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### Key Points

- The central registry is a database of child maltreatment perpetrators used to assist in the investigation and prevention of child maltreatment cases, to facilitate statistical analysis of child welfare data, to systematically track and respond to maltreatment allegations, to aid case monitoring and planning, and to provide background checks for volunteer or employed positions that involve contact with children.
- The central registry has real-world implications for families. It can negatively impact employment for low-income and minority families, with a particularly heavy burden on mothers, which, in turn, can jeopardize child well-being.
- The central registry significantly lacks due process protections at multiple junctures: the ease of being added to the central registry, the difficulty of getting off, the lasting damage to careers and reputations, and the lack of judicial oversight of the decision.
- Once someone is placed on the registry, the appeal process is lengthy, complicated, and requires parents to appeal the decision to the same department that initially deemed them perpetrators.
- Overreporting and anonymous reporting aggravate the lack of due process in relation to the central registry.

# The Blacklist: How Central Registry Reform Can Protect Kids and Promote Prosperity

## Executive Summary

The Child Abuse and Neglect Registry assists in investigations, as well as in data collection and analysis, and provides background checks for volunteer or employed positions with children. However, the central registry system has unintended consequences, ranging from limiting low income families' employment prospects to the denial of due process.

In order to make the central registry just and constitutional, various policies must be implemented, including prohibiting the listing of alleged perpetrators in the registry prior to a hearing before a judge; requiring a minimum of a preponderance of the evidence standard for central registry placement hearings; creating a third-party, accessible, and clear appeals process; and ending the practice of anonymous reporting, shifting to confidential reporting instead.

## Introduction

The child welfare system exists, at its core, to protect children who are in imminent danger of serious physical or emotional harm. The system derives its ability to intervene in the private life of a family from the restrained and targeted exercise of the government's police power, which allows the state to take certain limited actions necessary to prevent harm to the safety and welfare of its citizens. In the context of child welfare, the state's power is held in check by nearly a century of American jurisprudence, which recognizes that parents and children possess a fundamental liberty interest in their relationship with one another. The state may interfere in that relationship only when parents pose a threat to the health or safety of their children. Unfortunately, this balance—protecting children from significant harm while safeguarding the fundamental rights of families—is often skewed in child welfare.

An example of the operational tension between protecting children and protecting parental rights is seen in child abuse central registries. Central registries are federally mandated, state-run databases of child abuse or neglect records.

The proliferation of child abuse registries began in earnest after Congress enacted the Child Abuse and Prevention Act (CAPTA) in 1974, which provided states with federal funds to strengthen child protection programs, including developing databases for the collection and maintenance of child maltreatment allegations. Perpetrator tracking was not included in the original bill language, but some states began including agency-substantiated perpetrators in their registries during the 1980s and 1990s in response to increasing rates of child maltreatment ([McDonald, 2012](#)).

Central registries function as a way to assist child protective agencies in the investigation and prevention of child maltreatment cases, to facilitate statistical analysis of child welfare data, to help diagnose suspicious injuries, to systematically track and respond to maltreatment allegations, and to aid case monitoring and planning ([Besharov, 1978](#)). They are also commonly used to perform background checks on those entrusted with the care of children, such as prospective foster or adoptive families, as well as for individuals seeking a volunteer or employed position that involves contact with children ([Child Welfare Information Gateway, 2019](#)).

Although it would not be uncommon to think that the registry is a standalone database in which a person's name is only entered once it is shown that they abused or neglected a child, this is not the reality. In Texas, for example, Section 261.002 of the Family Code requires that the Department of Family and Protective Services maintain the names of individuals “*found by the department* [emphasis added] to have abused or neglected a child.” This listing happens prior to any hearing or court ruling as to whether the person added to the registry committed the alleged maltreatment. In addition, rather than being a separate database, the Texas central registry is a subset of the Department of Family and Protective Services’ agency-wide IMPACT<sup>1</sup> database, which tracks case information for all stages of services and cases, including unsubstantiated reports ([Department of Family and Protective Services \[DFPS\], n.d.](#)).

