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## ARTICLES

### PRIVATE PROSECUTION AND THE STATE

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*The modern family regulation system is paradigmatically public. In the common account, the state plays a monopolistic role. It decides which families to investigate and which to prosecute, which families to surveil and which to separate, and which services and benefits to provision for families entangled in the system. Yet, this public family regulation paradigm obscures the role of private prosecution. Nearly half of states permit private individuals to initiate dependency prosecutions. In these cases, private prosecutors allege that parents have neglected or abused their children and seek state intervention on the fundamental right to family integrity.*

*This Article surfaces the understudied and undertheorized private prosecutions of the family regulation system and situates them within the carceral state. Drawing on sources including statutes, legislative history, case law, accounts developed by other scholars, information obtained through records requests, and interviews with practitioners and state officials, it sketches out the legal framework for these prosecutions and traces recurring patterns of use. This study reveals private prosecutions to be a tool of last resort: Private individuals opt to prosecute their loved ones—or even themselves—after the state has failed to meet their needs through other means.*

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*The Article makes two contributions. First, it develops an initial descriptive account of private prosecutions in the family regulation system. Second, the Article builds from that account to develop a theoretical claim. It argues that private prosecution illustrates the state's decision to operate an expansive carceral state in place of a robust welfare state. Moreover, private prosecution lays bare the central role of private individuals in maintaining and expanding the carceral state, as private prosecutors increase the reach of the carceral apparatus while entrenching its logics. But even as private prosecutions shore up the carceral state, so too do they allow private individuals to extract support from it. As debates around the utility of private prosecution and enforcement across the carceral state continue, private dependency prosecutions offer a reminder. Before evaluating the utility of private prosecution, we must ask its goal: to disrupt the carceral state or to provide immediate relief to some already suffering in its thrall.*

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## INTRODUCTION

In much of the United States, any person—you, even!—can walk into a courthouse and petition for the state to take any child away from their family. Nearly half of all states authorize private individuals to initiate child dependency proceedings, and in some jurisdictions, those same private actors can prosecute entire cases alleging child abuse or neglect.<sup>1</sup> In these jurisdictions, you can ask a court to place the brand of parental deficiency upon an absolute stranger, your neighbor, your adult child, your own parents, or yourself. Through this private prosecution, you bring state scrutiny into the most intimate areas of families' lives.<sup>2</sup> You may spur the state to surveil, control, or separate families.<sup>3</sup> But so too may you spur the state to grant families access to otherwise unavailable funds and benefits.<sup>4</sup>

This Article explores and critiques private prosecutions in the family regulation system.<sup>5</sup> It makes two contributions, one descriptive and one theoretical. First, it provides a novel account of private dependency prosecutions, excavating their legal frameworks and patterns of use in practice. Then, it considers what these private prosecutions reveal about the dynamics of private prosecution within the carceral state. Private prosecutions present yet another piece of evidence that the state operates a vast carceral apparatus to fill the void created by its

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<sup>1</sup> See, e.g., KAN. STAT. ANN. § 38-2233(b) (West 2025) (“Any individual may file a petition alleging a child is a child in need of care . . . .”); N.H. REV. STAT. ANN. § 169-C:7(I) (2026) (“A proceeding under this chapter is originated by any person filing a petition . . . .”); OR. REV. STAT. ANN. § 419B.809 (West 2025) (“Any person may file a petition in the juvenile court alleging that a child named therein is [dependent] . . . .”); TENN. CODE ANN. § 37-1-119 (West 2025) (“The petition may be made by any person . . . .”). For a complete list of states authorizing private individuals to file dependency petitions, see Appendix, Table 1. For a fuller description of these statutes, see *infra* Section II.A. For a fuller description of the division of prosecutorial authority between private individuals and the state, see *infra* Section II.B. While jurisdictions use a number of terms to refer to these sorts of petitions, I use “dependency” throughout for the ease of consistency.

<sup>2</sup> See *Stanley v. Illinois*, 405 U.S. 645, 658 (1972) (finding “all Illinois parents are constitutionally entitled to a hearing on their fitness before their children are removed from their custody”).

<sup>3</sup> See *infra* Section II.A (describing statutes authorizing private prosecutions seeking placement of children in foster care or state surveillance and services for families).

<sup>4</sup> See *infra* Section III.B (surveying cases where parents prosecuted themselves to gain access to services for their children).

<sup>5</sup> I use “family regulation system” to more accurately reflect the purpose and function of the system traditionally called the child welfare system. See DOROTHY ROBERTS, *TORN APART: HOW THE CHILD WELFARE SYSTEM DESTROYS BLACK FAMILIES—AND HOW ABOLITION CAN BUILD A SAFER WORLD* 24 (2022) [hereinafter ROBERTS, *TORN APART*] (arguing that terms like “child welfare system” paper over how the system functions as a site of “surveillance, coercion, and punishment”).

weak social welfare apparatus.<sup>6</sup> They also show something more: The state relies on private individuals to maintain and expand its carceral apparatus, to police and punish those near to them, and to enforce the punitive logics of the carceral state.

Though the family regulation system has its roots in private prosecution,<sup>7</sup> today's family regulation system is paradigmatically public.<sup>8</sup> Under the public family regulation paradigm, the state decides whether to investigate a family, whether to close an investigation or prosecute a parent in court, and whether to seek family separation or family surveillance.<sup>9</sup> The state designs service plans to keep families together during investigations and to reunify families that it separates, and it coordinates and funds services for those families.<sup>10</sup> The state decides when to drop cases and when to go to trial.<sup>11</sup> Though private individuals and organizations may route families into this system and surveil and service them once there, they do so at the state's behest and under the state's supervision.<sup>12</sup>

Defenders of this public family regulation apparatus describe it as benevolent, rehabilitative, and necessary to protect the nation's

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<sup>6</sup> See LOÏC WACQUANT, *PRISONS OF POVERTY* 121–22 (2009) (arguing that the expansion of the “penal state” serves as a mechanism to manage and control marginalized populations created by the retrenchment of the welfare state); DAVID GARLAND, *THE CULTURE OF CONTROL: CRIME AND SOCIAL ORDER IN CONTEMPORARY SOCIETY* 76–77 (2002) [hereinafter GARLAND, *THE CULTURE OF CONTROL*] (arguing that a “culture of control” emerges as a response to the state's retreat from social welfare provision, with criminal legal institutions filling the void left by diminished social support systems); DAVID GARLAND, *LAW AND ORDER LEVIATHAN: AMERICA'S EXTRAORDINARY REGIME OF POLICING AND PUNISHMENT* 70 (2025) [hereinafter GARLAND, *LAW AND ORDER LEVIATHAN*] (observing that the simultaneous passage of two federal laws, one “dismantl[ing] the federal social safety net” and the other “accelerat[ing] construction of a massive penal state,” precisely encapsulates the American “political zeitgeist”).

<sup>7</sup> See *infra* Section I.A (describing the history of private prosecution in the family regulation system).

<sup>8</sup> See *infra* Section I.B (explaining the public family regulation paradigm).

<sup>9</sup> Josh Gupta-Kagan, *Rethinking Family-Court Prosecutors: Elected and Agency Prosecutors and Prosecutorial Discretion in Juvenile Delinquency and Child Protection Cases*, 85 U. CHI. L. REV. 743, 754–55 (2018) [hereinafter Gupta-Kagan, *Family-Court Prosecutors*].

<sup>10</sup> See 42 U.S.C. § 671(a)(15) (requiring states make reasonable efforts to “preserve and reunify families”); RESTATEMENT (THIRD) OF CHILDREN AND THE LAW § 2.30 cmt. m (A.L.I., Tentative Draft No. 4, 2022) (providing examples of state statutes that discuss states' obligation to fund services in order satisfy reasonable efforts requirements); *id.* § 2.50 cmt. o (discussing how courts weigh the benefits of providing a service, including family reunification, against the state's fiscal constraints to determine if a state made reasonable efforts to keep a child in the care of a parent or guardian).

<sup>11</sup> See, e.g., N.Y. FAM. CT. ACT § 1039(a)–(b) (LexisNexis 2026) (permitting adjournments in contemplation of dismissal only with the consent of the petitioner).

<sup>12</sup> Katie Louras, *The Runaway Train of Mandated Reporting*, 61 S.D. L. REV. 137, 143–50 (2024); Susan Vivian Mangold, *Protection, Privatization and Profit in the Foster Care System*, 60 OHIO ST. L.J. 1295, 1297 (1999) [hereinafter Mangold, *Protection, Privatization and Profit*].

children.<sup>13</sup> Its critics describe it as carceral, pathologizing, and ineffectual at safeguarding child well-being.<sup>14</sup> Pointing to the state's hyperfocus on poor families and Black, Native, and Latino families, critics argue that the state blames marginalized parents for larger societal problems and thus re-entrenches the hierarchies of the racial capitalist system.<sup>15</sup> But defenders' and critics' diverging accounts do converge around one idea, at least: The buck stops with the state.<sup>16</sup>

This public family regulation paradigm obscures private dependency prosecutions. In these prosecutions, it is a private individual, and not the state, who decides whether to prosecute a parent and whether to seek family separation or surveillance.<sup>17</sup> This private

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<sup>13</sup> See, e.g., Elizabeth Bartholet, *Differential Response: A Dangerous Experiment in Child Welfare*, 42 FLA. ST. L. REV. 573, 580 (2015) (linking surveillance, rehabilitation, and child protection and calling for an expansion of the child protective system); CHILD'S BUREAU, U.S. DEP'T OF HEALTH & HUM. SERVS., HOW THE CHILD WELFARE SYSTEM WORKS 2 (2020) [hereinafter CHILD'S BUREAU, HOW THE CHILD WELFARE SYSTEM WORKS] ("The child welfare system is a group of services designed to promote the well-being of children by ensuring safety, achieving permanency, and strengthening families.").

<sup>14</sup> See, e.g., ROBERTS, *TORN APART*, *supra* note 5, at 26 (describing the family-policing system as a carceral institution); Cynthia Godsoe, *Racing and Erasing Parental Rights*, 104 B.U. L. REV. 2061, 2080 (2024) (describing the "punishment and family separation of poor, Black, Indigenous, and other marginalized families" as "central to the American project of maintaining White supremacy"); S. Lisa Washington, *Pathology Logics*, NW. L. REV. 1523, 1572 (2023) [hereinafter Washington, *Pathology Logics*] (describing the family regulation system as pathologizing); Melissa Friedman & Daniella Rohr, *Reducing Family Separations in New York City: The COVID-19 Experiment and a Call for Change*, 123 COLUM. L. REV. F. 52, 53 (2024) (discussing how, during the COVID-19 pandemic, a drop in child removals did not result in a spike in child deaths, abuse, neglect, or other disasters); Richard Wexler, *Graphic Evidence that Child Welfare Surveillance Doesn't Work*, IMPRINT (Nov. 1, 2025, 3:01 PM), <https://imprintnews.org/opinion/graphic-evidence-that-child-welfare-surveillance-doesnt-work/58258> [<https://perma.cc/T87S-72XG>] (discussing how child welfare surveillance is ineffectual); Frank Edwards, Kelley Fong & Robert Apel, *Foster Care and Child Maltreatment Mortality Rates in the US*, 8 JAMA NETWORK OPEN, no. 12, art. e2551677, Dec. 30, 2025, at 1, <https://jamanetwork.com/journals/jamanetworkopen/fullarticle/2843235> [<https://perma.cc/4R32-FXFE>] (concluding that decreasing rates of foster care entry are not associated with changes in child maltreatment mortality rates, based on a review of 3.4 million records of children in foster care).

<sup>15</sup> See Dorothy Roberts, *How I Became a Family Policing Abolitionist*, 11 COLUM. J. RACE & L. 455, 460 (2021) [hereinafter Roberts, *Family Policing Abolitionist*] (discussing racial disparities in family regulation investigations); S. Lisa Washington, *Fammigration Web*, 103 B.U. L. REV. 117, 131 (2023) [hereinafter Washington, *Fammigration Web*] (describing how the family regulation system mirrors the subordination of marginalized groups in the criminal legal system); Erin Miles Cloud & Lisa Sangoi, *Fulfilling the Promise of Reproductive Justice: Abolition and the Family Regulation System*, CRITICAL RESISTANCE (Nov. 15, 2023), <https://criticalresistance.org/abolitionist/issue-39-reproductive-justice> [<https://perma.cc/8QQT-JDDS>] (describing the family regulation system as a troubling extension of America's history of systemic racism).

<sup>16</sup> *DeShaney v. Winnebago Cnty. Dep't of Soc. Servs.*, 489 U.S. 189, 209 (1989) (Brennan, J., dissenting) ("[T]he buck effectively stop[s] with the Department.").

<sup>17</sup> See *infra* Section II.A (describing states' statutes authorizing private prosecution).

decision compels immediate state scrutiny, as a state court judge must decide where a child will live and whether the state should take legal custody of the child.<sup>18</sup> As they proceed, private prosecutions raise a tangle of questions about the overlap of private and state authority and obligation.<sup>19</sup> In some jurisdictions, a private prosecution may compel the state's executive branch to step in to prosecute the case and to facilitate services for families. In others, the private prosecutor themselves must not only prosecute a family but also design a service plan and pay for services for the parents they prosecute. In still others, neither the state nor the private prosecutor is obligated to facilitate services for families.

Despite the complicated dynamics of these private prosecutions, they have received limited attention from scholars.<sup>20</sup> Indeed, they are often overlooked by the very court systems that process them.<sup>21</sup> The Article's first project, then, is to unearth the dynamics of these understudied prosecutions. The Article surveys the statutory landscape and legal framework for private dependency prosecutions and offers a rough accounting of how private individuals—and the state—use

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<sup>18</sup> See *infra* Part II (describing the consequences of initiating a private prosecution); *infra* Part III (explaining how private prosecutions can result in changes in legal and physical custody of children).

<sup>19</sup> See *infra* Section II.B (describing variations in the role of the state in private prosecutions across jurisdictions and comparing that role to the state's role in public prosecutions).

<sup>20</sup> There are a few exceptions. See, e.g., Gupta-Kagan, *Family-Court Prosecutors*, *supra* note 9, at 796 (noting that many states give anyone the right to initiate family-court proceedings in child protection cases, delinquency cases, or both, but confining discussion to several paragraphs); Ryan M. Rappa, Note, *Getting Abused and Neglected Children into Court: A Child's Right of Access Under the Petition Clause of the First Amendment*, 2011 U. ILL. L. REV. 1419, 1447–50 (2011) (analyzing private dependency statutes through the lens of an argument that children themselves have a right to access court through private filings); Rama Hyeweon Kim, *Parents, Kin, and the State: Family and Households Between Functional Parenthood and Child Protection*, 33 GEO. J. ON POVERTY L. & POL'Y 55, 98–100 (2025) (describing the use of private prosecution in Kentucky). One particular use of private petitions—to gain necessary findings for children to obtain Special Immigrant Juvenile Status, a legal immigration status—has received greater attention. See, e.g., Shani M. King & Nicole S. Hall, *Cooperative Federalism and SIJS*, 61 B.C. L. REV. 2869, 2889–91 (2020); Bernard Perlmutter, *Judges Behaving Badly . . . Clinics Fighting Back: The Struggle for Special Immigrant Juveniles in State Dependency Courts in the Age of Trump*, 82 ALB. L. REV. 1553 (2018); see also *infra* Section III.B (describing this use).

<sup>21</sup> See, e.g., Telephone Interview with Ky. Ct. Adm'r (Feb. 10, 2025) (notes on file with the New York University Law Review) (reporting Kentucky's court administration does not track the identity of filing parties); E-mail from Fla. Ct. Adm'r to author (Jan. 13, 2025) (on file with the New York University Law Review) (reporting Florida's court administration does not track the identity of filing parties); E-mail from Ariz. Ct. Adm'r to author (Jan. 10, 2025) (on file with the New York University Law Review) (reporting Arizona's court administration does not track the identity of filing parties).

private prosecutions.<sup>22</sup> To do so, it draws on a diverse array of primary and secondary sources, including statutes, legislative history, case law, accounts developed by other scholars, information obtained through records requests, and interviews with practitioners and state officials.

These sources reveal recurring patterns of private prosecution. The Article sorts these patterns into four categories, several of which unsettle the view of family regulation as motivated by child protection.<sup>23</sup> First, some private prosecutions serve as correctives to the state's failure to act on private individuals' good-faith concerns that a child is unsafe in their parents' care. Second, individuals may use private prosecutions as tools to resolve intrafamily disputes and to gain the state's imprimatur for informal family arrangements. For example, a father might prosecute a mother for child maltreatment to gain an edge in a custody fight or a grandparent caring for a child might prosecute the child's parent to win the ability to make legal decisions regarding the child and receive payment for their care of the child. Third, private prosecution operates as a cost-control mechanism for the state. The state may urge a family member to privately prosecute a case so the state can avoid the costs and obligations of a public prosecution.<sup>24</sup>

Fourth, and most arrestingly, families may prosecute themselves, using private prosecution to compensate for an inadequate welfare state. The state places a variety of resources and benefits behind a firewall, granting access only to families within the family regulation system.<sup>25</sup> This incentivizes children to prosecute their own parents and parents to prosecute themselves to enter this system. If a parent is willing to self-prosecute—laying the blame at their own feet, rather than at the feet of the state that fails to provide support outside the family regulation system—they may gain otherwise unavailable supports for their children.<sup>26</sup>

The total number of private dependency prosecutions initiated annually is likely in the low thousands—a small fraction of the hundreds of thousands of dependency cases filed annually.<sup>27</sup> But an examination

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<sup>22</sup> See *infra* Part II (surveying statutory landscape and legal frameworks for private prosecutions); *infra* Part III (exploring frequency of private prosecutions and recurring patterns of prosecution).

<sup>23</sup> See *infra* Section III.B (identifying four patterns of private prosecution).

<sup>24</sup> This pattern might be understood as a cousin of “hidden foster care,” the practice of states pressuring families to agree to voluntary changes in child custody in the place of formally placing children in foster care. Josh Gupta-Kagan, *America's Hidden Foster Care System*, 72 STAN. L. REV. 841, 843–44 (2020) [hereinafter Gupta-Kagan, *Hidden Foster Care*].

<sup>25</sup> See *infra* Section II.B.

<sup>26</sup> See *infra* Section III.B.3 (describing self-prosecutions).

<sup>27</sup> See *infra* Section III.A (summarizing a handful of states' reported rates of private prosecution and describing the difficulty of extrapolating national rates from those reports).

of these cases yields bigger lessons about the role of private individuals in the family regulation system and the function of private prosecution across the carceral state.<sup>28</sup>

The private prosecutions described in this Article illustrate the state's operation of a robust carceral state in place of a robust welfare state to meet individuals' needs and the role of private individuals in maintaining the carceral state and expanding its reach. Scholars have long argued that the growth of the carceral state corresponds with the "deliberate atrophy of the welfare state."<sup>29</sup> Instead of managing, containing, and supporting its citizens through a robust welfare state, the state has developed an expansive carceral apparatus.<sup>30</sup> The family regulation system as a whole neatly illustrates this point: The state fails to provide for families on the front end, then punishes and pathologizes individual parents for its failings on the back end.<sup>31</sup>

Private prosecutions at once offer proof of the state's reliance on carceral measures to make up for its thin welfare offerings and show the centrality of private actors in upholding the public carceral state. While the failed welfare state forces families into the family regulation system, the state itself need not police and prosecute all families in crisis to maintain order. Rather, private individuals police and prosecute their own.<sup>32</sup> So long as these private individuals are willing to peddle

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<sup>28</sup> See *infra* Section IV.A (arguing that private prosecution is a particularly acute example of the state's reliance on private individuals within the family regulation system and pointing out that the state conscripts millions more individuals to serve as mandated reporters); Section IV.B (arguing that patterns of use of private dependency prosecution foretell likely patterns of private criminal prosecution).

<sup>29</sup> WACQUANT, *supra* note 6, at 58.

<sup>30</sup> *Id.*; see also JONATHAN SIMON, GOVERNING THROUGH CRIME: HOW THE WAR ON CRIME TRANSFORMED AMERICAN DEMOCRACY AND CREATED A CULTURE OF FEAR 6 (2007) (describing how "governing through crime" has resulted in "a shift aptly described as transformation from the 'welfare state' to the 'penal state.'"); David Garland, *The Current Crisis of American Criminal Justice: A Structural Analysis*, 6 ANN. REV. CRIM. 43, 48 (2023) ("America's massive deployment of penal control is, in effect, an attempt to compensate for the failures of mainstream mechanisms of social integration.").

<sup>31</sup> ROBERTS, *TORN APART*, *supra* note 5, at 22–23, 211 (arguing that the government polices poor families through the family regulation system rather than offering them necessary material support and tracing how the "mythology about Black maternal depravity legitimizes the massive disruption that . . . child welfare systems inflict on Black families and communities"); UPEND MOVEMENT, END FAMILY POLICING, <https://upendmovement.org/about> [<https://perma.cc/GH29-4VKX>] (last visited Nov. 1, 2025) ("Current 'child welfare' interventions are based on a historical ideology of surveillance, separation, and punishment to control families and communities. . . . Today, this history plays out in forcibly separating families in response to poverty, immigration, incarceration, and other societal failures.").

<sup>32</sup> See *infra* Section III.B (describing parents prosecuting themselves to gain access to services for their children, grandparents prosecuting their incapacitated adult children to gain access to financial support and services for the grandchildren left in their care, and private individuals prosecuting parents in the face of the state's refusal to take action on

narratives of parental deficiency<sup>33</sup> and discipline those near to them,<sup>34</sup> they may be able to use private prosecution to extract what they need from the state for their family—protection, services, financial support, and so on. In doing so, they broaden the reach of the carceral apparatus and shore up its central logics.<sup>35</sup> The state, meanwhile, is absolved of the need to maintain a robust social welfare state to avert families’ crises on the front end or even a carceral state with enough capacity to respond to families’ crises on the back end.

Perhaps surprisingly, this Article does not advance a normative argument against private prosecutions of dependency cases or private prosecutions in other arenas of the carceral state. Private prosecution recurs across American legal systems.<sup>36</sup> It has been a feature of the American criminal legal system since its inception.<sup>37</sup> Civil private enforcement regimes—in which private individuals are empowered to enforce public law through civil suits—are “ubiquitous at the state level.”<sup>38</sup> These regimes have received renewed attention since Texas enacted S.B. 8, a statute permitting private enforcement against people who receive or provide abortions.<sup>39</sup> In both the criminal and civil settings, scholars hotly contest the normative value of these private schemes.<sup>40</sup> Private dependency prosecutions offer a reminder that

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behalf of certain children or at the state’s urging); *see also* JAMES FORMAN, JR., *LOCKING UP OUR OWN: CRIME AND PUNISHMENT IN BLACK AMERICA* 10–11 (2017) (tracing support by Black leaders and residents of Washington, D.C. for carceral measures wielded primarily against Black residents of D.C.).

<sup>33</sup> *See* S. Lisa Washington, *Survived & Coerced: Epistemic Injustice in the Family Regulation System*, 122 COLUM. L. REV. 1097, 1108–09 (2022) [hereinafter Washington, *Survived & Coerced*] (analyzing narratives about Black and Brown mothers’ parenting from an epistemic injustice lens).

<sup>34</sup> Alice Ristroph & Melissa Murray, *Disestablishing the Family*, 119 YALE L.J. 1236, 1258–59 (2010) (explaining how the state expects families to function as sites of discipline).

<sup>35</sup> *See* Cynthia Godsoe, *Disrupting Carceral Logic in Family Policing*, 121 MICH. L. REV. 939, 941 (2023) (“Like the criminal system, the family-policing system is driven by, and in turn perpetuates, carceral logic—an array of legal practices that operate to police, discipline, and most importantly, subordinate a given population in the name of safety or protection.”); GARLAND, *LAW AND ORDER LEVIATHAN*, *supra* note 6, at 49–50 (describing the “control imperative” of the penal state).

<sup>36</sup> *See* Emma Kaufman, *The Past and Persistence of Private Prosecution*, 173 U. PA. L. REV. 89, 150–52 (2024) (collecting data on private criminal prosecutions across the states).

<sup>37</sup> *Id.* at 120.

<sup>38</sup> Diego A. Zambrano, Neel Guha, Austin Peters & Jeffrey Xia, *Private Enforcement in the States*, 172 U. PA. L. REV. 61, 67 (2023).

<sup>39</sup> Luke P. Norris, *The Promise and Perils of Private Enforcement*, 108 VA. L. REV. 1483, 1487 (2022) (surveying the explosion of scholarship on private enforcement after the enactment of S.B. 8).

<sup>40</sup> *Compare* I. Bennett Capers, *Against Prosecutors*, 105 CORN. L. REV. 1561, 1564 (2020) (arguing that a move away from public prosecution in the criminal system could empower victims and reduce mass incarceration), *with* Benjamin Levin, *Victims’ Rights Revisited*,

private prosecutions are not independent of the carceral state; rather, they react to it and bolster it. So long as the carceral state remains the primary apparatus for meeting citizens' needs, it is difficult to cast private prosecution as purely desirable or undesirable, for its utility to individuals—particularly marginalized individuals—shifts in response to the deficiencies of the state.

