

NEVER MIND THE DECK CHAIRS, *SAVE THE SHIP*

HOW TO SAVE NEBRASKA'S SINKING CHILD WELFARE SYSTEM

**National Coalition for
Child Protection Reform
53 Skyhill Road (Suite 202)
Alexandria, Virginia 22314
(703) 212-2006
www.nccpr.org
nccpr@nccpr.org**

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By Richard Wexler, NCCPR Executive Director

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ABOUT NCCPR:

The National Coalition for Child Protection Reform is a non-profit organization whose members have encountered the child protection system in their professional capacities and work to make it better serve America's most vulnerable children. **Board of Directors:** **President:** *Martin Guggenheim*, former Director of Clinical and Advocacy Programs, New York University School of Law. **Vice President:** *Carolyn Kubitschek*, attorney specializing in child welfare law, former Co-coordinator of Family Law, Legal Services for New York City. **Directors:** *Elizabeth Vorenberg*, (Founding President) former Assistant Commissioner of Public Welfare, State of Massachusetts; former Deputy Director, Massachusetts Advocacy Center; former member, National Board of Directors, American Civil Liberties Union; *Annette Ruth Appell*, former Associate Dean for Clinical Affairs, Washington University Law School, St. Louis, former Associate Dean for Clinical Programs, William S. Boyd School of Law, University of Nevada, Las Vegas; *Marty Beyer, Ph.D.*, clinical psychologist and consultant to numerous child welfare reform efforts; *Ira Burnim*, Legal Director, Judge Bazelon Center for Mental Health Law, Washington, DC; former Legal Director, Children's Defense Fund; former Staff Attorney, Southern Poverty Law Center; *Prof. Dorothy Roberts*, Northwestern University School of Law, author *Shattered Bonds: The Color of Child Welfare* (Basic Civitas Books: 2002); *Witold "Vic" Walczak*, Legal Director, American Civil Liberties Union of Pennsylvania; *Ruth White*, Executive Director, National Center for Housing and Child Welfare, former Director of Housing and Homelessness, Child Welfare League of America. **Staff:** *Richard Wexler*, Executive Director. Author, *Wounded Innocents: The Real Victims of the War Against Child Abuse*. (Prometheus Books: 1990, 1995).

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PART ONE:

The current system

OVERVIEW

- A mother is late picking up her daughter from school. All three of her children immediately are taken away and placed in foster care. In later years, two more children are taken; one is confiscated at birth, the other during a visit with siblings. Then the mother is issued an ultimatum like something out of *Sophie's Choice*: Give up the babies and we may let you have the older kids back. That means, of course, that if authorities really are acting in the best interests of the child, they have concluded it is best for the older children to be with their mother.

But because the mother turns down the deal and because the state of Nebraska views children as bargaining chips, all five children lose their mother forever.

- The mother of an infant undergoing aggressive medical treatment for a rare form of leukemia rushes her baby to the doctor when she won't stop crying. The child has a broken leg. Oncologists say chemotherapy for the leukemia likely made the infant's bones brittle. But the Nebraska Department of Health and Human Services refuses to believe the experts and takes away all the mother's children.

- A child sees his father beat his mother. When the boy starts becoming violent himself, mom pleads for help from DHHS. Instead of helping, they take away the child and his younger brother – and place them in a home where the father is living while awaiting sentencing for assaulting the mother.

- A sixth-grader fights back against a school bully and gets suspended for a week. Between that and some illnesses he

winds up over the 20-day limit in Nebraska's draconian new school attendance law. That law lumps together excused and unexcused absences. Nevertheless, he passes and moves on to middle school.

Nebraska's take-the-child-and-run approach to child welfare makes all children less safe.

But after being absent only twice the next school year, the county attorney hauls them to court. Though the child is allowed to remain in his own home, the court makes him a "state ward" – without any charge of abuse or neglect and with no legal counsel provided to the mother.

By now the numbers are well-known; state officials don't even bother to deny it anymore: Nebraska tears apart families at one of the highest rates in the nation. But behind those numbers are stories like the ones described above, from the files of the Family Advocacy Movement in Omaha. There are many, many more.

Each is a story of children's lives damaged or destroyed because of the fanatical take-the-child-and-run mentality that characterizes Nebraska child welfare, and the failure of the Nebraska Legislature to hold anyone, in either the public or the private sector, accountable for those failures.

All those children taken from everyone they know and love are not the only ones who suffer. The more that child welfare systems are overloaded with children who never needed to be taken from their homes, the less time workers have to find children in real danger. Nebraska's take-the-child-and-run approach to child welfare makes all children less safe.

The mentality at DHHS was summed up by a former caseworker who says that during her initial training she was told: "Parents don't know their rights, and you should take advantage of that by walking all over them."

The mentality at DHHS was summed up by a former caseworker who says that during her initial training she was told: "Parents don't know their rights, and you should take advantage of that by walking all over them."¹ (See p. 7.)

Wrongful removal drives everything else. It is at the heart of all the problems facing the system. Yet the governor and the Legislature seem to be doing everything in their power to avoid facing up to this reality, obsessing over one diversion after another.

First, Nebraskans were told the answer to everything was to privatize the system. Now, they're being told the answer is to *un*-privatize the system. But the diversions and distractions don't end there. Some say: "Create a separate Department of Children's Services – that'll fix things!" "No, wait," others say, "throw in a 'Children's Commission' – then everything will be fine!"

Privatization is The Great Irrelevant

cy in American child welfare. There is no evidence from anywhere in the country that privatization *per se* makes child welfare systems better – or worse. The very term "privatization" is misleading. There is not a child welfare system in America that is 100 percent private or 100 percent public. All of them combine elements of each.

Among the few relatively good child welfare systems in America, some are heavily privatized, some are not. There is nothing to indicate that being privatized, or not being privatized was responsible for their success.

The condition of Nebraska child welfare, and the pointlessness of the privatization debate both were brought into stark relief at a legislative hearing on Jan. 26.

One witness cried as she described the failure of the current privatized system. The next witness cried over the failure of the previous public system.²

They were both right.

Similarly, the few relatively good systems include some in which various programs and services for children are handled by a separate, freestanding agency, and some in which children's services are a division of a larger agency. There is no evidence that agency structure played a role in these agencies' success.

The Titanic of Nebraska child welfare hit the iceberg years ago; it's been sinking ever since. Yet it seems all that DHHS and the Legislature can think of to do is find new ways to rearrange the deck chairs.

Now it appears, the decision is being taken out of their hands. Before legislators can vote with their hands, "lead agencies" are voting with their feet.

With KVC's decision to withdraw from case management, there is only one "lead agency" left. While privatization is never easy, the Nebraska record of "bail and fail" on the part of privatized lead agencies is unprecedented in modern American child welfare.

