

# SNAPSHOT: THE WAR ON DRUGS MEETS THE CHILD WELFARE SYSTEM

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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 support to keep families together and reunite them after separation. The war on drugs has provided a key tool to perpetuate this harmful system, especially against parents of color. According to drug war logic, any drug use – even suspected – is equivalent to child abuse, regardless of context and harm to the child. The underlying assumptions are that parental drug use automatically harms children; parents who use drugs cannot be good parents; the foster care system can provide better care for children; and it is better to remove children from their parents than to provide support to improve the situation.

The installation of the punitive child welfare system closely tracks the ramping up of the war on drugs in the 1980s. President Ronald Reagan had already 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 surveillance and punishment of Black mothers, reinforcing the wrongheaded and racist view that the child welfare system was better suited to care for children of color than their own families.<sup>1</sup> Between 1986 and 1996, the number of children removed from their parents’ care more than doubled at the same time the number of people in jails and prisons exploded.<sup>2</sup> In 1997, federal law enacted under the Clinton administration directed child welfare agencies

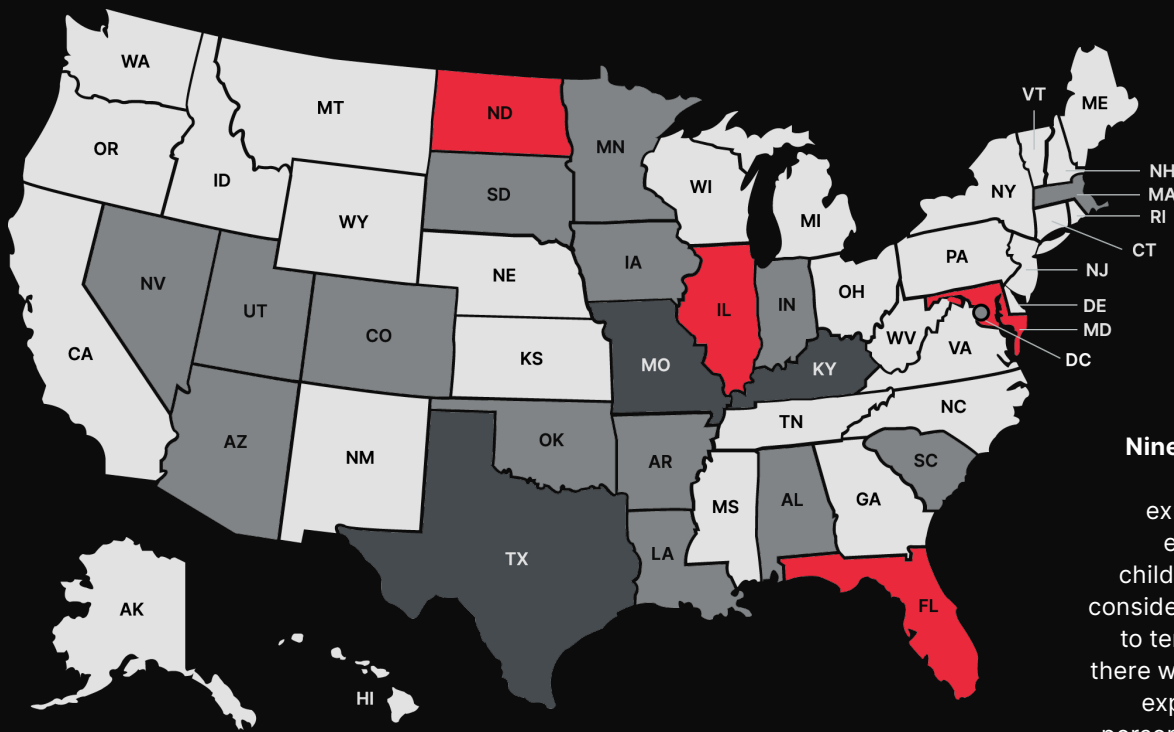
to prioritize terminating parental rights and encouraging adoptions over working to keep families together.<sup>3</sup> From 1982 to 2003, federal funding to support removal of children skyrocketed over 20,000 percent, with no increases to funding for support services for families.<sup>4</sup>

Every year, government agencies subject nearly five percent of children in the United States to an investigation or alternative response.<sup>5</sup> Two-thirds of these investigations end with no findings of maltreatment.<sup>6</sup> Cumulatively, some researchers estimate that over one-third of U.S. children have been the subject of a maltreatment investigation.<sup>7</sup> These investigations occur in families of color in disproportionate share to their makeup of the general population. For example, over half of Black children have been subject to a maltreatment investigation.<sup>8</sup> Removal from the parents’ custody has become a routine remedy: one in 17 white children, one in nine Black children, and one in seven Native American children were removed from their parents’ care between 2000 and 2011.<sup>9</sup>

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.<sup>10</sup> Some researchers estimate that over 80 percent of all foster system cases involve caretaker drug allegations at some point in the case.<sup>11</sup> 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.<sup>12</sup>

Often a finding of maltreatment based on parental drug use is based on a drug test rather than on any demonstrated harm to the child. These tests may be required by child welfare agencies or family courts, or they could come from other sources, such as criminal investigations or 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.<sup>13</sup> A positive drug test can also be used as justification to mandate abstinence-based drug treatment, even where the person does not have a substance use disorder. Parents who are forced into treatment have longer-term contact with the child welfare system, a system that puts them at a compounding risk of harm from the criminal and civil justice systems.<sup>14</sup>

