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THE INTERGENERATIONAL EFFECTS OF
THE CHILD WELFARE SYSTEM AND THE
LEGAL OBLIGATION TO RECTIFY THEM

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I. INTRODUCTION

The American Association of Pediatrics asserted that separating a child from her family “can cause irreparable harm, disrupting a child’s brain architecture and affecting his or her short- and long-term health. This type of prolonged exposure to serious stress—known as toxic stress—can carry lifelong consequences for children.”¹ Further, of the children who experience foster care, about forty percent of their mothers have a personal history of child welfare involvement.² The current child welfare system is creating a destructive cycle where children are removed from their parents and placed in foster care, allegedly to save them from abuse or neglect.³ However, the indirect abuse and neglect that the system itself can cause are long-lasting and far-reaching; not only to the child that was in the system but potentially to the children of that child.⁴ While the assertions and suggestions in this article apply to all current and former foster youth, there is a heightened need to address the harms that manifest in foster alumni as parents because of the probability that those harms will impact a second generation. Part II of this essay will discuss the origins of the foster care system as a government association. Part III will address the psychological effects on foster children who become mothers and on the children of those mothers. Part IV will argue the legal necessity for the State to make efforts to rectify this harm under a theory of prevention and tort liability. Finally, Part V of this essay will pose a possible plan of action to rectify the harm that the child welfare system causes to both mothers and children.

¹ Press Release, Colleen Kraft, AAP Statement Opposing Separation of Children and Parents at the Border (May 8, 2018), <https://perma.cc/25QX-B2ZA>.

² Rachel A. Fusco, *Second Generation Mothers in the Child Welfare System: Factors that Predict Engagement*, 32 CHILD & ADOLESCENT SOC. WORK J. 545, 549-50 (2015).

³ See Sarah McCue Horwitz et al., *Mental Health Problems in Young Children Investigated by U.S. Child Welfare Agencies*, 51 J. AM. ACAD. CHILD & ADOLESCENT PSYCHIATRY 572, 576—80 (2012).

⁴ See generally Lovie J. Jackson Foster et al., *Intergenerational Pathways Leading to Foster Care Placement of Foster Care Alumni’s Children*, 20 CHILD & FAM. SOC. WORK 72, 77—79 (2015).

II. ORIGINS OF THE CHILD WELFARE SYSTEM AS A GOVERNMENT AGENCY

The child welfare system is based on the legal principle of *parens patriae* or “parent of the country.”⁵ This principle allowed for the King of England to be the general guardian “of all infants, idiots, and lunatics.”⁶ This principle carried overseas and became a fundamental American value: to protect those most vulnerable among us. In the 19th century, American society began to see itself as responsible for rescuing desperate children, specifically with the Children’s Aid Society in 1853 founded by Charles Loring Brace, a Methodist minister.⁷ Similar organizations sprang up after the tragic case of Mary Ellen Wilson, a child who was abused by her foster parents in 1874.⁸ Government agencies replaced these private organizations in the early twentieth century, and, since the 1960s, the exercise of authority by those agencies to enter the sphere of child-rearing has surged.⁹ Case law has established the States’ *parens patriae* interest in “preserving and promoting the welfare of the child[.]”¹⁰ Further, Black’s Law Dictionary defines *parens patriae* as the government’s right to “prosecute a lawsuit on behalf of a citizen” especially those who are unable to protect themselves, specifically minors or the disabled.¹¹ What has grown out of the legal principle and American value of *parens patriae* is our monstrous child welfare system; a billion-dollar industry with in-house therapists and psychologists, daycares, social workers, lawyers, and more.¹² And yet, recent scholarship and study of this system have left many questioning whether removing children from their homes to save them from the situation they were in is truly doing less harm than good.¹³

⁵ Santosky v. Kramer, 455 U.S. 745, 766 (1982); Daniel Bergner, *The Case of Marie and Her Sons*, N.Y. TIMES (July 23, 2006), <https://www.nytimes.com/2006/07/23/magazine/23welfare.html>.

⁶ Bergner, *supra* note 5.

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ Santosky, 455 U.S. at 766.

¹¹ Shanta Trivedi, *The Harm of Child Removal*, 43 N.Y.U. REV. L. & SOC. CHANGE 523, 556 (2019) (quoting, in part, *Parens Patriae*, BLACK’S LAW DICTIONARY (11th ed. 2019)).

¹² See TEDx Talks, *Rethinking Foster Care by Molly McGrath Tierney at TEDxBaltimore 2014*, YOUTUBE (Feb. 27, 2014), <https://www.youtube.com/watch?v=c15hy8dXSps>.

¹³ Trivedi, *supra* note 11, at 543.

III. THE PSYCHOLOGICAL EFFECTS AND HARMS CAUSED BY THE CHILD WELFARE SYSTEM

There are many factors at play that could influence trauma in children who are raised in the foster care system, and the effects can have lasting ramifications as the children become adults and parents.¹⁴ As the alumni from the foster care, specifically the females, become mothers, they may suffer from a variety of maternal traumas due to maltreatment, abuse, or neglect which can cause psychopathology such as Complex Trauma¹⁵, PTSD¹⁶ and Post-Partum Depression,¹⁷ thus impacting these women's ability to parent and their child's development.¹⁸

A common criticism of the child welfare system is that if you are poor, you "better be a perfect parent . . ." ¹⁹ because "poverty is often conflated with neglect."²⁰ As the system is currently structured, agencies do not address the economic and racial inequality.²¹ Instead, structural failings are treated as the personal flaws of low-income

¹⁴ PETER J. PECORA ET AL., ASSESSING THE EFFECTS OF FOSTER CARE: EARLY RESULTS FROM THE CASEY NATIONAL ALUMNI STUDY 18, 45, 46 (2003).

¹⁵ Johanna K. P. Greeson et al., *Complex Trauma and Mental Health in Children and Adolescents Placed in Foster Care: Findings from the National Child Traumatic Stress Network*, 90 CHILD WELFARE 92, 93 (2011).

¹⁶ David J. Kolko et al., *Posttraumatic Stress Symptoms in Children and Adolescents Referred for Child Welfare Investigation: A National Sample of In-Home and Out-of-Home Care*, 15 CHILD MALTREATMENT 1, 49 (2010).

¹⁷ Michael W. O'Hara & Jennifer E. McCabe, *Postpartum Depression: Current Status and Future Directions*, 9 ANN. REV. CLINICAL PSYCH. 379 (2013) (describing postpartum depression).

