A Legislative Rewrite to the Child Abuse Prevention and Treatment Act

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Introduction

The Child Abuse Prevention and Treatment Act ("CAPTA"), originally enacted in 1974, is a piece of federal legislation in the United States whose purpose is to "to keep children safe and strengthen families."[1] CAPTA operates as a legislative funding program, providing federal funding and guidance to states "in support of prevention, assessment, investigation, prosecution, and treatment activities" and provides grants to public agencies and non-profit organizations devoted to child abuse prevention and treatment.[2] CAPTA is one of the key legislative guideposts for "child protection" legislation and programming because it establishes a national minimum definition for "child abuse and neglect."[3] Further, it is a powerful regulatory mechanism that controls and distributes billions of dollars to states, provided they comply with its requirements.[4]

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[1] PREVENT CHILD ABUSE AMERICA, *Protect Our Children: Digital Advocacy Day Makes it Easy*, https://preventchildabuse.org/latest-activity/protect-our-children-digital-advocacy-day-makes-it-easy/?gad_source=1&gclid=Cj0KCQjwxeyxBhC7ARIsAC7dS38CWhu66hLEpM217N04Y2AWT-02fIax3rxVvUBMeI_FK9NkLkzyPTQaAlMIEALw_wcB (last visited May 8, 2024).

[2] CHILD WELFARE INFORMATION GATEWAY, *About CAPTA: A legislative history*, https://cwig-prod-prod-drupal-s3fs-us-east-1.s3.amazonaws.com/public/documents/about.pdf?VersionId=y7C6qleUR3mZJ_UJ5t_dnzCNfO6HPcPs (last visited May 8, 2024).

[3] COURT APPOINTED SPECIAL ADVOCATES GUARDIANS AD LITEM, *Child Abuse Prevention and Treatment Act*, https://nationalcasagal.org/advocate-for-children/advocate-for-legislation/capta/ (last visited May 10, 2024).

[4] To be eligible for grants or financial assistance under CAPTA, states must meet several conditions, including: submitting a comprehensive state plan for how grants will be utilized within its child protective services; enactment and enforcement of state mandatory reporting laws; putting policies in place for managing substance-affected infants; providing immediate screening, risk assessment, and investigation procedures for abuse and neglect reports; creating confidentiality and data management; promoting interagency collaboration across child protection and other relevant agencies; enhancing professional training and qualifications within the system; conducting criminal background checks for prospective foster and adoptive parents; and creating early intervention referral programs for children under three. *See* 42 U.S.C.A. § 5106.

Since 1974, CAPTA has been reauthorized six times with several amendments that have expanded the scope of the law, and consequently, the reach of child protective services into the lives and homes of families.[5] In 2015, CAPTA was amended by the Justice for Victims of Trafficking Act.[6] This amendment expanded the definition of "child abuse and neglect" and "sexual abuse" to include a child who is identified as a victim of sex trafficking. It also added conditions to funding that required states to put in place provisions and procedures to identify and assess all reports of suspected child sex trafficking. The Comprehensive Addiction and Recovery Act of 2016 created additional criteria for funding, requiring states to outline procedures for health-care providers to identify infants born affected by substance use or withdrawal symptoms or fetal alcohol spectrum disorders, to address the health and substance use disorder treatment needs of the infant and family, and to develop plans of safe care for infants affected by all substance use (not just the use of illegal substances).[7] The most recent amendment to CAPTA was by the Victims of Child Abuse Reauthorization Act of 2018 that provides immunity from both civil and criminal liability for people who make good-faith child abuse or neglect reports or who provide information or assistance pursuant to a good-faith report.[8]

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[5] U.S. DEPARTMENT OF JUSTICE OFFICE OF JUSTICE PROGRAMS, *Child Abuse Prevention and Treatment Act*, https://www.ojp.gov/ncjrs/virtual-library/abstracts/child-abuse-prevention-and-treatment-act (last visited May 8, 2024).

[6] CHILD WELFARE INFORMATION GATEWAY, *supra* note 2.

[7] *Id.*

[8] *Id.*

Because of its expansive scope and regulation power, CAPTA has been one of the principal mechanisms by which the family policing system operates.[9]

CAPTA and the Family Policing System

Similar to the criminal legal system, the child welfare, protective services, and foster system (what I refer to collectively as the family policing system) overwhelmingly targets Black people - specifically, Black mothers. Black families are more likely to be surveilled, to come into contact with individuals and institutions that make up the family policing system, to be investigated, and to be legally labeled as abusive and neglectful.[10] As an effect of anti-Black racism, the family policing system has normalized and justified its existence and practices as "necessary to save children from 'bad mothers' who violently mistreat the children."[11] This false narrative about Black motherhood has resulted in irreparable harm: Black families are 6.3 times more likely than white families to be investigated by the family policing system; Black children are 2.4 times more likely than white children to experience termination of parental rights; and Black children are disproportionately placed into the foster care

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[9] I've adopted the term "family policing system" from Dr. Dorothy Roberts to refer to what is commonly known as the child welfare system or child protective services. This term more accurately describes the system that "is designed to serve the US racial capitalist power structure, governed by profit, wealth accumulation, and market competition for the benefit of a wealthy white elite, by regulating and disrupting the most disenfranchised populations in place of meeting human needs." Children and families are neither protected nor safer because of this system. Dorothy Roberts, *Building a World Without Family Policing*, LPE PROJECT (July 17, 2023), https://lpeproject.org/blog/building-a-world-without-family-policing/.

