

# Protecting Children from the Adverse Impacts of Bias in the Child Welfare System



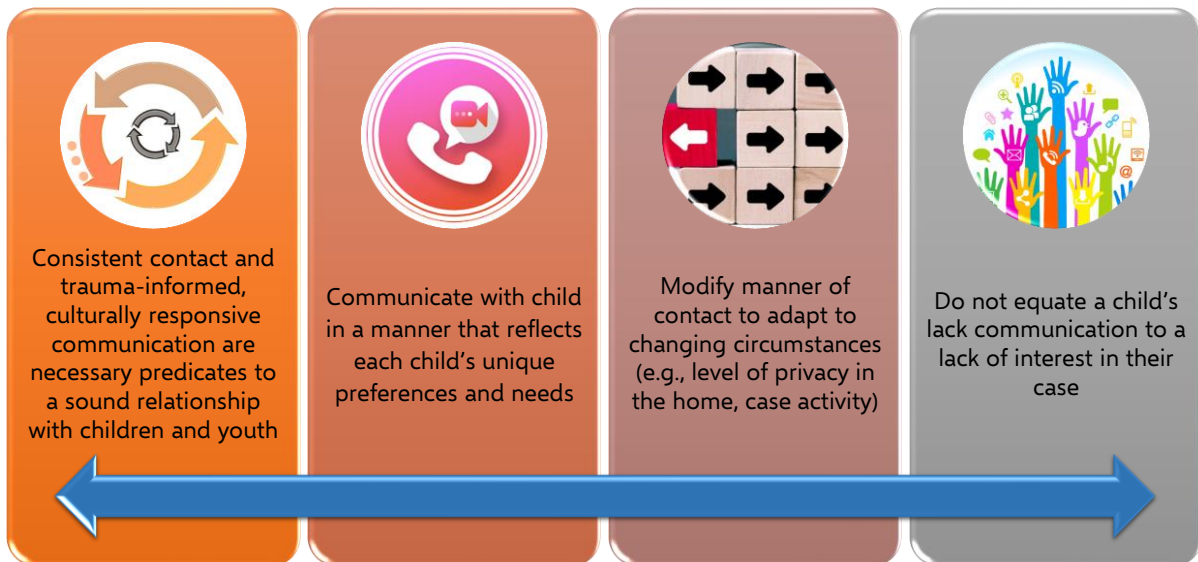
Eliminate Institutional Bias and Racism in the Child Welfare System, Starting with Strong Child Representation

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Image from the New York times  
 By Eleanor Davis

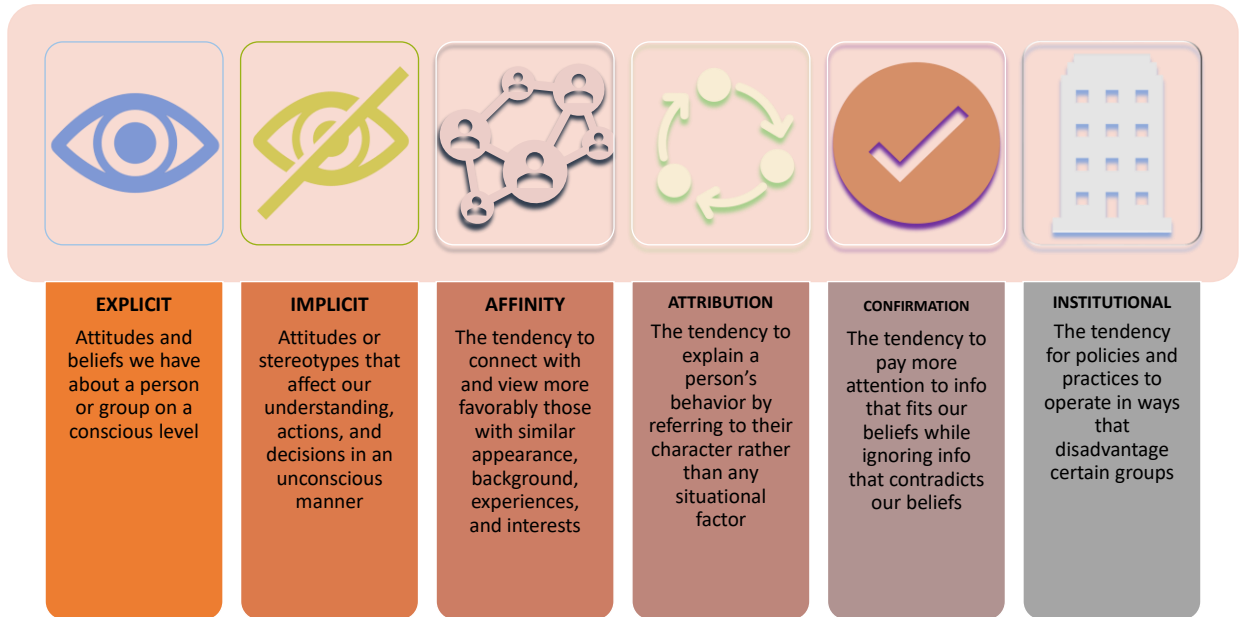
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## Contact & Communication



