

# Shadow on the Sunshine state

**How Florida's war against child abuse  
became a war against children**

A report from the  
NATIONAL COALITION FOR  
CHILD PROTECTION REFORM  
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## Sunshine state

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became a war against children

By Richard Wexler

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## ABOUT NCCPR

The National Coalition for Child Protection Reform is a non-profit organization whose members have encountered the child protective system in their professional capacities and work to make it better serve America's most vulnerable children. **Board of Directors: President:** *Diane Redleaf*, former Supervisory Attorney, Children's Rights Project, Legal Assistance Foundation of Chicago. **Vice President:** *Carolyn Kubitschek*, attorney specializing in child welfare law, former Co-ordinator of Family Law, Legal Services for New York City. **Treasurer:** *Joanne C. Fray*, attorney with extensive experience with litigation involving the care and protection of children and termination of parental rights, Lexington, Mass. **Directors:** *Elizabeth Vorenberg*, (Founding President) former Assistant Commissioner of Public Welfare, State of Massachusetts; former Deputy Director, Massachusetts Advocacy Center; former member, National Board of Directors, American Civil Liberties Union; *Annette Ruth Appell*, Associate Professor, William S. Boyd School of Law, University of Nevada, Las Vegas; former member of the Clinical Faculty, Children and Family Justice Center, Northwestern University Law School Legal Clinic, former Attorney and Guardian ad Litem, office of the Cook County, Ill. Public Guardian; *Marty Beyer, Ph.D.*, clinical psychologist and consultant to numerous child welfare reform efforts; *Ira Burnim*, Legal Director, Judge Bazelon Center for Mental Health Law, Washington, DC; former Legal Director, Children's Defense Fund; former Staff Attorney, Southern Poverty Law Center; *Martin Guggenheim*, Director of Clinical and Advocacy Programs, New York University Law School; Prof. *Zelda Harris*, Director, Domestic Violence Law Clinic, University of Arizona College of Law; *Martha Matthews*, Staff Attorney, National Center for Youth Law, former Director, Family Advocacy Program, Stanford University Law School; Prof. *Dorothy Roberts*, Northwestern University School of Law. **Staff:** *Richard Wexler*, Executive Director. Author, *Wounded Innocents: The Real Victims of the War Against Child Abuse*. (Prometheus Books: 1990, 1995).

**NCCPR's National Advocacy Activities are funded by grants from the Annie E. Casey Foundation, the Open Society Institute, part of the Soros Foundations Network, and the Edna McConnell Clark Foundation.**

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Second Edition, April 2000

## OVERVIEW

There are children in Florida for whom life has become marked by a daily forced march. By day, they are confined to an office of the state Department of Children and Families. By night, they sleep on cots in a day care center. The next morning, they are herded over to a homeless shelter for a shower and a meal.<sup>1</sup>

When they're lucky, they can sleep in a foster home – but just for one night. Then it's back to the office the next day. Another night, it might be a bed in a hotel room, shared with other troubled children.<sup>2</sup>

For Florida's nomad children, there are none of the normal comforts of child-

hood. There are no friends at school because their lives are so chaotic that often they can't go to school. There are no foster parents to comfort them, because Florida has too many foster children and therefore has run out of foster parents.

And there are no birth parents to love them and reassure them, because they have been taken from those parents and rarely even get a chance to see them. In some cases, the children really needed to be taken from those parents. But in other cases, the removal almost certainly never needed to happen in the first place.

At least one child treated this way came up with his own "solution." Twice, he tried to kill himself, once by drowning, a

second time by trying to throw himself off a hotel balcony.<sup>3</sup>

For other children, life is even worse. They are taken away from their parents in the name of child protection, only to be beaten or raped in foster care. In Broward County, a lawyer who represents children has said in a sworn affidavit that, over a period of just 18 months, he was made personally aware of 50 instances of child-on-child sexual abuse involving more than 100 Broward County foster children. He called it “an epidemic of child-on-child sexual abuse” in Broward County foster care.<sup>4</sup>

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**DCF Deputy Secretary Linda Radigan has said: “No one saw this coming.” But anyone *could* have seen it coming, had they only looked.**

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Even some of the lucky foster children in Florida, aren't really so lucky. They are children like Courtney. Taken away from her mother at four months of age, Courtney now is over a year old. Although her foster mother has taken good care of her, Courtney faces a different kind of tragedy – she never needed to lose her mother in the first place.

Though she cannot provide details because of confidentiality laws, foster mother Ronni Johnson says a simple misunderstanding prompted someone to turn in Courtney's mother. “There really was not a problem at all,” Johnson says. “It was total nonsense.”

But Johnson says DCF refused to listen and needlessly separated mother and child. Then, DCF repeatedly misplaced the

file so Courtney's mother was not even told what hoops she had to jump through to get her daughter back.

Johnson is president of the Lake County Foster Parents Association. It is a testament to the rampant needless removal of children in Florida, that even foster parents are complaining about it.<sup>5</sup>

What compounds all of these tragedies is the simple fact that they never had to happen. They are a direct result of misguided laws and policies that Florida's leaders either knew or should have known were doomed to fail – because the same policies had failed in state after state before Florida ever tried them.

DCF Deputy Secretary Linda Radigan has said: “No one saw this coming.”<sup>6</sup> But anyone *could* have seen it coming, had they only looked.

The most cursory look at the experiences of other states would have told DCF exactly what to expect by pursuing the same mistaken policies.

The National Coalition for Child Protection Reform tracks developments in child welfare systems all over the United States. Many of those systems are dreadful. But at this moment, there is probably no place in the United States where it is worse to be a foster child than the State of Florida.

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**The unintended consequence of the policies of Kathleen Kearney and the Kayla McKean law is that more Florida children are likely to die.**

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In one respect, Florida *has* outdone other states. In some ways, the chaos in Florida appears unprecedented.

- Even as the state moves to privatize foster care in most places, in one of the first places where it was tried, the state is moving to *unprivatize* it.

- One month, the head of DCF swoops down on a region to reopen files and have more children taken away. A few months later, the regional director in the same region reopens files again to see which children can be put back.

For the chaos, and the harm to children, blame rests squarely with DCF Secretary Kathleen Kearney and State Sen. Anna Cowin. They have done what once seemed impossible: take a dreadful child welfare system and actually make it worse. Though all of their actions appear to have been taken with the best of intentions, those actions have turned Florida's war against child abuse into a war against children.

The rationalizations are, by now, familiar. DCF says it must engage in mass confiscation of children because, however traumatic emotionally, at least it will keep them safe. It is done in the name of "child protection." Repeatedly DCF tells us they are "erring on the side of the child."

But that kind of rhetoric amounts to using innocent children as human shields behind which to hide failed policies. The Florida child welfare system is destroying children in order to "save" them. Kearney has set off a foster care panic in which untold numbers of children who often were unharmed in their own homes face emotional destruction and sometimes physical and sexual abuse in foster care. Cowin compounded the problem with the "Kayla McKean law."

Kearney's policies and Cowin's law have combined to cut a swath of destruction through thousands of Florida families. They have spread misery and despair among children and done nothing to make those children safer. In fact, they have increased the danger to the very children they were in-

tended to protect. Evidence from other states that have tried the same approach is overwhelming: The unintended consequence of the policies of Kathleen Kearney and the Kayla McKean law is that more Florida children are likely to die.

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**Kearney's own regional director in Broward County, Phyllis Scott, recently acknowledged that about 35 percent of the children in Broward County foster care could have remained safely in their own homes had the right services been available.**

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Some parents really are brutally abusive or hopelessly addicted, and their children really must be taken away. But in other cases children are taken because their parents' poverty has been confused with "neglect." Still other cases fall on a broad continuum in between, the parents neither all victim nor all villain.

Kearney's own regional director in Broward County, Phyllis Scott, recently acknowledged that about 35 percent of the children in Broward County foster care could have remained safely in their own homes had the right services been available.<sup>7</sup>

But for every case, Kathleen Kearney offers only one answer: Take the child and run. At least one of her subordinates almost gloats about cutting prevention programs as DCF pours scarce resources into taking away more and more children. The Kayla McKean law compounds the problem.

As a result, many children suffer far greater harm at the hands of the state than they ever endured at the hands of a parent. It profanes the memory of Kayla McKean to have her name on a law that has hurt so many children.

The problem with the approach taken by Kearney and Cowin is *not* that it hurts parents, though of course it does. The problem with their approach is that it hurts children.

- It hurts children when they are subjected to emotionally devastating interrogations and stripsearches – actions now required in many cases by the Kayla McKean law even when DCF workers themselves believe the parents are innocent.

- It hurts children when they are taken from everything loving and familiar and thrown in with strangers, never knowing if they will see their mother and father – and often brothers, sisters, grandparents, friends, teachers, and classmates -- ever again. Younger children often assume they must have done something terribly wrong, and now they are being punished.

- It hurts children when the emotional trauma is compounded by physical and sexual abuse in foster care itself, a widespread problem nationwide and one which worsens during a foster care panic.

- And it hurts children when workers are so overwhelmed dealing with the huge increases in their caseloads that they have even less time to find children in real danger, so more such children are overlooked.

You can do almost anything you want to a child in Florida today – as long as you're from DCF and you call it "erring on the side of the child."

Florida law defines child abuse as "an intentional act that could reasonably be expected to result in physical and mental injury to a child."<sup>8</sup> By that definition, placing any but the most seriously endangered child in the Florida foster care system is in

itself an act of child abuse.

Though many states have made the same mistakes as Florida, other states have refused to hop on the family-bashing bandwagon. They have found ways to reduce their foster care populations while making children safer. **In contrast, states that have taken Florida's approach repeatedly have found that total child abuse deaths actually increased.** That's because when workers are overwhelmed with children who *don't* belong in foster care, they have even less time to find those who really *do*.

In December, 1999, NCCPR wrote to both Kearney and Cowin by certified mail, seeking to discuss these issues and, in particular, to point them in the direction of states that are succeeding where Florida has failed. We know the letters were received. But we received no response. (The letters and copies of the notices of certified mail and return receipts can be found in Appendix 1).

## ROOTS OF THE CURRENT CRISIS

The problems at DCF predate the arrival of Kathleen Kearney, though she has made them far worse. Indeed, they predate the creation of DCF as a separate agency. They are the result of poor policies, poor administration and what amounts to a form of government-sanctioned child neglect in Florida: the repeated failure of a succession of governors and legislatures to adequately fund DCF or its predecessor, the Department of Health and Rehabilitative Services.

And just as now, those problems included failures in both directions. The agency repeatedly left some children in dangerous homes, even as it also repeatedly removed other children from safe ones.

