

MISREADING THE WARNING SIGNS

Why Kentucky Youth Advocates'
Approach to Child Welfare
Is Not in the Best Interests of Children

A report from the
NATIONAL COALITION FOR
CHILD PROTECTION REFORM
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SPEND MORE,

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PART ONE:

MISREADING THE GENERAL PROBLEM

INTRODUCTION

In April, 2001, Kentucky Youth Advocates released a report called *Warning Signs: The Current Status of Kentucky's Services to Abused and Neglected Children*.

KYA has a distinguished history of tireless work on behalf of Kentucky's most vulnerable children, and we do not challenge the intentions behind *Warning Signs*.

But KYA has misread those warning signs. Its proposed "solutions" are false promises built on a foundation of false premises. As a result, KYA is recommending an approach that actually will harm the children it wants to help. It is an approach that is contrary to the best interests of Kentucky's children.

Though KYA says it isn't proposing any solutions in its report, in fact, the recommended approach comes through loud and clear: Investigate more cases, substantiate more cases, take away more children, and put more of those children in institutions. Indeed, the report's approach can be boiled down to a single sentence: Take the child and run.

It is an approach that has been tried in many places around the country in recent years – and in every one of those places it has failed. In contrast, the few places that have defied this trend, by emphasizing safe, proven reforms, have reduced the number of children in foster care, *while making children safer*. Family preservation is truly in the best interests of children – the KYA approach is not.

There are several areas in which we agree with KYA's assessment of the state of child welfare in Kentucky. These are areas in which KYA's conclusions mirror the findings of many studies of child welfare agencies around the country. But the conclusions drawn from these findings are erroneous.

Among the problems with *Warning Signs*:

- As KYA acknowledges, *Warning Signs* is not a scientific study; largely it is the impressions of people KYA interviewed, though perhaps only *some* of these people, filtered through the preconceptions of KYA.

- There is little indication of who KYA spoke to, even by job title. How many birth parents? How many lawyers for birth parents? How many workers in anti-poverty programs, who may have seen first-hand one of the largest problems in any child welfare system, the confusion of poverty with child "neglect"?

If KYA did talk to such people, their perspective is entirely absent from *Warning Signs*. No such people are quoted. Indeed, with just one exception, all of the quotes from KYA's interviews come from caseworkers, people who supervise caseworkers, people who administer those caseworkers' agencies and people who train caseworkers. This is an extremely important perspective – but it cannot be relied on to the exclusion of all others.

- To the extent that birth parents or their representatives were contacted, they may well have been too intimidated to speak freely. In a "Special Note to Readers" the report states: "We would like to assure readers of this report that ... [w]e routinely inform all of our informants of Kentucky's mandatory child abuse and neglect reporting law. When we receive enough information to make a report, we do."

Now suppose you're an accused parent or that parent's lawyer. An interviewer begins by effectively placing you under suspicion, making clear that if he doesn't like you or what you say, he'll turn you in, and your children might well be taken away.

How much are you really going to say to such an interviewer?

- The report exaggerates the number of reform initiatives in Kentucky by branding even the slightest change a “reform” and counting similar or identical initiatives several times using different names.

- The report takes the work of a leading child welfare scholar out of context.

- The report makes misleading use of Kentucky data on child abuse reports and the number of such reports that are substantiated; failing to note that, according to federal data, Kentucky’s substantiation rate actually is slightly above the national average.

But most harmful of all are the two false premises that undergird the entire document.

False Premise #1: The report assumes that the system errs in only one direction. According to *Warning Signs* the system’s only mistake is to screen out cases, not investigate, and/or not remove children from their homes.

False Premise #2. The report tacitly assumes that, even if more investigation, substantiation, and removal would intrude on innocent families, that doesn’t really matter. Such intrusion is thought to be a mere inconvenience for parents, whereas failure to investigate can endanger children’s lives. In fact, as we explain later in this report, both underintervention and overintervention can do terrible things to children. Both can be, literally, fatal errors.

The Kentucky Perspectives That KYA Missed

Although KYA says it spoke to a cross-section of people with expertise about the state’s child welfare system, some perspectives never made it into *Warning Signs*.

Among them, the perspectives of two Kentucky lawyers who routinely represent parents and children in abuse, neglect and dependency cases. (These lawyers were not contacted by KYA, but like KYA’s sources, they asked to remain anonymous):

One of the lawyers said:

“There is a greater tendency to remove children of the poor. A lot of it is because of reasons of poverty, such as inadequate housing.”

This lawyer also said that if Kentucky paid welfare benefits to birth mothers equal to what it pays for substitute care, including even kinship care, many of those mothers could keep their children.

The other lawyer put it this way:

“Everybody has had cases in which they felt a child was not being adequately protected and was being returned to a home when they shouldn’t be.”

“And everybody has had cases where the treatment of parents was unduly harsh and services were not adequate to help them function in a way to let their children return. Sometimes, if we could just provide a car, teach the parent to drive and get the parent car insurance, she could make it to meetings with her child she needs to get the child back. But we have no mechanism to do that. So instead the child goes into treatment foster care, which costs as much as a Cadillac.”

Where KYA is right:

Warning Signs makes several important points. Indeed, when it comes to KYA’s analysis of the problems in the Kentucky child welfare system, we’re behind them 50 percent. Much of what KYA says is wrong in Kentucky is wrong in most of the country. So the report is almost certainly right about low morale among workers. It’s almost certainly right about uncovered cases and dangerously high caseloads. It’s almost certainly right about overcrowded foster homes. It’s almost certainly right in saying that whether someone is considered guilty of abuse and neglect depends on where that person lives. KYA is even right about some children being left in dangerous homes. *But KYA is wrong about the reasons for these problems.*

KYA also is probably right about the existence of a “bi-partisan drumbeat about how bad government is” that makes it harder to properly fund child welfare services. But by suggesting that Kentucky pour its money into a failed status quo, KYA is playing into the hands of those who beat the anti-government drums. By supporting an approach that is both costly and doomed to failure, KYA will make it that much harder to secure funding for safe, proven alternatives.

It is essential to spend more on child welfare – but government can’t just spend more, it also must spend smarter – and that includes some of the very reform initiatives KYA is attacking.

THE FALSE PREMISES

At the heart of the entire KYA report is this statement: “In several national reports, this tendency to deny protective services to some children is often referred to as ‘underinclusion.’ (Waldfogel, 2000, p.45).”

Over and over, *Warning Signs* is dominated by the false notion that this problem – ‘underinclusion’-- is the *only* way the system fails.

But the very scholar KYA cites to bolster this conclusion disagrees. Indeed, KYA has taken the work of Prof. Jane Waldfogel of the Columbia University School of Social Work out of context. Prof. Waldfogel is a supporter of some of the very reforms that have prompted the hand wringing at KYA, most notably the Community Partnerships for Child Protection. In article after article, including the one cited by KYA, Prof. Waldfogel has indeed cited underinclusion. But she has called it just one of five key problems, the others being capacity, service orientation, service delivery, and *overinclusion*.¹

Indeed, Prof. Waldfogel gives equal weight to underinclusion and overinclusion. She writes:

“For a variety of reasons some families are unjustly or inappropriately reported to CPS, exposing them unnecessarily to coercive and intrusive investigations. ... Child protection professionals also express concerns about the disproportionate representation of children from poor and minority families in the CPS system. These

*families may be at higher risk for conditions of poverty-related neglect, such as inadequate housing or child care ...*²

In citing both underinclusion and overinclusion, Prof. Waldfogel gets to the heart of the child welfare crisis. Child welfare agencies are arbitrary, capricious and

cruel. They *do* leave some children in dangerous homes – even as they take many other children from homes that are safe or could be made safe with the right kinds of services.

And, as is discussed below, these two problems are directly related. Indeed, the primary cause of underinclusion is overinclusion.

What is “Overinclusion”?

