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INTRODUCTION

It was a warm July afternoon when Natasha Felix let her three sons—ages five, nine, and eleven—play outside with their nine-year-old cousin in the neighborhood park adjacent to their apartment.[1] The children only spent about thirty minutes at the park and Natasha checked up on them every ten minutes from the apartment window.[2] Natasha and other neighborhood mothers were grateful that they could let their children play and release their energy at a park so close to home.[3] The children were playing happily when a preschool teacher visited the park with her class and assumed they were completely unsupervised.[4] Instead of asking the children if they were alright or if an adult knew where they were, she left the park with her class and called the Illinois Department of Children and Family Services (DCFS) hotline.[5]

DCFS investigated and eventually indicted Natasha for neglect under DCFS's Allegation 74 for "Inadequate Supervision." DCFS issued a citation indicating that two of the children had ADHD, the youngest child was five-years-old, and Natasha did not know that the children were running into the street with a scooter.[6] Although Natasha immediately appealed DCFS's decision with the help of a pro bono attorney and the Family Defense Center (FDC),[7] the court affirmed its decision.[8] The FDC appealed the case to the Illinois Appellate Court. Nearly two years later, with the help of legal

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[1] *Mother Fights Against Neglect Charge for Letting Kids Play*, FAM. DEF. CTR., http://www.familydefensecenter.net/client-stories/mother-challenges-dcfs-decision-that-prevents-her-three-children-from-playing-outside (last visited Jan. 26, 2019).

[2] *Id.*

[3] *Id.*

[4] *Id.*

[5] *Id.*

[6] Opening Brief of Appellant-Plaintiff at 14, Felix v. Ill. Dep't of Children and Family Servs. (2015) (No. 14 CH 3999), https://www.familydefensecenter.net/wp-content/uploads/2015/07/Natasha_F_Opening_Appellate_Brief.pdf [hereinafter Opening Appellate Brief].

[7] The Family Defense Center is an organization comprised of both staff and pro bono attorneys dedicated to reforming the child-welfare system, including DCFS, through impact litigation, legal assistance and policy reform. *Mission and Story*, FAM. DEF. CTR., https://www.familydefensecenter.net/about-us/mission-and-story/ (last visited Mar. 3, 2019).

[8] *Mother Fights Against Neglect Charge for Letting Kids Play*, *supra* note 1.

advocacy along with attention from both local and national news outlets, DCFS finally reversed its decision in Natasha's case and cleared her name.[9]

In the Illinois Administrative Code's Allegation 74, inadequate supervision occurs "when a child is placed at a real, significant and imminent risk of likely harm due to a parent or caregiver's blatant disregard of parental or caregiver responsibilities of care and support, including supervision."[10] Natasha is only one of many parents who have been unfairly targeted, investigated, and punished under Allegation 74.[11] Moreover, the effects of Allegation 74 are not an isolated phenomenon, but are rather representative of a nationwide issue of overbroad, vague, and misapplied state child neglect statutes. To ameliorate the problematic effects of Allegation 74 on Illinois residents, DCFS should revise Allegation 74's language to be specific and narrowly tailored. Furthermore, while all parents who are unfairly targeted by problematic child neglect laws deserve to have their stories heard, white, middle-class, and self-declared "free-range" parents are the archetype often portrayed as most affected by these laws.[12] Narrowing the language of Allegation 74 will not only help "free-range" parents, but also will mitigate the inequitable effects on minority parents in low-income neighborhoods.

To understand the development of child welfare laws, Part I of this Note briefly overviews the history and constitutional foundations of parental rights in the United States. To demonstrate the influences on problematic neglect statutes, this Part also includes a survey of federal and state child neglect statutes across the country, starting with the Child Abuse Prevention and Treatment Act of 1974 (CAPTA) and how it promoted issues of vagueness and overbreadth in certain state statutes. Part II overviews the origins and history of Allegation 74 in Illinois, while also discussing the problems with DCFS and its investigation process. This Part also discusses the effects Allegation 74 has on Illinois families. Finally, Part III analyzes the policy implications of the overbroad application of Allegation 74 and proposes changes to address them. Particularly, it discusses how lower-income and minority families are more likely to be targeted and affected by neglect laws, including Allegation 74, and how "free-range" parents—while also subjected to overbroad applications of these laws—should not be the focus of outcry for this issue. Rather, the focus should be on the minority and lower-income families who have fewer resources to fight these unwarranted claims.

I. PARENTAL RIGHTS: A BRIEF HISTORY

The United States has a long history of protecting and promoting parental rights, particularly the right to decide how to best raise one's children, on both the state and

[9] *Id.*
[10] ILL. ADMIN. CODE tit. 89, § 300 App. B (2001).
[11] *See* Verified Class Action Complaint for Injunctive and Declaratory Relief at 6, Nicole P. v. Ill. Dep't of Children and Family Servs. (Ill. Cir. Ct. Sept. 28, 2016) (No. 2016CH12809) [hereinafter Class Action Complaint], http://www.familydefensecenter.org/wp-content/uploads/2016/10/Nicole-P.-Complaint-with-Exs-A-and-B-only.pdf.
[12] The free-range parenting movement, often credited to "freerangekids.com," is a parenting style that encourages children "to take walks in nature, ride public transportation on their own and, generally, to get outside, stay active and acquire independent skills." It is often seen as a counter-movement to "helicopter" (overprotective) parenting. Barbara J. King, *Ready to Try Some Free-Range Parenting?*, NPR (Apr. 12, 2015), https://www.npr.org/sections/13.7/2015/04/12/399141301/ready-to-try-some-free-range-parenting.

federal level.[13] The Maryland Supreme Court articulated its deference to parental decisions on how to rear children in *Frye v. Frye*:

> Our primary concern with regard to matters involving the parent-child relationship was the protection of family integrity and harmony and the protection of parental discretion in the discipline and care of the child. We have steadfastly recognized the authority of parents and their need to fulfill the functions devolved upon them by that position.[14]

Tennessee also strongly defers to parental discretion, as reiterated in the 1994 case of *Broadwell v. Holmes*, in which the Tennessee Supreme Court stated that "Tennessee's historically strong protection of parental rights" is rooted not only in the United States Constitution but Tennessee's Constitution as well.[15] Tennessee courts recognize the constitutional right of parents to raise their children "without unwarranted state intervention."[16] Under Utah's Constitution, parents have a "fundamental liberty interest in the care, custody, and management of [their] children."[17] The fundamental liberty interest of parenting is also recognized by Florida's Supreme Court.[18]

Moreover, the United States Supreme Court has recognized the importance of parental rights through a long line of cases dating back to the early twentieth century. In *Pierce v. Society of Sisters*, the Court first stated that parental liberties include the right to rear and educate the child and that "[t]he child is not the mere creature of the state; those who nurture him and direct his destiny have the right, coupled with the high duty, to recognize and prepare him for additional obligations."[19] In 1944, the Court again recognized in *Prince v. Massachusetts* the fundamental right to parent: "[i]t is cardinal with us that the custody, care and nurture of the child reside first in the parents, whose primary function and freedom include preparation for obligations the state can neither supply nor hinder."[20] The most prominent affirmation of parents' fundamental right to make their own child-rearing decisions comes from *Troxel v. Granville* in 2000: "[t]he liberty interest at issue in this case—the interest of parents in the care, custody, and control of their children—is perhaps the oldest of the fundamental liberty interests recognized by this Court."[21]

Because the Supreme Court holds that the parental right to rear one's children is a fundamental liberty interest under the Fourteenth Amendment, potential infringements on

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[13] David Pimentel, *Criminal Child Neglect and the "Free Range Kid": Is Overprotective Parenting the New Standard of Care?*, 2012 UTAH L. REV. 947, 953 (2012).
[14] Frye v. Frye, 505 A.2d 826, 831 (Md. 1986) superseded by statute as stated in Allstate Ins. Co. v. Kim, 829 A.2d 611 (Md. 2003).
[15] Broadwell *ex rel.* Broadwell v. Holmes, 871 S.W.2d 471, 475 (Tenn. 1994).
[16] *Id.* at 476 (citing Hawk v. Hawk, 855 S.W.2d 573, 579 (Tenn. 1993)).
[17] 2 UTAH PRAC., *Utah Family Law* § 62A-4a-201, Westlaw (database updated Sept. 2018).
[18] Florida Dept. of Children and Families v. F.L., 880 So.2d 602, 607 (Fla. 2004) ("Parents have a fundamental liberty interest, protected by both the Florida and federal constitutions, in determining the care and upbringing of their children.").
[19] Pierce v. Soc'y of the Sisters of the Holy Names of Jesus & Mary, 268 U.S. 510, 535 (1925).
[20] Prince v. Massachusetts, 321 U.S. 158, 166 (1944).
[21] Troxel v. Granville, 530 U.S. 57, 65 (2000) (Respondent was a parent who objected to the grandparents' (petitioners) claim for visitation rights with their grandchild and the Supreme Court dismissed the grandparents' claims).

that right by states are subjected to strict scrutiny review.[22] This means that a state government must show that: (1) there is a "compelling state interest in the action it is taking," and (2) "that the action is narrowly tailored to serve that interest."[23] In the area of neglect laws, the compelling state interest is child safety and protecting children from harm or the risk of harm. Keeping children safe is an unquestionably compelling state interest, so the issue then comes down to balancing the risk of child harm while preserving parental choice.[24]

Although child neglect and the risk of children being left in dangerous situations is undoubtedly a valid state interest, balancing this state interest with parental rights becomes thorny and problematic when states try to define neglect. Confusion should be expected, though, given that at its root, neglect is the absence of doing something and the harm or risk of harm that this absence of action creates. This lack of a clear and uniform definition of neglect leads states to have a vast range of standards for child neglect, many of which are upheld despite their inherent ambiguities.[25]

A. Federal and State Development of Neglect Statutes

The ambiguous language of Illinois DCFS's Allegation 74 contributes to its over application in unwarranted contexts. Unfortunately, the vagueness of Allegation 74 is not an isolated issue. Definitions and standards of child neglect in both federal and state statutes reveal an unclear national conception of neglect that often results in inconsistent applications. Therefore, before turning to Allegation 74 in Illinois, it is important to understand the broader context and development of child neglect laws nationwide.

