

CHILD PROTECTION: AN AMERICAN LEGAL CRISIS

by

Marie J. Frere

HONORS THESIS

Submitted to Texas State University  
in partial fulfillment  
of the requirements for  
graduation in the Honors College  
December 2022

Thesis Supervisor:

Nathan Pino

## TABLE OF CONTENTS

	Page
ACKNOWLEDGEMENTS .....	3
ABSTRACT.....	4
CHAPTER	
I. CHILD PROTECTION: AN AMERICAN LEGAL CRISIS .....	5
II. THE AMERICAN LEGAL TRADITION .....	7
Early history of Child Protection .....	7
Individual Privacy Rights .....	13
Religious Institutions .....	16
III. REACTIONARY LEGISLATION.....	20
The AMBER Alert.....	21
The PROTECT Act.....	23
The Adam Walsh Act.....	24
Discussion .....	28
IV. PUBLIC OPINION FORMATION .....	29
Media Representations.....	29
V. PUBLIC HEALTH EDUCATION .....	33
Child Education .....	34
Adult Education .....	35
VI. THE CONVENTION ON THE RIGHTS OF THE CHILD .....	36
VII. THE FAMILY FIRST PREVENTION SERVICES ACT .....	38
VIII. CONCLUSIONS.....	41

## **ACKNOWLEDGEMENTS**

First, I would like to thank Dr. Nathan Pino for agreeing to be my thesis advisor and for thoroughly reviewing each edit of my work. His knowledge on my topic has helped me to explore new avenues I would not have found on my own, and this paper would not have been possible without his guidance.

Next, I would like to thank Mrs. Katie Arnold for meeting with me and allowing me to question her on her work with prosecuting child offenders. Her responses provided valuable support to the claims I made, and they prompted me to explore other topics for my paper.

Finally, I would like to thank Dr. Peter Tschirhart from the Texas State Honors College faculty for teaching me how to approach writing an undergraduate thesis. I was quite dumbfounded on how to go about starting my work, so without him and his class, I would have had no idea how to begin, much less how to complete, my thesis process.

## **ABSTRACT**

Child Protection in America is wildly insufficient given that laws regarding child services are largely comprised of reactionary legislation. Reactionary legislation is a piece of legislation meant to be a “quick fix” that is passed in response to public outcry on a notable event. Public opinions on the nature of child abuse are largely formed by misrepresentations in the media, which leads politicians to pass reactionary legislation. However, these “quick fixes” do very little to improve the issue at hand. In the end, little is done to help children who are being abused. Lawmakers know that the legal state of protecting children is contradictory, yet the topic of child protection is not politically prioritized, so it receives little attention. To address the legal and educational insufficiencies of child protection would take years of dedicated work, and there are several contributing factors to consider. Media, politics, public opinion, reactionary legislation, and the American legal tradition are factors that influence the protection of children in America. While research has been completed on each of these factors individually, this paper acts as a compilation of such information with additional analysis and connections made between differing topics. It analyzes current child protection laws and draws conclusions on how these laws are failing, as well as provides suggestions for legal reformation. In addition, it addresses the issue from an educational standpoint by suggesting methods to treat child abuse as a public health issue. This will provide ways to integrate educational measures into public health policies to combat misconceptions on the nature of child abuse.

## CHILD PROTECTION: AN AMERICAN LEGAL CRISIS

One of the oldest and most highly debated issues throughout history is child abuse. Whether labeled as such or left unnamed, child abuse has consistently pervaded human history as an evil that most consider unavoidable and dependent on the actions of individuals. Most people will argue that child abuse is wrong, so the issue of child protection initially appears to be a non-trivial topic. However, for such a globalized and well-known issue, the protection of children has continued to be placed on the backburner of all social progression. In the United States, there are several factors that contribute to the degree of protection of children. Legislation, politicians, media portrayals, public conception, child protective institutions, and the tradition of the law are components that influence one another to create the inadequacies of the current state of child protection. The reality of child protection in the U.S. is a bleak one, with over 7.8 million children receiving referrals for having been abused and only around half of these cases being screened for an official Child Abuse and Neglect investigation.<sup>1</sup> The number of referrals continues to grow every year, which means that the number of children that are not officially investigated for abuse continues to rise as well, an issue that has only further exacerbated itself through the COVID pandemic with over 250,000 cases expected to have been reported that were not.<sup>2</sup>

These numbers are not solely reliant on a lack of reporting, although the barriers for reporting child abuse are certainly a large factor in the number of cases that are

---

1. Loc H. Nguyen, "Calculating the Impact of Covid-19 Pandemic on Child Abuse and Neglect in the U.S.," *Child Abuse & Neglect* 118 (2021): p. 105136, <https://doi.org/10.1016/j.chiabu.2021.105136>.

2. Nguyen, 1.

investigated. The issue of child protection in the U.S. is a multi-faceted issue consisting of the “Vicious Cycle” between the media, society, politicians, and child welfare organizations.<sup>3</sup> The media portrays the nature of child abuse in a way that produces misconceptions among the public, which then shapes the way politicians react to the issue of child abuse as they attempt to satisfy public opinion. When politicians react to misguided social conceptions, conflicting and reactionary legislation is proposed which often negatively affects child welfare services in the ways they operate.

However, each part of this “Vicious Cycle” is more complicated than it is initially presented. Media is not limited to news coverage; public opinion is shaped by the media, but also by non-comprehensive or inaccurate education regarding the realities of child abuse. Politicians are responding to sporadic public outcry on the issue, but also to the tradition of law in America and motivation for funding. In addition, child welfare services are disadvantaged by reactionary legislation enacted by politicians and by the motivation and participation of adults, whom the system relies on for reporting cases of suspected abuse. While widely accepted as insufficient, the nature of child protection in the U.S. lacks dedicated and comprehensive reform measures as this is an issue whose insufficiencies are further perpetuated the longer they are left unaddressed. Several factors lie behind each component that influences the protection of children, and there are several components to this issue. Therefore, the goal of this paper is two-fold: 1) to explain the factors behind each component of this issue, and 2) to propose comprehensive reform measures to address the insufficiencies of child protection in America. Ideally,

---

3. David Chenot, “The Vicious Cycle: Recurrent Interactions among the Media, Politicians, the Public, and Child Welfare Services Organizations,” *Journal of Public Child Welfare* 5, no. 2-3 (May 19, 2011): pp. 167-184, <https://doi.org/10.1080/15548732.2011.566752>.

child protective legislation is put in place to prevent abuse and ensure that when adults in children's lives fail to protect them, systems are in place that will step in to provide protection. No child should ever feel as though they are responsible for their abuse, nor should they ever think that their life is worthless and that they would be better off dead. This is precisely why adequate time and attention must be dedicated to resolving the contradictions in child protective laws in addition to the numerous external contributing factors impacting child protection. The longer this issue is left unattended, the more children will continue to be harmed at alarming rates and will continue to fall through the cracks of the current system.

## **THE AMERICAN LEGAL TRADITION**

### **Early History of Child Protection**

In order to understand the insufficiencies that coexist within child protective services, the history of how child abuse has been recognized and handled in the United States must be understood first. Although child abuse has taken place for centuries, it was not fully recognized as an issue until medical professionals discovered “battered child syndrome” and labeled child beating as “deviant” behavior.<sup>4</sup> Before this, in the 17<sup>th</sup> and 18<sup>th</sup> centuries, English common law established that children had no rights and that parents were allowed to inflict any violence on their children in the name of discipline.<sup>5</sup> In this way, children were treated as property of the parent, which minimized their chances of being protected or treated as valid social agents in society.

---

4. Stephen J. Pfohl, “The ‘Discovery’ of Child Abuse\*,” *Social Problems* 24, no. 3 (February 1, 1977): 310–23, <https://doi.org/10.2307/800083>.