Behind this academic term are stories of heartbreak and tragedy from around the country. Here are a few examples:

- In Orange County, California, an impoverished single mother can’t find someone to watch her children while she works at night, tending a ride at a theme park. So she leaves her eight-, six-, and four-year-old children alone in the motel room that is the only housing they can afford. Someone calls child protective services. Instead of helping her with babysitting or daycare, they take away the children on the spot.³

- In Akron, Ohio, a grandmother raises her 11-year-old granddaughter despite being confined to a wheelchair with a lung disease. Federal budget cuts cause her to lose housekeeping help. The house becomes filthy. Instead of helping with the housekeeping, child protective services takes the granddaughter away and throws her in foster care for a month. The child still talks about how lonely and terrified she was – and about the time her foster parent took her picture and put it in a photo album under the heading: “filthy conditions.”⁴

- In Los Angeles, the pipes in a grandmother’s rented house burst, flooding the basement and making the home a health hazard. Instead of helping the family find another place to live, child protective workers take away the granddaughter and place her in foster care. She dies there, allegedly killed by her foster mother. The child welfare agency that would spend nothing to move the family offers \$5,000 for the funeral.⁵

- In Kearney, Missouri, a single mother loses her job as a home health aide, and then loses her rented house. She and her children travel the homeless circuit, moving from friends, to hotels to shelters. The mother wants something better for her children while she gets a job and a place to live, so she asks the state child protection agency for help. Instead of providing help with housing and a job, the children are placed in foster care. On the day the mother gets a full-time job, one of

her children, a two-year-old girl, dies. An autopsy report calls the death a homicide. The foster mother has been charged. Now the mother has only photos, and a video of the child's funeral. "I asked for help," she said, "and this is what happened."⁶

THE LOCH NESS MONSTER EFFECT

On the surface, it certainly *looks* like underinclusion is the only problem in Kentucky. After all, that's what some workers in Hardin County are complaining about, and that's what some school principals complained about in a recent survey. And when child abuse makes the front page, it's almost always because a child previously "known to the system" has died.

But that's a distorted picture.

When the state does too little there is a whole cadre of articulate people to yell about it – middle-class foster parents, case-workers, mainstream "child advocates" etc. The orientation of most of these professionals is toward removal of children from their homes. The inexperienced, overwhelmed frontline worker can see the messy home in front of her – she can't see the love between parent and child, or the inherent harm of tearing child from parent. Even if that worker has been told during her training that such harm exists, at best, she probably will understand it in her head, but not in her heart. And she is likely to confuse her own anger at the parent with what is best for the child.

A school principal is likely to be furious if his or her own report of maltreatment is unheeded. He or she is less likely to question the legitimacy of a case in which the child protective services worker showed up at school because someone *else* phoned in a report that proves to be baseless.

In contrast, when the state does too much, there's generally only a poor, sometimes inarticulate birth parent who has little clue to what's going on, much less how to tell a story in a way that will attract the attention of the news media. And even when such a parent can come forward, child wel-

fare agencies often can squelch the story with the "veto of silence." The agency will insist that there is really much, much more to the story, but they just can't provide the information because of "confidentiality" laws. Though it is claimed that such laws are needed to protect children, in fact they turn these children into human shields, behind which agencies hide their mistakes.

The result is something we have come to call The Loch Ness Monster effect. Remember those pictures of a long neck sticking out of the water that purport to show "Nessie?" Child welfare systems are like the Loch Ness Monster, only real.

Most of the time, they can keep all of their mistakes hidden behind an iron curtain of "confidentiality." Typically the records are secret and so are the court hearings. But when a child "known to the system" dies in his or her own home it becomes a police matter. To some extent, however limited, the curtain of confidentiality parts. Those cases are like that neck above the waterline.

The rest of the monster – all the cases in which a child was needlessly taken from a home that was safe or could have been made safe with the right kind of services -- remains hidden beneath the surface. So it becomes easy to confuse the part of the monster we can see with the entire beast.

Occasionally, we get a glimpse of the entire beast. What we know from those rare opportunities is that the stereotype of the parent who loses a child to "the system" bears little resemblance to reality. Most parents who lose their children to foster care are neither brutally abusive nor hopelessly addicted. Far more common are cases in which a family's poverty has been confused with child "neglect."

And it's easy to see how that can happen. As in most states, the definition of

“abused and neglected child” in Kentucky law is breathtakingly broad. The nine different definitions include: “[d]oes not provide the child with adequate care, supervision, food, clothing, shelter and education or medical care necessary for the child’s well-being.”⁷ There is hardly an impoverished child in Kentucky who couldn’t be wrongly branded “neglected” using a definition like that.

And when the Loch has been drained and the monster is made fully visible, lawsuits and studies have found such mislabeling all over the country – with tragic consequences.

- 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.⁸

- 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.⁹ But the “service” offered most often was foster care.

- Courts in New York City and Illinois have found that families are repeatedly kept apart solely because they lack decent housing.¹⁰

- In Washington D.C., where the foster care system was run for several years by a federal court, the first receiver named by the court to run the agency, Jerome Miller, found that between one-third and one-half of Wasahington’s foster children could be returned to their parents right now - - if the parents just had a decent place to live.¹¹ (KYA has enough respect for Miller to quote him with approval in the introduction to *Warning Signs*).

- 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.¹²

Most parents who lose their children to foster care are neither brutally abusive nor hopelessly addicted. Far more common are cases in which a family’s poverty has been confused with child “neglect.”

- 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.¹³

The confusion of poverty with neglect is such an ill-kept secret that the federal government actually has a program to deal with one piece of it. As part of what was formerly called the “Section 8” program, the Department of Housing and Urban Development allows cities to apply for “family unification” housing vouchers.

The program provides rent subsidies to families whose children have been placed in foster care, or are at risk of such placement, primarily because the family lacks adequate housing.

Local housing authorities work together with state and local child welfare agencies to apply for an allotment of vouchers. In 1999, the last year for which figures are available, 100 such vouchers were awarded in Louisville.¹⁴ While it is to the great credit of Louisville and other participating cities that they have applied for these vouchers, by doing so they admit what child welfare agencies routinely deny – that children are in fact taken from their parents and kept in foster care because those parents lack decent housing. Children in 100 Louisville families presumably were spared that fate. How many more are not so lucky?

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.

Other cases fall on a broad continuum between the extremes, the parents neither all victim nor all villain. What these cases have in common is the fact that there are a wide variety of proven programs that can keep these children in their own homes, and do it with a far better track record for safety than foster care. They include some of the very reforms that so upset KYA and its allies. But such programs are smeared when, for example, the label "family preservation" is slapped onto any decision to leave any child in any home under any circumstances, when something goes wrong.

Sometimes these in-between cases involve substance abuse. And that raises a question: Why even bother with the parents in such families. Why even try options like drug treatment? The answer: Because it is in the best interests of the children.

In a University of Florida study of "crack babies" one group was placed in foster care, another with birth mothers able to care for them. After six months, the babies were tested using all the usual measures of infant development: rolling over, sitting up, reaching out. Consistently, the children placed with their birth mothers did better.¹⁵ For the foster children, the separation from their mothers was more toxic than the cocaine. It is extremely difficult to take a swing at so-called "bad mothers" without

the blow landing on their children. Therefore, if we really believe all the rhetoric about the needs of the children coming first, we must put those needs before anything – even our anger at their parents.

KYA's own figures indicate that while substance abuse is a serious and real problem in many child welfare cases, it actually is less of a problem in Kentucky's child welfare caseload than in other states. That could give Kentucky a head start in dealing with the problem. But for all the talk in *Warning Signs* about increasing spending, there is not one word about devoting some of that spending to drug treatment.

WHY OVERINCLUSION HURTS CHILDREN

The second false premise implicit in *Warning Signs* is that even if there is overinclusion, it doesn't really do any harm. If a family is needlessly investigated, and even if a child is needlessly taken from a loving home, it is argued, at least that way the child is safe. After all, isn't that just "erring on the side of the child"?

In fact, there is probably no phrase in the English language that has done more harm to children than "erring on the side of the child."

A child abuse investigation does harm

All intervention in family life involves balancing harms. A child abuse investigation, however well-intentioned, is typically a very traumatic experience for a child. Children are interrogated about the most intimate details of their lives – and often stripsearched by hurried workers looking for bruises (something which, if done by almost anyone else, would be sexual abuse).

Three of the 20th Century's most influential experts on child welfare, Albert Solnit, the late Anna Freud, and the late Joseph Goldstein, described the harm this way:

*"Children react even to temporary infringement of parental autonomy with anxiety, diminishing trust, loosening of emotional ties, or an increasing tendency to be out of control. The younger the child, and the greater his own helplessness and dependence, the stronger is his need to experience his parents as his lawgivers, safe, reliable, all-powerful, and independent ... When family integrity is broken or weakened by state intrusion [the child's] needs are thwarted and his belief that his parents are omniscient and all-powerful is shaken prematurely."*¹⁶

Any parent who has seen her child endure such an experience doesn't need to hear about the consequences from an expert. A mother whose seven-year-old boy was interrogated three separate times as a result of false reports filed by a malicious neighbor put it this way:

"I trusted my parents explicitly. I knew they loved me. They had control over things. When they took my son into the principal's office, I had no control over whether they could do that or not. Mother's a fixer in these kid's eyes. Mother couldn't fix it this time. Mother had no power."¹⁷

How is tearing away this kind of security "erring on the side of the child"?