While the intent to track maltreatment and protect children is noble, the implementation of central registries has caused undue harm to many individuals. Parents can find their names listed in an official government database of child abusers prior to or even without a court ruling that they actually committed the alleged maltreatment. Individuals in Texas who have been wrongly identified in the registry and want to challenge their inclusion face an uphill battle navigating a complex bureaucratic process that rarely provides them with the opportunity to have their case reviewed by a neutral arbiter. These flaws are far from benign consequences and create long-term social and economic hardships for those wrongfully listed, as well as for those whose contact with the child welfare system was a result of conditions of poverty.

## Unintended Consequences of Central Registries

### *Employment and Volunteer Prospects*

In more than 30 states, employers are allowed to access, or, in some cases, required to use, the state’s central registry when conducting background checks in the hiring process ([Child Welfare Information Gateway, 2017](#)). The education, child care, and health care industries are just a few examples of employers who are required to conduct registry checks for potential employees. This means anyone working or applying to work in a daycare center, hospital, or as a home health aide would most likely not be hired if on the central registry.

According to a study on the unintended consequences of central registries ([Henry et al., 2019](#)), jobs that require background checks are predominantly held by women, particularly women of color. Statistics referenced in the study show that women “make up 97.7 percent of preschool and kindergarten teachers, 93.7 percent of child care workers, 88.5 percent of teaching assistants, 83.7 percent of personal care aids, and 82.5 percent of social workers.” Even more, almost 40% of child-care jobs are held by women of color ([p. 373](#)).

These statistics are significant in a system where low-income families and children of color are disproportionately referred to

CPS and overrepresented in foster care. Black children are reported at twice the rate of white children, and minority families are more likely to have more intense intervention after a report ([Drake et al., 2009, p. 312](#); [Children’s Bureau, 2012, p. 18](#)). Women are also more prevalent in the system, with more than 50% of perpetrators listed as female ([Children’s Bureau, 2020](#)). If these families are overrepresented in the system, then they are likely overrepresented in the central registry.

Impoverished families are also at increased risk of child welfare involvement ([Fong, 2017](#)). One case study on a cohort of California children found that the youth eligible for state Medicaid were twice as likely to be reported to CPS than their ineligible counterparts ([Putnam Hornstein & Needell, 2011](#)).

The correlation between these demographics and child welfare involvement implies restriction and disqualification

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1 Information Management Protecting Adults and Children in Texas (IMPACT)

from employment for low-income and minority families with a particularly heavy burden on mothers. According to Henry et al., “central registries, in their current form, may paradoxically undermine child well-being—a central goal of the child welfare system—by increasing risk of poverty-related maltreatment” (2019, p. 374). It is important to note that punitive measures, even unintended punitive measures, that have economic impacts, such as the central registry, can perpetuate or worsen cycles of abuse or neglect tied to poverty. Given the severity of these outcomes, it is critical for states to have robust due process protections in place to prevent wrongful or premature listing.

## Systemic Problems and the Need for Change

### Denial of Due Process

In 2015, a New York family experienced the trials of an unconstitutional central registry, joining the ranks of other parent voices across the nation in illuminating the disturbing practices of the CPS “blacklist.” After Tina and Phil Hankins removed their special needs son from his school over fears for his safety, the school reported the parents for alleged child neglect, despite their repeated efforts to alert school administrators of abuse at the hands of a staff member.

The Administration for Children’s Services claimed reason to investigate, which resulted in the Hankins being listed in the state’s central registry. The couple could not continue working their jobs as teacher and guidance counselor and had a later job offer rescinded.

The Hankins eventually were able to appeal their case to a state administrative judge who ended the investigation. Their registry record was sealed, and the judge called the investigation “vague and superficial” (Khan, 2019, para. 17). According to Chris Gottlieb, co-director of the Family Defense Clinic at the NYU School of Law, “If there is any evidence whatsoever that there might have been child abuse or neglect, then you end up with a record — even if there’s more evidence that there wasn’t abuse or neglect” (Khan, 2019, para. 5).