5. Pfohl, 310-11.

Beginning in the 1820s was the House of Refuge movement, which saw city youths placed in homes, or houses of refuge. While the official reason for these homes was to protect neglected children, the wording of the endeavor was to remove children from “corrupt urban environments”<sup>6</sup> and to institutionalize children who were considered “unordinary”, namely those who were homeless, impoverished, engaged in unruly behavior, or committed crimes.<sup>7</sup> Thus, the movement was geared towards reforming children to protect society from the possibility of future delinquency, which was believed to be a product and cause of poverty, rather than focusing on abusive parents and saving children.<sup>8</sup> Furthermore, this era equated poverty with neglect as a form of abuse rather than recognizing that impoverished families were more likely to lack the ability to fully provide for their children. So, rather than receiving assistance from the government to aid in family care, families living in poverty were subject to having their children removed and placed in a house of refuge since there was no distinction between neglect from poverty and neglect as a form of abuse.<sup>9</sup> The House of Refuge movement therefore established the practice of removing children from homes and further solidified the idea of poverty being equal with abuse and delinquency.

Following the House of Refuge movement was the establishment of the National Society for the Prevention of Cruelty to Children (NSPCC) in 1875. This movement originated from the National Society for the Prevention of Cruelty to Animals (NSPCA)

---

6. Pfohl, 311.

7. MaGuire, Brendan. 1982. “The House of Refuge Movement: Humanitarian Gesture or Simple Exploitation?” *Sociological Spectrum* 2 (3/4): 249. doi:10.1080/02732173.1982.9981667.

8. Pfohl, 311

9. Giovannoni, Jeanne M. “Parental Mistreatment: Perpetrators and Victims.” *Journal of Marriage and Family* 33, no. 4 (1971): 649–57. <https://doi.org/10.2307/349437>.



after the NSPCA intervened in a case of a young girl who was being abused in her foster home.<sup>10</sup> Upon the formation of the NSPCC, however, the majority of children removed from their homes were foster or adopted children, with little to no focus on the abuse that occurred by “natural” parents.<sup>11</sup> Ignoring family abuse by “natural” parents solidified the practice of discrediting abuse that occurs in the family, which is a notable basis for the current state of child protection and its tendency to prioritize family privacy. While the emergence of this organization was important to society’s recognition of child abuse as an issue, it still functioned at the same time of the House of Refuge movement, so children removed from their homes were institutionalized by a house of refuge and were subject to its ideology of child reform to prevent delinquency.<sup>12</sup>

The influence of the NSPCC largely declined, and the Juvenile Court System was established in 1899, along with the invention of the concept of “juvenile delinquency”.<sup>13</sup> While this was initially seen as a landmark achievement for children’s rights, and the idea of saving youths rather than punishing them was popularized amongst the western world,<sup>14</sup> more recent studies criticize the start of this movement as exploiting the lower class to protect the power of the middle- and upper-classes.<sup>15</sup> The Juvenile Court System was intended to keep children who committed crimes from adult jails and to create a less

---

10. Pfohl, 312.

11. Giovannoni, 652.

12. Pfohl, 312.

13. Weijers, Ido. 1999. “Juvenile Justice and the Origins of the Welfare State.” *European Journal of Crime, Criminal Law & Criminal Justice* 7 (1): 3–4. doi:10.1163/15718179920518673.

14. Ido, 3.

15. MaGuire, 249.

harsh system for juvenile criminal processing, but it lacked due process and funneled any non-criminal children into institutions like the Houses of Refuge.<sup>16</sup> Similarly to the Houses of Refuge, juvenile courts were more focused on protecting society from future delinquents who were believed to originate in the lower classes,<sup>17</sup> and historians in the 1960s and 70s noted how this system was geared towards controlling families who “resisted middle-class notions of proper behavior, sexuality, and family life.”<sup>18</sup>

The 1930s saw the development of child labor laws and the formation of the Children’s Bureau (CB) of Health, Education, and Welfare (HEW). The Children’s Bureau of HEW adopted a “Children’s Charter” to ensure secure homes for children and protect them against neglect, abuse, and exploitation.<sup>19</sup> There was increased cultural awareness of children’s rights, yet little to no attention directed at adult perpetrators of child abuse. A large component of this lack of addressal was due to the established power dynamic of the parent over the child, since the most common physical abuse against children was physical force as a means of punishment and it was widely deemed as an acceptable way to raise children.<sup>20</sup>

Child abuse began to receive a deviant label in the late 1940s and 50s when radiologists observed trends of children with broken or fractured bones. They first

---

16. Fox, Sanford J. “Juvenile Justice Reform: An Historical Perspective.” *Stanford Law Review* 22, no. 6 (1970): 1187–1239. <https://doi.org/10.2307/1227960>.

17. Pfohl, 313.

18. Dodge, L. Mara. ““Our Juvenile Court Has Become More like a Criminal Court”: A Century of Reform at the Cook County (Chicago) Juvenile Court.” *Michigan Historical Review* 26, no. 2 (2000): 51–89. <https://doi.org/10.2307/20173859>.

19. Pfohl, 314.

20. Pfohl, 314-5.

deemed the causes as being external and likely either parent-induced or simple childhood accidents, and later clarified that the causes were resultant from “misconduct and deliberate injury”, which brought on increased concern for abused children.<sup>21</sup>

Radiologists and pediatricians began to notice discrepancies between parent claims and the injuries found on children, and the idea that doctors should treat the children rather than the parents as their patients emerged in these fields specifically.<sup>22</sup>

A significant article by pediatrician C. Henry Kempe in 1962 detailed the newfound “battered child syndrome” as “a clinical condition in young children who have received serious physical abuse, generally from a parent or foster parent.”<sup>23</sup> This marked the first time child abuse officially received a “deviant” label, and the article also noted that physicians seemed reluctant to believe that parents could harm their children in such violent ways and how children were often hesitant to discuss any violence inflicted upon them especially by a parent.<sup>24</sup> Beginning in 1962, and over a four-year period, every state had passed some form of legislation against the abuse of children by their parents or caretakers.<sup>25</sup>

The “battered child syndrome” may have been a brief term unique to the 1960’s, but it raised significant awareness and concern for child abuse.<sup>26</sup> Just as child abuse was

---

21. Pfohl, 315.

22. Crane, Jennifer. “‘The Bones Tell a Story the Child Is Too Young or Too Frightened to Tell’: The Battered Child Syndrome in Post-War Britain and America.” *SOCIAL HISTORY OF MEDICINE* 28, no. 4 (November 1, 2015): 767–88. doi:10.1093/shm/hkv040.

23. C. H. Kempe, Frederic N. Silverman, Brandt F. Steele, William Droegemuller and Henry K. Silver, ‘The Battered Child Syndrome’, *Child Abuse and Neglect*, 1985, 9, 143–54, 144.

24. Crane, 767-8.

25. Pfohl, 310.

26. Crane, 768-9.

officially labeled as such in the 1960s, the 1970s and 80s saw the recognition and labelling of Child Sexual Abuse (CSA) for the first time. Previously, incest and sexual abuse of children were considered rare instances, so the “sexual abuse recovery movement” of the 80s was a huge shock to the nation, and this movement saw the passage of mandated reporting laws.<sup>27</sup> The rise of awareness around CSA is largely attributed to feminists, and feminist therapists are credited with promoting the “sexual abuse paradigm.”<sup>28</sup>

While this era marks the first time that incest was recognized as a legitimate issue, it also saw a large number of children and adults unintentionally fabricating experiences from their childhood where they were sexually abused by a family member. This was due to the techniques that therapists used to try to encourage discussions about sexual trauma with their patients: they often molded false experiences in their patients’ minds when they were in particularly suggestive states, creating scenarios to adhere to “adult expectations.” This resulted in a large-scale discrediting of CSA and incest in the 1990s, which brought back the popularity of the idea of “stranger molestation.”<sup>29</sup> Stranger molestation, like “stranger danger,” is a harmful idea to perpetuate as it is the least common form of CSA. The long-pervading stereotype of strangers abusing children throughout America’s history has proved detrimental, even now, in the recognition of child abuse since the public are less likely to recognize familial abuse, which are the most common instances of child maltreatment.