The real keys to success in any child welfare agency are:

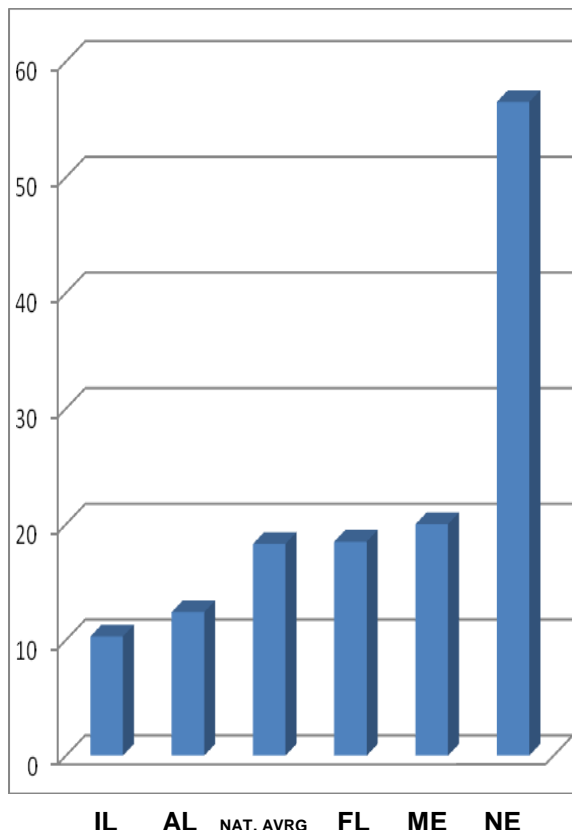
- Adequate funding.
- Strong, courageous agency leadership.
- A strong, unwavering commitment to a system built around proven programs to keep children safely in their own homes.

Nebraska has only one of these elements. Surprising as it may sound, the state spends enough for a good system – but it wastes the money on needless foster care and institutionalization.

Agency leadership has ranged from mediocre to breathtakingly cruel – with one former director of DHHS’ Division of Children and Family Services making a sick joke at the expense of victims of Nebraska’s “safe haven” debacle.³

And, of course, DHHS has set a course of family destruction, even as much

Number of children taken from their homes per thousand impoverished children, 2010:



Sources: See Appendix A.

of the nation realizes that there can be no child safety without family preservation.

THE EXTENT OF THE PROBLEM

Nebraska doesn’t just take away children at a rate above the national average, it takes children at the second highest rate in America when child poverty is factored in – a rate more than *triple* the national average and more than *quadruple* the rate in states widely-regarded as, relatively speaking, national models. If you don’t factor in poverty and just compare entries to the total child population, Nebraska *still* is second worst in the nation.⁴

The Titanic of Nebraska child welfare hit the iceberg years ago; it’s been sinking ever since. Yet it seems all that DHHS and the Legislature can think of to do is find new ways to rearrange the deck chairs.

It’s not just entries where Nebraska is a disaster. On any given day, Nebraska traps a higher proportion of its children in foster care than any other state.⁵

Looked at another way, nationwide, each year, about 254,000 children are taken from their parents. But if every state tore apart families at the same rate as Nebraska, more than 780,000 children would be removed from their parents each year.

Nationwide, about 404,000 children are trapped in foster care on any given day. But if every state held children in foster care at the same rate as Nebraska, there would be more than *1.2 million* children trapped in foster care right now.⁶

So either Nebraska is a cesspool of depravity, with more than triple the child abuse of the nation as a whole, or Nebraska is tearing apart a whole lot of families needlessly.

Either Nebraska is a cesspool of depravity, with more than triple the child abuse of the nation as a whole, or Nebraska is tearing apart a whole lot of families needlessly.

At one time DHHS officials tried to claim that Nebraska only looked like one of the worst, because its figures included juvenile justice placements over which DHHS claimed to have no control. DHHS implied that this was somehow unusual.

It's not.

According to a report from the Performance Audit Committee of the Nebraska Legislature, 31 states include juvenile justice placements in the figures they report to the federal government. And, of course, almost all of those states still have lower rates of removal, and all have proportionately fewer children in foster care, than Nebraska.

The Nebraska auditors also found something else: juvenile justice placements represented only about 22 percent of all placements.⁷

Nebraska is such an extreme outlier that even if you took all of those placements out (while still counting them for the 30 other states) Nebraska *still* would be third worst in the nation when it comes to the proportion of children trapped in foster care when rates of poverty are factored in, and fifth worst when compared only to total child population.⁸

Nebraska compounds the problem of extremely high rates of removal and placement when it decides where to put children. There is overwhelming consensus among child welfare experts that when a child must be placed out of the home, the best option almost always is placement with a relative, known as kinship foster care. Study after study has found such placements to be better for children's well-being, more stable, and most important, *safer* than what properly should be called "stranger care."

Yet Nebraska uses kinship care at a rate below the national average, and far below the national leaders.

There is an even larger body of research showing that the worst form of care is no family at all – placing children in group homes and institutions. Yet Nebraska uses this form of care at a rate well above the national average, and far above the rate in states that are models for safely putting families first.⁹

WHY WRONGFUL REMOVAL MATTERS SO MUCH

Ask officials in poor-performing child welfare agencies why they're taking away so many children needlessly and one phrase almost always comes up.

Sure adults may suffer when their children are taken away needlessly, but, it is claimed, we have to "err on the side of the child." In fact, there probably is no phrase in the child welfare lexicon that has done more harm to children than "err on the side of the child."

- When a child is thrown needlessly into foster care, he loses not only mom and dad but often brothers, sisters, aunts, uncles, grandparents, teachers, friends and classmates. For a young enough child it can be an experience akin to a kidnapping. Other children feel they must have done something terribly wrong and now they are being pun-

A FORMER DHHS CASEWORKER SAYS DHHS TOLD HER:

“Parents don’t know their rights and you should take advantage of that by walking all over them.”

Tawnie Stewart was a DHHS caseworker in the 1990s. Last year, she told the North Platte Telegraph about what her job was really like, and why she left:

On “voluntary” service plans:

“[Caseworkers] are told to tell parents ... that if they cooperate, things will go better, if not they will file criminal charges. Most people would be afraid at that point and the voluntary cooperation sounds easier, but in fact, it's better if you force them to pursue criminal actions. That way, they at least have to prove what they are saying. Otherwise, they can do what they want.”

On lying:

“I was supposed to be working for these mothers to help them get their children back, but I was being told to work against them. I worked with a case plan supervisor who wasn't familiar with cases, but would tell me what to put in [the case plan]. But the last straw was when I was told I would have to lie on the stand.”