- In FY 1989, half the people who

filed administrative appeals of HRS decisions “confirming” child abuse allegations against them and listing their names in a central registry had the determinations overturned.<sup>9</sup>

(No one knows what the number would be today. Florida no longer uses the central registry for employment screening. On those grounds, DCF abolished the appeals procedure).<sup>10</sup>

- In 1991, a year when 10,150 children were in foster care<sup>11</sup> an internal HRS study found that at least one-third of them could safely be in their own homes.<sup>12</sup>

- That same year, a survey of case-workers concerning barriers to doing their jobs found that 63 percent cited “responding to minor neglect reports” and 64 percent cited “completing reports on obviously unfounded cases.”<sup>13</sup> The commission that conducted the study also found that “children who could remain with their parents are

not receiving the services they and their families need,” causing “unnecessary admissions to shelter and foster homes.”<sup>14</sup>

In July, 1991, the *Tampa Tribune* won a lawsuit giving the newspaper access to more than 4,700 pages of previously secret HRS documents. The newspaper found that “Dozens of Florida children have been brutalized and as many as 10 were killed partly due to the indifference, incompetence or neglect of state workers charged with protecting them ...”<sup>15</sup>

In a series of reports, the newspaper documented both children left with dangerous birth parents and children “terrorized again at the hands of foster care givers.” At times, the *Tribune* reported, the “affirmation of safety [in foster care] becomes an epitaph of death or injury, the state’s own records prove.”<sup>16</sup>

## Florida’s Forgotten Victims

**There are some children people in Florida, and indeed around the nation, are never likely to forget.**

**More than ten years after his death, people remember Bradley McGee. And the case of Kayla McKean received attention all over the country, including an entire edition of *Dateline NBC*.**

**Each time such a case makes headlines, there are people who are quick to scapegoat efforts to keep families together. They tell us the death proves that family preservation is inherently unsafe. They tell us we need to pay more attention to “children’s rights.” To put “child protection ahead of family preservation” and “err on the side of the child.”**

**But other children, their lives as short and as tragic, have gotten less attention.**

- **Corey Greer, of Treasure Island, died when he was four months old of dehydration.**
- **Diana Nicole Whaley, of Ocala, three-years-old, bled to death after a beating.<sup>17</sup>**
- **Melissa King of Tampa, six-years-old, died of a beating so severe it ruptured her spinal cord.<sup>18</sup>**

**Why are these children so quickly forgotten? Perhaps because they don't fit the "formula." Corey Greer, Diana Nicole Whaley and Melissa King died with their "children's rights" on. They died only *after* the state "put child protection ahead of family preservation." They died only after the state "erred on the side of the child."**

**They died in foster care.**

**Corey Greer died in a foster home that police later would describe as "filthy and overcrowded." The home was licensed for five, but at the time Corey died, 12 children were living there. The foster mother was convicted of manslaughter and third degree murder.**

**Even so, Corey might have survived if only he had been white. According to a witness at the foster mother's trial, the foster mother said that touching black children "just gives me the willies." According to the witness, the foster mother referred to Corey Greer as "a big black blob."<sup>19</sup>**

**But after Corey Greer died, nobody pointed to the death as "proof" that foster care is inherently unsafe and should be abolished – and of course no one should draw that conclusion.**

**The overwhelming majority of foster parents don't abuse the children in their care. But neither do the overwhelming majority of birth parents. It would be as absurd to call for the virtual abolition of foster care based on the cases of Corey Greer, or Diana Nicole Whaley or Melissa King, as it would be to virtually abolish efforts to keep families together because of the death of Kayla McKean – yet DCF is doing just that, even though, as will be shown later in this report, real family preservation programs are safer than foster care.**

Two years later, the *Tribune* exposed the system again, through the terrifying

story of one child who grew up in it. She was taken from a genuinely neglectful

mother only to be beaten, burned, tied to a bed and nearly starved to death in one of 16 foster or failed adoptive homes.<sup>20</sup>

The head of HRS at the time, Jim Towey, ordered his top administrators to read the series and write analyses of the state's role. One administrator wrote: "If what HRS did in this case is how we are to do our job then please just close us down now – we don't deserve to be in business."<sup>21</sup>

Instead, HRS was simply broken into pieces and given a new name. And the administrator who showed such compassion for an abused foster child, Anita Bock, resigned last year -- under pressure from Kathleen Kearney.

## WHO IS IN THE SYSTEM?

We all know the stereotype about who loses a child to the foster care system. And since we've heard the horror stories so often, it's easy to believe that they represent the norm. But most parents who lose their children to foster care are neither brutally abusive nor hopelessly addicted.

Nationwide, at least 56 percent of "substantiated" child abuse cases involve allegations of neglect, not abuse.<sup>22</sup> Although precise data were unavailable for Florida, according to DCF's website "most children come into [foster] care due to neglect..."<sup>23</sup>

Neglect can be extremely serious – it can mean a parent deliberately starving a child or leaving the child alone for days at a time; but far more often, it means the child who is hungry because the foodstamps ran out, or the child who is left alone because his mother is terrified of being sanctioned off the welfare rolls for not showing up at her make-work job.

Florida defines neglect as "a caregiver's failure or omission to provide a child with the care, supervision, and services nec-

essary to maintain the child's physical and mental health, including, but not limited to, food, nutrition, clothing, shelter, supervision, medicine and medical services..."<sup>24</sup> By that definition, almost any poor family, at some time or other, could be caught in DCF's web.

For example, imagine that you are an impoverished single mother with an eight-year-old daughter and a four-year-old son. The four-year-old is ill with a fever and you need to get him medicine. But you have no car, it's unusually cold, it's pouring rain, and it will take at least an hour to get to and from the pharmacy. You don't know most of your neighbors and those you know you have good reason not to trust.

What do you do?

Go without the medicine? That's "medical neglect." DCF can take away your children for medical neglect. Dress the feverish four-year-old in the one, threadbare coat he's got and take him out in the cold and rain? That's "physical neglect." DCF can take away your children for physical neglect. Leave the eight-year-old to care for the four-year-old and try desperately to get back home as soon as you can? That's "lack of supervision." DCF can take away your children for lack of supervision.

All of which helps explain the real-life case of a man in West Palm Beach named Peter Reyes.

Reyes was a single father, caring for sons aged seven and four. He had worked installing air conditioners and ceilings, but he couldn't do that kind of work after surgery. Finding another job was hard because he had no car. His children were always loved, but it was getting harder and harder to keep them fed and housed. He called agency after agency and did everything he could think of. But soon Peter Reyes began falling behind on his bills, including the rent. Soon after, the family was evicted.

Reyes was able to get the help he needed from DCF, but only after agreeing to give up his children. Unlike most such cases, this one made news because, technically, Reyes had placed his children with DCF "voluntarily." In fact, there was already a "neglect" case open on him. He had been turned in by the director of a child care center who complained that the Reyes children wore dirty clothes.

Day care for the children and emergency housing aid for the father were all that were needed to keep the family together until Peter Reyes could find a job. Instead, DCF offered the help Peter Reyes needed only in exchange for his children.<sup>25</sup>

Other cases fall on a broad continuum between the extremes.

No one knows exactly how many such cases there are, but there are some clues. There is the 1991 HRS study cited earlier indicating that one-third of the state's foster children could safely be in their own homes – at a time when Florida was taking fewer children than it is taking today.

More recently, Dr. Ivor Groves, one of the nation's leading authorities on child welfare, and the court-appointed monitor of the nation's most successful child welfare reform, in Alabama, studied the system in Broward County. He offered his expert opinion for plaintiffs who sued over conditions in Broward foster care.

Among his conclusions:

**“Children are likely entering care when family preservation could be achieved if more time was available to work with the family carefully to address the issues that actually create a safety risk to the child...Children are staying in the custody of the department longer than necessary because of lack of options for permanent placement, lack of sufficiently intensive reunification efforts resulting from high caseloads and lack of enough**

**options for timely and intensive in-home services.”<sup>26</sup>**

And now, it turns out, the DCF regional director for Broward, a Kearney appointee, apparently agrees.

As noted earlier, Phyllis Scott estimates that, were the right services available, 35 percent of the children now in Broward County foster care could have been able to remain safely in their own homes.<sup>27</sup>

There also is evidence from around the nation:

- A study of "boarder babies" -- children who spend months in hospitals, found that the biggest single factor causing their forced hospital stays was lack of housing.<sup>28</sup>

- Families struggling to keep their children out of foster care are stymied by two major problems: homelessness and low public assistance grants, according to two New York City studies.<sup>29</sup>

- A study of "lack of supervision" cases in New York City by the Child Welfare League of America found that in 52 percent of the cases studied, the service needed most was what one might expect -- day care or babysitting.<sup>30</sup> But the "service" offered most often was foster care.

- Ruling in class-action lawsuits, courts in New York City and Illinois have found that families are repeatedly kept apart solely because they lack decent housing.<sup>31</sup>

- In Washington D.C., where the foster care system has been taken over by the federal courts, the former receiver named by the court to run the system found that between one-third and one-half of D.C.'s foster children could be returned to their parents right now -- if they just had a decent place to live.<sup>32</sup>

- In California, homeless children were given emergency shelter only on condition that they be separated from their parents, until a successful lawsuit put an end to the practice.<sup>33</sup>

- The National Commission on Children found that children often are removed from their families "prematurely or unnecessarily" because federal aid formulas give states "a strong financial incentive" to do so rather than provide services to keep families together.<sup>34</sup>

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**One foster child told her caseworker "I carry my dolls and books with me so they [other children] won't destroy them. Saturday night one girl beat me up...I don't want to stay here. This is not a place to live."**

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The emotional damage of taking these children from everything loving and familiar should be reason enough to be appalled at the massive, needless removal of Florida children from their homes. That emotional damage should be reason enough to refuse to accept the myth that removing children at the drop of a hat is just "erring on the side of the child."

But for many children forced into the Florida foster care system, the emotional abuse is just the beginning.

### **THE PANIC IN BROWARD**

There is no public official anywhere in Florida who should have been more aware of the harm to children caused by a foster care panic than Kathleen Kearney. Because before the panic spread statewide, it was well underway in her home county.

In 1998, the Broward DCF office sought to take children from their parents twice as often as their counterparts in Miami-Dade<sup>35</sup> – even though Miami has a higher population.

The reason is unclear. There was no single event, such as the death of a child "known to the system" in Broward of the sort that usually triggers such a panic. Perhaps it was the influence of Kearney herself. At the time she was a Broward County Circuit Judge. Then, as now, she was an outspoken advocate of more removal of children from their homes.

But while the reasons may be unclear, there is no doubt about the results.

- Caseworkers wound up carrying up to eight times the recommended caseloads.<sup>36</sup> One foster care counselor had 135 cases.<sup>37</sup>

- Foster parents took in as many as ten children at a time.<sup>38</sup>

Ivor Groves, the nationally-recognized child welfare expert, said in a sworn affidavit that the Broward system "is dangerously out of control...These are the worst conditions I am aware of in a child welfare system..."<sup>39</sup>

And what is happening to these children?