---

27. Satter, Beryl. “The Sexual Abuse Paradigm in Historical Perspective: Passivity and Emotion in Mid-Twentieth-Century America.” *Journal of the History of Sexuality* 12, no. 3 (July 2003): 424–64. doi:10.1353/sex.2004.0014.

28. Satter, 426.

29. Satter, 425.

## Individual Privacy Rights

The Convention on the Rights of the Child (CRC) is a United Nations (UN) treaty adopted in 1989 for the purposes of developing a unified approach in protecting children in each Member State from neglect and abuse of all forms. The treaty defines children as humans under the age of 18 years, prioritizes the protection and best interest of the child, and ensures the equal protection of children by State Parties without discrimination based on the actions or social statuses of a child's family or legal guardians.<sup>30</sup> Out of all 193 UN Member States, the United States is the only Member State that has not ratified the CRC.<sup>31</sup> The main reasons for this are that the US Government is concerned that the CRC would infringe too heavily upon the rights of American families and would result in the government being required to violate what is perceived as a right to familial privacy. Currently, the rights that children retain under the CRC conflict with the autonomy of parents under U.S. law in raising their children,<sup>32</sup> specifically concerning the CRC's article 12 that allows children to voice their opinions and represent themselves in matters that directly affect them.<sup>33</sup> Under U.S. law, parents retain the power to make all decisions regarding their children, so ratifying the CRC may threaten that right.<sup>34</sup>

---

30. "Convention on the Rights of the Child" United Nations Human Rights Treaty, vol. 1 (20 Nov 1989).

31. "UN, United Nations, UN Treaties, Treaties," United Nations (United Nations), accessed April 21, 2022, [https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-11&chapter=4&clang=\\_en](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11&chapter=4&clang=_en).

32. Soo Jee Lee. "A Child's Voice Vs. A Parent's Control: Resolving a Tension between the Convention on the Rights of the Child and U.S. Law." *Columbia Law Review* 117, no. 3 (April 2017): 687–727.

33. "Convention on the Rights of the Child" United Nations Human Rights Treaty, vol. 1 (20 Nov 1989).

34. Lee, 690.

The government is also concerned for the implications that ratifying such a treaty would have on the American economy, as many corporations outsource to countries that rely on child labor for production. If the US ratified the CRC, it may receive significant backlash for allowing corporations to exploit child labor, which would significantly alter the current model of capitalism that sustains the nation's economy. The U.S. may have certain laws in place to protect children, but its history of withholding rights from children and considering them to be the property of their parents has been harmful to the evolution of children's rights, so the CRC is important for establishing children as individuals who deserve rights and protection. These reasons are, in part, products of the tradition of the law in the United States which emphasizes the rights of the individual above all else and promotes the least amount of government involvement in the lives of citizens as is possible. Children were treated as the property of their "parents",<sup>35</sup> meaning they were considered to be property of their white, land-owning fathers, since women were also treated as belonging to men, and people of color were not considered valid citizens. Individual privacy and freedom is an important component to democracy and is necessary to prevent the formation of an oppressive governing body. However, in instances such as those of familial child abuse, Federal and State governments are influenced by the patriarchal tradition of allowing white, land owning fathers to control their wives and children. This leaves the government in a place of being so concerned with appearing to interfere with family life that families receive less restrictions on how they treat their children, which provides an avenue for decreased intervention in situations of child abuse.

---

35. Pfohl, 311.

Due to this tradition of the law in the US, the government considers activities related to the family to be private matters, which has proved to be detrimental in developing and enforcing child protective measures. Protecting the right to privacy has certainly proved beneficial for many social causes in the United States, such as legalizing contraceptive use, interracial marriages, and eliminating anti-sodomy laws. However, while privacy rights have been extended to include the right to marital privacy,<sup>36</sup> there has never been an established right to the privacy of families including children, so when this perceived right to familial privacy is prioritized above the rights of the child, it is essentially a prioritization of parental interests above children's rights. For example, there exists a sociological tendency for adults to place the interests of other adults and institutions above the rights and protection of children.<sup>37</sup> Through this tendency, adults who suspect that a child is being abused are more likely to consider how the allegations of abuse will affect the adult abuser's reputation, and subsequently their future, than they are to consider the situation of the child and how they are being affected by the abuse. Furthermore, adults hold the assumption that other adults are more credible than children and that their needs supersede the needs of children.<sup>38</sup> This same tendency is present in the way lawmakers approach creating child protective laws and is evident in the US government's abstention from ratifying the CRC. The protection of the supposed right to privacy in the family is the product of adults protecting other adults above children, which is an important factor in understanding some of the ways in which child protective

---

36. Douglas, William Orville, and Supreme Court Of The United States. *U.S. Reports: Griswold v. Connecticut*, 381 U.S. 479. 1964. Periodical. <https://www.loc.gov/item/usrep381479/>.

37. Marci A. Hamilton, "The Barriers to a National Inquiry into Child Sexual Abuse in the United States," *Child Abuse & Neglect* 74 (2017): pp. 107-110, <https://doi.org/10.1016/j.chiabu.2017.10.004>.

38. Hamilton, 108.

services in America are insufficient yet continue to remain unaddressed. An overwhelming amount of child abuse cases occur within the family, so ignoring this factor and continuing to prioritize parental privacy above the needs of the child creates a type of protection over the most likely institution for child abuse, that being the institution of the family.<sup>39</sup>

### **Religious Institutions**

While abuse in any form is most likely to occur within families, it is also quite prevalent within institutions that work closely with children. One such example is religious institutions, specifically regarding Child Sexual Abuse (CSA) within churches, also known as Clerical Child Sexual Abuse (cCSA). The very idea of churches and sexual abuse seem to contradict one another, yet there is a significant tendency for most cases of CSA to be brought against institutions managed by religious organizations.<sup>40</sup> There are three main reasons to explain sexual misconduct between priests or religious leaders and parishioners, which can be understood in the context between clergy and children as well. These reasons are: the power of freedom, which results from clergy not being under constant supervision from others; the power of access and accessibility, which comes from clergy having privileged access to the lives of their parishioners as

---

39. Linda Gordon, "The Politics of Child Sexual Abuse: Notes from American History," *Feminist Review* 28, no. 1 (1988): pp. 56-64, <https://doi.org/10.1057/fr.1988.4>.

40. Rashid, Faisal, and Ian Barron. "Why the Focus of Clerical Child Sexual Abuse Has Largely Remained on the Catholic Church amongst Other Non-Catholic Christian Denominations and Religions." *Journal of Child Sexual Abuse* 28, no. 5 (July 2019): 564–85. doi:10.1080/10538712.2018.1563261.



they administer care; and the power of knowledge, meaning that clergy have extensive knowledge about the members of their churches.<sup>41</sup>

First, this section will discuss cCSA in the Catholic church. The Charter for the Protection of Children and Young People was passed in the United States in 2002, in collaboration with the Pope, which requires all dioceses to enact prevention measures for CSA, some of which are to require abuse prevention training to anyone within the dioceses who works with children and to create an official code of conduct to prevent misconduct and boundary violations by church officials.<sup>42</sup> However, although this charter was passed, there was no guidance by the government for how this training would be implemented or any recommendations for what provisions should be included in these codes of conduct.<sup>43</sup> Furthermore, CSA allegations against the church are handled internally by the dioceses.<sup>44</sup> Internal investigations may give the church the power of discretion as they investigate alleged abuse, however internal investigations are less likely to be objective, which is further exacerbated when specific provisions have not been recommended by an outside entity. This lack of guidance and oversight can be attributed to a fear by the government of infringing too heavily on the rights of religious institutions, but also to the concern for the reputation of institutions and the fear of

---

41. Capps, Donald. "Sex in the Parish: Social-Scientific Explanations for Why It Occurs." *The Journal of Pastoral Care* 47, no. 4 (Wint 1993): 350–61.