1. The Child Abuse Prevention and Treatment Act (CAPTA)

Arguably the most significant federal legislation that tackles child neglect is the Child Abuse Prevention and Treatment Act of 1974 (CAPTA) and its subsequent reauthorizations.[26] This Act was the federal legislature's first step into an area of law that was previously exclusively subject to state discretion.[27] States are not required to follow CATPA, but it does provide funding to states' Child Protection Services (CPS) if they meet certain standards in responding to child abuse.[28] The original bill, introduced in 1971, did not include any definition of child abuse or neglect; however, in the 1989 reauthorization of CAPTA, child abuse and neglect were defined as "the physical or mental injury, sexual abuse or exploitation, negligent treatment, or maltreatment of a

[22] David Pimentel, *Protecting the Free-Range Kid: Recalibrating Parents' Rights and the Best Interest of the Child*, 38 CARDOZO L. REV. 1, 29 (2016).
[23] *Id.*
[24] Pimentel, *supra* note 13, at 960. This is particularly relevant given the recent shift towards overprotective parenting, which is fueled in part by the "stranger danger" fear, even though child abductions by strangers in the U.S. have become statistically negligible.
[25] *Id.* at 973.
[26] 42 U.S.C. §§ 5101–5116 (2012).
[27] David Pimentel, *Fearing the Bogeyman: How the Legal System's Overreaction to Perceived Danger Threatens Families and Children*, 42 PEPP. L. REV. 235, 243 (2015).
[28] Howard Davidson, *Federal Law and State Intervention When Parents Fail: Has National Guidance of Our Child Welfare System Been Successful?*, 42 FAM. L.Q. 481, 485 (2008).

child by a person who is responsible for the child's welfare.…"[29] Congress ultimately found that the 1989 definition was over-inclusive and led to a sharp rise in the number of unsubstantiated child abuse and neglect reports nationally.[30] Congress then amended the definition to "any recent act or failure to act on the part of a parent or caretaker, which results in death, serious physical or emotional harm, sexual abuse or exploitation, or an act or failure to act which presents an imminent risk of serious harm."[31] With this amendment, Congress was on the right track by removing "negligent treatment" from the definition of negligence. It attempted to replace types of injury, exploitation, and treatment with more relevant factors to better evaluate in a potential neglect or abuse case: the resulting harm or risk of harm to the child. However, the amendment did not go far enough because it failed to provide a narrowed, unambiguous definition of what harm or risk of harm encompasses in a neglect case.

The key language from the 1989 amendment is "imminent risk of serious harm," which is overbroad in its reach. For example, how likely must the risk be to be considered "imminent" and what types of situations, in terms of neglect, count as "serious harm?" It is nearly impossible for a parent to protect his or her child from all imminent risks of serious harm that are a part of everyday life. Consider a child in a vehicle moving at seventy-five miles per hour down the highway where injury from a car accident is a serious harm that could occur at any moment, thus making it a situation with imminent risk for serious harm.[32] While the amended CAPTA language was meant to narrow the statute's definitions of abuse and neglect, these unclear terms left an opening for states to create similarly ambiguous neglect statutes ripe for over application by state child protective services.[33]

2. Vague Language in State Child Neglect Laws

While not binding, CAPTA does supply guidelines for language to be used in states' child neglect laws and provides funding incentives for states that model their neglect statutes after CAPTA.[34] Several state definitions of abuse and neglect contain language that closely resembles the language in CAPTA, including defining neglect as a risk of harm.[35] However, most state definitions of child abuse and neglect are

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[29] Child Abuse Prevention, Adoption, and Family Services Act (CAPTA) of 1988, Pub. L. No. 100-294, sec. 101,
§ 14(4), 102 Stat. 102, 116.
[30] Pimentel, *supra* note 27, at 244.
[31] 42 U.S.C. § 5106g (2012).
[32] Pimentel, *supra* note 27, at 279.
[33] *Id.* at 270.
[34] David Manno, *How Dramatic Shifts in Perceptions of Parenting Have Exposed Families, Free-Range or Otherwise, to State Intervention: A Common Law Tort Approach to Redefining Child Neglect*, 65 AM. U. L. REV. 675, 684 (2016).
[35] *See* CHILD WELFARE INFO. GATEWAY (CWIG), DEFINITIONS OF CHILD ABUSE AND NEGLECT (2016), https://www.childwelfare.gov/pubPDFs/define.pdf; *see also, e.g.*, ARIZ. REV. STAT. ANN. § 8-201(25)(a) (2017) (defining "neglect" as "[t]he inability or unwillingness of a parent, guardian, or custodian of a child to provide that child with supervision, food, clothing, shelter, or medical care, if that inability or unwillingness causes unreasonable risk of harm to the child's health or welfare"); KY. REV. STAT. ANN. § 600.020(1)(a)(1) (West 2018) (defining "[a]bused or neglected child" to include "a child whose health or welfare is harmed or threatened with harm when [h]is or her parent, guardian . . . or other person exercising custodial control or supervision" allows such harm to be inflicted upon the child); MONT. CODE ANN. § 41-

intentionally vague and far-reaching so as to allow states' CPS wide-ranging discretion in determining whether a child is a victim and whether he or she should be removed from the household.[36] While state CPS should have substantial discretion to pursue neglect and abuse cases, retaining definitions and terms that are too broad gives CPS little guidance and leads to unwarranted investigations of parents whose legal and deliberative parenting decisions are misconstrued as neglect.

The West Virginia and Maryland child neglect statutes exemplify the broad, directionless language CAPTA aimed to cure. Under West Virginia law, "'[n]eglect' means the unreasonable failure by a parent, guardian or custodian of a minor child to exercise a minimum degree of care to assure the minor child's physical safety or health."[37] The statute does not define what "unreasonable failure" or "minimum degree of care" mean, leaving state CPS with minimal guidance on recognizing the difference between reasonable and unreasonable, and no guidance on what constitutes the minimum degree of care. Maryland law defines neglect as:

> leaving a child unattended or other failure to give proper care and attention to a child by any parent or other person who has permanent or temporary care or custody or responsibility for supervision of the child under circumstances that indicate . . . that the child's health or welfare is harmed or placed at substantial risk of harm.[38]

Again, this statute does not define what a "substantial risk of harm" is, or even what factors should be considered when determining whether a certain situation presents a substantial risk of harm. Nor does it describe what kinds of inattentiveness "other failure to give proper care and attention to a child" encompasses. Statutes like these leave CPS workers with too wide a range of interpretation, resulting in the statute not only being over applied but also applied inconsistently because CPS workers are forced to interpret the language on a case by case basis.[39]

Occasionally, a state's child neglect statute may be so overly broad that it is ultimately struck down as unconstitutional. In *State v. Downey*, the Indiana Supreme Court unanimously ruled that the state's Neglect of a Dependent statute, when construed literally, was unconstitutionally vague.[40] In *Roe v. Conn*, the Alabama Supreme Court held that the state's neglect statute, which allowed a juvenile court to remove a "neglected child" from his or her home if the judge found that "it appears that . . . the child is in such condition that its welfare requires," was also unconstitutionally vague.[41]

3-102(7)(a)(ii) (2013) ("Child abuse or neglect" includes "[s]ubstantial risk of physical or psychological harm to a child . . . ."); 40 R.I. GEN. LAWS § 40-11-2(1)(ii) (2018) (defining "[a]bused or neglected child" as a child whose parent "[c]reates, or allows to be created, a substantial risk of physical or mental injury to the child").

[36] Pimentel, *supra* note 27, at 269.

[37] W. VA. CODE § 61-8D-1 (2014).

[38] CWIG, *supra* note 35, at 37.

[39] Manno, *supra* note 34, at 693.

[40] 476 N.E.2d 121, 123 (Ind. 1985) (holding that statutory language defining neglect of a dependent as occurring when "[a] person having the care, custody or control of a dependent who knowingly or intentionally places the dependent in a situation that may endanger his life or health" failed to meet constitutional muster).

[41] 417 F. Supp. 769, 777–78 (M.D. Ala. 1976).

These cases are only a small sample of the overall national trend of ambiguous language found in neglect statutes, leaving most states' CPS to interpret their state statutes as they see fit.

