



Alone Without a Home: A Call to Transform Illinois' Family Regulation System

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For more than 35 years, the ACLU of Illinois has fought to protect the rights of families entangled with the so-called child welfare system. We have focused on “youth in care” because when youth¹ are taken into State custody, they frequently are placed in circumstances ripe for abuse. Yet, these youth frequently see their rights trampled without redress – all on the State’s watch – in a “foster care” system far more aptly named the “family regulation system.” Injustices like these led us to file the *BH v. Smith*² federal class action lawsuit on behalf of youth removed from their families and deprived of basic services and safe living conditions while in government custody. We remain committed to this litigation, and in recent years, we have broadened our policy advocacy work because Illinois’ foster youth interface with a bureaucratic, constitutionally offensive system that purports to *protect* them when it actually impinges on their freedoms, including their rights to maintain relationships with family members, be free from mistreatment by foster parents and case workers, live in the least restrictive family-like setting, receive services regardless of their sexual orientation or gender identity, and make age-appropriate decisions about their own bodies.

The number of youth at risk for system-imposed abuse continues to rise even though it could be avoided by providing families with services and supports while families remain intact. Illinois anticipates more than 23,000 youth will be in the care and custody of the Illinois Department of Children and

While Illinois’ overall population of youth under 18 has decreased, **the population of youth in care is projected to grow by more than 26% within a five year period.** These are youth separated from their families of origin as a result of neglect and abuse allegations.

Based on current foster youth population projections, the rate of abuse and neglect of youth in care continues to increase year over year.



Family Services (DCFS) this fiscal year – a remarkable 26 percent increase in five years’ time.³ This disturbing increase in the number of youth entering the Illinois system is out-of-step with national trends. According to the most recent annual data from the federal government comparing all 50 states, the District of Columbia, and Puerto Rico, the nation experienced the largest decrease in foster care caseloads since 2014, but Illinois was one of just three states to experience

While the nation experienced the largest decrease in foster youth since 2014, Illinois is:



1 of only 3 states to experience an increase of entry of youth in care



1 of only 7 states that saw foster care caseloads increase

Illinois spends an average of more than **\$51K per youth** – money spent for youth to remain separated from their families



an increase in youth entering foster care.⁴ Likewise, Illinois is one of only seven states that saw foster care caseloads increase, and the growth in Illinois exceeded even those seven states' expansion by thousands of youth. More and more families across the State face the risk of being forcibly separated from one another with youth entering a family regulation system plagued by insufficient service capacity, inadequate health care, and the longest lengths of stay in the nation. This unnecessary and unsustainable growth is placing increased demand on an already overburdened and under-performing system.

The explosion of Illinois' foster care caseloads is simply one in a long series of systemic indicators signaling that DCFS is not adequately carrying out its responsibilities, including acting as the legal parent for each of these youth.⁵ The signs exist throughout the system.

Once DCFS has taken a youth into their custody, DCFS has obligations to provide for the youth's well-being.⁶ Yet, after separating youth from their families in the name of "safety" and "protection," DCFS frequently fails to fulfil its obligations.⁷ Many of these youth still do not have their needs met or rights protected even though DCFS is now serving as their legal parent:

- *Right to be free of abuse and neglect.* The rate of abuse and neglect of youth in DCFS' care – youth DCFS has removed from families because of neglect and abuse only to be victimized again while in DCFS custody – has nearly tripled in a decade and it reached a new high with youth of color experiencing the largest increase.⁸
- *Right to personal relationships, family, and community.*
 - Youth in Illinois spend longer languishing without a permanent home than youth in any other family regulation system across the country.
 - Youth with significant needs are moved out of state each year because DCFS has not found a home for them in Illinois.

- *Right to be treated with dignity and not warehoused.* Each year, hundreds of youth remain in residential treatment centers instead of home environments because DCFS fails to identify and procure appropriate community-based services the youth and their caregivers need.
- *Right to bodily autonomy and movement.* Scores of youth remain locked into psychiatric hospitals, sometimes months after they should be released, because there are not adequate placements and services for them.

Scarce resources are going to systems that fail to protect – and even violate – youth’s rights:

- DCFS requested \$1.415B for the fiscal year 2023 budget to provide care for 23,453 youth in DCFS’ custody.⁹ That’s an average of more than \$51K per youth – money spent for youth to remain separated from their families – while DCFS fails to develop the community-based supports needed to strengthen families and address financial barriers that contribute to family instability.
- DCFS fails to leverage federal funds to subsidize the provision of legal counsel for youth in care so all youth have legal representation to zealously advocate on their behalf, a protection that is already guaranteed to youth in 36 other states and DC.¹⁰

Most youth face significant challenges in this system, but some Illinois youth fare worse:

- Black youth are over 25 times more likely to enter the family regulation system than their white peers in Illinois.¹¹ In 41 other states, Black youth are treated more comparably than in Illinois.¹²
- At every point in the system, including restrictive out-of-home care placement settings, Black youth are overrepresented.¹³
- LGBTQ youth are too often denied gender affirming care and placement because of gender identity.¹⁴

