; and Guttmacher Institute, "Substance Use During Pregnancy," Guttmacher Institute, March 14, 2016, https://www.guttmacher.org/state-policy/explore/substance-use-during-pregnancy.

37 Movement for Family Power, "'Whatever they do, I'm her comfort, I'm her protector': How the Foster System Has Become Ground Zero for the U.S. Drug War," Movement for Family Power, June 2020, https://static1.squarespace.com/static/5be5ed0fd274cb7c8a5d0cba/t/5eead939ca509d4e36a89277/1592449422870/MFP+Drug+War+Foster+System+Report.pdf.

38 *Ibid.*

39 Ellen M. Weber, "Child Welfare Interventions for Drug-Dependent Pregnant Women: Limitations of a Non-Public Health Response," *UMKC Law*

Review 75, no. 3 (2006–2007): 789–846, https://core.ac.uk/download/pdf/56354436.pdf.

40 *Ibid.*

41 Wendy Chavkin, Vicki Breitbart, Deborah Elman, and Paul Wise, "National Survey of the States: Policies and Practices Regarding Drug-Using Pregnant Women," *American Journal of Public Health* 88, no. 1 (January 1998): 117–119, https://ajph.aphapublications.org/doi/pdf/10.2105/AJPH.88.1.117.

42 Guttmacher Institute, "Substance Use During Pregnancy," Guttmacher Institute, March 14, 2016, https://www.guttmacher.org/state-policy/explore/substance-use-during-pregnancy.

43 Administration for Children and Families, "Child Maltreatment 2017," U.S. Department of Health and Human Services, 2019, https://www.acf.hhs.gov/cb/research-data-technology/statistics-research/child-maltreatment.

44 Keva Miller, Katharine Kahn, and E. Roberto Orellana, "Dynamics That Contribute to Racial Disproportionality and Disparity: Perspectives from Child Welfare Professionals, Community Partners, and Families," *Children and Youth Services Review* 34, no. 11 (November 2012): 2201–2207, https://pdxscholar.library.pdx.edu/socwork_fac/204.

45 Ira J. Chasnoff, Harvey J. Landress, and Mark E. Barrett, "The Prevalence of Illicit-Drug or Alcohol Use During Pregnancy and Discrepancies in Mandatory Reporting in Pinellas County, Florida," *New England Journal of Medicine* 322 (April 26, 1990): 1202–1206, https://www.nejm.org/doi/full/10.1056/NEJM199004263221706.

46 Keva Miller, Katharine Kahn, and E. Roberto Orellana, "Dynamics That Contribute to Racial Disproportionality and Disparity: Perspectives from Child Welfare Professionals, Community Partners, and Families," *Children and Youth Services Review* 34, no. 11 (November 2012): 2201–2207, https://pdxscholar.library.pdx.edu/socwork_fac/204.

47 Committee on Health Care for Underserved Women, "Substance Abuse Reporting and Pregnancy: The Role of the Obstetrician-Gynecologist," Committee Opinion, The American College of Obstetricians and Gynecologists, Number 473, January 2011, https://www.acog.org/Clinical-Guidance-and-Publications/Committee-Opinions/Committee-on-Health-Care-for-Underserved-Women/Substance-Abuse-Reporting-and-Pregnancy-The-Role-of-the-Obstetrician-Gynecologist.

48 "U.S. Sentencing Commission Hearing, 2/25/02: Cocaine Pharmacology, 'Crack Babies,' Violence," *Federal Sentencing Reporter* 14, no. 3–4 (2001): 191–225, https://www.jstor.org/stable/10.1525/fsr.2001.14.3-4.191?seq=1#page_scan_tab_contents.

49 National Advocates for Pregnant Women, "Prenatal Exposure to Illegal Drugs and Alcohol: Media Hype and Enduring Myths Are Not Supported by Science," National Advocates for Pregnant Women, http://advocatesforpregnantwomen.org/2010%20drugmyth%20factsheet%20v3.pdf.