Courts also employ the best interests of the child test used in child custody determinations, including those involving neglect and abuse allegations, which also helps to explain the trend of vague language in state neglect statutes.[42] Courts use this test in particular to balance "(1) the parent's interest for family integrity; (2) the state's interest to protect the minor; and (3) the child's interest in safety and a stable family environment."[43] This test concentrates on the child's interests, yet it does not have particularized or standardized factors, guidelines, or measures to determine what is in the child's best interest, thus providing the judge with broad discretion.[44] The lack of standardization or concrete guidelines allows parents to "be subjected to criminal punishment without evidence of abuse or neglect."[45]

As discussed earlier, it is understandable that so many states have struggled to adequately define neglect and provide uniform, particularized standards for investigating and identifying neglect. As Bernard C. Fisher, former executive director of the Citizens Committee for Children of New York stated, "[a]s pervasive as neglect is, it's still an elusive category to define . . . . The intent to harm is abuse; the failure to do something is neglect."[46] Defining neglect requires defining what the parent has failed to do and specifying where the line is between failing to take proper care of one's child and making a deliberate parenting decision. The consequences of failing to draw this line are well documented in the unsubstantiated cases that have surfaced under the enforcement of Allegation 74 by Illinois' DCFS.

II. ALLEGATION 74 IN ILLINOIS

In October 2001, Illinois' DCFS adopted a set of rules termed "Allegations," which DCFS workers use to investigate, indicate, and register parents and guardians for child neglect and abuse.[47] Inadequate Supervision under Allegation 74 provides a foundation for the indication of neglect and is described in its original language as when: "[t]he child has been placed in a situation or circumstances that are likely to require judgment or actions greater than the child's level of maturity, physical condition, and/or mental abilities would reasonably dictate."[48] The original language of Allegation 74 also included a non-exhaustive list of "factors to be considered" when applying Allegation 74, including "incident factors," "child factors," and "caretaker factors."[49] In 2012, over

[42] Manno, *supra* note 34, at 686.
[43] *Id.* (quoting Joyce Koo Dalrymple, Note, *Seeking Asylum Alone: Using the Best Interest of the Child Principle to Protect Unaccompanied Minors*, 26 B.C. THIRD WORLD L.J. 131, 143 (2006)).
[44] *Id.*
[45] *Id.*
[46] Enid Nemy, *Child Neglect: It's Hard to Define, Harder to Stop*, N.Y. TIMES (Aug. 18, 1979), http://www.nytimes.com/1979/08/18/archives/child-neglect-its-hard-to-define-harder-to-stop-neglect-may-be.html?_r=0.
[47] *See* Class Action Complaint, *supra* note 11, at 8. (Other factors include but are not limited to "precautionary measures exercised by a parent or caregiver to protect the child from harm" and "the dynamics of the relationship between the alleged perpetrator and the child.").
[48] Opening Appellate Brief, *supra* note 6, at 4.
[49] *Id.* at 5–6.

26,000 reports were made to DCFS under Allegation 74 and 6,961 cases (26.4%) were indicated.[50] Indication means that "a DCFS investigator conducted an investigation and determined that there was credible evidence that a child was abused or neglected."[51] These cases made up nearly 30% of DCFS's total caseload.[52]

A. Updating the Definition of Neglect in Allegation 74

All DCFS rules must conform to the state statute that authorizes DCFS to investigate child abuse and neglect in the first place.[53] In Illinois, this is the Abused and Neglected Child Reporting Act (ANCRA).[54] In 2001, when Allegation 74 and all other allegations were adopted by DCFS, ANCRA defined neglect as the "lack of necessary care," which meant that "a parent or caregiver who failed to provide a child with food, shelter, or medical care could be found to be neglectful."[55] The legislature preemptively changed this language in 2012 after the Illinois Supreme Court's ruling in *Julie Q. v. DCFS*, which involved another overbroad allegation for the definition of injurious environments.[56] In this case, the Court struck down Allegation 60, holding that DCFS's interpretation of injurious environment exceeded the scope of its authority under ANCRA.[57] After the *Julie Q.* ruling, DCFS was forced to expunge nearly 20,000 indicated findings entered under Allegation 60.[58]

Following *Julie Q.*, the Illinois state legislature amended and narrowed the child neglect definition to a child subjected to an injurious environment where (1) "the child's environment creates a likelihood of harm to the child's health, physical well-being, or welfare" and (2) "the likely harm is the result of a blatant disregard of parent, caretaker, or agency responsibilities."[59] This definition of neglect did not align with the definition of "inadequate supervision" in Allegation 74, which did not require "blatant disregard" but rather depended on an investigator's interpretation of a child's maturity, condition, or mental abilities.[60] Allegation 74's definition of neglect was far broader than the state's

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[50] CAITLIN FULLER & DIANE L. REDLEAF, FAMILY DEF. CTR., WHEN CAN PARENTS LET CHILDREN BE ALONE? 9 (2015), http://www.familydefensecenter.net/wp-content/uploads/2015/08/When-Can-Parents-Let-Children-Be-Alone-FINAL.pdf.

[51] *Hearings and Appeals*, ILL. DEP'T OF CHILD & FAM. SERVS. https://www2.illinois.gov/dcfs/aboutus/had/Pages/default.aspx (last visited Mar. 6, 2019).

[52] *Id.*

[53] *Inadequate Supervision*, FAM. DEF. CTR. (Nov. 17, 2016), http://www.familydefensecenter.net/tag/inadequate-supervision/ (under "Family Defense Center Continues to Fight for Parents' Right to Let Kids Play" subheading).

[54] *Id.*

[55] *Id.* (citing Abused and Neglected Child Reporting Act, 325 ILL. COMP. STAT. 5/1–5/11 (2019)).

[56] *Id.* In *Julie Q.*, plaintiff's estranged husband reported her to DCFS for allegedly drinking in front of their child and locking her in a room, even though he did not witness the event and Julie testified to being sober for three years at the time of the indication. Julie Q. v. Dep't of Children & Family Servs., 995 N.E.2d 977, 978, 979 (Ill. 2013). In its holding, the court stated that because the Abused and Neglected Child Reporting Act specifically removed "injurious environment" from its definition of neglect, DCFS could not re-establish this term in an indication. *Id.* at 985–86.

[57] *Julie Q.*, 995 N.E.2d at 986.

[58] Class Action Complaint, *supra* note 11, at 7.

[59] 325 ILL. COMP. STAT. § 5/3 (2019).

[60] *See* FULLER & REDLEAF, *supra* note 50, at 35 (noting that inadequate supervision occurs when "the child has been placed in a situation or circumstance that [is] likely to require judgment or actions greater than the child's level of maturity, physical condition, and/or mental abilities would reasonably dictate.").

definition of neglect (a blatant disregard of responsibilities) in ANCRA, meaning that DCFS in effect had developed its own standard for child neglect not checked by the state legislature or open for public consideration.[61] Allegation 74's definition of neglect was so expansive that it was possible to label the process of "growing up" as neglect—"engaging in activities that are beyond children's abilities is exactly how they learn and grow."[62]

Recognizing the illegality and detrimental effects of Allegation 74's overly broad neglect definition, the FDC challenged Allegation 74 in *Manier v. DCFS*.[63] Much like Natasha Felix's case, this one also involved children who were playing outside and allegedly beyond the view of their parent.[64] In August 2015, a Cook County judge ruled that Allegation 74 was void because its language was beyond the scope of ANCRA's definition of neglect.[65] Even though the *Manier* case declared Allegation 74 void, DCFS continued to use the Allegation in its voided form to investigate, indicate, and register Illinois parents and guardians.[66] Because DCFS continued to use Allegation 74 unlawfully, the FDC filed a class action complaint in 2016 on behalf of its clients indicated under Allegation 74 and others with similar cases. The class action involved as many as 30,000 people, including all parents and guardians who had been registered on the Illinois child neglect registry under Allegation 74 in the past five years and anyone under investigation via Allegation 74 at the time.[67]

Plaintiffs asked the court to order Illinois' DCFS to: (1) stop using Allegation 74 unlawfully, (2) remove those indicated under Allegation 74 and listed as child neglectors from the state neglect registry, and (3) allow DCFS to continue Allegation 74 investigations only when a new, lawful version of the rule could be formally adopted and implemented.[68] In the class action complaint, FDC estimated that in 2014, DCFS investigated about 23,566 cases under Allegation 74 and indicated findings in 6,588 of those cases.[69] In 2015, they estimated that DCFS investigated about 23,312 cases under Allegation 74, indicating findings in 6,564 of those cases.[70] In February 2017, the court granted class certification, allowing the lawsuit to proceed as a class action.[71] With a class action looming, DCFS spent several months in settlement negotiations with the FDC.

Finally, in May 2017, DCFS replaced Allegation 74 with new language. Inadequate supervision is now defined as when a child faces "real, significant and imminent risk of likely harm" because of a parent's (or caregiver's) "blatant disregard" of parental responsibilities, which includes supervision.[72] DCFS defines "blatant disregard" as when the imminent risk of likely harm is so apparent "that it is unlikely that a reasonable parent or caretaker would have exposed the child to danger without exercising precautionary

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[61] *Id.*
[62] *See Inadequate Supervision*, *supra* note 53.
[63] *Id.*
[64] *Id.*
[65] *Id.*
[66] *Id.*
[67] *Id.*
[68] *Id.*
[69] *See* Class Action Complaint, *supra* note 11, at 11.
[70] *Id.*
[71] *Updates on Key Litigation*, FAM. DEF. CTR. (Aug. 8, 2017), https://www.familydefensecenter.net/e-newsletter-august-2017/ (under "*Nicole P. et al. v. DCFS et al.*" subheading).
[72] ILL. ADMIN. CODE tit. 89, § 300 App. B (2017).

measures to protect the child from harm."[73] The phrases "blatant disregard" and "real, significant, and imminent risk of likely harm" were added to narrow the scope of the Allegation and to prevent it from being overbroad like its previous version. The qualifier "blatant disregard" is meant to apply only to parents who are essentially unreasonable because they do not exercise sound judgment in protecting their child from a "real, significant, and imminent risk of likely harm" while supervising them. However, DCFS has yet to implement these changes in its procedural instructions to staff.[74] Furthermore, the new definition of Allegation 74 still contains undefined terms that, without explanation or guidance on how to apply these terms, will lead to continued misapplication. Recognizing these issues, the FDC is still in negotiations with DCFS to ensure implementation of consistent procedures in line with the updated language.[75]

Although DCFS changed the language of Allegation 74 following the threat of a class action lawsuit, the system-wide application and enforcement of the rule has yet to be changed. Given DCFS's history of wide-ranging applications of its allegations, it is unlikely that the problem of overbroad investigation and implementation will go away with this simple update to Allegation 74's language. The consequences of the prior problematic language of Allegation 74 and failure to properly implement the new language are compounded by issues of overreporting and systemic incentives to close cases.