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## Types of Bias



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## CRACK COCAINE EPIDEMIC



AFTER 3 YEARS, CRACK  
PLAGUE IN NEW YORK  
ONLY GETS WORSE

- Urban poor
- Closely tied to criminal violence and homicide
- Crack babies
- War on drugs
- Sentencing disparities
- Mass incarceration



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# CRYSTAL METH EPIDEMIC



A CESSPOOL OF A DUNGEON: THE SURGING POPULATION IN RURAL JAILS

- Rural poverty
- Illicit labs and explosions
- Hillbilly heroin
- Redneck cocaine
- White trash
- Tweakers
- Speed freaks



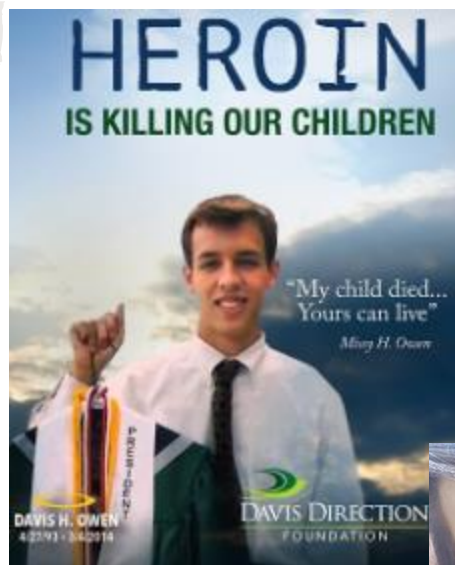
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# OPIOID CRISIS



IT IS A PUBLIC HEALTH CRISIS THAT KILLS HUNDREDS OF AMERICANS A DAY

- Suburban teens and young adults
- Focus on harm reduction
- We must decrease overdose deaths!
- Cobb County District Attorney Vic Reynolds: "We cannot arrest our way out of this epidemic. The road to recovery must be lined with treatment options."



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## Chief Justice Directive 04-06 ROLES & Professional Responsibilities



- In determining best interests, GALs and CLRs should engage in an ongoing inquiry to avoid inserting personal desires, values, and beliefs into their assessment and to continually reflect on and strive to mitigate their own biases. The GAL or CLR should endeavor to uncover what triggers their biases, employ investigative processes that use objective criteria to guide their assessment of best interests, and consider the legal rights and protections available to the child or youth.
- Regardless of role, in conducting this initial investigation, the attorney should explore the child or youth's cultural and other identities, religious practices, family traditions, holidays, and extracurricular interests and activities. The attorney should continually strive to practice cultural humility, reflect on and work to mitigate the attorney's own biases, and restrain from inserting personal desires, values, and beliefs into their assessment, advice, and advocacy.

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### Why is it Important to Identify and Understand Bias & Racism in the Child Welfare System?



Bias in child welfare practice occurs incrementally through “micro-actions” that are barely visible and are rarely challenged because they are practiced consistently within society and agencies.

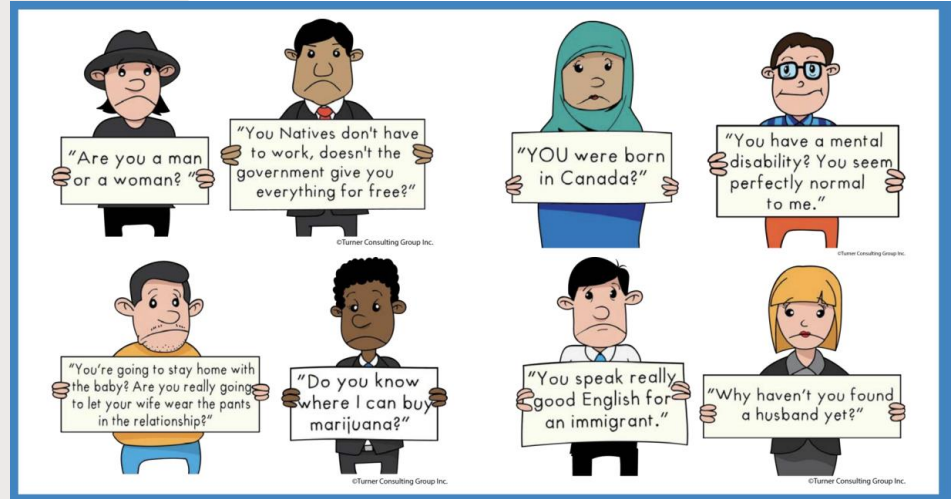
It is hard to detect bias in a single act but cumulatively, bias can contribute to extremely detrimental patterns of disproportionality.