50 *Ibid.*

51 *Ibid.*

52 *Ibid.*

53 Michele Staton-Tindall, Ginny Sprang, James Clark, Robert Walker, and Carlton D. Craig, "Caregiver Substance Use and Child Outcomes: A Systematic Review," *Journal of Social Work Practice in the Addictions* 13, no. 1 (January 2013): 6–31, https://doi.org/10.1080/1533256X.2013.752272.

54 Julilly Kohler-Hausmann, "'The Atilla the Hun Law': New York's Rockefeller Drug Laws and the Making of a Punitive State," *Journal of Social History* 44, no. 1 (Fall 2010): 71–95, https://www.jstor.org/stable/40802109?seq=1.

55 L. Zimmer, "Operation Pressure Point: The Disruption of Street-Level Drug Trade on New York's Lower East Side," National Criminal Justice Reference Service 108749, 1987, https://www.ncjrs.gov/App/Publications/abstract.aspx?ID=108749.

56 Peter Kerr, "War on Drugs Shifting Focus to Street Deals," *New York Times*, April 13, 1987, https://www.nytimes.com/1987/04/13/nyregion/war-on-drugs-shifting-focus-to-street-deals.html.

57 George James, "Drug Crackdown Is Expanded to East Harlem," *New York Times*, November 16, 1988, https://www.nytimes.com/1988/11/16/nyregion/drug-crackdown-is-expanded-to-east-harlem.html.

58 Natasha Frost, Judith Greene, and Kevin Pranis, "Hard Hit: The Growth in the Imprisonment of Women, 1977–2004," Institute on Women & Criminal Justice, May 2006, http://csdp.org/research/HardHitReport4.pdf.

59 Wendy Sawyer, "The Gender Divide: Tracking Women's State Prison Growth," Prison Policy Initiative, January 9, 2008, https://www.prisonpolicy.org/reports/women_overtime.html.

60 Carrie Jefferson Smith and Diane S. Young, "The Multiple Impacts of TANF, ASFA, and Mandatory Drug Sentencing for Families Affected by Maternal Incarceration," *Children and Youth Services Review* 25, no. 7 (2003): 535–552.

61 Soc. Serv. Law § 371(4-a).

62 Movement for Family Power, "'Whatever they do, I'm her comfort, I'm her protector': How the Foster System Has Become Ground Zero for the U.S. Drug War," Movement for Family Power, June 2020, https://static1.squarespace.com/static/5be5ed0fd274cb7c8a5d0cba/t/5eead939ca509d4e36a89277/1592449422870/MFP+Drug+War+Foster+System+Report.pdf.

63 Office of Children and Family Services, "Child Protective Services FAQ," Office of Children and Family Services, https://ocfs.ny.gov/main/cps/faqs.asp#report (accessed January 26, 2021).

64 Office of the Public Advocate for the City of New York, "Families at Risk: A Report on New York City's Child Welfare Services," Office of the Public Advocate for the City of New York, December 9, 2002, http://www.nyc.gov/html/records/pdf/govpub/2654risky_care_for_foster_kids.pdf.

65 Michael Oreskes, Suzanne Daley, and Sara Rimer, "A System Overloaded: The Foster Care Crisis," *New York Times*, March 15, 1987, https://www.nytimes.com/1987/03/15/nyregion/a-system-overloaded-the-foster-care-crisis.html.

66 Olivia Golden and Jennifer Ehrle Macomber, "Intentions and Results: A Look Back at the Adoptions and Safe Families Act," Urban Institute, December 11, 2009, 122, https://www.urban.org/research/publication/intentions-and-results-look-back-adoption-and-safe-families-act/view/full_report.

67 Office of Children and Family Services, "Compliance with the Adoption and Safe Families Act," Report 200-S-2, March 13, 2001, https://osc.state.ny.us/audits/allaudits/093001/00s2.pdf.