B. Issue of Overreporting Neglect in Illinois

Expansive or vague definitions of neglect impact many families in part due to the prevalence of overreporting. All fifty states have mandatory reporting requirements for teachers, school workers, social workers, and medical workers, and forty-nine states mandate that law enforcement officers report suspected cases.[76] After numerous amendments, Illinois law currently identifies seven professions as mandatory reporters: medical personnel, education workers, social service/mental health workers, law enforcement workers, child care workers, coroner and medical examiners, and clergy members.[77] Mandated reporters are required to make a report to DCFS if they have "reasonable cause to believe that a child known to them in their professional or official capacity may be an abused child or a neglected child."[78] In examining the nationwide movement towards expanding the professional categories of mandated reporters, Professor Thomas L. Hafemeister says that the general reason for the expansion is that people who are in the most frequent contact with children are more likely to notice the indicators of child abuse.[79] This includes "changes in the child's behavior, mannerisms, and attitudes, which a physician who infrequently sees a child may not be able to detect.

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[73] *Id.*
[74] *Updates on Key Litigation*, *supra* note 71.
[75] *Id.*
[76] Pimentel, *supra* note 27, at 266.
[77] Lisa Black & Robert McCoppin, *In Child Abuse Cases, Who Are 'Mandated Reporters' Under Illinois Law?*, CHI. TRIB. (Nov. 15, 2014, 6:30 AM), http://www.chicagotribune.com/news/ct-child-sex-abuse-teacher-reporting-met-20141114-story.html.
[78] 325 ILL. COMP. STAT. 5/4 (2019).
[79] Thomas L. Hafemeister, *Castles Made of Sand? Rediscovering Child Abuse and Society's Response*, 36 OHIO N.U. L. REV. 819, 852 (2010).

Indeed, the most frequent reporters today of child abuse are teachers (16.9%), police officers or lawyers (16.3%), and social services staff (10.6%)."[80]

In suburban Chicago, a teacher notified DCFS regarding three of her fellow teachers for failure to report suspected child abuse and the three teachers were later charged. Carol Casey, the Attorney Supervisor at the Cook County Office of the Public Guardian, bluntly explained why every teacher should report even a whiff of suspected abuse or neglect:

> Defining what constitutes reasonable cause to believe abuse has occurred can sometimes be considered a gray area, Casey said. You should always veer toward reporting because suspicion is a pretty low standard, she said. Sometimes people will overthink it, talk about it. They'll say, based on what we see, we don't think there was abuse.[81]

Many mandatory reporters do not have sufficient training to identify abuse and neglect, yet forty-six states, including Illinois, criminalize failure to report when a child may be at risk for abuse or neglect.[82] Furthermore, most states, including Illinois, provide immunity from liability to all reporters of child abuse and neglect regardless of whether the claims end up substantiated or not.[83] With no risk of liability for reporting combined with the threat of criminal liability for not reporting and often inadequate training in identifying signs of neglect and abuse, significant overreporting inevitably results. This does not include the countless neighbors, friends, and strangers who also, while likely having honorable intentions, can report ultimately unsubstantiated claims of neglect and abuse.

Widespread overreporting logically leads to a significant number of cases with unsubstantiated findings. Indeed, on both the national and state level, the statistics of unsubstantiated reports are staggering. In 2011, the majority of reports across the country were unsubstantiated: "of those reports that CPS deemed worthy of a response, nearly 3.3 million nationwide, 59% were either intentionally false or otherwise unsubstantiated."[84] DCFS was aware of notably high expungement rates for appealed indications as early as 2001. In *Dupuy v. McDonald*, plaintiffs alleged that DCFS "expunged 46.9% of indicated reports appealed to the internal review stage," and "63.3% of indicated report appeals following an administrative hearing."[85] In total, 74.6% of indicated reports were expunged upon appeal.[86] In addition to expunged cases, for the fiscal years of 2016 and 2017, there were nearly 113,000 unfounded reports of child abuse and neglect in Illinois.[87] Although many unsubstantiated DCFS indications are either dropped or later expunged, families nonetheless suffer the immediate consequences of an indication,

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[80] *Id.*
[81] Black & McCoppin, *supra* note 77.
[82] Pimentel, *supra* note 27, at 267.
[83] *Id.*
[84] *Id.* at 268.
[85] Dupuy v. McDonald, 141 F. Supp. 2d 1090, 1102 (N.D. Ill. 2001).
[86] *Id.*
[87] BEVERLY J. WALKER, ILL. DEP'T OF CHILDREN & FAMILY SERVS., CHILD ABUSE/NEGLECT STATISTICS: DATA AS OF JULY 31, 2017, 11 (2017), https://www2.illinois.gov/dcfs/aboutus/newsandreports/Documents/CANStat.pdf.

which includes the removal of a child from the home and potential employment insecurity. These consequences are discussed further in Part III. The consequences families face because of the overwhelming amount of unsubstantiated reports are magnified by both incentives for DCFS to close cases quickly and the vague language that leaves DCFS the broad discretion to pursue allegations.

C. DCFS Incentives to Quickly Close Cases

Generally, state CPS departments have both financial and public incentives to close cases quickly or substantiate claims. If a protective agency receives a report of an abused or neglected child and the report is dismissed as unfounded but the child ends up being harmed or worse, then there is often a large public outcry.[88] This exact type of public uproar occurred in New York City in 1995 following the death of a six-year-old girl.[89] In its response, the city's child welfare agency commissioner promised to remove children if there was any question of the child's safety.[90] This push for more thorough investigations and tougher consequences led to New York City's child removal rate increase from 8,000 to 12,000 in just two years and an increase in neglect cases from 6,658 to almost 11,000 in three years.[91]

Every year, Illinois DCFS receives over 250,000 calls to its hotline system.[92] Seeing the effects of over-reporting, this overwhelming number of calls means that DCFS workers are unavoidably swamped with massive caseloads, which itself provides an incentive to close cases as quickly as possible.[93] Under Illinois state law, DCFS has up to sixty days to complete a child abuse or neglect investigation and decide to indicate abuse or neglect, or deem the case unsubstantiated; however, most investigations are completed within thirty days.[94] Beginning in the fall of 2016, DCFS tripled its rate of abuse and neglect cases closed in fourteen days or less from five percent to fifteen percent in Cook County under its new initiative "Blue Star."[95] In an investigation conducted by *The Chicago Tribune* in May of 2017, DCFS frontline investigators, who did not wish to be identified, told reporters that "they now face unrealistic deadlines and new pressure to close cases."[96] *The Chicago Tribune* investigated DCFS case closure rates and found that DCFS had launched a contest that awarded $100 gift cards to the top two DCFS

[88] Pimentel, *supra* note 27, at 273.
[89] *Id.*
[90] *Id.*
[91] *Id.*
[92] Christy Gutowski, *Chances to Intervene Missed in Baby's Short Life, Review Reveals*, CHI. TRIB. (Dec. 30, 2013), https://www.chicagotribune.com/news/ct-xpm-2013-12-30-ct-child-abuse-lamya-met-20131230-story.html.
[93] *See* David Jackson & Gary Marx, *DCFS Under Fire for Quickly Closing Child Abuse Investigations*, CHI. TRIB. (May 24, 2017, 7:01 AM), https://www.chicagotribune.com/news/watchdog/ct-dcfs-hearing-met-20170523-story.html (reporting that DCFS workers feel "overwhelmed" and are often "in tears" because of their large caseloads).
[94] ILL. DEP'T OF CHILDREN & FAMILY SERVS., WHAT YOU NEED TO KNOW ABOUT A CHILD ABUSE OR NEGLECT INVESTIGATION 5 (2014), https://www.illinois.gov/dcfs/aboutus/Documents/whatcani.pdf.
[95] David Jackson et al., *After Three Kids Die Despite DCFS Involvement, It Urges Faster Probes*, CHI. TRIB., (May 11, 2017, 7:07 AM), http://www.chicagotribune.com/news/watchdog/ct-dcfs-kids-met-20170511-story.html.
[96] David Jackson et al., *After Three Kids Die Despite DCFS Involvement, It Urges Faster Probes*, CHI. TRIB., (May 11, 2017, 7:07 AM), http://www.chicagotribune.com/news/watchdog/ct-dcfs-kids-met-20170511-story.html.

investigators who closed the most cases in a month, and a $50 gift card to the third-place investigator.[97] Outcry from the public and Illinois state legislature was swift and the Senior Deputy Director of DCFS told the *Tribune* that DCFS was in the process of reviewing whether disciplining the supervisors who organized the contest would be an appropriate response.[98]

Financial incentives and pressure to close cases quickly creates a double-edged sword for the children and families investigated. Rushing through case investigations allows cases that should be further investigated to slip through the cracks and increases the likelihood of ultimately unsubstantiated cases to be indicated because of an inadequate investigation. Based on DCFS's history of pressuring workers to conclude investigations quickly and its broad use of allegations leading to a significant amount of unsubstantiated cases, it is unlikely that the updated language will be enough to stop DCFS from its sweeping use of Allegation 74 to indicate innocent parents and guardians.