When a call to child protective services includes sufficient evidence to warrant an investigation, then there is no alternative but to inflict this harm. But where such evidence is lacking, it is contrary to the best interests of the child to expose him or her to this kind of intrusion. And that is one reason why screening out some reports — a practice KYA decries -- is essential to a well-functioning child protection system.

Wrongful Removal

The harm is magnified that much more if the investigation leads to needless placement of a child in foster care.

Even when the foster home or institution is a good one, a child is suddenly uprooted not only from mother and father but often also from brothers, sisters, aunts, uncles, grandmothers, grandfathers, teachers, friends, and classmates. What that means for a child was aptly described by a columnist in Spokane, Washington:

*"All you need to do to understand the foster-care problem ... is remember back to when you were 7 years old. Think to a time when your mom or your dad was gone for a week and you missed them so much you thought the week would never end. Or the time you had to stay with a relative or friend for a few days, and though everything was fine, you counted the hours until you were in your own home again. Multiply by several times your remembered feelings of abandonment and aloneness."*¹⁸

Actually, it's even worse. The child who is just staying with a friend knows he will see his mom and dad again, and knows when. The foster child does not.

And what about a younger child? How do you explain suddenly being torn from the arms of mommy and daddy, put in a strange car and driven to a house you've never seen where you are left with strangers? No matter how well-meaning the caseworkers and how kind the foster parents, for the child it's an experience akin to a kidnapping.

No wonder one three-year-old girl, needlessly taken from a loving home, literally kicking and screaming, kept calling out "I'm sorry, I'm sorry, I'm sorry."¹⁹ All she could imagine is that she must have done something terribly wrong, and now she was being punished.

The punishment is compounded if a child is only just getting used to his or her new surroundings when he or she is forced to pack up and move again. Indeed, the issue of multiple placement is considered so

crucial that it is the focus of a class-action lawsuit in Washington State. According to National Public Radio “child welfare experts everywhere will be watching this case.”²⁰

Why is the issue so important? A 21-year-old woman who had been in nine foster homes by the time she was nine-years-old put it this way:

“When you spend your life going from place to place and knowing you’re not going to be in any place for very long, you learn not to reach out, not to care, not to feel. I knew that if I reached out to my foster parents, or to the other kids or to schoolteachers or to friends in school, very shortly I would have to leave and never see them again – never even get a chance to say goodbye ... If you don’t get involved you can’t get hurt. And that was my revenge on the world.”²¹

How is this “erring on the side of the child”?

And in some ways this is a best-case scenario. It assumes that at least the foster homes and institutions in which children are placed are safe.

The majority of foster homes *are* safe, and many foster parents are heroic. And the many good foster parents often are the first to blow the whistle on the abusive minority. But that minority is significant and probably growing. And abuse in foster care includes foster children abusing each other, as well as tragic accidents caused by child welfare agencies overcrowding foster homes. There is far more abuse in foster care than in the general population and far more than generally realized. Several academic studies suggest that there is abuse in at least one out of four foster homes. (For details on these studies, and full citations, see Appendix 1).

Think of how often children are moved from foster home to foster home and the implications become even more frightening. And the record for group homes and

institutions is even worse, as discussed below (see “Back to the Orphanage?” p.26).

When a child is taken from a safe home, or one which could have been made safe with the right kinds of services, only to be beaten, raped or killed in foster care, how is that “erring on the side of the child”?

Although child protective workers sometimes say they’re damned if they do and damned if they don’t, it’s not true. When it comes to taking away children, they’re *only* damned if they don’t

When a child welfare system is overwhelmed with children who could have remained safely in their own homes, that system soon runs out of foster parents, creating an artificial “shortage.” That prompts agencies to overcrowd foster homes and institutions and lower standards for foster parents and institutional staff. The more a system of foster care and institutions is overloaded, the more dangerous it becomes. So the KYA approach, with its emphasis on more and more child removal, would make foster children even less safe.

In fact, it would make *all* children less safe.

Foster care panics

The take-the-child-and-run approach has been tried all over the country and failed. In contrast, the few places that have refused to jump on the family-bashing bandwagon and emphasized safe, proven strategies to keep families together also have made children safer.

The take-the-child-and-run mentality is most likely to dominate a child welfare system after the death of a child

“known to the system” makes headlines. Immediately, politicians come forward to proclaim that the death “proves” that there was too much emphasis on family preservation.

There are pledges to change laws and policies to make it even easier to take away children, and there is a determined effort to scapegoat the workers involved in the case that’s in the news.

The result is a foster care panic. Every worker gets the message: Leave one child in a home that is dangerous and I may lose my job, be vilified in editorials and letters-to-the-editor, and maybe even face criminal charges. Take away hundreds of children needlessly and the children may suffer enormously – some may even die in foster care – but I as a worker am safe. (Although child protective workers sometimes say they’re damned if they do and damned if they don’t, it’s not true. When it comes to taking away children, they’re *only* damned if they don’t).

So suddenly there is a huge increase in the number of children taken from their homes. Foster homes become desperately overcrowded. Children sleep in offices or they’re jammed into hideous, makeshift shelters.

And workers become even more overwhelmed, leaving them less time to deal with each individual case. The hypothetical half an hour to make a life-and-death decision about whether to remove a child from a home becomes a hypothetical 15 minutes.

So workers make more mistakes in both directions. Even as they take away many more children based on little more than snap judgments, other snap judgments lead to more children left in dangerous homes. So even more children wind up dead. It happened just this way in Illinois in 1993, in Connecticut in 1995, and in New York City in 1996. (See “The Price of Panic” below).

The claim that taking away huge numbers of additional children will make children safer is, literally, a fatal error.

The Price of Panic

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 used in other states.

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 for several years, 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 1997.²²

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.²³ At the same time, foster care placements increased by 30 percent in just 14 months, overwhelming the system. 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.²⁴

The pattern showed itself in a new way in fiscal 1998, when the Illinois foster care panic finally began to abate. 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.*²⁵ Thanks to a new system for reimbursing private foster care agencies that emphasizes permanence, the decline in the foster care population has accelerated. And as that's happened, children have gotten safer.²⁶

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.²⁷

- Children were jammed 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.²⁸

Abandoning family preservation took a bad system and made it, in Wolf's words, "unquestionably worse."²⁹

And what about the case that started it all? What was the role of family preservation in the case of Joseph Wallace? A family preservation worker recommended that the Wallace family *not* be preserved -- he recommended to a judge that the child be removed. The judge agreed. The child was removed, but the records were lost when the family moved to another county. Only then was the child sent home to his death.³⁰

Not only was family preservation not the cause of the Wallace death -- family preservation almost saved Joseph Wallace's life.

CONNECTICUT: 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 increased by 73 percent,³¹ there was a scandal over abuse in foster care,³² and, as in Illinois, child abuse deaths increased.³³

NEW YORK CITY: Again, this time in late 1995, a child "known to the system" died. Again officials blamed "family preservation" -- even though deaths of children previously known to the child welfare system had declined

by more than 40 percent since 1991.³⁴ Once again, they set off a foster care panic, overwhelming the system. The result: Thousands of children were forced to sleep, often on chairs and floors, in a violence-plagued, makeshift emergency shelter created from city offices,³⁵ a four-year-old foster child was beaten and starved to death in a foster home opened by one private agency, apparently desperate for beds, after another had closed it down,³⁶ and the decline in child abuse deaths ended. Between 1996 and 1998, deaths of children previously “known to the system” increased by 50 percent.³⁷ Just as in Illinois, the death toll among children known to the system fell below the pre-panic level only in 1999 – by which time the panic had abated and the city was taking away fewer children.³⁸

These data don't prove that child abuse deaths always will go up when efforts to keep families together are abandoned. But the critics of child welfare reform premise their entire argument on the assumption that if efforts to keep children in their own homes are eliminated, or at least drastically curtailed, such deaths will decrease. That hasn't happened.

So why would anyone want to bring this approach to Kentucky?

Contrast the record of states and localities that have embraced the take-the-child-and-run approach with the few places that are putting a new emphasis on keeping families together.