[10] Erin Miles Cloud, *Toward the Abolition of the Foster System*, THE SCHOLAR AND FEMINIST ONLINE (2019), https://sfonline.barnard.edu/toward-the-abolition-of-the-foster-system/.

[11] *Id.*

system.[12] These same families are less likely to receive supportive services and more likely to experience temporary and permanent family separation.[13] In short, the family policing system tears apart Black families.

While there has been a plethora of criticism and media attention on the failure of the criminal legal system to bring justice and its disparate impact on Black people, there has been little public discourse and criticism surrounding the family policing system. This is in part because the family policing system is "framed as helpful, supportive and well-intentioned rather than punitive and retributive."[14] Despite the clearly harmful and disproportionate impact on Black families, we have turned a blind eye to the harms caused by the family policing system and endorsed the attempted destruction of the Black family. We must do more to expose the family policing system and its roots in deeply violent historical narratives about Black bodies.[15]

CAPTA is one of the strong-arms of the family policing system that has codified family policing into law and requires each state to establish its own child protective services.[16] Its mandates support the family policing system and perpetuates the cycle of

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[12] *Id.*

[13] *Id.*

[14] *Id.*

[15] By design, the family policing system terrorizes Black families. Dr. Dorothy Roberts' decade of work studying the family policing system has exposed its roots that can be traced back to "the sale of enslaved African family members, apprenticeship of Black children to former enslavers, the systematic displacement of Native children to white-dominated boarding schools and white adoptive families, and the servitude of impoverished European immigrant children." This system is rooted in white supremacy, capitalism, and patriarchy and used to control and subjugate the most marginalized groups. *See* Roberts, *supra* note 9.

[16] Eleanor J. Bader, *No More Family Policing*, INQUEST (Dec. 7, 2023), https://inquest.org/no-more-family-policing/.

trauma and family separation without sufficiently addressing the systemic inequities that harm the most marginalized communities. CAPTA's emphasis on mandatory reporting and investigation is a direct cause of family separation that has created an environment of fear and mistrust, discouraging families from seeking help due to the risk of punitive interventions.[17] CAPTA's federal definition of abuse and neglect is amorphous and prone to subjectivity and bias based on race, class, and other factors. Often, these definitions of abuse and neglect are conflated with symptoms of poverty; instead of providing interventions to address the root cause of family struggles and necessary socioeconomic supports, the system pathologizes poverty.[18] CAPTA's focus must shift from control and surveillance toward voluntary, non-coercive, community-based support for families. With its billions of dollars in funding, CAPTA can instead promote and invest in preventative measures that provide direct support to families, such as housing, healthcare, education, and economic assistance that can better address the underlying causes of "neglect and abuse."

Proposed Changes to CAPTA

The power and reach of the family policing system must be reduced (and in the long-term, eliminated). For far too long, Black families have been disenfranchised,

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[17] If caseworkers subjectively determine that abuse or neglect has occurred, the allegation is automatically deemed substantiated, and the parents and other caregivers are listed on a state central registry for decades which adversely affects access to employment, housing, and other life-affirming institutions. *See* HUMAN RIGHTS WATCH, *"If I wasn't Poor, I wouldn't Be Unfit": The Family Separation Crisis in the US Child Welfare System*, https://www.hrw.org/report/2022/11/17/if-i-wasnt-poor-i-wouldnt-be-unfit/family-separation-crisis-us-child-welfare (last visited May 9, 2024).

[18] *Id.*

stigmatized, and targeted for destruction. Power must be shifted away from the family policing system and back to Black families. The following are proposed major changes to CAPTA I find necessary to moving us closer to true reproductive justice[19]:

1. **End mandatory reporting requirements**. Section 5106a(b)(2)(B)(i) of CAPTA requires states to create "provisions and procedures for an individual to report known and suspected instances of child abuse and neglect, including a state law for mandatory reporting by individuals required to report such instances."[20] This broad reporting requirement is ineffective. There is no evidence that indicates policies that expand reporting more accurately detect children at risk of harm; states in which all adults are legally required to report are no better at detecting child abuse than those in which the mandate is narrower.[21] Most reports actually deal with manifestations of poverty and substance use, with very few cases actually about substantiated physical and sexual abuse.[22] Families can be reported for being late for daycare pickup, being in a car unattended, or for missing medical appointments because a family does not have access to reliable

[19] Reproductive justice includes the right to be able to raise your child in a safe, healthy, and sustained environment. It recognizes that Black freedom and self-determination are crucial components of ending reproductive oppression and seeks to create a world where Black children and families are safe, and where material conditions are radically transformed in ways that support Black life. *See* Maya Pendleton, *Reproductive Justice Demands the End of Family Policing*, UPEND (Mar. 3, 2022), https://upendmovement.org/2022/03/03/reproductive-justice-demands-the-end-of-family-policing/.

[20] 42 U.S.C.A. § 5106a.

[21] Mical Raz, *Why Mandatory Reporting Doesn't Keep Children Safe*, TIME (Jan. 31, 2024), https://time.com/6589854/mandatory-reporting-child-abuse-prevention/.