On how to treat families:

“[As part of my initial training I was told] ‘Parents don’t know their rights and you should take advantage of that by walking all over them.’”¹⁰

ished. One major study of foster care “alumni found they had twice the rate of post-traumatic stress disorder of Gulf War veterans and only 20 percent could be said to be “doing well.”¹¹

How can throwing children into a system which churns out walking wounded four times out of five be “erring on the side of the child”?

All of the trauma is compounded when children are moved from foster home to foster home. Each time they settle down and try to make friends, let alone form attachments to their substitute caregivers, they are uprooted again. Often they emerge years later unable to love or trust anyone.

Yet in Nebraska, of all the children

in foster care on Dec. 31, 2010, more than half had been in four or more placements.¹²

Two more studies, involving 15,000 typical cases, found that even maltreated children left in their own homes with little or no help fared better, on average, than *comparably-maltreated* children placed in foster care.¹³

As the *Omaha World-Herald* noted in an editorial about the first of the studies, the findings mean that “for those children who can reasonably be left at home, leaving them there should be given the benefit of the doubt.”¹⁴

In other words, the best way to err on the side of the child is to err on the side of the family.

But what about parents who use drugs? A common all-purpose excuse for removing children is the latest “drug plague,” which always is deemed intractable, impossible to treat and worse than any previous “drug plague” – until the research catches up with the hype.

So it may come as a surprise to learn that for anywhere from 58 to 70 percent of children in Nebraska foster care, drug abuse was not even alleged.¹⁵

Even where there is such an allegation, and even where it is true, foster care usually is the wrong answer.

University of Florida Medical Center researchers studied two groups of infants born with cocaine in their systems. One group was placed in foster care, the other with birth mothers able to care for them. After six months, the infants were tested using the standard measures of physical development – sitting up, reaching out, rolling over. Consistently, the children left in their own homes did better. For the foster children, being taken from their mothers was more toxic than the cocaine.

It is extremely difficult to take a swing at “bad mothers” without the blow landing on their children. If we really believe all the rhetoric about putting the needs of children first, then we need to put those needs ahead of everything – including how we may feel about their parents. That doesn’t mean we can simply leave children with addicts – it does mean that drug treatment for the parent almost always is a better first choice than foster care for the child.¹⁶

And addiction to methamphetamine is just as treatable, in the same time frames as addiction to other drugs.¹⁷

- All that harm can occur even when the foster home is a good one. The majority are. But the rate of abuse in foster care is far higher than generally realized and far higher than in the general population. Official statistics on the rate of abuse in foster care are

a sick joke. They only add insult to foster children’s injuries. In Nebraska, for example, DHHS claims that less than one half of one percent of foster children were abused in foster care in 2010.¹⁸

How can throwing children into a system which churns out walking wounded four times out of five be “erring on the side of the child”?

Other states make similarly preposterous claims. That is to be expected. When agencies investigate abuse in foster care they are, in effect, investigating themselves. But for that figure to be true, it means that one could gather more than 200 young people in a room, all of whom had been in foster care for up to a year, ask them: “How many of you were abused in foster care?” and only one would raise her or his hand.

I doubt anyone in child welfare seriously believes that’s what would happen. A better estimate comes from former foster child Rose Garland, who told the PBS series *Frontline*:

*I know that there are good foster families out there, o.k.? But I also know that every foster kid that I have ever talked to, including myself, have been abused in foster homes. And I'm talking physically, emotionally and sexually.*¹⁹

The evidence of widespread abuse in foster care is more than anecdotal. Independent studies find vastly higher rates of abuse in foster care than agencies find when they investigate themselves:

That same alumni study cited earlier found that one-third of foster children said

they'd been abused by a foster parent or another adult in a foster home.²⁰ (The study didn't even ask about one of the most common forms of abuse in foster care, foster children abusing each other.) Several other independent studies also find abuse in one-quarter to one-third of family foster homes.

"I know that there are good foster families out there, o.k.? But I also know that every foster kid that I have ever talked to, including myself, have been abused in foster homes. And I'm talking physically, emotionally and sexually."

--Rose Garland, former foster child

Switching to orphanages won't help -- the record of institutions is even worse²¹ - and Nebraska already overuses them.

Indeed, as recently as 2010, Nebraska suspended admissions to two Boys Town programs after it found misuse of physical restraints and potent psychiatric medications. Boys Town denied the allegations. The suspensions were lifted after Boys Town filed "corrective action plans."²²

Furthermore, the more a foster care system is overwhelmed with children who don't need to be there, the less safe it becomes, as agencies are tempted to overcrowd foster homes and lower standards for foster parents.

If a child is taken from a perfectly safe home only to be beaten, raped or killed in foster care, how is that "erring on the side of the child"?

- But even that isn't the worst of it. Everyone knows how badly caseworkers are

overwhelmed. They often make bad decisions in both directions -- leaving some children in dangerous homes, even as more children are taken from homes that are safe or could be made safe with the right kinds of services. The more that workers are overwhelmed with children who don't need to be in foster care, the less time they have to find children in real danger. So they make even more mistakes in both directions. That is almost always the real explanation for the horror-story cases that make headlines.

That's why the Nebraska approach makes all children less safe.

None of this means no child ever should be taken from her or his parents. Rather, it means that foster care is an extremely toxic intervention that must be used sparingly and in small doses. But year after year, Nebraska prescribes mega-doses of foster care, at rates almost unheard-of in much of America.

WHO IS IN THE SYSTEM?

How can it be possible that "abused" children typically do better in their own homes than in foster care? It's possible because most "abused" children were not abused.

Of all the children in foster care in Nebraska in 2010, 19 percent were there because of allegations of any form of physical abuse, from excessive corporal punishment to torture. Seven percent were in care because of sexual abuse.

In contrast 58 percent were in care because of "neglect."²³

What is "neglect"? In Nebraska it's "the failure of the parent to provide for the basic needs or provide a safe and sanitary living environment for the child."²⁴

A definition that broad can include some extremely serious maltreatment -- such as, say, deliberately starving a child, or locking him in a closet all day. But it also is a

perfect definition of poverty. And the confusion of poverty with neglect is the single biggest problem in American child welfare.

- Nationwide, three separate studies since 1996 have found that 30 percent of America's foster children could be safely in their own homes right now, if their birth parents had safe, affordable housing.²⁵

- A fourth study found that "in terms of reunification, even substance abuse is not as important a factor as income or housing in determining whether children will remain with their families."²⁶

In Nebraska, DHHS caseworkers admit that lack of adequate housing is a reason for removal for 25 percent of children in foster care.²⁷ Then DHHS sets up a classic Catch-22. Having children in the home often is a condition for living in subsidized housing. When the children are taken, the parents lose their housing. Then, they can't get their children back because they don't have housing.