This Article builds on and bridges several bodies of scholarship. First, it adds to the growing literature describing the carceral logics of the family regulation system and situating the family regulation system as one site of social control within the carceral state.<sup>41</sup> Through its examination of the interplay between private prosecutors and the state, the Article refocuses attention on private dimensions of the public family regulation system and develops a thicker understanding of the private and public institutions of family regulation.<sup>42</sup> Second, it introduces private family regulation prosecutions into the emerging conversation about private prosecutions across the carceral state, from private criminal prosecutions to civil private enforcement regimes.<sup>43</sup> Finally, by making the case that private prosecution reacts

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13 CALIF. L. REV. ONLINE 30, 31 (2022) [hereinafter Levin, *Victims' Rights*] (arguing “that private prosecution won’t solve what [Levin] see[s] as the fundamental problems with the U.S. criminal system”); Angela J. Davis, *The Perils of Private Prosecutions*, 13 CALIF. L. REV. ONLINE 7, 7–8 (2022) (arguing that private prosecution will exacerbate racial disparities in the criminal legal system); Roger A. Fairfax, Jr., *Outsourcing Criminal Prosecution?: The Limits of Criminal Justice Privatization*, 2010 U. CHI. LEGAL F. 265, 266 (2010) (discussing how the outsourcing of prosecution to private lawyers is in tension with constitutional norms); see also Norris, *supra* note 39, at 1487 (tracing debates over the desirability of private enforcement regimes).

<sup>41</sup> See, e.g., Washington, *Fammigration Web*, *supra* note 15, at 130 (discussing the growing body of scholarship on the family regulation system’s carceral logic); Laura Matthews-Jolly, *Adjudicating Obedience*, STAN. J. C.R. & C.L. (forthcoming 2026) (manuscript at 49–50) (on file with the New York University Law Review) (analyzing the family regulation system as a site of social control); Esther K. Hong, *The Carceral State(s)*, 30 MICH. J. RACE & L. 1, 2 (2025) (noting the prevalence of the invocation of “the carceral state” to analyze the family regulation system in scholarship); Nila Bala, *Parent-Child Privilege as Resistance*, 65 B.C. L. REV. 2629, 2666 (2024) (discussing the entanglement between the family regulation system and criminal legal system); Robyn M. Powell, *Under the Watchful Eye of All: Disabled Parents and the Family Policing System’s Web of Surveillance*, 112 CALIF. L. REV. 2005, 2009 (2024) (describing high rates of family policing system involvement for parents with disabilities).

<sup>42</sup> See Clare Huntington, *The Institutions of Family Law*, 102 B.U. L. REV. 393, 396 (2022) (discussing a lack of institutional analysis in family law scholarship); Elizabeth D. Katz, *Fostering Faith: Religion and Inequality in the History of Child Welfare Placements*, 92 FORDHAM L. REV. 2077, 2081 (2024) (noting that critiques of the family regulation system overlook that a “significant portion” of state funds for child welfare are routed to private religious organizations).

<sup>43</sup> See *supra* notes 37–40 (collecting recent scholarship on private criminal prosecution and private enforcement). See generally Jon D. Michaels & David L. Noll, *Vigilante Federalism*, 108 CORN. L. REV. 1187 (2023) (connecting the rise of private enforcement

to and compensates for the atrophy of the welfare state, the Article provides new support for the thesis that the American state relies on carceral measures to maintain social order in the absence of a strong welfare state.<sup>44</sup> It connects that thesis to the growing body of scholarship highlighting the role of private actors as agents of surveillance, discipline, and care within the public carceral state.<sup>45</sup>

The Article proceeds in four parts. Part I traces the family regulation system from its roots in private prosecution to today's public family regulation paradigm, showing how the state's deep-seated reliance on private actors has shaped that paradigm. Parts II and III describe and situate private dependency prosecutions within the public family regulation system. Part II provides the legal framework for private prosecutions, while Part III sketches out patterns of use, drawing from case law, secondary sources, and interviews with practitioners. Part IV offers a theoretical account of these private prosecutions. The Article concludes that private prosecution within the family regulation system and across the carceral state defies neat normative arguments, as it is at once a mechanism that powers and expands the carceral state and a mechanism that can provide relief to individuals in the face of the state's failure to meet their needs.

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regimes to conservative movements that encourage white, Christian individuals to police and marginalize Black Americans, women, and queer people); Aziz Huq, *The Private Suppression of Constitutional Rights*, 101 TEX. L. REV. 1259 (2023) (contextualizing recent private enforcement frameworks within historic examples of private enforcement regimes dating back to the Fugitive Slave Act).

<sup>44</sup> See, e.g., WACQUANT, *supra* note 6, at 58; Garland, *supra* note 30, at 48 (“America’s massive deployment of penal control is, in effect, an attempt to compensate for the failures of mainstream mechanisms of social integration.”); ISSA KOHLER-HAUSMANN, *MISDEMEANORLAND: CRIMINAL COURTS AND SOCIAL CONTROL IN AN AGE OF BROKEN WINDOWS POLICING* 66 (2018) (arguing that misdemeanor courts serve as a form of “managerial justice” that sort people and maintain order); SIMON, *supra* note 30, at 6 (describing how “governing through crime” has resulted in “a shift aptly described as transformation from the ‘welfare state’ to the ‘penal state.’”); Benjamin Levin, *The Limits of “Punishment,”* CALIF. L. REV. (forthcoming 2026) (manuscript at 4) (on file with the New York University Law Review) [hereinafter Levin, *The Limits of “Punishment”*] (arguing that the criminal legal system should be understood “as a form of governance—a constellation of institutions and approaches that sometimes punish, sometimes deliver services, and sometimes do social control”).

<sup>45</sup> See, e.g., Haiyun Damon-Feng, *Conscripted Surveillance*, 78 FLA. L. REV. (forthcoming 2026) (manuscript at 54) (on file with the New York University Law Review) (detailing how ICE “conscripts” private individuals into surveilling their communities); Mariam Hinds, *The Shadow Defendants*, 113 GEO. L.J. 823, 829 (2025) (describing how the criminal legal system “relies on and forcibly extracts [the] labor and resources” of Black women whose family members are criminal defendants). See generally Yiran Zhang, *The Care Bureaucracy*, 99 IND. L.J. 1241 (2024) (examining the state’s reliance on individuals’ family members for home-care work and the surveillance and regulatory expectations imposed upon those family members).

I offer here a note on vocabulary and scope. I am deliberate in the Article's use of the term "private prosecution" to describe statutes empowering private individuals to initiate dependency cases. This use merits explanation. Dependency cases initiated by private individuals are not criminal cases and do not seek to deprive parents of their physical liberty or to punish them (at least overtly). But these cases invoke the state's power to deprive parents of their fundamental right to parent their children. The invocation of that power operates as a mechanism of collective condemnation of "bad parents."<sup>46</sup> Thus, "private prosecution" is a term as apt here as in the criminal system.<sup>47</sup> Private dependency filings are not the only forms of private prosecution in the family regulation system. Some states outsource the prosecution of public family regulation cases to private attorneys, for example,<sup>48</sup> and many states permit private individuals to file petitions to terminate parents' rights.<sup>49</sup> This Article focuses narrowly on prosecutions of dependency petitions initiated by private actors.

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<sup>46</sup> See Sandra G. Mayson, *The Concept of Criminal Law*, 14 CRIM. L. & PHIL. 447, 449 (2020) (describing criminal law's purpose as "a mechanism of collective condemnation" as its defining feature); ROBERTS, *TORN APART*, *supra* note 5, at 161 (describing how the family regulation system "operates surprisingly like its criminal counterpart"); Josh Gupta-Kagan, *Beyond Law Enforcement: Camreta v. Greene, Child Protection Investigations, and the Need to Reform the Fourth Amendment Special Needs Doctrine*, 87 TUL. L. REV. 353, 419 (2012) (arguing that the state wields a "morally stigmatizing" force in areas outside criminal law and noting society imposes a "tremendous stigma" on those accused of being bad mothers).

<sup>47</sup> See Anna Arons, *Prosecuting Families*, 173 U. PA. L. REV. 1029, 1038 (2025) [hereinafter Arons, *Prosecuting Families*] (explaining use of term "prosecutor" in context of public family regulation prosecutions and collecting sources using "prosecutor" for the state's lawyers in dependency cases); see also Kaufman, *supra* note 36, at 96 (explaining use of "private prosecution" to describe "prosecution initiated by non-state actors, such as victims"); Laila L. Hlass, *Lawyering from a Deportation Abolition Ethic*, 110 CALIF. L. REV. 1597, 1650 (2022) (referencing "ICE prosecutors"); Nicole Hallett, *Rethinking Prosecutorial Discretion in Immigration Enforcement*, 42 CARDOZO L. REV. 1765, 1801 (2021) (same); cf. Roger A. Fairfax, Jr., *Delegation of the Criminal Prosecution Function to Private Actors*, 43 U.C. DAVIS L. REV. 411, 416–21 (2009) (describing jurisdictions' outsourcing of criminal prosecution to private attorneys). See generally Levin, *The Limits of "Punishment," supra* note 44 (arguing that focusing on "punishment" as the definitional frame for the criminal legal system obscures the function and flaws of that system).

<sup>48</sup> See, e.g., TEX. FAM. CODE ANN. § 264.009(d) (West 2025) ("Subject to the approval of the attorney general, the department may contract with a private attorney to represent the department in an action under this code.").

<sup>49</sup> See Deirdre M. Smith, *Termination of Parental Rights as a Private Remedy: Rationales, Realities, and Alternatives*, 72 SYRACUSE L. REV. 1174, 1175 (2022) (discussing states permitting private individuals to file petitions to terminate parents' rights).

## I

## THE BIRTH OF THE PUBLIC FAMILY REGULATION PARADIGM

The family regulation system developed around private prosecution. As urban poverty took hold in the late 1800s and as statist solutions foundered, private charitable organizations emerged to respond. These private organizations took an approach that set a template for today's public family regulation paradigm. Rather than meeting the needs of poor immigrant families through broad-based provision of support, they linked support to pathologization of families for their supposed deficiencies and prosecuted and punished families to manage them. In service of their project, private family regulators invoked state power and urged the creation of a public family regulation apparatus. That public apparatus eventually came to supplant private family regulators—but their approach still echoes, as the state deploys carceral solutions rather than welfare solutions to families' needs and relies on private individuals to carry out its project. This Part traces the public-private history of family regulation and highlights the tensions inherent to the family regulation paradigm.

*A. Family Regulation's Roots in Private Prosecution*

Long before the establishment of any family regulation system in the United States, the state sorted, controlled, and separated families. It severed Black families through enslavement, slaughtered Native families and stole their children, and placed poor immigrant children into indentured servitude.<sup>50</sup> But through the mid-nineteenth century, the state rarely purported to “protect” children from their parents.<sup>51</sup>

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<sup>50</sup> See Peggy C. Davis & Richard G. Dudley, Jr., *The Black Family in Modern Slavery*, 4 HARV. BLACKLETTER J. 9, 14 (1987) (discussing how the drafters of the Fourteenth Amendment saw the “deprivation of family rights as a fundamental vice of slavery”); Theresa Rocha Beardall & Frank Edwards, *Abolition, Settler Colonialism, and the Persistent Threat of Indian Child Welfare*, 11 COLUM. J. RACE & L. 533, 538 (2021) (“Native family separation is an outcome of U.S. colonialism and settlement.”); JOHN E.B. MYERS, CHILD PROTECTION IN AMERICA: PAST, PRESENT, AND FUTURE 10 (2006) [hereinafter MYERS, CHILD PROTECTION] (discussing how poor immigrant children could be “bound out” as indentured servants).

<sup>51</sup> See LINDA GORDON, HEROES OF THEIR OWN LIVES: THE POLITICS AND HISTORY OF FAMILY VIOLENCE 27 (1988) (describing the “discovery” of child abuse as a social problem in the 1870s); HERBERT COVEY, THE SMALLEST VICTIMS: A HISTORY OF CHILD MALTREATMENT AND CHILD PROTECTION IN AMERICA 125–27 (2018) (explaining the evolving work of child advocates and social workers in the nineteenth and twentieth centuries and their role in creating the child protection system); Michael Grossberg, *Changing Conceptions of Child Welfare in the United States, 1820–1935*, in A CENTURY OF JUVENILE JUSTICE 3, 24 (Margaret K. Rosenheim, Franklin E. Zimring & David S. Tanenhaus eds., 2002) [hereinafter Grossberg, *Changing Conceptions*] (arguing increasing state involvement in the late

The shift from that era of limited statist solutions to problems of “child welfare” to today’s omnipresent public family regulation system began with private prosecution.

In the late 1800s, white middle- and upper-class reformers undertook a project to “save the nation’s young.”<sup>52</sup> Reformers saw disorder in poor urban families and feared that disorder could destabilize society.<sup>53</sup> They created organizations across the country with names like the Society for the Prevention of Cruelty to Children.<sup>54</sup> At their peak, there were 300 such private family regulation organizations across the country.<sup>55</sup> These organizations defined “cruelty” expansively, to encompass physical abuse and neglect, immorality of parents and children, and conditions of poverty.<sup>56</sup> Reformers sought to “rescue” poor white immigrant children from their families by assimilating them into white middle-class mores and values.<sup>57</sup> These reformers ignored Black families almost entirely, cutting them off from even their thin form of rescue.<sup>58</sup>

Though early family regulation organizations were private, they formed in response to conditions created by the state. Often, the cruelty to which private organizations responded—urban poverty—was a product of political choices and structures.<sup>59</sup> And private organizations’

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nineteenth century “sprang from a new willingness in the era to re-think the legitimate bounds of state authority”).

<sup>52</sup> Michael Grossberg, “A Protected Childhood”: *The Emergence of Child Protection in America*, in *AMERICAN PUBLIC LIFE AND THE HISTORICAL IMAGINATION* 213, 218 (Wendy Gamber, Michael Grossberg & Hendrik Hartog, eds., 2003); Amy Mulzer & Tara Urs, *However Kindly Intentioned: Structural Racism and Volunteer CASA Programs*, 20 *CUNY L. REV.* 23, 46–47, 55, 58 (2016); see also MYERS, *CHILD PROTECTION*, *supra* note 50, at 21–22 (describing early placement methods for orphans).

<sup>53</sup> GORDON, *supra* note 51, at 29; Grossberg, *Changing Conceptions*, *supra* note 51, at 22; COVEY, *supra* note 51, at 126.

<sup>54</sup> MYERS, *CHILD PROTECTION*, *supra* note 50, at 35; GORDON, *supra* note 51, at 27.

<sup>55</sup> MYERS, *CHILD PROTECTION*, *supra* note 50, at 37.

<sup>56</sup> Grossberg, *Changing Conceptions*, *supra* note 51, at 27; see GORDON, *supra* note 51, at 69–72 (reviewing range of cases from the Society in the late nineteenth century).

<sup>57</sup> Grossberg, *Changing Conceptions*, *supra* note 51, at 27; Mulzer & Urs, *supra* note 52, at 51 (describing the “rescue fantasy” enacted by white women reformers).

<sup>58</sup> DOROTHY ROBERTS, *SHATTERED BONDS: THE COLOR OF CHILD WELFARE* 7 (2002) [hereinafter ROBERTS, *SHATTERED BONDS*]; Brenda G. McGowan, *Historical Evolution of Child Welfare Services*, in *CHILD WELFARE FOR THE TWENTY-FIRST CENTURY: A HANDBOOK OF PRACTICES, POLICIES, AND PROGRAMS* 25 (Gerald P. Mallon & Peg McCartt Hess eds., 2014).

<sup>59</sup> COVEY, *supra* note 51, at 124 (noting the effect of the Civil War, industrialization, the abolition of slavery, and tax laws on family structures, geography, and charity); GORDON, *supra* note 51, at 72 (quoting leader of Boston’s Society for Prevention of Cruelty to Children laying blame for child cruelty at “[t]he city that does not provide adequate playgrounds or wholesome recreations and amusements . . . airy, sunny and sanitary dwellings, that does not enforce its laws dealing with school attendance and child labor”).

efforts to rescue children came in the absence of state efforts to do the same.<sup>60</sup>

Private family regulators wielded a tremendous amount of power over marginalized families. Acting on tips and referrals, they investigated families—searching their homes and interviewing their associates—and they doled out limited financial support and services to families.<sup>61</sup> In the absence of state aid, families had to accept private family regulators’ surveillance and visions of proper family life to receive assistance.<sup>62</sup> Desperate families agreed to work with private organizations, and sometimes even sought them out.<sup>63</sup> In a pattern still familiar a century later, race-class subjugated families traded away their privacy and autonomy as the price for receiving financial support, shelter, and services.<sup>64</sup>

Private family regulators derived some of their power from the state’s absence. But they also relied on the state to enforce their power. Investigators carried badges, wore clothes cut from the same navy cloth as police uniforms, and issued legal summonses that conflated their organizations with police.<sup>65</sup> If families were not cowed into cooperation by these shows of power, private family regulators went to state courts to prosecute and punish parents and to take their children from them.<sup>66</sup>

Prosecution was a “primary function” of early private family regulators.<sup>67</sup> They initially prosecuted parents in criminal courts.<sup>68</sup> There, private prosecution was still relatively common.<sup>69</sup> Outside

<sup>60</sup> MYERS, CHILD PROTECTION, *supra* note 50, at 48; *see* COVEY, *supra* note 51, at 131, 135 (describing case of Mary Ellen Wilson, which led to the establishment of private organizations after the difficulty in prosecuting these cases came to light); Grossberg, *Changing Conceptions*, *supra* note 51, at 27 (“[A]nticruelty societies, like so many reforms of the era, dealt with symptoms, not causes . . .”).

<sup>61</sup> *See* GORDON, *supra* note 51, at 37, 48–49, 55 (describing the invasiveness and police-like actions of Massachusetts Society for the Prevention of Cruelty to Children).

<sup>62</sup> *See id.* at 83 (describing tension between single mothers and agencies’ views about proper family structure).

<sup>63</sup> *Id.* at 39, 49, 83.

<sup>64</sup> Washington, *Survived & Coerced*, *supra* note 33, at 1106–07; Dorothy E. Roberts, *Child Welfare’s Paradox*, 49 WM. & MARY L. REV. 881, 886 (2007) (citing Leroy H. Pelton, *Has Permanency Planning Been Successful? No*, in *CONTROVERSIAL ISSUES IN CHILD WELFARE* 268, 271 (Eileen Gambrill & Theodore J. Stein eds., 1994)).

<sup>65</sup> GORDON, *supra* note 51, at 54–55.

<sup>66</sup> *Id.* at 50–51; Grossberg, *Changing Conceptions*, *supra* note 51, at 25–26.

<sup>67</sup> McGowan, *supra* note 58, at 17; MYERS, CHILD PROTECTION, *supra* note 50, at 35–36.

<sup>68</sup> Susan Vivian Mangold, *Challenging the Parent-Child-State Triangle in Public Family Law: The Importance of Private Providers in the Dependency System*, 47 BUFE. L. REV. 1397, 1428 (1999) [hereinafter Mangold, *Challenging the Parent-Child-State Triangle*] (quoting speech by founder of New York Society for Prevention of Cruelty to Children); MYERS, CHILD PROTECTION, *supra* note 50, at 35.

<sup>69</sup> *See* Kaufman, *supra* note 36, at 110–13 (tracking shift from private criminal dispute resolutions to public ones throughout the Nineteenth Century).

criminal court, private family regulators sought to expand the state's family regulation institutions—and their own power. They successfully lobbied legislatures to criminalize more forms of “child cruelty” and to authorize harsher punishments for parents prosecuted in criminal courts.<sup>70</sup> They pushed legislatures around the country to create dedicated juvenile or family courts, the forums in which family regulation cases are still prosecuted.<sup>71</sup> Some also fought for the establishment of public family regulation agencies.<sup>72</sup> These private family regulators assumed that the establishment of public agencies would augment their own power because public agencies would wield power over families and private reformers would wield influence over public agencies.<sup>73</sup> Such an assumption, of course, points to the social status and power of private reformers.<sup>74</sup>

As they expanded public family regulation institutions, private family regulators pushed legislatures to authorize “private agents of the societies to work with police to arrest and prosecute abusive parents, and, if necessary, remove children from their homes.”<sup>75</sup> Thus, though the state's footprint expanded, private family regulators retained their role as prosecutors. They were successful in that role. Though private family regulators were known to lose criminal prosecutions, they held such sway in family courts that they almost never lost there.<sup>76</sup>

The development of private family regulation fits with broader trends of private enforcement identified by Professor Aziz Huq: A dominant group perceives a threat to the existing social arrangement, mobilizes for the creation of legal capacity to suppress the rights of the destabilizing (subjugated) group, and pursues a strategy of private enforcement because of limited state capacity.<sup>77</sup> In this landscape, Huq posits, “a mix of private and judicial action—but not direct state coercion” is an efficient and effective means of maintaining the status quo social structure, to the benefit of the dominant group.<sup>78</sup>

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<sup>70</sup> GORDON, *supra* note 51, at 51, 100; see MYERS, CHILD PROTECTION, *supra* note 50, at 40–43 (describing range of criminal laws and lobbying efforts).

<sup>71</sup> JANE M. SPINAK, THE END OF FAMILY COURT 29–32 (2023).

<sup>72</sup> GORDON, *supra* note 51, at 52; MYERS, CHILD PROTECTION, *supra* note 50, at 71–72.

<sup>73</sup> GORDON, *supra* note 51, at 52.

<sup>74</sup> See Mulzer & Urs, *supra* note 52, at 47 (describing the reliance that the legal system had on the reformers because they were white women).

<sup>75</sup> Grossberg, *Changing Conceptions*, *supra* note 51, at 25–26; see also GORDON, *supra* note 51, at 50–51 (noting that private societies successfully lobbied legislatures for the authority to remove children from their families and place them under the societies' care).

<sup>76</sup> GORDON, *supra* note 51, at 51; Mulzer & Urs, *supra* note 52, at 57.

<sup>77</sup> Huq, *supra* note 43, at 1296.

<sup>78</sup> *Id.*

Over the twentieth century, the state's capacity to regulate families directly swelled as the public family regulation institutions for which private family regulators had advocated came to fruition.<sup>79</sup> Private family regulation agencies struggled to survive as charitable donations dropped and acceptance of statist solutions to social problems grew.<sup>80</sup> In 1922, there were 300 private family regulation agencies around the country.<sup>81</sup> By 1956, there were eighty-four.<sup>82</sup> By 1967, there were ten.<sup>83</sup> Public family regulation became the dominant paradigm.<sup>84</sup>

### B. *The Public Family Regulation Paradigm*

The modern public family regulation system is a behemoth. States investigate the families of three million children annually,<sup>85</sup> and more than a third of American children live through investigations by the time they turn eighteen.<sup>86</sup> Almost all investigations target poor families, and a disproportionate rate target Black, Latino, and Native families.<sup>87</sup> States close more than 80% of investigations without substantiating any allegations of child maltreatment<sup>88</sup>—but only after subjecting parents, children, and communities to state scrutiny and intrusion into the most intimate areas of their lives.<sup>89</sup>

Private family regulators were correct, then, in their prediction: The growth of a public family regulation apparatus facilitated expanded

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<sup>79</sup> A full history of the arc of the family regulation system is beyond the scope of this Article. For a short history of major trends in family regulation, see generally John E.B. Myers, *A Short History of Child Protection in America*, 42 FAM. L.Q. 449 (2008) [hereinafter Myers, *A Short History*]. For a critique of the “[t]ypical history of child welfare policy,” see Mulzer & Urs, *supra* note 52, at 46 n.94.

<sup>80</sup> Myers, *A Short History*, *supra* note 79, at 453; Grossberg, *Changing Conceptions*, *supra* note 51, at 5, 37.

<sup>81</sup> MYERS, CHILD PROTECTION, *supra* note 50, at 45.

<sup>82</sup> *Id.* at 75.

<sup>83</sup> *Id.* at 76.

<sup>84</sup> *Id.*; Grossberg, *Changing Conceptions*, *supra* note 51, at 38.

<sup>85</sup> CHILD.'S BUREAU, U.S. DEP'T OF HEALTH & HUM. SERVS., CHILD MALTREATMENT 2022, at xv (2024) [hereinafter CHILD.'S BUREAU, CHILD MALTREATMENT 2022].

<sup>86</sup> Hyunil Kim, Christopher Wildeman, Melissa Jonson-Reid & Brett Drake, *Lifetime Prevalence of Investigating Child Maltreatment Among US Children*, 107 AM. J. PUB. HEALTH 274, 278 (2017).

<sup>87</sup> Kelley Fong, *Child Welfare Involvement and Contexts of Poverty: The Role of Parental Adversities, Social Networks, and Social Services*, 72 CHILD. & YOUTH SERVS. REV. 5, 5–6 (2017) (describing the overrepresentation of poor families in the child welfare system and offering explanations); CHILD.'S BUREAU, U.S. DEP'T OF HEALTH & HUM. SERVS., CHILD WELFARE PRACTICE TO ADDRESS RACIAL DISPROPORTIONALITY AND DISPARITY 2–3 (2021).

<sup>88</sup> CHILD.'S BUREAU, CHILD MALTREATMENT 2022, *supra* note 85, at 32–33.

<sup>89</sup> Anna Arons, *Family Regulation's Consent Problem*, 125 COLUM. L. REV. 769, 789–92 (2025) (describing the harms of investigations on families and communities).

control of race-class subjugated families.<sup>90</sup> It also brought an increase in family separation in the name of child welfare. While family separation was relatively rare in the era of private family regulation, today, the state places more than 145,000 children in foster care annually.<sup>91</sup> In today's family regulation system, the state is a clearinghouse, an investigator, a prosecutor, and a social worker. It receives and screens reports, refers them for investigation, and at the conclusion of initial investigations, decides which cases to close, which to route into ongoing services and surveillance, and which to prosecute to secure court orders for mandated services and surveillance or family separation.<sup>92</sup>

If the state decides to seek court-ordered family separation, it must meet a series of statutory obligations to receive federal funds. The state must show that it made "reasonable efforts" to avoid family separation, such as referring a parent for substance use treatment or trying to secure adequate housing for a family.<sup>93</sup> If a court authorizes family separation, the state typically must develop a "case plan" to facilitate the family's reunification, then make reasonable efforts toward reunification.<sup>94</sup> These efforts usually include facilitating visits between parents and children and provisioning services to families.<sup>95</sup> The state must also adhere to timelines mandated by state and federal law, some of which require the state to give parents access to review within certain windows and some of which require the state to speed its efforts to permanently sever family ties.<sup>96</sup> As Professor Lisa Washington shows,

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<sup>90</sup> See *supra* notes 70–74 and accompanying text (noting that some private family regulators sought to expand the state's family regulation apparatus); see also Kaufman, *supra* note 36, at 115–18 (positing that the growth of public prosecution facilitated the growth of mass incarceration).