[22] In 2019, of the 3 million children whose cases were investigated, more than 80% were found not to have been abused or neglected. *See* REPEAL CAPTA WORKGROUP, *2024 CAPTA Appropriations*, https://www.childrensrights.org/wp-content/uploads/2024/01/2023.21.10-FINAL-RepealCAPTA-Reappropriations-Letter-Fall-202394.pdf (last visited May 11, 2024).

transportation.[23] Families derive no benefits from reporting; instead mandatory reporting causes traumatic and unnecessary intrusion into private life and children are placed in unsafe conditions away from their families.[24] Parents are discouraged from seeking care or partaking in valuable support for fear of punishment or separation because of mandatory reporting. Over $100 million dollars each year devoted to states for mandatory reporting purposes is used to support and maintain the family policing system. The mandatory reporting requirement should no longer exist and the funds should be redirected to life-affirming family care and support services instead. This will shift federal and state institutions toward a commitment to family and community strengthening approaches rather than surveillance and control.

2. **Ban the use of child abuse and neglect registries.** Because of the inconsistencies across states for how neglect is defined, there are also discrepancies about how registry additions are made, how long an individual remains on a registry, and whether there are pathways for exiting the registry. Millions of people have been placed on a child abuse and neglect registry on the sole judgement of a caseworker from a child protective services agency, without a judge or similar impartial authority weighing evidence about the claims of

[23] Raz, *supra* note 21.

[24] Investigations have been described as "criminal-like," with children being strip-searched and CPS entering homes without warrants, often accompanied by armed police officers. *See* REPEAL CAPTA WORKGROUP, *supra* note 22.

neglect or abuse.[25] There is no evidence to support the existence of these registries - they do not fulfill their intended purpose of protecting children from future harm because the lists contain a large number of people who don't deserve to be on them.[26] Registries work to punish circumstances of poverty and it is unsurprising that the most marginalized communities are also the most harmed by registries.[27] [28] This ineffective tool should therefore be retired and funds should go directly to support families in poverty.

3. **End required substance abuse reporting.** Section 5106a(b)(2)(B)(ii)of CAPTA mandates states to submit plans that outline policies and procedures "to address the needs of infants born with and identified as being affected by substance abuse or withdrawal symptoms . . . including a requirement that health care providers involved in the delivery or care of such infants notify the child protective services system of the occurrence of such condition in such infants."[29] This requirement essentially requires healthcare professionals to set aside their own professional judgment about what is best for families and instead hand

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[25] Scott Pham, *The Blacklist*, BUZZFEED NEWS (Apr. 27, 2022), https://www.buzzfeednews.com/article/scottpham/child-abuse-and-neglect-registries-punish-parents-of-color.

[26] *Id.*

[27] *Id.* Black single mothers are 3.3 times more frequently identified as culpable of neglect than two white parents. Indigenous mothers are labeled 1.7 times more frequently, and Latine mothers are 1.6 times more frequently identified as such. Being identified as culpable of neglect can and does result in the removal of a child from the household or implementing an intrusive safety-plan to monitor parents within their homes.

[28] It follows that if you take mothers who live in poverty and block their access to the employment field, then you are "doubling down on the racism they experienced everywhere else in their lives." It is a system that perpetuates itself. *See* Pham, *supra* note 25.

[29] 42 U.S.C.A. § 5106a.

power over to the family policing system. As a result of this mandate, "[r]eporting to CPS for child maltreatment is now the nation's primary policy response to substance use during pregnancy – above and beyond non-punitive policies, such as mandating treatment providers to prioritize admission for pregnant and parenting people," and such newborns are often separated from their mothers immediately after birth.[30] This provision in CAPTA essentially serves to separate newborns from their mothers. Many mothers flagged for having an infant with withdrawal symptoms, however, are not using illicit opioids or abusing prescription medications, but are in recovery and are being treated with either methadone or suboxone that cause the infants' symptoms.[31] Moreover, there is no evidence that shows a causal link between drug use and child mistreatment or inferior parenting, and instead studies point to factors such as socioeconomic insecurity and lack of access to healthcare and housing that account for much of the observed maltreatment.[32] It has been shown through several studies that the most effective treatment for newborns exposed to substances is keeping mothers and newborns together, encouraging mother-infant bonding through skin-to-skin contact, breastfeeding, and other infant

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[30] MOVEMENT FOR FAMILY POWER, *"Whatever They Do, I'm Her Comfort, I'm Her Protector.": How the Foster System Has Become Ground Zero for the U.S. Drug War*, https://static1.squarespace.com/static/5be5ed0fd274cb7c8a5d0cba/t/5eead939ca509d4e36a89277/1592449422870/MFP+Drug+War+Foster+System+Report.pdf (last visited May 11, 2024).

[31] John Kelly, *A Cheaper Preservation Approach to Keep Babies Exposed to Opioids with Mom*, THE IMPRINT (June 26, 2018), https://imprintnews.org/child-welfare-2/cheaper-preservation-approach-keep-babies-exposed-opioids-mom/31417.

[32] MOVEMENT FOR FAMILY POWER, *supra* note 30.

soothing techniques.[33] This "Eat, Sleep, Console" method has been shown to be effective in shortening hospital stay times, reducing the need for more medication among opioid-exposed infants, and is more cost-effective.[34] Ending required substance abuse reporting will not only save money, but also promote community autonomy and reduce the unnecessarily intrusive reach of the family policing system.

