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Child Welfare Reform: The Role of Federal Court Oversight in Child Protective Service Workers' Caseloads

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Child Welfare Caseloads

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Child Welfare Reform: The Role of Federal Court Oversight in

Child Protective Service Workers' Caseloads

Key Practitioner Messages

- Legal measures such as class action lawsuits and consent decrees may be effective in reducing child welfare workers' caseloads as part of systematic change.
- Schools of social work should expose their generalist and clinical track students to macro courses that address the role of such legal measures.
- Policy planning related to child welfare reform should involve frontline workers' experiences and perspectives.

Key words

Child protection; Child abuse; Fostered children; Child law; Legal processes; USA.

Introduction

In 2017, over 3 million children in the USA received a child protective services (CPS) investigation or an alternative response, reflecting a ten per cent increase from 2013 (US Department of Health and Human Services, 2019). Given the growing number of child welfare cases, there is continued interest in the size of the CPS workforce and worker caseloads [PUBLISHER – THE PRECEDING UNDERLINED TEXT IS FOR THE MARGIN]. The most recent data available from 42 states in 2017 suggest a total child welfare workforce of 33 820, and data from 36 states identified that 18 502 workers engaged in investigations and alternative responses. During the same year, this group of individuals

completed on average 72 CPS cases per worker per year (US Department of Health and Human Services, 2019).

Caseload often refers to the actual number of cases assigned to an individual child welfare worker regardless of risk level of the case itself (Strolin *et al.*, 2006). Although what it means to have a 'high caseload' is not consistently defined in the literature, most prior studies use the standard of the Child Welfare League of America (CWLA) of 12 to 17 active cases to refer to average caseload sizes for CPS workers. Caseload size is closely related to the time a child welfare worker needs to complete case-related paperwork, administrative duties and coordination of services for each client (Kaye *et al.*, 2012; McFadden *et al*., 2015). Reasonable caseload sizes are understood to promote worker retention, wellbeing and effective service delivery (Kaye *et al*., 2012).

The Negative Consequences of High Child Welfare Caseloads

High caseloads have been linked with workers leaving the child welfare system (Strolin *et al*., 2006). A large body of literature suggests that caseload size contributes to child welfare workers' decisions related to retention and turnover (Benton, 2016; Kaye *et al*., 2012; Kim, 2011; Wilke *et al*., 2018). By examining public child welfare workers from 12 counties in one state in the USA, Smith (2005) found that for each increase in caseload size, the odds of worker retention decreased by six per cent. High caseload sizes have also been associated with early departures from the child welfare workforce and workers making mistakes that harm children and could have negative consequences for the agency (Wilke *et al*., 2018). Moreover, high caseload sizes have been linked with lower worker self-esteem and self-efficacy, higher stress, and burnout—additional factors that contribute to turnover

(McFadden *et al*., 2015; Schelbe *et al.*, 2017; United States General Accounting Office, 2003; Wilke *et al*., 2018).

Worker turnover is subsequently linked to frequent case transfers and shuffling of assignments, increasing the caseload size of remaining child welfare workers and diminishing the continuity and quality of services delivered to children and families (Poulin, 1994). In this regard, high caseloads and turnover seem to form a vicious cycle within the child welfare system ultimately harming children [PUBLISHER – THE PRECEDING UNDERLINED TEXT IS FOR THE MARGIN] and the families CPS workers are trying to protect and serve. Despite the substantial body of literature on caseload and its links to burnout and turnover of child welfare workers (Burns, 2011; Gonzalez *et al.*, 2009; for an exception, see Kim and Kao, 2014), prior research has not examined the high caseload problem in the context of reforming the child welfare system using federal legal measures, such as class action lawsuits and consent decrees.