<sup>91</sup> CHILD'S BUREAU, CHILD MALTREATMENT 2022, *supra* note 85, at xv (reporting rate of foster care placement); ROBERTS, SHATTERED BONDS, *supra* note 58, at 8 ("Then in the late 1980s two things happened to cement the child welfare system's current relationship to Black Americans: both the total size of the foster care population and the share of Black children exploded.").

<sup>92</sup> *DeShaney v. Winnebago Cnty. Dep't of Soc. Servs.*, 489 U.S. 189, 208 (1989) (Brennan, J., dissenting) (describing state's expansive role); see also Gupta-Kagan, *Family-Court Prosecutors*, *supra* note 9, at 755 (summarizing the options available to the agency at the close of an investigation period). The agency may pursue any of these options regardless of whether it found evidence to support the underlying allegations. Arons, *Prosecuting Families*, *supra* note 47, at 1045.

<sup>93</sup> 42 U.S.C. § 671(a)(15).

<sup>94</sup> 42 U.S.C. § 675(1)(B); 42 U.S.C. § 671(a)(16).

<sup>95</sup> CHILD'S BUREAU, U.S. DEP'T OF HEALTH & HUM. SERVS., REASONABLE EFFORTS TO PRESERVE OR REUNIFY FAMILIES AND ACHIEVE PERMANENCY FOR CHILDREN 2 (2019) [hereinafter CHILD'S BUREAU, REASONABLE EFFORTS].

<sup>96</sup> See S. Lisa Washington, *Time and Punishment*, 134 YALE L.J. 536, 577 (2024) [hereinafter Washington, *Time and Punishment*] (describing statutes that require courts to hold hearings on family separations and on allegations of maltreatment within particular timeframes but noting "evidence that statutory timelines are regularly violated or sidestepped").

the state alternately weaponizes and evades these timeframes to stretch families' separations and prevent their reunifications.<sup>97</sup>

Taking a wider view, the state is often responsible not just for administering the family regulation system but also for pushing families into it. Like private family regulators, states define child maltreatment expansively.<sup>98</sup> Most investigations relate to allegations of child neglect, rather than child abuse.<sup>99</sup> Child neglect is difficult to disentangle from family poverty.<sup>100</sup> States may investigate families who have inadequate housing, face parental unemployment, cannot find childcare, or cannot access mental or physical healthcare.<sup>101</sup> States may also investigate parents for behavior that is harmful to their children but that stems from parents' stress from living under poverty.<sup>102</sup> Often, too, families seeking support from the state—for instance, referrals for services for parents or children, daycare vouchers, in-home help—can only access that support through family regulation agencies and must accept state surveillance as a condition of support.<sup>103</sup> State policy choices thus funnel families into the family regulation system.<sup>104</sup>

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<sup>97</sup> See generally *id.* (surveying timeframes within family regulation cases and arguing that the state manipulates these timelines to the detriment of marginalized families).

<sup>98</sup> Josh Gupta-Kagan, *Confronting Indeterminacy and Bias in Child Protection Law*, 33 STAN. L. & POL'Y REV. 217, 235 (2022).

<sup>99</sup> In investigations that substantiated allegations of child maltreatment, 74% found neglect, 17% found physical abuse, and 11% found sexual abuse. CHILD.'S BUREAU, CHILD MALTREATMENT 2022, *supra* note 85, at 23. Children may be counted in more than one category. *Id.*

<sup>100</sup> See, e.g., Josh Gupta-Kagan, *Distinguishing Family Poverty from Child Neglect*, 109 IOWA L. REV. 1541 (2024) [hereinafter Gupta-Kagan, *Family Poverty*]; Kierra M. P. Sattler, *Disentangling Poverty from Neglect: Using a Person-Centered Approach to Examine Risk Factors for Neglect Among Families in Poverty*, 28 CHILD MALTREATMENT 576 (2023).

<sup>101</sup> Gupta-Kagan, *Family Poverty*, *supra* note 100, at 1546.

<sup>102</sup> *Id.* at 1546, 1549.

<sup>103</sup> See KRISTINA ROSINKSY, MEGAN FISCHER & MAGGIE HAAS, CHILD TRENDS, CHILD WELFARE FINANCING SFY 2020: A SURVEY OF FEDERAL, STATE, AND LOCAL EXPENDITURES 108–09 (2023) (listing types of preventive services); CHILD.'S BUREAU, U.S. DEP'T OF HEALTH & HUM. SERVS., IN-HOME SERVICES TO STRENGTHEN CHILDREN AND FAMILIES 3–4 (2021) (describing types of services available to families who have “open cases with a child welfare agency”); Darcey H. Merritt, Rachel D. Ludeke, Julie Halverson, Jai' Chewe & Usha Kaul, *Mandated Reporting and Child Welfare Surveillance: Protection or Subordination*, 106 FAMS. SOC'Y: J. CONTEMP. SOC. SERVS. 480 (2025) (noting that Black parents who receive “preventive” services are subject to state “oversight” and “surveillance”); Megan Conn, *With Influx of Federal Funding, New York Aims to Expand Foster Care Prevention*, IMPRINT (Dec. 20, 2021), <https://imprintnews.org/top-stories/with-federal-funds-new-york-aims-to-expand-foster-care-prevention/61346> [<https://perma.cc/ZG26-DCQY>] (quoting state representative stating that “[t]he only way I believe we can get [funding for additional supports for families] done is to do a mass infusion of money into the [family regulation] system for both programs”).

<sup>104</sup> Gupta-Kagan, *Family Poverty*, *supra* note 100, at 1602; Hyunil Kim, Yun Young Kim, Eun-Jee Song & Liliane Windsor, *Policies to Reduce Child Poverty and Child Maltreatment: A Scoping Review and Preliminary Estimates of Indirect Effects*, CHILD. & YOUTH SERVS. REV., Jan. 2024; Paola Scommegna, *Anti-Poverty Tax Credits Linked to Declines in Reports*

Some take the state to be monopolistic, not just dominant, in the family regulation system. Almost four decades ago, Justice Brennan described Wisconsin's family regulation scheme in his dissent in *DeShaney v. Winnebago County*, a case arising from the brutal beating of young Joshua DeShaney at the hands of his father.<sup>105</sup> Justice Brennan cast the state's creation and maintenance of an expansive family regulation scheme as actions that pushed all non-state actors from the field.<sup>106</sup> He wrote:

Through its child-welfare program . . . the State of Wisconsin has relieved ordinary citizens and governmental bodies other than the Department of any sense of obligation to do anything more than report their suspicions of child abuse to [the Department]. If [the Department] ignores or dismisses these suspicions, no one will step in to fill the gap.<sup>107</sup>

Yet even in the public family regulation paradigm described by Justice Brennan, private actors play pivotal roles. Take just a few examples. First, private individuals are conscripted into surveillance, as federal and state law mandate that they report suspected child maltreatment to the state.<sup>108</sup> Second, the state may contract with private providers to oversee foster care, surveillance, and services for families.<sup>109</sup> Third, private actors may volunteer to serve as advocates for children; that is, laypeople with no relation to a child may be designated to opine to the court about a child's best interests.<sup>110</sup>

Though the paradigmatic public family regulation system is not purely public, this account emphasizes that the state retains ultimate control over cases and over families. As Justice Brennan described it, "While many different people contributed information and advice to this decision, it was up to the people at the [public family regulation

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*of Child Neglect, Youth Violence, and Juvenile Convictions*, PRB (Dec. 8, 2022), <https://www.prb.org/resources/anti-poverty-tax-credits-linked-to-declines-in-reports-of-child-neglect-youth-violence-and-juvenile-convictions> [<https://perma.cc/RQB7-QK7R>] (describing research finding that increased tax credits to families "are related to declines in reports of child maltreatment, youth violence, and juvenile convictions").

<sup>105</sup> *DeShaney v. Winnebago Cnty. Dep't of Soc. Servs.*, 489 U.S. 189, 191 (1989).

<sup>106</sup> *Id.* at 208 (Brennan, J., dissenting).

<sup>107</sup> *Id.* at 210; *see also In re R.M.P.*, 569 P.3d 1202, 1204 (Colo. 2025) ("[T]he State, in its role as *parens patriae*, is the sole party that may prosecute dependency and neglect proceedings.").

<sup>108</sup> Louras, *supra* note 12, at 144–50.

<sup>109</sup> Mangold, *Protection, Privatization and Profit*, *supra* note 12, at 1297 (describing how federal and state law allow for private non-profit and for-profit corporations to oversee foster care services); Mangold, *Challenging the Parent-Child-State Triangle*, *supra* note 68, at 1435 (describing how private agencies provide preventive services).

<sup>110</sup> *See Mulzer & Urs*, *supra* note 52, at 47, 55, 57 (describing role of white women in this "child-saving movement").

agency] to make the ultimate decision (subject to the approval of the local government’s corporation counsel) whether to disturb the family’s current arrangements.”<sup>111</sup> In this public family regulation paradigm, “the buck effectively stop[s]” with the state.<sup>112</sup>

### C. *The Contested Function and Purpose of Family Regulation*

More than a century ago, families came up with a shorthand for the Society for Prevention of Cruelty to Children, the dominant private family regulation organization.<sup>113</sup> They called it “the Cruelty.”<sup>114</sup> Private family regulators purported to prevent cruelty to children at the hands of their parents; parents saw the private family regulators themselves as inflicting cruelty on families. This duality is a microcosm of the longstanding contestation of the purpose and function of the family regulation system.

Like proponents of private family regulation before them, proponents of the public family regulation system describe it as benevolent and rehabilitative. In this telling, its purpose is to support families, and it achieves this purpose by facilitating the removal of children from immediate danger and by providing parents services and oversight to allow them to safely reunify with their children.<sup>115</sup> The purported benevolence of this system justifies a culture of informality and cooperation.<sup>116</sup> Parents are entitled to limited procedural protections and discouraged from being adversarial, and courts and agencies collaborate to gather a vast amount of personal information about families.<sup>117</sup>

Critics view the family regulation system’s benevolence as a veneer. “[H]owever kindly intentioned,”<sup>118</sup> the family regulation system

<sup>111</sup> *DeShaney*, 489 U.S. at 209 (Brennan, J., dissenting).

<sup>112</sup> *Id.*

<sup>113</sup> GORDON, *supra* note 51, at 28.

<sup>114</sup> *Id.* at 52.

<sup>115</sup> CHILD’S BUREAU, *HOW THE CHILD WELFARE SYSTEM WORKS*, *supra* note 13, at 2.

<sup>116</sup> SPINAK, *supra* note 71, at 20; *see also* Jane M. Spinak, *Family Defense and the Disappearing Problem-Solving Court*, 20 CUNY L. REV. 171, 171–72 (2016) (describing lack of effective family legal defense practices in context where “[w]hat was best for the child permeated the determinations of neglect or abuse”); Vicki Lens, *Against the Grain: Therapeutic Judging in a Traditional Family Court*, 41 L. & SOC. INQUIRY 701, 702 (2015) (“Envisioned as a hybrid of the legal and social, [family court] incorporates aspects of the adversarial system, including its focus on due process, while also emphasizing collaboration over conflict, and rehabilitation over punishment.”).

<sup>117</sup> Anna Arons, *The Empty Promise of the Fourth Amendment in the Family Regulation System*, 100 WASH. U. L. REV. 1057, 1078–79, 1110–11, (2023) [hereinafter Arons, *Empty Promise*].

<sup>118</sup> MALCOLM X & ALEX HALEY, *THE AUTOBIOGRAPHY OF MALCOLM X*, at 25 (1965) (describing X’s placement in foster care as a child as “[n]othing but legal, modern slavery—however kindly intentioned”); *see also* Mulzer & Urs, *supra* note 52, at 51–54 (tracing the long history of white “rescue fantasies” animating family regulation).

functions to “maintain[] White supremacy, as well as class, gender, and other hierarchies.”<sup>119</sup> Per this account, the family regulation system is organized around carceral logics.<sup>120</sup> Those logics demand the “surveillance, coercion, and punishment” of individual “bad” parents.<sup>121</sup> By blaming individual parents for their families’ struggles, the state deflects attention from policy choices that shape families’ struggles.<sup>122</sup> This, in turn, fuels narratives of race-class subjugated parents as deficient and protects and shores up the hierarchies of the racial capitalist system.<sup>123</sup> This account acknowledges that private individuals play key roles in surveilling families and funneling them into the family regulation system.<sup>124</sup> But it situates the family regulation system as a site of state violence, and the family regulation system as a building block of the carceral state.

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In the paradigmatic account of the modern family regulation system, given voice by Justice Brennan, the buck stops with the state.<sup>125</sup> The

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<sup>119</sup> Godsoe, *supra* note 14, at 2080; *see also* ROBERTS, *TORN APART*, *supra* note 5, at 23 (explaining that the “family-policing system . . . parallels the function of police and prisons”); Emily J. Stolzenberg, *Tribes, States, and Sovereigns’ Interest in Children*, 102 N.C. L. REV. 1093, 1146–47 (2024) (describing critiques of the family regulation system as a system of “social reproduction”).

<sup>120</sup> Washington, *Fammigration Web*, *supra* note 15, at 131; Washington, *Pathology Logics*, *supra* note 14, at 1533–34; Cynthia Godsoe, *Disrupting Carceral Logic in Family Policing*, 121 MICH. L. REV. 939, 942 (2023) (reviewing DOROTHY ROBERTS, *TORN APART: HOW THE CHILD WELFARE SYSTEM DESTROYS BLACK FAMILIES—AND HOW ABOLITION CAN BUILD A SAFER WORLD* (2022)).

<sup>121</sup> Washington, *Fammigration Web*, *supra* note 15, at 126, 131.

<sup>122</sup> *Id.* at 131; KHIARA M. BRIDGES, *THE POVERTY OF PRIVACY RIGHTS* 122–23, 128–29 (2017) (describing how “the moral construction of poverty justifies disruptive state interventions in poor families”).

<sup>123</sup> ROBERTS, *TORN APART*, *supra* note 5, at 23, 211.

<sup>124</sup> *See, e.g.*, Dorothy Roberts, *Why Abolition*, 61 FAM. CT. REV. 229, 235 (2023) (acknowledging role of mandated reporters); *End Surveillance of Families*, UPEND MOVEMENT, <https://upendmovement.org/end-surveillance-families> [<https://perma.cc/GG7B-QMNQ>] (describing reporting as “open[ing] the door for increased policing and surveillance” and calling for repeal of mandated reporting laws).

<sup>125</sup> *DeShaney v. Winnebago Cnty. Dep’t of Soc. Servs.*, 489 U.S. 189, 208 (1989) (Brennan, J., dissenting); *see also* Chris Gottlieb, *The Birth of the Civil Death Penalty and the Expansion of Forced Adoptions: Reassessing the Concept of Termination of Parental Rights in Light of Its History, Purposes, and Current Efficacy*, 45 CARDOZO L. REV. 1319, 1324 (2024) (“In stark contrast to the private party context in which termination of parental rights was developed, today it is primarily the state that severs parental rights and forces adoptions of children over their parents’ objections.”); Leroy H. Pelton, Commentary 3, *Four Commentaries: How We Can Better Protect Children from Abuse and Neglect*, 8 FUTURE CHILD. 120, 126 (1998) (“The fundamental structure of the public child welfare system is that of a coercive apparatus wrapped in a helping orientation.”).

state's deficient social welfare apparatus fails to meet families' needs, the state tags individual parents as deficient, and the state separates—and perhaps reunifies—families as a result. Private individuals play a supporting role only, channeling families into the system and contracting to carry out the state's surveillance and service provision. Yet, in the very state about which Justice Brennan wrote, private individuals may initiate and prosecute dependency cases, without so much as providing notice to the state.<sup>126</sup> In portraying the state's power as monopolistic, the public family regulation paradigm ignores these private prosecutions. The remainder of the Article offers a corrective and considers what private prosecutions reveal about the contested purpose and function of family regulation and private prosecution in the carceral state.

## II

### THE LAW OF PRIVATE FAMILY REGULATION PROSECUTION

This Part surveys the legal frameworks for private prosecution. It begins by describing statutory authority for private prosecution, then turns to questions of the state's role in private prosecutions and the constitutionality of private prosecutions. With the legal groundwork laid, Part III delves into how frequently and under what circumstances private individuals exercise their power to initiate cases.

This account draws on an array of sources, including statutes and legislative history, case law, requests for data from state court administrators, secondary sources, and interviews with practitioners.<sup>127</sup> Yet even these diverse sources do not provide a complete picture of private prosecution across the country. For instance, state court administrators do not maintain comprehensive records of who initiated prosecutions.<sup>128</sup> And publicly available case law is composed almost exclusively of appellate cases, painting an incomplete and unrepresentative picture of the full body of cases.<sup>129</sup> Thus, the account

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<sup>126</sup> WIS. STAT. ANN. § 48.25(1) (West 2025) (permitting petitions to be filed by “[t]he district attorney, corporation counsel, or other appropriate official,” or by “[t]he counsel or guardian ad litem for a parent, relative, guardian or child”); *In re* S.G., 21 N.W.3d 764, 774–75 (Wis. Ct. App. 2025) (holding that in privately prosecuted cases, the state is not entitled to notice nor is it entitled to party status).

<sup>127</sup> The practitioners responded to a request for responses regarding practitioners' experiences with private dependency filings that I sent to a national listserv for counsel for children and parents maintained by the American Bar Association.

<sup>128</sup> See *infra* Section III.A.

<sup>129</sup> See Ruth Halperin-Kaddari, Eyal Katvan & Bryna Bogoch, *Distorted Digital Databases and the Construction of Legal Knowledge*, 43 U. PA. J. INT'L L. 885, 934 (2022) (“[D]espite the digital revolution . . . there is no country in the world in which all court decisions are published and accessible to all. This is particularly true in family law, where the questions of privacy versus transparency are even more acute than in other fields.”);

provided here is a rough sketch and a starting point for more fulsome explorations of the legal authority for and dynamics of private prosecutions in the family regulation system.

### A. *Statutory Authorization for Private Prosecution*

Every state grants standing to public agencies or officials to initiate dependency proceedings.<sup>130</sup> In all but three states, legislatures grant this standing to the executive branch—family regulation agencies or public prosecutors.<sup>131</sup> When the executive exercises its power to bring proceedings, it alleges that a child has been maltreated by their parents and it seeks to intrude on the family’s right to family integrity by separating the family or by requiring that the parents agree to conditions of surveillance and services to keep their child in their care.<sup>132</sup>

In much of the country, the state’s standing to initiate these prosecutions is not exclusive. Twenty-three states grant at least some private individuals standing to initiate petitions seeking state intervention on families.<sup>133</sup> A handful of these states narrow the class of private individuals who may file—for instance, limiting standing to children themselves, school officials, foster parents, or grandparents.<sup>134</sup> But twenty states take a far more expansive tack, granting standing to a

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Julie Hixson-Lambson, *Consigning Women to the Immediate Orbit of a Man: How Missouri’s Relocation Law Substitutes Judicial Paternalism for Parental Judgment by Forcing Parents to Live Near One Another*, 54 ST. LOUIS U. L.J. 1365, 1420 (2010) (describing technical barriers to access family court trial level decisions in Missouri).

<sup>130</sup> See *infra* Appendix.

<sup>131</sup> Three states—Alabama, Missouri, and Mississippi—require that petitions be initiated by intake officers employed by courts. Appendix. However, in two of these jurisdictions, executive agents still play a role in screening and referring cases for filing. Gupta-Kagan, *Family-Court Prosecutors*, *supra* note 9, at 795. For a longer discussion of the division of filing authority between agencies and prosecutors, see Arons, *Prosecuting Families*, *supra* note 47, at 1056–58, 1064–68.

<sup>132</sup> *Stanley v. Illinois*, 405 U.S. 645, 657–58 (1972) (holding that parents are entitled to hearings on their fitness before the state removes their children and noting the state’s interest in caring for children is *de minimis* where their parents are fit); see, e.g., N.Y. OFF. CHILD. & FAM. SERVS., 9 NEW YORK STATE CHILD PROTECTIVE SERVICES MANUAL E-1 (2023) (explaining orders short of removal that might be sought).

<sup>133</sup> *Infra* Appendix. This count includes Pennsylvania, where the state’s statute permits filing by “any person,” 42 PA. STAT. AND CONS. STAT. ANN. § 6334(a) (West 2026). However, the Pennsylvania Supreme Court suspended that statute “only insofar as the Act is inconsistent with Rules . . . which provide that the county agency may file a petition and any other person shall file an application to file a petition.” PA. R. JUV. CT. PRO. 1800(8).

<sup>134</sup> See, e.g., CONN. GEN. STAT. ANN. § 46b-129 (West 2025) (authorizing filing by “any child-caring institution or agency . . . , a child or such child’s representative or attorney or a foster parent of a child, having information that a child or youth is neglected”); R.I. GEN. LAWS § 14-1-11 (2025) (authorizing filing by “any appropriate person”); R.I. GEN. LAWS § 14-1-3(2) (2025) (defining “appropriate person” to include “any truant officer or other school official” and “[a]ny maternal or paternal grandparent, who alleges that the surviving

near-unlimited class of private individuals.<sup>135</sup> These states sweep broadly, conferring standing to “any person,”<sup>136</sup> “any adult,”<sup>137</sup> “a reputable person,”<sup>138</sup> or, slightly more constrained, “any interested person.”<sup>139</sup>

Some of these states granting broad standing still require that the private individual have “an interest and personal stake in the matter” to satisfy standing.<sup>140</sup> Elsewhere, “any person” really means “any person.” Private individuals with “no natural or legal relationship to the child”<sup>141</sup> may have standing to initiate prosecutions, on the theory that all members of the public share an interest in protecting children.<sup>142</sup> In the words of one court, “[i]t is difficult to see how standing could have been defined any more broadly.”<sup>143</sup>

Even states that do not grant standing to private individuals to file dependency petitions may authorize courts to hear applications from private individuals seeking to file petitions. Though their statutory schemes vary, at least nine states allow private individuals to seek court orders either permitting the private individual to file a petition or directing an executive-branch official to file a petition.<sup>144</sup> Two other states permit courts to authorize private individuals to file petitions in cases where the court already has jurisdiction over the child.<sup>145</sup>

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parent, in those cases in which one parent is deceased, is an unfit and improper person to have custody of any child or children”).

<sup>135</sup> See *infra* Appendix (listing twenty states granting expansive standing).

<sup>136</sup> See, e.g., D.C. CODE § 16-2305(b) (2026) (granting standing to “any person”); N.H. REV. STAT. ANN. § 169-C:7 (2026) (same); OR. REV. STAT. ANN. § 419B.809 (West 2025) (same).

<sup>137</sup> See, e.g., 705 ILL. COMP. STAT. ANN. 405/2-13 (West 2025) (granting standing to “any adult person”); ARK. CODE ANN. § 9-35-205 (2025) (renumbered from 9-27-310, effective July 2025) (granting standing to any adult or any child in the family over age ten).

<sup>138</sup> See, e.g., MINN. STAT. ANN. § 260C.141 (West 2025) (granting standing to “[a]ny reputable person”); W. VA. CODE ANN. § 49-4-601 (LexisNexis 2025) (same).

<sup>139</sup> See, e.g., KY. REV. STAT. ANN. § 620.070 (West 2025) (granting standing to “any interested person”); UTAH CODE ANN. § 80-3-201 (LexisNexis 2025) (same).

<sup>140</sup> *Jobst v. Jobst*, 817 S.E.2d 515, 522 (S.C. Ct. App. 2018) (“The general principles of standing—that a party have an interest and personal stake in the matter—overlay that broad interpretation, but otherwise the statute simply provides ‘any person.’”).

<sup>141</sup> *In re M.M.*, 86 A.3d 622, 625 (Me. 2014).

<sup>142</sup> *Id.* at 626 (noting that strangers would lack standing to bring a custody petition but had standing to bring a dependency petition because they “did not seek court-ordered contact with [the child]; rather, their petition sought to have the court protect [the child] from alleged jeopardy”); see also *In re C.S.M.F.*, 89 A.3d 670, 676 (Pa. Super. Ct. 2014) (noting that when the court is examining would-be private dependency petitions, the identity of the party is “relatively inconsequential” as compared to whether the child is dependent).

<sup>143</sup> *Stapleton v. Dauphin Cnty. Child Care Serv.*, 324 A.2d 562, 567 (Pa. Super. Ct. 1974).

<sup>144</sup> See ALA. CODE § 12-15-121 (2026); CAL. WELF. & INST. CODE §§ 325, 328, 331 (West 2026); COLO. REV. STAT. § 19-3-501 (2025); GA. CODE ANN. § 15-11-150 (2025); MICH. COMP. LAWS ANN. § 712A.11 (West 2025); MISS. CODE ANN. § 43-21-451 (2025); MO. ANN. STAT. § 211.081 (2025); N.D. CENT. CODE § 27-20.3-01 (2025); WIS. STAT. ANN. § 48.25(3) (West 2025).

<sup>145</sup> ALASKA STAT. § 47.10.020 (2025); N.Y. FAM. CT. ACT § 1032 (McKinney 2026).