- A study of "lack of supervision" cases 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.²⁸ But the "service" offered most often was foster care.

- 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.²⁹

And across the country, several people who have run child welfare systems have acknowledged that their own systems take away too many children.

- In Washington D.C., where the foster care system was run for several years by the federal courts, the first receiver named by the court to run the agency found that between one-third and one-half of D.C.'s

foster children could be returned to their parents immediately -- if they just had decent housing.

Foster care is an extremely toxic intervention that must be used sparingly and in small doses. But year after year, Nebraska prescribes mega-doses of foster care, at rates almost unheard-of in much of America.

- A former District Administrator in Broward County Florida estimated that 35 percent of the children in that county's foster care system could have remained safely in their own homes had the right kinds of help been provided.³⁰

- The former head of one of the nation's largest child welfare systems, Los Angeles County's, put the figure at up to 50 percent.³¹

And here's the really scary part: None of these other jurisdictions has ever taken away children at anywhere near the rate of Nebraska.

THREE CASES FROM NEBRASKA

All of which helps explain what happened to the children of Anthony and Arva Kelley. We know more about this case than most because, two years, ago, the family filed a civil lawsuit which was the topic of a story in the *Omaha World-Herald*.

It all began in 2000 when police found their three children, then aged 4, 2 and 1 home alone late at night. After waiting one hour, the police removed the children.

It would be nine years before they were returned.

The more that workers are overwhelmed with children who don't need to be in foster care, the less time they have to find children in real danger.

In the intervening years:

- The parents had four more children, and DHHS could find no reason to remove any of them, even as they held onto the older children.

- Report after report, evaluation after evaluation said the older children could be returned home safely.

- The parents did everything they were told to do to get their children back. But every time they completed the requirements, DHHS and/or the court would come back with new requirements.

- Though the initial allegations did not include substance abuse, the father was required to get substance abuse treatment. But one outpatient program after another put him on waiting lists.

- So he went to a private therapist. Sorry, the court said, that's the wrong kind of treatment. Go back and start over.

- He finally completed the "right" kind of program in 2002. But he couldn't pay for it. So the provider refused to give him the papers showing he'd completed the program – and the court acted as though he had not completed it.

- Three years later, he finally got the certificate, but by then the court said that wasn't enough.

- In an example of the kind of vindictiveness that is a common part of child

welfare, Nebraska-style (see p. 23), when the parents didn't dot every i and cross every t on paperwork requirements for visits, DHHS stopped the visits – thereby punishing the children for the alleged paperwork transgression of the parents.

- In 2005, the then-Director of HHS, Nancy Montanez, said the children should be home, but for "legal reasons" HHS couldn't do anything about it.

- Later that year, another top HHS official, Todd Reckling, apologized for all the delays.

- But a year later, HHS pulled something else that turns up often in accounts from families: The "Sophie's Choice" ultimatum; in this case: Give up custody of the oldest children forever – or we'll come after the younger children as well.

The children finally were returned in November 2008. The children who were 4, 2 and 1 when they were taken, were 13, 11 and 9 when they were returned.

And so, in order to "solve" a problem that could have been fixed with a little help to be sure that some young children were not left home alone again and the house was cleaned up, the Nebraska Department of Health and Human Services inflicted incalculable harm on three small children.

One of the children was hospitalized in 2006 for severe emotional distress. A family therapist told the *World-Herald* that "the children definitely have suffered feelings of abandonment. The system divided and conquered."

The case also probably cost Nebraska taxpayers hundreds of thousands of dollars in caseworker time and court costs as it dragged on for nine years.

Once finally reunited, the parents took the one step sure to keep Nebraska DHHS from doing more damage: They moved their family to South Carolina, near the homes of the children's grandparents.

The lawyers who brought the civil suit say what's really frightening is that cases like this are not unusual. "We're ... really tired of seeing how the Department screws up families," said attorney Amy Geren. "You can only turn your back on that so many times and say 'It's just one case.'"³²

Or consider a case where the problems were more serious, but still did not require resorting to foster care.

In this case the mother was repeatedly convicted of drunk driving. She allegedly also had eating disorders and anxiety problems, her home was a mess, and the child sometimes had an unpleasant odor.

Were the mother rich, she'd wind up in celebrity rehab, with a private therapist for her anxiety and a housekeeper to keep the home spotless. Were she living in another state, she might have gotten drug treatment and counseling with an Intensive Family Preservation Services intervention to make sure the home was made clean and safe.³³

But because it happened in Nebraska, the child was consigned to foster care with strangers for two-and-a-half years.

During that time, the child, who had been removed because of her mother's drunk driving, was transported to a visit with her mother by a worker whose blood alcohol level was five times the legal limit. The car was stopped when it was seen swerving on I-80. The child, then age 8, was found crying in the back seat.

A year later, according to the *World-Herald*, the girl was attacked by the foster parents' dog, "leaving gaping wounds on her cheek and [tearing] a two-inch strip from her upper arm, exposing tissue, according to medical records."

Just two weeks after this second incident, DHHS decided the little girl could be placed with her aunt.³⁴

But these tragedies aren't always

DHHS' fault – at least not entirely.

In one of the saddest of the "safe haven" cases, involving a single father of nine children, DHHS got it partially right. While the agency did not provide the father with the help he needed, at least the agency agreed to a kinship care placement.

"We're ... really tired of seeing how the Department screws up families. You can only turn your back on that so many times and say 'It's just one case.'"

--Amy Geren, attorney

One relative took two of the children and a great aunt, in an amazing act of generosity, immediately opened her home to the other seven.

But that wasn't enough for Elizabeth Crnkovich, the Douglas County Juvenile Court judge hearing the case.

Instead of praising the great aunt to the skies and thanking her for her extraordinary compassion, Judge Crnkovich whined that, before she took in all those children, the aunt didn't buy them each a separate bed. The children had to share beds and sleep on air mattresses. The judge also was upset that, with everything else she had to do to accommodate seven children – including looking for a larger house to live in – the aunt had not immediately arranged school enrollment.

(School enrollment apparently is an obsession for Judge Crnkovich. She has been a driving force behind Nebraska's draconian, counterproductive truancy law and she relishes the opportunity to use it as what she reportedly describes as "a hammer" against families, in one case even jailing

We are the Board! Resistance is futile!

WHY THE NEBRASKA FOSTER CARE REVIEW BOARD SHOULD BE ABOLISHED

Mary Callahan is a foster parent from Maine who got fed up with the fact that almost every child the state placed with her never needed to be taken from his or her birth parents. That's why her book is called *Memoirs of a Babystealer*.³⁵ Her activism helped transform the Maine system into a national leader in keeping children safe by keeping families together. One of her commentaries is on the NCCPR website.³⁶

Callahan has a term for how most child welfare systems work. They put a family under a microscope, judge anything and everything they do, and then lie in wait, for as long as it takes for a parent to slip up. Callahan calls it the "gotcha' moment."