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## Microaggressions

Commonplace verbal, behavioral, or environmental slights, whether intentional or unintentional, that communicate hostile, derogatory, or negative attitudes toward a marginalized group.



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## Coded Language

Seemingly neutral statements that individuals use to disguise explicit or implicit negative connotations when describing the racial, cultural, or ethnic identity of children or parents

### White Child

- The child appeared not to have bathed in several days. His clothes were malodorous and ill-fitting.

### Child of Color

- The child was found in deplorable condition. His hair was unkempt and his clothes were filthy and not appropriate for the weather.



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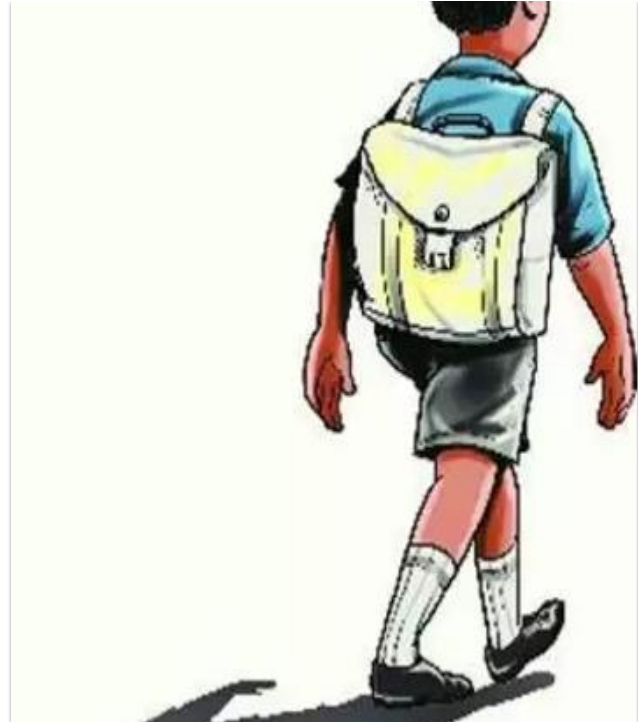
## Coded Language

### White Child

- The child is autistic and sometimes elopes from the mother's home.

### Child of Color

- The mother is aware that the child has special needs and has failed to supervise him. He often runs away from home for hours at a time.



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**Don't eat the cupcake!**



## SYSTEMIC & STRUCTURAL BIAS AND RACISM

- **SYSTEMIC** bias or racism emphasizes the involvement of an entire system, and often multiple systems—for example, political, legal, economic, health care, school, and criminal justice systems.
- **STRUCTURAL** racism emphasizes the role of the laws/legislation, policies, institutional practices, and entrenched norms that are the systems' foundation.
  - These things were “baked into” the system at the outset and it is almost impossible to extract them.

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## Bias & Consequences



**Bias based on race, culture, religion, socioeconomics (poverty), and education can cloud our assessment of a situation.**

- Bias can stem from misunderstandings and past experiences
- Bias can exist in individuals as well as the system/institutions

**The consequences of bias are disproportionality and disparity in case planning and delays in family reunification**

- Our perceptions of certain groups of people and how we treat them influences our work
- Undermines our efforts to be fair and equitable



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## ACKNOWLEDGMENTS AND ANALYSES OF BIAS AND RACISM

### APOLOGIES

- American Bar Association
- American Psychological Association
- National Association of Social Workers

### PUBLICATIONS

- Children's Rights
- The Annie E. Casey Foundation



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## RESOLUTION 606

- [T]he American Bar Association urges federal, state, local, territorial, and tribal governments and courts, as well as attorneys, judges, legislatures, governmental agencies, and policymakers to:
  - Recognize implicit and explicit bias and acknowledge collective responsibility for challenging laws, policies, and practices that devalue Black families and normalize systemic racism and family separation;
  - Ensure all legal decisions, policies, and practices regarding children's wellbeing respect the value of Black children and families' racial, cultural, and ethnic identities and connections, needs, and strengths that arise from those identities; and
  - Consult, listen to, and be led by Black parents, children, and kin with lived experience in child welfare to learn how to support constructive steps to end the legacy of Black family separation under the law.