¹⁸ See Marina A. Zhukova, *Mothers with a History of Child Welfare Involvement: A Brief Literature Review of Cross Generational Impact of Maternal Trauma*, in RESEARCH WITH UNDERREPRESENTED POPULATIONS OF CHILDREN AND ADOLESCENTS: IDEAS, SAMPLES, AND METHODS. NEW DIRECTIONS FOR CHILD AND ADOLESCENT DEVELOPMENT 117, 118 (Elena L. Grigorenko ed., 2020).

¹⁹ Emma S. Ketteringham, *Live in a Poor Neighborhood? Better Be a Perfect Parent*, N.Y. TIMES (Aug. 22, 2008), <https://www.nytimes.com/2017/08/22/opinion/poor-neighborhoods-black-parents-child-services.html>.

²⁰ Trivedi, *supra* note 11, at 536 (citing Taya Asim Cooper, *Racial Bias in American Foster Care: The National Debate*, 97 MARQ. L. REV. 215, 228 (2013)).

²¹ Ketteringham, *supra* note 19.

parents.²² Instead of the State providing assistance to level the playing field and make parenting easier and more feasible for low-income families, these low-income parents are held to the highest standard and are at the highest risk for removal of their children because of factors that are out of their control.²³ Further, research conducted at the University of Pennsylvania found that white families, on average, have access to more help and more support from the child welfare system.²⁴ “Statistics confirm that minority families, and Black families in particular, are less likely to receive in-home services meant to address underlying causes and prevent removal.”²⁵ These racist and systemic failings of the system exacerbate the tendency for foster care to be intergenerational, as this article will further discuss.

As this section will demonstrate, there is overwhelming psychological and statistical evidence that the child welfare system does a disservice to American generations by not adequately addressing and attempting to rectify the trauma that is inherent in the foster care system.

A. The Psychological Effects on the Foster Child through Childhood and Adulthood

Institutionalized care, in addition to the original circumstances that landed a child in the foster care system, creates distinct traumas, like inconsistent childcare and insecure attachments that can have negative effects on one’s functioning.²⁶ Children will often be placed in the foster care system due to maltreatment, physical and sexual abuse, the death of a caregiver,²⁷ poverty, substandard housing, domestic violence, or parental substance abuse.²⁸ It is a common occurrence

²² *Id.*

²³ *Id.*

²⁴ Jessica Pryce, *To Transform Child Welfare, Take Race Out of the Equation*, YOUTUBE (Sept. 11, 2018), <https://www.youtube.com/watch?v=ykLj-Hc28o4>.

²⁵ Trivedi, *supra* note 11, at 536 (citing Stephanie Smith Ledesma, *The Vanishing of the African-American Family: “Reasonable Efforts” and Its Connection to the Disproportionality of the Child Welfare System*, 9 CHARLESTON L. REV. 29, 36 (2014)).

²⁶ Kenna E. Ranson & Liana J. Urichuk, *The Effect of Parent–child Attachment Relationships on Child Biopsychosocial Outcomes: A Review*, 178 EARLY CHILD DEV. & CARE 129, 134 (2008).

²⁷ See Zhukova, *supra* note 18, at 122.

²⁸ Delilah Bruskas & Dale H. Tessin, *Adverse Childhood Experiences and Psychosocial Well-Being of Women Who Were in Foster Care as Children*, 17 PERMANENTE J. e131, e132 (2013).

within the system for a child to be separated from their family, their home, or their community and be placed in a home with people whom they have never met.²⁹ Additionally, within the first year of foster care, children can be moved and placed in different households anywhere from one to fifteen times.³⁰ Though harm from the circumstances of removal is obviously not the fault of the system, a child's experience in the system exacerbates the harm and negatively affects the child's socio-emotional development.³¹ As a result of being placed in the system, children may develop complex traumas which resultantly can cause emotional dysregulation, behavioral and cognitive problems, insecure attachments, and biological problems.³² This harm can be long-lasting, if not permanent, causing challenges in parenting and other biopsychosocial problems across lifespans.³³

Psychological ramifications of the child welfare system become especially evident as those children age. Adolescents who have been exposed to institutionalized care often exhibit externalizing behavior problems and are at a higher risk for academic problems.³⁴ One study looked at adolescents between the ages of fourteen and seventeen and found that adolescents in foster care displayed higher rates of diagnosis across many disorders, specifically mood disorders and PTSD than those who had no contact with the system.³⁵

Research shows that children who go through the foster care system are at a higher risk for developing psychopathology than children raised outside of this system.³⁶ Often, the levels of pathology in foster children resemble those of adults that have experienced horrific trauma.³⁷ In the foster care subsample of a nationally representative child welfare study, the rate of PTSD was 24.9% in children aged 8-10 and 15.7% in those aged eleven through fourteen.³⁸ These rates are

²⁹ *Id.*

³⁰ *Id.*

³¹ Zhukova, *supra* note 18, at 118.

³² Judith A. Cohen et al., *Trauma-focused CBT for Youth with Complex Trauma*, 36 CHILD ABUSE & NEGLECT 528, 528 (2012).

³³ Ranson & Urichuk, *supra* note 26, at 139.

³⁴ Bruskas & Tessin, *supra* note 28, at e131—32.

³⁵ Peter J. Pecora et al., *Mental Health Services for Children Placed in Foster Care: An Overview of Current Challenges*, 88 CHILD WELFARE 5, 10—13 (2009).

³⁶ *Id.* at 13.

³⁷ *Id.*

³⁸ Kolko et al., *supra* note 16, at 48, 55.

roughly equivalent to the PTSD rate in war veterans³⁹ and are significantly higher than the general population which has a lifetime prevalence of 4.7%.⁴⁰

The trauma that is generated by a child entering the foster care system carries through, and further manifests itself, as that child becomes an adult. A study looking at mental health in those who experienced foster care found that nearly 50% of alumni had one or more mental health problem (depression, social phobia, panic disorder, PTSD, drug dependence) and nearly 20% had at least 3 diagnoses.⁴¹ Further the study found that PTSD rates for alumni were twice as high as they were in war veterans.⁴² Adults who had a history of being raised in an institutionalized setting reported higher stress levels, somatic problems, and mental health problems; furthermore, adults who have experienced the foster care system report higher levels of depression, anxiety, and problematic social adjustment overall.⁴³

B. The Intergenerational Hypothesis: Effects on Motherhood of a Foster Child and Her Children

1. Foster-Care-Alumni as Mothers

Harms caused by foster care can also impact how foster-care-alumni will be as parents.⁴⁴ The classic example of foster children as mothers creating a cycle of foster care concerns pregnancies at a young age.⁴⁵ One study found that more than 71% of women and 50% of men who were twenty-one years old had been pregnant or impregnated their

³⁹ Mark B. Hamner, *Trauma and the Vietnam War Generation: Report of Findings from the National Vietnam Veterans Readjustment Study*, J. TRAUMATIC STRESS (1992) (book review).