But we'd never encountered a state where this was the officially-recommended course of action – until we read an Annual Report of the Nebraska Foster Care Review Board – in this case the one from 2008.³⁷ Although such boards exist in many states, in no other state does their influence come close to that wielded by the board in Nebraska. In part, that's because the board's longtime director (until earlier this year) had been the Godsource for the state's media – that one person or organization guaranteed a quote in every child welfare story; the one whose declarations are viewed as Holy Writ. Questions about using a state employee for personal errands and alleged violations of the federal Hatch Act, did not change that status.

As is so often the case with people in child welfare, the members of the board care deeply about children. They have the best of intentions. But the board is totally out-of-touch with best practice in child welfare, and clueless concerning what really works to keep children safe.

A close look at an FCRB Annual Report makes clear why Nebraska harms so many children by needlessly tearing apart families and holding children in foster care at higher rates than almost any other state. One of the most important reforms the state can make is to abolish the board – even though the sponsor of the bill to do just that probably was not motivated by Nebraska's high rate of child removal.

As is so often the case with people in child welfare, the members of the board care deeply about children. They have the best of intentions. But the board is totally out-of-touch with best practice in child welfare, and clueless concerning what really works to keep children safe. In fact, the requirements for membership on the board almost guarantee this. So it's no wonder their reports read like a manual for getting to "gotcha."

- In a state that takes children at one of the highest rates in the nation, the Nebraska Foster Care Review Board said that, in 2008, removal decisions were correct at least 98 percent of the time. So either all those other states that take proportionately fewer children (and that's almost every state, including those with strong records for keeping children safe) don't know what they're doing, or the Review Board is blind to Nebraska's rampant needless destruction of families.

- Even the Review Board had to concede that in 22 percent of cases, the state failed to make "reasonable efforts" to reunify families after the child was removed, when it should have done so – something required by federal law. So the real figure must be far higher.

- When children really can't stay safely in their own homes, the best option is kinship foster care with a relative, (see p. 25). But even though Nebraska actually uses kinship care at a rate below the national average, nearly every comment about kinship care in the FCRB report frets about the state doing too much of it.

- In contrast, the board promotes the worst form of "care," institutionalization. Even though Nebraska institutionalizes children at a rate well above the national average, (see p. 27), the Review Board calls for even more of it, instead of demanding far better alternatives such as Wraparound programs. Indeed, in a state where the "safe haven" debacle dramatized the urgent need for programs like Wraparound, the word "Wraparound" does not even appear in the report.

Worst of all is the angry, hectoring, patronizing tone the report takes toward families.

Most parents who lose their children to foster care are neither sadists nor brutes. Often, their poverty is confused with neglect, (see p. 9). Other times there are serious, real problems, but problems that can be fixed with a helping hand.

Reading a Nebraska Foster Care Review Board's report is a bit like watching one of those *Star Trek* episodes in which the conquering Borg order those they've subjugated to "Comply! Comply!"

The reason to extend that hand is not for the sake of the parents, but for their children. Multiple studies document the inherent trauma of being thrown into foster care, (see p. 7). Yet instead of putting the children first and offering a helping hand, the Review Board puts its contempt for the parents first, and offers only a wagging finger – over and over and over again.

Yes, there are token references to prevention, and even one good example of a family caught in a no-win situation. But mostly, the board's vision of prevention is really about surveillance, complete with an Orwellian suggestion that every new mother be assessed by hospital staff to see if she is a potential child abuser. Best practices like drug court and pre-hearing conferences are perverted into ways to crack down on families. Visits are viewed not as a chance to help children, who desperately need to see their parents, but to hover over the parents, writing down every word and gesture, awaiting that "gotcha moment."

Thirty-nine times - an average of once every three pages - there are references to the need to assess parental "willingness" or parental "ability" or parental "appropriateness" or, most often of all, "parental compliance." Reading a Nebraska Foster Care Review Board's report is a bit like watching one of those *Star Trek* episodes in which the conquering Borg order those they've subjugated to "Comply! Comply!"

That the FCRB would be so biased against families is almost inevitable given the requirements in current law for membership. The board members come from professions which almost ensure that their personal life experiences will bias them against struggling families.

For example, one member must be a director of a child advocacy center. These are places where children believed to have been sexually abused or severely physically abused are taken for medical exams and questioning.

Anyone who runs one of these places is like an astronomer with an enormously powerful telescope. That astronomer will have an extremely good view of a tiny portion of the sky – but no chance at all to see the big picture.

While brutal physical abuse and sexual abuse are a tiny proportion of all cases seen by DHHS, cases alleging such horrors represent nearly 100 percent of what the director of a

child advocacy center sees. So it's no wonder she or he is likely to view all parents caught up in the system as suspect and issue reports focusing on surveillance and compliance.

Much the same is true for a pediatrician – and one member of the board must be a pediatrician.

Another must run a Court-Appointed Special Advocate (CASA) program. But the largest study of CASA ever done, a study commissioned by the National CASA Association itself, found that CASAs prolong foster care and reduce the chances that children will be placed with relatives instead of strangers. They also devote less time to cases when the children they work with are Black.³⁸

Instead of putting the children first and offering a helping hand, the Review Board puts its contempt for the parents first, and offers only a wagging finger – over and over and over again.

That kind of bias is built into the CASA model. CASAs are volunteers who are supposed to spend a lot of time on their cases. Poor people aren't likely to have that kind of time. So though CASAs, too, mean well, they are likely to come from backgrounds and have life experiences vastly different from the families they judge.

Still another member of the Review Board must be a “guardian *ad litem*” who has represented children. Though there are serious problems with the Nebraska GAL program,³⁹ and, in fact, we recommend that the very role of GALs be changed (see p. 49) nevertheless, it still makes sense that a GAL be on the board. But it is just as urgent that the board include a lawyer who regularly represents parents, yet there is no such requirement.

Similarly, there is no requirement that a board member be a parent who once lost a child to DHHS – or even that a member be a former foster child.

Governors and legislators come and go, but the Foster Care Review Board is always there, wagging its finger.

When the longtime director, Carolyn Stitt, finally was removed she was replaced by Kathy Bigsby Moore, someone who has shown the same attitude toward families.

Nothing will really change until the statewide Review Board is abolished. Unfortunately, legislation that would have done just that has been watered down to the point where it is almost meaningless. Now, it would create a new board dominated by members of local foster care review boards.