The Roles of Class Actions and Consent Decrees in Child Welfare Reform

A class action lawsuit is a nontraditional litigation process that allows a representative to start a lawsuit on behalf of a larger group of individuals sharing similar cases. This type of lawsuit is used when members of the group are so many that bringing individual cases to the court would be considered impractical (Miller, 2009). A class action lawsuit has advantages in that a smaller group of plaintiffs represent the larger class so that claims do not have be litigated individually and that the whole class of individuals do not need to appear before the court. Similar to the standard litigation process, once a class action lawsuit has been filed and the class certified, the case can go to trial. However, these class action lawsuits are usually

complicated and thus are settled by agreements between parties (Seligman, 2011). Such settlements are embodied in consent decrees, which can act similarly to court orders in that violations can lead to sanctions (Seligman, 2011). The content of a consent decree primarily outlines the specific actions defendants are mandated to take to resolve the identified issues. Entering a consent decree involves regular monitoring by court-appointed individuals and possibly returning to court if additional enforcements are needed.

Civil rights and child advocacy organisations have historically used class action lawsuits and consent decrees in their attempts to reform the child welfare system [PUBLISHER – THE PRECEDING UNDERLINED TEXT IS FOR THE MARGIN]. For example, the New York Civil Liberties Union's then attorney Marcia Robinson Lowry filed a landmark class action lawsuit known as the Wilder (representing the 14-year-old main plaintiff, Shirley Wilder) case in 1973 against the New York City foster care system for engaging in discriminatory practices. Essentially, the city's foster care system had contracted with private agencies, which were mostly Jewish and Catholic. Such agencies preferred children of their own faith for placement, leaving many Black and Protestant children to languish in the foster care system (Bernstein, 2001). The lawsuit ended in a settlement in 1999, which was 26 years after it was first filed. Since then, dozens of states have also been sued for systemic failure to adequately protect children in their care (Alvarez, 2011; Farber and Munson, 2010; Lowry *et al.*, 2002).

In particular, Children's Rights (Children's Rights, 2015), with Marcia Robinson Lowry as its director, has served as a watchdog organisation, taking legal action to protect maltreated children in the USA since its establishment in 1995. The organisation has initiated

class action lawsuits that transpired in federal monitoring of the state, court-enforced reform plans, assessment of states' progress to improve child welfare conditions (Children's Rights, 2015). A more in-depth discussion of Children's Rights and class action lawsuits is written elsewhere (Lee *et al.*, 2019). Notably, Children's Rights brought class action lawsuits against three states—Michigan (MI), New Jersey (NJ) and Tennessee (TN)—which serve as the focal child welfare systems for the current case study.

Current Study

Two primary research questions driving the current study are: (1) What do states' individual class action lawsuits say about the state of child welfare workers' caseloads?; and (2) What do states' individual consent decrees suggest with respect to the type of settlements the states and courts have made regarding child welfare workers' caseloads? A secondary question asks (3) What caseload-related outcomes have each state achieved as a result of legal reforms via class action lawsuits and consent decrees? This study focuses on the MI, NJ and TN child welfare systems [PUBLISHER – THE PRECEDING UNDERLINED TEXT IS FOR THE MARGIN, i.e. 'This study focuses on the Michigan, New Jersey and Tennessee child welfare systems'], given the similarities in when the initial class action lawsuits were filed (i.e., between 1999 and 2006) and the child advocacy organisation that initiated the lawsuits (i.e., Children's Rights).

Methods

Data Sources

Primary data were drawn from the legal documents, including individual class action lawsuits, consent decrees, and monitoring reports. These documents were obtained

electronically by visiting Children's Rights' and the three states' child welfare websites. For each state, one class action lawsuit, one consent decree and their most recent monitoring reports were obtained. This made up a corpus of nine documents. Given that the documents sourced were open and public, no institutional review board approval was required.

Analysis Plan

Before starting the analysis process, it was important to understand the structure of class action lawsuits and consent decrees. Most of the documents used either a table of contents or bolded headings, which were helpful for identifying sections pertinent to caseloads. Once these sections were identified, relevant passages were highlighted or bookmarked and brief background information and content related to child welfare caseloads were extracted by using a separate word document. Data abstraction occurred in the order of the three research questions.