<https://www.americanbar.org/content/dam/aba/administrative/news/2022/08/hod-resolutions/606.pdf> -

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- The history and impact of anti-Black racism in America is unique and must be honored as such.
- This does not imply that other areas of child welfare disproportionality and family separation are not also important areas of focus of the Association, including those that affect Native American children, LGBTQ children, and Latino and immigrant children and youth.



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## AMERICAN PSYCHOLOGICAL ASSOCIATION APOLOGIZES FOR LONGSTANDING CONTRIBUTIONS TO SYSTEMIC RACISM

- The American Psychological Association failed in its role leading the discipline of psychology, was complicit in contributing systemic inequities, and hurt many through racism, racial discrimination, and denigration of people of color, thereby falling short on its mission to benefit society and improve lives.
- Psychologists created and promoted the widespread application of psychological tests and instruments that have been used to disadvantage many communities of color, contributing to the overdiagnosis, misdiagnosis, and lack of culturally appropriate diagnostic criteria to characterize the lived experience and mental health concerns of people of color.
- APA recognizes that traditional diagnostic methods and standards do not always capture the contextual and lived experiences of people of color, which influences mental health outcomes and emotional well-being.



<https://www.apa.org/about/policy/racism-apology>

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- APA will encourage psychologists and trainees to consider the limitations of While Western-oriented clinical practice, and gain awareness of other healing approaches emanating from Indigenous and other non-Western and cultural traditions.
- APA will continue to learn and update new information on racism in diagnosis and clinical practice, and on the pursuit of equity, diversity, and inclusion in health service psychology, including psychological testing and assessment, while fostering practice based on culturally relevant evidence.

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## NASW APOLOGIZES FOR RACIST PRACTICES IN AMERICAN SOCIAL WORK

June 17, 2021



- Progressive Era social workers built and ran segregated settlement houses
- Social worker suffragists blocked African Americans from gaining the right to vote
- Prominent social worker supported eugenics theories and programs
- Social workers participated in the removal of Native American children from their families for placement in boarding schools
- Since the founding of the profession, bias among social workers has limited the delivery of healthcare, mental health treatment, and social services to people of color

<https://www.socialworkers.org/News/News-Releases/ID/2331/NASW-apologizes-for-racist-practices-in-American-social-work>

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## RACIAL (IN)JUSTICE IN THE U.S. CHILD WELFARE SYSTEM, Response to the Combined Tenth to Twelfth Periodic Reports of the United States to the Committee on the Elimination of All Forms of Racial Discrimination. July 2022



- Mandated reporters in the education and medical fields are more likely to report Black families than white families
- Medical professionals are twice as likely to screen Black infants for maternal drug use than white infants
- Black families are between two and five times more likely than white families to have their cases investigated instead of closed
- 53% of Black children will be subjected to a child welfare investigation before they turn 18, compared to 28% of white children
- Risk scores used to make removal determinations have been consistently lower in cases of removals involving Black children than in cases involving white children, indicating that Black families are systematically torn apart at a lower threshold of risk
- Black children are 15% more likely than white children to be placed into government care instead of receiving in-home services
- Once removed from their families, Black children receive inferior services and are shuffled to more placements, are shuffled to more placements and stay in foster care longer, and are less likely to be either returned home or adopted than white children

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THE ANNIE E. CASEY  
FOUNDATION

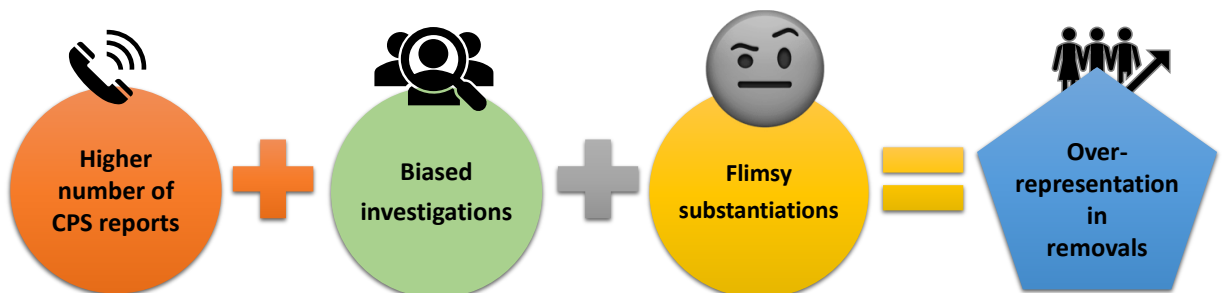
“RACIAL DISPROPORTIONALITY, RACE DISPARITY,  
AND OTHER RACE-RELATED FINDINGS IN  
PUBLISHED WORKS DERIVED FROM THE  
NATIONAL SURVEY OF CHILD  
AND ADOLESCENT WELL-BEING.”