4. **Fund family care and support.** CAPTA has immense power in its funding structure. It is important to shift focus (and power) away from family policing and toward family care and support. Ultimately, to accomplish its intended goal of keeping children safe and strengthening families, CAPTA must promote child, family, and community autonomy, provide access to direct support, and advance family healing from the effects of past harmful policies. One key way this can be done is by eliminating funding eligibility and process criteria that usually hinders small, grassroots organizations so that more money can go to these important groups that provide direct support to families. Instead, states can be incentivized to create a community-led grant funding process to allocate funds to organizations that have community trust and that do not have ties to the family policing system.[35] Direct funding should also be provided to parents who

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[33] NATIONAL INSTITUTES OF HEALTH, *"Eat, Sleep, Console" reduces hospital stay and need for medication among opioid-exposed infants*, https://www.nih.gov/news-events/news-releases/eat-sleep-console-reduces-hospital-stay-need-medication-among-opioid-exposed-infants (last visited May 11, 2024).

[34] *Id.*

[35] REPEAL CAPTA WORKGROUP, *supra* note 22.

participate in leadership programs that train families on how to influence police and address structural issues within the family policing system. Funds should also be allocated for "Mandated Supporting" training for professionals; this training curriculum should be community-approved, family-centered, and designed to help educate professionals around equitable, harm reductionist and anti-racist approaches to ensuring child welfare.[36]

Finally, there should be an expansion of funding to support community mutual aid efforts and basic needs for families, such as access to housing, quality food, transportation, child care, and health care.

Reimagining CAPTA

For the scope of this legislative rewrite, I am targeting Section 5106 through Section 5106a(b) because these are most related to the aforementioned proposed changes. The indigenous rhetorical strategy of survivance will be used to expose the function of white supremacy, capitalism, and patriarchy in asserting social hierarchies. Instead of centering the issue to be solved around how to regulate, surveil, and control families, the needs and experiences of children and families of the most marginalized communities will be centered. The needs of the people most affected by the family policing system, specifically Black mothers, will be the guiding light and

[36] JUST MAKING A CHANGE FOR FAMILIES, *Mandated Supporting*, https://jmacforfamilies.org/mandated-supporting (last visited May 11, 2024).

scaffold on which the legislation will be built upon. The following is a proposed rewrite of the stated sections of CAPTA, with my personal edits shown in red.

CHAPTER 67 – CHILD ABUSE PREVENTION AND TREATMENT AND ADOPTION REFORM

SUBCHAPTER I – GENERAL PROGRAM

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§ 5106. Grants to States, Indian tribes, or tribal organizations, and public or private agencies and organizations.

(a) Grants for programs and projects

The Secretary may make grants to, and enter into contracts with, entities that are States, Indian tribes or tribal organizations, or public agencies or private agencies or organizations (or combinations of such entities) for programs and projects for the following purposes:

(1) Training programs

The Secretary may award grants to public or private organizations under this subsection —

(A) for the training of professional and paraprofessional personnel in the fields of health care, medicine, law enforcement, judiciary, social work and child protection, education, child care, and other relevant fields, or individuals such as court appointed special advocates (CASAs) and guardian ad litem, who are engaged in, or intend to work in, the field of

prevention, identification, and treatment of child abuse and neglect, including the links between domestic violence and child abuse and neglect. Training curricula must incorporate anti-racism and social-emotional strategies for professionals, including: recognizing and challenging implicit biases, what culturally relevant supports look like, how to assess the strengths, priorities, and needs of families to create individualized care and protection plans, and other trauma-informed, family-first practices.

(B) to improve the recruitment, selection, and training of volunteers serving in public and private children, youth, and family service organizations in order to prevent child abuse and neglect;

(C) for the establishment of resource centers for the purpose of providing information and training to professionals working in the field of child abuse and neglect;

D) for training to enhance linkages among ~~child protective service agencies and health care agencies,~~ entities providing physical and mental health services, community resources, and developmental disability agencies, to improve screening, forensic diagnosis, and health and developmental evaluations ~~, and for partnerships between child protective service agencies and health care agencies that support the coordinated use of existing Federal, State, local, and private funding to meet the health evaluation needs of children who have been subjects of~~

~~substantiated cases of child abuse or neglect;~~ to create an integrated system of care that centers on family experience and incorporates a family's strengths;

(E) for the training of personnel in best practices to meet the unique needs of children with disabilities, including promoting ~~interagency~~ collaboration among community-approved organizations;

(F) for the training of personnel in best practices to promote collaboration with the families from the initial time of contact during the investigation through ~~treatment~~ support;

(G) for the training of personnel regarding the legal duties of such personnel and their responsibilities to protect the legal rights of children and families;

(H) for the training of personnel in childhood development including the unique needs of children under age 3;

(I) for improving the training of supervisory and nonsupervisory child welfare workers in anti-racist, trauma-informed, culturally responsive strategies of support for families;

~~(J) for enabling State child welfare agencies to coordinate the provision of services with State and local health care agencies, alcohol and drug abuse prevention and treatment agencies, mental health agencies, other public and private welfare agencies, and agencies that provide early~~

~~intervention services to promote child safety, permanence, and family~~ ~~stability;~~

(K) for cross training for child protective service workers in research-based strategies for recognizing situations of substance abuse, domestic violence, and neglect and how to respond with the appropriate family supports in response to each;

(L) for developing, implementing, or operating information and education programs or training programs designed to improve the provision of services to infants or toddlers with disabilities with life-threatening conditions for—

(i) professionals and paraprofessional personnel concerned with the welfare of infants or toddlers with disabilities with life-threatening conditions, including personnel employed in child protective services programs and health care facilities; and

(ii) the parents of such infants; and

(M) for the training of personnel in best practices relating to the provision of differential response.