42. Stephanie J. Dallam et al., "Analysis of the Written Policies of the 32 U.S. Archdioceses on the Prevention of Child Sexual Abuse," *Journal of Child Sexual Abuse* 30, no. 8 (January 2021): pp. 891-910, <https://doi.org/10.1080/10538712.2021.1970678>.

43. Dallam, 893.

44. Dallam, 892.

shaming religious organizations.<sup>45</sup> The concern for the reputation of the church can be understood through the aforementioned tendency of adults to place the interests and reputation of other adults above the needs of children, and this tendency is also a factor in what makes internal investigations by the church less objective processes.

However, cCSA is not uniquely a Catholic phenomenon. The media has continued to report on cCSA specifically regarding the Catholic church since the 1990s, which has created a public perception that it is most prevalent in Catholic institutions.<sup>46</sup> While the Catholic church accounts for 62% of all CSA allegations against religious organizations, this is a part of the larger tendency for most CSA allegations to be brought against institutions managed by religious organizations.<sup>47</sup> The most attended religious institutions in America are Protestant churches, yet there have only recently been limited inquiries into the prevalence of CSA in these organizations.<sup>48</sup> Relying on information reported from three major insurance companies that cover 165,500 Protestant churches in the U.S., 7,095 claims of CSA have been alleged against these churches from 1987 to 2007, marking about 260 claims each year and \$87.8 million in total settlements awarded.<sup>49</sup> The fact that statistics on abuse within Protestant churches must be derived from insurance claims is concerning because cCSA is clearly an issue in these institutions, yet there has been little to no research done on the specifics of how or why it

---

45. Hamilton, 106-7.

46. Rashid et. al, 565-6.

47. Rashid et. al, 567.

48. Denney, Andrew S., Kent R. Kerley, and Nickolas G. Gross. "Child Sexual Abuse in Protestant Christian Congregations: A Descriptive Analysis of Offense and Offender Characteristics." *Religions* 9, no. 1 (January 2018): 27. doi:10.3390/rel9010027.

49. Denney et. al, 1-2.

may occur in this church environment. For this reason, it can only be assumed that the same power dynamics that occur in the Catholic church which create an environment that lends itself to child exploitation are the same dynamics that occur in other religious organizations such as the Protestant church.

Most research on cCSA is dedicated specifically to the Catholic church, which raises the question of why Protestant churches are excluded from this research when, as previously noted, they are the most attended religious institutions in America. One explanation is that the government and media outlets are concerned with appearing to condemn Protestant churches in the same way they have reacted to CSA in Catholic churches and the possible backlash that would result from discussing such a popular institution. This would be an even greater concern as related to Protestant churches considering that they have even greater membership and attendance rates in America than Catholic churches. In fact, there have been cases against protestant ministers that the media has not reported on since these cases do not fit anti-Catholic rhetoric that the media tends to follow.<sup>50</sup> Furthermore, I have concluded that Catholic churches have the Pope and the Vatican City to act as a figurehead and to, in theory, make decisions that every Catholic church will follow worldwide. Protestant churches do not have this hierarchy, so in terms of framing institutionalized abuse, it seems easier to place most of the blame on a group with a clearer hierarchy rather than trying to frame institutionalized issues in an organization with no unified hierarchy. Moreover, it is also easier for the media to continue attributing cCSA to Catholic churches under the “celibacy” frame,

---

50. Rashid et. al, 574.

meaning that the media tends to frame cCSA as a catholic phenomenon due to the promoting of celibacy in the Catholic church that is not present in protestant churches.<sup>51</sup>

Religious freedom is an important and necessary component to American society, as well as the separation of church and state. However, in the case of the dioceses and protestant organizations, the consideration of the rights of religious organizations to operate with little to no government intervention is placed above the need to protect children who are in consistent contact with the adults of these institutions and are thus more vulnerable to abuse. Nevertheless, it is possible to maintain the religious freedoms of Americans while also protecting the rights of children, but only if government officials prioritize children above the considerations for the reputation of religious institutions or the fear of appearing to infringe too heavily upon their rights.

### **REACTIONARY LEGISLATION**

In conjunction with the American legal tradition, child protective policies are significantly shaped by reactionary legislation. Reactionary legislation is classified as a law or policy which is introduced as a reaction to increased public concern regarding a major event, a response by lawmakers meant to satisfy public opinion on the issue at hand.<sup>52</sup> Regarding child protection, politicians often introduce new legislation for child services in the wake of a highly publicized and particularly gruesome child abuse scandal. In order to satiate public outcry and maintain constituent support, elected officials will propose a type of “quick fix” to allegedly address the scandal and ensure

---

51. A Donohue, “A Review Essay of Philip Jenkins’ Pedophiles and Priests,” Catholic League, May 12, 1996, <https://www.catholicleague.org/a-review-essay-of-philip-jenkins-pedophiles-and-priests/>.

52. “The Polar Bear Ethic: From the Reactionary Trend in Environmental Lawmaking...: EBSCOhost.”.

that an incident like it will never occur again. The issue with reactionary legislation is that it is largely symbolic on the part of elected officials who push this reactionary policy for the sake of public support,<sup>53</sup> but the proposed policy lacks substance, accompanying funding, and often creates contradictions in existing laws, as well as disproportionately targets Child Welfare Services as the sole reason for the incident in question.<sup>54</sup>

The case of 9-year-old Amber Hagerman, who was abducted and killed by a stranger in 1996, brought about the AMBER alert, which is discussed at length further in this section. The AMBER alert popularized and, in 2003, President George W. Bush signed the Prosecutorial Remedies and Other Tools to End the Exploitation of Children Today (PROTECT) Act, which he initiated following 9/11 and promoted as a domestic remedy for protecting children.<sup>55</sup> President Bush also enacted the Adam Walsh Child Protection and Safety Act (AWA) in 2006. This short period of time saw the formation of three expansive pieces of legislation for child protection, which have been heavily criticized since their respective enactments.

### **The AMBER Alert**

One example of controversial reactionary legislation is the well-known AMBER alert. The AMBER alert is an acronym for America's Missing: Broadcast Emergency Response but is also named after 9-year-old Amber Hagerman who was abducted and killed by a stranger in Arlington, Texas in 1996. The AMBER alert was established later

---

53. Juliet F. Gainsborough, "Scandals, Lawsuits, and Politics: Child Welfare Policy in the U.S. States," *State Politics & Policy Quarterly* 9, no. 3 (2009): pp. 325-355, <https://doi.org/10.1177/153244000900900304>.

54. Chenot, 170.

55. Renfro, Paul M. "'Hunting These Predators': The Gender Politics of Child Protection in the Post-9/11 Era." *Feminist Studies* 44, no. 3 (September 2018): 567-99. doi:10.15767/feministstudies.44.3.0567.

in the same year as the Amber Hagerman incident, and by 2003, it was expanded nationwide and placed under federal oversight.<sup>56</sup> It was developed as a reaction to a child abduction-murder case and is often praised as a means for saving children's lives. However, in child abduction-murder cases, the events often occur much more quickly than what an AMBER alert can respond to, so any times the AMBER alert has been successful has been in low-risk cases where a child is abducted by a family member.<sup>57</sup> While these successes are not a negative component of AMBER alerts, the system is still framed to give off the impression that children are rescued quickly and from life-threatening situations,<sup>58</sup> and there are other issues with the system that have been criticized more recently. One concern, which ties into the media misrepresentations covered later in this work, is that AMBER alerts perpetuate the common misconception that strangers constitute most child abductions, when the reality is that most child abductions occur by a family member or someone close to the family. The alert itself is named for a case of "stranger danger" and continues to publicly target cases of child abduction by a stranger, which only account for around eleven percent of all child abduction cases.<sup>59</sup> However, AMBER alerts are widely accepted, praised, and satisfy public opinion even though they reenforce the idea of "stranger danger", which is a

---

56. Griffin, Timothy, and Filip Wiecko. "'Worth It If It Saves Just One Life'? Ethical Reservations Regarding AMBER Alert." *Criminal Justice Ethics* 34, no. 2 (August 2015): 156–76. doi:10.1080/0731129X.2015.1059572.