Dunbar, K. and Barth, P.  
2008

- African-American infants are less likely to experience reunification than white infants
- African-American youth over age 10, as well as youth of other racial and ethnic groups, are significantly less likely to return home than white youth

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## WHAT HAPPENS BEFORE THE COMPLAINT IS FILED?



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# BUZZWORDS

- Popular words, phrases, or jargon frequently used to quickly communicate ideas
- Can be misleading and damaging when used to describe individuals and families in child welfare settings
- Can be subjective or carry negative connotations
- Can influence perceptions
- May directly impact decision-making
- May lead to labeling of children or parents that can be difficult to overcome

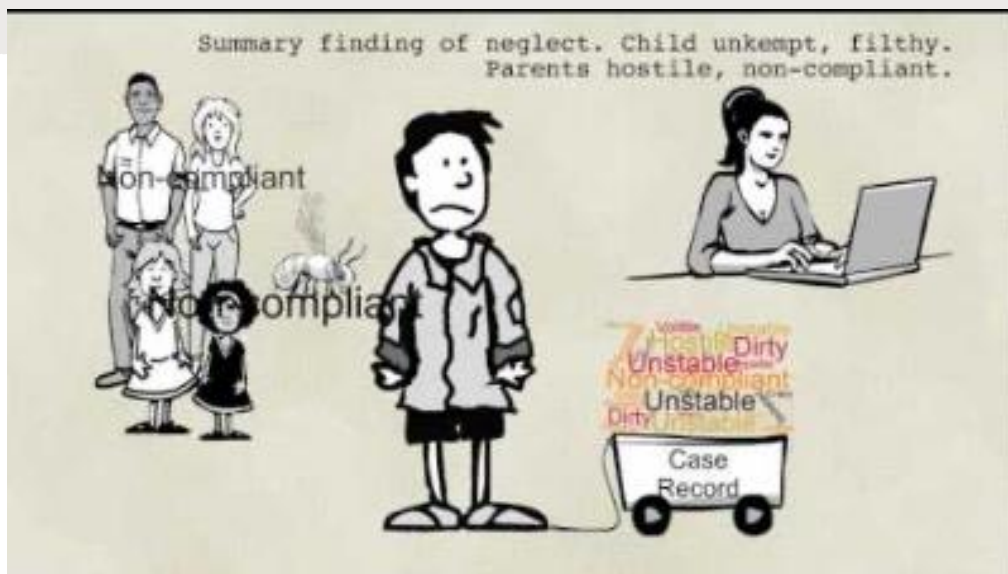


<https://capacity.childwelfare.gov/states/topics/child-protection/buzzwords ->

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# BUZZWORDS

[https://www.youtube.com/watch?v=ipCgPXp\\_Vmc -](https://www.youtube.com/watch?v=ipCgPXp_Vmc -)



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## What have you heard?



## What would you say instead?

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### Language from Actual Dependency Complaint

M is not allowed to be left alone with the children because of her mental health issues. M is violent and stated the children were stressing her out. Putative F is emotionally and physically abusive to the M and the children. F calls the mother names like "stupid" and "lazy."



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BMo has one child who was removed because of high lead levels. BMo has untreated mental health issues that need to be explored before the child can be returned. BMo has three older children who are not in her custody.

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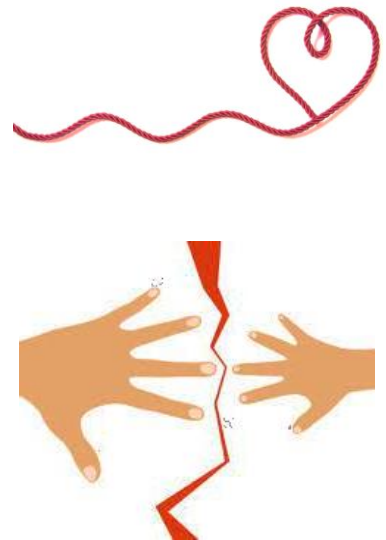
The 16-year-old M has a history of aggressive and delinquent behavior and there is a concern with her ability to care for the child and herself.