Today's private prosecution statutes echo those of the private family regulation era. When Illinois created the country's first juvenile court system in 1899, it granted standing to "any reputable person, being resident in the county, having knowledge of a child in his county who appears to be either neglected, dependent or delinquent," to petition the newly formed court.<sup>146</sup> That foundational statute empowered private family regulation organizations to prosecute families—while also creating a path for other private individuals to prosecute families and laying the groundwork for the public family regulation system.<sup>147</sup> More than a hundred years later, deep into the public family regulation era, Illinois grants standing to initiate dependency cases to "any adult person."<sup>148</sup> Elsewhere, too, states that granted standing to private individuals in their juvenile courts' foundational statutes continue to do so today.<sup>149</sup> In this sense, these modern statutes persist as reminders of the centrality of private individuals and organizations to the creation of the family regulation system.<sup>150</sup>

Standing to initiate proceedings does not, of course, mean the ability to prevail in proceedings.<sup>151</sup> But hauling a family into court is a

<sup>146</sup> Juvenile Courts Act, § 4, 1899 Ill. Laws 131.

<sup>147</sup> See *supra* Section I.A.

<sup>148</sup> 705 ILL. COMP. STAT. ANN. 405/2-13 (West 2025).

<sup>149</sup> See, e.g., Wright S. Walling & Gary Debele, *Private CHIPS Petitions in Minnesota: The Historical and Contemporary Treatment of Children in Need of Protection or Services*, 20 WM. MITCHELL L. REV. 781, 802–03 (1994) (explaining that Minnesota's early statutes specifically authorized "any reputable person" to file a petition); MINN. STAT. § 260C.141 (2025) (granting standing to "[a]ny reputable person"); Ch. 78, § 3, 1907 Ariz. Session Laws 142, 144 (granting standing to commence proceedings to "any citizen, resident of the county," in act establishing juvenile courts); ARIZ. REV. STAT. ANN. § 8-841 (2025) (granting standing to "any interested party"); Act 215, § 4, 1911 Ark. Acts 166, 170 (granting standing to commence proceedings to "any reputable person" who is a resident of the county, in act establishing state juvenile courts); ARK. CODE ANN. § 9-35-205 (2025) (renumbered from § 9-27-310, effective July 2025) (granting standing to "any adult" or any member of a family age 10 or older); Ch. 336, § 4, 1921 Conn. Pub. Acts 3361 (granting standing to commence proceedings to, inter alia, parents, guardians, certain public officials, and private family regulation organization, in act establishing state juvenile courts); CONN. GEN. STAT. ANN. § 46b-129(a) (West 2025) (granting standing to, inter alia, certain public officials, state family regulation agency, child, and child's foster parents). Some states, however, have narrowed their standing provisions. See, e.g., MERRILL SOBIE, PRACTICE COMMENTARIES, N.Y. FAM. CT. ACT § 1032 (McKinney) (explaining that New York's 1962 Family Court Act granted standing to "any person having knowledge or information of a nature which convinces him that a child is neglected," but that the "Section did not last long in the world of contemporary family practice," and by 1973, the provision had been narrowed to grant standing to public family regulation agencies and to "a person on the court's direction").

<sup>150</sup> See *supra* Section I.A.

<sup>151</sup> See, e.g., Stapleton v. Dauphin Cnty. Child Care Serv., 324 A.2d 562, 567 (Pa. Super. Ct. 1974) ("The fact that a stranger to the child . . . has standing to file a petition with respect to the child implies nothing about the standard that the court will apply in deciding what action to take on the petition.").

burden at best and a trauma at worst.<sup>152</sup> Courts may grant interim relief and move a child to a different home before exhaustively considering the merits of a petition.<sup>153</sup> Courts may also be required to hold hearings and make findings on the merits of petitions rather than summarily dismissing them.<sup>154</sup> Even unmeritorious cases can take years to resolve, and children may be separated from their parents in the interim.<sup>155</sup> Parents must muster the resources to defend themselves<sup>156</sup>—and may have to do so without the legal representation they would be afforded in a public prosecution.<sup>157</sup> At base, private prosecutions “invite the intervention of agencies of the state into a parent’s care of that child.”<sup>158</sup> These are “very serious matter[s].”<sup>159</sup>

Taken together, private prosecution statutes operate as sweeping grants of standing. Of the 72.4 million children in the United States, 28.7 million live in jurisdictions where a private individual could enter

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<sup>152</sup> See *Troxel v. Granville*, 530 U.S. 57, 101 (2000) (Kennedy, J. dissenting) (“It must be recognized, of course, that a domestic relations proceeding in and of itself can constitute state intervention that is so disruptive of the parent-child relationship that the constitutional right of a custodial parent to make certain basic determinations for the child’s welfare becomes implicated.”).

<sup>153</sup> See Telephone Interview with Ga. Prac. (May 13, 2025) [hereinafter Ga. Prac.] (notes on file with the New York University Law Review) (noting that judges may change child custody arrangements on an emergency basis after the initiation of a private prosecution).

<sup>154</sup> See, e.g., *In re Emily G.*, 686 S.E.2d 41, 46–47 (W. Va. 2009) (requiring hearing before dismissal); *B.R.C.M. v. Fla. Dep’t of Child. & Fams.*, 215 So. 3d 1219, 1223 (Fla. 2017) (requiring lower courts to make “individualized factual findings and apply the law to the facts” whenever a petition “alleges specific facts supporting a finding of dependency”); *In re P.T.*, No. 2011 CA 00200, 2012 WL 1029490, at \*1 (Ohio Ct. App., Mar. 19, 2012) (reversing dismissal of petition where “prior to any scheduled court hearings or appearances, a magistrate reviewed the file via a ‘non-oral hearing’ and determined that the complaint should be dismissed”).

<sup>155</sup> See, e.g., *In re D.H.*, 494 P.3d 302 (table) (Kan. Ct. App. 2021) (dismissing grandfather’s private petition in decision issued eighteen months after petition was filed and noting that grandfather retained physical custody of child during pendency of case); *Doe v. G.D.*, 370 A.2d 27, 34 (N.J. Super. Ct. App. Div. 1976) (dismissing former foster parents’ private petition and noting the hardship of the child remaining with the former foster parents for a year during the pendency of the case); *W.L.F. v. Cabinet for Health & Fam. Servs.*, 567 S.W.3d 155, 156 (Ky. Ct. App. 2018) (declining to hear father’s interlocutory appeal challenging child’s placement with grandparents who filed private petition).

<sup>156</sup> See, e.g., *In re Emily G.*, 686 S.E.2d at 46–47 (finding that lower court erred in dismissing a relative’s private petition without a hearing).

<sup>157</sup> See, e.g., *Jobst v. Jobst*, 817 S.E.2d 515, 522 (S.C. Ct. App. 2018) (finding no error where mother in private prosecution case did not receive court-appointed lawyer she would have been entitled by statute to receive in public prosecution); see also Smith, *supra* note 49, at 1219 (noting that some states deny parents the right to counsel in private termination of parental rights prosecutions, even if they afford them the right to counsel in public termination cases).

<sup>158</sup> *In re Theresa E.*, 429 A.2d 1150, 1155 (Pa. Super. Ct. 1981).

<sup>159</sup> *Id.*

a courthouse and ask for that child to be placed in state custody.<sup>160</sup> Another 23 million children live in jurisdictions where that person could at least petition the court to initiate proceedings to place the child in state custody.<sup>161</sup> More than 70% of the nation's children could find themselves in foster care as a result of a proceeding formally instigated by a private individual.

### B. *The Role of the State in Private Prosecution*

All private prosecution statutes permit private individuals to *initiate* dependency petitions.<sup>162</sup> But the fact that a private individual files a petition does not mean that the private individual exercises a monopoly over the prosecution. Instead, the state may still play a role in the case, inside and outside court.

To explore the state's role in private dependency prosecutions, it is helpful to keep in view the state's wide-ranging role in public dependency prosecutions.<sup>163</sup> When the state prosecutes a family, it is statutorily obligated to make "reasonable efforts" to avoid family separation and to reunite families.<sup>164</sup> State agents might refer a parent to a substance use treatment program or a child to a mental health provider, locate new housing for a mother and her children to move away from a violent father, or secure housecleaning services or childcare for a family.<sup>165</sup> The state usually covers the cost of these services if families do not have other means to pay, and families with open cases may receive priority for services over families not entangled in the family regulation

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<sup>160</sup> These numbers were derived by cross-referencing child population figures reported by the federal Children's Bureau for 2022 and the survey of statutes summarized in the Appendix. *Child Population Data*, CHILD.'S BUREAU, U.S. DEP'T OF HEALTH & HUM. SERVS., <https://cwoutcomes.acf.hhs.gov/cwodatasite/population/index> [https://perma.cc/ENH4-NNNY] (last visited Oct. 26, 2025).

<sup>161</sup> *Id.*

<sup>162</sup> *See infra* Appendix.

<sup>163</sup> *See supra* Section I.B.

<sup>164</sup> 42 U.S.C. § 671(a)(15); CHILD.'S BUREAU, REASONABLE EFFORTS, *supra* note 95, at 1.

<sup>165</sup> *See* 42 U.S.C. § 629a(7); *see also* CHILD.'S BUREAU, REASONABLE EFFORTS, *supra* note 95, at 2 (listing examples of reasonable efforts); LEIGH GOODMARK, NAT'L COUNCIL OF JUV. & FAM. CT. JUDGES, REASONABLE EFFORTS CHECKLIST FOR DEPENDENCY CASES INVOLVING DOMESTIC VIOLENCE 25 (2008), <https://www.ncjfcj.org/publications/reasonable-efforts-checklist-for-dependency-cases-involving-domestic-violence> [https://perma.cc/J2ZN-L2ZM] (describing services that could prevent the need to remove the child); N.Y. OFF. OF CHILD. & FAM. SERVS., WORKING TOGETHER: HEALTH SERVICES FOR CHILDREN IN FOSTER CARE ch. 6, <https://ocfs.ny.gov/main/sppd/health-services/docs/manual/WTHS-Manual-Ch06.pdf> [https://perma.cc/M3BA-K46N] (last visited Oct. 26, 2025) (describing preventive and ongoing healthcare for children in foster care system).

system.<sup>166</sup> Public prosecutions thus open resources to families that the state otherwise withholds.

Because the state occupies such an expansive role in public prosecutions, private prosecutions raise questions not just of who prosecutes the case in court but also of who (if anyone) is responsible for providing the family services outside of court.

The answer to the first of these questions—who prosecutes privately filed petitions?—may appear obvious: the person who filed the petition. But state courts do not uniformly view standing to *file* a petition as granting the right to *prosecute* a petition, nor do they uniformly view the right to prosecute a petition as the *exclusive* right to prosecute a petition. A few states allow anyone to file a petition but then substitute the executive as prosecutor after filing.<sup>167</sup> Other states require, allow, or encourage the executive to intervene to co-prosecute a case alongside the private prosecutor.<sup>168</sup> This dual authority means

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<sup>166</sup> See, e.g., WASH. REV. CODE ANN. § 13.34.025(2)(b) (West 2025) (stating that the state shall provide funding for services if the parent is unable to pay); N.Y. FAM. CT. ACT § 1015-a (McKinney 2026) (stating that court may order the state to provide or arrange for provision of social services); 42 U.S.C. § 622 (requiring that states develop plans to provide for mental healthcare for children in foster care to be eligible for federal funding); see also RESTATEMENT (FIRST) OF CHILD. & L. § 2.30 cmt. m (A.L.I., Tentative Draft No. 4, 2022) (explaining courts should weigh heavily the likelihood of family preservation when determining whether the state is too financially constrained to provide services); RESTATEMENT (FIRST) OF CHILD. & L. § 2.50 cmt. o (A.L.I., Tentative Draft No. 4, 2022) (“If there is a significant benefit to the parent and child, and a significant increase in the opportunity for reunification, then the state has not made reasonable efforts to reunify the family absent its provision of the service.”); YOUTH L. CTR., MAKING REASONABLE EFFORTS: A PERMANENT HOME FOR EVERY CHILD 62–63 (2000), <https://www.ylc.org/resource/making-reasonable-efforts-a-permanent-home-for-every-child> [<https://perma.cc/M5ZK-QYKY>] (“Priority for the most intensive services goes to families for whom the risk of removal of their children is most imminent, or whose children are returning home from foster care.”).

<sup>167</sup> See, e.g., E-mail from Ill. Prac. to author (Jan. 21, 2024, at 20:54 ET) (on file with the New York University Law Review) (“Illinois allows anyone to file a neglect/abuse petition but only the State’s Attorney can prosecute the petition.”); Sullivan v. Sullivan, 442 N.E.2d 1348, 1352 (Ill. App. Ct. 1982) (“The person filing the petition is merely an agent of the court and the court does not exceed its constitutional powers merely by directing the filing of a petition concerning a minor through the office of a State’s Attorney.”); *In re Kheirkhah*, No. 2002-L-128, 2004 WL 231495, at \*2 (Ohio Ct. App. Feb. 6, 2004) (holding that a guardian ad litem for a child may file petitions but is then “required to step aside. Thereafter, the duty falls on the children services agency to investigate the situation and, if necessary, prosecute the complaint.”); *In re Dependency of M.W.*, No. 2 CA-JV 2024-0034, 2024 WL 4231153, at \*2 (Ariz. Ct. App. Sep. 18, 2024), review denied (Jan. 3, 2025) (finding that court had inherent authority to substitute agency for private individual as prosecutor).

<sup>168</sup> See *In re Emily G.*, 686 S.E.2d 41, 47 (W. Va. 2009) (noting “statutory directives requiring participation by the Department of Health and Human Resources” in a private prosecution); *G.M.A. v. Commonwealth*, 689 S.W.3d 142, 146–47 (Ky. Ct. App. 2024) (finding that grandparents who filed a private petition were entitled to party status even

that even if the state wishes to dismiss a petition—it may have wished never to bring the petition!—the private individual may continue in their prosecution of it.<sup>169</sup>

Where the state intervenes in a case, either taking over a prosecution or co-prosecuting alongside a private individual, there is a straightforward answer to the question of who is responsible for making efforts toward rehabilitating and supporting families: the state.<sup>170</sup> But private prosecutions where the state never intervenes do not yield such a straightforward answer.<sup>171</sup> Some courts find that in private prosecutions, no one is responsible for making any effort to

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after the intervention of the state); *Jobst v. Jobst*, 817 S.E.2d 515, 522 (S.C. Ct. App. 2018) (describing prosecution in which private individual and agency both participated); *see also* Telephone Interview with Pima Cnty., Ariz. Prac. (Apr. 23, 2025) [hereinafter Pima Cnty., Ariz. Prac.] (notes on file with the New York University Law Review) (describing the attorney's experience convincing judges that private petitioners she represented were entitled to remain as co-petitioners); Telephone Interview with Rural Wash. Prac. (May 19, 2025) [hereinafter Rural Wash. Prac.] (notes on file with the New York University Law Review) (describing judge's practice of strong-arming agency into participating in private prosecutions); *see also* KAN. STAT. ANN. § 38-2233 (West 2025) (specifying that private individuals "may be represented by the individual's own attorney in the presentation of the case").

<sup>169</sup> *See, e.g.*, *Care & Prot. of Benjamin*, 525 N.E.2d 418, 420 (Mass. 1988) (allowing private prosecutor to continue prosecution after state ceased its prosecution); *G.M.A.*, 689 S.W.3d at 147–48 (holding that private prosecutors should have been afforded opportunity to contest dismissal after state moved to dismiss); *In re Dependency of Schermer*, 169 P.3d 452, 467 (Wash. 2007) (reinstating private prosecutor's petition over state's objections).

<sup>170</sup> *See, e.g.*, *E.B. v. Cabinet for Health & Fam. Servs.*, No. 2021-CA-1443-ME, 2022 WL 3329469, at \*4 (Ky. Ct. App. Aug. 12, 2022) (finding that state made reasonable efforts); *Justin T. v. Ariz. Dep't of Econ. Sec.*, No. 1 CA-JV 07-0089, 2007 WL 5515542, at \*5–6 (Ariz. Ct. App. Nov. 27, 2007) (remanding case where state failed to submit report before disposition); *In re D.H.*, No. 23-416, 2024 WL 4763258, at \*7 (W. Va. Nov. 13, 2024) (describing state's obligation to "provide supportive services" even in private prosecution); *see also In re N.A.K.*, No. 103,188, 2010 WL 1610451, at \*1 (Kan. Ct. App. Apr. 15, 2010) (passing on the question of whether the state must provide services as a general matter on the grounds that state did provide adequate services in this case).

<sup>171</sup> *See, e.g., In re B.Y.G.M.*, 176 So. 3d 290, 292 n.1 (Fla. Dist. Ct. App. 2015) (collecting cases in support of the proposition that "[t]he department, as most frequently occurs, is absent in proceedings that involve private petitions"); *Lowell v. Lowell*, 934 S.W.2d 540, 543 (Ark. Ct. App. 1996) (approving of intervention by two other private individuals in a private prosecution with no reference to intervention by agency); *In re H.R.B.*, 43 P.3d 887, 890 (Kan. Ct. App. 2002) (noting that agency is not a necessary party to private prosecution); *In re Dependency of LS*, 402 P.3d 937, 943 (Wash. Ct. App. 2017) (noting that agency is not a necessary party to private prosecution); Telephone Interview with Or. Prac. (May 13, 2025) [hereinafter Or. Prac.] (notes on file with the New York University Law Review) (describing cases where agency is never a party or not made a party until disposition).

reunify families.<sup>172</sup> Other courts place responsibility with the state, even if it never intervened.<sup>173</sup>

Still others place responsibility for reunification efforts with the private prosecutors.<sup>174</sup> A layperson—a grandmother, a friend, a non-custodial parent—may need to develop case plans, make service referrals and pay for services, and track the progress of the same parents they are prosecuting.<sup>175</sup> These private individuals may lack resources, professional training, and even the desire to reunify children with their parents.<sup>176</sup> A Kansas practitioner described representing grandparents who filed a dependency petition against their adult child in hopes of receiving permanent legal custody of their grandchild.<sup>177</sup> She explained that her grandparent-clients (and she) took on tasks typically handled by professionalized caseworkers, including developing a service plan for their adult child, locating services and referring their child to them, monitoring their child’s compliance with this service plan, and preparing updates for the court.<sup>178</sup> The grandparents did all of this ostensibly to reunify their adult child and grandchild—even as they sought to obtain permanent legal custody of their grandchild by proving their adult

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<sup>172</sup> See, e.g., *In re Brown*, 2006-Ohio-3189, at ¶ 27 (Ohio Ct. App. 2006) (noting that where grandmother privately prosecuted case, “no children services agency has provided services in this case and . . . neither the trial court nor the parties are charged with the responsibility of preparing or maintaining a case plan”); Or. Prac., *supra* note 171 (describing cases where agency is never a party or not made a party until disposition and private prosecutions in which there are periodic review hearings but no case plans); Pima Cnty., Ariz. Prac., *supra* note 168 (describing question of who is responsible for making efforts toward reunification in private prosecutions as “somewhat controversial” and noting that some “judges say no requirement unless the state places a child”).

<sup>173</sup> See, e.g., *R.J. v. Fla. Dep’t of Child. & Fams.*, 187 So. 3d 362, 364 (Fla. Dist. Ct. App. 2016) (noting that even if agency is not joined as a party in a private prosecution, the court may place a child in agency’s custody and order services); Or. Prac., *supra* note 171 (describing cases where courts order state to intervene at dispositional phase).

<sup>174</sup> This shifting of responsibility from the state to individuals fits with the broader thesis that the state has privatized dependency. Martha L.A. Fineman, *Masking Dependency: The Political Role of Family Rhetoric*, 81 VA. L. REV. 2181, 2187 (1995).

<sup>175</sup> Telephone Interview with Kan. Prac. (Apr. 29, 2025) [hereinafter Kan. Prac.] (describing practitioner’s efforts to develop case plans on behalf of private individuals prosecuting cases); Pima Cnty., Ariz. Prac., *supra* note 168 (noting that at least one judge in practitioner’s jurisdiction required a private petitioner to provide reunification services); E-mail from Rural Wash. Prac. to author (Jan. 19, 2024) (on file with the New York University Law Review) (“[O]ur judges seem to think that then the person FILING is responsible to provide remedial services at their expense to the parents.”).

<sup>176</sup> See Kan. Prac., *supra* note 175 (describing how private petitioners can lack access to professional resources to coordinate services and may pursue custody rather than family reunification); Pima Cnty., Ariz. Prac., *supra* note 168 (noting that most private petitioners are seeking custody); see also *infra* Section III.B (describing how, in some cases, private petitioners strategically prosecute without seeking reunification).

<sup>177</sup> Kan. Prac., *supra* note 175.

<sup>178</sup> *Id.*

child's parental deficiency.<sup>179</sup> Put in legalese, this arrangement raises ethical concerns.<sup>180</sup> Put more bluntly by the Kansas practitioner, "It gets really weird."<sup>181</sup>

The state may also afford parents more limited legal protections than they would receive in public prosecutions. In private prosecutions, some courts decline to apply statutory timelines that would apply to the state, and others find it proper to refuse to provide parents court-appointed counsel in a private prosecution, though they would be entitled to counsel in a public prosecution.<sup>182</sup>

### C. Constitutional Challenges to Private Prosecution

Courts have had surprisingly little to say about the constitutionality of private prosecution of dependency cases, especially as compared to the constitutionality of private prosecution of criminal cases.<sup>183</sup> To the extent that they have considered it, courts typically accept the constitutionality of these prosecutions.

A search of state appellate case law turns up just two cases challenging the constitutionality of prosecutions by private individuals. One state appellate court summarily dismissed what it construed to be a procedural due process challenge, after noting that the parents challenging the private prosecution did not allege any specific deficiencies in the procedure they received.<sup>184</sup>

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<sup>179</sup> *Id.*

<sup>180</sup> See, e.g., KAN. RULES OF PROF. CONDUCT 3.3 (Kan. 2007) (requiring lawyers to act with candor toward the tribunal); *id.* at 3.7 (forbidding, as a general matter, lawyers from serving as witnesses in trials where the lawyer is acting as an advocate).

<sup>181</sup> Kan. Prac., *supra* note 175.

<sup>182</sup> *Dunham v. Arkansas Dep't of Hum. Servs.*, No. CA97-1123, 1998 WL 128729, at \*2 (Ark. Ct. App. Mar. 18, 1998) (finding that because a case was initiated by private prosecution, statutory timeline does not apply); *Jobst v. Jobst*, 817 S.E.2d 515, 522 (S.C. Ct. App. 2018) (finding no error where mother was not appointed counsel); *In re Brown*, 2006-Ohio-3189, at ¶ 27 (Ohio Ct. App. 2006) (explaining that where state is not a party, statutory obligations that typically fall to state are moot). *But see Walker v. Walker*, 892 A.2d 1053, 1055 n.5 (Del. 2006) (noting in dicta that parents have a right to counsel in private dependency prosecutions).

<sup>183</sup> See *Kaufman*, *supra* note 36, at 124 (collecting state cases finding private criminal prosecution constitutional); *Young v. United States ex rel. Vuitton*, 481 U.S. 787, 790, 793 (1987) (holding that a private attorney could not be appointed to prosecute a contempt case under the facts of the case, without reaching the propriety of private prosecution more broadly); *Donziger v. United States*, 143 S. Ct. 868, 868–69 (2023) (Gorsuch, J., dissenting from denial of certiorari) (describing criminal prosecution as a power held uniquely by the executive); *Robertson v. United States ex rel. Watson*, 560 U.S. 272, 278 (2010) (*per curiam*) (Roberts, C.J., dissenting from denial of certiorari) (arguing that permitting private criminal prosecution would be a "startling repudiation of [the] basic" premise that "criminal prosecution pits the government against the governed").

<sup>184</sup> *In re N.A.K.*, No. 103, 188, 2010 WL 1610451, at \*1 (Kan. Ct. App. 2010).

Another state's supreme court gave more fulsome consideration to a father's substantive due process challenge to a private prosecution statute granting standing to any "three or more persons."<sup>185</sup> The father alleged that the statute "unduly interferes with [his] fundamental due process right to parent [his child] free from State interference."<sup>186</sup> The Supreme Judicial Court of Maine agreed that private prosecution implicated his fundamental rights.<sup>187</sup> But it found that the statute was constitutional under a strict scrutiny analysis: The state had a compelling interest in protecting children from harm, and the statute was narrowly tailored because it required a minimum of three petitioners, afforded parents judicial review early in the prosecution, and exposed petitioners to possible criminal or civil prosecution if they knowingly filed a false petition.<sup>188</sup>

The dearth of additional constitutional challenges to these statutes may speak to their disuse or to the disincentives parents face in raising legal challenges in family regulation proceedings.<sup>189</sup> The absence may also speak to the still-deep roots of private family regulation and to the equally deep-rooted expectation that race-class subjugated families are to be subjected to scrutiny from all sides.

A separate body of cases provides support for the hypothesis that family regulation norms against rights-based litigation and in favor of expansive state intervention may stifle constitutional challenges. This set of cases challenges judicial authority to override executive prosecutorial discretion in the family regulation system. Such challenges arise when a court orders the executive to file a petition after receiving an application from a private individual,<sup>190</sup> when a court directs the executive to intervene in a private prosecution,<sup>191</sup> or when a court denies the executive's order to dismiss a prosecution and permits a private

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<sup>185</sup> *In re M.M.*, 86 A.3d 622, 626 (Me. 2014).

<sup>186</sup> *Id.* at 625.

<sup>187</sup> *Id.*

<sup>188</sup> *Id.* at 626.

<sup>189</sup> See generally Arons, *Empty Promise*, *supra* note 117, at 1102–03 (describing how family court's "problem-solving" orientation pressures parents to forego legal rights and arguments).

<sup>190</sup> See, e.g., *In re M.C.*, 131 Cal. Rptr. 3d 194, 219 (Cal. Ct. App. 2011) (considering whether the court may order the executive to file a petition upon receipt of a private application); *Sullivan v. Sullivan*, 442 N.E.2d 1348, 1352 (Ill. App. Ct. 1982) (same); see also *C.B. v. Cabinet for Health & Fam. Servs.*, No. 2021-CA-0449-ME, 2022 WL 68177, at \*5 (Ky. Ct. App. Jan. 7, 2022) (considering whether the court may sua sponte order the executive to file a petition); *Donald Q.Q. v. Stephanie R.R.*, 198 A.D.3d 1155, 1156–57 (N.Y. App. Div. 2021) (same).