- Thanks to a lawsuit that led to a landmark consent decree, Alabama is rebuilding its entire child welfare system to emphasize keeping families together. Instead of the usual boilerplate “service plan” in which the services are geared to the agency's convenience, each family gets a custom-tailored plan for each child – and then the services called for in the plan actually are delivered. They call it “moving the system instead of the child.” Twenty-one counties have completed the rebuilding process. In those counties, the foster care population is down by 33 percent,³⁹ and an independent, court-appointed monitor has found that children are *safer* now than they were before the changes.⁴⁰

- In the mid-1990s, the child welfare system in Pittsburgh and surrounding Allegheny County, Pa. was typically mediocre, or worse. Foster care placements were soaring and those in charge insisted every one of those placements was necessary. New leadership changed all that. Since 1997, the fos-

ter care population has been cut by 20 percent. When children must be placed, half stay with relatives and siblings are kept together 82 percent of the time. They've done it by tripling the budget for primary prevention, more than doubling the budget for family preservation, embracing innovations like the Annie E. Casey Foundation's Family to Family program (one of the reforms KYA complains about) and adding elements of their own, such as housing counselors in every child welfare office so families aren't destroyed because of housing problems. And, as in Alabama, children are safer. Re-abuse of children left in their own homes has declined. And since January, 1997, there has been only one child abuse fatality in a family previously known to the agency.⁴¹

- As a result of its foster care panic, by 1997 Illinois had more children in foster care, relative to its child population, than any other state. Most of those children were under the control of private agencies. The agencies were told their first job was to return children to their birth parents or place them for adoption. But the agencies were paid only for each day they kept the children in foster homes or institutions. The agencies often had sterling reputations and blue chip

boards of directors. For years, when they insisted that every day of every placement was absolutely essential, no one questioned it.

But with the foster care population spiraling out of control, and children suffering enormously, the Illinois branch of the American Civil Liberties Union was able to drag the state child welfare agency kicking and screaming into a new way of reimbursing agencies based on the principle that you get what you pay for.

Now, Illinois pays for permanence. Private agencies are rewarded for returning children to their own homes and for adoptions. They are penalized for letting children languish in foster care. There also is a new emphasis on taking away fewer children in the first place.

When the financial incentives changed, amazing things happened. Suddenly the intractable became tractable and the dysfunctional became functional. Since 1997, the Illinois foster care population has been cut almost in half.⁴²

And once again, children are safer. The rate of reabuse of children left in their own homes has steadily declined along with the foster care population.⁴³

Illinois still has serious problems. All of the recent improvements do little more than undo the damage done by the foster care panic. The state is still too quick to label people child abusers and too quick to take away their children. But Illinois is moving in the right direction, and the improvement illustrates the overarching role played by financial incentives in where children are placed and how long they stay there – notwithstanding mountains of noble rhetoric to the contrary.

SPEND MORE, BUT SPEND SMARTER

A constant theme in *Warning Signs* is the need for Kentucky to spend more on child welfare. Once again, KYA is right.

All states need to spend more on child welfare.

But states also need to spend smarter. And the kind of spending KYA is proposing in *Warning Signs* is not smart. And it is not in the best interests of children.

When the financial incentives changed, amazing things happened. Suddenly the intractable became tractable and the dysfunctional became functional. Since 1997, the Illinois foster care population has been cut almost in half. And once again, children are safer.

KYA mentions only two areas where more money should be spent: Hiring more workers to investigate child abuse, and throwing more children into expensive institutions. The former is likely to do little good, the latter is actually harmful.

The point of hiring new workers is to lower caseloads to manageable levels, so the workers can devote enough time to each case. Lower caseloads better protect children both in the obvious ways and also by increasing morale among workers, thereby reducing turnover.

But KYA is calling for hiring more workers even as it also sends a message that there are huge numbers of hidden child abusers who would be flushed out by the new investigators.

Workers hired in such a climate feel even more pressure to take the child and run. The net of intervention widens, the threshold for taking away children, instead of helping families, gets lower and lower.

The result: The new workers chase a huge number of false reports and trivial

cases, many more children suffer the trauma of needless removal, foster care gets worse as homes become overcrowded and standards are lowered, and the caseloads remain as high as ever.

Spending on institutions

Even worse is the constant drumbeat in *Warning Signs* about the supposed need to spend more on the most expensive form of care – institutions. The problem is not that this is the most costly form of care, the problem is that it is often the most harmful form of care. The extent of the harm is outlined in detail beginning on page 26. In addition, these enormously expensive facilities drain away funds that can be used on programs that are far better for children.

As we noted at the outset, KYA is probably right about the existence of a “bi-partisan drumbeat about how bad government is” that makes it harder to properly fund child welfare services. But that makes it essential that when new spending is won, the funds are then spent wisely.

Otherwise, Kentucky risks repeating the experience of Florida.

As a result of the highly-publicized death of a child “known to the system,” Florida has poured more than \$390 million into its Department of Children and Families in the past three years, doubling the agency’s budget.⁴⁴ But it would be hard to find anyone in Florida, aside from the people who run the agency, who really believes Florida’s children are any better off.

In fact, the system has gotten far worse.

That’s because Florida has been putting its money in all the wrong places – pouring almost all the increase devoted to child welfare into more investigators and more substitute care. Some prevention programs have actually been cut.

Why? Because the same death that prompted the increased spending also set off a foster care panic. The panic was made

worse when Governor Jeb Bush appointed to run the agency a strong proponent of the take-the-child-and-run approach to child welfare. The system, already bad before the panic, has gotten even worse. Now foster homes licensed for two and three children sometimes have 12 and 13. At one point children in central Florida lived through a daily forced march, spending their days in an office and their nights on cots in a day care center. Then they’d shower the next morning at a homeless shelter. As always, all this hardship was inflicted in the name of “erring on the side of the child.” And while child abuse deaths did not increase, as they did in Illinois, Connecticut, and New York City, they didn’t go down either. The number of child abuse deaths in 1999, the first year of the panic and the most recent figures available, was the same as the previous year.

All the suffering – and all the spending – accomplished nothing.⁴⁵

And now, in some quarters, there’s been a backlash against spending more on child welfare, with some arguing that Florida’s experience proves you can’t solve child welfare problems by throwing money at them.

The truth is, you can’t solve child welfare problems *without* throwing money at them – but you have to throw it in the right place.

Had Florida spent all those millions on reforms that have been proven to safely and effectively keep families together, had it put the money into Family to Family and Intensive Family Preservation Services, had it used the money to start building an Alabama-style “system of care,” Florida today probably would be on its way to becoming one of the best child welfare systems in America. Instead, after throwing almost all its new child welfare money into investigations and substitute care, it is among the worst.

With this general background, the flaws in the KYA analysis can be examined in detail.

PART TWO: MISREADING THE SPECIFICS

SUBSTANTIATION

KYA complains about a drop in the percentage of cases that are “substantiated” by child protective workers. KYA blames this on the elimination of a category called “some indication” of maltreatment. KYA bemoans this, arguing that it “artificially decreases the number of children who are counted as being at risk.”

In fact, the “some indication” category posed a serious danger to children. And the best available evidence is that rather than undercounting the number of at-risk children now, Kentucky was overcounting that number before.

Crucial to understanding these issues is an understanding of how the investigation process works. When a worker investigates an allegation of child maltreatment, she can label it “substantiated” or “unsubstantiated.” But the term substantiated means a lot less than the word implies.

Substantiation is not like a criminal conviction. It does not mean that a neutral party found a parent guilty beyond a reasonable doubt after prosecution and defense presented a case. Quite the contrary. A case can be labeled “substantiated” based solely on the opinion of one often undertrained, overworked caseworker who is conducting the investigation. In other words, the “prosecutor” also serves as “judge” and “jury.”

That worker need not hear both sides and weigh rules of evidence. And the standard of “proof” is not the criminal standard of “beyond a reasonable doubt.” The worker need merely believe that a “preponderance of the evidence” indicates guilt. That’s the lowest standard in American jurisprudence – the same standard used to de-

termine which insurance company pays for a fender bender.

As noted earlier, as in most states, the definition of child abuse and neglect in Kentucky is breathtakingly broad. So it takes very little to label someone a “substantiated” child abuser.

Of course workers can, and do, err in both directions. But data from a major federal study show that workers are two to six times more likely to wrongly substantiate a case against an innocent family than they are to wrongly label the case against guilty parents “unsubstantiated.”⁴⁶

Since it takes so little to declare a case “substantiated,” obviously, to declare “some indication” of abuse requires even less. The “some indication” category was, by definition, filled with cases in which there was *more* evidence of innocence. Since these cases were lumped in with those labeled “substantiated” they artificially inflated the substantiation rate.