⁴⁰ Katie A. McLaughlin et al., *Trauma Exposure and Posttraumatic Stress Disorder in a National Sample of Adolescents*, 52 J. AM. ACAD. CHILD & ADOLESCENT PSYCHIATRY 815, 819 (2013).

⁴¹ PETER J. PECORA ET AL., IMPROVING FAMILY FOSTER CARE: FINDINGS FROM THE NORTHWEST FOSTER CARE ALUMNI STUDY 34 (2005); *see generally* Jackson Foster, *supra* note 4, at 75.

⁴² PECORA ET AL., *supra* note 41, at 34.

⁴³ Zhukova, *supra* note 18, at 118.

⁴⁴ Bryn King, *First Births to Maltreated Adolescent Girls: Differences Associated with Spending Time in Foster Care*, 22 CHILD MALTREATMENT 145, 146 (2017).

⁴⁵ MARK E. COURTNEY ET AL., MIDWEST EVALUATION OF THE ADULT FUNCTIONING OF FORMER FOSTER YOUTH: OUTCOMES AT AGE 21 at 10—11 (2007).

partner.⁴⁶ This compares to one-third of young women and 19% of young men in the general population, as seen in the National Longitudinal Study of Adolescent Health Study.⁴⁷ Adolescents in the foster care system have been found to have higher rates of teenage pregnancies.⁴⁸ They are also more likely to lack sexual education which correlates with more risky sexual behaviors such as unprotected sex,⁴⁹ and increased number of sexual partners.⁵⁰ These children of teenage foster kids have higher rates of diagnoses of depression and anxiety and, later on, have higher rates of intimate partner violence,⁵¹ which are all significant factors that cause this cycle to continue.

2. Why the Intergenerational Effect: The Child Welfare System as a Cause of Ineffective Parenting

Even in the absence of the element of teenage pregnancy, the foster care system can create a cycle of destruction for generations.⁵² There have been several hypotheses proposed as to why the foster care system is cyclical for women.⁵³ Research has shown that early victimization of a mother leads to mental health problems, which predict future perpetration of maltreatment against one's own children.⁵⁴ The high rates of psychopathology, specifically depression and PTSD,⁵⁵ reported in foster care alumni is a logical cause of female foster care alumic needing foster care for their own children.

Other research has shown that children who went through the foster care system may not have had positive parental role models, and will therefore not have the skills needed to be parents themselves.⁵⁶ A

⁴⁶ *Id.* at 10.

⁴⁷ *Id.*

⁴⁸ Zhukova, *supra* note 18, at 119.

⁴⁹ *Id.*

⁵⁰ Sara C. Carpenter et al., *The Association of Foster Care or Kinship Care with Adolescent Sexual Behavior and First Pregnancy*, PEDIATRICS, Sept. 2001, at 3, 4, 5.

⁵¹ Rachel A. Fusco, *Second Generation Mothers in the Child Welfare System: Factors that Predict Engagement*, 32 CHILD ADOLESCENT SOC. WORK J. 545, 549 (2015).

⁵² *See generally* Zhukova, *supra* note 18.

⁵³ *See generally id.*

⁵⁴ Dominic T. Plant et al., *Association Between Maternal Childhood Trauma and Offspring Childhood Psychopathology: Mediation Analysis from the ALSPAC Cohort*, 211 BRIT. J. PSYCHIATRY 144, 147, 149 (2017).

⁵⁵ Pecora et al., *supra* note 35, at 14.

⁵⁶ Zhukova, *supra* note 18, at 121—22.

Great Britain study showed that 6.7% of mothers that reported maltreatment as children were later involved in the child welfare system, due to perpetuating the same against their own children, as opposed to 0.4% of families who have maltreated their children without having a traumatic childhood history themselves.⁵⁷ Children raised in foster care often do not form secure attachments because of their tumultuous relationship with caregivers.⁵⁸ These children may then grow up to become parents and utilize maladaptive parenting strategies in their own offspring due to their insecure/disorganized attachment patterns.⁵⁹

Another perspective on the intergenerational effect pertains to the lack of resources available to a foster child when transitioning into adulthood and parenthood. Research shows that young adults who had been in foster care often lag behind both economically, socially and in education.⁶⁰ For foster-care alumni, these forms of support is often unavailable or limited, due to poor parent-child relationships or because of the low resources of foster parents.⁶¹ This creates a stronger challenge for foster-care alumni in acquiring post-secondary education and/or stable employment, which can limit their abilities as parents to handle parenthood and provide for their children.⁶² A previous study showed that that children of low-resource parents are more likely to experience foster-care than children of parents with more resources.⁶³ The lack of resources among foster-care alumni may therefore increase the risk that their children are placed back into the system.⁶⁴

⁵⁷ Louise Dixon et al., *Risk Factors of Parents Abused as Children: A Mediation Analysis of the Intergenerational Continuity of Child Maltreatment (Part I)*, 46 J. CHILD PSYCH. & PSYCHIATRY 47, 51 (2005).

⁵⁸ See Ranson & Urichuk, *supra* note 26, at 142.

⁵⁹ See Elizabeth Wall-Wieler et al., *The Cycle of Child Protection Services Involvement: A Cohort Study of Adolescent Mothers* American Academy of Pediatrics, 141 PEDIATRICS 1, 2 (2018); MARK E. COURTNEY ET AL., EVALUATION OF THE ADULT FUNCTIONING OF FORMER FOSTER YOUTH: OUTCOMES AT AGE 26 at 80—89 (2011).

⁶⁰ See generally COURTNEY ET AL., *supra* note 59.

⁶¹ Zhukova, *supra* note 18, at 119.

⁶² Mikkel Mertz & Signe Hald Anderson, *The Hidden Cost of Foster-Care: New Evidence on the Inter-Generational Transmission of Foster-Care Experiences*, 47 BRIT. J. OF SOC. WORK 1377, 1380 (2016).