But the same problem that afflicts CASA programs, the need for volunteers with time on their hands, also afflicts the local boards, and is likely to produce the same bias. Though federal law requires some form of case review, it does not require that it be done by citizen boards. Therefore, in addition to abolishing the state board, the local boards should be abolished as well.

parents, apparently for wanting to do no more than tell their side of the story - see p. 43.)

So, after everything else these children had endured, including the death of their mother and the break-up of their family, the judge ordered them uprooted again and placed with strangers.

Fortunately, DHHS appealed and that stayed the judge's ruling. A couple of months later she relented and approved the placement with the children's aunt.

But that still leaves one crucial question unanswered: Don't juvenile court judges in Nebraska get any training? The answer would seem to be no, since any

such training almost certainly would include this fundamental point:

An air mattress in the home of a loving relative is better for a child than a bed in the home of a total stranger.

No matter how much the child welfare community disagrees on everything else, everyone – *everyone* – gets that when children are torn from their family, there should indeed be a rush to get them into a placement that is as close to their own family as possible, as soon as possible – and the younger the child, the greater the need to "rush."

Is that really so hard to grasp?

But wait, it gets worse.

In arguing that every bed should have been purchased and every detail attended to before the children were placed with their aunt, the judge said: "I don't know what the rush was."

Right. What's the rush? Let 'em rot in separate homes with strangers, or a hospital ward, or a "shelter," or wherever it was these children would have wound up, had it not been for the generosity of their relatives.

No matter how much the child welfare community disagrees on everything else, everyone – *everyone* – gets that when children are torn from their family, there should indeed be a rush to get them into a placement that is as close to their own family as possible, as soon as possible – and the younger the child, the greater the need to

"rush."

Children don't experience time the way adults do. Every time the system dithers, it increases their suffering. While people in child welfare systems often fail to act on this knowledge, at least they *possess* this knowledge.

But not only is Judge Crnkovich apparently unaware of the impact of delay on children, there's also a question of whether she has a vindictive streak.

At a subsequent hearing, the father asked to visit his children. The judge denied the motion on grounds that, because her earlier order was being appealed, she couldn't rule on the entirely-unrelated request for visitation. That sounds an awful lot like taking a swing at the child welfare agency for daring to appeal her earlier ruling – and not caring that the blow landed, once again, on the children.⁴⁰

RACISM COMPOUNDS THE PROBLEM

Agencies like DHHS say they never take away children because the children are poor – until one brings up the topic of race.

Point out, for example, that African American children in Nebraska are in foster care at a rate 3.4 times higher than their rate in the general population and Native American children are in foster care at a rate 6.8 times their rate in the general population⁴¹ (again one of the worst records in the nation) and DHHS is likely to say: That's not because of racism, it's because they're poor!

The one way to get a child welfare agency finally to admit to class bias is to raise the issue of racial bias. In fact, it's both.

Study after study shows that even when poverty is taken into account, a child is more likely to be taken from everyone she or he knows or loves if that child is a minority.

- A study by researchers at The Children's Hospital of Philadelphia found that when doctors examined children, "toddlers with accidental injuries were over five times more likely to be evaluated for child abuse, and over three times more likely to be reported to child protective services if they were African American or Latino."⁴²

- A study of decision-making at 39 pediatric hospitals found that "Black children are more likely to be evaluated for abuse than white children with comparable injuries ..."⁴³

- A study of decisions to "substantiate" allegations of maltreatment after they are reported found that caseworkers were more likely to substantiate allegations of neglect against Black and Latino families – and the only variable that could explain the discrepancy is race.⁴⁴

- A study of women whose newborns tested positive for cocaine found that the child was more than 72 percent more likely to be taken away if the mother was Black.⁴⁵

- A comprehensive federal study of child maltreatment found that "even when families have the same characteristics and lack of problems, African-American children, are more likely than white children to be placed in foster care."⁴⁶

- But perhaps most telling is what happens when caseworkers are given hypothetical situations and asked to evaluate the risk to the child. The scenarios are identical – except for the race of the family. Consistently, if the family is Black, the workers say the child is at greater risk.⁴⁷

And once again, a problem that is bad in much of the nation is worse in Nebraska.

- The rate at which Native American children are overrepresented in foster care in Nebraska is the third worst in the nation.

- While many other states reduced racial bias in child welfare in recent years, the rate at which minorities are overrepre-

sented in Nebraska foster care actually has gotten worse.⁴⁸

- When the National Council of Juvenile and Family Court Judges created an innovative program to help judges reduce bias in their own decision making it was piloted in Portland, Oregon, Los Angeles, and Omaha. It worked in Portland and Los Angeles. Apparently, it failed in Omaha.⁴⁹

The one way to get a child welfare agency finally to admit to class bias is to raise the issue of racial bias. In fact, it's both.

It is not only Black and Native American children who are at risk.

In 2002, Omaha police rounded up ten children from two Hmong families and held them in foster care for four days when they confused marks left by the traditional Asian healing practice of coining, using a coin to rub ointment onto a feverish child,⁵⁰ with child abuse.

As the *Omaha World-Herald* noted at the time, local and national experts said the remedy is not harmful if handled properly.

The head of the Omaha police child victim unit said they make decisions in such cases by comparing the children "to what we see on kids who are not part of that culture." But that means they will see nothing on non-Asian children precisely because they are not part of a culture that uses coining.⁵¹

After the children were taken away and traumatized by removal from their families, the city prosecutor said that police and prosecutors needed to educate themselves about coining before deciding whether to file criminal charges. Once they did their

homework, no charges were filed and the children were returned.

A spokeswoman for the Omaha police defended their actions as, yes “erring on the side of caution.”

When the National Council of Juvenile and Family Court Judges created an innovative program to help judges reduce bias in their own decision making it was piloted in Portland, Oregon, Los Angeles, and Omaha. It worked in Portland and Los Angeles. Apparently, it failed in Omaha.

But as the families’ lawyer pointed out: “These young children are going to be more injured by the activity of the state than they are by Tiger Balm or Vicks Vapo-rub.”⁵² Two of the children only got sicker during their time in foster care.⁵³

More recently, DHHS turned what should have been a family celebration into a nightmare.

A Chinese immigrant family from Palo Alto, California, had come to Nebraska because their 12-year-old daughter was the North American winner of an international children's painting contest sponsored by the United Nations. The painting was on display at the Omaha Children's Museum, and the proud parents flew the family out to see it. But on the way back to the airport, the 12-year-old girl and her 13-year-old brother apparently started acting like 12 and 13-year-olds, with the boy “needling his sister,” according to the father's lawyer. The boy may

have hit his mother; she may have hit him.

They pulled to the side of the road to settle everyone down – not knowing that someone was watching from her front lawn.

Mom and dad were arrested and jailed for a weekend. The children's sentence lasted a lot longer. They were held in Nebraska foster care, thousands of miles from home, for more than a month.