(2) Triage procedures

The Secretary may award grants under this subsection to public and private agencies that demonstrate innovation in responding to reports of child abuse and neglect, including programs of collaborative partnerships between t~~he State child protective services agency~~,

community social service agencies and family support programs, ~~law enforcement agencies~~, developmental disability agencies, substance abuse treatment entities, health care entities, domestic violence prevention entities, mental health service entities, schools, churches and synagogues, and other community agencies, to allow for the establishment of a triage system that —

(A) accepts, screens, and assesses reports received to determine which such reports require an intensive intervention of support and which require voluntary referral to another community-approved agency, program, or project;

(B) provides, either directly or through referral, a variety of community-linked services to assist families in life-affirming services to aid in the prevention of child abuse and neglect; and

(C) provides further investigation and intensive intervention and support when the child's safety is in jeopardy.

(3) Mutual support programs

The Secretary may award grants to private organizations to establish or maintain a national network of mutual support, leadership, and self-help programs as a means of strengthening families in partnership with their communities.

(4) Kinship care

The Secretary may award grants to public and private entities to assist such entities in developing or implementing procedures using adult relatives as the preferred placement for children removed from their home (after all other measures of support are exhausted to keep parent or guardian and their child or children together), where such relatives are determined to be capable of providing a safe nurturing environment for the child and where such relatives comply with the State child protection standards.

(5) Linkages among child protective service agencies and public health, mental health, substance abuse, developmental disabilities, and domestic violence service agencies

The Secretary may award grants to entities that provide linkages among ~~State or local child protective service agencies and~~ community-approved organizations/ entities and public health, mental health, substance abuse, developmental disabilities, and domestic violence service agencies, and entities that carry out community-based programs, for the purpose of establishing linkages that are designed to ensure that a greater number of substantiated victims of child maltreatment have their physical health, mental health, and developmental needs appropriately diagnosed and treated, in accordance with all applicable Federal and State privacy laws.

(b) Discretionary grants

In addition to grants or contracts made under subsection (a), grants or contracts under this section may be used for the following:

(1) Respite and crisis nursery programs provided by community-based and community-approved organizations under the direction and supervision of hospitals.

(2) Respite and crisis nursery programs provided by community-based and community-approved organizations.

(3) Programs based within children's hospitals or other pediatric and adolescent care facilities, that provide model approaches for improving medical diagnosis of child abuse and neglect and for health evaluations of children for whom a report of maltreatment has been substantiated. (4)(A) Providing hospital-based information and referral services to—

(i) parents of children with disabilities; and

(ii) children who have been victims of child abuse or neglect and their parents.

(B) Except as provided in subparagraph (C)(iii), services provided under grant received under this paragraph shall be provided at the hospital involved—

(i) upon the birth or admission of a child with disabilities; and

(ii) upon the treatment of a child for child abuse and neglect.

(C) Services, as determined as appropriate by the grantee, provided under a grant received under this paragraph shall be hospital-based and shall consist of—

(i) the provision of notice to parents that information relating to community services is available;

(ii) the provision of appropriate information to parents of a child with disabilities regarding resources in the community, particularly parent training resources, that will assist such parents in caring for their child;

(iii) the provision of appropriate information to parents of a child who has been a victim of child abuse or neglect regarding resources in the community, particularly parent training resources, that will assist such parents in caring for their child and reduce the possibility of child abuse and neglect;

(iv) the provision of appropriate follow-up services to parents of a child described in subparagraph (B) after the child has left the hospital; and

(v) where necessary, assistance in coordination of community services available to parents of children described in subparagraph (B).

The grantee shall assure that parental involvement described in this subparagraph is voluntary.

(D) For purposes of this paragraph, a qualified grantee is an acute care hospital that—

(i) is in a combination with—

(I) a health-care provider organization;

(II) a child welfare organization;

(III) a disability organization; and

(IV) a State child protection agency;

(ii) submits an application for a grant under this paragraph that is approved by the Secretary;

(iii) maintains an office in the hospital involved for purposes of providing services under such grant;

(iv) provides assurances to the Secretary that in the conduct of the project the confidentiality of medical, social, and personal information concerning any person described in subparagraph (A) or (B) shall be maintained, and shall be disclosed only to qualified persons providing required services described in subparagraph (C) for purposes relating to conduct of the project; and

(v) assumes legal responsibility for carrying out the terms and conditions of the grant.

(E) In awarding grants under this paragraph, the Secretary shall—

(i) give priority under this section for two grants under this paragraph, provided that one grant shall be made to provide services in an urban setting and one grant shall be made to provide services in rural setting; and

(ii) encourage qualified grantees to combine the amounts received under the grant with other funds available to such grantees.

(5) Such other innovative programs and projects that show promise of preventing and treating cases of child abuse and neglect as the ~~Secretary~~ community members may approve.

(c) Evaluation

In making grants for projects under this section, the Secretary shall require all such projects to be evaluated for their effectiveness and finally approved by community members. Funding for such evaluations shall be provided either as a stated percentage of a demonstration grant or as a separate grant or contract entered into by the Secretary for the purpose of evaluating a particular demonstration project or group of projects. In the case of an evaluation performed by the recipient of a grant, the Secretary shall make available technical assistance for the evaluation, where needed, including the use of a rigorous application of scientific evaluation techniques.