57. Griffin, "Worth It If It Saves Just One Life?" 157-8.

58. Griffin, Timothy, Joshua H. Williams, and Colleen Kadleck. "AMBER Alert Effectiveness Reexamined." *Criminal Justice Policy Review* 33, no. 1 (February 2022): 23–44. doi:10.1177/08874034211026366.

59. Jessup, Corey, and Monica K. Miller. "Fear, Hype, and Stereotypes: Dangers of Overselling the Amber Alert Program." *Albany Government Law Review* 8, no. 2 (May 2015): 467–507.

common stereotype held on child abduction cases. This, in turn, affects the overall way child abuse is viewed, especially in terms of child sexual abuse, since strangers are often believed to be the perpetrators in these cases. Furthermore, naming this alarm system after a child in such a highly publicized case is a framing tactic to garner public support, which ties back to the aforementioned tendency for legislators to propose “quick fix” laws in the wake of a highly publicized and particularly gruesome case of child abuse or harm. The AMBER alert system is just one instance of a reactionary law that addresses the least likely form of child victimization, that being abduction and murder by a stranger.

### **The PROTECT Act**

The Prosecutorial Remedies and Other Tools to end the Exploitation of Children Today (PROTECT) Act was signed into law in 2003 and nationalized the AMBER alert system, as well as strengthened the sentencing of sex offenders and further defined and punished possession of child pornography.<sup>60</sup> This act includes amendments to federal law to eliminate the limit on the number of years for supervised release from prison following a conviction of a felony offense against a child. It also implements a mandatory life sentence for a person who is convicted of a federal sex crime against a child if they also have a prior sex crime conviction involving a minor.<sup>61</sup>

In my legal analysis, I found that one line in the PROTECT Act stands out from the rest: section 107, which reads that the Act “establishes criminal liability for attempting to remove a child from the United States with intent to obstruct the lawful

---

60. Renfro, 569.

61. Congressional Research Service, “S.151 - 108th Congress (2003-2004): PROTECT Act,” [www.congress.gov](https://www.congress.gov/bill/108th-congress/senate-bill/151), April 30, 2003, <https://www.congress.gov/bill/108th-congress/senate-bill/151>.

exercise of parental rights.” Even in legislation that is geared towards protecting children, provisions for parental rights are still included. This demonstrates the legal tradition covered earlier in this work for American child protection to be more considerate of parental rights than with protecting children. Rewording this section of the PROTECT act would reframe the way this act functions. Instead of making it illegal to remove a child from the country due to “intent to obstruct the lawful exercise of parental rights,” it could be changed to indicate that someone removing a child from the United States would fall under kidnapping and/or would unnecessarily put the child at risk of harm. This way, the wording of the PROTECT Act would be more beneficial to prioritizing children’s rights through other legal measures, such as through the CRC which inherently conflicts with the idea of prioritizing parental rights above the welfare of children. By eliminating a direct challenge to the provisions of the CRC, specifically the provisions of Article 12 that is mentioned earlier in this work, American law would become more conducive with the CRC, which would make it less contradictory for the United States to ratify this treaty.

### **The Adam Walsh Act**

The Adam Walsh Child Protection and Safety Act, also known as the Adam Walsh Act (AWA), was signed into law in 2006 by former President George W. Bush. Its main purpose is to provide a three-tiered system to classify sex offenders into different potential risk levels, as well as to create a registration and notification system for sex offenders.<sup>62</sup> The AWA lowered the age for juvenile sexual offenders and lengthened the

---

62. Congressional Research Service, “H.R.4472 - 109th Congress (2005-2006): Adam Walsh Child Protection and Safety Act of 2006,” [www.congress.gov](http://www.congress.gov), July 27, 2006, <https://www.congress.gov/bill/109th-congress/house-bill/4472>.



registration requirements for convicted sexual offenders,<sup>63</sup> and is known as “the most expansive and punitive sex offender law ever initiated by the federal government.”<sup>64</sup> This law was passed on the 25<sup>th</sup> anniversary of the abduction and murder of Adam Walsh, a six-year-old who was abducted from a Sears and whose severed head was found in a drainage canal two weeks later. While this law was not immediately reactive to the case, it was passed on the 25<sup>th</sup> anniversary of the abduction and is named after the child in one of the most highly publicized cases of child victimization. It also includes provisions titled “The Jacob Wetterling, Megan Nicole Kanka, and Pam Lychner Sex Offender Registration and Notification Program” and “The Amie Zyla Expansion of Sex Offense Definition.” Jacob Wetterling was an 11-year-old abducted from his school and murdered in 1989; Megan Nicole Kanka was a seven-year-old who was abducted, raped, and murdered by her neighbor in 1994; Amie Zyla was sexually assaulted at 8 years old by a 14-year-old family friend. Jacob Wetterling’s case prompted the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act of 1994, which was further expanded by the “Megan’s Law” following Megan Kanka’s case. “Megan’s Law” required notifying neighborhoods of the presence of a convicted sex offender since Megan Kanka’s parents were not aware that the neighbor who raped and killed their daughter was a convicted sex offender.<sup>65</sup> Amie Zyla’s case prompted the expansion of the

---

63. Young, Caitlin. “Children Sex Offenders: How the Adam Walsh Child Protection and Safety Act Hurts the Same Children It Is Trying to Protect. (Cover Story).” *New England Journal on Criminal & Civil Confinement* 34, no. 2 (Summer 2008): 459–84.

64. Fabian, John. “The Adam Walsh Child Protection and Safety Act: Legal and Psychological Aspects of the New Civil Commitment Law for Federal Sex Offenders.” *Cleveland State Law Review* 60, no. 2 (June 2012): 307–64.

65. “Making Meaning of Megan’s Law.” *Law & Social Inquiry* 31, no. 2 (April 1, 2006): 267–312.

Sex Offender Registration and Notification Act (SORNA) to require juvenile offenders to be registered in the national registry and makes it a crime to not register as a sex offender if convicted of a sex crime.<sup>66</sup> Each of these cases named for other cases of child victimization influenced the larger body of work named after Adam Walsh.

The AWA establishes mandatory registration and notification systems for sex offenders and ensures punishments if these guidelines are not followed. It also creates a three-tier system for sex offender registration based on the severity of the crime and the age of the child involved and has expanded the guidelines for what constitutes a sex offender. However, the AWA has been under scrutiny for a variety of reasons.

One is due to the role of John Walsh, father to Adam Walsh and host of the TV show *America's Most Wanted*. This show was instrumental in drawing public concern to the existence of sex offenders and led to the public outcry necessary to pass the AWA.<sup>67</sup> However, this played into the media tendency to misrepresent the realities of child maltreatment, which leads to misguided public opinions and is a tendency covered later in this work. By publicizing the AWA through a source of entertainment media, this practically ensured that there would be enough public outrage to pressure lawmakers to pass the AWA. Furthermore, it increased public awareness on a rare form of child maltreatment, that being the abduction and murder of a child by a stranger. This form of child abuse was thus overrepresented to the public and led to an act largely dedicated to other rare cases of children being abducted and harmed by strangers. This, in turn,

---

66. Yung, Corey Rayburn. "The Sex Offender Registration and Notification Act and the Commerce Clause." *Federal Sentencing Reporter* 21, no. 2 (2008): 133–38. <https://doi.org/10.1525/fsr.2008.21.2.133>.