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## ADJUDICATION OF DEPENDENCY

- The experience of separating Black children from their parents in the child welfare system is intimately linked to the history of slavery in this country.
- Black children are 15% more likely than White children to be placed into government care instead of receiving in-home services.
- For Black children, the trauma of separation includes not only the disruption of critical family and community attachments, but also the potential harm to their sense of individual and cultural identity.



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## LANGUAGE IN DEPENDENCY PETITIONS



- The mother is without independent housing for herself and the children
- The father has a history of criminal behavior
- The mother has untreated mental health issues
- The mother was arrested for shoplifting last month
- The mother does not know who the father of the child is
- The putative father has not provided any support for the children
- The father has addiction issues

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# RIGHT TO A JURY TRIAL

Jury trials are a vital part of the U.S.'s system of "checks and balances."

Can jury trials help to alleviate bias and disparity in the child welfare system?

Do we owe a duty to our clients and to the community at large to:

- Expose the different forms of bias, discrimination, and racism?
- Highlight the frequency of occurrences as well?

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## JURY TRIALS PROTECT AGAINST TWO FORMS OF BIAS – BUT DO THEY INTRODUCE OTHERS?

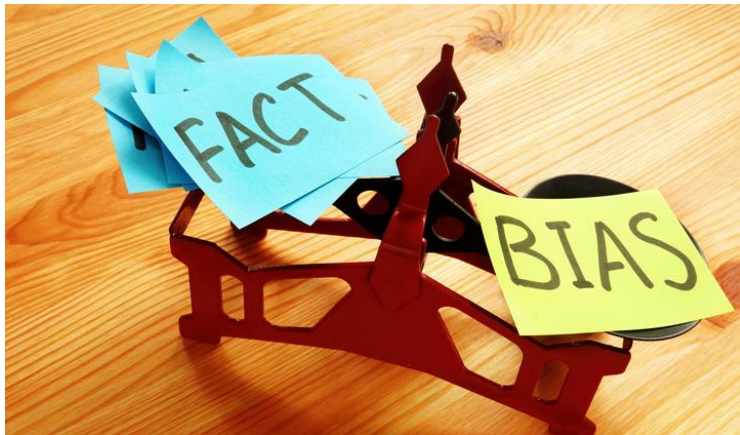
### JUDICIAL BIAS

- Jurors are not privy to or bound by preliminary allegations
  - Jury didn't sign removal order
  - Jury didn't make preliminary hearing decisions based on allowable hearsay
- Jurors are not privy to inadmissible information about the family

### CHILD WELFARE SYSTEM BIAS

- Jurors are not numb to the inherent cruelty of the system
  - Family separation and destruction are not routine
- Jurors may consider the threshold question of dependency more seriously
  - As outsiders, jurors are not looking down the road of the case

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### Advocacy Pro Tips at Adjudication: Allow the Facts to Outweigh Your Bias

1. Focus on what can actually be proven at the Adjudication Hearing through admissible evidence as it relates to the safety of the child if the child were returned home that day.
2. If you are focusing on your own beliefs and moral judgments, then you run the risk of not focusing on the safety of the child.
3. While preparing for the Adjudication Hearing, look ahead to consider what Permanency Plan and Case Plan will be implemented for the family.

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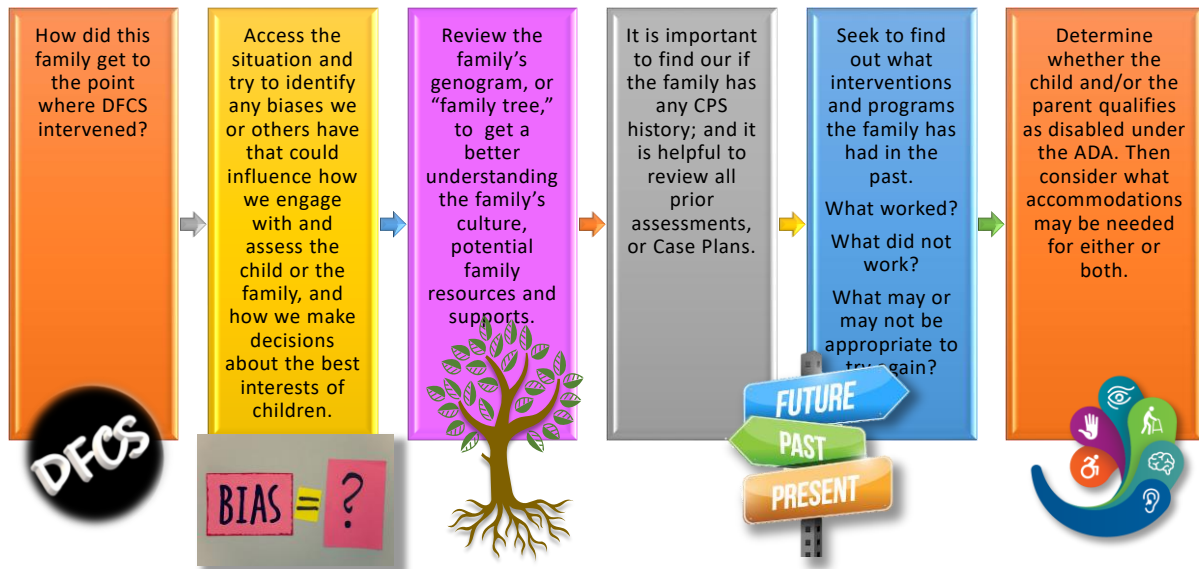
## CASE PLANNING