⁶³ See Signe Hald Andersen & Peter Fallesen, *A Question of Class: On the Heterogeneous Relationship Between Background Characteristics and a Child's Placement Risk*, 32 CHILD. & YOUTH SERV. REV. 783, 784 (2010).

⁶⁴ *Id.*

3. The Effect of Child Welfare System Trauma on the Second Generation

Looking at this effect from a biological perspective, it was found that maternal trauma prior to conception can be transmitted to the fetus through epigenetic mechanisms and can impact fetal development.⁶⁵ Researchers concluded that genetic transmission of trauma can be often seen in the second and even in the third generation.⁶⁶ This data was supported by a study of holocaust survivors whose children and grandchildren did not go through the traumas they did but still exhibited the same PTSD symptoms.⁶⁷

Psychological studies and hypotheses demonstrate how a mother that was in foster care carries traumas and psychological complications that have adverse effects on her children often to the point of them needing foster care themselves, creating the cyclical nature of the child welfare system for women.⁶⁸ Children born to women while in foster care have increased rates of reporting for alleged abuse or neglect in comparison to children born to mothers who were not currently in the system.⁶⁹ A study by Jessica D. Bartlett et al. showed that children born to young women who had a childhood Child Protective Services (hereinafter CPS) report were 72% more likely to be reported to CPS

⁶⁵ See Mark A. Hanson & Peter D. Gluckman, *The Developmental Origins of Health and Disease: New Insights*, 102 (ISSUE 2) BASIC & CLINICAL PHARMACOLOGY & TECH. 90, 91 (2008); Wall-Wieler et al., *supra* note 59, at 2.

⁶⁶ Stanley Krippner & Deirdre Barret, *Transgenerational Traumas: The Role of Epigenetics*, 40 J. MIND & BEHAV. 53, 53 (2019).

⁶⁷ Rachel Yehuda, *Are Different Biological Mechanisms Involved in the Transmission of Maternal Versus Paternal Stress-Induced Vulnerability of Offspring?*, 70 BIOLOGICAL PSYCHIATRY 402, 402-03 (2011).

⁶⁸ Elizabeth Wall-Wieler et al., *supra* note 59, at 2. See also Heidi N. Bailey et al., *The Impact of Childhood Maltreatment History on Parenting: A Comparison of Maltreatment Types and Assessment Methods*, 36 CHILD ABUSE & NEGLECT 236, 236 (2012) (supporting the notion that individuals who were maltreated or had negative parenting tend to repeat it in the next generation); see generally Nicholas Berthelot et al., *Intergenerational Transmission of Attachment in Abused and Neglected Mothers: The Role of Trauma-Specific Reflective Functioning*, 36 INFANT MENTAL HEALTH J. 200 (2015) (describing mothers with trauma carrying this over to their children by creating insecure attachments with the offspring).

⁶⁹ Wall-Wieler et al., *supra* note 59, at 2.

than children born to young mothers with no CPS history.⁷⁰ This statistical evidence is not shocking in light of the psychological research and findings discussed above.

4. A Significant Source of Tainted Statistics

Though there is a strong indication that children of foster care alumni are often placed back in foster care, these statistics are slightly mitigated by a significant issue in the child welfare system that it would be an injustice to not address: systemic racism. Researchers found racial bias at every step of the child welfare system; the investigation, the mitigation efforts and in the ultimate removal.⁷¹ There are disproportionalities and disparate outcomes for Black and Brown children in foster care.⁷² A study has found that 53% of Black children in the U.S. will be the subject of a child welfare investigation by age eighteen, 16% higher than the rate for all children, even though the study yielded no relationship between race and child maltreatment.⁷³ Scholars have gone so far as to label the child welfare system an “apartheid institution.”⁷⁴ In 2019, Black children accounted for 23% of the children in foster care, though they make up only 14% of the country’s population under the age of 18.⁷⁵ In 2016, Hispanic children made up 17.6% of the population, yet accounted for 21% of foster children.⁷⁶ Emma Ketteringham, a family court attorney, asserted that the system places unfair, unreachable standards on parents who are raising their children with very little money, and their neighborhood and ethnicity

⁷⁰ Jessica D. Bartlett et al., *Intergenerational Transmission of Child Abuse and Neglect: Do Maltreatment Type, Perpetrator, and Substantiation Status Matter?*, 63 CHILD ABUSE & NEGLECT 84, 90 (2017).

⁷¹ Trivedi, *supra* note 11, at 536.

⁷² Sharon L. McDaniel, *White Privilege in Child Welfare: What Racism Looks Like*, IMPRINT (June 23, 2020, 11:50 PM), <https://imprintnews.org/opinion/white-privilege-in-child-welfare-what-racism-looks-like/44662>.

⁷³ Hyunil Kim et al., *Lifetime Prevalence of Investigating Child Maltreatment Among US Children*, 107 AM. J. PUB. HEALTH 274, 278 (2017).

⁷⁴ Trivedi, *supra* note 11, at 534.

⁷⁵ Kids Count Data Ctr., *Black Children Continue to Be Disproportionately Represented in Foster Care*, THE ANNIE E. CASEY FOUND. (Apr. 13, 2020), <https://datacenter.kidscount.org/updates/show/264-us-foster-care-population-by-race-and-ethnicity>.

⁷⁶ Trivedi, *supra* note 11, at 539.

impact whether or not their children are removed.⁷⁷ Because race is hereditary, the analysis of an intergenerational pattern in foster care is exacerbated exponentially when considering the systemic racism in the child welfare system.

IV. THE LEGAL OBLIGATION TO MAKE EFFORTS TO COMBAT THE HARM CAUSED BY THE CHILD WELFARE SYSTEM

There is an obvious need for corrective action and intervention from a psychological and healthcare standpoint. There is also a need and obligation from a legal standpoint in that the State has an obligation to take corrective action to rectify the harm done both to the foster-care-alumni and their children. This obligation is to all current and former foster children and can be seen in our Constitution, tort laws, and the statutory mandates that instruct states and localities to do more in terms of preventing the need for foster care.⁷⁸

A. The Child Welfare Agency's Violations of an Obligation to Protect Foster Children from Harm and Liability for Failing to Do So

1. The Child Welfare Agency as a Violation of the Fourteenth Amendment

The child welfare system, as a mechanism that removes children from their families and can directly result in a higher probability of psychopathology, teen pregnancies, and scarred generations, infringes on both the substantive and procedural due process rights of children who are forced to interact within the child welfare system.⁷⁹ In the 1988 *DeShaney v. Winnebago* Supreme Court case, a four-year-old child was abused and beaten by his father and sustained traumatic brain injuries that left him mentally incapacitated.⁸⁰ Though the child protection services agency (CPS) had received many complaints pertaining to this

⁷⁷ Jessica Pryce, *To Transform Child Welfare, Take Race Out of the Equation*, YOUTUBE (Sept. 11, 2018), <https://www.youtube.com/watch?v=ykLj-Hc28o4>.