<sup>191</sup> See, e.g., *In re D.H.*, No. 23-416, 2024 WL 4763258, at \*5 (W. Va. Nov. 13, 2024) (considering executive's challenge to order that it join in the prosecution of a private petition).

individual to continue a prosecution.<sup>192</sup> Executive branch officials in at least five states have challenged these court orders on separation-of-powers grounds, arguing that in ordering the executive to file, the judiciary is usurping a core executive function within the sole authority of the executive branch.<sup>193</sup>

In raising these challenges, the executive falls back on well-established criminal law norms. In that field, courts are loath to intervene on prosecutorial decisionmaking. For an illustration of the strength of that norm, we need look no further than the Southern District of New York's recent decision to grant the executive's application to dismiss all charges against former New York City Mayor Eric Adams despite the court's own assessment that the executive's desire to dismiss the case "smacks of a bargain."<sup>194</sup> Indeed, even if the failure to criminally prosecute a case may implicate the interests of a child, courts find criminal prosecutorial discretion unbreachable. In *Linda R.S. v. Richard D.*, the Supreme Court considered a claim by a mother challenging a prosecutor's refusal to bring criminal charges against a father for failure to pay child support.<sup>195</sup> Though the court noted that the mother had an interest in the support of her child, it concluded that "a private citizen lacks a judicially cognizable interest in the prosecution or nonprosecution of another," and dismissed her claim.<sup>196</sup>

Yet state appellate courts for the most part conclude that these criminal law norms have no bearing on family regulation prosecutions. With a lone exception,<sup>197</sup> these courts have found that there is no

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<sup>192</sup> See, e.g., *In re Adoption of Eric*, 796 N.E.2d 465 (Mass. App. 2003) (considering whether a court may permit a private individual to continue a prosecution that the executive has abandoned).

<sup>193</sup> See *supra* notes 190–92 (collecting cases). That the well-resourced executive brings these constitutional challenges with some frequency provides further support for the notion that the absence of constitutional challenges brought by parents stems from the structural constraints parents face. Cf. *Lassiter v. Dep't of Soc. Servs.*, 452 U.S. 18, 38–40 (1981) (Blackmun, J., dissenting) (highlighting the resources and power of the executive, as opposed to parent-litigants, in a termination of parental rights case).

<sup>194</sup> *United States v. Adams*, 777 F. Supp. 3d 185, 192 (S.D.N.Y. 2025); see also *id.* ("A court cannot force the Department of Justice to prosecute a defendant. That is by design. In our constitutional system of separation-of-powers, a court's role in a criminal case is to preside over the matter—not to decide whether the defendant should be prosecuted.").

<sup>195</sup> 410 U.S. 614 (1973).

<sup>196</sup> *Id.*

<sup>197</sup> *C.B. v. Cabinet for Health & Fam. Servs.*, No. 2021-CA-0449-ME, 2022 WL 68177, at \*5 (Ky. Ct. App. Jan. 7, 2022) ("[T]he family court's duty stops at the reporting stage. It cannot interject itself into an investigation or take any other actions beyond reporting until such time as the Cabinet or some other interested party files a . . . petition." (citation omitted)); see also *Donald QQ. v. Stephanie RR.*, 198 A.D.3d 1155, 1156–57 (N.Y. App. Div. 2021) (holding on statutory grounds that the court may not order agency to file and noting that "primary responsibility for initiating such proceedings has been assigned by the Legislature to

separation-of-powers issue with the judiciary overriding executive prosecutorial decisionmaking in family regulation cases. State appellate courts observe that family courts have long exercised expansive power over families, including using investigative powers traditionally associated with the executive, and tie that expansive power to the societal need to protect children.<sup>198</sup> This separation-of-powers issue is ripe for a fuller exploration. But this initial account surfaces two intriguing themes: first, judicial reluctance to equate family proceedings with overtly carceral criminal proceedings; and second, the talismanic invocation of “child welfare” as justification to expand regulation of families,<sup>199</sup> not just by the executive, but also by the judiciary and by private actors.<sup>200</sup>

### III

#### THE PRACTICE OF PRIVATE FAMILY REGULATION PROSECUTION

Though more than twenty states authorize private dependency prosecutions, authorization of a practice does not necessarily equate to use of a practice. This Part offers an initial exploration of how often and under what situations individuals avail themselves of private dependency prosecutions. There is no one cohesive explanation for when and why private prosecutors choose to file. But several surprising patterns emerge. Private petitions often appear less motivated by immediate concerns of child safety and more motivated by interpersonal conflict, by families’ need for support or services from the state, or by the state’s desire to avoid the obligations it would incur from filing itself. These

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child protective agencies”); *In re R.M.P.*, 569 P.3d. 1202, 1204 (Colo. 2025) (holding, in a state that does not allow for private prosecution or for individuals to petition the court to order the executive to prosecute cases, that the state holds exclusive authority to prosecute petitions).

<sup>198</sup> See, e.g., *In re D.H.*, No. 23-416, 2024 WL 4763258, at \*5 (W. Va. Nov. 13, 2024) (“This overlap [in spheres of governmental authority] is often necessary in abuse and neglect proceedings, where there are concurrent obligations to protect the best interest of the children involved.”); *In re M.C.*, 131 Cal. Rptr. 3d 194, 219 (Cal. Ct. App. 2011) (“We find nothing in our Constitution or the statutory dependency scheme that would classify initiation of dependency proceedings as a ‘core’ or ‘essential’ executive function.”); *In re Adoption of Eric*, No. 02-P-1631, 2003 WL 22156040, at \*1 (Mass. App. Ct. Sep. 18, 2003) (“The prosecutor, as an agent of the executive branch of the government, is the only official who is empowered to pursue criminal proceedings. Care and protection cases are civil and often involve multiple parties.”); *Sullivan v. Sullivan*, 442 N.E.2d 1348, 1352 (Ill. App. Ct. 1982) (“[T]he juvenile court neither lacked jurisdiction nor exceeded its constitutional authority in pursuing the neglect petition in the case at bar . . .”).

<sup>199</sup> See Sean Hannon Williams, *Sacred Children, Taboo Tradeoffs, and Distorted Discourses*, 57 U. MICH. J.L. REFORM 163, 165, 172 (2023) (observing that “child welfare” is a “sacred value” and that “invoking child welfare in policy decisions cuts off constructive analysis and dampens debate”).

<sup>200</sup> For a longer discussion of how the expansive judicial role in family court proceedings raises separation-of-powers problems and breeds unchecked state control over marginalized families, see Arons, *Empty Promise*, *supra* note 117, at 1099–113.

patterns begin to show how private prosecution responds to the public family regulation system and how it fits within a broader scheme of carceral governance.

### A. Rates of Private Prosecution

It is near-impossible to quantify the number of private dependency prosecutions across the country. This is not surprising: It is difficult to quantify even the total number of dependency prosecutions across the country. As a rough starting point, it appears that by a very conservative estimate, at least 200,000 public and private dependency cases are initiated annually.<sup>201</sup>

The primary barrier to quantifying private dependency prosecutions is state data tracking. Some states that permit private prosecution do not track the identity of the individual or entity filing the case.<sup>202</sup> A few states do track this identity. These states generally report rates of private filing ranging from less than 1% to 7% of all dependency petitions.<sup>203</sup>

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<sup>201</sup> This estimate is derived from reviewing the annual number of entries into foster care. This estimate is an undercount, as some filings do not result in foster care placements. Arons, *Prosecuting Families*, *supra* note 47, at 1046 n.80 (2025) (describing difficulty in quantifying the number of family regulation court filings annually and explaining why the annual number of foster care placements is a rough proxy for filings); *see also* E-mail from Christopher Church, Senior Dir. for Casey Fam. Programs, to author (July 27, 2023) (on file with the New York University Law Review) (explaining flaws in federal Children's Bureau's reporting on court filings); *supra* note 132 and accompanying text (noting that some petitions do not seek foster care placement).

<sup>202</sup> *See, e.g.*, Response from Ohio Ct. Admin. to Records Request from author (May 20, 2025) (on file with the New York University Law Review) (reporting that court administration does not track identity of filing party); E-mail from Ariz. Ct. Admin. to author (Jan. 10, 2025) (on file with the New York University Law Review) (same); E-mail from Fla. Ct. Admin. to author (Jan. 13, 2025) (on file with the New York University Law Review) (same); Response from Kan. Ct. Admin. to Records Request from author (Mar. 13, 2025) (on file with the New York University Law Review) (same); Telephone Interview with Ky. Ct. Admin. (Feb. 10, 2025) (notes on file with the New York University Law Review) (same); E-mail from Admin. Off. of the Cts., N.H., to author (Apr. 2, 2025) (on file with the New York University Law Review) (same).

<sup>203</sup> Response from Ark. Ct. Admin. to Records Request from author (Feb. 26, 2025) (on file with the New York University Law Review) (reporting between 1.9% and 4.7% of dependency petitions were privately filed from 2022 to 2024); Response from Minn. Ct. Admin. to Records Request from author (Mar. 21, 2025) (on file with the New York University Law Review) (reporting between 0.6% and 1.8% of dependency petitions were privately filed from 2022 to 2024); Response from Me. Ct. Admin. to Records Request from author (Apr. 1, 2025) (on file with the New York University Law Review) (reporting between 0.2% and 0.5% of dependency petitions were privately filed from 2022 to 2024); Response from Wash. Ct. Admin. to Records Request from author (May 15, 2025) (on file with the New York University Law Review) (reporting between 0.5% and 1.3% of dependency petitions were privately filed from 2022 to 2024); Response from Or. Ct. Admin. to Records Request from author (June 17, 2025) (on file with the New York University Law Review) (reporting approximately 7% of dependency petitions were privately filed from 2022 to

But these counts are likely both inaccurate and unrepresentative of national trends, for a few reasons.

*First*, states' reporting is incomplete. For instance, one state provided information on the filing parties for electronically filed petitions but reported that it was missing data on filing parties for 15% of electronically filed petitions and that it does not track filing parties for manually filed petitions.<sup>204</sup> Further, family regulation statutes and terminology vary significantly state by state, and differences in terminology may yield imprecise responses to records requests.<sup>205</sup> *Second*, the breadth of standing for private individuals varies state by state. For instance, Maine reports that private prosecutions represent between 0.2% and 0.5% of all dependency prosecutions<sup>206</sup>—but Maine requires three or more individuals to initiate a prosecution, whereas no other state requires a cohort of multiple private individuals for standing.<sup>207</sup> *Third*, the rate of private prosecution seems to fluctuate. The West Virginia Supreme Court noted in 2024 that it had considered two cases arising out of private dependency prosecutions that term alone—apparently enough of a trend to warrant comment.<sup>208</sup> And, as discussed at greater length below, some private dependency prosecutions are motivated by the hope of gaining Special Immigrant Juvenile Status visas for unaccompanied minors.<sup>209</sup> It seems likely that fewer children will pursue such visas during the second Trump administration.<sup>210</sup>

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2024); *see also* E-mail from Admin. Off. of the Cts., N.H., to author (Apr. 2, 2025) (on file with the New York University Law Review) (reporting identity of filing party is not recorded, but anecdotally, few petitions are privately filed).

<sup>204</sup> Response from Or. Ct. Admin., *supra* note 203.

<sup>205</sup> For instance, a Delaware practitioner described similarities in guardianship and dependency petition terminology. Telephone Interview with Del. Prac. (Apr. 29, 2025) [hereinafter Del. Prac.] (notes on file with the New York University Law Review); *see also* F.C. v. B.C., 64 A.3d 867, 876 n.50 (Del. Fam. Ct. 2013) (describing an earlier case regarding “privately initiated dependency and neglect proceedings” as holding that parents have a right to court-appointed counsel in “private guardianship cases” (citing Walker v. Walker, 892 A.2d 1053 (Del. 2006))). A records request to Delaware resulted in an official in the state’s office of court administration clarifying whether the request sought information on guardianships, on dependency petitions, or both. Response from Del. Ct. Admin. to Records Request from author (Apr. 28, 2025) (on file with the New York University Law Review).

<sup>206</sup> Response from Me. Ct. Admin., *supra* note 203.

<sup>207</sup> *See infra* Appendix.

<sup>208</sup> *In re* I.S., No. 23-332, 2024 WL 4788059, at \*9 (W. Va. Nov. 14, 2024) (“We note that this is the second case docketed this term of court wherein the abuse and neglect petition was filed by a ‘reputable person’ pursuant to this statute.”).

<sup>209</sup> *See infra* Section III.B.3.

<sup>210</sup> *See, e.g.*, Miriam Jordan, *Trump Administration Halts Funding for Legal Representation of Migrant Children*, N.Y. TIMES (Mar. 21, 2025), <https://www.nytimes.com/2025/03/21/us/migrant-children-legal-representation-funding.html> [<https://perma.cc/J7PP-25PC>] (reporting that the Trump administration has cut funding to legal service providers for migrant children).

Finally, even where standing requirements are identical, rates of private prosecutions appear to vary significantly state by state and even county by county.<sup>211</sup> In some states, private prosecution seems a virtual nullity.<sup>212</sup> In others, private prosecution appears to be a regular part of family regulation practice.<sup>213</sup> Practitioners and court websites offer hints as to why rates of private prosecution vary even within a single state. Practitioners report that private prosecution can become a known strategy through word-of-mouth.<sup>214</sup> In addition, some jurisdictions post blank private dependency petitions for pro se litigants, while other jurisdictions within the same state offer no such template and practitioners report that it is mainly represented parties who file private petitions.<sup>215</sup>

These caveats aside, private individuals likely initiate at least a few thousand private prosecutions annually, by a conservative

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<sup>211</sup> I looked up the statute in each of the twenty-three states that permit private prosecution on Westlaw, then reviewed cases that cited that statute to identify cases that were initiated by private prosecution. (Because many states' provisions permitting private prosecution are embedded in statutes authorizing public prosecution or setting forth procedures for all dependency prosecutions, not every citation of a private prosecution statute indicates the case at hand was initiated by private prosecution.) This method did not capture every private prosecution, for few trial-level family court decisions are publicly available and Westlaw neither captures all appellate decisions nor does it always attach cases that cite the statute to the statute itself. See Elisabeth Sheff, Kimberly Rhoten & Jonathan Lane, *A Whole Village: Polyamorous Families and the Best Interests of the Child Standard*, 31 CORN. J.L. & PUB. POL'Y 287, 294 (2021) ("[T]he vast majority of family law cases go unpublished, unreported, and unknown."). But it offers a rough proxy for relative rates of private prosecutions. Some states yielded no appellate cases initiated through private prosecution; others yielded dozens. See *supra* notes 202–03 and supporting materials on file with the New York University Law Review.

<sup>212</sup> Response from Me. Ct. Admin., *supra* note 203.

<sup>213</sup> For instance, one practitioner reported private filings happen "all the time" in her jurisdiction. E-mail from Del. Prac. to author (Jan. 19, 2024) (on file with the New York University Law Review). Elsewhere, searches on Westlaw yielded dozens of appellate cases reviewing private filings in Ohio, as compared to a handful of such cases in other states. See supporting materials on file with the New York University Law Review.

<sup>214</sup> See, e.g., Telephone Interview with King Cnty., Wash. Prac. (May 8, 2025) [hereinafter King Cnty., Wash. Prac.] (notes on file with the New York University Law Review); Telephone Interview with Maricopa Cnty., Ariz. Prac. (Apr. 30, 2025) [hereinafter Maricopa Cnty., Ariz. Prac.] (notes on file with the New York University Law Review).

<sup>215</sup> Compare Maricopa Cnty., Ariz. Prac., *supra* note 214 (noting forms for initiating private prosecutions are posted on court website and reporting that pro se prosecutions are not uncommon), and *Filing for Juvenile Dependency*, MARICOPA CNTY. SUPERIOR CT., [https://superiorcourt.maricopa.gov/lrc/juv\\_group\\_1](https://superiorcourt.maricopa.gov/lrc/juv_group_1) [<https://perma.cc/W97W-CWZ9>] (last visited Nov. 8, 2025) (providing template and filing instructions for initiating private dependency prosecution), with Pima Cnty., Ariz. Prac., *supra* note 168 (reporting most private prosecutions are brought by parties who retain counsel), and *Court, Children, and Family Services*, PIMA CNTY. SUPERIOR CT., <https://www.sc.pima.gov/pima-county-juvenile-court/court-children-and-family-services> [<https://perma.cc/9YG4-EHT8>] (last visited Nov. 8, 2025) (containing no forms for filing).

estimate.<sup>216</sup> Examining the dynamics that drive private individuals to file these cases sheds new light on the function of the family regulation system and on the use of private prosecution more generally.

### B. *Patterns of Private Prosecution*

This Section draws on case law and accounts from practitioners to describe recurring patterns of private prosecution. These sources do not present a conclusive or cohesive account. But they do reveal that private individuals often prosecute strategically, using private prosecution as a mechanism to extract protection, services, and benefits from a recalcitrant state, and often respond to situations that have little to do with parental unfitness.

#### 1. *Correcting State Inaction*

To be sure, some private prosecutors are motivated by their pressing concerns about children's immediate safety in their parents' care and by the state's failure to take action. Relatives or acquaintances of families file dependency petitions based on their suspicions of child maltreatment.<sup>217</sup> Children's schools or services providers can do the same.<sup>218</sup>

Some of these private individuals prosecute cases after they have brought their concerns about a child to the state through its family

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<sup>216</sup> Cross-referencing the statutes collected in the Appendix and data collected by the federal Children's Bureau regarding the number of children entering foster care, approximately 75% of foster care placements arise in states permitting some form of private initiation of dependency cases. See CHILDS. BUREAU, U.S. DEP'T OF HEALTH & HUM. SERVS., CHILD WELFARE OUTCOMES DATA: ENTERED FOSTER CARE DURING 2022, <https://cwoutcomes.acf.hhs.gov/cwodatasite/enteredCare/index> [<https://perma.cc/PGT8-22WH>] (choose "2022" from dropdown and change view to "Number of Children Entering Care & Median Length of Stay"). Thus, approximately 150,000 dependency prosecutions annually *could* be the product of private prosecution. See *supra* note 201 and accompanying text (explaining use of foster care entries as proxy for total dependency prosecutions). If even 1% of those prosecutions are privately initiated, that would mean 1,500 annually.

<sup>217</sup> See, e.g., *E.B. v. Cabinet for Health & Fam. Servs.*, No. 2021-CA-1443-ME, 2022 WL 3329469, at \*1 (Ky. Ct. App. Aug. 12, 2022) (upholding dependency finding against parents in private prosecution brought by friend of child's mother, after child disclosed his father had threatened to break his fingers); *In re C.G.-S.*, 2019-Ohio-370, ¶ 20 (considering case in which aunt privately prosecuted case after child reported sexual abuse by parent).

<sup>218</sup> See, e.g., *A.P. v. Cabinet for Health & Fam. Servs.*, No. 2021-CA-0918-ME, 2022 WL 2280902, at \*3 (Ky. Ct. App. June 24, 2022) (noting that school employee initiated prosecution based on "myriad" concerns about the children); see also *J.H. v. Northfield Pub. Sch. Dist.* No. 0659-01, No. A08-1213, 2009 WL 1182199, at \*4 (Minn. Ct. App. May 5, 2009) (acknowledging school could have privately prosecuted a case but did not); *In re Conner*, 140 P.3d 1167, 1171 (Or. Ct. App. 2006) (acknowledging doctor could have privately prosecuted a case but did not).

regulation agency, and the agency has declined to intervene.<sup>219</sup> A practitioner in one state, for example, reported that the state's family regulation agency virtually never files cases regarding teenagers—even when teenagers are in precarious living situations because of conflict with their parents.<sup>220</sup> The child might then file their own petition through counsel, in order to receive a foster care placement, services, and housing.<sup>221</sup> Cases like this fit neatly within the account developed by Professor Bennett Capers of the potential for private criminal prosecutions to enhance victims' autonomy and grant subjugated victims greater power vis-à-vis the state.<sup>222</sup>

In other instances, well-resourced private petitioners may retain counsel to privately prosecute a case in which the family regulation agency is also taking an active role in order to assert greater control over the proceeding or to ensure a higher level of legal competency on the part of the prosecutor.<sup>223</sup> One longtime Arizona practitioner noted that in her experience, public prosecutors have “good intentions” but limited legal acumen and little time to prepare witnesses.<sup>224</sup> In contrast, she viewed herself as better able to prepare and prosecute effectively when she was retained by private individuals to do so because she “didn't have to listen to what anybody else thought [she] needed to be doing or the time [she] was spending.”<sup>225</sup>

## 2. *Resolving Family Disputes*

Despite admonitions from courts that private dependency petitions should not be used as a means of gaining legal custody of children,<sup>226</sup>

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<sup>219</sup> See, e.g., *In re Forrest*, 2004-Ohio-4189, ¶¶ 11–12 (considering petition filed by grandmother after agency previously investigated same allegations); *M.E.G. v. Dep't of Child. & Fams.*, 805 So. 2d 40, 40–41 (Fla. Dist. Ct. App. 2001) (noting grandparents privately prosecuted case after agency investigated and declined to proceed), *as clarified* (Feb. 1, 2002); *Pima Cnty., Ariz. Prac.*, *supra* note 168 (describing private prosecutions she brought on behalf of clients after agency investigation).

<sup>220</sup> E-mail from Or. Prac. to author (Jan. 22, 2024) (on file with the New York University Law Review) (describing family regulation agency's refusal to file cases on behalf of teenagers); see also *R.J. v. Fla. Dep't of Child. & Fams.*, 187 So. 3d 362, 363 (Fla. Dist. Ct. App. 2016) (considering case filed by child's attorney after child's parents refused to let child return home from in-patient psychiatric center).

<sup>221</sup> For more on petitions filed in order to receive services, see *infra* Section III.B.3.

<sup>222</sup> Capers, *supra* note 40, at 1591–92.

<sup>223</sup> See *Pima Cnty., Ariz. Prac.*, *supra* note 168.

<sup>224</sup> *Id.*

<sup>225</sup> *Id.*

<sup>226</sup> See *In re Reese*, 446 N.E.2d 482, 485 (Ohio Ct. App. 1982) (noting that private dependency prosecutions should not be used as a vehicle for resolving custody); *In re Theresa E.*, 429 A.2d 1150, 1155 (Pa. Super. Ct. 1981) (admonishing father for using private dependency prosecution to resolve custody case); see also *To File a Juvenile Dependency*, MARICOPA CNTY. SUPERIOR CT., [https://superiorcourt.maricopa.gov/lrcc/juv\\_jvd1](https://superiorcourt.maricopa.gov/lrcc/juv_jvd1) [<https://perma.cc/>

cases and reports from around the country reveal that parents and relatives may use private prosecution to achieve exactly that end.<sup>227</sup> Consider two examples.

First, against the backdrop of an ongoing custody dispute between two family members, one may also initiate a private dependency prosecution. The private prosecutor may have legitimate concerns regarding the child's safety in the other person's care and may feel that the judge overseeing the custody litigation is not addressing their concerns.<sup>228</sup> Or the private prosecutor may believe that making an allegation of abuse or neglect against the other party gives them an edge in the ongoing litigation. A Georgia practitioner noted that even if courts ultimately dismiss bad-faith private dependency petitions, they sometimes grant emergency relief that changes existing custody arrangements.<sup>229</sup>

Second, families may come to informal arrangements in which a parent leaves a child in the care of a friend or relative, without any formal change in legal custody. Though any parentally created risk to the child has already been mitigated by the informal arrangement, some caretakers eventually file private dependency petitions against the parent.<sup>230</sup>

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MHU7-H9MA] (last visited Nov. 8, 2025) (“If you are the mother or father of the child(ren), you may not use this packet to establish or change a legal decision-making (custody) order.”).

<sup>227</sup> This Article limits its consideration of allegations of child maltreatment in custody litigation to those instances where a child's caretaker initiates a separate dependency proceeding against a child's parent. It does not consider cases where allegations of child maltreatment are lodged *within* an ongoing custody proceeding, though there are certainly thematic overlaps. For a discussion of how custody courts handle allegations of child maltreatment, see Joan S. Meier & Vivek Sankaran, *Breaking Down the Silos That Harm Children: A Call to Child Welfare, Domestic Violence and Family Court Professionals*, 28 VA. J. Soc. Pol'y & L. 275, 282 (2021).

<sup>228</sup> See, e.g., *Timothy P. v. Ariz. Dep't of Econ. Sec.*, No. 2 CA-JV 2009-0032, 2009 WL 2710121, at \*6 (Ariz. Ct. App. Aug. 28, 2009) (allowing mother's private dependency petition to move forward where she alleged child's father was abusing child); *Lowell v. Lowell*, 934 S.W.2d 540, 543 (Ark. Ct. App. 1996) (considering dependency findings in private prosecutions by three fathers, each of whom had a child with the mother, against the mother); *In re Emily G.*, 686 S.E.2d 41, 44 (W. Va. 2009) (considering private prosecution by grandparents that coincided with protracted guardianship litigation between grandparents and parents).

<sup>229</sup> E-mail from Ga. Prac. to author (Jan. 19, 2024) (on file with the New York University Law Review); cf. Jonah E. Bromwich & Andy Newman, *Child Abuse Investigators Traumatize Families, Lawsuit Charges*, N.Y. TIMES (Feb. 20, 2024), <https://www.nytimes.com/2024/02/20/nyregion/acs-nyc-family-trauma-lawsuit.html> [<https://perma.cc/SVF9-Y4X5>] (describing how a pattern of abuse was perpetrated against a mother through her former partner's false reports of child maltreatment).