§ 5106a. Grants to States for child abuse or neglect prevention and treatment programs

(a) Development and operation grants

The Secretary shall make grants to the States, from allotments made under subsection (f) for each State that applies for a grant under this section, for purposes of

assisting the States in improving ~~the child protective services~~ family support systems of each such State in—

(1) the intake, assessment, screening, and investigation of reports of child abuse or neglect;

(2)(A) creating and improving the use of multidisciplinary teams and interagency, intra-agency, interstate, and intrastate protocols to enhance investigations; and

(B) improving legal preparation and representation, including—

(i) procedures for appealing and responding to appeals of substantiated reports of child abuse or neglect; and

(ii) provisions for the appointment of an individual appointed to represent a child in judicial proceedings;

(3) case management, including ongoing case monitoring using the least intrusive measures possible, and delivery of services and ~~treatment~~ support provided to children and their families;

(4) enhancing the general child protective system by developing, improving, and implementing risk and safety assessment tools and protocols, including the use of differential responses centered on supports for individual family needs;

(5) developing and updating systems of technology that support the program and track reports of child abuse and neglect from intake through final disposition and allow interstate and intrastate information exchange;

(6) developing, strengthening, and facilitating training including—

(A) training regarding research-based strategies, including the use of differential response, to promote collaboration with the families;

(B) training regarding the legal duties of such individuals;

(C) personal safety training for case workers; and

(D) training in early childhood, child, and adolescent development; These trainings should comply with the curricula requirements stated in subsection 5106(a)(1).

7) improving the skills, qualifications, and availability of individuals providing services to children and families through community-approved and trusted organizations ~~and the supervisors of such individuals, through the child protection system, including improvements in the recruitment and retention of caseworkers;~~

(8) developing, facilitating the use of, and implementing research-based strategies and training protocols for individuals mandated to ~~report child abuse and neglect~~ support families;

(9) developing, implementing, or operating programs to assist in obtaining or coordinating necessary services for families of disabled infants with life-threatening conditions, including—

(A) existing social and health services;

(B) financial assistance;

(C) services necessary to facilitate adoptive placement of any such infants who have been relinquished for adoption; and

(D) the use of differential response in preventing child abuse and neglect;

(10) developing and delivering information to improve public education relating to the ~~role and responsibilities of~~ harms the child protection system have caused and its historical ties to chattel slavery, ~~and the nature and basis for reporting suspected incidents of child abuse and neglect, including the use of differential response~~ and methods of creating community pathways of family care and support;

(11) developing and enhancing the capacity of community-based programs to integrate shared leadership strategies between parents and professionals to prevent and treat child abuse and neglect at the neighborhood level;

(12) ~~supporting and enhancing interagency collaboration between the child protection system and the juvenile justice system for improved delivery of services and treatment, including methods for continuity of treatment plan and services as children transition between system~~s;

(13) supporting and enhancing interagency collaboration among public health agencies~~, agencies in the child protective service system,~~ and agencies carrying out private community-based programs—

(A) to provide child abuse and neglect prevention and treatment services (including linkages with education systems), and the use of differential response; and

(B) to address the health needs, including mental health needs, of children identified as victims of child abuse or neglect; including

supporting prompt, comprehensive health and developmental evaluations for children who are the subject of substantiated child maltreatment reports; or

(14) developing and implementing procedures for collaboration among ~~child protective services~~ community-approved organizations and domestic violence services, and other agencies in—

(A) investigations, interventions, supports, and the delivery of services and treatment provided to children and families, including the use of differential response~~, where appropriate~~; and

(B) the provision of services that assist children exposed to domestic violence, and that also support the caregiving role of their nonabusing parents.

(b) Eligibility requirements

(1) **State plan**

(A) In general

To be eligible to receive a grant under this section, a State shall submit to the Secretary a State plan that specifies the areas of the child protective services system described in subsection (a) that the State will address with amounts received under the grant. This State plan must be approved by community members (local representative community boards may be formed for such purposes).

(B) Duration of plan

Each State plan shall—

(i) remain in effect for the duration of the State's participation under this section; and

(ii) be periodically reviewed and revised as necessary by the State to reflect changes in the State's strategies and programs under this section. Final approval must be made by community members.

(C) Additional information

The State shall provide notice to the Secretary and community members—

(i) of any substantive changes, including any change to State law or regulations, relating to the prevention of child abuse and neglect that may affect the eligibility of the State under this section; and

(ii) of any significant changes in how funds provided under this section are used to support activities described in this section, which may differ from the activities described in the current State application.