- A three-year-old girl, left alone in a crowded foster home, was beaten so badly she suffered a concussion. Her attacker was a 14-year-old boy with a history of violence.

- In another foster home, the same child's older brother, age seven, was molested.<sup>40</sup>

- An 11-year-old was lured away from her foster home by another foster child, then gang-raped by three men.

- An eight-year-old was sexually abused in his ninth foster home placement, an overcrowded home with at least 11 children who ranged in age from 14 months to 14 years old. He had been moved after the previous foster mother allegedly told her own children to hit the boy with coat hangers on his legs and buttocks – so the marks wouldn't show.<sup>41</sup>

One foster child told her caseworker "I carry my dolls and books with me so they [other children] won't destroy them. Saturday night one girl beat me up...I don't want to stay here. This is not a place to live."<sup>42</sup>

The cases were not aberrations. Attorney David Bazerman represents children in Broward County. In a sworn affidavit he

declared that over a period of just 18 months, he had been made aware of 50 cases of child-on-child sexual abuse involving more than 100 Broward County foster children. He called it "an epidemic of child-on-child sexual abuse" in Broward County foster homes.<sup>43</sup>

Sometimes emotional trauma was inflicted by caseworkers themselves. In one case, workers suddenly showed up in the middle of the night, woke a foster child from a deep sleep and whisked her away to another placement without a word of explanation, as the girl's six-year-old sister screamed "Where are you taking my sister?"<sup>44</sup>

At one point, the Mayor of Ft. Lauderdale declared a "day of prayer" for Broward County's foster children.<sup>45</sup> So far, that hasn't been enough.

## **"Could this child be any worse off with his mother than he has been with the department?"**

**EXCERPTS FROM A STORY IN THE FT. LAUDERDALE SUN SENTINEL, NOV. 29, 1998**

***"...[A]n 8-year-old boy in the custody of [DCF] cowered under a table in his therapist's office and confided a terrible secret.***

***"'Mommy, I need to tell you something,' the boy whispered. 'You can't tell anybody because I'll get in trouble. They'll hurt me.' The little boy, terrified and crying, told how he has been sexually abused day after day by teen-agers in his foster home. ...[The] 8-year-old boy was sexually assaulted as often as twice a day in a foster home that a judge declared unsafe for him two months earlier.***

***"It was not the first time the system failed the boy, according to court records and testimony. The child went weeks without medi-***

***cal attention for a severe ear infection while under state custody. He was bounced among foster homes and schools and separated from his younger sister and brother. The sister, just 6 at the time, suffered physical abuse in a foster home by an older child.***

***"This case is an example of the worst things that are happening in the system,' Circuit Judge Arthur Birken wrote in May. 'This court wonders ... what favor is being done to children when they are removed from the home and put in situations where they are abused and neglected?'***...

***"In October, the judge again voiced his concerns about the case, this time over the 8-year-old boy. The state had placed him in a foster home with 8 or 9 older children who had "mental handicaps," Birken wrote. 'It is this court's opinion that the home is not an appropriate placement,' Birken wrote in an Oct. 1 order. But the agency disregarded the judge's order and left the child in the home.***

***"On Monday, during a visit with his mother at his therapist's office, the boy said he had been repeatedly sexually abused by four of the older children ...***

***"Finally, the agency moved the boy ...***

***"The mother had completed the tasks the state gave her to get her children back. On Oct. 1, Birken ordered the state to arrange for a therapist to monitor a visit between the mother and her children to see if she was ready to be reunited with them. It took a month for the agency to arrange the visit. In court this week, the judge personally called the therapist to move up the appointment. He said he wants to send the boy home.***

***"Could this child be any worse off with his mother than he has been with the department?" the judge asked.<sup>46</sup>***

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**But that wasn't the end of the story. The boy did go home, but his brother and sister did not – in part because DCF feared that after all that had been done to the boy while in DCF custody, the boy might sexually abuse his siblings.**

**So he became despondent and told a counselor he was being abused at home. One day, he climbed on the ledge of an "assessment center" and threatened to kill himself. Now, at the age of 9, he is in a "residential treatment center" in Georgia.<sup>47</sup>**

It's not that Judge Kearney was unaware of the crisis, indeed, she spoke out against the conditions to which Broward County children were subjected in foster care. But she apparently was oblivious to role that needlessly taking away too many children played in exacerbating those conditions.

Whereas her colleague at the time, Judge Arthur Birken, began to express qualms about placing so many children in

such a dreadful system (See "Could This Child..." above), Kearney actually called for taking away more.

When the Ft. Lauderdale *Sun-Sentinel* posed the question "So why is Broward one of the worst in the State?" the story reported that "Circuit Judge Kathleen Kearney...blames poorly trained workers who have been too focused on keeping families together, sometimes ignoring signs that children are in danger."<sup>48</sup>

## **Foster Care: The Real Record on Safety**

**You hear it over and over again: Sure, foster care may do enormous emotional damage to a child, especially one who never needed to be taken from his or her parents in the first place, but at least in foster care, the child is safe, so we should "err on the side of the child."**

**But that ignores the fact that the emotional trauma is far too serious to be so blithely brushed aside. It also ignores the dirty little secret of foster care: Often, it's *not* safe. There is evidence from all over the country.**

**A study of reported abuse in Baltimore, found the rate of "substantiated" cases of sexual abuse in foster care more than four times higher than the rate in the general population.<sup>49</sup> Using the same methodology, an Indiana study found three times more physical abuse and twice the rate of sexual abuse in foster homes than in the general population. In group homes there was more than ten times the rate of physical abuse and more than 28 times the rate of sexual abuse as in the general population, in part because so many children in the homes abused each other.<sup>50</sup>**

**Those studies deal only with reported maltreatment. The actual amount of abuse in foster care is likely to be far higher, since agencies have a special incentive not to investigate such reports, since they are, in effect, investigating themselves.**

**In New York City, for example, where Children's Rights Inc. settled a lawsuit against the child welfare system, they have found that "Abuse or neglect by foster parents is not investigated because**

**[agencies] tolerate behavior from foster parents which would be unacceptable by birth parents."<sup>51</sup>**

**Studies not limited to official reports produce even more alarming results. Another Baltimore study, this one examining case records, found abuse in 28 percent of the foster homes studied -- more than one in four.<sup>52</sup>**

**Even what is said to be a model foster care program, where caseloads are kept low and workers and foster parents get special training, is not immune. When alumni of the Casey Family Program were interviewed, 24 percent of the girls said they were victims of actual or attempted sexual abuse in their foster homes. Furthermore, this study asked only about abuse in the one foster home the children had been in the longest. A child who had been moved from a foster home precisely because she had been abused there after only a short stay would not even be counted.<sup>53</sup>**

**This does not mean that all, or even many, foster parents are abusive. The overwhelming majority do the best they can for the children in their care -- like the overwhelming majority of parents, period. But the abusive minority is large enough to cause serious concern. And abuse in foster care does not always mean abuse by foster parents. As the Indiana study -- and the Broward County data -- indicate, it can be caused by foster children abusing each other.**

**And we know that the more a foster care system is overwhelmed, the more homes are overcrowded, and the greater is the temptation to lower standards.**

**In contrast, as discussed elsewhere in this report, *real* family preservation programs have a far better track record for safety.**

## **THE PANIC SPREADS**

With her appointment as DCF Secretary, Kearney took her philosophy statewide.

One of Kearney's multitude of regional spokespeople declared that "If there's even a shadow of doubt about safety, that child will be removed ... Our new philosophy is to remove the child at all costs," she said,<sup>54</sup> ignoring the fact that there is far more

than a shadow of doubt about the safety of foster care.

In May, 1999 Kearney sent what she called "a strike force" to Orlando to reopen thousands of cases to see if children had been left at home when they should have been taken away.<sup>55</sup> She ordered no comparable check of the files of children taken away to see if they could go home.

But six months later her new, hand-picked regional director did just that, forced

by the huge numbers of children entering the system to look at the files yet again to see if any children could go home.<sup>56</sup>

In August, Kearney visited Hillsborough County.

Here's how the *St. Petersburg Times* described it.

*"[Kearney] said she had gotten wind that ... new employees may face pressure to close their investigations quickly because of the number of new cases piling up. ...[S]ome of the staff began to gently indicate they were not aware of any such pressure.*

*"Kearney's response was immediate and sharp. 'I don't want to have to move from Orlando to Tampa to do a full-file review, but I will do it.'"*<sup>57</sup>

And even as Kearney brags about budget increases to investigate cases and take away children, \$1.7 million in aid for prevention programs is being cut.<sup>58</sup>

Though cuts in social services are common, those doing the cutting typically express regret. But when the state cut funding for two such programs on the Treasure Coast, Kearney's regional spokeswoman almost bragged about it.

"It is correct that we're taking prevention money and putting it into intervention programs," she said. "Now the whole philosophy is safety driven instead of prevention driven."<sup>59</sup>

In that district, Kearney is withdrawing all funding from a crisis nursery, -- a place where parents or other caretakers under stress can leave their children for a few hours or a few days. The nursery also provides concrete help.

For a great-grandmother suddenly asked by DCF itself to care for five great-grandchildren the center has been a lifeline.

"I was living by myself and my salary was very modest," she told the *Vero Beach Press Journal*. "They brought money for clothes and food."

And then, they would take the children for a few days at a time, when their great grandmother got too tired.<sup>60</sup>

If money can't be found to make up for Kearney's decision, the lifeline will be cut.

Among the unkindest cuts of all is the state's decision to opt out of a Jacksonville program that is the epitome of common decency: comfortable, humane places for parents to visit their children while those children are in foster care.

In addition to the warm environment at two sites in Jacksonville, staff of the Family Visitation Center help arrange the transportation needed to get everyone to the visits, often a huge barrier to parents too poor to own cars.

It is funded with a combination of DCF dollars and private support. But last November, DCF announced it was cutting its entire \$83,000 contribution -- an amount equal to about three one hundredths of one percent of the new child welfare money in Governor Bush's budget proposal.

"The vast majority of [parents who lose their children to foster care] are not bad people," the Center's director, former child abuse investigator Barbara Alexander told the *Florida Times-Union*. "Some of them just need to learn how to hold a baby, as simple as that sounds."

