

Drug Policy Alliance

Criminal Justice Issues and Prisoners' Rights

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The child welfare and foster system holds perhaps the greatest power a state can exercise over its people: the power to forcibly take children away from parents and permanently sever parent- child relationships.

However, the foster system has been subject to surprisingly little scrutiny of its wide latitude to surveil and control families. This is made all the more remarkable by the fact that the foster system almost exclusively monitors the parenting of society's most marginalized people.

Allegations of caretaker substance use are present in an overwhelming majority of cases. Data vary widely, but some studies estimate that over **80% of all foster system cases involve caretaker drug use allegations** at some point in the life of the case.

This report is an attempt to contribute to the small but growing body of literature that questions the foster system's intervention into the lives of parents who use drugs, particularly low income white and Black, American Indian and Latinx parents.

[Read the full report \(PDF\)](#)

Despite the similar rates of drug use amongst white and non white drug users, and between drug users in different socioeconomic classes, much of the hysteria in the war on drugs revolves around the drug use of parents living in poverty, and particularly low income Black and Brown mothers.

Not one study has been able to conclusively establish a causal link between drug use and child maltreatment. In contrast, several studies have documented the harm of foster care. There is compelling evidence that the policy and practice that has resulted is more toxic to children, parents and families than the alleged effects of drug use on pregnancy and parenting.

The foster system does not have a demonstrably reliable way of identifying risk of harm emanating from drug use. CPS agencies and family courts commonly conflate evidence of drug use such as a positive drug test with risk of harm. This is despite widespread agreement among leading medical and foster system authorities that a positive drug test cannot predict whether a child has been harmed or is at risk of harm by the parent all it can attest to is the existence of a drug metabolite in the body.

"A drug test is not a test for addiction and certainly is not a parenting test.

Medically prescribed and supervised medication for opioid use disorder is widely recognized as the standard of care for opioid use disorder, especially for pregnant people. Yet it is condemned by many child protective agencies and family court judges. They are acting in contravention of medical authority and demanding that parents cease recommended treatment to regain custody of their children.

The foster system's primary response to determinations of child maltreatment is to remove the child/ren from the parents' care and place them into the foster system. The foster system allocates almost three times as much money to removing children from their families' care and placing them in the foster system than on putting services in place to keep families together. Separating a child from the care of their parents, is one of the most violent actions a government can take against its people, with profound implications for both the parent and child.

Drug treatment poses a particular challenge to the foster system. Studies document that up to 23% of parents who are identified by the foster system as having substance use disorders are not offered treatment even after their entry into the foster system. And despite overwhelming evidence of the difficulty in accessing quality treatment, the foster system equates non-compliance with treatment with unfitness as a parent.

Ms. L was approached and questioned by Child Protective Services (CPS) a few days after she called the police for help with a domestic disturbance incident. When CPS asked her if she uses drugs, she truthfully responded that she smokes marijuana from time to time.

This admission and subsequent drug tests led to a child neglect proceeding against her in which the state failed to present any evidence that Ms. L neglected her child. Yet, the court adjudicated her neglectful, repeatedly referencing her marijuana use in making this decision, and implemented a family service plan, a combination of ongoing state surveillance and service provision.

Ms. L's family service plan included parenting and anger management classes, a drug treatment program, drug screenings, unannounced visits from CPS, and family court conferences and hearings. When Ms. L buckled under the pressure of complying with all these demands and maintaining her job, her children were taken from her and placed in foster care.

The state then added to her family service plan individual and family counseling services and supervised visits with her children. Ms. L eventually quit her job in order to comply with the family service plan.

In spite of her enormous efforts at compliance, Ms. L is facing termination of her parental rights. Her children have rotated through different foster care placements, and the emotional stress of separation from their mother has taken an enormous toll on them. The children's CPS caseworker reported that the children are prone to angry outbursts at school, lack interest learning, and show no concern for their own wellbeing.

Ms. L's story is by no means atypical.

The report takes a closer look at how the Administration for Children's Services (ACS), the child protective services agency for New York City, addresses allegations of parental drug use in the Bronx.

The overwhelming majority of parents targeted by this system are living in poverty. Black, Latinx, and mothers also are disproportionately targeted. Allegations of parental drug use are a major feeder of parents into the foster system and children into foster care.

[Read the full report for a closer look at the Bronx](#) (PDF)

[Read the full report for more recommendations](#) (PDF)

Movement for Family Power works to end the Foster Systems policing and punishment of families and to create a world where the dignity and integrity of all families is valued and supported. Learn more at movementforfamilypower.org.

Movement for Family Power is a funded partner of the Drug Policy Alliance. We are proud to support their work in promoting health-centered services and innovative harm reduction practices. Learn more about [advocacy grants for partners here](#).

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