67. Handler, Michael R. "A Law of Passion, Not of Principle, nor Even Purpose: A Call to Repeal or Revise the Adam Walsh Act Amendments to the Bail Reform Act of 1984." *The Journal of Criminal Law and Criminology* (1973-) 101, no. 1 (January 1, 2011): 279–308.

formed public opinion to be more concerned about “stranger danger” than the true common tendencies of abusers to be someone a child knows well.

This act is also criticized due to its provisions that require states to set the minimum age that juveniles must register as sex offenders at 14, with some states requiring registration as low as 11 years old.<sup>68</sup> This portion of the AWA is a reaction to Amie Zyla, who made a heartfelt plea to congress years after she was sexually abused by a 14-year-old when she was 8-years-old, which was highly publicized<sup>69</sup> and garnered public outcry to the possibility of minors abusing other minors and then going on to exhibit the same behavior upon reaching adulthood. The issue with this section of the Act is that, instead of proposing measures to aid in reforming minors following sexual misconduct against other minors, children are being punished as adults and given no opportunity for help. In one such instance, a 13-year-old boy saw an image of oral sex online and had his 4-year-old sister mimic what he had seen, saying he had been “curious.” The boy’s mother took her son to a psychiatrist, who turned the child over to the authorities for investigation on felony charges while he was removed from his home. Under the AWA, this boy would be required to register as a sex offender for fifteen years to life,<sup>70</sup> which also means that any school he applies to or any neighborhood he resides in will be notified that he is a child sex offender. While this case is different than what

---

68. Young, 462.

69. Jeanette Der Bedrosian / Published Spring 2018, “When the Abuser Is a Child, Too,” The Hub, March 12, 2018, <https://hub.jhu.edu/magazine/2018/spring/children-who-are-child-sexual-abusers/#:~:text=I%20n%202005%2C%20a%2017-year-old%2C%20Amie>.

70. Young, 459.

occurred with Amie Zyla, both cases raise the question of how to handle child offenders who are children themselves.

## **DISCUSSION**

Child protection efforts are once again geared more towards the concerns of adults rather than the needs of children. The AMBER alert is an example of a reactionary policy that garnered strong public support due to its appearance of aiding in child abductions versus the reality of it not being very effective and perpetuating harmful misconceptions regarding child endangerment. The PROTECT Act continues the legal tradition in America to consider and prioritize parental rights amidst child protection, and the Adam Walsh Act punishes children as adults specifically with sex crimes against other minors. These pieces of legislation also focus on sex crimes against children when only about 10% of reported child abuse cases are instances of CSA.<sup>71</sup> This is not to say that the issue does not need to be addressed; it is simply disproportionately overrepresented in child protective legislation since these cases elicit more media coverage and response out of the public. Furthermore, I find that it is harmful to name reactionary legislation after children. This sensationalizes the very real cases that have occurred to real children, as well as lends itself to perpetuating the idea that each of these instances of abuse are likely to occur, which detracts from the true nature of abuse and leads to less overall awareness.

Politicians not only propose legislation that tends to prioritize the concerns of adults and institutions over the rights of children, but also to respond to public outcry and

---

71. Thomas Hove et al., "Newspaper Portrayals of Child Abuse: Frequency of Coverage and Frames of the Issue," *Mass Communication and Society* 16, no. 1 (2013): pp. 89-108, <https://doi.org/10.1080/15205436.2011.632105>.

satisfy public opinion even if that means proposing policies which are largely performative and only make it more difficult to protect children from abuse. Public opinion is a significant factor in the formation of child welfare policies, but public perception itself is impacted by several factors.

## **PUBLIC OPINION FORMATION**

Public opinion largely contributes to what is known as “policy resistance,” which occurs with issues “that are complex, poorly understood, and engender strong emotional and defensive responses.”<sup>72</sup> Child abuse, especially CSA, is considered to be policy resistant, which has resulted in a lack of comprehensive and coordinated approaches to effectively addressing the issue.<sup>73</sup> The two largest factors influencing public opinion regarding child abuse are the media and public health education. Both factors largely misrepresent the realities of child abuse, which subsequently creates harmful public misconceptions that influence the way politicians treat the issue of child protection. In order to address the policy resistant nature of child protection, public conceptions on the issue must be more accurate. Therefore, understanding the way the media contributes to public misconceptions and addressing public health education measures is essential to effectively addressing the issue of child abuse.

### **Media Representations**

It is widely known that the media shapes public perceptions on a wide variety of topics, and child abuse is no exception to this influence. There is a social phenomenon

---

72. Elizabeth J. Letourneau et al., “The Need for a Comprehensive Public Health Approach to Preventing Child Sexual Abuse,” *Public Health Reports* 129, no. 3 (2014): pp. 222-228, <https://doi.org/10.1177/003335491412900303>.

73. Letourneau, 223.

called the “crime myth,” where crimes are retold and sensationalized until the events are distorted beyond the original crime.<sup>74</sup> These stories then tend to incorporate current social anxieties about an issue, which leads the “crime myth” to reflect a social and political problem. The “crime myth” ultimately lends itself to shaping public reactions to the politicized nature of sensationalized cases.<sup>75</sup> Politicians and news sources are invested in promoting these misconceptions to aid in their personal agendas, and the facts often differ greatly from these promoted “crime myths.”<sup>76</sup>

In context of the “crime myth,” news media tends to focus on reporting gruesome physical or sexual abuse cases,<sup>77</sup> as well as portrays cases of abuse as occurring by strangers, especially in the context of the internet and “stranger danger” in online chat rooms.<sup>78</sup> The issue with overrepresenting some forms of abuse is that it creates the misconception that abuse will most likely be visible or easily detected. However, the most common form of abuse is neglect, with over 70% of child abuse cases involving neglect of some form, followed in order of frequency by physical abuse, sexual abuse, and then emotional and psychological maltreatment.<sup>79</sup> Neglect is difficult to recognize and is oftentimes inaccurately equated with poverty. Furthermore, the public is less aware of neglect as a prevalent form of abuse and generally lack the education to recognize non-

---

74. Kappeler, Victor E., and Gary W. Potter. *The Mythology of Crime and Criminal Justice*. Fourth edition / Victor E. Kappeler, Gary W. Potter. Waveland Press, 2005, pp. 1-34.

75. Kappeler et. al, 2.

76. Kappeler et. al, 34.

77. Hove, 90.

78. McAlinden, A.-M. “Setting ‘Em up’: Personal, Familial and Institutional Grooming in the Sexual Abuse of Children.” *Social and Legal Studies* 15, no. 3 (September 1, 2006): 339-362–362. doi:10.1177/0964663906066613.

79. Hove, 92.

physical indicators of abuse. It is worth noting that the statistics surrounding sexual abuse are dependent on reported cases, and reporting is significantly less likely to happen in cases of CSA, so its frequency is most likely underrepresented. Nevertheless, it is still overrepresented in news stories, which negatively impacts public perceptions on abuse and significantly lessens the number of cases that are reported to child welfare agencies.

News media also has the tendency to portray abuse cases as isolated incidents committed by monstrous individuals who are outliers in society.<sup>80</sup> However, the majority of child abuse occurs within the family by members of society that are well respected or held in high regard. The problem with the “monstrous individual” framing is that it causes adults to be less likely to recognize someone they know as a child offender since this person is someone they love and does not appear as a socially isolated monster who commits inhuman acts.<sup>81</sup> Additionally, the gruesome cases depicted in the news are not isolated incidents: they are constantly occurring but since most cases do not often present themselves in an obvious way or result in the death of a child, they receive little attention and are misattributed to isolated incidents rather than being recognized as frequently occurring products of an insufficient system with underlying social causes. News media often fails to adequately portray the background information of abuse cases and refrains from conveying child abuse as a societal problem.<sup>82</sup>

Media is not limited to the news: it includes entertainment media as well. The way child abuse is portrayed in movies or TV shows negatively affects public perceptions

---

80. Hove, 90.

81. Letourneau, 225.

82. Hove, 94.

on the reality of abuse while also influencing the way child offenders are prosecuted. In my interview with Texas prosecutor Katie Arnold, we discussed her experience with child abuse cases and what barriers she encounters when building and prosecuting one of these cases.