Indeed this may well explain why, before the change, the substantiation rate in Kentucky was significantly above the national average. In 1996, for example, the last year for which data are available before the change, Kentucky substantiated 39.5 percent of all reports, compared with 34.3 percent nationwide.⁴⁷

In 1999, the substantiation rate in Kentucky dropped to 29.3 percent. But that still was slightly higher than the national average, which has fallen to 29.2 percent.⁴⁸ (The national figure includes “substantiated” and “some indication” combined in the eight states that still retain a “some indication” category or equivalent).

As these figures indicate, a decline in the number of substantiated cases of child maltreatment is in keeping with national trends. Nationwide, as of 1999, the number

of “substantiated” cases of child abuse had declined for six years in a row.⁴⁹ And that makes sense. During those years, crime went down, poverty went down and unemployment went down. Similarly, according to the most recent “Kids Count” survey – co-coordinated in Kentucky by KYA -- the overall health, safety and economic security of Kentucky children improved from 1990 to 1998.⁵⁰

Children need protection from the mindless piling up of rumor and innuendo in files about their families.

Under such circumstances, child abuse can be expected to go down as well. So the most likely reason for the decline in “substantiated” cases of child abuse in Kentucky is that there is less child abuse in Kentucky. (Interestingly, even as child abuse has gone down, the nationwide foster care population has continued to go up. It’s now at least 588,000⁵¹ – still another indication of the widespread problem of wrongful removal).

But the most important reason to get rid of the “some indication” category is the very reason KYA wants to restore it: Dropping this category, says KYA, “wipes away any prior record that there was “some indication” of child abuse and neglect,” information KYA contends might be useful “the next time an allegation is made.” Therefore, eliminating it “may unintentionally place children in jeopardy.”

This is a classic example of KYA flunking the “balance of harms” test. Because KYA declines to acknowledge the harm of a child abuse investigation and the harm of wrongful removal of a child, KYA refuses even to consider the harm that can be done by taking a category as incredibly flimsy as “some indication” of maltreatment

and using it to establish “patterns” that don’t really exist. Children need protection from the mindless piling up of rumor and innuendo in files about their families.

Reinstating the “some indication” category would be contrary to the best interests of children.

In fact, KYA actually wants to go further. It wants Kentucky to keep files on people who have been determined to be entirely innocent of child abuse – cases that are unsubstantiated. Again, this supposedly is in the interest of finding “patterns.” That means that if you want to phone in repeated, anonymous reports on someone as a means of harassment, there’s a good chance that if you do it often enough, something will stick because the false reports may be deemed a “pattern.”

One can only hope that when KYA says Kentucky isn’t keeping unsubstantiated reports, they’re right. A spokesman for the Cabinet for Families and Children says Kentucky *does* keep such records.⁵² Unfortunately, many other states do the same.

And finally, it is not even clear if data from after 1997 can be compared to pre-1997 data at all, since, as KYA notes, that year there was a radical change in the method for compiling the data, as the state switched from examining paper files to automated data collection.

SCREENING

Among the odder sections of the KYA report is one which complains about a practice that is common to child protective systems in every state in the country: Screening.

Some reports are obviously preposterous or trivial. To investigate them is to needlessly subject thousands of children to all the anguish of a child abuse investigation. At the same time, adding these cases to workers’ loads simply steals even more time and attention from children in real danger, increasing the chances that those children will be missed.

Screening mechanisms in many states aren't very good. Workers are poorly trained and decisions are inconsistent. But KYA doesn't call for better screening. KYA appears to be calling for *no* screening.

And it uses scare tactics to do it. "If an intake worker makes a mistake in deciding not to investigate, a child may be injured or killed." Once again, KYA displays no compassion for children victimized by the trauma of needless investigation. And KYA fails to note that if no cases are screened out, worker loads will soar, they'll have less time for each case and, as a result, -- a child may be injured or killed.

Screening actually puts into practice not triage, but rather one of the noblest principles of medicine, the one every doctor is supposed to learn in medical school: First, do no harm.

Sometimes people don't report their suspicions at all. Since that, too, can lead to a real case of abuse being missed, by KYA's logic the state shouldn't wait for "reports" at all, but simply send its workers into the home of *every* Kentucky family.

Once again, there are lessons to be learned from Florida. One of the ways the Florida legislature responded to the well-publicized death of a child "known to the system" was to drastically curb the screening of child maltreatment reports. Lawmakers also commissioned an outside study to examine the results.

The study found that the results were a disaster. At least 35 percent of the calls passed on to investigators should have been screened out. As a result, the study concludes, workers have less time for each investigation, increasing the likelihood that

serious abuse will be missed.

"The hotline is supposed to be a gate," the researcher who conducted the study said. "They've got the gate rusted, stuck open." As a result, cases pile up, creating a backlog of uncompleted investigations.

"I equate that to the game of playing Russian roulette. It's just a matter of time before some child in the backlog pool is really badly injured."⁵³

It is true that any screening mechanism creates a danger that a real case will be screened out and real abuse will be missed. But more real abuse is missed when agencies don't screen. The case files simply pile up on workers' desks, getting little or no attention because the workers have too many other cases. That, too is screening.

The choice is never really between screening and no screening. The choice is between setting up a consistent, rational screening system, or screening cases based on which one makes it to the top of the pile on a worker's desk.

KYA seeks to obscure all this by replacing the term screening with the inflammatory word "triage." But triage refers to deciding which ill patients will be treated while others must wait. In a triage situation, everyone is sick.

In child welfare, the point of screening is to screen out cases in which there is no "illness" at all, or at least none for which a child abuse investigation is the proper cure. In so doing, workers are spared from being distracted from real "sickness" and healthy families don't face "surgery." In short, screening actually puts into practice not triage, but rather one of the noblest principles of medicine, the one every doctor is supposed to learn in medical school: First, do no harm.

Eliminating all screening is contrary to the best interests of children.

Furthermore, Kentucky is about to refine its screening process by adding one of the nation's most successful reforms. It goes by several names around the country:

“differential response” “two tiered response” “dual track response” and “family assessment.” In Kentucky it’s called the “multiple response system.”

By whatever name, this model is as much about widening the net as narrowing it.

In most parts of the country, a case is either screened in – subjecting the family to a full-scale, traumatic investigation, or it is screened out and nothing is done at all.

Multiple response offers another option: In cases believed to be less serious, the referral goes to a helping agency instead of an investigating agency, typically an agency in the community the report came from. Someone from the agency goes to the home and offers voluntary help. No interrogation, no trauma – just help. In some cases, this response is used instead of an investigation, narrowing the net. In other cases it is used instead of doing nothing, thereby widening the net.

As one child protective in a state where the system already is in use put it: “In the old days ... I was told to get in and get out; find out what happened, who did it, and get out. Now ... for the first time, I’m doing something that really helps...”⁵⁴

A recent review of the research on multiple response systems, conducted for the federal government found that “all reported positive safety outcomes.”⁵⁵

REFORM EFFORTS

The one thing that almost everyone involved in the foster care system can agree on is that the system has failed. Children are taken from parents whose only crime is poverty. Other children are left in dangerous homes. Children are taken from safe homes only to be abused in foster care. Children are bounced from foster home to foster home emerging years later unable to love or trust anyone. And even as many children who had all the advantages life has to offer still live with their parents into their mid-20s, foster children are abandoned by the

system, typically at age 18, often with little education, no resources and no place to call home.

**If the current institutions
serving children are so good,
why are the outcomes so
bad?**

Many foster children have the courage and the wherewithal to beat these odds. But study after study has found that former foster children are disproportionately represented on America’s welfare roles, in America’s homeless shelters – and in America’s jails.

One federal study found that, between two-and-a-half and four years after “aging out” only half of former foster children had a high school education, fewer than half had jobs, and 25 percent had been homeless for at least one night.⁵⁶

All of which raises the question: If the current institutions serving children are so good, why are the outcomes so bad?

The children deserve better. They deserve reform.

But KYA apparently believes all this can be solved simply by investigating more families and institutionalizing more children – in short, by doing exactly what has failed, but doing more of it.

KYA appears to have little faith in the skills and resources of Kentuckians in general and the people who work in child protection in particular. KYA seems to believe that these workers are incapable of coping with change, and can perform their jobs well only if they do exactly what they’ve always been used to doing.

Thus, at a time when other child advocates all over the country are clamoring for change, KYA complains that Kentucky has become “a hotbed for reform.”

KYA claims that there are 19 reforms underway in Kentucky and says “it is no wonder that Kentucky’s state social workers ... are overwhelmed with the challenges and complexity of these efforts.”