The *Times-Union* described a visit:

*"Robert squealed as his mother's car pulled up the driveway. 'Mommy, Mommy, Mommy,' Robert said, catching the car. [Sherri] Bernasco embraced and kissed her son. Robert's three sisters were dropped off moments later, unleashing another round of hugs.*

*“After 90 minutes of games, snacks and small talk about everything from Pokemon to schoolwork, the family separated again.*

*“Robert wailed as he refused to let go of his mother. ‘I don’t want to go,’ he said. ‘Momma, no Momma. I want to go with you.’”<sup>61</sup>*

The amount of time parents can spend visiting their children is among the most crucial factors in shortening time spent in foster care and successfully reuniting parent and child. Perhaps that’s why it’s apparently such a low priority at DCF.

## ENTER SENATOR COWIN

Say this about Anna Cowin, she has no hesitancy in proclaiming her own role. When it comes to child welfare issues, Cowin declares, “I’m the lightning rod.”<sup>62</sup> To Cowin, an indication of the overwhelmed state of DCF is the fact that she couldn’t get answers. “And I’m a Senator,” she declared.<sup>63</sup>

But if one gets too preoccupied with one’s own role, it can be hard to see the bigger picture.

And the bigger picture is one of chaos, brought on by the combination of Kathleen Kearney’s policies and Cowin’s law, the “Kayla McKean Child Protection Act.”

Two provisions, in particular, have caused enormous harm. Eight years after workers complained that they were forced to spend too much time on frivolous cases, the Kayla McKean law actually prohibits hotline workers from screening out any reports that come from judges, doctors, teachers and other school personnel.<sup>64</sup>

But these same professionals also face legal penalties if they don’t report even the slightest suspicion of maltreatment.

Thus, they have enormous incentives to report trivial cases or cases in which there is no real evidence of maltreatment. Until last year, the hotline had at least the *potential* to act as a line of defense. It could have been used to prevent children from being subject-

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**Children have actually been taken from their parents and thrown into foster care just to wait for an appointment for their state-mandated strip-searches.**

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ed to the trauma of a needless investigation and to keep workers from drowning in false and trivial reports, thereby stealing attention from children in real need. But the Kayla McKean law makes that much harder.

Perhaps even worse is a provision requiring a so-called “medical evaluation” of the child for almost every category of maltreatment. “Medical evaluation” is a euphemism for a stripsearch. The stripsearches are required not only in cases in which a DCF worker, after investigating, believes there is genuine cause to suspect physical or sexual abuse. It also is required for physical and even emotional neglect.

And it doesn’t matter if the DCF worker herself finds no evidence of maltreatment and believes the allegation to be patently false. The stripsearch must be performed anyway.

The child may not even get the comfort of having this traumatic examination performed by the family doctor. In many cases only members of specified child protection teams can conduct the stripsearch.<sup>65</sup>

All over the United States, child protection agencies send workers into schools to teach children, correctly, that “your body

is your own.” But if you’re a child in Florida, it’s not. In Florida, thanks to the Kayla McKean law, all it takes is for a malicious or otherwise unfounded report to be called into a hotline and passed on to an investigator for a child to be subject to a mandatory strip-search.

And because child protection teams are now overwhelmed by the demands of the new law, children have actually been taken from their parents and thrown into foster care just to wait for an appointment for their state-mandated stripsearches.<sup>66</sup>

Legislation introduced the day the first edition of this report was released would solve some of these problems.<sup>67</sup>

It has been argued that the Kayla McKean law would work if only the state spent more money on it. The state does need to spend far more on child welfare – but not on a law built on false premises, a law that is inherently harmful to children. Spending more on the Kayla McKean law would not end the needless stripsearches of innocent children – it would just speed them up. (There is more on how Florida *should* be spending its money later in this report).

The combination of Kearney’s policies and Cowin’s law has had results as predictable as they are disastrous.

- Statewide, in just one year, the number of children removed from home and placed in “emergency shelter” increased by 80 percent.<sup>68</sup> Though other states have experienced similar foster care panics, none has been quite that bad.

- In Hillsborough County, the number of abuse investigations is up by 34 percent – but, in a reflection of Kearney’s priorities, the number of children taken away from their parents is up by 73 percent.<sup>69</sup> In some homes ten infants are living in one foster home. Other homes, licensed for no more than five children, have 12. And children are beginning to sleep in DCF offices.<sup>70</sup>

Said one supervisor: “We can’t do the quality investigations we want to do. It’s going to increase the chances of a child getting hurt or dying.”<sup>71</sup>

- In Palm Beach County, one in four foster homes is overcrowded with more children than allowed by law. The number of children in foster care is up by 19 percent since 1997.<sup>72</sup>

- In the Jacksonville area, the number of overcrowded foster homes increased from 14 in 1998 to 65 in May, 1999 – and that was before the impact of the Kayla McKean law was felt.<sup>73</sup>

By October, according to the *Florida Times-Union*, caseworkers were getting 25 to 30 new cases a month, on top of cases they’ve been unable to close. The recommended national standard is 12 cases per worker.

“It’s ridiculous, It’s horrible,” said one supervisor. “In ten years I’ve not seen it this bad.”

The increased caseload has brought an increase in false and malicious calls. “We get a lot of parents who are going through divorce that want to try to use the system against each other,” said caseworker Bruce Perry. In one case, Perry said, he had to investigate the same father three times, even though he knew after the first visit there was no evidence of abuse.

Said Perry: “I’ve never been this far behind. It’s overwhelming.”<sup>74</sup>

- In Miami-Dade, Kearney used a backlog of 2,000 uncompleted investigations as a reason to pressure Anita Bock to resign. Now the backlog is over 3,000.<sup>75</sup>

- Back in Broward County, where it all began, “I think we’re backsliding, and I hate to say it,” Bernard Perlmutter of the University of Miami Children’s Law Clinic told the *Miami Herald*. “It’s a scary thing. The state is being derelict in carrying out its duty to protect children in its care.”<sup>76</sup>

- On some nights, teenagers must sleep in a DCF office, because there is no place else for them to go.<sup>77</sup>

Although the Broward County lawsuit has been settled, the terms are extremely disappointing. One has to look under a microscope to find anything DCF is actually required to *do*. For what little is required, there is no independent monitor to ensure compliance – DCF gets to police itself – and most important, there is nothing in the agreement requiring a shift in priorities from child confiscation to child abuse and foster care prevention.<sup>78</sup>

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**Said one supervisor: “We can’t do the quality investigations we want to do. It’s going to increase the chances of a child getting hurt or dying.”**

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A lawyer who often represents foster children described her reaction to the settlement this way: “I threw up.”<sup>79</sup>

But the impact of the Florida Foster Care Panic has been worst where Kayla McKean died, in Lake County and the surrounding area.

During the first six months of 1999 the number of children taken from their parents in Lake County increased by 400 percent – and it’s still climbing. At the end of 1999, there were 900 cases that no one had investigated after 45 days, and caseloads threatened to reach 200 per worker. Foster homes licensed for two or three children routinely have 12 or 13. That’s why Lake County’s children wind up on the forced march from office to day care center to shelter, or jammed into hotels.<sup>80</sup>

Of course, not everyone considers all this bad news. According to the *Orlando Sentinel*:

*“...[T]he rising numbers mean something positive, said Children & Families Secretary Kathleen Kearney. They mean that children throughout the state are safer from abuse and neglect, she said...”<sup>81</sup>*

Unfortunately, she’s wrong even about that.

## **HOW FOSTER CARE PANICS ENDANGER CHILDREN**

So far in this report, we have documented the harm to children when they are needlessly taken from their homes and placed in foster care. We have documented the emotional torment and the risk of physical and sexual abuse to these children.

But even that may not be the worst of it.

There is an excellent chance that, as a result of the Florida foster care panic, more children will die.

That’s exactly what happened when the state of Illinois embarked on policies like the policies embraced by Kathleen Kearney. And the State of Connecticut. And the City of New York.

In each case, the death of a child “known to the system” prompted the mass scapegoating of efforts to keep families together and a huge surge in foster care placements.

First came Illinois.

In April, 1993, three-year-old Joseph Wallace was killed by his mother. Joseph was “known to the system.” “Family preservation” quickly became the scapegoat. It was attacked relentlessly by politicians and much of the media -- even though most

of the programs in Illinois bore little resemblance to the safe, effective models described later in this report.

As a result, workers and judges became terrified to leave or return any child home for fear of becoming the next target of politicians and the Chicago media. Almost all efforts to keep families together were effectively abandoned amid claims that such efforts contradict "child protection."

**But instead of saving lives, child abuse deaths went up. They soared from 78 before family preservation was abandoned to 82 the first year after, to 91 in fiscal 1997.<sup>82</sup>**

That's not surprising. The abandonment of family preservation led to a foster care panic that overwhelmed the system to the point that it created a backlog of more than 5,000 uncompleted investigations.<sup>83</sup> At the same time, foster care placements increased by 30 percent in just 14 months. Child abuse deaths *in* foster care in Illinois went from zero in the year before the foster care panic to five in the first year afterwards -- an all-time record.<sup>84</sup>

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**The politicians in Illinois, Connecticut, and New York promised that if they were allowed to implement policies that resulted in huge increases in the number of children taken from their parents, child abuse deaths would go down. That didn't happen.**

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The pattern showed itself in a new way in fiscal 1998, when the Illinois foster

care panic finally abated. That year, the number of child abuse deaths finally fell below the number before the panic began. And that year also was the first year since the panic in which the total number of Illinois children in foster care actually declined.<sup>85</sup> The decline has continued and a new study documents that as the number of children in foster care has fallen, children have gotten safer.<sup>86</sup>

And abandoning family preservation caused other tragedies in Illinois.

- Having supposedly "put children first," Illinois officials soon found they had no place to put children at all. So they were jammed into a hideous shelter, then overflowed into offices. Streetwise teens were thrown together with vulnerable younger children; infants were jammed into urine-soaked cribs. An 11-year-old got hold of a gun and fired it.<sup>87</sup>

- Children were crowded into any foster home with a bed, with little screening of foster parents or foster children. As a result, according to Benjamin Wolf of the Illinois Affiliate of the American Civil Liberties Union, the Illinois foster care system became "like a laboratory experiment to *produce* the sexual abuse of children."

- A study by the Child Welfare Institute found that *at least* one third of the children taken from their parents at the height of the foster care panic could safely have been returned to their own homes.<sup>88</sup>

Abandoning family preservation took a bad system and made it, in Wolf's words, "unquestionably worse."<sup>89</sup>

Two years later, a child "known to the system" died in Connecticut. Rather than learn from the Illinois experience, Connecticut officials repeated it. They, too, scapegoated family preservation. The result: The foster care population rose 73 percent in two years,<sup>90</sup> there is a scandal over abuse in

foster care,<sup>91</sup> and, as in Illinois, child abuse deaths increased.<sup>92</sup>

Then it was New York City's turn. Again, this time in late 1995, a child "known to the system" died. Again officials blamed "family preservation" – even though child abuse deaths had declined in New York City for four years in a row. Once again, they set off a foster care panic, overwhelming the system. The result: Thousands of children have been forced to sleep, often on chairs and floors, in a violence-plagued, emergency makeshift shelter created from city offices,<sup>93</sup> a four-year-old foster child was beaten to death in a foster home opened by one private agency, apparently desperate for beds, after another had closed it down,<sup>94</sup> and the decline in child abuse deaths is over. In 1996, for the first time in five years, they went up. They went up again in 1997 and 1998.<sup>95</sup> A study that looked only at deaths of children "known to the system" found they increased by 50 percent during that same time period.<sup>96</sup>

Why does it keep happening. Why do *total* child abuse deaths, as opposed to simply deaths of children in foster care, keep going up even as more and more children are taken from their parents?