Constitutional rights of youth in the custody of the Illinois family regulation system:

- ✓ Right to bodily autonomy
- ✓ Right to family integrity
- ✓ Right to be protected from abuse and neglect while in DCFS custody
- ✓ Right to sufficient food, clothing, shelter, and medical and mental health care while in state care
- ✓ Right to grieve against government abuses and receive meaningful relief for violations of rights
- ✓ Right to privacy, free speech, and freedom of association
- ✓ Right not to be discriminated against based on race, ethnicity, religion, gender, gender identity or expression, sexual orientation, or disability

Black youth are over 2.5 times more likely to enter the family regulation system than their white peers in Illinois



DESHANEY V. WINNEBAGO CTY. DEPT. OF SOCIAL SERVS., 489 U.S. 189, 199 (1989)

“[W]hen 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 general well-being ... The affirmative duty to protect arises not from the State’s knowledge of the individual’s predicament or from its expressions of intent to help him, but from the limitation which it has imposed on his freedom to act on his own behalf ... it is the State’s affirmative act of restraining the individual’s freedom to act on his own behalf – through incarceration, institutionalization, or other similar restraint of personal liberty – which is the “deprivation of liberty” triggering the protections of the Due Process Clause.”

When DCFS pursues family separation, youth and their families deserve fairness in the removal process and individualized services that prioritize family reunification, including immediate and frequent family visitation. When a determination is made that removal is

A map of the United States where each state is colored either red or blue. Red states include California, Nevada, Idaho, Utah, Arizona, New Mexico, Texas, Oklahoma, Kansas, Nebraska, South Dakota, North Dakota, Minnesota, Iowa, Missouri, Arkansas, Louisiana, Mississippi, Alabama, Georgia, Florida, South Carolina, North Carolina, Virginia, West Virginia, Maryland, Delaware, Pennsylvania, New Jersey, Connecticut, Rhode Island, Massachusetts, Vermont, New Hampshire, Maine, Alaska, and Hawaii. Blue states include Washington, Oregon, Montana, Wyoming, Colorado, New Mexico, Arizona, California, Nevada, Idaho, Utah, Arizona, New Mexico, Texas, Oklahoma, Kansas, Nebraska, South Dakota, North Dakota, Minnesota, Iowa, Missouri, Arkansas, Louisiana, Mississippi, Alabama, Georgia, Florida, South Carolina, North Carolina, Virginia, West Virginia, Maryland, Delaware, Pennsylvania, New Jersey, Connecticut, Rhode Island, Massachusetts, Vermont, New Hampshire, and Maine.

In short, the goal is to transform DCFS into a system that partners with families to create an environment where youth and families can be safe and successful, rather than regulated by a system that surveils and punishes families in crisis. With careful consideration and cautious investment, this goal can be achieved limiting harm to youth and families across Illinois.

ACLU of Illinois – Alone Without a Home: A Call to Transform Illinois’ Family Regulation System

AVOID THE HARMS AND TRAUMA CAUSED BY DCFS INVOLVEMENT

PROTECT YOUTH'S RIGHTS TO FAMILY



Strengthen Youth and Families:

- ✓ Strengthen parents' capacity to care for youth at home by allowing them to utilize funds that have traditionally been earmarked to pay for foster care.
- ✓ Increase families' access to high-quality legal assistance to proactively address reasons families may be separated including housing and employment discrimination, lack of access to public benefits, access to stable, safe, and affordable housing, educational supports, intimate partner violence, and other family law issues. Free or low-cost legal assistance should be available to families in need.
- ✓ Amend Illinois' drug exposed infant statute to align with the protections provided by the Illinois Reproductive Health Act.
- ✓ Reduce collateral consequences of DCFS system-involvement:
 - Streamline and simplify the process parents can use to have their records cleared within a reasonable amount of time following their successful completion of DCFS intervention.
 - Limit disclosure of DCFS records for employer and professional licensing determinations.

Prevent Unjust Forced Family Separation:

- ✓ Require DCFS to demonstrate evidence of specific, meaningful actions DCFS has taken to avoid forcible family separation and why no service arrangement or other in-home interventions could sufficiently decrease DCFS' concerns in court proceedings.
- ✓ Require the Court to make findings regarding how the trauma of family separation may impact each youth's well-being as part of the Court's best interest analysis in removal hearings.
- ✓ Prevent any "end run" around the due process rights and protections families are entitled to receive during the removal process by establishing a state-funded right to legal counsel for families at the very first point of DCFS' investigation.
- ✓ Disentangle factors tied to poverty from the maltreatment definition of "neglect."
- ✓ Disaggregate systemwide data to root out bias and institute a blind removal protocol.

