

ANALYSIS OF ARIZONA TASK FORCE RECOMMENDATIONS

January 5, 2012

Bill Montgomery's war against grandchildren, and other problems with his recommendations

The biggest problem with Maricopa County Attorney Bill Montgomery's recommendations (and they're his recommendations, the rest of the Task Force were just extras in his production) is not the hiring of a bunch of retired cops. That will just waste money with no real impact on children one way or the other.

New York City and Texas both took similar steps in recent years. In both cases, child abuse deaths "known to the system" *increased*. I'm not saying hiring the ex-cops caused the increase, only that the latest panacea isn't going to work any better than all the others. (What probably caused the increase in those other places was the same thing that has caused such deaths to increase in Arizona – foster-care panics – sharp, sudden increases in needless removals of children in the wake of high-profile tragedies.)

No, the biggest problem is Montgomery's war against grandchildren – which he wages with a series of attacks against their grandparents. It's not always grandparents; but they are the relatives relied on most often when a child is placed in kinship foster care, that is, placement with a relative.

The evidence base for kinship care is strong

One study after another has found that placing children with relatives is more stable, better for children's well being and, most important *safer* than what should properly be called "stranger care." Grandparents and other relatives also are far less likely to ask that the children be doped up on psychiatric medication.

In contrast, study after study finds abuse in one-quarter to one-third of foster homes and the record of group homes and institutions is worse.

But the Montgomery motto seems to be: Never let facts get in the way of grabbing a headline.

So we get a proposal to subject every grandparent and other relative to an ideological litmus test that will be almost impossible for many of them to meet. Imagine the scenario: You're a grandmother and a stranger comes to your door and says: "We've just taken your grandchildren from your daughter because she abused them. We'll place them with you instead of a total stranger – provided that you immediately take us at our word that your daughter is, indeed, a child abuser. Reveal even the slightest doubt that we are absolutely right and everything you may believe about your daughter is wrong, and we'll punish your grandchildren for your doubts by placing them with total strangers – and putting them at significant risk of abuse."

The rationalization for this is that somehow, if a grandparent doesn't believe the charges, that will translate into "witness tampering" and/or unauthorized contact with the parent. And where, exactly is Montgomery's evidence that this happens so often that it

presents a greater danger than the well-known emotional harm, and risk of abuse, in stranger care? He provides none, of course.

In contrast, as noted above, multiple studies have found abuse in one quarter to one-third of stranger care homes, and the record of group homes and institutions is even worse.

Two class-action lawsuits in other states, which allow administrative appeals of caseworker findings of child abuse, found that in 75 percent of cases, those findings were overturned on appeal. So often, relatives have good reason to be skeptical about caseworkers' claims.

Up to now, kinship care has been one of the few things Arizona has done right – placing children in kinship care at a rate above the national average. Now, even as his other proposals are likely to lead to even more children taken away from their parents, Bill Montgomery wants to curb the use of kinship care. Where, exactly, does he propose to place all these children?

Other problems with the recommendations

- Montgomery actually proposes to deprive children of some of their rights when he demands “an absolute prohibition for victim and alleged perpetrator contact in Team Decision Making meetings.”

Team Decisionmaking is a process in which everyone who cares about a child, and wants to be present, is brought together to try to craft a plan to keep that child safe. It’s been highly successful across the country.

The scare scenario Montgomery wants to conjure up is of, say, a seven-year-old forced to sit in the same room as the father who raped her. But under Team Decisionmaking no one, child or adult, is present against her or his will. Older children are present only when they want to be.

For example, what about, say, an eight-year-old whose mother was charged for leaving him home alone so she could work? What if he wants to see his mother and talk to her at the meeting? What about the 15-year-old who was taken away because the parents lived in unsafe housing – because it was all they could afford? What if he *wants* to be at the meeting to advocate for moving the whole family into better housing?

Or, conversely, what if that rape victim is 17, not seven. What if she wants to be there to tell her father what a stinking piece of [excrement] he is, and why he should rot in jail for the rest of his life? What about *her* rights?

- As usual, Montgomery tries to draw a bright line between “criminal” and non-criminal child abuse. But his recommendations offer no definition of criminal. Does the mother who smokes a marijuana cigarette to ease the pain of labor wind up subject to investigation by Montgomery’s new “criminal corps”?

In Maryland, they recently created a criminal neglect statute. One of the first to be charged was a 40-year-old single mother who left her children, ages 8, 9, and 11 home alone

while she worked at a chicken processing plant. Are those the kinds of “criminals” Montgomery plans to target?

- Of course, Montgomery wants to expand the rush to termination of parental rights in the name of “permanency.” What it really means is that many more children will be taken needlessly from loving homes forever – with no guarantee of that permanency. Nationwide, previous moves to expedite termination of parental rights have led to a 70 percent increase in the number of children who “age out” of foster care each year with no home at all.

- The call for creating a presumption that investigative records and reports are open is a step in the right direction, but it doesn’t go far enough. For starters the presumption should apply to all records, including case plans and delivery of services. And DES should not retain the power to decide.

The presumption should be rebutted only by a lawyer for the child or the parent asking a judge to close a particular record. If the lawyer for either party could show, by clear and convincing evidence, that releasing the document would harm a child, then the judge could order that particular record closed. (Under this plan DES would not even be allowed to ask for secrecy, since DES has no interest in secrecy other than to cover its mistakes.)

Montgomery’s plan also is silent on the need to create the same strong rebuttable presumption of openness for all court hearings.

- There are multiple calls to further involve foster parents and CPS workers in policy discussions and decision making. That makes sense. But of course there is not one word about doing the same with birth parents. That’s because of the stereotype promoted by everyone from Janet Napolitano to Bill Montgomery of all birth parents as at best sick or at worst, evil. That’s nonsense. The overwhelming majority of birth parents love their children, want what’s best for them and often have lost them to foster care because of their poverty.

The fact that he is so determined to shut them out of all decision making shows that Montgomery’s token comments about more help and services, and his silly claim that fewer children will be removed are disingenuous.

- And finally, Montgomery even revives the first great panacea that failed – the false claim, propounded by Napolitano that somehow the mandate for CPS workers did not put enough emphasis on child safety. In fact, the law was changed, just the way Napolitano wanted. CPS workers equated child safety with child removal and set off the foster-care panic that made the entire system worse; the panic that still hasn’t ended. (For details, see [our comprehensive report on Arizona child welfare](#).)

Yet somehow, Montgomery claims the law wasn’t changed enough.

In short, Montgomery offers only more of the same family-bashing take-the-child-and-run approach that Arizona has been using for nearly a decade – the approach that took a bad system and made it much, much worse.