It's not as odd as it sounds.

Child protective systems all over the country are arbitrary, capricious and cruel. Workers typically are underqualified for the job, undertrained and overworked. So they repeatedly err in both directions, leaving some children in dangerous homes even as they remove other children from safe homes.

During a foster care panic, workers have far more cases, leaving them even less time for each case. That means they make even more mistakes – in both directions.

One can question that hypothesis, but this much is beyond question. The politicians in Illinois, Connecticut, and New York promised that if they were allowed to implement policies that resulted in huge

increases in the number of children taken from their parents, child abuse deaths would go down. That didn't happen.

The same promises have been made to the people of Florida.

The number of child abuse deaths in 1999, the first year of the Florida Foster Care Panic, is not known yet. Between 1994 and 1998, the number of deaths fluctuated dramatically, showing no pattern from year to year, so even when the data are available, a one-year change, up or down, is not definitive proof of anything. The other states showed a pattern over several years.

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**FLORIDA CHILD ABUSE AND  
NEGLECT DEATHS,  
CALENDAR YEARS 1994-1998**

Year	Deaths
1994	80
1995	62
1996	82
1997	71
1998	82

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Source: Florida Dept. of Children and Families.

But the policies of Kathleen Kearney and the Kayla McKean law are premised on the assumption that they will save children's lives. Experience from other states suggests that they won't.

**PRIVATIZATION – THE GREAT  
IRRELEVANCY**

As the DCF sinks like the Titanic under the weight of the crisis it created, Kearney and her staff have sought to distract

attention from their failures through an elaborate game of rearrange the deck chairs.

Everything will be fine, we are told, just as soon as everything is turned over to private agencies which will magically provide services more efficiently and effectively than DCF ever could. (Except, of course, in Lake County, where DCF is taking back cases from a private agency after getting into a finger-pointing contest over who failed Kayla McKean the most).

Once again, DCF is ignoring history – this time, more than a century’s worth.

Private agencies dominate child welfare in large parts of the country, particularly the Northeast.

In New York City, all non-relative foster care has been provided by private agencies for more than a hundred years. Yet few in child welfare point to New York City as a model of anything, except failure. Philadelphia and Chicago also rely heavily on private agencies, and their systems also have consistently been among the worst in the nation.

Closer to home, the recent revelations about Florida’s privately-run “residential treatment centers” [See: “Just Say No to the Orphanage,” P. 25] should make anyone think twice about the notion of privatization as panacea.

There also are concerns that after rearranging the deck chairs DCF will abandon ship – handing over all the problems to local governments and leaving those local governments to pick up the tab.

“Kathleen Kearney calls it ‘empowering communities’” said the *Palm Beach Post* in an editorial. “The reality sounds more like ‘dump and run.’”<sup>97</sup>

But while privatization per se is irrelevant to the quality of services, it does afford a unique opportunity for dramatic improvement – though, as is discussed below, almost certainly not in the way DCF has in mind.

## WHEN ADOPTION IS NO OPTION

There are some children for whom quick termination of parental rights and efforts to place them in adoptive homes is an entirely appropriate course of action.

But it’s the wrong answer for the many children who could safely be in their own homes if proper services were provided to keep families together.

Furthermore, the latest national data make clear that there are not even enough adoptive homes for the children who truly need them.

In 1997, Congress passed the so-called Adoption and Safe Families Act (ASFA). The law provides the ultimate incentive to states to push adoption at all costs: Money. States now receive a bounty of \$4,000 to \$6,000 for every finalized adoption above a baseline number.

As a result, states have been falling all over themselves to try to get children adopted.

But the actual results have been pathetic. The average annual increase in foster child adoptions under ASFA – 4,000<sup>98</sup> -- equals less than eight-tenths-of-one-percent of the total number of children in foster care on any given day.

Meanwhile, since 1985, the number of children in foster care has increased by an average of five percent per year.

Put another way, since ASFA was passed, the total increase in foster child adoptions has been about 8,000.<sup>99</sup> Nevertheless, during about the same time period, the total number of children in foster care rose from 520,000 to 547,000.<sup>100</sup>

Furthermore, of those 8,000 adoptions, at least 1,600 are likely to fail,<sup>101</sup> leaving children devastated when it turns out that their “forever families” really aren’t.

(ASFA actually provides an incentive for slipshod adoptive placements, since

states get to keep the money even if an adoption fails. In fact, if they place the same child again, they collect another bounty.)

And the rush to terminate parental rights is likely to create a generation of legal orphans, with no ties of any kind to their birth parents, and no adoptive home either.<sup>102</sup>

It is not possible to adopt our way out of the foster care crisis. It should be obvious by now that one more tired “recruitment campaign” for foster parents is no answer either. And as is explained on page 25, neither are orphanages.

The only way to fix foster care is to have less of it – by taking away fewer children in the first place.

### **SPEND MORE, BUT SPEND SMARTER**

Florida has historically underfunded all of its efforts to help children. Those on the far right who say the way to control DCF is to starve it are wrong.

There are children in Florida who really are brutally abused by their parents. Those children need to be taken from those parents, and DCF needs the resources to do it. But spending *only* on those resources is counterproductive.

Yet that appears to be what DCF proposes to do. Though Kearney has been bragging about budget increases, the increased funds appear directed almost exclusively to funding the foster care panic she did so much to create. Of the \$135 million in new money proposed by Governor Bush, even the most generous interpretation shows that less than four percent (\$4.95 million) will go to helping keep children in their own homes, and almost all of this money appears targeted toward policing families, not helping them. Another \$12 million will be spent on adoption.<sup>103</sup> At the same time, as noted

earlier, \$1.7 million is being cut from aid for various child abuse prevention programs.

Thus, the best that can be expected from spending nearly all the new money on investigations and foster care is that the system just might be brought up to the disgraceful level at which it was functioning before the panic.

More likely, these skewed funding priorities will lead to a further widening of the DCF net, leaving conditions little or no better off, with even more children needlessly taken from their homes.

Similarly, it is foolish to believe that the Kayla McKean law would “work” if only it were properly funded. It is wrong to subject children to the trauma of a needless child abuse investigation because a patently frivolous report could not be screened out at the child abuse hotline. It is wrong to subject an innocent child to a stripsearch even when everyone knows no abuse occurred, just because the law allows no flexibility. More money does nothing to solve the problems inherent in the Kayla McKean law itself.

Florida does need to spend more. But it must also spend smarter.

### **CHANGE FINANCIAL INCENTIVES**

The first step toward spending smarter is to use privatization as an opportunity to radically alter the financial incentives that currently drive the system.

Right now, all over America, private agencies are told in effect: “Here is a child. Your first goal is to do everything you can either to return the child to his or her birth parents or get the child adopted.” But, all over America, government almost never puts its money where its mouth is. Instead, governments pay agencies for three things: Foster care, foster care, and foster care.

Private agencies typically are paid for each day they care for a child. As soon as they do what they are supposed to do – return the child home or place the child for adoption – the reimbursement stops.

The impact is every bit as strong on nominally non-profit organizations as on for-profit corporations. People who work for non-profits like to keep their jobs, after all, and the desire to survive can induce in non-profits a form of greed that is as corrosive to common decency as the worst corporate behavior.

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**“Officials suggested Walden [a residential treatment center] might be overusing a seclusion room for children and billing the state double its normal rate to ‘maximize revenues,’ records show.”**

--Ft. Lauderdale *Sun-Sentinel*

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For example, The Ft. Lauderdale *Sun-Sentinel* reported that Walden Community School, a non-profit “residential treatment center” in Miami Springs “carried a surplus of more than \$1 million in 1997, comparable to an agency with a budget nine times as large, state officials pointed out. Officials suggested Walden might be overusing a seclusion room for children and billing the state double its normal rate to ‘maximize revenues,’ records show.”

Pat Kramer, who oversees mental health programs for the DCF in Broward County told the *Sun-Sentinel*: “Frequently the not-for-profit is as concerned if not more [with money] because they all have to stay in business.”<sup>104</sup>

To the extent that there is a financial incentive for anything else, it is adoption. As noted earlier, states now get bounties for every finalized adoption over a baseline number.

There is no comparable incentive for keeping children in their own homes or returning them there.

In fact, the only option in child welfare for which there is no financial incentive either to states, local governments or private agencies, is keeping families together.

The lesson has been learned in Illinois, a state which relies heavily on private agencies for child welfare services. After the state’s foster care panic abated and officials calmed down and surveyed the damage, they realized that the real barrier to permanence for children was the per diem reimbursement system.

So, working with the Illinois Branch of the American Civil Liberties Union, which had won a sweeping settlement of a class-action lawsuit, they changed the system and started paying for permanence.

Private agencies are now rewarded for adoptions (most of which are in fact, conversions of kinship placements to “subsidized guardianships”) and for returning children to their own homes. They are penalized financially for allowing children to languish in foster care.<sup>105</sup>

Once this new system was put in place, amazing things began to happen. The intractable became tractable, the dysfunctional became functional and the state’s foster care population plummeted from 51,000 to 38,000 in just two years,<sup>106</sup> with no compromise of safety. Indeed, a study found that children allowed to remain in their own homes with services, following abuse reports, were less likely to be reabused than children were likely to be abused in foster care.<sup>107</sup>

## OTHER SOLUTIONS

### **Michigan – Getting Serious About Family Preservation**

Other states also are bucking the family-bashing trend. In the process, they are teaching lessons that Florida continues to ignore.

Michigan is the only state that has taken real Intensive Family Preservation Services (IFPS) programs and made them readily available statewide. A real family preservation program rigorously follows the model established by the first such program, Homebuilders, in Washington State. (See

“What is Family Preservation,” below). It is an easy model to replicate, as evidenced by the fact that various agencies in Michigan successfully run scores of IFPS programs, which they call “Families First.” But though the program costs significantly less than foster care, it doesn't work if states try to save even more by diluting the model – which is exactly what Florida did.

The name of the Florida program, “Family Builders” sounds similar, but the resemblance ends there. According to the state’s Family Safety Task Force the Florida program is characterized by long delays, waiting lists, and diluted services.