Results

Descriptive Characteristics of the Three Cases

Michigan's class action lawsuit was filed on August 8, 2006 in the US District Court for the Eastern District of Michigan by the plaintiff children's attorneys, including Marcia Robinson Lowry from Children's Rights, against Jennifer Granholm, then Governor of the State of Michigan, and the Department of Human Services (DHS) (now called Department of Health and Human Services) leadership responsible for child protective services. Main plaintiff children included Dwayne B., a seven-year-old boy who moved through eight different foster care placements during the five years he was in state care, among others. A

settlement was reached between the parties and the consent decree was accepted on July 3, 2008.

New Jersey's original class action lawsuit was filed on August 4, 1999, and an amended complaint was filed on September 29, 2000 in the US District Court for the District of New Jersey. The amended complaint was filed by the plaintiff children's attorneys including those from Children's Rights against Christine Whitman, then Governor of the State of New Jersey, as well as the Department of Human Services and Division of Youth and Family Services (DYFS) (now called Department of Children and Families) leadership. Plaintiff's children included Charlie and Nadine H., who are siblings aged 11 and nine, respectively, and were abused and neglected in their foster home for five years, among others. A settlement was reached between parties and a consent decree was accepted in June 23, 2003 and modified in July 18, 2006.

Tennessee's class action lawsuit was filed on May 10, 2000 in the US District Court for the Middle District of Tennessee at Nashville by the plaintiff children's attorneys including those from Children's Rights against Donald Sundquist, then Governor of the State of Tennessee and the Commissioner of the Tennessee Department of Children's Services (DCS). Plaintiff children included Brian A., a nine-year-old boy who was placed in an emergency shelter indefinitely due to emotional and behaviour problems, among others. A settlement was reached between the parties and thus the consent decree was accepted by the same court on July 27, 2001.

Research Question 1: What do the Class Actions Say About Child Welfare Caseloads?

The class action lawsuit brought against MI noted abuse and neglect of children in foster care, lack of basic medical and mental health services, and frequent moves between multiple placements (Children's Rights, n.d.). These harms to children were attributed, in part, to child welfare workers' high caseloads and turnover [PUBLISHER – THE PRECEDING UNDERLINED TEXT IS FOR THE MARGIN] (Dwayne B. v. Granholm, 2006). The lawsuit noted that workers have dangerously high caseloads that frequently exceed the national standard of 12 open cases per CPS caseworker conducting initial assessments and 17 families per CPS caseworker providing ongoing support (Hughes & Lay, 2012). Caseload ratios at DHS ranged from 25:1 to 40:1 in 2005 (Dwayne B. v. Granholm, 2006). The lawsuit also highlighted DHS' early retirement programme implemented in 1997 and again in 2002, which caused a large number of experienced DHS caseworkers to retire, decreasing the department staff by over 20 per cent.

Similar to MI's case, the class action lawsuit brought against NJ alleged DYFS' failure to protect children in its custody was, in part, because child welfare workers' caseloads were too high. Caseloads at DYFS often exceeded 80 children per worker, preventing child welfare workers from visiting children in their foster homes or obtaining services needed to support children's emotional, behavioural and psychological needs (Charlie and Nadine H. v. Whitman, 2000). DYFS placed enormous pressure on caseworkers to keep the number of caseloads down by closing cases prematurely. In fact, many promotions were based on caseworkers' abilities to close cases instead of the quality of service provided, resulting in demoralisation of the workforce. Further, high caseloads and a lack of a supportive work environment resulted in a large number of child welfare workers leaving the agency.

The class action lawsuit brought against TN argued that high caseloads was one of the reasons for DCS' systemic failure to fulfil its legal obligations to protect children in its custody and provide them and their families with legally required services. The lawsuit noted that individual caseloads were often over 40 children per worker. In 1999, DCS admitted that caseloads were as high as 51 per worker, and the lawsuit linked this with high turnover rates, citing that in one DCS office alone the turnover rate in a single year was 100 per cent (Brian A. v. Sundquist, 2000). Much like NJ's case, high caseloads and subsequent turnover rates have contributed to DCS workers not having enough time to visit children in foster homes and secure much needed services to support children in the state's care (see Table 1 for details).

Research Question 2: What do Individual Consent Decrees Say About the Settlement States and Courts Have Made Regarding Child Welfare Caseloads?