⁷⁸ See U.S. CONST. amend. XIV, § 1; Federal Tort Claims Act of 1946, 28 U.S.C.S. § 2671; Family First Prevention Services Act of 2017, Pub. L. No. 115-123, 132 Stat. 232 (2018).

⁷⁹ See Pecora et al., *supra* note 35, at 13; COURTNEY ET AL., *supra* note 45, at 10—11.

⁸⁰ *DeShaney v. Winnebago Cnty. Dep't of Soc. Servs.*, 489 U.S. 189, 193 (1989).

case and took various steps to protect the child, the CPS made the decision not to remove him from his abusive father, and the results were disastrous.⁸¹ The child and his mother brought suit against the county alleging that the county deprived the child of his liberty without substantive due process, in violation of the Fourteenth Amendment, by failing to protect him.⁸² The Court held that the Due Process Clause does not “impose an affirmative obligation on the State to ensure that [Constitutional] interests do not come to harm through other means.”⁸³ Therefore, as long as the harm was not because of the State, the State cannot be held liable.⁸⁴ The decision in *DeShaney* specified that the Due Process Clause does not protect citizens from “private violence, or other mishaps not attributable to the conduct of its employees.”⁸⁵ Yet, the decision in *DeShaney* makes a distinction between the facts in that case, where the child was not taken from his father, and a situation in which the child was a ward of the state:

It is true that in certain limited circumstances the Constitution imposes upon the State affirmative duties of care and protection with respect to particular individuals . . . but these cases afford petitioners no help. Taken together, they stand only for the proposition that when the State takes a person into its custody and holds him there against his will, the Constitution imposes upon it a corresponding duty to assume some responsibility for his safety and well-being.⁸⁶

Here, the significant issues and psychological deficits in this specific group of citizens, foster children, are caused by the State itself through the governmental child-welfare system.⁸⁷ The State took these children into its custody and therefore imposed upon itself a duty to assume responsibility for these children’s safety and well-being. However, the State did not fulfill its duty, as evident by the increased

⁸¹ *Id.* at 193.

⁸² *Id.*

⁸³ *Id.* at 195.

⁸⁴ *Id.* at 200.

⁸⁵ *Id.* at 194.

⁸⁶ *DeShaney*, 489 U.S. at 198-200.

⁸⁷ See psychological studies above addressing the harms of the child welfare system on children and aged-out adults. See Ranson & Urichuk, *supra* note 26; Bruskas & Tessin, *supra* note 28; Cohen et al., *supra* note 31.

risk of psychopathology and psychological issues in both foster children and the children of foster children. Applying *DeShaney*, the State should be responsible for the harm it caused. Further, this is a substantive due process issue: a violation of the Fourteenth Amendment of the United States Constitution, which asserts that a State shall not “deprive any person of life, liberty, or property, without due process of law.”⁸⁸

While *DeShaney* addresses a possible substantive due process violation of the child welfare system, there may be a procedural due process violation as well. In *Town of Castle Rock v. Gonzales*, a father picked up his three daughters from their mother’s house without notice, in violation of a restraining order.⁸⁹ The mother demanded the police enforce her restraining order, but they did not.⁹⁰ When the father resurfaced hours later, police found the three daughters in the back of the father’s car, dead.⁹¹ The mother sued the police department for depriving her of the property interest in her restraining order.⁹² The Court held that the mother did not have a property interest protected by the Fourteenth Amendment in the enforcement of her restraining order.⁹³ The Court explained that one only has a legitimate claim of entitlement to government benefit when she clearly has more than an abstract need and more than a unilateral expectation; she must have a legitimate entitlement to a government benefit.⁹⁴

It is indisputable that children in foster care have a legitimate claim of entitlement to life, liberty, and property. When foster children are removed from their homes and endure the suffering that is often a result of the system, they are deprived of these fundamental entitlements, to the extent that trauma and pathology infringe on their life and liberty. This became more than a unilateral expectation of the protection of life, liberty, and property once the children were taken from their homes and placed in government custody. Thus, once children are in the custody of the child welfare system, they have a legitimate entitlement to this government benefit. 42 U.S.C. § 1983 created a federal cause of action for “the deprivation of any rights,

⁸⁸ U.S. CONST. amend. XIV, § 1.

⁸⁹ *Town of Castle Rock v. Gonzales*, 545 U.S. 748, 753 (2005).

⁹⁰ *Id.* at 753.

⁹¹ *Id.* at 754.

⁹² *Id.*

⁹³ *Id.* at 768.

⁹⁴ *Id.* (quoting *Bd. of Regents of State Colls. v. Roth*, 408 U.S. 564, 577 (1972)).

privileges, or immunities secured by the Constitution and laws.”⁹⁵ Under this statute, one could argue that, should the State not address and rectify the harms and ramifications brought upon alumni of the system and their children, this class of people could have a federal cause of action for the consequences they suffered from either their parents spending time in the system, or them spending time in the system themselves.

2. State’s Liability for the Harm under a Theory of Tort Law

A second theory of liability is pulled from tort law under the assertion that these two generations, mother and child, would not have sustained this harm but for the deeply flawed child welfare system. The harm itself is a direct result of the actions of the State, regardless of how many steps or years the harm took to manifest itself.

There is prospective future harm to two generations of Americans by the State when one child enters the child welfare system. Our theory of tort liability is inspired by the Federal Tort Claims Act of 1946 (hereinafter FTCA).⁹⁶ Under the FTCA, an individual may bring suit against a federal employee acting as an agent of the government if the claimant demonstrates that (1) he was injured or his property damaged by a federal employee; (2) the employee was acting within the scope of his official duties; (3) the employee was acting negligently and wrongfully; and (4) the negligent or wrongful act proximately caused the injury or damage of which he complains.⁹⁷ The FTCA also allows a suit against a governmental agency.⁹⁸ The FTCA’s jurisdictional requirement is that there be a negligent injury by a government employee acting within the course and scope of employment.⁹⁹ In the application of the FTCA to the child welfare system, we are not alleging a tortious act or employee, but a tortious system. The two generations in this discussion are injured by a system acting within “the scope of its

⁹⁵ *Gonzales*, 545 U.S. at 755.