## **What is “Family Preservation”?**

**The term "family preservation" has a very specific meaning. It refers to a systematic determination of those families in which children could remain in their homes or be returned home safely, and provision of the services needed to ensure that safety. The term refers to programs which rigorously follow a series of policies and procedures pioneered by the first such program, Homebuilders, in Washington State.**

**Among those policies and procedures:**

- The intervention begins when the family is in crisis. A Homebuilders intervention is designed for families whose children otherwise face imminent removal to foster care.**

- The intervention is short -- usually four to six weeks -- but extremely intense.**

**Family preservation has been falsely characterized as a "quick fix." In fact Homebuilders workers have caseloads of no more than three,<sup>108</sup> so though they are with a family for no more than six weeks, they can spend several hours at a time with that family -- often equivalent to a year of conventional "counseling."**

**Furthermore, the end of the intervention does *not* mean the end of support for the family. The Homebuilders model requires that the**

**family be linked to less intensive support after the intervention to maintain the gains made by the family.**

- **The worker spends her time in the family's home, so she can see the family in action -- and so the family doesn't have the added burden of going to the worker's office. The worker gives her home phone number or pager number to the family and is on call 24 hours a day.**

- **The worker begins with the problems the family identifies, rather than patronizing the family and dismissing their concerns.**

- **Workers are trained in several different approaches to helping families, so they don't become hostile to those families if their first attempts to help don't work.**

- **But perhaps most important, family preservation workers combine traditional counseling and parent education with a strong emphasis on providing "hard" services to ameliorate the worst aspects of poverty.**

**Family preservation workers help families find day care and job training, and get whatever special educational help the children may require. They teach practical skills and help with financial problems. They even do windows. Faced with a family living in a dirty home, a family preservation worker will not lecture the parents or demand that they spend weeks in therapy to deal with the deep psychological trauma of which the dirty home is "obviously" just a symptom. The family preservation worker will roll up her sleeves and help with the cleaning.**

**This has a number of benefits:**

- **First and foremost, poverty is the single best predictor of actual child maltreatment, and broad, vague laws make it easy to confuse poverty itself with "neglect." A few hundred dollars in "flexible funds" for a security deposit on an apartment in a better neighborhood may be the most important "therapy" a family needs.**

- **Once basic survival needs are taken care of, a troubled parent can start to work on other problems. It's a lot easier to concentrate on how to be the best possible parent when one isn't worrying about where your next meal is coming from or whether your family is about to be evicted.**

• **By providing the concrete help a family says it needs, family preservation workers set themselves apart from many of the "helping" professionals parents have dealt with. They have proven they can deliver. Where everything had seemed hopeless, the family preservation worker has provided hope. That makes the parents more receptive to the worker's ideas for how the parents can do their part to make the family work.**

### **What Family Preservation is not**

**The child welfare establishment has given family preservation a new meaning: all purpose scapegoat. They have slapped the label onto any child abuse death anywhere under any circumstances, even if the child was never in a real family preservation program.**

**Agencies have eagerly embraced this scapegoating, since it is far safer for them to blame a law or policy that supposedly mandates "family preservation" than to admit that a child died because of their own bungling or budget cuts.**

In contrast, the Michigan program sticks rigorously to the Homebuilders model. It has served more than 75,000 children. Between 1991 and 1999, the state's foster care population declined by seven percent,<sup>109</sup> and it's been done with a safety record the manager of any foster care program in America would envy.<sup>110</sup> A state audit found that the Michigan program "has generally been effective in providing a safe alternative to the out-of-home placement of children who are at imminent risk of being removed from the home."

The audit also found the program cost effective, with a family preservation intervention costing just a little over one-third as much as a year in foster care.<sup>111</sup>

Real family preservation programs are more humane than foster care, less expensive than foster care and, most important, *safer* than foster care. But family preservation is smeared when the label is slapped onto any decision to leave any child in any home under any circumstances, even if that

child had never been anywhere near a real family preservation program. It's been a very effective smear campaign, and nowhere more so than in Florida.

### **Alabama – Taking The Next Step**

As a result of a lawsuit that led to the nation's most innovative child welfare consent decree, (*R.C. v. Hornsby*) the state of Alabama has gone beyond any one program. It is rebuilding its entire child welfare system to emphasize family preservation principles.

The Alabama reforms create a "system of care" geared to the specific needs of each individual family. Agencies must have the flexibility to provide what a family needs, not the pre-packaged services that suit the agency's convenience. The approach emphasizes moving the system instead of the child.

The changes are being phased in county by county. So far, 17 counties have

adopted the model. In those counties, non-relative foster care placements have declined by 35 percent.<sup>112</sup> More important, **Ivor Groves, the independent, court-appointed monitor, concluded that children in Alabama are safer now than before the system switched to a family preservation model. Groves wrote that "the data strongly support the conclusion that children and families are safer in**

**counties that have implemented the R.C. reforms."**<sup>113</sup>

The lawyer who brought the suit leading to these reforms, Ira Burnim of the Bazelon Center for Mental Health Law, is a member of the NCCPR Board of Directors. The Bazelon Center has published a book explaining in detail the lawsuit, the settlement, and how the Alabama reforms work.<sup>114</sup>

## **Just Say "No" to the Orphanage**

**As the number of children pouring into the Florida foster care system has grown, there has been renewed talk of building orphanages.**

**They wouldn't be called orphanages, of course. They'd be called "group homes" or "residential academies" or "congregate care facilities" or "residential treatment centers."**

**But they'd really be orphanages.**

**The back to the orphanage movement is based on two false premises. The first, is that every child in foster care really needs to be there, so there is no alternative. That myth is addressed throughout this report.**

**The second false premise is the Boys Town myth. The child welfare establishment says today's orphanages will be better than yesterday's and we should no longer precede the word "orphanage" with the word Dickensian. This myth has been fed by media that have flocked to the nation's few well-run institutions, what amount to "luxury orphan resorts." Of course there are model orphanages. There also are model jails. But they are called models precisely because they are unusual.**

**Even as some Florida legislators were talking late last year about building more orphanages, a Florida newspaper was exposing hideous conditions in the orphanages the state already has.**

**In a four-part series, the Ft. Lauderdale *Sun-Sentinel* documented the warehousing of children in "residential treatment centers."**

The newspaper found that at least 55 children have been abused in the centers over the past three years, and the real number probably is significantly higher, because there is strong evidence that reports are not thoroughly investigated.

Attorney Karen Gievers told the newspaper: "It's not right to take children from their biological parents using one standard and then come up with every excuse in the book for abuses of children in [state] custody."<sup>115</sup>

A Miami-Dade judge recalled a 13-year-old foster child who had spent half his life at one of the centers.

"They put him there and left him there. There were reports in the file that said he should be out. By the time he came out, he couldn't function. He was 13. His biggest thrill was getting candy, like his was five."

When Illinois sent investigators to check on children it had placed in Florida centers, they were appalled. At two centers children were living in filth, at another, the teacher had quit several months earlier. Said investigator Ron Davidson: "The only education the kids were getting was watching cartoons."

Illinois vowed never to institutionalize children in Florida again. Said Davidson: "We essentially quarantined the entire state of Florida. The state was doing such a poor job of monitoring these facilities, we just felt like we could not trust Florida with our kids."<sup>116</sup>

There are similar stories all over the country.

In 1987, New York City set up 17 mini-orphanages for infants and toddlers. The city called them "congregate care facilities" but they soon acquired another name: baby warehouses. In the two years between the time they were set up and the time the state ordered them closed:

- Two children died of infectious diarrhea because of unsanitary diapering practices. A third child died because -- like 91 percent of the children -- he was not properly immunized. There may have been more deaths, but the record keeping was as shoddy as the sanitation.

- Inspectors found that "all but five of the shelters have had consistent problems with roaches, flies, mice, or rats. Food practices are often unsafe."

- Disease was not the only hazard. Inspectors also found "unshielded wall outlets, broken cribs, playpens, and highchairs, play areas with broken glass, toxic chemicals leaking from containers within easy reach of toddlers."

- Children were cared for in eight-hour shifts by untrained workers who often did not even know their names. At one of the baby warehouses, the children were spoken to only when they did something wrong.<sup>117</sup>

The "baby warehouses" were not aberrations. An Indiana study found that children in "group homes" are 10 times more likely to be physically abused and 28 times more likely to be sexually abused than children in their own homes.<sup>118</sup>

There have been other tales of terror from America's modern orphanages. Among them:

- A 1997 Los Angeles County Grand Jury report which found, according to the *Los Angeles Times*, that "Many of the nearly 5,000 foster children housed in Los Angeles County group homes are physically abused and drugged excessively while being forced to live without proper food, clothing, education, and counseling, according to a blistering report by the county grand jury." [Emphasis added]<sup>119</sup>

A year later, the *Times* found that "children under state protection in California group and foster homes are being drugged with potent, dangerous psychiatric medications, at times just to keep them obedient and docile for overburdened caretakers...Under the influence of such drugs, children have suffered from drug-induced psychoses, hallucinations, abnormal heart activity, uncontrollable tremors, liver problems, and loss of bowel control..."

The *Times* found that it happens to children as young as three "and even a 22-month-old knew the word 'meds.'"<sup>120</sup>

- The JDM Residential Treatment Center near St. Louis, where, according to a former director, "there were days when there wasn't any food. The whole thing was just a way to make money off the state."<sup>121</sup>

- **Mooseheart, near Chicago, where, between 1989 and 1994, four "houseparents" were convicted of molesting the children in their care. In the most recent case, a houseparent was convicted of molesting six pre-teen boys in less than a year.<sup>122</sup>**

- **Mission of the Immaculate Virgin on Staten Island, which became so well known for brutality that youths would run away and sleep on the subway rather than spend even one night there. According to *New York Newsday*, "Adolescents returning from temporary placements ... described a pattern of incidents in which longer-term residents raped, robbed, or assaulted newcomers while night-shift staff slept on the job."<sup>123</sup>**

- **Linden Hill and Hawthorne Cedar Knolls, two institutions in Westchester County, New York which, according to *New York Newsday*, were "plagued by violence, unchecked sex, and poor supervision. ... " Said one counselor: "They have lost sight that the program is no longer safe to kids. It's outrageous."<sup>124</sup>**

**To know which is more likely to emerge from the "back to the orphanage" movement -- luxury orphan resorts or baby warehouses -- we need only look at how America has handled the mass institutionalization of other populations who are feared and despised.**

**The "back-to-the-orphanage" movement is based on the premise that the same governments and private agencies that have given us the prison system and the juvenile justice system, and have dotted the landscape with hideous warehouses for the mentally ill and the mentally retarded, somehow will come up with loving, humane institutions for children who are disproportionately black and overwhelmingly poor. But orphanages are institutions for the poor, and institutions for the poor are almost always poor institutions.**

### **Other Innovations**

The Annie E. Casey Foundation and the Edna McConnell Clark Foundation are sponsoring initiatives around the country to reform child welfare with an emphasis on preventing foster care and shortening its du-

ration when it is needed. (The Clark and Casey foundations also help fund NCCPR).