- Once in CPS custody, Black children have longer placements in foster care, receive fewer services, and are less likely to reunify with their family
- Once removed from their families, Black children receive inferior services and are shuffled to more placements, stay in foster care longer, and are less likely to be either returned home or adopted, as compared to White children
- The APA recognizes that traditional diagnostic methods and standards do not always capture the contextual and lived experiences of people of color, which influences mental health outcomes and emotional well-being of people of color



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## ARE YOU ADVOCATING FOR EFFECTIVE CASE PLANS?

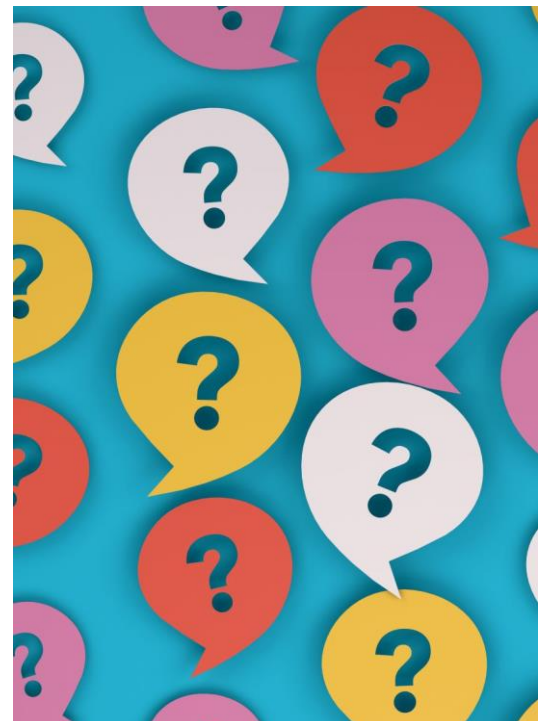


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### Advocacy Pro Tips for Case Planning

Question the need for any type of assessment or evaluation for the child.

- ✓ Force the state agency to explain why the parent needs each specific assessment/evaluation that they are requesting in the Case Plan.
- ✓ Be cautious of mental health evaluations—both psychological and psychiatric, because often:
  - ❖ Overdiagnosis and/or misdiagnosis by clinician
  - ❖ Case Manager and/or Court highlight specific statements made by parent and create additional services and goals
- ✓ Advocate for culturally competent clinical service providers as it relates to the assessments and the recommended therapeutic services for the parent and the children.
- ✓ Other types of services that fit more into the "norms" that are projected onto the parents/families instead of what will actually address any safety issues for the child when returned home



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## If the child wants to go home... the CYF should be in lock-step with the Parent Attorney.

Push back on unnecessary or overreaching case plan goals for the parent, such as:



### **"Parent must obtain a high school diploma or GED."**

- This may not be feasible given the parent's work schedule or other matters in his/her life that will limit their ability to complete this particular goal.

### **"Parent must obtain 'appropriate' and 'independent' housing."**

- This is always a major issue with removals and family reunification
- Consider that the child's family may follow their own culturally typical practices of living with two to three generations of family members.

### **"Parent must obtain employment."**

- Our middle/upper middle class selves project onto our child welfare families that they "Have to have a job," but in some cultures, women do not work, and many of our clients cannot work.
- Consider if the parent has SSI for his/herself, and the children's SSI that is sufficient to provide for their needs, then a requirement for employment is unnecessary.