(2) **Contents**

A State plan submitted under paragraph (1) shall contain a description of

the activities that the State will carry out using amounts received under the grant to achieve the objectives of this subchapter, including—

(A) an assurance that the State plan, to the maximum extent practicable, is coordinated with the State plan under part B of title IV of the Social Security Act [42 U.S.C. 620 et seq.] relating to child welfare services and family preservation and family support services;

(B) an assurance in the form of a certification by the Governor of the State that the State has in effect and is enforcing a State law, or has in effect and is operating a statewide program, relating to child abuse and neglect that includes—

(i) provisions or procedures for an individual to report known and suspected instances of child abuse and neglect, ~~including a State law for mandatory reporting by individuals required to report such instances~~;

(ii) policies and procedures ~~(including appropriate referrals to child protection service systems and for other appropriate services)~~ to address the needs of infants born with and identified as being affected by substance abuse or withdrawal symptoms resulting

from prenatal drug exposure, or a Fetal Alcohol Spectrum Disorder, including a requirement that health care providers involved in the delivery or care of such infants use the "Eat, Sleep, Control" method (or similar evidence-based method) to keep mothers with their newborns ~~notify the child protective services system of the occurrence of such condition in such infants, except that such notification shall not be construed to—~~

(I) establish a narrow and specific definition under Federal law of what constitutes child abuse or neglect; or

(II) ~~require prosecution for any illegal action~~;

(iii) the development of a plan of ~~safe care~~ support for the infant born and identified as being affected by substance abuse or withdrawal symptoms, or a Fetal Alcohol Spectrum Disorder to ensure the safety and well-being of such infant following release from the care of health care providers, including through—

(I) addressing the health and substance use disorder treatment needs of the infant and affected family or caregiver; ~~and~~

(II) ~~the development and implementation by~~ ~~the State of monitoring systems regarding the implementation of such plans to determine~~ ~~whether and in what manner local entities are~~ ~~providing, in accordance with State~~ ~~requirements, referrals to and delivery of appropriate services for the infant and~~ ~~affected family or caregiver~~;

(iv) procedures for the immediate screening, risk and safety assessment, and prompt investigation of ~~such~~ substantiated reports;

(v) triage procedures, including the use of differential response, for the appropriate referral of a child not at risk of imminent harm to a community organization or voluntary preventive service;

(vi) procedures for immediate steps to be taken to ensure and protect the safety of a victim of child abuse or neglect and of any other child under the same care who may also be in danger of child abuse or neglect and ensuring their placement in a safe environment;

(vii) provisions for immunity from prosecution under State and local laws and regulations for individuals making good faith reports of suspected or known instances of child abuse or neglect;

(viii) methods to preserve the confidentiality of all records in order to protect the rights of the child and of the child's parents or guardians, including requirements ensuring that reports and records made and maintained pursuant to the purposes of this subchapter and subchapter III shall only be made available to—

(I) individuals who are the subject of the report;

(II) ~~Federal, State, or local government entities, or any agent of such entities, as described in clause (ix)~~;

(III) child abuse citizen review panels;

(IV) child fatality review panels;

(V) ~~a grand jury or court, upon a finding that information in the record is necessary for the~~

~~determination of an issue before the court or~~ ~~grand jury; and~~

(VI) ~~other entities or classes of individuals statutorily authorized by the State to receive~~ ~~such information pursuant to a legitimate~~ ~~State purpose;~~

(ix) ~~provisions to require a State to disclose confidential information to any Federal, State,~~ ~~or local government entity, or any agent of such entity, that has a need for such~~ ~~information in order to carry out its~~ ~~responsibilities under law to protect children~~ ~~from child abuse and neglect;~~

(x) ~~provisions which allow for public~~ ~~disclosure of the findings or information about~~ ~~the case of child abuse or neglect which has resulted in a child fatality or near fatality~~; (xi) ~~the cooperation of State law enforcement~~ ~~officials, court of competent jurisdiction, and~~ ~~appropriate State agencies providing human services in the investigation, assessment,~~

~~prosecution, and treatment of child abuse and neglect~~;

(xii) provisions requiring, and procedures in place that facilitate the prompt expungement of any records that are accessible to the general public or are used for purposes of employment or other background checks in cases determined to be unsubstantiated or false; ~~except that nothing in this section shall prevent State child protective services agencies from keeping information on unsubstantiated reports in their casework files to assist in future risk and safety assessment~~;

(xiii) provisions and procedures requiring that in every case involving a victim of child abuse or neglect which results in a judicial proceeding, a guardian ad litem, who has received training appropriate to the role, including training in early childhood, child, and adolescent development, and who may be an attorney or a court appointed special advocate who has received training

appropriate to that role (or both), shall be appointed to represent the child in such proceedings—

(I) to obtain first-hand, a clear understanding of the situation and needs of the child; and

(II) to make recommendations to the court concerning the best interests of the child;

(xiv) the establishment of citizen review panels in accordance with subsection (c);

(xv) ~~provisions, procedures, and mechanisms—~~

~~(I) for the expedited termination of parental rights in the case of any infant determined to be abandoned under State law; and~~

~~(II) by which individuals who disagree with an official finding of child abuse or neglect can appeal such finding~~;

(xvi) provisions, procedures, and mechanisms that assure that the State does not require

reunification of a surviving child with a parent who has been found by a court of competent jurisdiction —

(I) to have committed murder (which would have been an offense under section 1111(a) of title 18 if the offense had occurred in the special maritime or territorial jurisdiction of the United States) of another child of such parent;

(II) to have committed voluntary manslaughter (which would have been an offense under section 1112(a) of title 18 if the offense had occurred in the special maritime or territorial jurisdiction of the United States) of another child of such parent;

(III) to have aided or abetted, attempted, conspired, or solicited to commit such murder or voluntary manslaughter;

(IV) to have committed a felony assault that results in the serious bodily injury

to the surviving child or another child of such parent;

(V) to have committed sexual abuse against the surviving child or another child of such parent; or

(VI) to be required to register with a sex offender registry under section 20913(a) of title 34;

Nonetheless, States shall not completely bar reunification for such families, and it should be encouraged where the family is able to obtain necessary support to maintain a healthy household.