Program sites have a lot of freedom to design their own programs, but common elements include building on the strengths of families instead of merely singling out their weaknesses, and building a support structure

for troubled families in their own communities.

Both initiatives use a concept called Team Decision Making. Within 72 hours of a substantiated report in which a child has been or may be placed in foster care, anyone and everyone who might be able to help the family is invited to sit down around a table and come up with ideas for how to help.

Based on those suggestions, the child protective services (CPS) worker and supervisor develop a plan to work together with the family, friends and, if the child is already in care, the foster parents.

The plans also call for decentralizing child protective services agencies, with CPS

workers operating from neighborhood-based offices. They get involved in the community, helping to sponsor and run community events. The community can see CPS as something other than an adversary – and the CPS workers find that poor communities are filled with strong, caring families and institutions, that generally don't make the 11 o'clock news.

When foster care is required, the care is provided by foster parents in the same neighborhood as the birth family, and foster parents work *with* birth parents to help make the family safe for the children's return.

## **When the Problem is Drugs**

### **LESSONS FROM A FLORIDA STUDY**

**They may be the parents most of us would most like to punish:  
The parents who use drugs.**

**No one really knows how many there are. The huge numbers bandied about by child welfare agencies are guesses, and the agencies have a vested interest in guessing high. Furthermore, guesses about the extent of "substance abuse" by parents lump together everything from the parent who sells her child for crack to the parent who had her child taken for a week at birth because she smoked one marijuana cigarette to ease the pain of labor.<sup>125</sup>**

**But the problem cannot be minimized either. The problem of drug abuse, like the problem of child abuse, is serious and real. And there is an enormous temptation to punish addicted parents. But do we want to punish their children?**

**The question is urgent because a Florida study suggests that often, when we deny addicted mothers treatment and take away their children, that is exactly what we're doing.**

**The study of so-called "crack babies" was conducted by Dr. Marylou Behnke and her colleagues at the University of Florida**

**Medical School Department of Pediatrics. In the study half the infants placed at birth in foster care, the other half with birth mothers able to care for them. After one year, the babies were tested using all the usual measures of infant development: rolling over, sitting up, reaching out, smiling. Consistently, the children placed with their birth mothers did better.<sup>126</sup> Whatever we may think of mothers who once succumbed to drug addiction, their infant children may not agree.**

**And that is why a key component of any child welfare program should be readily accessible drug treatment, with an emphasis on programs geared to the needs of women. When inpatient treatment is required, there is an urgent need for programs that allow women to keep their children with them.**

**Some mothers will not be interested in such treatment. Others will repeatedly fail. In such cases, their children typically must be taken away. But treatment needs to be tried because, as the Florida study shows, it is extremely difficult to take a swing at “bad mothers” without the blow landing on their children.**

One of the Clark Foundation programs operates in several neighborhoods in Jacksonville.

Families at risk of abuse or neglect get a wide variety of help, all in one location “full-service” neighborhood schools.

When a call to the DCF hotline doesn’t meet the criteria for a child abuse investigation, it is sent to an agency that channels referrals to one person in one of the schools. Outreach workers then contact the family and offer voluntary help. (Sadly, it is likely that in the current climate, the hotline is referring too few calls to this kind of help, and routing too many to traditional, coercive investigations. As noted earlier, in some cases the Kayla McKean law now requires this.)

Workers from CPS, health, family support, juvenile justice and income support agencies are trained together and work together to provide help custom-tailored to the needs of individual families.

Community volunteers such as ministers, friends and neighbors, sign contracts committing themselves to help the family.<sup>127</sup>

The Clark Foundation offers a hypothetical example of how these initiatives come together: A CPS worker investigates a bruise on a two-year-old. The family appears troubled but there is no evidence that abuse caused the bruise.

Instead of closing the case, (or, though this is not mentioned in the hypothetical, taking the child anyway) the worker conducts a thorough assessment. “The assessment reveals a young single parent who is unsure of how to care for her children and is drinking too much alcohol. She is isolated from her neighbors, friends and family...”

At the Team Decision Making meeting, a plan is developed. The mother enrolls in A.A. and a support group for young mothers. A neighbor visits every few days and helps with errands. The two-year-old is enrolled in day care, and a family support

worker helps the mother find health care and a job training program.<sup>128</sup>

## CONCLUSION

These models, the impact of reversing financial incentives in Illinois, and the successes in Alabama and Michigan all show that there is a better way. We don't have to respond to every child abuse tragedy with a foster care panic. We don't have to destroy children in order to save them.

There is no reason to believe that Kathleen Kearney has anything but the best of motives. No doubt, Sen. Cowin also truly thought her legislation would help children. But the issue isn't motivation. The issue is results.

There are parents who do terrible things to children with the best of intentions.

They may beat children mercilessly, for example, because they think it's the only way to get children to behave, or get them stay away from drugs or a dangerous group of peers. When parents do that to children – even if they think it's for the children's own good – those parents must be stopped. And when the State of Florida does terrible things to children, even when it's in the name of doing good – the state must be stopped.

The people of the State of Florida have it in their power to end the foster care panic, and demand solutions that offer real help and real hope to the state's most vulnerable children.

Florida's war against child abuse has become a war against children. It's time to rethink the battle plan.

# SHADOW ON THE SUNSHINE STATE/35

## NOTES

<sup>1</sup> Karin Meadows, "Foster Homes Overflow; Abused Children Shuttled Around to Eat, Bathe, Sleep" *Orlando Sentinel*, Nov. 6, 1999, p. A1

<sup>2</sup> Gwyneth K. Shaw, "Shortage of Foster Homes Turns Kids into Nomads," *Orlando Sentinel*, Nov. 10, 1999, p. A1.

<sup>3</sup> *Ibid.*

<sup>4</sup> Affidavit of David S. Bazerman, Esq, *Ward v. Feaver*, Case# 98-7137, United States District Court, Southern District of Florida, Fort Lauderdale Division, Dec. 16, 1998, p. 4.

<sup>5</sup> Rich McKay, "DCF in Grip of 'Foster Care Panic'" *Orlando Sentinel* (Lake County Edition) Jan. 30, 2000 p. A1, and author's interview with Ronni Johnson.

<sup>6</sup> Curtis Krueger, "Child Abuse Numbers Rising," *St. Petersburg Times*, Nov. 25, 1999, p. 1B

<sup>7</sup> Shana Gruskin, "DCF Administrator confident of transition" Ft. Lauderdale *Sun-Sentinel*, March 25, 2000, p. 8B.

<sup>8</sup> Florida Statutes, Title XLVI, Chapter 827.03(1)(b). This is the definition in Florida's criminal statutes. Elsewhere, in the law under Proceedings Related to Children (Title V, Chapter 39.01(2)) abuse is defined as "any willful act or threatened act that results in any physical, mental or sexual injury or harm that causes or is likely to cause the child's physical, mental, or emotional health to be significantly impaired." Placing any but the most seriously endangered child in the Florida foster care system is abuse by this definition as well.

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<sup>10</sup> This was explained to the author by Cecka Green of the DCF public information office in a telephone conversation on March 2, 2000.

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<sup>12</sup> Lisa Demer, "3<sup>rd</sup> of State's Foster Children Face Little Risk if Returned Home," *Tampa Tribune* March 13, 1992.

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<sup>15</sup> Lisa Demer, Tim Collie, Wayne Garcia, "State's Children Killed, Beaten Despite HRS" *Tampa Tribune*, July 12, 1991, p. A2.

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<sup>18</sup> Lisa Demer, "Foster Mother Sentenced to Life in Child's Death," *Tampa Tribune*, Sept. 4, 1991, p. 1.

<sup>19</sup> Diana Smith, "Foster Baby's Death Spurs Corrective Action by State," Associated Press Dec. 8, 1985, "Race Issue Raised in Baby's Death," United Press International, Oct. 22, 1986, "Woman Faces Seven Years in Foster Child's Death," Associated Press, June 13, 1988.

<sup>20</sup> Lisa Demer, "Nobody's Child," *Tampa Tribune*, August 15-18, 1993.

<sup>21</sup> Lisa Demer, "Administrators Admit HRS System Failed 'Jane'" *Tampa Tribune*, Sept. 10, 1993.

<sup>22</sup> U.S. Department of Health and Human Services, Administration for Children, Youth and Families, *Child Maltreatment 1997: Reports from the States to the National Child Abuse and Neglect Data System* (Washington, DC: U.S. Government Printing Office, 1999) Chart, Figure 4.2.

<sup>23</sup> Florida's Foster Care System, statement on DCF website, [http://www.state/fl.us/cf\\_web/fs/fostercare/main.html](http://www.state/fl.us/cf_web/fs/fostercare/main.html)

<sup>24</sup> Florida Statutes, Title XLVI, Chapter 827.03(3)(a) 1. This is the definition in criminal law. Although a similar definition in Florida's law concerning "Proceedings Relating to Children" includes an exception if the problem "is caused primarily by financial inability..." the criminal law contains no such exception.

<sup>25</sup> William Cooper Jr., "In Rare Move, Agency Lets Single Dad Turn Over Custody of Kids," *Palm Beach Post*, June 7, 1997, p. 1A;

William Cooper Jr., "Dad's Reward For Hard Work: Sons Back Home," *Palm Beach Post*, August 2, 1997.

<sup>26</sup> Affidavit of Dr. Ivor Groves, *Valerie Ward v. Edward Feaver*, Case No. 98-7137-CIV, United States District Court Southern District of Florida, Fort Lauderdale Division, pp. 6, 10.

<sup>27</sup> "DCF Administrator..." Note 7, *Supra*.

<sup>28</sup> City of New York Office of the Comptroller, Office of Policy Management, *Whatever Happened to the Boarder Babies?*, January, 1989, pp. 11-12

<sup>29</sup> Studies cited in Karen Benker and James Rempel, "Inexcusable Harm: the Effect of Institutionalization on Young Foster Children in New York City," *City Health Report*, (New York: Public Interest Health Consortium for New York City) May, 1989.

<sup>30</sup> Mary Ann Jones, *Parental Lack of Supervision: Nature and Consequences of a Major Child Neglect Problem* (Washington: Child Welfare League of America, 1987), p.2.