⁹⁶ Federal Tort Claims Act of 1946, 28 U.S.C.S. § 2671.

⁹⁷ *Federal Tort Claims Act*, HOUSE.GOV, <https://www.house.gov/doing-business-with-the-house/leases/federal-tort-claims-act> (last visited Feb. 1, 2022).

⁹⁸ *Comparing 42 U.S.C 1983 and Tort Claims Acts*, THE CLIMATE CHANGE & PUB. HEALTH L. SITE, https://biotech.law.lsu.edu/cases/immunity/FTC_v_1983.htm (last visited Feb. 1, 2022).

⁹⁹ *Id.*

duties.” Here, the child welfare agency itself is negligent by continuously producing the same results of harmed children and, more generally, scarred American citizens.

To put our theory more broadly than the FTCA, to prove a prima facie case of negligence under tort law the State must have (a) had a duty to prevent harm, (b) failed to prevent that harm, and (c) neglected that obligation caused the harm to whom the duty was owed.¹⁰⁰ If these elements are proven, the State would be obligated to ameliorate the harm. The court in *DeShaney* held that the State was not liable for the harm done to the four-year-old child because the Due Process Clause does not impose a duty on the State to protect every child.¹⁰¹ However, once a child is part of the child welfare system and is a ward of the State, the State does have a duty to protect the child. In the case of these two harmed generations, it was the State’s duty to prevent the harm that occurred. In conclusion, the State committed a tort on these two generations. Though tort law usually looks to monetary damages as the primary means of rectification, we propose a more effective and far-reaching solution: mental health, medical, and correctional services, mentorship, and State-sponsored community support.

3. Comparing 42 U.S.C §1983 and the FTCA

Part IV §1 of this article contemplates 42 U.S.C. §1983 as grounds for bringing a suit against the State for the child welfare system’s violation of foster children’s Constitutional Rights. Part IV §2 contemplates the FTCA as grounds for a suit against the government for a child welfare agency’s negligence and tortious conduct, in an analysis unrelated to the Constitution, that caused significant harm to foster children and the children of foster children. These two statutes are independent of each other, and each has its own requirements, options for remedies, and defenses. Though in some instances, suits under either statute can arise from the same incident, 42 U.S.C. § 1983 requires a constitutional violation, while the FTCA does not. Both statutory sources for a suit are applicable in holding the State liable for harm caused by the child welfare system.

¹⁰⁰ RESTATEMENT (SECOND) OF TORTS § 282 (1965).

¹⁰¹ *DeShaney v. Winnebago Cnty. Dep’t of Soc. Servs.*, 489 U.S. 189, 200 (1989).

B. Statutory Obligations to Combat Harm

1. Combating Harm as a Means of Prevention

Child protection jurisprudence and legislation have already begun to acknowledge the significant detrimental results of the system and have reacted with calls for reform of procedure and goals, most notably with the Family First Services Prevention Act of 2018.¹⁰² The Family First Services Prevention Act focuses on preventative measures to keep a family together before the situation gets dire enough that there is no other option but to remove the children from their parents.¹⁰³ There is a history of a statutory requirement that the State make reasonable efforts to prevent the removal of children,¹⁰⁴ beginning with the Adoption Assistance and Child Welfare Act of 1980 (AACWA).¹⁰⁵ As the legislative history of the AACWA and its progeny indicate, before the introduction of the reasonable efforts requirement, foster care was often viewed as the first option when a family was having issues.¹⁰⁶ The reasonable efforts requirement holds state agencies accountable by requiring them to examine alternatives to foster care and provide home-based services wherever feasible.¹⁰⁷ However, the reasonable efforts requirement has faced an array of obstacles in execution. Such barriers include judges often not having enough information to make a finding of reasonable efforts or lack thereof, attorneys failing to make an argument for lack of reasonable efforts in court, and reluctance of

¹⁰² Family First Prevention Services Act of 2017, Pub. L. No. 115-123, 132 Stat. 232 (2018); *Family First Prevention Services Act*, NAT'L CONFERENCE OF STATE LEGISLATURES (Apr. 1, 2020), <https://www.ncsl.org/research/human-services/family-first-prevention-services-act-ffpsa.aspx>.

¹⁰³ NAT'L CONFERENCE OF STATE LEGISLATURES, *supra* note 102.

¹⁰⁴ *Relevant Federal and State Law*, NAT'L CTR. FOR STATE CTS.: EVERY KID NEEDS A FAM., (Aug. 31, 2020), https://www.ncsc.org/__data/assets/pdf_file/0025/53728/EKNF_LawPage_Final_8.31.20-Logo.pdf.

¹⁰⁵ Adoption Assistance and Child Welfare Act of 1980, 42 U.S.C. § 675; NAT'L CTR. FOR STATE CTS.: EVERY KID NEEDS A FAM., *supra* note 104; Leonard Edwards, *Overcoming Barriers to Making Meaningful Reasonable Efforts Findings*, AM. BAR ASS'N (Jan. 29, 2019), https://www.americanbar.org/groups/public_interest/child_law/resources/child_law_practiceonline/january---december-2019/overcoming-barriers-to-making-meaningful-reasonable-efforts-find/.

¹⁰⁶ Edwards, *supra* note 105.

¹⁰⁷ *Id.*

judges to make a finding of lack of reasonable efforts because of the consequence of federal funds not being provided for that case.¹⁰⁸

The Family First Services Prevention Act recognizes that the removal of a child from the home causes trauma and pathology, as the numerous psychological studies have illustrated above.¹⁰⁹ The Act calls for federal resources to be spent on preventative measures for “candidates for foster care” under the emerging theory,¹¹⁰ as illustrated above, that there is significant harm caused by entry into the foster care system that is in the State’s interest to avoid, even to the extent of federal legislation.¹¹¹ Under this rationale, a natural reaction to the vast psychological science and research is to call for the State to implement measures to address the foster-child-turned-mother’s psychological and maturity deficits and pathology. This is the most logical way of preventing the next generation from the all-but-inevitable entry into the system themselves because of issues stemming from the harms and deficits that resulted from the mother, the first generation, spending time in the system.