It isn’t reform that demoralizes workers, it’s the lack of reform.

In fact, KYA has exaggerated both the number of reforms and their complexity.

- KYA makes Kentucky appear to be engaging in multiple reforms by double and triple counting similar or identical initiatives.

For example, KYA lists as separate reforms: “Increased pressure to place children in adoptive homes,” “expedited termination of parental rights procedures,” and “competing for the bonuses associated with the federal Adoption 2002 Excellence Awards.”

In fact, the federal Adoption and Safe Families Act pays bounties to states for every finalized adoption over a baseline number and requires states to seek to terminate parental rights for most children who have been in foster care for 15 of the previous 22 months.

Thus, the federal government does indeed impose “increased pressure to place children in adoptive homes.” But termination of parental rights is nothing new – Kentucky is simply being pressured to do more of it. And if Kentucky does more of it, and then places the children in adoptive homes, the state automatically gets the bounties.

There are, in fact, no bonuses associated with the “Adoption 2002 Excellence Awards.” Rather, KYA is thinking of the “Adoption Opportunities Program.” This program allows states and private agencies to compete for grants to reduce barriers to adoption, but no state is required to apply.

Thus, what KYA portrays as three separate “reforms” is in fact the expansion of one existing practice – termination of parental rights, theoretically leading to adoption.

Similarly, KYA lists separately “relying on ‘community partnerships...’ and “depending upon ‘informal and natural helpers’ as opposed to relying on professionals.” In fact, the ‘informal and natural helpers’ are a key component of the community partnership program, not two separate reforms. (And, contrary to KYA’s loaded language, the informal helpers supplement the professionals, they don’t replace them).

And elsewhere, KYA lists as separate reforms “use of kinship care, which relies on placing children with their relatives” and using TANF (Temporary Assistance for Needy Families) funds to help finance this same initiative.

- Eight of the items KYA lists as separate reforms are the result of changes not in Kentucky policy, but in federal law.

- KYA lists not only programs actually underway but also reforms the state is merely “considering.”

- Many of the reforms are taking place only in portions of the state. It is an exaggeration to suggest that all child welfare workers are dealing with all of them.

- Some items listed by KYA as reforms have nothing to do with the services actually provided to children and families, they are simply administrative changes.

- Items which *ease* the burden on workers are included on a list that supposedly proves how overburdened these workers are.

For example, one “reform” is said to be implementing a new federal law concerning children who “age out” of the system at 18. But this law mandates no new programs. It only offers more money and more flexibility to states in implementing their existing programs or starting new ones, if they so choose. (Apparently KYA’s enthusiasm for spending money decreases if the

money isn't going into institutionalizing more children and investigating more parents).

Another allegedly burdensome reform "enhances the education and training of newly-hired state child protection workers."

When child welfare workers are questioned about frustrations on the job, they generally do *not* complain about getting more money for their programs and more opportunities for training.

Eliminate the duplication, the reforms that are only being "considered," the items that ease the burden on workers, and the changes that have nothing to do with the services received by children and families, and the real number of reforms in Kentucky turns out to be somewhere between four and six – and at least three of these are taking place only in limited portions of the state.

Kentucky may be warming to reform a little, but it's hardly a "hotbed."

And it isn't reform that demoralizes workers, it's the lack of reform. Workers quit when they have so many cases that they can't provide any real help to children and families. They quit when they drown in paperwork. They quit when they're underpaid and underappreciated. KYA's recommended approach, taking away even more children and filing them away in institutions, will only make these conditions worse.

Administrators of reform programs, such as Intensive Family Preservation Services programs, one of the oldest reform efforts, report higher morale and less worker turnover, even though the jobs of IFPS workers are among the most difficult in child welfare. Why? Because they see success – producing measurable results in improving the lives of children and families.⁵⁷

Similarly, those responsible for the Alabama reforms report that caseworker turnover, while still a serious concern, has diminished as the state has reformed its system to emphasize keeping families together.⁵⁸

KYA ends its section on reforms with a quote from an official in Milwaukee County, Wisconsin, in 1995: "The second lesson I've learned is that it is important to guard against the 'easy out' of symbolic, rather than real reform."

Apparently, he was quite an effective guard.

Three years later, as a result of a class action lawsuit brought by Children's Rights, Inc., the state decided the Milwaukee system was so atrocious that the only alternative was a state takeover. It didn't help. The lawsuit has been expanded -- and CRI generally targets systems regarded as among the worst in the country.

Two recent studies, one from the state itself, found alarming rates of abuse in foster care. One study found that most children didn't even have a case plan within required time limits. Caseworkers typically met with foster parents only twice a year, and only one in five foster children got the monthly caseworker visits required by agency policy. Some records were falsified.⁵⁹

In 2001, the pages of the *Milwaukee Journal Sentinel* have been filled with tragic stories about children needlessly taken from their homes only to die in foster care. And no wonder. Relative to its child population, Milwaukee County has more children in foster care than New York City, Chicago/Cook County, Illinois, or Cleveland/Cuyahoga County, Ohio.⁶⁰

Perhaps Milwaukee County guarded against all kinds of reform, and did it a little too well. And perhaps that's not a model that should be held up as an example for Kentucky.

The real meaning of reform

Of the relatively few reforms actually underway or just starting in Kentucky, two are particularly significant, in that they are based on two of the leading national models.

Louisville is one of four sites for the Edna McConnell Clark Foundation's Community Partnerships for Child Protection. It's also a site for the Annie E. Casey Foundation's Family to Family program. (The Casey Foundation also helps to fund NCCPR – and KYA).

The initiatives have much in common. Both are based on the premise that we routinely underestimate the resilience and resourcefulness of poor families and poor communities. Mobilizing these strengths can ensure safer children and stronger families.

Foster parents are treated as members of a team. They are encouraged to act as mentors to birth parents, not adversaries, assisting in efforts to help reunite the family whenever it is safe to do so.

These reform initiatives recognize that even in the most crime-plagued neighborhood, most people don't commit crimes. Even in neighborhoods where drug dealers congregate on the corner, most parents are doing everything they can to keep their children *away* from that corner. Even the poorest communities have neighborhood associations, community-based social service agencies and churches that can form the foundation for helping child protective services (CPS) keep children safe without forcing them to leave everyone they know and love. The problem is, CPS agencies have often been clueless about what these groups are and where to find them, and the community groups have been too suspicious, often with good reason, to work with CPS.

Bridging these barriers is what initiatives like Family to Family and Community Partnerships really are all about.

Key to these initiatives is decentralizing child protective services. CPS workers are based in the communities they serve, often in neighborhood centers that offer a wide array of services. This allows them to get to know their communities, to learn about sources of help for troubled families, formal and informal. And it allows the communities to get to know CPS workers in a non-adversarial setting.

When a child still must be placed in foster care, intensive efforts are made to place the child with his or her extended family or, failing that, in a nearby foster home. That makes it easier for children to see their birth parents during visits. It also allows them to stay in the same school and maintain ties to friends and teachers.

Foster parents are treated as members of a team. They are encouraged to act as mentors to birth parents, not adversaries, assisting in efforts to help reunite the family whenever it is safe to do so.

A key element in the Community Partnerships is the "multiple response" model discussed earlier that is just beginning in Kentucky. And both initiatives use a process called Team Decisionmaking (also called Family Group Conferencing). Under this model, within hours of a child's placement – and sometimes beforehand, in an effort to see if the placement can be prevented – everyone concerned about that child gathers in one room to talk things over. The birth parents are there, the foster parents are there. So are extended family, friends, neighbors, community service providers, religious leaders and anyone else who might be able to help.

A CPS worker leads a discussion of the case. Everyone around the table offers advice, and eventually develops a plan of action. The CPS worker has the final say concerning whether the plan is approved and implemented.

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 Decisionmaking 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.⁶¹

Because they are decentralized and developed in partnership with local communities, community partnerships are not identical all over the country.

The Louisville partnership is built on another Kentucky reform, Family Service Centers, which provide a wide variety of human services in one, neighborhood location (KYA counted this initiative and the Community Partnerships separately). The partnership is based at one such "neighborhood place," with plans to expand to others. In addition to Team Decisionmaking, the Louisville partnership includes court-ordered mediation in low risk cases, and a new approach to casework emphasizing "concrete actions that families can take to address their own problems, guard against relapsing into destructive behaviors and more effectively care for their children." The partnership also is working with area schools to help children with attendance and behavior problems early on, before those problems escalate into "educational neglect" charges.⁶²

There is a substance abuse counselor at the "neighborhood place" a "community resource team" to link families with formal and informal help, and a new twist on "parent education." Instead of courses that patronize families, the neighborhood place offers voluntary "talkshops" developed with the community, and built around the parents' needs and concerns.⁶³

"There are inner-city parents who raise their children to be responsible adults, despite catastrophes that would destroy more affluent families."