In MI, the consent decree noted that beginning in April 2009, new caseworkers will receive pre-service training, which includes being assigned case tasks under the primary supervision of an experienced caseworker and being responsible for a 'training caseload' that does not exceed three cases. Under this policy, CPS workers assigned to investigate or assess allegations of child maltreatment were to have a caseload of no more than 12. The majority (95%) of CPS workers were to reach this goal by October 2011.

In NJ, the consent decree also highlighted, starting in September 2006, all new caseworkers will be enrolled in pre-service training and no worker will assume a full caseload until completing the training and passing a competency test. Over half (58%) of CPS intake workers were to have caseloads of no more than 12 families and ten new referrals per month

by June 2007, and the majority (95%) were to have caseloads no more than 12 families and eight new referrals per month by December 2008.

Much like MI and NJ, the TN's consent decree noted that no caseworker may assume any responsibility for a case until after completing pre-service training and passing a competency test [PUBLISHER – THE PRECEDING UNDERLINED TEXT IS FOR THE MARGIN]. No CPS worker is to have a caseload that exceeds more than 15 to 20 individuals, depending on their experience level (see Table 2 for details).

Research Question 3: What Caseload-Related Outcomes Have Each State Achieved?

The most recent monitoring report for MI, capturing progress between January and December 2017, noted that DHS averaged 95.9 to 98.1 per cent of CPS investigation and assessment staff meeting the required caseload standards outlined in the consent decree. That said, a recent performance audit by the state's auditor general office found, through a survey of over 750 CPS investigators, that high caseloads were at fault for DHS' failure to meet other important benchmarks (e.g., commencing investigations within 24 hours of the complaint received, making face-to-face contact with child victims and completing investigations within the required time frames) (Ringler, 2018). The most recent monitoring report for NJ, highlighting progress between January and June 2018, noted that an average of 95 per cent of CPS intake workers and 100 per cent of investigative workers were in compliance with the caseload standard of no more than 12 families and eight new referrals per month (Center for the Study of Social Policy, 2019). TN successfully reached *and* maintained its overall performance, including caseload standards, and thus was able to officially exit the settlement

and its more than 16-year-long reform as of July 2017 (Tennessee Office of the Governor, 2017; Lee *et al*., 2019) (see Table 3 for details).

Discussion

This case study focused on examining US CPS workers' caseloads in three states that are currently under (i.e., MI and NJ) or have a history of being under (i.e., TN) federal oversight via class action lawsuits and consent decrees. States varied in factors, such as the number of caseloads identified in each class action lawsuit, caseload standards set forth in consent decrees, and progress made by each child welfare system. Importantly, this study highlights the potential effectiveness of class action lawsuits and consent decrees in reforming a key aspect of child welfare workforce, namely CPS worker caseloads [PUBLISHER – THE PRECEDING UNDERLINED TEXT IS FOR THE MARGIN, i.e 'This study highlights the potential effectiveness of class action lawsuits and consent decrees in reforming... CPS worker caseloads']. Caseloads are closely linked with CPS workers' self-efficacy, stress level, work performance and retention rates (McFadden *et al*., 2015; Schelbe *et al*., 2017; United States General Accounting Office, 2003; Wilke *et al*., 2018). Analysis of these three states suggests that caseloads are associated with caseworkers' manageability of their workloads, ability to provide adequate services to and conduct regular visitations with children and families, along with supervision quality, work place morale, and prevention of burnout and turnover. Importantly, all three states made significant improvements in meeting their caseload standards. This suggests that legal measures like federal court oversight may be effective in reducing child welfare workers' caseloads as part of systematic change.

That said, there are a number of limitations to keep in mind when considering class actions and consent decrees as reform tools. First, problems class actions set out to address can reoccur or new problems may arise after the lawsuit is over. As a case in point, New Mexico's Children, Youth and Families Department (CYFD) was sued in 1980 for failing to adequately find adoptive homes for children, who languished in their child welfare system for an average of five years. CYFD came out of a 25-year-long federal court oversight in 2005 only to experience problems of precisely the sort the class action lawsuit was intended to address. New Mexico's child welfare system remains among the worst in the country to this day, with additional lawsuits being filed against them for its ongoing failures to provide critical services to the most vulnerable children in their care (e.g., Kevin S. v. Jacobson, 2018).