The Hankins’ story highlights several major areas of deficiency of due process in how central registry works, notably the ease of getting on the central registry, the difficulty of getting off, the lasting damage done to careers and reputations, and the lack of judicial oversight of the decision. The 14th Amendment to the Constitution prohibits state governments from depriving individuals of life, liberty, or

property interests without due process of law. Among the most fundamental requirements of due process is adequate notice of the planned deprivation and the opportunity to be heard before an impartial tribunal (Friendly, 1975, pp. 1267, 1279-1281). When a limitation of freedom is at stake, a caseworker, or at most a caseworker and a supervisor, issuing a finding of maltreatment is no alternative to a courtroom that sees evidence, hears a defense, and includes a neutral arbiter of the law.

A similar constitutionally suspect process exists in Texas, too, where an individual is added to the central registry when a CPS investigation results in a disposition of “reason to believe” (Department of Family and Protective Services, 2017). A reason to believe finding is made when a single caseworker concludes from their own investigation that the alleged maltreatment occurred and was committed by the alleged perpetrator (Department of Family and Protective Services, 2019a). Upon this finding, which occurs before a final disposition has been made, the alleged perpetrator’s name is listed in the registry.

A reason to believe finding is not the same as a legal finding made by a court, as is the case with criminal history and sex offender registries. Rather, it is an administrative finding made by the investigating caseworker before the case goes before a judge.

In the 2007 case *Jamison v. State Department of Social Services Division of Family Services*, the Supreme Court of Missouri held that an investigation alone is insufficient to support the loss of liberty that comes with being listed in the central registry if employment could be affected (*Jamison v. State Department of Social Services Division of Family Services*, 2007). The North Carolina Court of Appeals issued a similar decision in a 2010 case, *In the Matter of W.B.M.* (2010), holding that listing an individual in the central registry prior to a court hearing violates an individual’s constitutionally protected due process rights regardless of employment prospects. The court in *W.B.M.* also held that providing a pre-deprivation hearing “is no more functionally or financially burdensome than holding a hearing after the individual has been placed on the list to determine if the individual should be removed from the list” (pp. 22-23), and children can be protected without depriving individuals of their liberty interests.

The cases, along with many others, went so far as to hold that the court should use at least a preponderance of the

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evidence standard before placement on the registry to protect due process ([McDonald, 2012](#)).

Despite these cases representing a pathway to reform, this matter requires further attention as courts are still presented with the issues of central registries. Most previous cases on the central registry found at least one part of the central registry to undermine due process protections, but more reform is needed before the system is viable for parents ([McDonald, 2012](#)).

### **Appeal Process**

What happens after entry into the central registry varies by state. Some states have automatic expungement of registry records if a court dismisses the case. Others have a statute of limitations on how long a name can remain on the registry. Some differentiate between abuse or neglect ([Child Welfare Information Gateway, 2018](#)).

In Texas, if an individual is listed on the central registry for any maltreatment, their name will remain in the registry indefinitely unless they successfully appeal the investigation outcome. Texas is one of roughly 17 states—a small minority—that allow names to be entered into the central registry while an appeal is still pending ([McDonald, 2012](#)).

Under current practice, the review and appeal processes are also primarily housed within the department. If the alleged perpetrator disputes the department's finding of abuse or neglect, the case is referred to administrative review of investigative findings (ARIF). The administrative review is brought in front of another employee within the department who was not involved with the case. The ARIF process is informal and does not involve a trial or formal witness testimony. The department has 45 days to issue a decision on the review but can extend this deadline ([Department of Family Protective Services, 2019b](#)).

While the administrative finding can be appealed, the appeal remains in the hands of the department. The next tier of appeal is conducted by the DFPS Office of Consumer Relations (OCR). The OCR's opinion is the final disposition of the case and has no deadline for when the decision must be delivered ([Department of Family and Protective Services, 2018](#)).

If the designated perpetrator wants to appeal the final decision from DFPS, they can request a release hearing, which

appeals the case to the State Office of Administrative Hearings (SOAH). Under rule §700.605 of the Texas Administrative Code, if a release hearing is requested, the department will ask SOAH to appoint a judge and render final decision in the case.

The appeal process is lengthy, complicated, and contains many stages in which a missed deadline could result in denial of the appeal. Worse, the process requires parents to appeal a decision to the same department that initially deemed them perpetrators.

A 2014 investigative report by the *Austin American-Statesman* found that more than 1 out of every 3 CPS cases challenged by the alleged perpetrators are ultimately overturned. Yet, only 3% of reason to believe cases are appealed each year ([Ball, 2014](#)). This reveals the difficulty of the current appeals process and suggests the possibility that a significant number of Texans may be wrongfully listed on the state's central registry.