Drug use has especially been used to demonize pregnant people who use drugs, despite a dearth of evidence supporting a link between in utero drug exposure and negative long-term health effects.<sup>15</sup> Even though the “crack baby” scare of the 1980s and 90s was proven to be a myth that only served to castigate and punish women of color, states responded by passing laws defining drug use during pregnancy as child abuse.<sup>16</sup> Today, increased attention to neonatal abstinence syndrome in babies exposed to opioids during pregnancy continues this trend by catalyzing legislative efforts to define this exposure as per se child abuse.<sup>17</sup> Nineteen states and the District of Columbia have statutes that consider any drug use during pregnancy to be child maltreatment.<sup>18</sup> Unsurprisingly, this can lead to removal of children born to parents who used drugs during pregnancy, even without signs of harm. In New York City’s Bronx borough, nearly half of removals of children under one month old were due to drug use during pregnancy.<sup>19</sup>



**Nineteen states and the District of Columbia** define prenatal exposure to drugs as sufficient evidence to make a finding of child maltreatment. **Seven states** consider prenatal exposure grounds to terminate parental rights when there was a prior child with prenatal exposure or when the pregnant person/parent does not participate in drug treatment. These mandates act as family separation tools and exist despite evidence showing that in utero exposure to drugs does not have long-term negative health impacts on the child.

## STATE POLICIES ON DRUG USE DURING PREGNANCY

- Drug consumption during pregnancy considered child maltreatment
- Prenatal exposure considered grounds to terminate parental rights when there was a prior child with prenatal exposure or when the pregnant person/parent does not participate in drug treatment
- Both

Source: *Movement for Family Power* (as of February 2020)

**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.**

Mandatory reporting laws are a big contributor to child abuse investigations stemming from alleged drug use during pregnancy. These laws require certain professionals to report any reasonable suspicion of child maltreatment. Half of all states and the District of Columbia require doctors to report any suspicion of drug use to child welfare authorities.<sup>20</sup> At least half of reports to child protective services about newborns exposed to drugs in utero come from medical professionals.<sup>21</sup> These laws have conscripted doctors to wage the war on drugs on people who have come to them for health services.

Parents are not afforded many protections during a child maltreatment investigation and family court proceedings. The burden of proof for establishing maltreatment is lower than that required in criminal court, and some states do not ensure parents have attorneys if they cannot afford one.<sup>22</sup> Parents who are in substance use disorder treatment may be told by judges to switch programs, including some courts that require people using methadone and buprenorphine for opioid use disorder treatment to taper off their medications.<sup>23</sup> Parents are often forced to fend for themselves against the complexities of child welfare agencies and court systems that have become adept at removing children from their families.

These policies have wreaked serious harm among primarily low-income families, especially Black, Latinx, and Indigenous families. They have contributed to the United States' alarming distinction as home to the most children made legally parentless through termination of parental rights.<sup>24</sup> Separating children from their parents often leads to the very harms from which these policies purport to protect. Removal from parental care is associated with long-term mental health problems, smoking, poverty, lower educational attainment, and use of public assistance.<sup>25</sup> Mothers who had a child removed from their care are significantly more likely to give birth to another child exposed to drugs in the womb and to experience severe mental health problems.<sup>26</sup> The foster care system is rife with systemic problems that can harm a child's health and development.<sup>27</sup> Children tend to have better outcomes when they stay with their parents, even if they have experienced maltreatment.<sup>28</sup>

Fear of having a child taken away also discourages parents from seeking health services. People will forgo healthcare, including prenatal care, which can place the parent and pregnancy at risk.<sup>29</sup> Parents who use opioids may be afraid to discuss this issue with their healthcare providers, even though doing so may lead them to getting medications like methadone and buprenorphine that can safely treat opioid use disorder while reducing risk of harm to the pregnancy.<sup>30</sup> Fear of repercussions may lead people to try to suddenly stop using drugs, which can be detrimental to the pregnancy.<sup>31</sup>

The drug war has provided the means and logic to justify removing children from their families. Placing the blame on individual parents and drugs offers an easy scapegoat that detracts from focusing on structural issues like racism, poverty, and lack of supportive services.

**Instead of a system that prioritizes taking children from their parents, we should prioritize:**

- Conducting drug testing only when medically necessary and when the parent provides informed consent to a physician.
- Prohibiting removals based on drug tests alone and requiring demonstrated harm to the child.
- Increasing protections in child welfare investigations and family court, including the right to attorney.
- Banning family courts from requiring parents to taper off medications for treating substance use disorders and eliminating requirements for abstinence to be enrolled in a treatment program.
- Eliminating mandatory reporting for drug use alone.
- Repealing laws that define drug use during pregnancy as child abuse or maltreatment.
- Establishing alternatives to removal and termination of parental rights and establishing procedures to reinstate parental rights.
- Creating and providing additional funding for harm reduction-based family treatment programs and supportive services.
- Destigmatizing parental drug use.
- Supporting policies and initiatives that increase social safety nets like Supplemental Nutrition Assistance Program (SNAP) and Temporary Assistance for Needy Families (TANF) benefits, housing, and healthcare.

## Endnotes

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