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<sup>32</sup> Tamar Lewin, "Child Welfare Is Slow to Improve Despite Court Order," *The New York Times*, December 30, 1995, p.6

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88. Bruce Dold, "Kids Suffer Under DCFS Reform Efforts," *Chicago Tribune*, Sept. 22, 1995, Sec.1, p.19

89. Personal Communication.

<sup>90</sup> Susan Pearsall, "Just Who Should Care for the Children?" *The New York Times*, Connecticut Weekly, April 20, 1997, p. 13CN.

<sup>91</sup> Valerie Finholm, "Report Raises Questions About Foster Care Organization," *Hartford Courant*, May 9, 1997, p. A3.

<sup>92</sup> Personal Communications with David Dearborn, and James Wiltse spokesmen, Connecticut Department of Children and Families. Child abuse and neglect fatalities in Connecticut rose from five in 1995, the year before the foster care panic, to nine in 1996. They fell to seven in 1997 and six in 1998, but they still haven't fallen back to where they were before the foster care panic.

<sup>93</sup> Rachel L. Swarns, "For Children Awaiting Foster Care, Another Night on Office Cots," *The New York Times*, November 29, 1997; Russ Buettner, "Foster Kids Glut System; Surge Worst Since Crack Heyday" *New York Daily News*, May 12, 1997; Russ Buettner, "Bid to End ACS Office Hell," *New York Daily News*, May 14, 1997.

<sup>94</sup> Rachel L. Swarns, "Agency Was Warned About Foster Mother Charged in Girl's Death," *The New York Times*, July 2, 1997, p. B3.

<sup>95</sup> In 1995, there were 31 "substantiated" child abuse deaths in New York City (down from 60 in 1991). The number rose to 38 in 1996, 46 in 1997 and 47 in 1998. Personal Communication, Terry McGrath, spokesman, New York State Department of Children and Families.

<sup>96</sup> Nina Bernstein, "Agency Head Defends Effort for Children," *The New York Times*, July 23, 1999, p. B1.

<sup>97</sup> Editorial, "From Tallahassee: New Bills, More Hassle," *Palm Beach Post*, Feb. 6, 2000.

<sup>98</sup> "Clinton Touts Growth in Adoptions" *Newsday*, Sept. 25, 1999, p. A14.

<sup>99</sup> Ibid.

<sup>100</sup> Author's Interview with John Hargrove, Children's Bureau, U.S. Department of Health and Human Services, March 2, 2000.

<sup>101</sup> No one knows how many foster child adoptions fail, but even before ASFA, with its incentives for slipshod placements, several states estimated the failure rate at between 15 and 25 percent. See, for example: "Adoption: What to do When Love is Not Enough," *The Deseret News*, April 15, 1999, p.C1., "Nobody's a Winner When Adoption Fails," *Arizona Republic*, March 9, 1999, p.B1; "Number of Children in DHS Care to Grow," *Sunday Oklahoman*, July 19, 1998, p.1.

<sup>102</sup> Previous attempts to increase adoptions by expediting termination of parental rights produced exactly that result. See Martin Guggenheim, "The Effects of Recent Trends to Accelerate the Termination of Parental Rights of Children in Foster Care – An Empirical Analysis in Two States," *Family Law Quarterly*, Vol. 29, No.1, Spring, 1995, p.139. The study was conducted under the auspices of NCCPR.

<sup>103</sup> Author's interview with John Perry, Senior Management Analyst, Department of Children and Families. According to Perry, of \$135 million in new funds proposed by Governor Bush, 4.5 million will go to "in-home supervision" – which suggests policing rather than providing services. Another \$495,000 will be the state share of a pilot project to allow more flexible use of federal foster care funds. Thus, there is no guarantee that even one dime of the new money will actually go to providing more help for families.

<sup>104</sup> Sally Kestin, "Making Money Off Children's Mental Illness," *Ft. Lauderdale Sun-Sentinel*, Nov. 7, 1999, p. 24A.

<sup>105</sup> Author's interview with Benjamin S. Wolf, Director and Counsel, Institutionalized Persons Project, The Roger Baldwin Foundation of ACLU, Inc.

<sup>106</sup> Press release, *HHS Announces Third Annual Adoption 2002 Excellence Awards*, U.S. Department of Health and Human Services, Nov. 24, 1999

<sup>107</sup> Testimony of Jess McDonald, Note 86, *Supra*.

108. Some critics of family preservation set up a straw man by first claiming that family preservation workers can have caseloads as high as six, and then saying such programs don't work. A program with a caseload of six is *not* a family preservation intervention.

<sup>109</sup> 1991: Child Welfare League of America, National Data Analysis System, data available online at [www.cwla.org](http://www.cwla.org); 1999: Michigan Family Independence Agency, *Foster Care Program Placement Data, Jan. 1997 to Present* August, 1999.

<sup>110</sup> Of 75,000 children who have gone through the program, two died during the intervention. (Personal Communication, Susan Kelly, director of family preservation services, Michigan Family Independence Agency). It is unlikely that there is a foster care program in America that can match that safety record. Indeed, in just the first year of the Illinois foster care panic, there were five child abuse deaths in that state's foster care system.

<sup>111</sup> State of Michigan, Office of the Auditor General, *Performance Audit of the Families First of Michigan Program*, July, 1998, p. 3. Cost figures were: Family preservation intervention: \$4,367; One year of foster care: \$12,384, One year of institutional care: \$56,206.

<sup>112</sup> Office of the Court Monitor for the R.C. Consent Decree, Human Systems and Outcomes, Inc., September, 1999.

<sup>113</sup> . Ivor D. Groves, *System of Care Implementation: Performance, Outcomes, and Compliance*, March, 1996, Executive Summary, p. 3.

<sup>114</sup> Judge David L. Bazelon Center for Mental Health Law, *Making Child Welfare Work: How the R.C. Lawsuit Forged New Partnerships to Protect Children and Sustain Families* (Washington DC: May, 1998). Copies are available from the Center, (202) 467-5730.

<sup>115</sup> Sally Kestin, "Volatile Environment Sometimes Leads to Abuse," *Ft. Lauderdale Sun-Sentinel*, Nov. 9, 1999, p. 6A.

<sup>116</sup> Sally Kestin, "Throwaway Kids," *Ft. Lauderdale Sun-Sentinel*, Nov. 7, 1999, p. 1A.

117. All information about the "baby warehouses" is from Karen Benker and James Rempel, "Inexcusable Harm: The Effect of institutionalization on Young Foster Children in New York City," *City Health Report* (New York: Public Interest Health Consortium for New York City), May, 1989.

<sup>118</sup> J. William Spencer and Dean D. Knudsen, "Out of Home Maltreatment: An Analysis of Risk in Various Settings for Children," *Children and Youth Services Review* Vol. 14, pp. 485-492.

<sup>119</sup> James Rainey, "Grand Jury Cites Abuses in Group Foster Homes," *Los Angeles Times*, April 9, 1997, p. A1.

<sup>120</sup> Tracy Weber, "Caretakers Routinely Drug Foster Children"(p. A1) and "Prescription for Tragedy"(p. A31) *Los Angeles Times*, May 17, 1998.

121. Martha Shirik, "As Troubles Come to Light, Home Surrenders License," *St. Louis Post-Dispatch*, Oct. 3, 1993, p.1.

122. "Ex-Mooseheart Staffer Guilty of Molesting Boys," *Chicago Tribune*, Nov. 5, 1993, Sec. 2, p. 7; Linda Young, "Mooseheart Aches After Sex Abuses," *Chicago Tribune*, Feb. 8, 1994, p.1.

123. Nina Bernstein, "Probe of Foster Care Nightmares," *New York Newsday*, May 2, 1990, 16.

124. Michael Powell, "Violence Rife at Two Homes for Troubled Teens," *New York Newsday*, Nov. 14, 1990, p.6.

<sup>125</sup> Brief for Defendant Appellant and Brief for Petitioner-Respondent, *Nassau County (N.Y.) Department of Social Services v. Theresa*.

<sup>126</sup> Vickie Chachere, "Studies Challenge Beliefs About Crack Babies" *Tampa Tribune*, May 3, 1998, Metro p. 3.

<sup>127</sup> Heitzi Epstein, *A Child Advocate's Guide to State Child Protective Services Reform* (Washington, DC: National Association of Child Advocates, Winter, 1999), p. 3.

<sup>128</sup> Edna McConnell Clark Foundation, *Community Partnerships for Protecting Children* (New York: Undated). More information on the Clark Foundation initiative is available from the foundation's Program For Children, 250 Park Ave. New York, NY 10177-0026. (212) 551-9100. Information on the Annie E. Casey Foundation's Family to Family initiative is available at the Casey Foundation website, [www.aecf.org/familytofamily](http://www.aecf.org/familytofamily).

## ABOUT NCCPR

The National Coalition for Child Protection Reform is a non-profit organization whose members have encountered the child protective system in their professional capacities and work to make it better serve America's most vulnerable children. **Board of Directors: President: Diane Redleaf**, former Supervisory Attorney, Children's Rights Project, Legal Assistance Foundation of Chicago. **Vice President: Carolyn Kubitschek**, attorney specializing in child welfare law, former Co-ordinator of Family Law, Legal Services for New York City. **Treasurer: Joanne C. Fray**, attorney with extensive experience with litigation involving the care and protection of children and termination of parental rights, Lexington, Mass. **Directors: Elizabeth Vorenberg**, (Founding President) former Assistant Commissioner of Public Welfare, State of Massachusetts; former Deputy Director, Massachusetts Advocacy Center; former member, National Board of Directors, American Civil Liberties Union; **Annette Ruth Appell**, Associate Professor, William S. Boyd School of Law, University of Nevada, Las Vegas; former member of the Clinical Faculty, Children and Family Justice Center, Northwestern University Law School Legal Clinic, former Attorney and Guardian ad Litem, office of the Cook County, Ill. Public Guardian; **Marty Beyer, Ph.D.**, clinical psychologist and consultant to numerous child welfare reform efforts; **Ira Burnim**, Legal Director, Judge Bazelon Center for Mental Health Law, Washington, DC; former Legal Director, Children's Defense Fund; former Staff Attorney, Southern Poverty Law Center; **Martin Guggenheim**, Director of Clinical and Advocacy Programs, New York University Law School; Prof. **Zelda Harris**, Director, Domestic Violence Law Clinic, University of Arizona College of Law; **Martha Matthews**, Staff Attorney, National Center for Youth Law, former Director, Family Advocacy Program, Stanford University Law School; Prof. **Dorothy Roberts**, Northwestern University School of Law. **Staff: Richard Wexler**, Executive Director. Author, *Wounded Innocents: The Real Victims of the War Against Child Abuse*. (Prometheus Books: 1990, 1995).

**NCCPR's National Advocacy Activities are funded by grants from the Annie E. Casey Foundation, the Open Society Institute, part of the Soros Foundations Network, and the Edna McConnell Clark Foundation.**

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