D. The Updated Language of Allegation 74 Continues to be Problematic

As previously stated, the new language of Allegation 74 states that there is inadequate supervision when a child is exposed to a "real, significant and imminent risk of likely harm" because of the parent's or caregiver's "blatant disregard of parental or caregiver responsibilities of care and support, including supervision."[99] While this language is certainly narrower than its unlawful predecessor, because Allegation 74 does not provide any guidance or a definition for what a real, significant, and imminent risk of likely harm is, it still has the propensity to be overly broad and unevenly applied.

This language resembles CAPTA's definition of child abuse and neglect, which includes "an act or failure to act which presents an imminent risk of serious harm."[100] Law professor David Pimentel stresses that a major flaw of neglect statutes, including Allegation 74, is their use of risk in defining neglect because this implies that by parenting a certain way, risk can be eliminated or avoided.[101] Furthermore, by defining neglect in terms of risk, statutes implicate "relatively innocuous decisions—certainly within the purview of parental discretion—but that involve inherent risk, such as allowing children to participate in sports activities, or piling children in the car to go on a family vacation, both of which carry the risk of serious injury."[102] Like CAPTA, Allegation 74's "significant and imminent risk of likely harm" fails to distinguish between reasonable risks of harm, which are inevitable in any child's life, and unreasonable risks of harm.[103]

Allegation 74's use of "imminent," also found in CAPTA's definition of neglect, should ideally narrow the scope of its application to only imminent risk situations. Unfortunately, this word further muddies the boundaries of what types of risk should be

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[97] David Jackson et al., *DCFS Investigators Competed for $100 Gift Cards for Closing Most Cases*, CHI. TRIB., (May 30, 2017, 6:58 AM), http://www.chicagotribune.com/news/local/breaking/ct-dcfs-contest-met-20170526-story.html.
[98] *Id.*
[99] ILL. ADMIN. CODE tit. 89, § 300 App. B (2017).
[100] 42 U.S.C. § 5101 note (2012) (General Definitions).
[101] Pimentel, *supra* note 27, at 268.
[102] *Id.*
[103] *Id.*

considered in an investigation.[104] Dictionary definitions of "imminent" include "likely to occur at any moment; impending," and "ready to take place."[105] It is reasonable for Illinois and other states to want to prevent harm that is likely to occur and should be prevented in abuse and neglect situations. However, "imminent" ultimately serves to be both over and under inclusive in describing situations of risk. For instance, a child routinely exposed to known carcinogens under this standard would likely not be considered neglected because the resulting harm would not be imminent.[106] But, permitting a child to play contact sports or allowing a child to do something as simple as climb a tree involve exposing a child to risk of real, significant, and imminent harm.[107] Therefore, the term "imminent," while likely added in an attempt to narrow the scope of the risk of harm due to inadequate supervision, ends up encompassing situations that do not involve neglect and leaves out others that would.

In Allegation 74's current form, DCFS tried to further specify the harm of inadequate supervision by adding "likely harm" and due to "blatant disregard" from the parent or guardian. "Blatant disregard" is defined in Allegation 74 as "an incident where the real, significant, and imminent risk of harm would be so obvious to a reasonable parent or caretaker that it is unlikely that a reasonable parent or caretaker would have exposed the child to the danger without exercising precautionary measures to protect the child from harm."[108] This explanation tries to clarify a situation in which supervision is inadequate, but it still runs into the same issues of vagueness and over-inclusivity as the terms discussed previously because DCFS does not define what the range of likelihood should be for either harm or blatant disregard, nor does it provide any guidance on what is "significant."

The "likely harm" language in Allegation 74 is equally problematic. For many of the cases challenging Allegation 74 and handled by FDC, a parent intentionally allowed his or her child to play, walk, or travel unsupervised or left them unattended for very brief periods of time, such as leaving a child in a car for a matter of minutes to run a quick errand. Recalling Natasha Felix's case, she allowed her children to play in the adjacent park for about thirty minutes before a DCFS hotline call was placed.[109] In Nicole P.'s case, her three boys were roughhousing and her youngest son sustained some scratches and bruises.[110] She was indicated under Allegation 74 for failing to supervise her children and stop the roughhousing.[111] Deona W., a licensed child caregiver and college student, was another named plaintiff in the Nicole P. class action complaint.[112] At the time, she was living with a friend when the father of her friend's child dropped the child off to leave in her friend's care without telling Deona.[113] The mother fell asleep at some point

[104] *Id.* at 279.
[105] *Imminent*, DICTIONARY.COM, http://www.dictionary.com/browse/imminent (last visited Nov. 19, 2017); *Imminent*, MERRIAM-WEBSTER, https://www.merriam-webster.com/dictionary/imminent (last visited Nov. 19, 2017).
[106] Pimentel, *supra* note 27, at 278.
[107] *Id.* at 279.
[108] ILL. ADMIN. CODE tit. 89, § 300 App. B (2017).
[109] *Mother Fights Against Neglect Charge for Letting Kids Play*, *supra* note 1.
[110] Class Action Complaint, *supra* note 11, at 14.
[111] *Id.*
[112] *Id.* at 15.
[113] *Id.*

and while Deona was upstairs in the house reorganizing her closet, the child wandered outside where she was found by police officers, who returned her to the house and placed a hotline call to DCFS.[114] Deona was subsequently indicated under Allegation 74.[115]

In all of these cases it is important to analyze the likely harm. In cases where children are outside alone, the three immediate dangers that come to mind are a child being abducted, harmed by a stranger, or getting hit by a car. While it is normal for parents to have nightmarish fears over "stranger danger" and the often ghastly aftermath of abducted child cases, data demonstrates that children are significantly safer today than children growing up two decades ago.[116] In 2014, the FBI's National Crime Information Center had 332 active files on stranger abductions of minors and the National Center for Missing and Exploited Children cites that in 2016, there were 1,419 attempted abductions of children in the U.S.[117] In fact, children are two and a half times more likely to die by drowning in a swimming pool and twenty-six times more likely to die in a car accident than to be abducted by a stranger.[118] People generally are also over three times more likely to be struck by lightning than a child is likely to be abducted by a stranger.[119] Therefore, the fear of children being in immediate danger of stranger abduction is realistically unwarranted.

In terms of children being hit by cars, 4,735 pedestrians were killed by cars in the U.S. in 2013, and of those pedestrians only 236 (5%) were children aged 14 or younger.[120] These statistics, however, are at odds with the general trend in recent years towards overprotective parenting that has saturated the mindsets of both parents and state CPS agencies.[121] For DCFS to be able to fully and competently analyze whether a harm is likely when investigating neglect under Allegation 74, DCFS needs to implement better standards and training regarding what constitutes a likely risk, as opposed to risks that, while in popular culture may seem likely, are merely speculative.

In addition to the vague language of Allegation 74, "DCFS's rule for inadequate supervision allegations includes [twenty-one] factors that investigators should consider when investigating an inadequate supervision allegation and provides great discretion to investigators to apply those factors."[122] On the surface, guiding factors for DCFS investigation seem helpful because they provide more direction to DCFS workers.

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[114] *Id.*
[115] *Id.*
[116] Manno, *supra* note 34, at 710.
[117] Glenn Kessler, *58,000 Children 'Abducted' a Year: Yet Another Fishy Statistic*, WASH. POST (Mar. 17, 2015), https://www.washingtonpost.com/news/fact-checker/wp/2015/03/17/58000-children-abducted-a-year-yet-another-fishy-statistic/?utm_term=.317b7183efbf; *Nonfamily Abductions & Attempts*, NAT'L CTR. FOR MISSING & EXPLOITED CHILDREN, http://www.missingkids.com/theissues/nonfamily (last visited Mar. 16, 2018).
[118] Pimentel, *supra* note 13, at 999 n.96.
[119] *Id.* at 960.
[120] NAT'L HIGHWAY TRAFFIC SAFETY ADMIN., U.S. DEP'T OF TRANSP., TRAFFIC SAFETY FACTS 3 (2015), https://crashstats.nhtsa.dot.gov/Api/Public/ViewPublication/812124. With these statistics in mind, one cannot reasonably say that the chance of a child being hit by a car or abducted is a likely risk of harm. Granted, risks of being hit by a car are more likely in some areas than others, but DCFS investigators should be mindful of both the actual statistics of risk and the environment the child is in, for instance, whether a child is playing next to a busy road or near a neighborhood street.
[121] Pimentel, *supra* note 13, at 955.
[122] FULLER & REDLEAF, *supra* note 50, at 10.