Although this is a family of American citizens, and the parents have lived in the United States for 17 years, the 12-year-old's appointed guardian *ad litem* who, in theory, was supposed to watch out for her “best interests,” wanted to seize the family's passports – which would have made it impossible for the girl to go to South Korea for the award ceremony. (After all, what could be more suspicious, and pose more risk to a child, than an Asian-American family going to – Asia?) The guardian *ad litem* reportedly explained that the art contest was irrelevant to the foster care case.

In addition, during visits the family was forced to speak English, though they prefer Chinese – so the supervisors monitoring the visits could understand every word. No one has explained why the visits had to be monitored in the first place.

As the children languished, the director of the children and family services division of DHHS at the time, Todd Reckling, blithely declared that these things take time.⁵⁴ But when Nebraska was desperate to send out-of-state “safe haven” children home, they made it happen within days. Meanwhile, the parents even reported themselves to Santa Clara County, California, child welfare authorities in the hope it would speed up the process. (In California, individual counties run their own child welfare systems.)

“These kids are very much involved in the Palo Alto community, with Boy Scouts, art and Chinese lessons,” a family friend told the *San Jose Mercury News*.

"And they are being ripped away from not only their family, but from their whole community."

He went on to read aloud from an e-mail sent by the 12-year-old girl to her parents: "Dear Mom and Dad," the e-mail said. "We love you a lot. Remember that. We know you're doing everything you can to bring us back home and we are very thankful. Love you a lot." The e-mail is signed with 10 exclamation points.⁵⁵

Thanks to news coverage and the parents' middle-class status (which meant they could afford private attorneys) Nebraska made a deal to let Santa Clara County authorities take over the case. As soon as the children were out of Nebraska, common sense prevailed and the family was reunited, with the usual requirement that the parents undergo "counseling."⁵⁶

THE RACIAL BIAS OF "STRUCTURED DECISION MAKING"

And now DHHS reportedly has made a move that may well make the bias problem worse.

When caseworkers enter a home to investigate alleged child maltreatment, they often bring with them checklists of questions to ask and elements of the home to observe in order to determine the level of risk to the child.

Checklists, in themselves, are not a problem. Indeed, checklists are key to the initiative mentioned earlier that helped reduce bias in courts in Los Angeles and Portland (though, apparently not Omaha). There's even a checklist in this report (see page 33.) But checklists become dangerous when the questions themselves reinforce biases build into the system.

There is evidence this happens with a popular form of "risk assessment" and "safety assessment" known as Structured Decision Making (SDM). DHHS reportedly ei-

ther is planning to use it or already has begun doing so.

As soon as the children were out of Nebraska, common sense prevailed and the family was reunited, with the usual requirement that the parents undergo "counseling."

A comprehensive study of racial bias in Michigan found that while SDM has a veneer of objectivity, many of the determinations workers are asked to make are highly subjective.

"Caseworkers are asked to rate parenting skills, self-esteem, hopelessness, motivation, and whether the caretaker(s) viewed the situation/investigation as seriously as the worker and cooperated with the worker." (The latter is particularly alarming, since it penalizes a parent for the perfectly normal reaction of being angry when accused of child abuse.) The Michigan study continues: "These are highly subjective assessments of parents and caretakers during an investigation of child maltreatment while there is a spoken or unspoken threat of a child being removed from parent or caretaker custody."⁵⁷

The Michigan study also found that risk factors that appear to be race neutral are anything but. Simply being a young parent is deemed a risk. So is being a single parent. Black parents are more likely to be young and more likely to be single.

Other "risk factors" are self-reinforcing. A child is rated at higher risk if there have been previous reports of maltreatment. But, precisely because of poverty – and racial bias – poor Black families are

Beware of the teddy bear subsidy bill

Suppose your child had to be placed out of your care because of some emergency – illness perhaps – and no one in your extended family was available.

Suppose a stranger came forward and said:

I'll take care of him, I'll even love him as my own – just as long as you pay me for absolutely everything. Not just food and clothing, mind you. But if you want me to send him to an after-school activity, you pay me. If you want him to go to a movie, you pay me. If you want him to have a teddy bear to comfort him at night – you better pay me for that, too!

Oh, and by the way, your kid opens and closes the refrigerator door an awful lot, and he keeps leaving the lights on. You need to pay me for the additional electric bill as well.

Bet you wouldn't want *your* child placed with anyone that greedy.

Yet, in its original form, one of the bills introduced during the current legislative session in Nebraska would have required that the state pay foster parents to cover all of these costs and more.

The bill would have jacked up foster parent pay to the point that it met the level called for in a so-called study conducted by, among others, the National Foster Parent Association (NFPA). The study came up with a so-called “minimum adequate rate” that foster parents supposedly should be paid in each state.⁵⁸

Raising the rate to cover every toy, game, movie ticket and everything-else-you-can-think-of would cost the state nearly \$3.6 million in state funds every year, with the federal government forced to shell out nearly \$900,000 more.

“Minimum” sounds like they mean enough to cover the basics. After all, any parent who “loves a foster child like my own” would have no problem paying for a teddy bear or a movie ticket, right?

Not according to the twisted logic of this study.

The so-called “minimum” rate includes all of the items mentioned above, and more. This is disclosed in a separate, hard-to-find “technical report” which explains how the “minimum” was calculated.⁵⁹ I suspect it's called a “technical report” precisely because they hope no one will read it. (It's available online here: <http://bit.ly/wlxKaR>.)

This won't come cheap. Even though the report actually understated what Nebraska pays foster parents now, according to an estimate from the office of the Nebraska Legislative Fiscal Analyst, raising the rate to cover every toy, game, movie ticket and everything-else-you-can-think-of would cost the state nearly \$3.6 million in state funds every year, with the federal government forced to shell out nearly \$900,000 more.

Here's what else \$3.6 million could do:

- Provide \$600-a-month rent subsidies for 500 families for a year, so their children aren't taken away because of lack of housing.
- Provide \$100-a-week day care subsidies for 692 families so their children aren't taken on lack-of-supervision charges. (By the way, the authors of the study urge states to go beyond the “minimum” rates they recommend and also reimburse *foster* parents for all day

care and babysitting expenses. So, under their proposal, a child can be taken from impoverished birth parents because they can't afford day care and then handed over to middle-class foster parents whose day care expenses are fully reimbursed by taxpayers.)

- Provide Intensive Family Preservation Services interventions for 480 families.⁶⁰
- Provide inpatient drug treatment at a family treatment center where children can stay with their parents for 144 families.

So at a time when Nebraska already tears apart families at one of the highest rates in the nation, some legislators actually want to take scarce funds that finally could reduce Nebraska's obscene rate of removal and divert them to cover a giant, needless subsidy for middle-class foster parents.