1. Other Statutory and Legislative Sources

There is legislation that addresses children aging out of the system: The Foster Care Independence Act of 1999 which established the John H. Chafee Foster Care Independence Program.¹¹² This legislation extends Medicaid coverage, provides incentives for adoption, increases requirements for foster parents, and extends funding for housing for aging out foster children.¹¹³ However, it does not provide any direct mental and psychological help or education, other than more foster care, to children aging out of the system.¹¹⁴ Additionally, this legislation only had actual ramifications for foster kids that have aged out until the age of twenty-one, though the Family

¹⁰⁸ *Id.*

¹⁰⁹ See Pecora et al., *supra* note 35, at 10.

¹¹⁰ Asheley Pankratz, *What About Florida’s Children? Analyzing the Implications of the Family First Prevention Services Act of 2018*, 44 NOVA L. REV. 63, 73 (2019).

¹¹¹ See Ranson & Urichuk, *supra* note 26; Cohen et al., *supra* note 31; Pecora et al., *supra* note 35.

¹¹² John H. Chafee, *Foster Care Independence Program*, U.S. DEP’T OF HEALTH & HUM. SERVS. (June 28, 2012), <https://www.acf.hhs.gov/cb/resource/chafee-foster-care-program>.

¹¹³ *Id.*

¹¹⁴ See *id.*

First Services Prevention Act gave the option of extending the Chafee Foster Care Independence Programs until the age of twenty-three.¹¹⁵ As made evident by psychological studies and statistics, mothers that have a history with the child welfare system need significant aid past the age of twenty-three to combat and treat the disastrous effects of their tumultuous childhood.¹¹⁶ This is the gaping hole in our child welfare industry; there is a government interest in providing accessible services for *all* parents in the years beyond the early twenties because these additional, longer-lasting, and further-reaching services will serve both as prevention for the future generation and as rectification of past traumas of the aged-out generation. The alternative is that these parents will receive the needed services later, as prevention services under the Family First Services and Prevention Act; when the family has already developed issues and the children are in danger of removal.

Several states have codified in state law a duty to children in foster care. For example, New Jersey's Child Placement Bill of Rights Act grants foster children the right to be free from physical or psychological abuse.¹¹⁷ Another is Hawaii's Revised Statute Section 350-1 that grants children the right to be protected from physical, sexual, emotional, or other types of abuse.¹¹⁸ These statutes are further evidence that once a child is part of the child welfare system, the State has at least a minimal duty to protect that child. The devastating psychological studies and statistics discussed above prove that this duty has been breached. Further, for the good of the State and its constituents, there should be services and organizations in place to rectify the damage done to the previous generation and prevent that same damage from occurring to the second generation of "candidates for foster care."¹¹⁹

¹¹⁵ *Family First Prevention Services Act*, NAT'L CONF. OF STATE LEGISLATURES (Apr. 1, 2020), <https://www.ncsl.org/research/human-services/family-first-prevention-services-act-ffpsa.aspx>.

¹¹⁶ See generally Carpenter et al., *supra* note 50; Plant et al., *supra* note 54; Dixon et al., *supra* note 57.

¹¹⁷ Child Placement Bill of Rights Act, N.J. STAT. ANN. § 9:6B-4(h) (West 1990).

¹¹⁸ Lydia M.S. Fuatagavi, *An Analysis of the Rights of Children in Foster Care in Hawai'i*, 20 ASIAN-PACIFIC L. & POL'Y J. 139, 144 (2019); HAW. REV. STAT. §350-1 (2013).

¹¹⁹ See CHAPIN HALL & CASEY FAM. PROGRAMS, FAMILY FIRST PREVENTION SERVICES ACT: CANDIDACY CONSIDERATIONS 1 (2019) (defining the term "candidates for foster care").

C. Tying it all Together: The Need to Address the Harm as both Prevention and Restitution

There are multiple motivations for addressing the issues in foster-children-turned-mothers: the motivation of preventing second-generation children from entering the foster care system and the legal obligation of the state to rectify the harm that it caused to the first generation. The Family First Services Prevention Act acknowledges that foster care is a traumatic experience and that children experience trauma and harm from entry into the foster care system.¹²⁰ And while it looks to prevent the harm by avoiding entry to the foster care system, there is an obligation to ameliorate the harm after the fact, specifically to offer services and aid to *rectify* the harm done to those that have experienced the foster system or are impaired by its far-reaching effects. This is more than a mere political interest because the harm was a direct result of a state agency. We have identified this group—foster children who have become mothers and the children of those mothers—as a specified class of citizens with a heightened need that the State must do more for and that the federal government has an interest in protecting and providing aid to. There is a heightened obligation because the State has caused these issues; they are the fault of the state and therefore the State has a duty to rectify the harm it caused.

The Children’s Bill of Rights has asserted that, though there is no national standard of the rights of children in foster care, three core areas are vital to the healthy development of a child.¹²¹ These three core areas are (1) physical well-being; (2) social and emotional well-being; and (3) educational and life skills.¹²² The child welfare system creates significant deficits for children in all three areas.¹²³ Further, those children eventually become parents and, as a result of those significant deficits, their children, the second generation, inevitably inherit and suffer from deficits themselves.¹²⁴

¹²⁰ *Family First Prevention Services Act*, CHILD.’S DEF. FUND, <https://www.childrensdefense.org/policy/policy-priorities/child-welfare/family-first/> (last visited Feb. 6, 2022).

¹²¹ The Children’s Bill of Rights is a proposition by the First Focus, Campaign for Children organization. See Fuatagavi, *supra* note 118, at 146.

¹²² *Id.* at 147.

¹²³ See Ranson & Urichuk, *supra* note 26.

¹²⁴ See generally Zhukova, *supra* note 18; Mertz & Anderson, *supra* note 62.

V. A POSSIBLE PLAN OF ACTION AND ITS CHALLENGES

A. Challenges to Providing Services to Combat Harm and Pathology

There are many challenges to properly treating the psychological problems that accompany the foster care system. Both the alumni who have aged out of the system and their youth must have proper access to treatment as aid to combat the intergenerational effects of the foster care system. Additionally, tackling the psychological effects early, while the children, specifically adolescent females, are in foster care, could prevent the high rate of second-generation foster care.