Unfortunately, DCFS's formal training policies do not teach investigators how to evaluate these factors.[123] This means that in addition to trying to interpret the vague language of Allegation 74 to a possible inadequate supervision case, DCFS investigators must also consider almost two dozen factors in their investigation—all within the short period that DCFS investigators are allotted for case investigation. One factor investigators must consider under Allegation 74 is the child's maturity level and capacity to appropriately respond to emergency situations.[124] No formal policies, guidelines, or training teach DCFS investigators how to properly evaluate children to determine whether their maturity level meets the level deemed acceptable by DCFS.[125] This factor, like many others under Allegation 74, is further complicated by the fact that DCFS does not elaborate on what an acceptable maturity level looks like.[126]

The FDC's extensive review of Illinois DCFS's inadequate supervision cases showed that many parents were in fact being indicated based on only two factors: (i) the child or children's age and (ii) the duration of the time that the child or children were left alone.[127] The FDC found that in many of its Allegation 74 cases, DCFS did not document any specific risk of harm to the child but indicated the parent nonetheless, subjecting them to all of the consequences that come with being indicated as a form of neglect.[128] Importantly, FDC notes that the time in which a child was left alone its Allegation 74 cases is never long and is often under half an hour.[129] Before the change in Allegation 74's language, the Illinois Appellate Court expunged these indicated cases because DCFS failed to consider all factors and "provide real evidence of the likelihood of harm resulting from the inadequate supervision."[130] These decisions show the need for not only clearer language in Allegation 74 but also for investigators to be better trained in determining whether inadequate supervision is truly present in a given case.

E. Effects of Allegation 74 on Parents and Guardians

While states generally encourage the reporting of child neglect cases, overreporting and improperly indicated findings have significant negative consequences for the adults involved. If an individual's case results in an indicated finding, then the finding and the parent or guardian's identifying information is entered into the Illinois State Central Register for a time period of anywhere between five to fifty years.[131] Those indicated under Allegation 74 remain on the registry for five years, unless their indication is expunged on appeal.[132] The database is described as "confidential," but is actually accessible to thousands, "including doctors, schools, courts, and certain employers."[133] This means that "[s]tate police, physicians, grand juries, legal supervisors of children, law enforcement agencies, school superintendents, welfare agencies, and anyone the [DCFS]

[123] *Id.* at 29.
[124] *Id.* at 13.
[125] *Id.*
[126] ILL. ADMIN. CODE tit. 89, § 300 App. B (2017).
[127] FULLER & REDLEAF, *supra* note 50, at 11.
[128] *Id.*
[129] *Id.*
[130] *Id.*
[131] Class Action Complaint, *supra* note 11, at 4.
[132] *Id.*
[133] *Id.* at 2.

Director authorizes for research purposes" have access to a person's indication on the registry, and this can have devastating effects on an individual's ability to care for his or her children and find employment.[134]

Before an investigation is even completed, a DCFS investigator can have an individual tested for drugs, divulge confidential information, or be separated from his or her children.[135] A DCFS investigation and indication can also be devastating to a person's employment opportunities, especially if that person works with children. An individual who works in DCFS-licensed facilities such as group homes, child welfare agencies, foster homes, and day care centers will likely be put on a "protective plan" during the investigation, which prevents the person from working with children or requires monitoring of the individual's work with children.[136] Protection plans generally last the entire investigation, which can take over two months, and if a person's employer is unable to find suitable work for the employee in alignment with the protection plan, the employee can be suspended with or without pay or, at worst, terminated.[137] A parent or guardian indicated under a DCFS allegation can be prohibited from working in the entire childcare field, as childcare facilities are mandated to verify whether potential hires have been indicated through DCFS.[138] DCFS investigators can also require a "safety plan" to be implemented, which means that while the investigation is ongoing the children at the center of the investigation can be placed outside of the home or only allowed to see their parent or guardian with supervision.[139] While safety plans are supposed to be voluntary and require a parent to sign on, the experience is often coercive and can be implemented even when there is no evidence of threatened danger to the child.[140]

Furthermore, background checks for school district employees include checking the Illinois State Central Register.[141] If an individual is listed in the registry, he or she can be prohibited from activities like helping with after-school care, coaching a child's sports teams, or adopting a child.[142] There is no question that people who neglect or abuse children should not be allowed to work or take care of children as part of their professional responsibilities. However, as seen previously, many Illinois residents are being investigated or indicated, only to have their cases later expunged.[143]

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[134] *Id.* at 4.

[135] *Id.* at 3; (confidential information may be released to law enforcement, legislators, prospective adoptive parents, foster parents and other caregivers, court appointed special advocates, and others before a person has even been indicated) Administrative Code, Section 431.90: Disclosure of Personal Information Without Consent,
http://www.ilga.gov/commission/Jcar/admincode/089/089004310000900R.html).

[136] *Id.* at 4.

[137] *Id.*

[138] *Id.* at 5.

[139] FULLER & REDLEAF, *supra* note 50, at 27.

[140] *Id.* In a particularly extreme example of the coercive nature of "safety plans," the FDC brought the case *Hernandez ex rel. Hernandez v. Foster* before the Seventh Circuit to challenge a DCFS investigator's action of telling the parents of a child who had already been removed from their custody that if they did not sign the proposed safety plan, they would not be able to see their child. 657 F.3d 463, 483 (7th Cir. 2011). The Court stated of the DCFS worker's actions that "a threat that parents cannot see their child unless they agree to something is extremely coercive." *Id.* at 482.

[141] Class Action Complaint, *supra* note 11, at 4.

[142] *Id.*

[143] FULLER & REDLEAF, *supra* note 50, at 9.

State and federal courts have acknowledged that being indicated or registered under "DCFS regime" damages a person's "reputation and employment opportunities, and implicates a constitutional liberty interest."[144] Disruptions in employment, needing to hire childcare while dealing with the investigation, and possible legal expenses to fight an indication all add to financial stress experienced by the parent or guardian being investigated.[145] While some of these effects are unavoidable in any type of child neglect or abuse investigation, the severe disruption in peoples' lives further underscores the need for improved language in Allegation 74 and improved DCFS investigation training. Even if a parent is not indicated, the DCFS investigation alone can have significant and sometimes irreversible consequences on a family's economic security and home life. While no child protection agency will be able to ensure that only guilty parents are investigated or indicated, changes in Allegation 74 language and DCFS training would help lower the significant number of innocent parents that DCFS indicates under Allegation 74 and other allegations.

III. POLICY IMPLICATIONS OF ALLEGATION 74 AND RECOMMENDED CHANGES

This Part will discuss several policy impacts of Allegation 74 and will make concrete suggestions for changing its language and application. First, this Part will discuss the media's focus on parents targeted by neglect statutes who have made deliberate decisions to allow their children to play, travel, or be left on their own—these parents identify with the "free-range" parenting movement. Second, this Part asserts that this group of parents, usually white and middle-to upper-class, should not be the focus of this attention because minority and lower-income parents are more likely to experience intrusion from DCFS investigations and are also less likely to have the resources to defend themselves against unjustified investigations and indications. Finally, I argue that the Illinois DCFS needs to take additional steps to narrow and specify Allegation 74's language to avoid these policy issues, and I will provide suggestions for changes in both language and application of the Allegation.

A. The Spotlight on Free-Range Parenting

When researching problematic child neglect statutes, it does not take long to come across media and scholarly articles on the "free-range" parenting movement and to see how this parenting style is at odds with current vague and overbroad state neglect statutes.[146] Free-range parents prioritize the importance of "giving children autonomy, allowing them to play outdoors unsupervised, to walk or ride a bicycle to school or a

[144] Class Action Complaint, *supra* note 11, at 5.
[145] FULLER & REDLEAF, *supra* note 50, at 14.
[146] *See, e.g.*, L.J. Jackson, *Smothering Mothering: 'Helicopter Parents' Are Landing Big in Child Care Cases*, A.B.A. J., Nov. 2010, at 18; Michael Lewyn, *The Criminalization of Walking*, 2017 U. ILL. L. REV. 1167 (2017); Manno, *supra* note 34; Pimentel, *supra* note 13; Pimentel, *supra* note 22; Amanda Kolson Hurley, *The Murky Law on Free-Range Kids*, CITYLAB (Apr. 17, 2015), https://www.citylab.com/equity/2015/04/the-murky-law-on-free-range-kids/390795/; Donna St. George, *'Free Range' Parents Cleared in Second Neglect Case After Kids Walked Alone*, WASH. POST (June 22, 2015), https://www.washingtonpost.com/local/education/free-range-parents-cleared-in-second-neglect-case-after-children-walked-alone/2015/06/22/82283c24-188c-11e5-bd7f-4611a60dd8e5_story.html?utm_term=.76080741cf5d.

friend's house. These parents believe that this autonomy is important in helping children develop a sense of responsibility and self-sufficiency."[147] Free-range parents are not simply letting their children run wild, but rather are making particular decisions about the best way to raise their children while teaching them about autonomy, independence, and responsibility. Importantly, these parents are often described as "highly educated and highly informed."[148] Unfortunately, these parenting decisions are not frequently seen as an alternative parenting methodology but as a form of neglect.[149] One noticeable commonality among the most high-profile free-range parenting cases is that advocating parents are white, often educated, and middle class.[150] While many free-range parents have faced consequences under the neglect laws in their state, Utah is the first state to protect the rights of free-range parents with its own free-range parenting law.[151] To create this law, the Utah legislature had to change its definition of neglect[152] so that it does not include (in and of itself) traveling to and from school, playing outdoors, and leaving children unattended in a vehicle under certain conditions.[153] Utah's bill, while the first of its kind, may signal a growing trend in coming years towards more free-range friendly parenting laws.