The second reform effort, Family to Family works to shorten stays in foster care and ease the trauma of placement.

This is done by recruiting foster parents from the communities in which children live, and by relying more on placements with relatives, called kinship care.

This has prompted concern based on stereotypes about poor families and poor communities. Those who harbor stereotypes about impoverished birth parents, sometimes extend the condemnation to every adult related to that child, and to entire neighborhoods.

In poor communities all over America there are parents who have waged a battle for decades to save their children from poverty, despair, and the lure of the streets. They have been forced to call upon reservoirs of strength that the privileged can only imagine.

As a newspaper columnist in Rochester, New York put it: "It is astonishing to me as I travel the city how many decent, loving and determined people" live in Rochester's worst slums. "They keep their lives together the old fashioned way – they get jobs, they join churches and lift each other

up, and they support each other's efforts to take back their streets ... There are inner-city parents who raise their children to be responsible adults, despite catastrophes that would destroy more affluent families."⁶⁴

Contempt for a child's family and community is in itself harmful to the child, who is likely to ask himself: "If my mother and father are horrible people, and all my other relatives are no good, and my entire community is rotten, then what does that make me?"

If one of those inner city parents wins the battle against the streets with three children and loses it with a fourth, should she be denigrated and discarded when she comes forward to take in that fourth child's children? Apparently some in Kentucky's child welfare establishment say yes. The research says no. In Illinois, which has relied more heavily on kinship care than any other state, there is less abuse of children in kinship care than in foster homes with strangers.⁶⁵

Furthermore, children pick up on the attitudes of the adults who care for them – and such contempt for a child's family and community is in itself harmful to the child, who is likely to ask himself: "If my mother and father are horrible people, and all my other relatives are no good, and my entire community is rotten, then what does that make me?"

Concerns also have been raised about placing children directly in foster homes, rather than in short term "assessment" facilities or shelters first.

No one is suggesting that either approach is best for every child.

But for many children, the trauma of placement is eased if they can be taken immediately to people they already know and love – or at least if they can stay in their own neighborhood, staying in the same school and keeping contact with friends and classmates.

Indeed, the need for this kind of security is so great that the consent decree that guides the Alabama reforms specifically calls for reducing the use of short-term shelters to the greatest extent possible.

The Bazelon Center for Mental Health Law explained why in its book about the Alabama reforms, *Making Child Welfare Work*:

*"Because it is so traumatic to uproot a child, an important goal of [the Consent Decree] is to have the child's first placement be the only placement. ... To minimize moves, the decree outlaws the use of shelter care except under unusual circumstances. Workers are not permitted to park a child in a shelter while they look for a more permanent placement, unless the child can receive the full range of necessary services while in the shelter and 'it is likely that the [child's] stay in foster care will not extend beyond his/her stay in the shelter.' [emphasis in original]. What this meant was that counties had to develop a sufficiently large and flexible array of [placements] so they could place children directly...to the setting determined as most appropriate for meeting the child's needs."*⁶⁶

How does one create such a large and flexible array of placements? By not taking away so many children in the first place, and by using previously untapped resources, including extended families.

Family to Family taps those resources. It has done it successfully all over the country.

We know that because of an exhaustive, independent evaluation of the program conducted by scholars at the University of North Carolina

The initiative exists in several places around the country. Some have done better than others. But in all locations, the evaluations found, “fewer children entered out of home care and those who had to be removed from their homes were placed in less restrictive forms of care.”

Furthermore, while conventional foster parent “recruiting campaigns” are failing all over the country, Family to Family sites often succeed in recruiting foster parents in the children’s own neighborhoods. And instead of the hostility that often characterizes relationships between birth parents and foster parents, many foster parents embraced the Family to Family approach of working with and mentoring birth parents.

In addition:

- With more foster families available, fewer children had to be institutionalized.
- Increased use of relatives as foster parents also opened up a new option for permanency, as more relatives agreed to be permanent guardians of children who could not be reunited with their birth parents.
- At most sites, there was a significant reduction in the number of placements children had to endure. At one site, the number of children in care between one and two years who endured three or more placements was cut by more than 25 percent. At another site, it was cut by more than 50 percent.

And perhaps most significant: There is strong evidence of better safety outcomes.

Because Family to Family succeeded in keeping more children safely in their own homes, the children who *were* removed had more serious problems. Nevertheless, there was no increase in the “recidivism” rate – the number of children returned home who re-enter care – at any Family to Family site. And in some sites, the recidivism rate went down.

That indicates that all of the other improvements in children’s lives were accomplished while making children safer.⁶⁷

No approach to child welfare, whether it’s Community Partnerships, Family to Family or take-the-child-and-run will ever keep every child safe. But all available evidence shows that the child welfare reform efforts discussed in this report, Community Partnerships, Family to Family, Intensive Family Preservation Services, changing financial incentives, the Alabama System of Care, and the reforms in Pittsburgh and Allegheny County – all of them have better overall track records for safety than foster care or institutions.

BACK TO THE ORPHANAGE?

You won’t see the word “orphanage” in *Warning Signs*. You won’t even see the word “institution.” But more than anything else, institutionalizing children is what *Warning Signs* is about.

KYA has cast in its lot with former House Speaker Newt Gingrich, hinting none too subtly, over and over, that more children need to be institutionalized – in other words, go back to the orphanage.

But instead of confronting the issue squarely, KYA presents the issue as one of money. Certain, unspecified placements are presented as better for children, but, it is alleged, the children aren’t being placed there just because those placements cost more.

How does KYA know? Because an unspecified number of workers, many of whom work at these unspecified places, say so.

The most expensive placements in any child welfare system are the institutions – whether they’re called group homes, or orphanages or “residential treatment centers.” They do indeed cost a fortune.

They also tend to be lousy for children.

Indeed, even so-called “good” institutions – with huge private endowments,

country-club grounds and well-trained staff, tend to be bad for children.

In 1995, the North American Council on Adoptable Children (NACOAC) reviewed the scholarly literature concerning children raised in orphanages.⁶⁸ The findings are grim:

- In one study, 25 percent of adult women institutionalized before age five exhibited a personality disorder, compared to none in a control group. The institutionalized women had a great deal of difficulty functioning as parents themselves.

- Research found that “children denied the opportunity to form a consistent relationship with a caregiver in their early years, such as institutionalized children, are at serious risk for developmental problems and long-term personality disorders.”

- Children who grow up in poor quality institutions are more likely to have lower IQ scores and retarded language development. Children in such institutions are more likely to exhibit anti-social behavior and be unable to form supportive relationships with others. Furthermore, “[E]ven good institutions fail to provide children with long-term, stable affectionate relationships that are critical to later social relations.”

- A survey of teenagers with a history of long term, out-of-home placement, published in a leading peer-reviewed scholarly journal, found that the teenagers found institutions to be a significantly worse option than their own families, care by relatives, adoption, or even foster care.⁶⁹ The NACOAC review aptly summed up the study findings: “The teens felt “less loved, less looked after, less trusted, less wanted ...Teens described a powerful code of behavior dictated by institutional peer-group subculture, encompassing drugs, sex, and intimidation.”

The research on the harm of institutionalization is so overwhelming that the federal government now evaluates state child welfare systems in part on their ability

to *reduce* the number of children under age 12 in institutions.⁷⁰

- Orphanage proponents often claim that institutions provide children with “stability” since the children don’t have to move from foster home to foster home. But institutional staff often work in shifts, the caretakers changing every eight hours. And even in institutions using a so-called “house parent” model, the house parents typically quit every year or so.⁷¹ That makes institutions every bit as unstable as multiple foster home placements. The real way to promote stability is to get the children who don’t need to be in foster care back into their own homes. That would eliminate overcrowding in foster care and leave room in good, stable foster homes for the children who really need them.

The research on the harm of institutionalization is so overwhelming that the federal government now evaluates state child welfare systems in part on their ability to *reduce* the number of children under age 12 in institutions

- Orphanage proponents also say institutions keep siblings together. But what if they’re brother and sister? And what if there’s a big difference in their ages. It’s not safe to institutionalize large groups of boys and girls or children of different ages together. In contrast, ever since Pittsburgh and surrounding Allegheny County, Pa. started freeing up foster care beds by emphasizing efforts to keep families together, they’ve been able to keep siblings together in foster homes 82 percent of the time.⁷²

As noted above, even good institutions do harm. And the fact is, there are very few good institutions. Yes, there are

model orphanages. There also are model jails. They're called models precisely because they are exceptions.