One challenge to properly combating the negative ramifications of foster care is the likelihood that those that need the most help will not be receptive to it. Research has demonstrated that women who went through the foster care system may find it difficult to engage in psychological treatment; low compliance was found in women's participation in court-mandated services after their children were removed and put into out-of-home care.¹²⁵ This effect was often causally linked to reports of both substance abuse and intimate partner violence.¹²⁶

Another challenge to rectifying the pathology and harm caused by the system is that children are not being helped by the right people nor with the right methods. Trauma exposure is pervasive among children living in foster care,¹²⁷ and yet most foster parents, child welfare staff, and others in the system are not adequately prepared to recognize and effectively respond to the trauma symptoms.¹²⁸ About 80% of foster children exhibit emotional and behavioral difficulties¹²⁹

¹²⁵ Stephen M. Butler et al., *Maternal Compliance to Court-Ordered Assessment in Cases of Child Maltreatment*, 18 CHILD ABUSE & NEGLECT 203, 209 (1994).

¹²⁶ *Id.*

¹²⁷ Zhukova, *supra* note 18, at 126; *see also* Bryn King, *First Births to Maltreated Adolescent Girls: Differences Associated with Spending Time in Foster Care*, 22 CHILD MALTREATMENT 145, 146 (2017).

¹²⁸ Jessica Dym Bartlett & Berenice Rushovich, *Implementation of Trauma Systems Therapy-Foster Care in Child Welfare*, 91 CHILD. & YOUTH SERVS. REV. 30, 30—38 (2018).

¹²⁹ Sarah McCue Horwitz et al., *Mental Health Problems in Young Children Investigated by U.S. Child Welfare Agencies*, 51 J. AM. ACAD. CHILD & ADOLESCENT PSYCHIATRY 572, 572 (2012).

and between 50%¹³⁰ and 64%¹³¹ of those with need are not receiving proper services. Of those who do receive the necessary care, they seldom receive empirically validated services.¹³² Additionally, much of the currently given therapy is not culturally sensitive and may increase the attrition rate.¹³³ The mental health needs of these young children in foster care are likely to go unmet¹³⁴ thus exacerbating the discussed intergenerational effects of foster care.

VI. CONCLUSION: A POSSIBLE APPROACH

The child welfare system is not fully broken, but flawed, with gaping holes into which thousands of Americans fall each year. Recently, there have been calls to fully abolish the child welfare system.¹³⁵ Our final proposition does not go so far as to eradicate the system, but instead to extend it to resemble a dual child-maternal welfare system or a “family-based” system. A child welfare system and maternal welfare system are inextricably intertwined, and the approach taken until now, to address the needs of the child independent from the mother who should be, but is not, providing those needs, has created an ineffective and fragmented system.

In creating this child-maternal welfare system, we can take direction from the *Tipat Chalov* centers, a common service provider in Israel. *Tipat Chalov* centers are located throughout the state of Israel and are operated by health bureaus that provide physical health and

¹³⁰ Barbara J. Burns et al., *Mental Health Need and Access to Mental Health Services by Youths Involved with Child Welfare: A National Survey*, 43 J. AM. ACAD. CHILD & ADOLESCENT PSYCHIATRY 960, 960 (2004).

¹³¹ Lauren K. Leslie et al., *Addressing the Developmental and Mental Health Needs of Young Children in Foster Care*, 26 J. DEV. & BEHAV. PEDIATRICS 140, 144 (2005).

¹³² See Horwitz et al., *supra* note 129, at 7; Leslie et al., *supra* note 131, at 144–45.

¹³³ Dana A. Weiner et al., *Evidence-Based Treatments for Trauma Among Culturally Diverse Foster Care Youth: Treatment Retention and Outcomes*, 31 CHILD. & YOUTH SERVS. REV. 1199, 1199 (2009).

¹³⁴ See generally Charles H. Zeanah et al., *Foster Care for Young Children: Why It Must Be Developmentally Informed*, 50 J. AM. ACAD. CHILD & ADOLESCENT PSYCHIATRY 1199, 1199–201 (2011).

¹³⁵ See generally Michael Fitzgerald, *Rising Voices for ‘Family Power’ Seek to Abolish Child Welfare System*, IMPRINT (Jul. 8, 2020, 11:45 PM), <https://imprintnews.org/child-welfare-2/family-power-seeks-abolish-cps-child-welfare/45141>.

mental health services to pre and postpartum women and their youth.¹³⁶ These clinics are staffed by public health nurses as well as physicians, dietitians, health consultants, and social workers.¹³⁷ These clinics are easily accessible and counteract many of the barriers to treatment that this population faces, such as lack of detection, hesitation of parents to seek out treatment, and structural failings and systematic inequality with unaddressed ramifications.¹³⁸

Until now, the child welfare system has “err[ed] on the side of removal” to the detriment of American children and families.¹³⁹ To address the needs of the community, instead of punishing parents when those needs are not met, we propose a more permanent and intensive version of *Tipat Cholov* centers; women’s clinics that provide physical health and evidence-based mental health services and are maintained and funded by welfare and federal funds. These clinics can provide a community of support and services that parents and children will not be afraid to ask for and utilize. By making these centers easily accessible and community-based, we can remove the stigma and shame that often accompany a parent seeking help from the child welfare system. Services provided will teach the aged-out generation how to be strong, independent, functional adults, and these services can be provided before a familial situation gets dire enough that removal is necessary.¹⁴⁰ These services will also be goal-oriented towards leveling the playing field for underprivileged and undereducated parents through services, counseling, and financial aid. They will provide the education and direction that these mothers did not get in their youth, as most do, because of their traumatic and tumultuous history in the system. Access to this education and these services, without fear of legal ramifications but with community support, can lower the number of teenage pregnancies among foster children and decrease the prevalence of psychopathology among all child welfare system participants. These clinics, with evidence-based psychological treatment and other

¹³⁶ Bobbie Postmontier et al., *Incorporating Interpersonal Psychotherapy for Postpartum Depression into Social Work Practice in Israel*, 29 RSCH. SOC. WORK PRAC. 61, 62 (2019).

¹³⁷ *Tipat Chalav*, NEFESH B’NEFESH: HEALTHCARE ISRAEL, <https://www.nbn.org.il/aliyahpedia/government-services/health-care-national-insurance/tipat-chalav/> (last visited Feb. 6, 2022).

¹³⁸ Postmontier et al., *supra* note 136, at 61—68.

¹³⁹ Trivedi, *supra* note 11, at 533.

¹⁴⁰ Molly Tierney, *Adoption is Forever?*, MOLLY MCGRATH TIERNEY (Apr. 19, 2019), <https://mollytierney.com/category/child-welfare/>.

statistically and scientifically effective services, will provide what the child welfare system has, until now, left its wards missing: psychological health, adult skills, and parenting support.