<sup>230</sup> See, e.g., *In re L.D.*, 432 P.3d 1029 (table) (Kan. Ct. App. 2019) (considering private prosecution brought by grandmother who already had child in her care); *W.L.F. v. Cabinet for Health & Fam. Servs.*, 567 S.W.3d 155, 157 (Ky. Ct. App. 2018) (considering private prosecution brought by grandparents who already had child in their care); *In re Reese*,

Any private prosecution raises a risk that the child may be removed from the prosecutor-caretaker and placed in foster care elsewhere.<sup>231</sup> This is because a family court judge may deem a prosecutor-caretaker an unfit caregiver.<sup>232</sup> That risk is heightened if the prosecutor-caretaker is a member of a subjugated group, as they may be deemed inappropriate caretakers because of judicial bias or because of purportedly “objective” factors ranging from the size of their home, to their past criminal records, to their financial resources.<sup>233</sup> But if the prosecutor-caretaker retains physical custody of the child through the proceeding,<sup>234</sup> they may receive payments and access to supports and services from the state for their continued care of the child.<sup>235</sup> Considering the financial pressure under which caretakers raising relatives’ children often live<sup>236</sup> and the likelihood that children separated from their parents will have

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446 N.E.2d at 484 (considering private prosecution brought by aunt who already had child in her care); *Jobst v. Jobst*, 817 S.E.2d 515, 522 (S.C. Ct. App. 2018) (considering private prosecution brought by grandparents who alleged they were primary caretakers of child); Kim, *supra* note 20, at 98–99 (observing that in Kentucky family members may file private petitions to gain legal custody of children already in their care).

<sup>231</sup> See, e.g., *In re B.J.*, 2012-Ohio-3127, ¶ 2 (noting that during pendency of aunt’s private prosecution the child was placed elsewhere); *How to File for Juvenile Dependency*, MARICOPA CTY. SUPERIOR CT., [https://superiorcourt.maricopa.gov/lrc/juv\\_group\\_1](https://superiorcourt.maricopa.gov/lrc/juv_group_1) [<https://perma.cc/MHU7-H9MA>] (last visited Nov. 8, 2025) (“If DCS does not feel the person petitioning for Dependency can provide a proper home for the children, this petition could possibly result in the children being placed in foster care.”).

<sup>232</sup> See Josh Gupta-Kagan, *America’s Hidden Foster Care System*, 72 STAN. L. REV. 841, 873 (2020) (noting concern that “formal foster care licensing requirements could prevent children from living with kin”).

<sup>233</sup> *Id.*; Kele Stewart, *Rethinking Relative Care* 21–22 (unpublished manuscript) (on file with the New York University Law Review).

<sup>234</sup> See, e.g., *In re L.D.*, 432 P.3d at 1029; *W.L.F.*, 567 S.W.3d at 157; *In re Reese*, 446 N.E.2d at 484; *In re S.S.*, 2008-Ohio-1686, ¶ 2; *Jobst*, 817 S.E.2d at 517; *F.E. v. E.B.*, 641 S.W.3d 700, 702–03 (Ky. Ct. App. 2022).

<sup>235</sup> See, e.g., CHILD’S BUREAU, U.S. DEP’T OF HEALTH & HUM. SERVS., KINSHIP CARE AND THE CHILD WELFARE SYSTEM 5 (2022) [hereinafter CHILD’S BUREAU, KINSHIP CARE] (noting that relatives who participate in “formal kinship care,” in which the state has legal custody and relatives have physical custody of children, “are typically eligible for more financial assistance than other types of caregivers” and comparing supports available to informal vs. formal kinship caregivers); *Resources for Current Foster Parents*, ILL. DEP’T CHILD. & FAM. SERVS., <https://dcfs.illinois.gov/loving-homes/fostercare/resources-for-current-foster-parents.html> [<https://perma.cc/LAR9-K2HG>] (last visited Nov. 4, 2025) (summarizing payments and support services available to foster parents); *Foster Care Financial Supports*, ADOPTIVE & FOSTER FAM. COAL. N.Y., <https://affcnny.org/fostercare/financial-supports> [<https://perma.cc/NP6P-UGRT>] (last visited Nov. 4, 2025) (same); *How Can We Improve Placement Stability for Children in Foster Care?*, ANNIE. E. CASEY FOUND. (2023), <https://www.casey.org/strategies-improve-placement-stability> [<https://perma.cc/LSQ7-C7US>] (describing best practices for providing supports to foster parents and foster children).

<sup>236</sup> See Siyan Liu & Laura D. Quinby, *Could Social Security Child Benefits Help Grandparent Caregivers?*, CTR. FOR RET. RSCH. AT B.C. (Oct. 24, 2023), <https://crr.bc.edu/could-social-security-child-benefits-help-grandparent-caregivers> [<https://perma.cc/4CX2-BRDG>] (discussing economic pressures grandparent-caregivers face).

mental health needs,<sup>237</sup> these benefits can be enticing. Further, private prosecutions may also allow caretaker-prosecutors to gain legal custody or guardianship of the child, permitting them to make decisions on behalf of the child without consulting the child's parents.<sup>238</sup> A private dependency prosecution can thus bring financial benefits, expedience, and some sense of durability for the caretaker, as parents cannot change their mind and take their child back without going to court to seek a change in custody.<sup>239</sup>

Caretakers could gain at least some of those benefits—legal custody and durability—through a custody or guardianship case, rather than a dependency case. But in the wake of *Troxel v. Granville*,<sup>240</sup> a plurality decision from the Supreme Court that invalidated a grant of weekend visitation to grandparents over a parent's objection, some states have narrowed their standing provisions for custody, visitation, and guardianship petitions.<sup>241</sup> A caretaker may not have standing to bring a custody or guardianship petition but may yet be able to avail themselves of the broader standing requirements for private dependency prosecutions.<sup>242</sup>

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<sup>237</sup> See *The Science Is Clear: Separating Families Has Long-term Damaging Psychological and Health Consequences for Children, Families, and Communities*, SOC'Y FOR RSCH. IN CHILD DEV. (2018), <https://www.srkd.org/briefs-fact-sheets/the-science-is-clear> [<https://perma.cc/T2BE-NVRT>] (discussing lasting mental health impacts of family separation); Honghua Li, Kai Liu, Junsong Fei, Tongshuang Yuan & Songli Mei, *Association of Early Parent-Child Separation with Depression, Social and Academic Performance in Adolescence and Early Adulthood: A Prospective Cohort Study*, 18 CHILD & ADOLESCENT PSYCHIATRY & MENTAL HEALTH 1, 9 (2024) (finding children who experience separation have higher rates of depression).

<sup>238</sup> See CHILD'S BUREAU, KINSHIP CARE, *supra* note 325, at 4 (distinguishing between legal and physical custody); *Jobst v. Jobst*, 817 S.E.2d 515, 524 (S.C. Ct. App. 2018) (upholding award of permanent custody to grandparents who privately prosecuted parents); *Ives v. Ives*, 2003-Ohio-3505, ¶ 4 (Ohio Ct. App. 2003) (same).

<sup>239</sup> Pima Cnty., Ariz. Prac., *supra* note 168 (describing clients' desire for permanence as a motive for privately prosecuting parents); Kan. Prac., *supra* note 175 (same).

<sup>240</sup> 530 U.S. 57 (2000).

<sup>241</sup> For example, the Washington statute at issue in *Troxel* permitted "[a]ny person" to petition a superior court for visitation rights "at any time" and authorize[d] state superior courts to grant such rights whenever visitation may serve a child's best interest." 530 U.S. 57, 60 (2000) (quoting WASH. REV. CODE § 26.10.160(3)). The Washington statute now in effect permits "[a] person who is not the parent of the child" to petition for visitation only if the person "has an ongoing and substantial relationship with the child," "is a relative of the child or a parent of the child," and "[t]he child is likely to suffer harm or a substantial risk of harm if visitation is denied." WASH. REV. CODE ANN. § 26.11.020 (West 2025); see also Hanock Spitzer, *Grandparental Investment & the Law: Grandparents' Visitation Rights and Time Spent with Grandchildren in a Post-Troxel World* (unpublished manuscript) (on file with the New York University Law Review) (summarizing changes to states' statutes post-*Troxel*).

<sup>242</sup> See *Cole v. Thomas*, 735 S.W.2d 333, 334–35 (Ky. Ct. App. 1987) (contrasting narrow standing to bring custody cases with broad standing to bring dependency cases); *In re A.G.*, 154 N.E.3d 439, 446–47 (Ohio Ct. App. 2020) (holding that mother whose rights had been

Caretakers may reap strategic advantages in pursuing private prosecution even where they could pursue custody through other means.<sup>243</sup> In addition to accessing the resources available to foster children noted above, prosecutor-caretakers may access more favorable judges. The Arizona practitioner noted that dependency petitions are heard by one court and custody petitions in another.<sup>244</sup> She observed that the court hearing custody petitions typically saw allegations of maltreatment as “people making mountains out of a molehill, whereas the exact opposite was true” in the court hearing dependency petitions.<sup>245</sup> Thus, she sometimes steered her clients toward private prosecutions.<sup>246</sup> Worth noting, states may operate “two-tiered” family court systems, where one specialized court hears dependency cases and oversees overwhelmingly poor and disproportionately Black, Latino, and Native litigants, while another hears private custody cases and oversees whiter, more “moneyed litigants.”<sup>247</sup> Thus, by opting to file a dependency petition, rather than a custody petition, a private prosecutor may access a court in the daily business of judging marginalized parents as deficient.<sup>248</sup>

There can also be strategic downsides to these prosecutions. In public dependency prosecutions, once a petition is filed, the state must usually make efforts to reunify the parent and the child.<sup>249</sup> If a court holds that this same obligation accrues to someone—the state or the private petitioner themselves—in a private dependency prosecution, then some

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terminated was permitted to bring dependency petition though she was barred from bringing custody petition).

<sup>243</sup> See Kim, *supra* note 20, at 99 (noting that in Kentucky family members may “use private maltreatment petitions to work around the requirements under the DFC statute or as a ‘jumping off point’ to pursuing a private custody action” and describing advantages of gaining orders granting emergency custody through maltreatment petitions before “aiming for permanent custody”).

<sup>244</sup> Pima Cnty., Ariz. Prac., *supra* note 168. Note that Arizona has done away with the nomenclature of “custody,” and its statutes instead refer to “legal decision-making authority” and “placement” of children. See, e.g., ARIZ. REV. STAT. ANN. § 25-409 (2025) (referencing “legal decision-making authority” and “placement”). I use custody here for consistency across jurisdictions.

<sup>245</sup> Pima Cnty., Ariz. Prac., *supra* note 168.

<sup>246</sup> *Id.*

<sup>247</sup> Leah A. Hill, *Do You See What I See? Reflections on How Bias Infiltrates the New York City Family Court—The Case of the Court Ordered Investigation*, 40 COLUM. J.L. & SOC. PROBS. 527, 546 (2007); accord Mariela Olivares, *The Unpragmatic Family Law of Marginalized Families*, 136 HARV. L. REV. F. 363, 366 (2023).

<sup>248</sup> See Matthew I. Fraidin, *Decision-Making in Dependency Court: Heuristics, Bias, and Accountability*, 60 CLEV. ST. L. REV. 913, 947–49 (2013) (describing how dependency courts rely on racialized narratives and cognitive biases that frame marginalized parents as inherently deficient).

<sup>249</sup> See *supra* Section II.B (describing state’s obligations in public dependency prosecutions).

entity must make efforts to address the problems that resulted in the child being separated from their parents.<sup>250</sup> This could mean referring the parent for services or facilitating counseling or visits between the parent and child.<sup>251</sup> Efforts toward reunification might well be what is best for the parent and the child.<sup>252</sup> But if the private individual's goal is to make durable their own custody of the child, these efforts might be at cross-purposes with the private individual's goal in prosecuting the petition.<sup>253</sup>

### 3. *Accessing State Benefits*

Perhaps the most surprising private prosecutors of all are parents themselves. Across the country, cases reveal that parents file petitions alleging that *they* have neglected or abused their own children.

These self-prosecutions come into sharper focus through an examination of what families stand to gain through them. Once a parent initiates a prosecution, a court may order the state to pay for services that a child or family desperately needs—but that their family is otherwise unable to access.<sup>254</sup> The Washington Supreme Court, for instance, considered a prosecution that parents of an adolescent in a mental health crisis brought against themselves.<sup>255</sup> The parents alleged

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<sup>250</sup> *Id.* (describing courts' varying approaches to reasonable efforts in private prosecutions).

<sup>251</sup> See CHILD'S BUREAU, REASONABLE EFFORTS, *supra* note 95, at 2 (surveying common "reasonable efforts").

<sup>252</sup> See CASEY FAM. PROGRAMS, WHY IS IT IMPORTANT TO MINIMIZE CHILDREN'S TIME AWAY FROM FAMILY? (2024), <https://www.casey.org/media/24.07-QFF-SF-Minimizing-time-away.pdf> [<https://perma.cc/WX22-548W>] (summarizing research describing harms of family separation to children).

<sup>253</sup> See Pima Cnty., Ariz. Prac., *supra* note 168 (noting that while private filers sought durable custody, dependency proceedings risked loss of control once CPS intervened); Kan. Prac., *supra* note 175 (explaining that private filers often misunderstood that Child in Need of Care cases aim at reunification, not permanent custody); MARICOPA CNTY. SUPERIOR CT. L. LIBR. RES. CTR., DEPENDENCY VS. GUARDIANSHIP 2, <https://superiorcourt.maricopa.gov/media/gvajagwx/jvd10hz.pdf> [<https://perma.cc/Z5X6-8ZP7>] (last visited Oct. 30, 2025) (cautioning private prosecutors that "DCS may also become a part of the case," meaning that "DCS may provide services to the family (for example, counseling)").

<sup>254</sup> See CHILD WELFARE INFO. GATEWAY, CHILD'S BUREAU, IN-HOME SERVICES TO STRENGTHEN CHILDREN AND FAMILIES 3 (2021), <https://www.childwelfare.gov/resources/home-services-strengthen-children-and-families> [<https://perma.cc/Q7PJ-ZU25>] (describing services available to families *if* they have "open cases with a child welfare agency"); Charlotte Baughman, Tehra Coles, Jennifer Feinberg & Hope Newton, *The Surveillance Tentacles of the Child Welfare System*, 11 COLUM. J. RACE & L. 501, 529 (2021) (explaining that family regulation agencies may provide families expanded access to services, but those services come coupled with surveillance); see also Washington, *Time and Punishment*, *supra* note 96, at 593 (observing that even if families do have active family regulation cases, wealthy parents may face fewer delays in resolving their cases because they can "'buy time' by gaining access to a variety of private providers").

<sup>255</sup> *In re Dependency of Schermer*, 169 P.3d 452, 454–58 (Wash. 2007).

that they could no longer afford appropriate residential care for their son but that he would not be safe in their home.<sup>256</sup> The Washington Supreme Court held that parents could bring a dependency prosecution against themselves<sup>257</sup> and noted that once a family court entered a finding of dependency against the parents, the court could order the state to provide additional services for the child.<sup>258</sup> Elsewhere, too, courts are prepared to order the state to provide services to a family—so long as the parent is willing to fall on their sword, prosecute themselves, and accept the stigma and legal consequences of claiming they cannot care for their child.<sup>259</sup>

One Florida court stands out for its refusal to accept a self-prosecution. In that case, a mother prosecuted herself to gain access to services for survivors of intimate-partner violence and their families.<sup>260</sup> The state's family regulation agency had refused to prosecute the case, citing in part the mother's ambivalence about the relationship.<sup>261</sup> She failed to perform the expected role of victim, and the state refused to prosecute her—and thus refused, too, to provide services to her family.<sup>262</sup> With the support of her children's assigned advocate, she resorted to prosecuting herself, and she won a finding against herself in family court.<sup>263</sup> The appellate court, however, threw out her petition, finding that “[a] scenario in which the same person asks the court to act and then admits the need for that action, without more, simply does not legally confer authority upon it to do so.”<sup>264</sup> Her naked request for help from the state so failed to fit the court's scripts of unwanted state intrusion into the most intimate areas of families' lives that it was illegible. The court wrote that it “makes no sense.”<sup>265</sup>

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<sup>256</sup> *Id.* at 456–58.

<sup>257</sup> *Id.* at 461–62.

<sup>258</sup> *Id.* at 463, 467.

<sup>259</sup> *See, e.g.,* David S. v. Audilio S., 32 P.3d 417, 418 (Ariz. Ct. App. 2001) (allowing parents to petition for dependency to maintain residential treatment, contingent on their admission that they could not safely care for their child); Rural Wash. Prac., *supra* note 168 (noting that prior terminations may later be used to prove parental unfitness and that parents may feel compelled to invoke child-welfare involvement to access otherwise unavailable services); Maricopa Cnty., Ariz. Prac., *supra* note 214 (explaining that courts order the local family regulation agency to investigate cases upon receiving private filings and the agency may then choose to intervene in the case); Or. Prac., *supra* note 171 (noting that parents of some children facing delinquency proceedings consent to dependency findings against themselves if the child's delinquency attorney initiates a private dependency prosecution).

<sup>260</sup> Fla. Dep't of Child. & Fams. v. Y.C., 82 So. 3d 1139, 1140 (Fla. Dist. Ct. App. 2012).

<sup>261</sup> *Id.*

<sup>262</sup> *See* Washington, *Survived & Coerced*, *supra* note 33, at 1106–07 (describing the narratives the family regulation system demands of survivors of intimate partner violence).

<sup>263</sup> Y.C., 82 So. 3d at 1140.

<sup>264</sup> *Id.* at 1142.

<sup>265</sup> *Id.*

It is not only parents who prosecute private dependency petitions to seek state support or services. Children themselves—typically through counsel—may also prosecute dependency petitions against their parents. Sometimes, this is because the child is estranged from or in danger at the hands of their parent.<sup>266</sup> But other times, the parent-child relationship appears to be, at best, a footnote to the child's actual concerns. As with self-prosecutions, though the child is at risk, the parent has not created the risk.

Two types of child-initiated prosecution stand out. First, a child who is themselves being prosecuted by the state for juvenile delinquency may file a *dependency* prosecution against their parents.<sup>267</sup> The dependency proceeding, in turn, may grant the child access to more—or better—services.<sup>268</sup> It may also ensure that the child is placed in foster care rather than detention,<sup>269</sup> resolve the delinquency prosecution more favorably,<sup>270</sup> and allow one state agency to hand off responsibility for a child to another state agency.<sup>271</sup> Despite the consequences they face, parents may be “on board” with these prosecutions.<sup>272</sup> In one

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<sup>266</sup> See *supra* note 221 and accompanying text.

<sup>267</sup> Maricopa Cnty., Ariz. Prac., *supra* note 214; Or. Prac., *supra* note 171; see also Ark. Dep't of Hum. Servs. v. T.B., 67 S.W.3d 539, 540 (Ark. 2002) (directing agency to pay for services for child in case that began as a delinquency case and then was refiled as a dependency case).

<sup>268</sup> See Maricopa Cnty., Ariz. Prac., *supra* note 214 (noting that practitioners strategically filed private dependency petitions to secure services from the state family regulation agency for children when the delinquency system failed to provide them, a practice used frequently enough that the legislature amended a statute to restrict it); Or. Prac., *supra* note 171 (identifying access to services as one potential benefit of filing a dependency petition); see also LIANN SEITER, NAT'L TECH. ASSISTANCE CTR. FOR THE EDUC. OF NEGLECTED OR DELINQ. CHILD & YOUTH, MENTAL HEALTH AND JUVENILE JUSTICE: A REVIEW OF PREVALENCE, PROMISING PRACTICES, AND AREAS FOR IMPROVEMENT (2017) (describing prevalence of mental health needs in children in the juvenile system and shortcomings in addressing their needs).

<sup>269</sup> See Or. Prac., *supra* note 171; see also JORDAN BATES, K.O. BERGER, NELLA HOGBERG & OWYHEE WEIKEL-MAGDEN, OR. JUD. DEP'T, OREGON JUVENILE DEPENDENCY BENCHBOOK 77 (Elizabeth Gage ed., 2025), <https://www.courts.oregon.gov/programs/jcip/Documents/Juvenile.Delinquency.Bench.Book.5.15.25.pdf> [<https://perma.cc/JC42-WGU6>] (including commitment as possible disposition); OR. JUD. DEP'T, *Disposition*, in OREGON JUVENILE DEPENDENCY BENCHBOOK 2 (2021), <https://www.courts.oregon.gov/programs/jcip/SiteAssets/Lists/JuvDepBenchbook/EditForm/Disposition.pdf> [<https://perma.cc/26VD-KWUC>] (including placement with the state's family regulation agency, i.e., foster care, as possible disposition).

<sup>270</sup> See Or. Prac., *supra* note 171.

<sup>271</sup> For instance, the Arizona Department of Juvenile Corrections is responsible for delinquency cases whereas the Arizona Department of Child Safety is responsible for dependency cases. See *About ADCJ*, ARIZ. DEP'T JUV. CORR., <https://adjc.az.gov/about-adjc> [<https://perma.cc/X9AG-3AZJ>] (last visited Nov. 2, 2025); *Who Is DCS?*, ARIZ. DEP'T CHILD SAFETY, <https://dcs.az.gov/about> [<https://perma.cc/6D8N-7QDU>] (last visited Nov. 2, 2025).

<sup>272</sup> See Or. Prac., *supra* note 171 (observing that in some delinquency cases, parents are “really on board” when a child's attorney filed a dependency petition against them).

jurisdiction, these sorts of delinquency-cum-dependency prosecutions became so common that the state legislature modified its private dependency statute to make it more difficult for children with open delinquency cases to file dependency petitions.<sup>273</sup>

Second, children may file dependency petitions as a step toward securing visas for themselves. Undocumented migrant children may be eligible for a Special Immigrant Juvenile Status (“SIJS”) visa if they can obtain a finding in family court that they are not able to live with at least one of their parents because that parent “abused, abandoned, or neglected” them and that it is not in the child’s best interest to return to their country of origin.<sup>274</sup> Equipped with this finding, they may petition for a visa from USCIS.<sup>275</sup> In multiple states, private dependency petitions filed by migrant children dominate the private dependency docket.<sup>276</sup> Children filing these sorts of cases may already be in stable living arrangements with their other parent or another relative, and they may be seeking findings against a parent living in another country.<sup>277</sup> Their parents pose no immediate risk to them, and concepts like providing services to “reunify” the family or punish an out-of-country parent hold little salience.<sup>278</sup> To the extent a parent is aware of the prosecution, they

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<sup>273</sup> See ARIZ. REV. STAT. ANN. § 8-841(b) (2025). For an explanation of the impetus behind this change in law, see Maricopa Cnty., Ariz. Prac., *supra* note 214 (explaining that legislature limited ability to file dependency petitions for children with open delinquency cases in response to an increase in such filings); Ariz. House Floor Session Part 2 – Committee of the Whole #2 & Third Reading, 54th Leg., 1st Reg. Sess., at 01:43 (May 11, 2019), <https://www.azleg.gov/videoplayer/?eventID=2019051198&startStreamAt=89> (on file with the New York University Law Review).

<sup>274</sup> King & Hall, *supra* note 20, at 2897; *see id.* at 2877–81 (explaining the statutory requirements for SIJS visas). In states where children cannot file private dependency petitions, they may still receive the necessary findings for SIJS through other grants of jurisdiction to family courts. *See, e.g.*, Euceda v. Romero, 233 A.D.3d 680, 681 (N.Y. App. Div. 2024) (making findings necessary for SIJS in the course of deciding an aunt’s petition for guardianship of a child).

<sup>275</sup> King & Hall, *supra* note 20, at 2877–81.

<sup>276</sup> For example, searches on Westlaw for cases citing the state’s private dependency prosecution in Florida and Connecticut revealed cases primarily filed by migrant children, and both states’ supreme courts have considered private petitions filed for such purposes. *See, e.g.*, B.R.C.M. v. Fla. Dep’t of Child. & Fams., 215 So. 3d 1219, 1223 (Fla. 2017) (collecting lower court cases addressing dependency petitions by immigrant juveniles, noting a “recent spate” of cases in one judicial district, and “disapprov[ing] of the categorical summary denial of dependency petitions filed by immigrant juveniles”); *see also In re Jose B.*, 34 A.3d 975, 976 (Conn. 2012) (dismissing child’s petition where child reached age 18 before trial court reached the merits of his private petition), *overruled in part by In re Henry P. B.-P.*, 173 A.3d 928, 935 (Conn. 2017); *see also In re Jessica M.*, 35 A.3d 1072, 1072–73 (Conn. 2012) (same).

<sup>277</sup> *See* B.R.C.M. v. Fla. Dep’t of Child. & Fams., 215 So. 3d 1219, 1223 (Fla. 2017) (referencing private petitions “only seeking immigration relief, not state assistance following abuse, abandonment, or neglect”).

<sup>278</sup> *See* Or. Prac., *supra* note 171 (explaining that many migrant children the practitioner represented were not seeking foster care placements or reunification services); King Cnty.,

may consent to findings against themselves.<sup>279</sup> The family may all agree to a shared project of using a private prosecution to extract the ultimate benefit—a visa—from the state.

#### 4. *Shifting State Costs*

In the above examples, no matter their specific motivation, private individuals prosecute cases at their own behest, in the face of state absence or state recalcitrance. Sometimes, though, private individuals prosecute cases at the behest of the state.<sup>280</sup>

The state may investigate a case and decide that children should be removed from their parents' care.<sup>281</sup> But if the state were to prosecute the dependency case, it would have to expend resources on the prosecution and on services, foster care, and surveillance of the family outside court.<sup>282</sup> It would also have to adhere to statutory timelines and afford the family statutorily and constitutionally imposed procedural protections.<sup>283</sup> If the state could instead find a private individual to prosecute the case, it might avoid these financial and procedural burdens.<sup>284</sup> One practitioner reported that the family regulation agency in her jurisdiction took this route “all the time,”<sup>285</sup> encouraging or “directing” friends or relatives to prosecute petitions against parents in place of the agency itself prosecuting the petition.<sup>286</sup> The practitioner also noted that parents were more likely to consent to findings against themselves in private prosecutions than they were in public prosecutions, adding to the expedience of these proceedings.<sup>287</sup>

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Wash. Prac., *supra* note 214 (stating parents usually either consent to removal or are absent); Maricopa Cnty., Ariz. Prac., *supra* note 214 (discussing cases where reunification services are not provided).