68 Movement for Family Power, "'Whatever they do, I'm her comfort, I'm her protector': How the Foster System Has Become Ground Zero for the U.S. Drug War," Movement for Family Power, June 2020, https://static1.squarespace.com/static/5be5ed0fd274cb7c8a5d0cba/t/5eead939ca509d4e36a89277/1592449422870/MFP+Drug+War+Foster+System+Report.pdf.

69 Tom Hilliard, "Fostering careers," Center for an Urban Future, September 2011, https://nycfuture.org/research/fostering-careers.

70 Office of the Public Advocate for the City of New York, "Families at Risk: A Report on New York City's Child Welfare Services," Office of the Public Advocate for the City of New York, December 9, 2002, http://www.nyc.gov/html/records/pdf/govpub/2654risky_care_for_foster_kids.pdf.

71 *Ibid.*

72 Somini Sengupta, "Parents in Poor Neighborhoods Wary of Child Welfare Agency," *New York Times*, May 31, 2000, https://www.nytimes.com/2000/05/31/nyregion/parents-in-poor-neighborhoods-wary-of-child-welfare-agency.html.

73 Thomas J. Lueck, "Study Says Poverty Rate Rose to 25% in New York City," *New York Times*, June 10, 1992, https://www.nytimes.com/1992/06/10/nyregion/study-says-poverty-rose-to-25-in-new-york-city.html.

74 Elizabeth Kolbert, "Cuomo Reveals List of Big Cuts in Budget Pact," *New York Times*, March 30, 1990, https://www.nytimes.com/1990/03/30/nyregion/cuomo-reveals-list-of-big-cuts-in-budget-pact.html.

75 Eric Schlosser, "The Prison-Industrial Complex," *The Atlantic*, December 1998, https://www.theatlantic.com/magazine/archive/1998/12/the-prison-industrial-complex/304669.

76 Alison Walsh, "States, help families stay together by correcting a consequence of the Adoption and Safe Families Act," Prison Policy Initiative, May 24, 2016, https://www.prisonpolicy.org/blog/2016/05/24/asfa/.

77 *Ibid.*

78 *Ibid.*

79 Wendy Sawyer, "The Gender Divide: Tracking Women's State Prison Growth," Prison Policy Initiative, January 9, 2008, https://www.

prisonpolicy.org/reports/women_overtime.html.

80 Community Service Society, "NY Reentry Roundtable," http://www.cssny.org/advocacy-and-research/entry/ny-reentry-roundtable (accessed January 26, 2021).

81 Michael Elsen-Rooney, "Fewer Than 8,000 NYC Kids in Foster Care, an All-Time Low," *New York Daily News*, February 13, 2020, https://www.nydailynews.com/new-york/education/ny-foster-care-numbers-drop-20200213-ptzmaeuxajf7fe3hwortdn7zzu-story.html.

82 Movement for Family Power, "'Whatever they do, I'm her comfort, I'm her protector': How the Foster System Has Become Ground Zero for the U.S. Drug War," Movement for Family Power, June 2020, https://static1.squarespace.com/static/5be5ed0fd274cb7c8a5d0cba/t/5eead939ca509d4e36a89277/1592449422870/MFP+Drug+War+Foster+System+Report.pdf.

83 Yasmeen Khan, "NYC Will End Practice of Drug Testing Pregnant Patients without Written Consent," *Gothamist*, November 17, 2020, https://gothamist.com/news/nyc-will-end-practice-drug-testing-pregnant-patients-without-written-consent.

84 NYC Commission on Human Rights, "NYC Commission on Human Rights Launches Investigations into Three Major Private Hospital Systems' Practices of Drug Testing Newborns and Parents," November 16, 2020, https://www1.nyc.gov/assets/cchr/downloads/pdf/press-releases/Hospitals_Press_Release_11-16-2020.pdf.

85 Editorial Board, "Slandering the Unborn," *New York Times*, December 28, 2018, https://www.nytimes.com/interactive/2018/12/28/opinion/crack-babies-racism.html.