A decision that has severe economic, social, and mental consequences on individuals requires an efficient, trans-

parent, and just appeals process. Not only must the initial registry entry require a court hearing, the appeal process must require a neutral arbiter.

### **Maltreatment Reporting**

The designation of a perpetrator in a CPS case and the consequent entry into the central registry have major impacts on families with respect to economic well-being, reputation,

and trauma. These consequences are why it is critical to get the system right. With the central registry process already denying families due process of law, it is necessary to identify any other systemic pain points that aggravate the injustice of the central registry.

One issue negatively affecting the central registry process is reporting. Nationwide in 2018, 4.3 million allegations of neglect and abuse were received by CPS involving nearly 8 million children. Of these 4.3 million reports, 44% were immediately screened out. Of the children whose families were investigated or received an alternative response, more than 2.8 million were deemed nonvictims, meaning roughly 80% of received allegations were unsubstantiated ([Children's Bureau, 2020, p. xiii](#)).

In line with national statistics, Texas has a 22% confirmation rate of maltreatment reports ([Children's Bureau, 2020](#),

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p. 27). These statistics suggest that reports are often incorrect and can easily tangle an innocent family into CPS involvement. The high rate of unsubstantiated reporting in conjunction with insufficient parental protections puts Texas families at risk.

Elevating the risk of overreporting are Texas statutes that allow anonymous reporting to CPS hotlines. Texas is one of many states that accept, under section 261.304 of the Family Code, anonymous reports of child maltreatment, but accepting anonymous allegations is problematic.

Studies that have looked at anonymous reporting show dangerously low rates of substantiated reports. Sixteen percent of calls come from anonymous sources and of those calls only 1.5% go on to indicate abuse or neglect (Cecka, 2014, p. 58).

While reporting is the earliest stage in CPS involvement, it has direct effects on the central registry. The report, if screened-in, is the basis for an investigation that ultimately will result in central registry entry or not. Additionally, all open and ongoing investigations list the alleged perpetrator on the registry before a conclusion is even made. With the large numbers of reports that are unfounded, due process is again jeopardized.

Further, reporters are not even required to identify themselves, which can leave families susceptible to malicious reports or misinformation. The intent of anonymous reporting is to encourage and protect the reporter from retaliation. This, however, unintentionally encourages a misuse of the reporting system. Although it is a state jail felony under section 261.107 of the Texas Family Code to knowingly make a false report with the intent to deceive, the allowance for anonymous reporting renders this penalty virtually meaningless. An alternative to anonymous reporting, confidential reporting, affords the same level of security protections by sealing reporting records but also brings a level of accountability to the reporter.

The solution to false or erroneous reports is that entry into the central registry must not come before a court

decision and hearing on the matter. As extra protection, Texas should also require reporters to confidentially identify themselves, meaning the same security provisions for anonymous reports are applied, while protecting the constitutional rights of parents by discouraging false reports and ensuring intentionally false reporters are held accountable.

## Conclusion and Policy Recommendations

The current central registry system is unconstitutional and unjust at every juncture. Before the state can ensure that both parent and child are protected by the registry, various policy changes must be made, including:

- Prohibiting the listing of alleged perpetrators in the registry prior to a hearing before a judge;
- Requiring a minimum of a preponderance of the evidence standard for central registry placement hearings;
- Creating a third-party, accessible, and clear appeals process; and
- Ending the practice of anonymous reporting and shifting to confidential reporting.

Individuals in Texas and across the country have the right to meaningful due process before being labeled a perpetrator in a centralized database. This can only be provided in central registry cases through court oversight and an evidentiary standard sufficient to justify the deprivation of liberty.

In cases where the defendant disagrees with the perpetrator designation, the defendant must be allowed to appeal their case without departmental conflicts of interest and with clear instruction on how to appeal their case.

Finally, with the overreporting of maltreatment allegations in Texas, which has significant implications for families, anonymous reporting practices must be ended in favor of confidential reports that protect both reporters and parents.

These recommendations are the minimum changes that must be made to the central registry in an effort to make the system responsive and successful for all families. ★

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