B. Impact of Allegation 74 and Similar Legislation on Minority and Lower Income Parents

While free-range parents also deserve protection of their parental rights, the most damning effects of problematic neglect laws on competent parents, including Allegation 74, often fall on minority and lower-income parents. Neglect statutes tend to disproportionally impact disadvantaged families.[154] Race, class, and gender prejudices can consciously or subconsciously influence intervention decisions where minority or lower-income parents make a deliberate decision about how best to raise their child, including when there are no alternative options for child supervision.[155] Furthermore, at the judicial level, personal biases of judges can affect their decision-making when determining a parent or guardian's moral fitness and ability to properly parent his or her child.[156] When innocent parents who have the financial resources are wrongfully targeted for neglect or abuse investigations, they are able to hire child welfare experts and

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[147] Pimentel, *supra* note 13, at 957.
[148] *Id.*
[149] Nicole Vota, Note, *Keeping the Free-Range Parent Immune from Child Neglect: You Cannot Tell Me How to Raise My Children*, 55 FAM. CT. REV. 152 (2017).
[150] *See, e.g.*, Charlotte Alter, *'Free Range Parenting' Too Often Leads to Child Neglect Investigations, Report Finds*, TIME (Aug. 7, 2015), http://time.com/3988798/parenting-differences-child-neglect-report/; Emily Friedman, *Mom Charged with Child Endangerment for Letting Kids Go to Mall Alone*, ABC NEWS (July 20, 2009), http://abcnews.go.com/US/story?id=8113294&page=1; Lenore Skenazy, *FAQs*, FREE RANGE KIDS, http://www.freerangekids.com/faq/ (last visited Jan. 17, 2019).
[151] Korva Coleman, *Utah's 'Free-Range' Parenting Law Protects Parents So Kids Can Roam*, NPR (Apr. 1, 2018), https://www.npr.org/2018/04/01/598630200/utah-passes-free-range-parenting-law.
[152] *Id.*
[153] S.B. 65, 2018 Leg., Child Neglect Amendments (Utah 2018), https://le.utah.gov/~2018/bills/static/SB0065.html.
[154] *See generally* Douglas J. Besharov, *Child Abuse Realities: Over-Reporting and Poverty*, 8 VA. J. SOC. POL'Y & L. 165 (2000).
[155] Manno, *supra* note 34, at 699.
[156] *Id.*

attorneys to help fight the claims. These parents "have an advantage when trying to defend themselves against a claim of *res ipsa* abuse or neglect, because they have access to more qualified lawyers and medical experts, and better medical care."[157] Unfortunately, lower income parents do not have these kinds of resources at their disposal.

The disproportionate impact of neglect investigations and indications on lower income and minority families can be seen at the state level in the application of Allegation 74. In 2011, 13% of American families with preschoolers had no formal or pre-arranged informal child care plans.[158] This statistic includes leaving children alone, a practice known as "self-care," or with an older sibling. Notably, a 2015 report showed that parents utilizing self-care the most were white and earning at or above 200% of the federal poverty line.[159] Despite the data showing that self-care was being used more frequently by white families with more financial resources, the FDC has represented primarily low-income African American and Latina mothers in Allegation 74 investigations and indications.[160] Furthermore, fourteen out of the twenty-one clients that the FDC represented in the 2015 expungement cases qualified to have all legal fees waived—meaning their incomes were below the poverty line. In sixteen of the FDC's Allegation 74 cases, the parent or guardian indicated was a single mother or joint parent with a partner, but only the mother was indicated for inadequate supervision.[161] Additionally, immigrant mothers were disproportionately more likely to be indicated under Allegation 74, even though they had some of the lowest rates of relying on self-care in the previously cited reports.[162] These statistics show that, in line with the "well-documented" biases from DCFS investigators and judges present in DCFS investigations as a whole, these biases are also present in Allegation 74 cases.[163]

Free-range parents who are unfairly targeted under neglect laws deserve to have their stories heard. However, the majority of these publicized stories involve white, middle-class families who have more resources to fight unwarranted neglect investigations and charges.[164] In fact, the woman who coined the "free-range parenting" movement fits this very profile.[165] The focus of media, academics, and public outrage

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[157] Allyson B. Levine, *Failing to Speak for Itself: The Res Ipsa Loquitur Presumption of Parental Culpability and Its Greater Consequences*, 57 BUFF. L. REV. 587, 606 (2009).
[158] FULLER & REDLEAF, *supra* note 50, at 15.
[159] *Id.* at 16.
[160] *Id.* at 20.
[161] *Id.* at 21.
[162] *Id.*
[163] *Id.*
[164] *See e.g.*, Petula Dvorak, '*Free-Range' Kids and Our Parenting Police State*, WASH. POST (Apr. 13, 2015), https://www.washingtonpost.com/local/free-range-kids-and-our-parenting-police-state/2015/04/13/42c30336-e1df-11e4-905f-cc896d379a32_story.html?utm_term=.44750118edb9; Stephanie Land, *Free-Range Parenting Is a Privilege for the White and Affluent*, HUFFINGTON POST, https://www.huffingtonpost.com/entry/free-range-parenting-is-a-privilege-for-the-white-and_us_57eda33ae4b0972364deaf69 (last updated Oct. 18, 2006, 7:33 PM); Hanna Rosin, *The Overprotected Kid*, ATLANTIC (Apr. 2014), https://www.theatlantic.com/magazine/archive/2014/04/hey-parents-leave-those-kids-alone/358631/; Lenore Skenazy, FREE-RANGE KIDS, http://www.freerangekids.com/ (last visited Jan. 17, 2019).
[165] Lenore Skenazy, *FAQs*, FREE RANGE KIDS, http://www.freerangekids.com/faq/ (last visited Jan. 17, 2019). Lenore Skenazy is white, middle-class, and a graduate of Yale and Columbia. CCFC, *Free Range*

alike needs to shift to the minority and lower income parents who: (1) may not identify with the free-range parenting movement but are still being unfairly targeted by neglect laws and CPS, and (2) have fewer resources and are in a more vulnerable position to be at the mercy of both CPS and the courts. Biases and prejudices not only lead to higher rates of investigation and indication for lower income and minority parents but can also influence a parent's willingness to tell his or her story for fear of having further issues with CPS or simply because no one will listen.

C. Recommended Changes to Allegation 74's Language and Application

As discussed earlier, because it is so difficult to define neglect and outline standardized methods to investigate neglect, it will not be easy for DCFS to update Allegation 74's language and its investigation methods. Nonetheless, the devastating effects of this overbroad and often misapplied allegation highlight the dire need for immediate changes to its language and application. The FDC has outlined several proposed changes for DCFS allegation language and its practices, which will be advocated for in the discussion below.[166] I will also suggest further changes in the application and language of Allegation 74.

1. Necessary Changes in the Application of Allegation 74

First, the FDC's recommendation to set a certain age at which children are presumed responsible enough to be left alone is an excellent start.[167] In Illinois under the Juvenile Court Act, a parent can be found to have neglected his or her child due to inadequate supervision up until the age of fourteen.[168] Of the known legal age restrictions for children left at home alone, Illinois has the highest age set at fourteen,[169] whereas the most common age is ten.[170] Illinois should conform with the majority of other states and lower the age at which children can be left alone to an age closer to ten years old. By giving parents a clear idea of when the state will more closely scrutinize their decision to leave a child alone, parents can make more informed decisions about how DCFS would be likely to view this decision.

Second, DCFS needs to further revise its procedures for carrying out investigations. In March of 2018, DCFS released new investigative procedures to conform with the new version of Allegation 74.[171] These new procedures are an improvement and include examples that "in and of themselves do not independently constitute 'blatant disregard' or a 'real, significant, and imminent risk of likely harm.'"[172] Examples of these exceptions

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Kids' Lenore Skenazy - Boston, Thursday, March 21 at 7:30 p.m., https://commercialfreechildhood.org/lenoreskenazy

[166] FULLER & REDLEAF, *supra* note 50, at 5.

[167] *Id.* at 29.

[168] *Id.* at 10.

[169] *Latchkey Children Age Restrictions by State*, WASH. POST, https://www.washingtonpost.com/apps/g/page/local/latchkey-children-age-restrictions-by-state/1555/ (last visited Jan. 27, 2019).

[170] *Id.*

[171] *Inadequate Supervision*, *supra* note 53.

[172] DEP'T OF CHILDREN & FAMILY SERVS., *Inadequate Supervision*, REPORTS OF CHILD ABUSE & NEGLECT 5–6 (2015), https://www2.illinois.gov/dcfs/aboutus/notices/Documents/Procedures_300_Appendix_B.pdf (at 107–08 in pdf).

include leaving school-age children at home alone and running an errand while leaving a child in the car.[173] When these exceptions occur, DCFS investigators must look at other factors to determine whether the situation constitutes inadequate supervision.[174] While this is a good start for making investigatory procedures more instructive and clear for investigators, issues still remain.

For instance, there are factors listed that are helpful things to consider but could likely still be ambiguous in application. One factor listed is the child's "level of preparedness" for being left at home alone,[175] when nowhere does it provide an example of what preparedness involves. The factors listed also have the potential to be applied with bias without proper training about different types of community and income levels of families. Going back to the preparedness factor, a low-income family might not have the resources to provide the child with a cell phone but may be able to prepare the child in other ways. Another factor that is somewhat ambiguous is how frequently the child is left alone, outside, or in the community.[176] A working, single, low-income parent might leave their child alone or in the community more frequently than a two-parent household or one that can afford to pay for a caregiver, however, this does not mean that the child is more likely to be neglected. Specific factors to be considered are a good start, but they need to be accompanied with more specific details and guidelines on what these factors mean and how they can be consistently applied.