Mrs. Arnold informed me that one of her most significant barriers is the misconceptions of the jury on CSA and how these misconceptions are formed by crime TV shows and movies. In several occurrences, juries have expressed that while they believed without a doubt that the defendant in question sexually abused a child, they wanted concrete DNA evidence that this abuse occurred if they were going to allow this case to proceed to trial. Mrs. Arnold explained that in most cases of CSA, there will not be any physical DNA evidence to support her case. The perpetrator may not have left behind any DNA on the child if they did not violate the child with penetrative sexual intercourse, and many cases of sexual abuse involve violating the child with an inanimate object. Even if a perpetrator left behind DNA, which rarely happens, the child would have to refrain from bathing or using the restroom and immediately report to a facility that would conduct a rape kit test to collect any potential DNA. Since most abuse occurs in the family, a child is unlikely to have access to transportation to a facility to collect any potential DNA. Furthermore, the child is most likely being manipulated into staying silent on their abuse or may not even realize that what is happening to them is wrong.

However, in crime entertainment media, there is always concrete DNA evidence that provides the necessary breakthrough for a case to be tried. Mrs. Arnold explained how these harmful portrayals in entertainment media have influenced the way juries respond to the cases of child abuse that she presents and has led to several instances of



juries voting to dismiss the case against the defendant due to a lack of DNA evidence to support the case. This is just one example of the way popular entertainment media contributes to harmful public misconceptions regarding child abuse and exemplifies how these misconceptions negatively impact the protection of children.

In considering the ways that media influences public opinion, discussion often equates entertainment media with news media and fails to discuss entertainment media and its role on public perception of critical issues. Therefore, it is essential to recognize the roles that news and entertainment media play in creating public misconceptions surrounding child abuse as I discuss the need for improving public health education. Including sufficient education on the signs and situations surrounding child abuse will effectively combat these harmful misconceptions, which will happen if child abuse is considered to be a public health issue.

## **PUBLIC HEALTH EDUCATION**

In considering education as a preventative measure for child abuse, it is necessary to keep in mind that this does not mean that education can prevent abuse from ever occurring. Rather, the “prevention” aspect comes into play by being able to promote general awareness, which will lead to increased reporting and decreased cases of abuse. Prevention is also thought of in a “tertiary sense,” meaning in considerations for treating known offenders.<sup>83</sup> There are different ways education can aid in prevention, like teaching children how to speak up if they experience abuse, teaching adults to recognize

---

83. Wortley, R., and S. Smallbone. “Applying Situational Principles to Sexual Offenses against Children.” In *R. Wortley & S. Smallbone Crime Prevention Studies: Situational Prevention of Child Sexual Abuse*, 7–35, 2006.

signs of abuse or abusers among them, and overall awareness of the realities of child maltreatment that the public often lacks.

### **Child Education**

Preventing abuse should never be the responsibility of the child. However, the reality of the situation is that adults may not be able to recognize when a child is being mistreated. To aid in prevention, it is necessary to educate children on what types of abuse exist and how they can identify if it is happening to them. Body safety rules are one such example: if a child has a set of rules that they understand about their body and how others should be interacting with it, they will be able to identify if someone is violating these rules and their body. They also must be taught to identify adults that they can communicate with and trust.<sup>84</sup>

In cases of child grooming, predators will often select children that offer the least amount of resistance and seem to be more vulnerable than the average child. Children can be taught to recognize signs of abuse and then exhibit behaviors that are likely to deter groomers, like assertively saying no and showing signs of distress to connect with the conscience of the predator.<sup>85</sup>

There are limitations to these ideas, such as the fact outlined earlier in this work that most abuse occurs by a family member, someone close to the child, or someone in a position where they come in close contact with children. Unfortunately, children are not always surrounded by adults that they can trust, or they may believe that since a trusted adult is harming them that it is not abuse. Educating children must also be done in a way

---

84. Feigh, Alison. "In the Footsteps of Mary and Joseph: The Role of Adult and Child Education in the Prevention of Abuse." *Currents in Theology and Mission* 45, no. 3 (July 2018): 23–26.

85. Wortley et. al, 24.

that does not make the child feel as though the burden of preventing abuse is solely on them. Even with these limitations, it is still beneficial to educate children in the event that they are able to identify that they are being abused and that they have a trusted adult to confide in.

### **Adult Education**

Most educational endeavors should be directed towards adults to decrease instances of child abuse. Public education measures tend to focus on “stranger danger” when most abuse occurs within the family or by someone close to the family and child. In this sense, child abuse is partially considered to be a public health issue, but only regarding abuse by a stranger, which is the least likely form of child maltreatment. Therefore, public education must be reformed to include information on the risk that relatives, neighbors, and friends pose to children in domestic settings, even though this has the potential to cause a panic.<sup>86</sup> Also, initial public reaction to this information may not be favorable because no person wants to believe that someone they know and trust could harm their child. However, in weighing these concerns against the benefits of accurately educating adults, they seem worth the risk if it will lead to the prevention of child abuse. Additionally, this weighing of concerns displays the crossroads in most child protection of considering the needs of adults versus the needs of children. Even if it is not initially well-received, it is necessary to truly educate adults in order to combat the harmful misconceptions the public has regarding child abuse. This will, in turn, prioritize the needs of children in child protection methods. The goal is to promote awareness, which will aid in prevention.

---

86. Wortley et. al, 26.

## THE CONVENTION ON THE RIGHTS OF THE CHILD

The CRC is briefly mentioned earlier in this work in discussing how it conflicts with American privacy and parental rights, specifically in regard to article 12 of the CRC. This section will explain some potential conflicts with U.S. domestic law.

The preamble of the CRC recognizes that the “equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world.”<sup>87</sup> It takes this statement a step further by then ensuring that children will receive special protection since they are particularly vulnerable members of society. In theory, the idea of protecting children and granting them special protections would not be controversial or opposed by any nation, which is evident in the fact that every other member nation other than the U.S. has signed onto this document. This raises the question of why the U.S. has not signed this document, especially when it was one of the leading nations in creating this treaty.<sup>88</sup> The answers can be found in the way U.S. domestic laws differ from other countries, as well as how the history mentioned earlier in this work has created the legal traditions surrounding domestic child protection.

Fifteen years after it was ratified, the CRC was labelled as a potential “threat to the American family” and the general discourse surrounding the U.S. potentially signing this treaty was that it may allow the UN to infringe too heavily upon American national sovereignty or may give the UN control between parent and child relationships.<sup>89</sup> A

---

87. “Convention on the Rights of the Child” United Nations Human Rights Treaty, vol. 1 (20 Nov 1989).

88. Scherrer, James L. “The United Nations Convention on the Rights of the Child as Policy and Strategy for Social Work Action in Child Welfare in the United States.” *Social Work* 57, no. 1 (January 1, 2012): 11–22. doi:10.1093/sw/swr006.

89. Davidson, Howard. “The Convention on the Rights of the Child: A Call for U.S. Participation.” *Human Rights* 32, no. 1 (2005): 18–18. <http://www.jstor.org/stable/27880456>.

specific concern that stemmed from these general concerns was that children would have the right to sue their parents, but this has not been stated in the CRC. These general concerns are unsubstantiated and have not been proven to occur in any country where the CRC is ratified, nor has any other Member State voiced any similar concerns.<sup>90</sup> As discussed earlier in this work, the U.S. tends to focus on the rights of the family and is described as a familiarized country. A familiarized country is one that tends to place the burden of a person's welfare on members of their family, and the family as a unit takes on the responsibility of individual actions by a family member.<sup>91</sup> Additionally, the U.S. has a higher threshold for what constitutes as allowable for intervention in cases of domestic child abuse, so only extreme cases of abuse are generally responded to or intervened with.<sup>92</sup>

It is necessary to understand these tendencies to contextualize discussion on why the U.S. has not ratified the CRC. The U.S. has a long held legal tradition which prioritizes parental rights above children's rights, and since the country places responsibility for individuals on their family members, it explains the lower levels of intervention into homes, except in severe cases, since the government and child protective institutions feel hesitant to interfere with the established family unit dynamic. However, social workers are still more likely to remove children from their homes now than in the past, as the U.S. investigates 4 million cases of child abuse and neglect a year

---

90. Davidson, 18.

91. Berrick, J.D. ( 1 ), J.N. ( 1 ) Roscoe, and M. ( 2 ) Skivenes. 2022. "Children's Rights and Parents' Rights: Popular Attitudes about When We Privilege One over the Other." *International Journal of Social Welfare* 31 (4): 449-462-462. doi:10.1111/ijsw.12523.