(xvii) ~~an assurance that, upon the implementation by the State of the provisions, procedures, and mechanisms under clause (xvi), conviction of any one of the felonies listed in clause (xvi) constitute grounds under State law for the termination of parental rights of the convicted parent as to the surviving children (although case-by-case determinations of whether or not to seek termination of parental rights shall be within the sole discretion of the State)~~;

(xviii) provisions and procedures to require that a representative of the child protective services agency shall, at the initial time of contact with the individual subject to a child abuse or neglect investigation, advise the individual of the complaints or allegations made against the individual, in a manner that is consistent with laws protecting the rights of the informant;

xix) provisions addressing the training of representatives of the child protective services system regarding the legal duties of the representatives, which may consist of various methods of informing such representatives of such duties, in order to protect the legal rights and safety of children and families from the initial time of contact during investigation through treatment;

(xx) provisions and procedures for improving the training, retention, and supervision of caseworkers;

(xxi) provisions and procedures for referral of a child under the age of 3 who is involved in a substantiated case of child abuse or neglect to early intervention

services funded under part C of the Individuals with Disabilities Education Act (20 U.S.C. 1431 et seq.);

(xxii) provisions and procedures for requiring criminal background record checks that meet the requirements of section 471(a)(20) of the Social Security Act (42 U.S.C. 671(a)(20)) for prospective foster and adoptive parents and other adult relatives and non-relatives residing in the household;

(xxiii) provisions for systems of technology that support the State child protective service system described in subsection (a) and track reports of child abuse and neglect from intake through final disposition;

(xxiv) provisions and procedures requiring identification and assessment of all reports involving children known or suspected to be victims of sex trafficking (as defined in section 7102(10) of title 22); and

(xxv) provisions and procedures for training child protective services workers about identifying, assessing, and providing comprehensive services for children who are sex trafficking victims, including

efforts to coordinate with State law enforcement, juvenile justice, and social service agencies such as runaway and homeless youth shelters to serve this population;

(C) an assurance that the State has in place procedures for responding to the reporting of medical neglect (including instances of withholding of medically indicated treatment from infants with disabilities who have life-threatening conditions), procedures or programs, or both (within the State child protective services system), to provide for—

(i) coordination and consultation with individuals designated by and within appropriate health-care facilities;

(ii) prompt notification by individuals designated by and within appropriate health-care facilities of cases of suspected medical neglect (including instances of withholding of medically indicated treatment from infants with disabilities who have life-threatening conditions); and

(iii) authority, under State law, for the State child protective services system to pursue any legal remedies, including the authority to initiate legal proceedings in a court of competent jurisdiction, as may be necessary to prevent the

withholding of medically indicated treatment from infants with disabilities who have life-threatening conditions;

(D) a description of—

(i) the services to be provided under the grant to individuals, families, or communities, either directly or through referrals aimed at preventing the occurrence of child abuse and neglect;

(ii) the training to be provided under the grant to support direct line and supervisory personnel in report taking, screening, assessment, decision making, and referral for investigating suspected instances of child abuse and neglect;

(iii) the training to be provided under the grant for individuals who are required to report suspected cases of child abuse and neglect compliant with the training requirements outlined in subsection § 5106(a);

(iv) policies and procedures encouraging the appropriate involvement of families in decisionmaking pertaining to children who experienced child abuse or neglect;

(v) policies and procedures that promote and enhance appropriate collaboration among child protective service agencies, domestic violence service agencies, substance abuse treatment agencies, and other agencies in investigations, interventions, and the delivery of services and treatment provided to children and

families affected by child abuse or neglect, including children exposed to domestic violence, where appropriate; and

(vi) policies and procedures regarding the use of differential response, as applicable;

(E) an assurance or certification that the programs or projects relating to child abuse and neglect carried out under part B of title IV of the Social Security Act [42 U.S.C. 620 et seq.] comply with the requirements set forth in paragraph (1) and this paragraph;

(F) an assurance or certification that programs and training conducted under this subchapter address the unique needs of unaccompanied homeless youth, including access to enrollment and support services and that such youth are eligible for under parts B and E of title IV of the Social Security Act [42 U.S.C. 620 et seq., 670 et seq.] and meet the requirements of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11301 et seq.); and

(G) an assurance that the State, in developing the State plan described in paragraph (1), has collaborated with community-based prevention agencies and with families affected by child abuse or neglect.

Nothing in subparagraph (B) shall be construed to limit the State's flexibility to determine State policies relating to public access to court proceedings to determine child abuse and neglect, except that such

policies shall, at a minimum, ensure the safety and well-being of the child, parents, and families.

(3) **Limitation**

With regard to clauses (vi) and (vii) of paragraph (2)(B), nothing in this section shall be construed as restricting the ability of a State to refuse to disclose identifying information concerning the individual initiating a report or complaint alleging suspected instances of child abuse or neglect, except that the State may not refuse such a disclosure where a court orders such disclosure after such court has reviewed, in camera, the record of the State related to the report or complaint and has found it has reason to believe that the reporter knowingly made a false report.

(4) **Definitions**

For purposes of this subsection—

(A) the term "near fatality" means an act that, as certified by a physician, places the child in serious or critical condition; and

(B) the term "serious bodily injury" means bodily injury which involves substantial risk of death, extreme physical pain, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ, or mental faculty.