<sup>279</sup> Or. Prac., *supra* note 171; King Cnty., Wash. Prac., *supra* note 214.

<sup>280</sup> Del. Prac., *supra* note 205; *see also* Kim, *supra* note 20, at 101 (arguing that mechanisms allowing for private filing “offer[] the state a cheap and convenient way to offload child protection cases”); *id.* at 99–100 (quoting agency supervisor who acknowledged the pressure agency social workers feel to accede to relatives' petitions in light of crowded dockets, because “we'll just close this case out, that's one less case”).

<sup>281</sup> Del. Prac., *supra* note 205.

<sup>282</sup> *See supra* Section II.B.

<sup>283</sup> *Id.*

<sup>284</sup> *Id.*

<sup>285</sup> Del. Prac., *supra* note 205.

<sup>286</sup> *Id.*

<sup>287</sup> *Id.* While the practitioner did not opine on why this might be, one theory may be that parents believe that by consenting to their family members' petitions, they can avoid further state involvement. *Cf.* Gupta-Kagan, *Hidden Foster Care*, *supra* note 24, at 874 (positing that some families may consent to informal foster care to limit judicial involvement or avoid terminations of parental rights).

State-instigated private prosecutions should not be surprising in light of the already-documented prevalence of “hidden foster care.” As Professor Josh Gupta-Kagan documented, states induce thousands of parents each year to put their children in the care of family members by threatening to place the children in foster care and bring the parents to family court.<sup>288</sup> By relying on hidden foster care, states avoid judicial scrutiny and legal obligations.<sup>289</sup> Similarly, by inducing family members to file private dependency petitions, the state may avoid legal obligations and obscure its role in a family’s separation. If the state succeeds in finding a private prosecutor to bring a case in its stead, its role as rehabilitator, as punisher, *or* as distributor of benefits may go unnoticed and unscrutinized.

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These examples do not capture all dynamics of private dependency prosecution. There are other (jaw-dropping) examples—for instance, an Iowa practitioner reported that an insurance company prosecuted a mother, alleging that the quantity of insurance claims she submitted for services for her child demonstrated that she was medically abusing the child.<sup>290</sup> While not exhaustive, the examples collected here reveal recurring patterns that help make sense of the mechanism of private prosecution within the carceral state.

#### IV

#### THE FUNCTION OF PRIVATE PROSECUTION

Private family regulation prosecutions defy neat explanation. As described in Part II, legal frameworks for private prosecution differ from jurisdiction to jurisdiction. For instance, in some states, a private prosecution compels a public prosecution and state efforts toward family reunification, whereas in others, a private prosecution allows the state to avoid not just the expense of public prosecution but also the expense of any efforts toward family reunification.<sup>291</sup> Further, the four patterns of private prosecution identified in Part III are neither exhaustive nor exclusive. Private prosecutors may, for example, be motivated by both a desire to protect a child and the state’s urging them

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<sup>288</sup> Gupta-Kagan, *Hidden Foster Care*, *supra* note 24, at 843–44.

<sup>289</sup> *Id.* at 844.

<sup>290</sup> E-mail from Iowa Prac. to author (Jan. 19, 2024) (on file with the New York University Law Review).

<sup>291</sup> See *supra* Section II.A (explaining differences between states’ private prosecution frameworks).

to prosecute a case,<sup>292</sup> or by both a desire to gain access to state benefits and to gain an advantage in custody litigation.<sup>293</sup> And their motivations may fall outside the identified patterns altogether.<sup>294</sup>

Given the myriad iterations of private prosecution, this Part does not purport to provide a totalizing account for its function. Instead, it offers three observations about the relationship between private prosecution and the state. First, it shows how private dependency prosecutions compensate for and enable the failures of the public welfare state. Second, it uses private dependency prosecutions to illustrate the role private individuals play in maintaining and expanding the carceral state. Finally, it considers what these insights about the function of private prosecution within the family regulation system reveal about the utility and function of private prosecution across the carceral state.

### A. *Private Dependency Prosecution and the Welfare State*

It is hardly a novel claim that the United States manages and controls its population through the carceral state rather than through the welfare state.<sup>295</sup> In the words of Professor Loïc Wacquant, “social divestment entails and necessitates carceral reinvestment.”<sup>296</sup> To maintain social order, the state exerts control over marginalized groups through punitive measures.<sup>297</sup> It fails to meet citizens’ needs on a societal level, then blames citizens for their supposed failings on an individual level and metes out limited services and supports to those branded as deficient.<sup>298</sup> The family regulation system as a whole exemplifies this

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<sup>292</sup> See *supra* Sections III.B.1, B.4 (noting that private individuals may prosecute parents to protect children in cases that the state refuses to prosecute).

<sup>293</sup> See *supra* Sections III.B.2–3 (noting that private individuals may prosecute their own family members to gain an edge in custody litigation and to gain access to financial support and services for children in their care).

<sup>294</sup> See *supra* note 290 (recounting a prosecution by an insurance company).

<sup>295</sup> For just a few examples, see JONATHAN SIMON, *POOR DISCIPLINE: PAROLE AND SOCIAL CONTROL OF THE UNDERCLASS, 1890-1990* (1993); ISSA KOHLER-HAUSMANN, *MISDEMEANORLAND: CRIMINAL COURTS AND SOCIAL CONTROL IN AN AGE OF BROKEN WINDOWS* POLICING 5–9 (2019); Edward L. Rubin & Malcolm M. Feeley, *Criminal Justice Through Management: From Police, Prosecutors, Courts, and Prisons to a Modern Administrative Agency*, 100 OR. L. REV. 261, 351 (2022); Abel Rodríguez, *Lethal Immigration Enforcement*, 109 CORN. L. REV. 465, 496–97 (2024); Tonya L. Brito, Kathryn A. Sabbeth, Jessica K. Steinberg & Lauren Sudeall, *Racial Capitalism in the Civil Courts*, 122 COLUM. L. REV. 1243, 1248 (2022).

<sup>296</sup> WACQUANT, *supra* note 6, at 120.

<sup>297</sup> *Id.*; see also MICHEL FOUCAULT, *DISCIPLINE AND PUNISH: THE BIRTH OF THE PRISON* 195–228 (Alan Sheridan trans., Vintage Books 2d ed. 1995) (describing how modern disciplinary institutions shift responsibility for social failures onto individuals, framing poverty as personal deficiency and offering only conditional, moralized assistance).

<sup>298</sup> See SIMON, *supra* note 30, at 24–43 (connecting the American preference for governing through penal intervention to cultural preferences for narratives of personal responsibility

approach. The state refuses to provide for families, depriving them of access to healthcare, childcare, housing, and quality schools, then labels individual parents deficient.<sup>299</sup> Families may then receive services from the state, but at the cost of their privacy, their autonomy, and their dignity.<sup>300</sup> The carceral family regulation system thus compensates for the failures of the welfare state.

Private prosecutions within the family regulation system offer a particularly sharp example of this dynamic. Private individuals are pushed into prosecution because the welfare state has failed to address their needs on the front end. Sometimes, the thinness of the welfare state is an immediate and readily apparent spur for private prosecution. Consider cases where private individuals turn to prosecution because they have been deprived of services and financial support for themselves, their children, or their grandchildren.<sup>301</sup> Other times, the role of the weak welfare state in spurring private prosecution is more attenuated but still present—for instance, in cases where grandparents prosecute their adult children to gain legal custody of their grandchildren.<sup>302</sup> The adult children in these cases often leave their children in grandparents' care because of their own struggles with substance use, mental health,

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and maintenance of existing hierarchies); Bernard E. Harcourt, *From the Asylum to the Prison: Rethinking the Incarceration Revolution*, 84 TEX. L. REV. 1751 (2006) (arguing that the rise in incarceration reflects a broader shift from welfare and mental-health institutions to punitive confinement); Alexandra Natapoff, *Misdemeanor Decriminalization*, 68 VAND. L. REV. 1055, 1056–60 (2015) (describing how the treatment of misdemeanor offenses in the criminal legal system functions as a means of social control).

<sup>299</sup> See ROBERTS, *TORN APART*, *supra* note 5, at 45 (arguing that Black families are systemically bound to conditions of poverty that the state then penalizes by removing their children rather than addressing underlying needs); Vivek Sankaran & Christopher Church, *Rethinking Foster Care: Why Our Current Approach to Child Welfare Has Failed*, 73 SMU L. REV. F. 123, 137–38 (2020) (recognizing that despite the link between poverty and child maltreatment, the state addresses the issue through family separation rather than meaningful social support); Cynthia R. Mabry, *Second Chances: Insuring That Poor Families Remain Intact by Minimizing Socioeconomic Ramifications of Poverty*, 102 W. VA. L. REV. 607, 616 (2000) (describing how a parent's financial status often affects their children's living environment); Washington, *Pathology Logics*, *supra* note 14, at 1576–77 (describing the presumption that parents in the family regulation system are immoral and incapable).

<sup>300</sup> See ROBERTS, *TORN APART*, *supra* note 5, at 79 (describing an experiment where child welfare workers associated Black households with neglect more often than others, illustrating how state interventions often stigmatize); Shanta Trivedi, *The Harm of Child Removal*, 43 N.Y.U. REV. L. & SOC. CHANGE 523, 540–50 (2019) (documenting the lasting harms experienced by children in foster care and demonstrating how state interventions meant to help often compromise families); Washington, *Survived & Coerced*, *supra* note 33, at 1107 (noting that a survivor's refusal to acknowledge the value of mandated services prolonged her divorce, underscoring the loss of autonomy); cf. Clare Huntington, *Rights Myopia in Child Welfare*, 53 UCLA L. REV. 637, 665 (2006) (arguing that framing rights solely as autonomy from the state obscures families' need for supportive state intervention).

<sup>301</sup> See *supra* Sections III.B.1–3 (describing such patterns of prosecution).

<sup>302</sup> See *supra* Sections III.B.1–2.

joblessness, houselessness, or incarceration.<sup>303</sup> Had the state provided adequate support to these adult children, they may never have been in a position to leave their own children in the care of grandparents.

Families pursuing private prosecution face real problems. We can imagine a variety of solutions to these problems. The state could, for example, allow parents to petition for state-funded services for their child without proclaiming their own deficiency,<sup>304</sup> or enact functional parentage statutes that allow grandparents to petition for legal custody of grandchildren in their care without entering the family regulation system.<sup>305</sup> These are not necessarily *less carceral* solutions—laws making it easier for parents to place their children in state care or obtain services for their children without declaring their own deficiency can also be described accurately as laws making it easier to punish and institutionalize their children.<sup>306</sup> But it is possible to dream, too, of more radical interventions. We might imagine the state decentering the two-parent nuclear family as the organizing unit of society and recognizing more diffuse legal authority spread across kinship networks.<sup>307</sup> Yet private prosecution stifles that sort of dreaming; it compensates for and

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<sup>303</sup> Megan L. Dolbin-MacNab & Lyn M. O’Connell, *Grandfamilies and the Opioid Epidemic: A Systemic Perspective and Future Priorities*, 24 CLIN. CHILD. FAM. PSYCH. REV. 207 (2021); Katti J. Sneed & Cosette J. Mast, *Effects of Parental Incarceration: A Grandparent’s Perspective*, 7 CONTEMP. J. RSCH., PRAC. & POL. 36, 37 (2022).

<sup>304</sup> Some states that do not allow private prosecution do have such mechanisms. *See, e.g.*, NEB. REV. STAT. ANN. § 43-247(3)(a) (LexisNexis 2025); N.Y. FAM. CT. ACT § 732 (McKinney 2026).

<sup>305</sup> *See* Courtney G. Joslin & Douglas NeJaime, *How Parenthood Functions*, 123 COLUM. L. REV. 319, 323 (2023) (noting that two-thirds of states have a functional parenthood doctrine that “extends parental rights to an individual based on the individual’s conduct of having formed a parental relationship with the child and functioned as a *parent*”); *id.* at 331–42 (describing the many variations in this doctrine across states). At least one state—Arizona—in which a practitioner reported she privately prosecuted dependency cases to allow grandparents to obtain legal custody does not have any functional parentage doctrine. *Id.* at 423 (omitting Arizona from list of states with functional parent doctrines); *see also* Pima Cnty., Ariz. Prac., *supra* note 168 (noting that in the absence of other mechanisms for grandparents to seek permanent custody, they may turn to private prosecution); Ga. Prac., *supra* note 153 (noting that grandparents sometimes use private dependency filings to “get around” the restrictions of *Troxel*).

<sup>306</sup> For a critique of these sorts of laws, which are often called “Person in Need of Supervision” or “Child in Need of Supervision” laws and which allow parents to petition for their child to be declared ungovernable, *see generally* Randy Frances Kandel & Anne Griffiths, *Reconfiguring Personhood: From Ungovernability to Parent Adolescent Autonomy Conflict Actions*, 53 SYRACUSE L. REV. 995 (2003).

<sup>307</sup> *See* Courtney G. Joslin & Douglas NeJaime, *Multiparenthood*, 99 N.Y.U. L. REV. 1242, 1254, 1269 (2024) (finding that though family law typically treats parenthood as binary, some state legislatures have enacted expanded, albeit still limited, definitions of parenthood to allow for more than two parents); Kele Stewart, *Rethinking Relative Care* 17–18 (unpublished manuscript) (on file with the New York University Law Review) (noting fundamental gap between family structures and family law).

enables the state's front-end failures, allowing it to continue to rely on the carceral state as the primary tool to manage marginalized families.

In this sense, private prosecution operates as a pressure valve for the state.<sup>308</sup> The social welfare state fails families, so families prosecute themselves to seek out the state support they need. The family meets its immediate needs by routing itself into the state's carceral apparatus, and the state is relieved of the pressure to build up a more robust social welfare state—to implement less carceral solutions—that could avert similar front-end problems for other families.

Private prosecutions make up a fraction of the total number of family regulation prosecutions initiated annually, and they are a drop in the bucket when compared to the millions of family regulation investigations that states initiate annually.<sup>309</sup> But this smaller subset of prosecutions starkly illustrate a broader trend of private individuals routing themselves into the family regulation system to receive care. Even in states that do not allow private prosecution, parents resort to “reporting themselves to CPS as a last-ditch effort to get help in the face of inaccessible and often unaffordable services.”<sup>310</sup> A quick

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<sup>308</sup> Many scholars have characterized state institutions as hydraulic mechanisms that respond to pressures upon them by shifting to maintain the existing social order. See James Q. Whitman, *Equality in Criminal Law: The Two Divergent Western Roads*, 1 J. LEGAL ANALYSIS 119, 122–23 (2009) (describing the criminal legal system as a “hydraulic system . . . like a water balloon: If you squeeze it at one decision point in the effort to control discretion, it will bulge at another”); Alan Z. Rozenshtein, *Surveillance Intermediaries*, 70 STAN. L. REV. 99, 169 (2018) (describing state surveillance as hydraulic); Jessica A. Clarke, *Scrutinizing Sex*, 92 U. CHI. L. REV. 1, 72 (2025) (acknowledging argument that requiring courts to apply heightened scrutiny to more forms of discrimination will result in “hydraulic effects” loosening heightened scrutiny in practice); Jennifer M. Chacón, *Immigration Federalism in the Weeds*, 66 UCLA L. REV. 1330, 1381 (2019) (summarizing data showing “something of a hydraulic effect between certain state and local immigrant-protective policies and federal enforcement efforts”).

<sup>309</sup> See *supra* Section III.A (calculating the frequency of private prosecutions).

<sup>310</sup> *In re Holbrook*, 997 N.W.2d 28, 32 (Mich. 2023) (Cavanaugh, J., concurring) (citing Jennifer Brookland, *When Giving Up a Child Is the Only Way to Get Needed Help*, DETROIT FREE PRESS (Nov. 20, 2022, at 14:57 ET), <https://www.freep.com/story/news/2022/11/20/parents-child-protective-services-mental-health-help/69656670007> [<https://perma.cc/RL9C-3WSK>]); see also Michaela Ramm, *Parents Are So Desperate to Get Their Children Mental Health Care They're Giving Up Custody*, USA TODAY (Apr. 30, 2025, at 13:43 ET), <https://www.usatoday.com/story/news/nation/2025/04/21/parents-give-up-custody-child-mental-health-help/83179840007/?taid=680674eeecd9770001b14420&utm> [<https://perma.cc/E6U3-9YVE>]; Madeleine Hagen, *“I Called CPS on Myself,” a Richland Mother's Desperate Search for Mental Health Care*, APPLE VALLEY NEWS NOW (Mar. 14, 2022), [https://www.applevalleynewsnow.com/news/health/i-called-cps-on-myself-a-richland-mother-s-desperate-search-for-mental-health-care/article\\_b1f36c20-a48f-58cd-8f1f-25b007e2252d.html](https://www.applevalleynewsnow.com/news/health/i-called-cps-on-myself-a-richland-mother-s-desperate-search-for-mental-health-care/article_b1f36c20-a48f-58cd-8f1f-25b007e2252d.html) [<https://perma.cc/KXL2-X2YQ>]; Christine Herman, *To Get Mental Health Help for a Child, Desperate Parents Relinquish Custody*, NPR (Jan. 2, 2019, at 14:31 ET), <https://www.npr.org/sections/health-shots/2019/01/02/673765794/to-get-mental-health-help-for-a-child-desperate-parents-relinquish-custody> [<https://perma.cc/25MG-9FJJ>]. Similarly, mandated reporters may report parents in hopes of connecting them

search of social media confirms as much. Users on TikTok, YouTube, Instagram, Reddit, and Quora all serve up tips for parents seeking to report themselves to family regulation agencies to access state-sponsored childcare or mental healthcare.<sup>311</sup> One recent study estimated that as many as five percent of all foster care entries—and as many as eighteen percent in some jurisdictions—owe to attempts to obtain “behavioral health or disability services” for children, “not because of maltreatment.”<sup>312</sup>

This pattern has not escaped judicial notice. Faced with the case of a mother who “demand[ed] help” from the state after she “exhausted all resources” to care for her severely mentally ill child, a Michigan Supreme Court justice wrote:

The laws on the books simply do not account for parents who are overwhelmed by their children’s mental health crises and need state intervention. It strikes me as fundamentally unfair to deem parents faced with such insurmountable challenges as unfit or neglectful. . . . I ask the Legislature to consider creating a no-fault procedure that allows the state to intervene without requiring courts to adjudicate parents as unfit . . . .<sup>313</sup>

The justice called on her state’s legislature to enact laws creating new pathways to services for children in such situations.<sup>314</sup> Two years later, in the face of continued legislative inaction and another similar case, the same justice made “another attempt to draw the legislature’s attention

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to services. KELLEY FONG, *INVESTIGATING FAMILIES: MOTHERHOOD IN THE SHADOW OF CHILD PROTECTIVE SERVICES* 54–60 (2023).

<sup>311</sup> See, e.g., Deleted User, REDDIT (r/TrueOffMyChest), *I Am Considering Calling CPS on Myself* (Jan. 19, 2023), <https://redd.it/10g87ev> [<https://perma.cc/Z5VK-FP38>]; u/NopePotatoes, REDDIT (r/breakingmom), *I CALLED CPS ON MYSELF* (Feb. 24, 2021), <https://redd.it/lrcg2i> [<https://perma.cc/5P9Y-F9C9>]; u/phreedom76, REDDIT (r/CPS), *Do Parents Ever Reach Out to CPS for Support?* (Feb. 22, 2024), <https://redd.it/1ax1qz> [<https://perma.cc/2XK6-KRAP>]; *How Can Someone Call CPS on Themselves?*, QUORA, <https://www.quora.com/How-can-someone-call-CPS-on-themselves> [<https://perma.cc/CY3M-M37R>] (last visited Oct. 25, 2025); Video posted by Kayla Barker (@kaylabarker601), TIKTOK (Jan. 16, 2026), <https://www.tiktok.com/@kaylabarker601/video/7596103810557152567?q=calling%20cps%20on%20yourself&t=1769436735796> (on file with the New York University Law Review); Video posted by Nora Annie (@norannie1), INSTAGRAM, *This was late 2023/ early 2024. I accessed every resource available to me.* (Sep. 22, 2025), <https://www.instagram.com/reel/DO61ua7Enm0/?igsh=MWJrZTg0aXBkcXdmZW%3D%3D> (on file with the New York University Law Review).

<sup>312</sup> MAX GROSS, BETSY KEATING, JOSH COLTEN, RACHEL MILLER, LAURA RADEL & MARISSA ABBOTT, U.S. DEP’T HEALTH & HUM. SERVS., *PREVALENCE AND CHARACTERISTICS OF CHILDREN ENTERING FOSTER CARE TO RECEIVE BEHAVIORAL HEALTH OR DISABILITY SERVICES 1* (2025).

<sup>313</sup> *Holbrook*, 997 N.W.2d at 31–32 (Cavanagh, J., concurring).

<sup>314</sup> *Id.*

to this ongoing problem.”<sup>315</sup> It should come as no surprise that her state’s legislature has not taken up her charge to shore up the welfare state, for the state may instead rely on individuals to route themselves into the carceral state.

### B. *Private Dependency Prosecution and the Carceral State*

There is a certain irony in invoking the “carceral state” to explain private dependency prosecution. After all, the term invites a focus on public actors and institutions as the entities managing the polity through carceral means—punishing, surveilling, and controlling race-class subjugated individuals to maintain social order.<sup>316</sup> Yet, as private dependency prosecution exemplifies, the state maintains its system of carceral governance through reliance on private individuals to police, prosecute, and discipline those near to them. Indeed, the specter or possibility of private enforcement, even if the mechanism is rarely used, may shore up the carceral apparatus by creating a sense of precarity.<sup>317</sup> Thus, private prosecution can be understood as part of the “shadow carceral state”—the policies and institutions outside “visible tentacles of penal power” that “enhance carceral state power.”<sup>318</sup> Two points bear further exploration.

First, private dependency prosecutions demonstrate how private actors expand the reach and extend the capacity of the carceral state. Though the state may purport to protect all the nation’s children,<sup>319</sup> examples abound of the state declining to do so through direct intervention. Family regulation agencies may refuse to investigate entire categories of cases,<sup>320</sup> or they may refuse to prosecute cases even

<sup>315</sup> *In re Lange*, No. 166509, 2025 WL 1108082, at \*8 (Mich. Apr. 14, 2025) (Cavanagh, J., concurring).

<sup>316</sup> See Esther K. Hong, *The Carceral State(s)*, 30 MICH. J. RACE & L. 1, 24–25 (2025) (mapping conceptions of the carceral state that emphasize the roles of various state actors).

<sup>317</sup> See Judith Butler, *Foreword* to ISABELL LOREY, *STATE OF INSECURITY: GOVERNMENT OF THE PRECARIOUS* vii, vii (Aileen Derieg trans., Verso 2015) (“[P]recarity has itself become a regime, a hegemonic mode of being governed, and governing ourselves.”).

<sup>318</sup> Katherine Beckett & Naomi Murakawa, *Mapping the Shadow Carceral State: Toward an Institutionally Capacious Approach to Punishment*, 16 THEORETICAL CRIMINOLOGY 221, 222 (2012).

<sup>319</sup> See, e.g., CHILD.’S BUREAU, *HOW THE CHILD WELFARE SYSTEM WORKS*, *supra* note 13, at 2 (detailing how child welfare system is “designed to promote the well-being of children”); *Prince v. Massachusetts*, 321 U.S. 158, 166 (1944) (asserting that the state may “act[] to guard the general interest in youth’s [sic] well-being”).

<sup>320</sup> See *supra* Section III.B.1 (recounting practitioners’ experiences with agencies rejecting cases regarding unhoused teenagers); see also Dawn J. Post & Sarah McCarthy, *For Teens in Child Welfare System, “Day in Court” Often Disappoints*, IMPRINT (Apr. 7, 2014, at 11:56 ET) (“[W]e frequently see that teenagers are simply not taken as seriously as younger children by child welfare authorities when they allege parental abuse.”).

if they identify safety concerns for children.<sup>321</sup> Yet the families involved in these cases nevertheless may end up routed into the public family regulation apparatus, as private individuals may step in to fill the gaps left by the state. A child within a category of cases the state declines to investigate may prosecute their own parents, or a relative may prosecute the parents of a child who appears at risk, sometimes at the explicit urging of the state.<sup>322</sup>

In this way, the state conserves its resources. Depending on the jurisdiction and the circumstances, it may avoid expending them on investigation, prosecution, and/or services for the family.<sup>323</sup> But the family still ends up under the watchful eye of the family court and often, too, under surveillance from other institutions of the public family regulation system.<sup>324</sup> Looking beyond private prosecutions, we can see other ways that private individuals widen the net of the family regulation system, for instance, the millions of private citizens conscripted into service as mandated reporters of suspected child maltreatment, surveilling families even in places where the state does not reach.<sup>325</sup> These private individuals, like private prosecutors, extend the tentacles of the carceral state.

Second, in addition to expanding the reach of the carceral state, private dependency prosecutions replicate and entrench its logic. The carceral state is organized according to “an array of legal practices that operate to police, discipline, and most importantly, subordinate a given

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<sup>321</sup> See *supra* Sections III.B.1, B.3, B.4 (recounting prosecutions initiated after agencies investigated but failed to file cases regarding alleged child maltreatment).

<sup>322</sup> See *supra* Sections III.B.1, B.3, B.4.