92. Berrick et. al, 452.

and, out of these investigations, around 200,000 children are removed from their homes and placed in foster care.<sup>93</sup>

A large concern for ratifying the CRC comes down to States' rights. The U.S. is unique in that it closely protects States' rights in its constitution, so there are concerns that by adopting the CRC into national law, it would supersede the authority of each state by forcing them to comply with one way of addressing children. I believe that these concerns are more of an excuse to not sign onto the document. It is not clear how recognizing children as valid social agents worthy of special protections would infringe on how States chose to protect children. Furthermore, the CRC, like most UN documents, just makes recommendations for how a country should proceed in implementing the provisions of a treaty, so if States are already respecting children's rights to the fullest of their capabilities, then signing this document should be of minimal concern. When it comes to weighing these concerns against the benefits of signing the CRC, protecting children outweighs all concerns.

### **THE FAMILY FIRST PREVENTION SERVICES ACT**

The Family First Prevention Services Act (FFPSA, "the Act") is a subsection of the Bipartisan Budget Act of 2018. Its goals are to decrease the number of children who are removed from their homes and provides a list of Title IV-E prevention methods and services, which states can use Title IV-E funds for implementation.<sup>94</sup> This is a fairly new

---

93. Bald, A. ( 1 ), E. ( 2 ) Chyn, J. ( 3 ) Hastings, and M. ( 4 ) Machelett. 2022. "The Causal Impact of Removing Children from Abusive and Neglectful Homes." *Journal of Political Economy* 130 (7): 1919-1962–1962. doi:10.1086/719856.

94. "Family First Prevention Services Act - Child Welfare Information Gateway," [www.childwelfare.gov](https://www.childwelfare.gov/topics/systemwide/laws-policies/federal/family-first/), n.d., <https://www.childwelfare.gov/topics/systemwide/laws-policies/federal/family-first/>.

piece of legislation in regard to other significant child protective legislation, so its effects are difficult to evaluate. This section will still cover this act and is comprised of criticisms by other scholars as well as my own analysis of the provisions of the law and how it may interact with each of the factors explored in this paper thus far.

One aspect of the FFPSA that I notice is that it lacks any clear-cut definitions for any form of child maltreatment. This is not unique to the FFPSA, as all American child protective laws lack clear definitions of what constitutes each form of abuse. It may be difficult to come up with specific definitions, and the reasoning may be to allow states to retain sovereignty and discretion in how they proceed with child protection. However, I compare this to the lack of clarity with mandated reporting laws. As discussed earlier, mandated reporting laws were left intentionally broad to theoretically promote reporting on child maltreatment. In practice, the lack of clarity in the definitions of abuse in these guidelines lead to less reporting since mandated reporters are given far too much discretion to decide what they believe constitutes abuse. I argue that the same can be said for the FFPSA: the continued lack of specific definitions for forms of child maltreatment give states and social workers far too much discretion in what they consider to be deserving of FFPSA services and Title IV-E funding. Additionally, the Act continually mentions that any mentions of a “child” throughout the legislation refers to “a child who is a candidate for foster care.”<sup>95</sup> Determinations for children eligible for foster care are also largely subjective since considerations for maltreatment are loosely defined and subjective to the reporter or investigator. This means that the very provisions of the Act are largely dependent on the abstractly defined crime of “child maltreatment.”

---

95. Bipartisan Budget Act of 2018

Other critics of this act are concerned for its implications on families of color and American Indian/Native Alaska (AI/NA) populations. The approved list of prevention programs has not been proven to aid Black or AI/NA families, which are already overrepresented in child welfare systems.<sup>96</sup> Considering this overrepresentation and the fact that almost none of the approved prevention programs have been proven to aid these families, there are concerns that the FFPSA will only increase the racial disparity faced by these families by not giving them equal access to programs that can help them.<sup>97</sup>

The FFPSA is supposed to apply to child welfare, not just child protection from abuse. However, there is a large focus in the Act on providing aid to families only when the child is at imminent risk of being removed from their home and placed in foster care following an investigation for child maltreatment. By only providing services to prevent children from entering foster care, the FFPSA largely ignores the threat of poverty to family stability.<sup>98</sup> I would like to take this current analysis on the FFPSA a step further by contextualizing it with the tendency, as discussed earlier in this work, to equate poverty with neglect as a form of abuse. By failing to explicitly include impoverished families, the Act furthers the preconceived notions of equating poverty with neglect since it lacks any clear distinctions between the two. This will only lead to the perpetuation of this misconception, which is harmful to impoverished families as they are treated as child offenders rather than as families who need assistance.

---

96. Testa, M.F., and D. Kelly. "The Evolution of Federal Child Welfare Policy through the Family First Prevention Services Act of 2018: Opportunities, Barriers, and Unintended Consequences." *Annals of the American Academy of Political and Social Science* 692, no. 1 (November 1, 2020): 68-96-96. doi:10.1177/0002716220976528.

97. Testa et. al, 69.

98. Testa et. al, 69.



The FFPSA is not wholly insufficient, and I would like to note that it is not a piece of reactionary legislation, which means it does not perpetuate the “vicious cycle” as mentioned earlier in this work. It also provides funding to states to implement programs to aid families, and it promotes the least amount of child removal from homes or immediate family as is possible to ensure a child’s safety. However, exiting concerns for how it impacts families in poverty or Black and AI/NA families, as well as my own concerns for its lack of definitions for various forms of child maltreatment and distinctions between poverty and maltreatment, are significant limitations to the Act’s efficiency. Child welfare and protection is incomplete if it does not consider all children or all families, so ignoring the impact that the FFPSA may have on families of color means that child welfare is not being fully addressed.

## **CONCLUSIONS**

Child protection has proven to be an issue with several contributing factors to its success or insufficiencies. To understand this issue in America, it is necessary to understand the history of child protection to contextualize the reason why child protective laws have evolved to what they are today. The greatest dangers I have found to protecting children are reactionary legislation, media misrepresentations, lack of definitions associated with child protection, and lack of consideration for impoverished families or families of color. I believe the best way to combat these challenges are to educate the public on the realities of child abuse to combat the harmful notions that most people are not even aware that they hold. Prevention begins with education, so it is necessary to treat child abuse as a public health issue. I also found that comprehensive legal reform is the other most important step to aid in child protection. By clearly defining various forms of

abuse, this will aid mandated reporters and social workers in providing clear guidelines to minimize their interpretations of what constitutes child maltreatment. Distinctions must also be made between poverty and neglect so that impoverished families can receive the help they need instead of being treated as criminals. The U.S. must also sign onto the CRC to codify children's rights into law, which will prioritize children as necessary members of society. This will mean amending portions of the law to be conducive with the CRC so there are no domestic contradictions. Finally, indigenous families and families of color must be considered equally in all child protective initiatives. Child protection is left incomplete when it does not address the needs of every child, which means that it is incomplete since AI/NA and Black families are largely overrepresented in child welfare.

Ultimately, children must be prioritized in American society. They are the most vulnerable population in the world and are deserving of special protections to ensure their health and safety. By ignoring the needs of children, the U.S. is ignoring the future of its society and country.