Second, the amount of time and financial resources spent on class action lawsuits to achieve at best very modest changes are enormous [PUBLISHER – THE PRECEDING UNDERLINED TEXT IS FOR THE MARGIN]. For instance, states pay many millions of dollars for consulting, legal and monitoring fees and not necessarily for acquiring services and resources for the plaintiff children and their families (Lee *et al*., 2019). This mostly benefits lawyers and legal professionals instead of the workers and vulnerable families involved in the class actions. Relatedly, as documented in the cases of MI and TN, as well as prior class actions (e.g., Wilder case), many of these lawsuits are often bogged down by bureaucracy and unnecessary delays. In the case of Wilder, by the time the lawsuit ended, the main plaintiff, Shirley Wilder, had already died and both her son and grandson had also gone through the same foster care system fraught with racism, discrimination and inequality.

Third, there is variability in how class actions are used not only at the state level within the USA but also at the international level. For example, in Canada, provincial superior courts have jurisdiction over both provincial and federal matters and thus most class actions are litigated in provincial courts and not federal courts. That is, the local courts seems to exert more power than the federal courts regarding matters involving a large group of individuals, such as children in child welfare. Importantly, class actions are not widely used as a legal mechanism in places outside North America. European countries, for examples, do not have a similar process by which a group of individuals can take legal action as a single class. One reason may be because Europe has varied legal systems across different countries and do not share an environment or a culture that is lawsuit-friendly as the USA (Bigonzi *et al*., 2018). This suggests that when considering the reform of child protection systems in a global context, one may need to look beyond class action lawsuits as the main means for change.

Fourth, at a more individual level, social workers have limited knowledge of class action lawsuits and consent decrees and their roles in system change. Social work education and training will do well to introduce to students, trainees and professionals the role of class actions and consent decrees in child welfare reform. At the same time, it is important to acknowledge that as it is now schools of social work rarely offer courses in forensic social work and other related courses, such as child protection and child welfare policy although such classes would allow for better understanding how child welfare institutions function and their implications for children and families. Instead of being optional and available only to students in specialised tracks, these classes should be part of both bachelor's and master's

level foundational curricula so that all social work students and future social work professionals have basic knowledge of the role of class actions as one tool of reform, not just for child welfare but also for other sectors of interest to social workers.

Related to this is that many child welfare workers are not trained as social workers [PUBLISHER – THE PRECEDING UNDERLINED TEXT IS FOR THE MARGIN], as some states only require that a bachelor's degree in any subject or subject related to social work (e.g., psychology, counselling) be the main educational qualification for such positions. Further, child welfare workers with a social work degree are not necessarily trained in macro or policy practice, limiting their understanding of the process and impact of policy decisions. This also contributes to child welfare workers struggling to understand their roles in civil and criminal courts. Legal actions such as class actions and consent decrees involving the federal court could be perceived as esoteric at best and irrelevant at worst. Child welfare agencies should require bachelor's and master's level social work education for their workforce and schools of social work ought to expose their generalist and clinical track students to courses that address areas where social work, law and public policy meet and encourage students to critically think about their roles in such intersections.

Finally, another factor that contributes to the limited knowledge of legal measures for system reform stems from the large gap between frontline child welfare workers and decision makers. Decisions related to class actions and consent decrees happen at the administrative level, where positions are held by graduate trained social workers, public administrators and policy personnel who may not have direct experience working with children and families ‘on the ground.’ This gap contributes to lack of translation of relevant information and

communicative exchanges between frontline workers and policymakers. For example, new protocols per the consent decrees are devised and implemented without considering the real concerns and needs of frontline workers and the children and families they serve face. Policy planning should involve frontline child welfare workers' experiences and perspectives [PUBLISHER – THE PRECEDING UNDERLINED TEXT IS FOR THE MARGIN], which can be easily obtained through qualitative interviews and focus groups. Such information should inform and shape, for example, benchmarks and measures outlined in consent decrees.

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