<sup>323</sup> See *supra* Section II.B (outlining the state’s role in private prosecutions in different jurisdictions and noting that in some jurisdictions, private actors are responsible for prosecuting cases and making “reasonable efforts”); see also Martha L.A. Fineman, *Masking Dependency: The Political Role of Family Rhetoric*, 81 VA. L. REV. 2181, 2187 (1995) (explaining how the state privatizes dependency by positioning families as units of care); Jennifer S. Hendricks, *Essentially a Mother*, 13 WM. & MARY J. WOMEN & L. 429, 464 (2007) (noting that American family law functions as “a system that privatizes dependence, placing responsibility for caretaking on the family rather than the state”); Hinds, *supra* note 45, at 878 (“Women who support their system-involved loved ones save the government and taxpayers money by performing and subsidizing government functions.”).

<sup>324</sup> See *supra* Sections II.A–B (explaining that the initiation of a private prosecution invites immediate scrutiny by family courts and may also impel a public prosecution and family regulation agency involvement).

<sup>325</sup> Louras, *supra* note 12, at 143–50; see also Chaz Arnett, *Crowdsourcing Surveillance*, 72 UCLA L. REV. DISCOURSE 362, 380 (2024) (“In recent years, the proliferation of public and private use of surveillance technologies has expanded the domain in which private anti-Black surveillance may leverage state force.”); Damon-Feng, *supra* note 45, at 54 (describing ICE’s conscription of migrants into surveilling those close to them).

population in the name of safety or protection.”<sup>326</sup> This logic justifies the punishment of individuals for their purported personal failings, while insulating existing social structures from scrutiny.<sup>327</sup> In the context of family regulation, this translates to marking individual parents—especially parents who are members of subjugated groups—as deviant, rather than acknowledging or addressing the many failures of the social welfare state that may make it impossible for them to reach hegemonic ideals of good parenting.<sup>328</sup>

Private prosecution requires individuals to deploy this logic against those closest to them. An individual—a grandparent, a friend, a child, a parent—may be motivated to seek support, services, or stability for their family,<sup>329</sup> and private prosecution may offer a path forward. The catch, of course, is that the individual must frame their plea for assistance around a narrative of parental deficiency. In doing so, they must engage in what Professor Lisa Washington calls self-subjection, “the active production of specific narratives about the system and the performance of and reification of a particular normative vision of the family.”<sup>330</sup>

Beyond calling upon individuals to produce specific narratives, private prosecution may call on individuals to enforce that narrative and discipline their family into it. Recall the Kansas grandparents who were required to develop a service plan for their adult child, then monitor their child’s compliance and report on it to the court.<sup>331</sup> To receive the benefit they sought, these grandparents not only had to brand their own child a bad parent—a painful pill to swallow<sup>332</sup>—but also then discipline their child into conforming to a particular vision of good parenthood. Private prosecution thus re-inscribes carceral logics in the collective

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<sup>326</sup> Cynthia Godsoe, *Disrupting Carceral Logic in Family Policing*, 121 MICH. L. REV. 939, 941 (2023) (book review); see also Loïc Wacquant, *Ordering Insecurity: Social Polarization and the Punitive Upsurge*, 11 RADICAL PHIL. REV. 1, 9, 19 (2008) (describing shared punitive logics of welfare and penal states); Benjamin Levin, *Criminal Law Exceptionalism*, 108 VA. L. REV. 1381, 1387 (2022) (noting increased recognition of punitive logics “in a host of U.S. institutions, from housing policy to employment law”); Dorothy E. Roberts, *The Supreme Court, 2018 Term—Foreword: Abolition Constitutionalism*, 133 HARV. L. REV. 1, 18 (2019) (“[C]arceral logics take over ever-expanding aspects of our society.”).

<sup>327</sup> Washington, *Fammigration Web*, *supra* note 15, at 131.

<sup>328</sup> *Id.*

<sup>329</sup> See *supra* Section III.B (exploring motivations for private prosecutions).

<sup>330</sup> S. Lisa Washington, *The Family Regulation Frame* 35 (2025) [hereinafter Washington, *The Family Regulation Frame*] (unpublished manuscript) (on file with the New York University Law Review).

<sup>331</sup> See *supra* notes 177–81 and accompanying text.

<sup>332</sup> See Dolbin-MacNab & O’Connell, *supra* note 303, at 215 (describing caregiver-grandparents’ ambivalence toward their adult children).

consciousness. This, in turn, may distort family structures and power dynamics.<sup>333</sup> So, too, may it distract from calls for structural change.<sup>334</sup>

There is a continuity to the manner in which private dependency prosecutions react to and fortify existing social structures. The private family regulation efforts of the nineteenth century emerged in the face of limited state capacity and in response to anxieties of the dominant social group about threats to their social order.<sup>335</sup> These private individuals seeded an approach to child welfare that relies on carceral measures at the expenses of broad-based social welfare measures.<sup>336</sup> At the same time, their initial efforts facilitated limited statist intervention.<sup>337</sup> Today, private prosecutions in the family regulation system illustrate the state's reliance on carcerality over social welfare—and the state's reliance on private individuals to carry out its surveillance, prosecution, and punishment.

### C. *Private Prosecution Across the Carceral State*

This Article has not (I hope) painted a rosy picture of private prosecution. And yet, it ends in a place of ambivalence about the desirability of the practice—in the family regulation system and across the carceral state. On one hand, private prosecution enables state failure, relieving the state of the pressure to develop structural interventions for its citizens' needs, and expands the footprint of the carceral state by conscripting private individuals into its service. On the other hand, private prosecution enables individuals to meet their own needs *in the face of* state failure, extracting the resources they desperately need from the state, though at a high cost. This ambivalence is worth probing, as conversations about the role of private enforcement in the criminal and civil legal systems have gained traction.<sup>338</sup> Thus, this Article closes with a short thought experiment. Taking private criminal prosecution as a case study, it considers what private dependency prosecutions may reveal about the utility of private prosecution in other arenas.<sup>339</sup>

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<sup>333</sup> See *supra* Section III.B.2 (noting that family members may use private prosecution to gain an edge in custody litigation).

<sup>334</sup> See *supra* Section IV.A (arguing that private prosecution relieves pressure on states to strengthen its social welfare state).

<sup>335</sup> See *supra* Section I.A; see also Huq, *supra* note 43, at 1296 (explaining that private suppression regimes “emerge when a dominant group that is *capable of effectual political action* is threatened by others’ defections from their preferred social arrangement”).

<sup>336</sup> See *supra* Section I.A.

<sup>337</sup> *Id.*

<sup>338</sup> See *supra* notes 38–40 (collecting recent scholarship on private enforcement and private criminal prosecution).

<sup>339</sup> I heed here Professor Lisa Washington's call for a dialectic approach to legal thinking, in which we consider not just what the dominant carceral frame can reveal about family

Public prosecution has long been cast as a necessary constitutive feature of the American criminal legal system.<sup>340</sup> But criminal scholars have begun to question that assumption, both descriptively and normatively. Professor Roger Fairfax notes that though “the idea of the privately-retained prosecutor is largely a historical one, remnants of the private prosecution model remain.”<sup>341</sup> Elaborating on that observation, Professor Emma Kaufman’s work reveals that seven states allow for private individuals to prosecute criminal cases and many more allow for the state to contract with private attorneys to prosecute cases.<sup>342</sup> She shows that the state’s monopoly on criminal prosecution has been overstated and argues that acknowledging this reality may create space for new sorts of reforms.<sup>343</sup>

Kaufman stops short of endorsing private prosecution as a normative matter—but others, most notably Professor Bennett Capers, do not.<sup>344</sup> Capers argues for the abolition of the “system where [public] prosecutors hold a monopoly in deciding which cases are worthy of pursuit” and envisions instead a system in which victims control prosecutions and “‘we the people,’ including those of us who have traditionally had little power, [are] empowered to seek and achieve justice ourselves.”<sup>345</sup> Critics of Capers’s vision, meanwhile, sound an alarm that private prosecution “risks re-entrenching punitive impulses and legitimating institutions of punishment.”<sup>346</sup> Yet these debates take place in the abstract<sup>347</sup>—an imagined world of private prosecutions,

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regulation but what, for instance, a frame centering the family regulation system can reveal about the criminal legal system. Washington, *The Family Regulation Frame*, *supra* note 330, at 53–54.

<sup>340</sup> See Kaufman, *supra* note 36, at 96–106 (tracing the “widespread agreement that criminal law is the government’s domain and that there is something uniquely troubling about outsourcing, misallocating, or privatizing criminal power”); J.D. King, *Prosecution Without Prosecutors*, 60 WAKE FOREST L. REV. 1061, 1070 (2025) (noting that though criminal scholars take public prosecutorial power as “an article of faith,” that account ignores jurisdictions permitting “prosecutor-less prosecutions”).

<sup>341</sup> Fairfax, *supra* note 47, at 423 (citation omitted).

<sup>342</sup> Kaufman, *supra* note 36, at 150–52.

<sup>343</sup> *Id.* at 144–48.

<sup>344</sup> Capers, *supra* note 40, at 1564.

<sup>345</sup> *Id.*

<sup>346</sup> Levin, *Victims’ Rights*, *supra* note 40, at 30; see also Davis, *supra* note 40, at 8 (arguing that private prosecution would produce outcomes that benefit victims but do so at times to the detriment of defendants and society writ large).

<sup>347</sup> See, e.g., Capers, *supra* note 40, at 1564 (“What would it mean to turn away from public prosecutors . . . ?”); Kaufman, *supra* note 36, at 122 (noting that “[i]n the standard account of the American legal development, private prosecution used to exist, and then it disappeared” and collecting sources to that effect). *But see* Jenia I. Turner, *Victims as a Check on Prosecutors: A Comparative Assessment*, 13 CALIF. L. REV. ONLINE 72, 73 (2022) (reviewing results of European states giving victims roles in criminal decisionmaking and

with all sides asserting a vision of what private prosecutions *would* look like, not what they *do* look like.<sup>348</sup>

Private dependency prosecutions offer a concrete example of how private prosecutions function in relation to the state. The patterns of private prosecution uncovered in this Article show that private prosecution cannot be understood as an alternative mechanism *outside* the carceral state. Rather, it is a mechanism *within it* and *responsive to it*. It is easy to see how private criminal prosecutions, too, would compensate for and enable the state's failures. Capers imagines victims using private prosecution as a corrective to state inaction. This vision not only has a clear analogue in private prosecution of family regulation cases but also highlights that private prosecution allows the state to continue to avoid building infrastructure that tends to victims after they are harmed or that prevents their harms in the first place.

We can imagine other analogues, too. Just as families prosecute their own to seek services within the family regulation system, so too might families criminally prosecute their loved ones—or themselves—to gain access to substance use treatment for them.<sup>349</sup> Just as children prosecute their parents to receive findings necessary to obtain SIJS visas, so too might people criminally prosecute others near to them to receive visas set aside for victims of violent crime.<sup>350</sup> Just as family members engaged in custody battles attempt to brand the stigmatizing label of “child abuser” on one another in attempts to assert their power and

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arguing that such an approach is “not likely to be the most promising way to ensure fair and just prosecutions in the U.S. context”).

<sup>348</sup> Even Professor Kaufman's descriptive account of private prosecution in the modern criminal legal system largely focuses on whether states' “criminal statutes, criminal procedure rules, and criminal court dockets” permit private prosecution, rather than whether and how individuals exercise their power where permitted. Kaufman, *supra* note 36, at 128, 129–31.

<sup>349</sup> See WENDY A. BACH, PROSECUTING POVERTY, CRIMINALIZING CARE 146–53 (2022) (describing use of criminal legal system to access substance use treatment); Monica C. Bell, *Situational Trust: How Disadvantaged Mothers Reconceive Legal Cynicism*, 50 L. & SOC'Y REV. 314, 332 (2016) (“When women call the police, they are often turning in people about whom they deeply care—intimate partners and children. One way respondents explain these calls is by emphasizing potential therapeutic consequences of police involvement, such as getting into social service programs or interrupting destructive patterns.” (citation omitted)).

<sup>350</sup> See Michael Kagan, *Immigrant Victims, Immigrant Accusers*, 48 U. MICH. J.L. REFORM 915, 944 (2015) (“[E]ven if evidence of widespread fraud has yet to emerge, an incentive to accuse could raise concern that some individual crime reports might be at least exaggerated if not entirely fabricated. For present purposes, it suffices to recognize that this incentive exists in the structure of the U [victim of violent crime] visa system.”). *But see* Imogene Mankin, *Abuse-in(g) the System: How Accusations of U Visa Fraud and Brady Disclosures Perpetrate Further Violence Against Undocumented Victims of Domestic Abuse*, 27 BERKELEY LA RAZA L.J. 40, 54 (2017) (arguing both that widespread U visa fraud is implausible as a practical matter and that “U visa immigration fraud is a legal fiction, in that it does not contemplate a possibility for dual intent”).

gain an edge for themselves within family courts, so too might private individuals criminally prosecute others to gain leverage with institutions that control resources such as housing.<sup>351</sup>

In each of these examples, the private prosecutor responds to the state<sup>352</sup>—its failure to expand access to substance use treatment outside carceral structures, to create legal pathways to citizenship, to build safe housing. An expansion of private criminal prosecution might expand the footprint of the carceral state by allowing more private individuals to access services through the carceral state. So too might it expand the state’s license to ignore the needs of its citizens or to deploy solutions housed exclusively within carceral systems. At the same time, an expansion of private criminal prosecution might aid individual litigants in meeting their material needs in a concrete sense and enhancing their equity and autonomy in a more abstract sense.

Thus, it seems fair to cast private prosecution as a reformist measure,<sup>353</sup> for it strengthens and entrenches the state’s reliance on carceral measures to address human needs. Nevertheless, it is difficult to cast it as inherently undesirable. Rather, it is worth asking what the goal of private prosecution is as a starting point for assessing the utility and wisdom of the mechanism. If the goal is to disrupt the carceral state, full-stop, then private prosecution is counterproductive. But if the goal is to provide interim relief—harm reduction, mitigation, and some measure of autonomy—to those already suffering in the thrall of the carceral state, then private prosecution may be useful even as we build toward a different world.<sup>354</sup>

## CONCLUSION

Private prosecutions of dependency cases reveal how the state drafts families into its project of social control through carcerality.

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<sup>351</sup> Bell, *supra* note 349, at 317 (“Mothers believe that calling the police sometimes protects them from, or gives them leverage with, other institutions.”).

<sup>352</sup> GARLAND, *LAW AND ORDER LEVIATHAN*, *supra* note 6, at 95 (noting the crucial, but over-looked, role of state capacity in shaping the carceral state).

<sup>353</sup> See Zohra Ahmed, *Taking Revolution Seriously*, 123 MICH. L. REV. 1209, 1212–13 (2025) (book review) (“Non-reformist reforms shift power, alter social and political relations, and attack the size, scope, and legitimacy of the prison industrial complex. In contrast, a reformist reform might reduce harm in the short term, but it does not destabilize prison as an all-important institution for social control.” (citation omitted)); CRITICAL RESISTANCE, *REFORMIST REFORMS VS. ABOLITIONIST STEPS TO END IMPRISONMENT* (2021), [https://criticalresistance.org/wp-content/uploads/2021/08/CR\\_abolitioniststeps\\_antiexpansion\\_2021\\_eng.pdf](https://criticalresistance.org/wp-content/uploads/2021/08/CR_abolitioniststeps_antiexpansion_2021_eng.pdf) [https://perma.cc/J82K-ASD5].

<sup>354</sup> JOCELYN SIMONSON, *RADICAL ACTS OF JUSTICE: HOW ORDINARY PEOPLE ARE DISMANTLING MASS INCARCERATION* xv–xvi (2023) (describing how people use “the tools of the system” to disrupt and dismantle the criminal legal system).

Far from offering an alternative to state power, these prosecutions demonstrate how the carceral apparatus maintains existing structures of racial capitalism while only minimally meeting human needs. When families turn to private prosecution—often prosecuting themselves and their loved ones—to access basic services and support, they compensate for the state’s failure to meet the basic needs of its citizens through either the welfare state or the carceral state. The conscription of private individuals to police and prosecute those near to them serves a dual function: It extends the reach of the carceral state, and it transforms those harmed by state failure into participants in narratives of individual deficiency.

As scholars continue to debate the merits of private enforcement across various domains of the carceral state, the lessons of private dependency prosecutions offer a reminder that expanding private enforcement powers, absent fundamental transformation of the underlying structures they serve, risks not dismantling the carceral machine but fortifying it.

## APPENDIX

TABLE 1: STANDING TO INITIATE DEPENDENCY PROSECUTIONS<sup>i</sup>

<i>State</i> <sup>ii</sup>	<i>May private individuals file dependency petitions?</i>	<i>May private individuals petition courts to initiate dependency petitions or may courts order private individuals to file dependency petitions?</i> <sup>iii</sup>	<i>Which private individuals have standing under the statute(s)?</i> <sup>iv</sup>
<i>AL</i>	No	Yes	“Any person . . . who has knowledge of the facts alleged or is informed of them and believes that they are true”
<i>AK</i>	No	Yes	“[A] person . . . having knowledge of the child’s circumstances”
<i>AZ</i>	Yes	--	“[A]ny interested party”
<i>AR</i>	Yes	--	“Any adult or . . . [a]ny member ten (10) years of age or older of the immediate family alleged to be in need of services”
<i>CA</i>	No	Yes	“[A] person”
<i>CO</i>	No	Yes	“[A] law enforcement officer or other person”
<i>CT</i>	Yes	--	“[A]ny child-caring institution or agency . . . , a child or such child’s representative or attorney or a foster parent of a child, having information that a child or youth is neglected”
<i>DE</i>	Yes	--	“Any person having knowledge of a child within the State who appears to be neglected, dependent or delinquent”
<i>DC</i>	No	No	
<i>FL</i>	Yes	--	“[A]ny other person who has knowledge of the facts alleged or is informed of them and believes that they are true”
<i>GA</i>	No	Yes	“[A]ny person who has actual knowledge of the abuse, neglect, or abandonment of a child or is informed of the abuse, neglect, or abandonment of a child that he or she believes to be truthful”
<i>HI</i>	No	No	--
<i>ID</i>	No	No	--
<i>IL</i>	Yes	--	“Any adult person”
<i>IN</i>	No	No	--
<i>IA</i>	No	No	--

TABLE 1: STANDING TO INITIATE DEPENDENCY PROSECUTIONS CONTINUED

<i>State</i> <sup>ii</sup>	<i>May private individuals file dependency petitions?</i>	<i>May private individuals petition courts to initiate dependency petitions or may courts order private individuals to file dependency petitions?</i> <sup>iii</sup>	<i>Which private individuals have standing under the statute(s)?</i> <sup>iv</sup>
KS	Yes	--	“Any individual”
KY	Yes	--	“[A]ny interested person”
LA	No	No	--
ME	Yes	--	“Three or more persons”
MD	No	No	--
MA	Yes	--	“A person”
MI	No	Yes	“[A] person”
MN	Yes	--	“Any reputable person . . . having knowledge of a child in this state or of a child who is a resident of this state, who appears to be in need of protection or services or neglected and in foster care”
MS	No	Yes	“[S]ome other person [designated by the court]”
MO	No	Yes	“[A]ny person”
MT	No	No	--
NE	No	No	--
NV	No	No	--
NH	Yes	--	“[A]ny person”
NJ	Yes	--	“Any person having knowledge or information of a nature which convinces him that a child is abused or neglected”
NM	No	No	--
NY	No	Yes	“[A] person on the court’s direction”
NC	No	No	--
ND	No	Yes	“[A]ny other person . . . which has knowledge of the facts alleged or is informed and believes the facts are true”
OH	Yes	--	“[A]ny person having knowledge of a child who appears . . . to be an unruly, abused, neglected, or dependent child”
OK	No	No	--
OR	Yes	--	“Any person”
PA	Yes	--	“[A]ny person”

TABLE 1: STANDING TO INITIATE DEPENDENCY PROSECUTIONS CONTINUED

<i>State</i> <sup>ii</sup>	<i>May private individuals file dependency petitions?</i>	<i>May private individuals petition courts to initiate dependency petitions or may courts order private individuals to file dependency petitions?</i> <sup>iii</sup>	<i>Which private individuals have standing under the statute(s)?</i> <sup>iv</sup>
RI	Yes	--	“[A]ny appropriate person having knowledge, information, or belief of the material facts”
SC	Yes	--	“[A]ny person having knowledge or information of a nature which convinces such person that a child is neglected”
SD	No	No	--
TN	Yes	--	“[A]ny person . . . who has knowledge of the facts alleged or is informed and believes that they are true”
TX	No	No	--
UT	Yes	--	“[A]ny interested person”
VT	No	No	--
VA	No	No	--
WA	Yes	--	“Any person”
WV	Yes	--	“[A] reputable person [who] believes that a child is neglected or abused”
WI	Yes	--	“The counsel or guardian ad litem for a parent, relative, guardian or child”
WY	No	No	--

<sup>i</sup> This Table summarizes standing requirements set forth in states’ statutory schemes. In a few instances, standing has been narrowed by state courts or by other statutes. *See, e.g., In re C.S.M.F.*, 89 A.3d 670, 675 (Pa. Super. 2014) (“While the Juvenile Act provides that any person may file a dependency petition, our Supreme Court subsequently suspended that [provision] ‘insofar as [it] is inconsistent with [other rules providing] that the county agency may file a petition and any other person shall file an application to file a petition.’” (citation omitted)); 14 R.I. GEN. LAWS ANN. § 14-1-3 (West 2025) (setting forth a circumscribed list of “appropriate person[s]” who may file petitions). This Table does not reflect those constraints. This statutory survey updates and expands upon a similar survey conducted by Ryan Rappa. Ryan M. Rappa, Note, *Getting Abused and Neglected Children into Court: A Child’s Right of Access Under the Petition Clause of the First Amendment*, 2011 U. ILL. L. REV. 1419, 1426–47 (2011).

<sup>ii</sup> The statutes that provide the basis for this Table are as follows: ALA. CODE § 12-15-121(a) (2026); ALASKA STAT. § 47.10.020 (2025); ARIZ. REV. STAT. ANN. § 8-841 (2025); ARK. CODE ANN. § 9-35-205 (2025); CAL. WELF. & INST. CODE §§ 325, 328, 331 (West 2026); COLO. REV. STAT. § 19-3-501 (2025); CONN. GEN. STAT. ANN. § 46b-129 (West 2025); DEL. CODE ANN. tit. 10, § 1003 (2026); D.C. CODE § 16-2305 (2026); FLA. STAT. ANN. § 39.501 (West 2025); GA.

CODE ANN. § 15-11-150 (2025); HAW. REV. STAT. ANN. § 587A-11 (LexisNexis 2025); IDAHO CODE § 16-1610 (2025); 705 ILL. COMP. STAT. ANN. 405/2-13 (West 2025); IND. CODE ANN. § 31-34-9-3 (West 2025); IOWA CODE ANN. § 232.87(2) (West 2025); KAN. STAT. ANN. § 38-2233 (West 2025); KY. REV. STAT. ANN. § 620.070 (West 2025); LA. CHILD. CODE ANN. art. 631 (2025); ME. REV. STAT. ANN. tit. 22, § 4032 (2025); MD. CODE ANN., CTS. & JUD. PROC. § 3-809 (LexisNexis 2025); MASS. GEN. LAWS ANN. ch. 119, § 24 (2025); MICH. COMP. LAWS ANN. § 712A.11 (West 2025); MINN. STAT. ANN. § 260C.141 (West 2025); MISS. CODE ANN. § 43-21-451 (West 2025); MO. ANN. STAT. § 211.081 (West 2025); MONT. CODE ANN. § 41-3-422 (West 2025); NEB. REV. STAT. ANN. § 43-261 (LexisNexis 2025); NEV. REV. STAT. ANN. § 432B.510 (LexisNexis 2025); N.H. REV. STAT. ANN. § 169-C:7(1) (2025); N.J. STAT. ANN. § 9:6-8.34 (West 2025); N.M. STAT. ANN. § 32A-1-10 (West 2025); N.Y. FAM. CT. ACTS LAW § 1032 (McKinney 2026); N.C. GEN. STAT. § 7B-403 (2025); N.D. CENT. CODE § 27-20.3-12 (2025); OHIO REV. CODE ANN. § 2151.27 (LexisNexis 2025); OKLA. STAT. ANN. tit. 10A, § 1-4-501 (West 2025); OR. REV. STAT. § 419B.809 (West 2025); 42 PA. STAT. AND CONS. STAT. ANN. § 6334 (West 2026); R.I. GEN. LAWS §§ 14-1-11, 14-1-3 (2025); S.C. CODE ANN. § 63-3-550 (2025); S.D. CODIFIED LAWS § 26-7A-43 (2025); TENN. CODE ANN. § 37-1-119 (2025); TEX. FAM. CODE ANN. § 262.001 (West 2025); UTAH CODE ANN. § 80-3-201 (LexisNexis 2025); VT. STAT. ANN. tit. 33, § 5309 (2025); VA. CODE ANN. § 16.1-260 (2025); WASH. REV. CODE ANN. § 13.34.040 (West 2025); W. VA. CODE ANN. § 49-4-601 (LexisNexis 2025); WIS. STAT. ANN. § 48.25 (West 2025); WYO. STAT. ANN. § 14-3-411 (2025).

iii The dashes in this column reflect that the states in question need not have separate mechanisms by which the court may accept a petition filed by a private individual or order the filing of a petition by a private individual, as private individuals are already empowered to take that action absent court approval.

iv The language in this column reflects the broadest grant of standing in each state's statute. Some states list particular private individuals as exemplars, then include a broader "catchall" grant of standing. *See, e.g.*, N.J. STAT. ANN. § 9:6-8.34 (West 2025) (granting standing to "[a] parent or other person interested in the child," and to "[a]ny person having knowledge or information of a nature which convinces him that a child is abused or neglected"). In such instances, the Table includes only the language of the catchall provision. The dashes in this column reflect that the states in question only permit filing by state actors and no private individuals have standing to file petitions.