Furthermore, for all investigations, DCFS should no longer create incentives to close cases as quickly as possible and should have a specific policy discouraging such programs. This practice only increases the likelihood of error in deciding a case and can lead to disastrous results in both allowing abusive or neglectful parents to keep custody of their children or by indicating innocent parents. DCFS should also teach its investigators to interpret the language of Allegation 74 in a clearer, more standardized way. For instance, investigators should be given clear definitions of what "significant harm" looks like and what "likely" means.[177] If being abducted by a stranger or hit by a car are statistically negligible risks, these should not be considered as likely risks or potential harms when evaluating the child's situation.

DCFS should also create a standardized training instruction to teach investigators how to analyze all factors listed under Allegation 74.[178] For instance, for factors such as how long it takes for the caregiver to reach the child and whether the caregiver can see and hear the child, DCFS needs to set better parameters.[179] What is an acceptable time for the caregiver to reach the child? Does the caregiver need to have the child directly in his or her line of sight, or is it acceptable for the caregiver to be able to look out of the window and see the child? Factors would be helpful in guiding a DCFS workers' assessment of a potential Allegation 74 situation. However, DCFS first needs to clearly train its workers on what the factors mean and the boundaries of their acceptable application. One factor that should be discarded is measuring a child's maturity level. Children of the same age can have different maturity levels that are difficult to measure,

[173] *Id.*
[174] *Id.*
[175] *Id.* at 106.
[176] *Id.*
[177] FULLER & REDLEAF, *supra* note 50, at 32.
[178] *Id.*
[179] *Id.* at 36.

which makes it too subjective of a concept to be taught and standardized across all cases.[180] Additionally, if DCFS establishes a bright line age of when a child is presumed responsible enough to be left alone, ideally set at ten years old to be in line with my proposed statutory change, there should be less of a need to look at the child's maturity level.

DCFS should also train hotline workers to ask more questions from callers when a child is seen playing at a park or walking to school, like in so many of the free-range and FDC cases mentioned. Hotline workers should ask if the caller has spoken to the child, if the child said that his or her parents know where he or she is, or if the parent is in close proximity to the child (e.g. in a house across the street). Asking these kinds of questions will help DCFS investigators early on in determining the parent's awareness at the time of the call. It will also help callers get more accustomed to asking children about their situation first before calling DCFS, which can help reduce the number of reports made on innocent and knowledgeable parents.

2. Language Changes to Allegation 74

As previously discussed, Allegation 74's current language is still problematic in its clarity and scope. One of the most concerning terms is the word "imminent," which proves to be both under and over inclusive because it excludes harms that are not immediately about to happen and includes harms that, while technically imminent, are simply a part of daily life or are difficult to avoid. Because the very definition of "imminent" is problematic for Allegation 74 and its scope, DCFS should remove the term completely. While imminence conveys the time-sensitive nature of the harm, the terms "real and significant" convey both the timeliness and seriousness of the harm so that "imminent" is unnecessary.

If DCFS continues to use "imminent" in Allegation 74, I agree with Professor David Pimentel that Allegation 74's current description of the risk of harm should be changed to a significant and imminent risk of likely harm that is "grossly disproportionate" to the risks of the next best alternative form of supervision.[181] As espoused in the free-range parenting philosophy, parents usually know their child better than anyone else and therefore are in the best position to decide how much independence should reasonably be given to their child. Parental autonomy is also a fundamental liberty interested protected under the Fourteenth Amendment.[182] Therefore, stronger language and a higher standard before DCFS intervention in the parent-child relationship is a reasonable and appropriate response that would likely help in protecting parental rights and cut down on the investigation of innocent parents simply choosing to raise their children in the way they think is best.

Adding the "grossly disproportionate" standard would force DCFS to show that risk of harm to the child is grossly disproportionate to the costs and risks of the best alternative situation.[183] For example, in the case where children walk to school by

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[180] Sarah Knapton, *Girls Really Do Mature Quicker Than Boys, Scientists Find*, TELEGRAPH (Dec. 20, 2013, 7:00 AM), https://www.telegraph.co.uk/news/science/science-news/10529134/Girls-really-do-mature-quicker-than-boys-scientists-find.html.
[181] Pimentel, *supra* note 27, at 285.
[182] *Id.*
[183] *Id.*

themselves, DCFS would need to show that the risk of walking to school alone is grossly disproportionate to the risk of waiting for and riding the bus or being driven to school. This heightened standard will also force DCFS to more seriously evaluate the costs, risks, and decisions of parents under an inadequate supervision investigation and will likely force DCFS to take more time in fully evaluating the factors of the case before coming to a decision to either indicate or close the case.

Of course, "grossly disproportionate" needs to be defined by DCFS to avoid the same problems of vagueness and misapplication. While this definition should be determined by DCFS, I offer the following definition: grossly disproportionate means that it would be obvious to a reasonable caregiver that the real and significant risk of likely harm posed outweighs the risk of the next best alternative form of supervision. There are still issues with this definition in terms of what types of risks should be obvious to a reasonable parent; however, this higher standard would nonetheless likely narrow the application of Allegation 74 so that non-neglectful parents making deliberate parenting decisions are less likely to be targeted.

CONCLUSION

Our country has a long history of recognizing and protecting parental rights. However, many states including Illinois, are influenced by the problematic language of CAPTA as well as the natural difficulties in defining and recognizing neglect and have created problematic child neglect statutes that are vague, overbroad, and often misapplied. Allegation 74's legal history and broad usage demonstrate the system-wide issues in DCFS's policies, training, and investigations. While the language of Allegation 74 has been updated to fall within the scope of ANCRA and DCFS has released updated procedures to conform with this new definition, more improvements in Allegation 74's language and application are necessary to ensure that innocent parents—free-range and otherwise—do not continue to be wrongfully targeted under this rule.

The continued need for updates to Allegation 74 language and DCFS procedures is clear when looking at the disturbing experience of an Illinois mother that occurred in August of 2018 and made national headlines.[184] One summer day, Corey Widen of Wilmette, Illinois, decided to let her 8-year-old daughter walk her dog, Marshmallow, around the block during which Widen was able to view her daughter for most of the walk.[185] After her daughter returned, Widen was expecting a playmate of her daughter's to arrive at the door but to her surprise, it was the police. The police had been contacted by an anonymous caller who reported a child walking a dog alone and while the police quickly concluded that her daughter was not in danger, according to Widen "[a]pparently whoever call[ed] the police didn't think the police were a good enough judge of what was okay and not okay. Then they called DCFS. The police did not call DCFS."[186]

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[184] Kate Thayer, *Wilmette Mom Investigated for Letting 8-Year-Old Walk Dog Around the Block*, CHI. TRIB. (Aug. 23, 2018, 8:35 AM), https://www.chicagotribune.com/lifestyles/ct-life-leaving-kids-alone-moms-shamed-20180820-story.html/.

[185] *Id.*

[186] Lindsey Bever, *An 8-Year-Old Girl Was Walking Her Dog on Her Own — and Someone Reported Her to the Police*, WASH. POST (Aug. 24, 2018), https://www.washingtonpost.com/news/parenting/wp/2018/08/24/an-8-year-old-girl-was-walking-her-dog-on-her-own-and-someone-reported-her-to-the-police/?noredirect=on&utm_term=.4c6a88ca4515.

After a weeks-long investigation in which DCFS interviewed Wilden's friends, family members, and even her children's pediatrician, DCFS found no wrongdoing and decided against indicating Wilden.[187] When asked about the investigation by the *Chicago Tribune*, a DCFS spokesperson said that "We want to investigate . . . because you just don't know . . . . You also don't want to say (to the public), 'Don't call us unless it's serious.'"[188] Wilden, however, felt the damage had already been done, stating that the whole experience had been "traumatizing" for her family and that she was "mom-shamed" for her parenting decision.[189] Despite her ordeal, Widen recognized how lucky she was to have resources and connections to attorney friends who were able to help her and stated that since her ordeal went public, she has had over 100 people write to her with some even asking for help.[190] The FDC Executive Director Rachel O'Konis Ruttenberg also commented on Widen's case and praised her for shedding light on the racial and income disparities that often affect the outcomes of DCFS investigations: "'[t]he consequences are so much more dire for low-income and families of color'… [w]hen DCFS first comes in contact with a family, those with financial means tend to hire a lawyer to assist them… but 'low-income families don't have the resources to get an attorney and get in front of it.'"[191]

Widen's story represents perhaps the best-case scenario for what can happen after DCFS is called for a potential inadequate supervision allegation. Widen was in a privileged position to fight the investigation, her family was not separated, her job was not threatened or severely interrupted, she was not financially devastated from fighting the investigation, and her case took weeks to resolve instead of months or years. However, it is important to remember that this traumatic ordeal occurred after DCFS had updated its Allegation 74 language and procedures. This level of investigation into a girl walking her dog around the block demonstrates that there are still significant issues with Allegation 74's language and application that require remedy. Had some of the changes I proposed above been in place at the time of the incident, it is very well possible that this investigation could have been avoided and saved both Widen and her family from stress and disruption, as well as DCFS resources. While DCFS has made progress in clarifying Allegation 74 and its application, further specification of its language and factors, as well as more rigorous staff training will help ensure that innocent parents like Corey Widen, Natasha Felix, and countless other innocent parents are not wrongly targeted by DCFS.

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[187] *Id.*
[188] Thayer, *supra* note 184.
[189] Bever, *supra* note 186.
[190] Kate Thayer, *Wilmette Mom at Center of DCFS Investigation Sheds Light on Parents Caught in 'Upside-Down Child Welfare System,'* CHI. TRIB. (Sept. 19, 2018, 5:00 AM), https://www.chicagotribune.com/lifestyles/ct-life-wilmette-mom-child-endangerment-laws-20180917-story.html.
[191] *Id.*