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.

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

Examples abound from around 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.⁷³

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.⁷⁴

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].⁷⁵

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 age three "and even a 22-month-old knew the word 'meds.'"⁷⁶

- In November, 1999, the Ft. Lauderdale *Sun-Sentinel* exposed horrifying

conditions in Florida's privately-run "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 abuse reports are not thoroughly investigated. One lawyer 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."⁷⁷

A Miami 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 he was five."

What is striking about many of these accounts is that they are not stories about one institution – they're stories about entire *systems* of orphanages. When it comes to orphanages we're not talking about rotten apples, we're talking about rotten barrels.

As for cost, KYA's report is written to suggest that it is somehow immoral to even raise the issue of how expensive it is to confine a child to an institution. In fact, it is

immoral *not* to raise this issue. Because every dollar thrown into an institution almost certainly could have been better spent on something else.

In 1995, the Child Welfare League of America estimated that it costs an average of \$36,500 to keep just one child in an orphanage for a year.

For that kind of money, an agency could provide in-patient drug treatment to a mother at a facility where she could keep her children with her. Or the agency could provide Intensive Family Preservation Services to seven families. Or it could provide \$300-a-month rent subsidies to ten families. Each of these options is far more likely to be in the best interests of children than a year in an orphanage.

CONCLUSION

At the beginning of this report we said that we admire KYA's dedication and concern about children. We do not question the group's intentions.

But the road to foster care hell has always been paved with good intentions.

Kentucky should take a different road. The first step is to understand what all those *Warning Signs* really mean.

Foster care vs. reform: The track record on safety

Try to make any change for the better in child welfare anywhere in the country, and it will be met with a campaign of resistance built on one theme: Only taking away children keeps them safe. Anything else is dangerous.

In fact, reform efforts consistently have been shown to have better track records for safety than either traditional foster care or institutions.

- National data on child abuse fatalities show that a child is more than twice as likely to die of abuse in foster care than in the general population.⁷⁸

- 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.⁷⁹ 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. The record for institutions was even worse. 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.⁸⁰

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,⁸¹ 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."⁸² And a lawyer who represents children in Broward County, Florida, says 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. The official number during this same period: seven – because until what the lawyer called "an epidemic of child-on-child sexual abuse" was exposed, the child abuse hotline didn't accept reports of such abuse.⁸³

When it comes to abuse in foster care or institutions, there is an enormous incentive for agencies to see no evil, hear no evil and speak no evil.

So it's not surprising that 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.⁸⁴

- 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.⁸⁵ Officials at the program say they have since lowered the rate of all forms of

abuse to “only” 12 percent, but this is based on an in-house survey of the program’s own caseworkers, not outside interviews with the children themselves.⁸⁶

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 is likely to increase when child protection agencies take away more and more children, prompting them to lower standards and overcrowd foster homes. In addition, abuse in foster care does not always mean abuse by foster parents. As the Broward County data and the Indiana study make clear, it can be caused by foster children abusing each other.

Compare this record to the record of reform efforts.

The oldest such reform is Intensive Family Preservation Services, a program begun in the mid-1970s by Homebuilders, an agency in Washington State.

The original Homebuilders program has served 12,000 families since 1982. No child has ever died during a Homebuilders intervention and only one child has ever died afterwards, more than a decade ago.⁸⁷ Michigan has the nation's largest family preservation program. The program rigorously follows the Homebuilders model. Since 1988, the Michigan family preservation program has served 90,000 children. During the first two years, two children died during the intervention. In more than a decade since, there has not been a single fatality.⁸⁸ In contrast, when Illinois effectively abandoned family preservation during the mid-1990s, there were five child abuse deaths in foster care in just one year.⁸⁹

Newer reform efforts are producing similar results:

- Alabama is implementing a consent decree resulting from a federal lawsuit requiring it to reframe its whole approach to child welfare by emphasizing efforts to keep families together.⁹⁰

In counties that have adopted this approach, foster care placements have declined by 33 percent.⁹¹ More important, an independent, court-appointed monitor concluded that children in Alabama are safer now than before the system switched to a family preservation model. The monitor wrote that “the data strongly support the conclusion that children and families are safer in counties that have implemented the *R.C.* reforms.”⁹²

- A reform effort in Pittsburgh and surrounding Allegheny County, Pa. has cut the foster care population by 20 percent since 1997. At the same time, the rate of reabuse of children left in their own homes has declined, and there has been only one death of a child previously “known to the system”⁹³

- A review of studies of an approach to helping families called “differential response” a program brand new to Kentucky, where it is called “the multiple response system,” found “all [studies] reported positive safety outcomes.”⁹⁴

- And a comprehensive independent review of the Family to Family program found considerable success in reducing traumatic foster care placements, with no compromise in safety. Indeed, at some Family to Family sites, the rate at which children sent home were returned to foster care actually decreased, even though the program was dealing with more difficult cases.⁹⁵

None of these programs is right for every child. But for most children most of the time the programs cited in this paper have consistently proven themselves more humane and safer than substitute care.

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- ⁷² [Allegheny County Department of Human Services, Ensuring Permanency in Allegheny County](http://trfn.clpgh.org/acdhs/CYF/permrep799.htm) May 1999, <http://trfn.clpgh.org/acdhs/CYF/permrep799.htm>
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⁷⁴ 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.

⁷⁵ James Rainey, "Grand Jury Cites Abuses in Group Foster Homes," *Los Angeles Times*, April 9, 1997, p.A1.

⁷⁶ Tracy Weber, "Caretakers Routinely Drug Foster Children"(p.A1) and "Prescription for Tragedy"(p.A31) *Los Angeles Times*, May 17, 1998.

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NOTES TO APPENDIX

⁷⁸ U.S. Dept. of Health and Human Services, Administration on Children, Youth and Families. *Child Maltreatment 1999* (Washington, DC: U.S. Government Printing Office, 2001) p.viii.

⁷⁹ Mary I. Benedict and Susan Zuravin, *Factors Associated With Child Maltreatment by Family Foster Care Providers* (Baltimore: Johns Hopkins University School of Hygiene and Public Health, June 30, 1992) charts, pp. 28, 30.

⁸⁰ J William Spencer and Dean D. Kundsens, "Out of Home Maltreatment: An Analysis of Risk in Various Settings for Children," *Children And Youth Services Review* Vol. 14, pp. 485-492, 1992.

⁸¹ *Marisol A. v. Giuliani* No. 95-Civ-10533 (S.D.N.Y., filed Dec. 13, 1995).

⁸² *Marisol A. v. Giuliani*, Complaint, Paragraph 245, p.75

⁸³ Affidavit of David S. Bazerman, Esq, *Ward v. Feaver*, No. 98-7137, United States District Court, Southern District of Florida, Fort Lauderdale Division, Dec. 16, 1998, p.4.

⁸⁴ Memorandum and Order of Judge Joseph G. Howard, *L.J. v. Massinga*, Civil No. JH-84-4409, United States District Court for the District of Maryland, July 27, 1987.

⁸⁵ David Fanshel, et. al., *Foster Children in a Life Course Perspective* (New York: Columbia University Press, 1990), p.90.

⁸⁶ *How Are The Children Doing? Assessing Youth Outcomes in Family Foster Care*. (Seattle: Casey Family Program, 1998).

⁸⁷ Personal communication from Charlotte Booth, Executive Director, Homebuilders. Even in the one case in which a child died after the intervention, in 1987, Homebuilders had warned that the child was in danger and been ignored.

⁸⁸ Personal Communication, Susan Kelly, former director of family preservation services, Michigan Family Independence Agency.

⁸⁹ Peter Kendall and Terry Wilson, "Boy's Death Casts Shadow on Foster Care," *Chicago Tribune*, Feb. 28, 1995.

⁹⁰ *R.C. v. Hornsby* 88-D-1170-N (M.D. Ala, filed 1988).

⁹¹ Ivor D. Groves, *A Summary Report on Implementation Status of the R.C. v. Petelos Consent Decree* (Tallahassee, FL: Human Systems and Outcomes, Inc., December, 1999) Chart, p.10.

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⁹³ Allegheny County Department of Human Services, Office of Children, Youth, and Families, *Ensuring Permanency in Allegheny County*, <http://trfn.clpgh.org/acdhs/CYF/permrep799.htm>; and personal communications.

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