REDUCE THE HARMS AND TRAUMA YOUTH EXPERIENCE IN DCFS CARE

ENFORCE YOUTH'S CONSTITUTIONAL RIGHTS

Protect Youth in Care:

- ✓ Implement oversight and accountability measures to ensure high-quality care to youth:
 - Prohibit improper restraint of DCFS youth, including shackling and overreliance on or inappropriate use of chemical, physical and mechanical restraints.
 - Require dependency court oversight for the use of restraints and placement in residential treatment centers and crisis hospitals.
 - Enforce and strengthen mandates prohibiting discrimination against youth in care.
 - Amend the Illinois Foster Children's Bill of Rights to provide meaningful mechanisms for youth to enforce their rights.
- ✓ Increase and improve youth's access to legal counsel:
 - Establish a statutory right to client-directed, state funded legal representation for every youth in care at all phases of case proceedings.
 - Deliver support to the youth through a multi-disciplinary legal representation team that includes social workers, peer mentors, and system navigators.
- ✓ Increase and enhance family connections:
 - Require that DCFS provide evidence at all hearings demonstrating affirmative, active efforts to prevent the breakup of kin/family and that those efforts have and continue to prove unsuccessful.
 - Adopt more rigorous legal standards that require DCFS to engage in meaningful, active, ongoing, solution-oriented efforts to remove all barriers to frequent quality contact between youth and their family members regardless of the permanency goal.



ENDNOTES

- 1 As used in this document, “youth” is intended to cover references to children, minors, young adults, and young people. The word “youth” is used for brevity.
- 2 *B.H. v. Johnson*, No. 88-cv-5599 (N.D. Ill. 1988). The name of the Defendant changes with each new DCFS Director to reflect that name of the DCFS Director appointed at the time of a specific filing.
- 3 Ill. Dep’t. of Children and Family Servs., *Budget Proposal Overview FY 2023* at 5 (rev. Feb. 4, 2022) (hereinafter “*Budget Proposal*”), https://www2.illinois.gov/dcf/aboutus/newsandreports/Documents/FY23_Budget_Proposal_Overview.pdf.
- 4 U.S. Dep’t. of Health and Human Servs., Admin. on Children, Youth and Families, Children’s Bureau, *Adoption Foster Care Analysis Reporting System (AFCARS), Trends in Foster Care and Adoption: FY 2011-2020* (submissions as of Oct. 4, 2021), <https://www.acf.hhs.gov/cb/report/trends-foster-care-adoption>.
- 5 Ill. Off. of the Auditor Gen., *Performance Audit of the Department of Children and Family Services Child Safety and Well-Being* at i-iii (May 12, 2022) (hereinafter “*2022 DCFS Performance Audit*”), https://www.auditor.illinois.gov/Audit-Reports/Performance-Special-Multi/Performance-Audits/2022_Releases/22-DCFS-Child-Safety-Well-Being-Perf-Full.pdf.
- 6 See *DeShaney v. Winnebago Cnty. Dept. of Soc. Servs.*, 489 U.S. 189, 199 (1989) (“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 general well-being”).
- 7 2022 DCFS Performance Audit, *supra* note 5; see also Tamara Fuller et al., Conditions of Children in or at Risk of Foster Care in Illinois: FY2021 Monitoring Report of the B.H. Consent Decree, Children and Family Rsch. Ctr., Sch. of Soc. Work, Univ. Ill. Urbana-Champaign at 1-5, 1-9 through 1-11, 2-2 through 2-3, and 3-3 through 3-5 (2021) (hereinafter “Conditions of Children”), https://cfrc.illinois.edu/pubs/rp_20211021_FY2021BHReport.pdf.
- 8 Conditions of Children, *supra* note 7 at 1-10, 1-11.
- 9 Budget Proposal, *supra* note 3, at 5-6.
- 10 Nat’l. Ass’n. of Couns. for Children, *State Models of Children’s Legal Representation* at 1 (July 2022), <https://secureservercdn.net/50.62.198.124/zmc.c18.myftpupload.com/wp-content/uploads/2022/07/Model-of-Rep-Chart-2022.pdf>.
- 11 C. Puzzanchera et al., *Disproportionality Rates for Children of Color in Foster Care Dashboard (2010-2020)*, Nat’l. Council of Juv. and Family Ct. Judges (2022), http://ncj.org/AFCARS/Disproportionality_Dashboard.asp?selYear=2020&selRace=Black&selDisplay=3.
- 12 *Id.*
- 13 Tamara Fuller et al., *Racial Disproportionality in the Illinois Child Welfare System FY2021 Report*, Children and Family Rsch. Ctr., Sch. of Soc. Work, Univ. Ill. Urbana-Champaign at 3 (Oct. 2021), https://cfrc.illinois.edu/pubs/rp_20211021_FY2021DisproportionalityReport.pdf.
- 14 As a result of the inadequate treatment and care provided for LGBTQ youth in DCFS’ care, remedies are sought through the *B.H. v. Smith* class action litigation; see also Ill. Off. of the Auditor Gen., *Performance Audit of Department of Children and Family Services LGBTQ Youth in Care* at iii-viii (Feb. 2021), http://auditor.illinois.gov/Audit-Reports/Performance-Special-Multi/Performance-Audits/2021_Releases/21-DCFS-LGBTQ-Youth-in-Care-Perf-Full.pdf.