### **"Parent must resolve all criminal issues."**

- Parents have no control over how quickly the criminal justice system moves.
- Additionally, just because a parent has pending criminal charges or is out on bond, this does not mean that they do not have the right to have the children in their care and/or direct someone else of their own choosing to care for their child if they do become incarcerated again.

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## PERMANENCY PLANNING

- African-American infants are less likely to experience reunification than White infants
- Black youth over 10 years of age, as well as youth of other racial and ethnic groups, are significantly less likely to return home than White youth
- One study reviewed by Children's Rights found that White children were four times more likely to be reunified with their families than Black children
- Black children are 2.4 times more likely than White children to have their parents' rights legally terminated
- The majority of children who become legal orphans are Black
- Black children transitioning out of the child welfare system experience even worse outcomes compared to White children
- An estimated 23% of Black youth who age out of foster care experience homelessness and 29% experience incarceration—far higher rates than for non-Black youth



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## Advocacy Pro Tips for Permanency Planning

### Visitation

Visitation between children and parents is vital to reunification!

- Advocate for frequent and consistent visitation
- Ensure that visitation is addressed at EVERY hearing

### Goal Posts

Do not allow the state agency OR the court to move the goal post absent adjudication of new issues

### Barriers to Returning Home

At every hearing, require the state agency to articulate the remaining safety barriers to reunification

### Case Plan Progress

Recognize “substantial completion” of the case plan and advocate for return home if there are no articulable safety threats from doing so

### Transition Home

Determine which remaining services can be completed with the child in the home

### Foster Parent

Monitor cases for interference by foster parents who do not support reunification

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## THE ROAD TO PERMANENCY

- Service plans
- Placements
- Diligent search/family finding
- Child behavior



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# SERVICE PLANS

- Barriers for parents
  - Transportation
  - Parents' work schedule
  - Language barriers
  - Literacy level
  - And...
- Barriers for children
  - Provider turnover
  - Safety and perceived safety
  - Disconnection/loneliness
  - Distrust
  - And...

Parent will access MyChart to remain up-to-date on child's treatment

Youth will attend school daily with no unexcused absences

Child will participate in weekly individual therapy

Parent will attend in-person parenting classes once per week

Youth will not be absent from her placement without permission of the foster parent

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# PLACEMENTS

- Does the placement meet the child's basic needs for safety and stability?
- Is the placement supportive of family reunification?
- Is the placement located in the child's school district? Near the child's family?
- How many placement moves has the child experienced?



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## FAMILY FINDING

- How diligent is the search?
- Is the search ongoing?
- Whose responsibility is the search?
- Are relatives evaluated by objective standards?
- Are relatives ruled out for arbitrary reasons?
- Is there a preference for non-family placements?
- Is ICPC filed timely?

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## CHILD BEHAVIOR

- Sibling interactions
- Post-visit behaviors
- Elopement
- Sexualized behaviors



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## LGBTQ+ Labels Matter



"Psychosexual"  
Evaluations

vs.

"Forensic"  
Evaluations

- Know the difference!
- Psychosexual eval – should only be conducted when it is almost certain that there was sexual abuse involving that child
- The State must disclose in the child life history that a psychosexual eval was conducted

"Highly  
Sexualized"  
Behaviors

vs.

"Age-  
Appropriate"  
Behaviors

- Was the child or children experimenting (with themselves or other children) or exhibiting curiosity in an age-appropriate manner with other age-appropriate children?

"Perpetrator"  
Child

vs.

"Victim"  
Child

- Psychosexual evaluations imply that the evaluated child was the offender and could lead to mislabeling as a "predator"

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### Be cautious of inaccurate labels and irrelevant descriptions of children and their families in court and in documentation.

- Creates unwarranted limitations on:
  - Options for foster home placements
  - Congregate care (group homes)
  - Adoption resources
- The result for the child is:
  - More likely to be "hoteled" for long periods of time.
  - In extreme cases, the child ages out of foster care without achieving permanency

## SOGIE

(Sexual Orientation,  
Gender Identity, and  
Gender Expression)

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# BIAS IN DELINQUENCY CASES

- Bias can influence descriptions of youth and their behaviors
- The tools and instruments used to assess youth and families in juvenile justice system are not immune
- Data analysis can highlight bias risks
  - Which youth are steered to diversion programs
  - Which youth are detained pending adjudication?
  - When is override criteria being employed?
  - Are youth with private vs. appointed counsel treated differently?
- Is the court able to distinguish who it's afraid of from who it's mad at?



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We appreciate  
your interest in  
this very  
important topic!

## For additional information and resources, please contact either of us.

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