THE FACTS ABOUT CURRENT RATES

Current rates for foster parents are not, in fact, as low as the authors of the NFPA study want people to think.

- The existing rates quoted in the "study" always are the "base rates" even though many states add additional payments and/or have additional tiers of rates. In the case of Nebraska, for example, NFPA failed to factor in the state's coverage of liability insurance for foster parents.⁶¹

- Payments are tax-free since they are considered "reimbursement." In addition, foster children's health insurance is covered by Medicaid.

Some have suggested that anyone opposed to this kind of bill wants to take toys from foster children. On the contrary, we want children placed with foster parents who care enough about those children to give them toys without demanding government reimbursement.

At a time when Nebraska already tears apart families at one of the highest rates in the nation, some legislators actually want to take scarce funds that finally could reduce Nebraska's obscene rate of removal and divert them to cover a giant, needless subsidy for middle-class foster parents.

On top of everything else, the bill is incredibly insulting to foster parents.

When foster parents are polled on why they leave foster parenting, low pay consistently ranks low on the list. Far more important is the fact that child welfare agencies so often treat foster parents the same way they treat birth parents – like dirt.⁶²

Foster parents often say that they can't be in it for the money because there is not enough money. For the overwhelming majority of foster parents it's true. But if this bill passes it will attract a lot of the wrong kinds of people to foster parenting.

The whole bill raises a fundamental question: What is our "social contract" with foster parents? If most foster parents really are in it for all the right reasons, and for the good feeling it gives them to help children in need, isn't it reasonable that reimbursement not quite cover every expense?

If someone volunteers to tutor children at an after-school program, or serve meals at a soup-kitchen, he doesn't get reimbursed for the mileage to get to and from the program. He may even dip into his own pocket for some supplies. Why is it wrong to expect the same of foster parents?

The best foster parents understand this. Maine foster parent Mary Callahan, whose writing is cited elsewhere in this report, wrote about how often the children placed with her

as a foster parent could have stayed safely in their own homes if their own parents had gotten the kind of financial assistance she received:

I justified my pay by saying it was just like my other profession, nursing. I enjoyed taking care of patients, did a good job, but I still expected a paycheck. It took one particular foster child, [named Michael] to show me the big difference between nursing and foster parenting.

I don't say "I love you" to my patients. ...

I'm not saying that foster parents shouldn't be paid at all. Most are middle-class families that don't have a lot to begin with. But how can foster parents say, as some do, "I love him as if he were my own," if they are not willing to make some sacrifice?

But if there aren't enough foster parents who will do it for just a little financial help, maybe we should look back to the people who already love the child, without conditions -- the birth family. Yes, there may be cases, such as an abusive parent, in which a child cannot be returned to his or her family. But in many instances, such as Michael's, pay the birth family the amount that would be paid to foster parents to help them stay together in the first place.⁶³

Of course not every foster parent feels this way. One person claiming to be a Nebraska foster parent said on the website of the *Lincoln Journal Star*: "We don't ask to be reimbursed for a teddy bear ..." Rather, he or she said, the government money goes to things including toys and outings to Chuck E. Cheese.⁶⁴

THE ONE GOOD PART OF THE ORIGINAL BILL

The teddy bear, or if you prefer, Chuck E. Cheese subsidy bill did have one good provision. It would have required paying grandparents and other relatives the same rates paid to strangers, even when those grandparents can't dot every i and cross every t in hypertechnical licensing requirements.

Currently, federal law requires equal pay only when the relatives are licensed. And, in fact, the federal government won't help pay for the placement unless the relatives are licensed (another good reason for Nebraska to seek a waiver from these rules, see p. 39).

So states often pay unlicensed grandparents little or nothing - even though kinship foster parents are likely to need the money more than strangers. (Since most children taken from their parents are poor, odds are their extended families also are poor.) Most foster care licensing requirements are related more to middle-class creature comforts than to actual health and safety. They may involve things like minimum square footage and number of children who can share a room. Often poor families can't meet these standards. So Nebraska is wise not to require that kinship foster parents be licensed. Nebraska also would be wise to pass this part of the teddy-bear subsidy bill - and junk the rest.

THE AMENDED BILL

Unfortunately, as of Feb. 28, it looks like the Legislature is headed toward doing close to the opposite. An amended bill (AM2165) eliminates the provision equalizing payments for relatives. It also includes a bad provision narrowing the definition of who qualifies as a kinship foster parent (see p. 27). And while the new bill it does not mandate the same giant pay raise as the original bill, it gives foster parents, including relatives, an immediate increase of more than \$1,100 per year, something that should have gone only to unlicensed relatives, who get so much less to begin with. The amended bill sets up a committee, stacked with foster parents and representatives of foster care agencies, charged with using the phony NFPA "study" as a starting point for crafting recommendations for still more raises. Of course the committee includes no birth parents or representatives of birth parents. It doesn't even require a kinship foster parent.

This bill has been combined with a bill requiring DHHS to seek the waiver mentioned above. That part of the amended bill should be retained; the rest should be junked.

more likely to be subjects of such potentially false reports.⁶⁵

In addition, SDM has other serious flaws. Though it supposedly measures a family's strengths as well as its weaknesses, the scoring method is such that, in many cases, if the "strengths" option didn't exist, the score would be unchanged – in other words, it's just window dressing. In addition, the strengths often were not strengths at all, but simply the absence of a weakness, such as noting that a mother did not have a drug problem. Typically, there are few if any places to measure real strengths, such as creativity and resourcefulness.⁶⁶

In Los Angeles County, where the child welfare agency uses SDM, a human being isn't even supposed to make the crucial decision about whether to take away the child. After filling out the checklists the results are fed into a computer – which then tells the worker whether or not to break up the family.⁶⁷ In effect, so-called "structured decision making" has been turned into computerized racial profiling.

So it's no wonder the former director of the Los Angeles County Department of Children and Family Services (DCFS), Trish Ploehn, has speculated that SDM contributed to a rapid increase in children taken from their parents in Los Angeles County.⁶⁸ DCFS has acknowledged that the racial disparity in the Los Angeles system has increased since SDM began.⁶⁹

Last year, an evaluation by the respected Washington State Institute for Public Policy found that using SDM may have increased racial bias in child removals in that state – though the researchers caution other factors also may have been at play.⁷⁰

THE MEAN SEASON

Most people in child welfare are well-motivated. Most caseworkers take on

their low-paid, high-stress jobs for the right reasons. Although we contend that group homes and institutions are the worst form of care, and residential treatment is largely worthless, the people at places like Boys Town and other institutions don't want to harm children.

While it is only the work
of a minority, child welfare in
Nebraska has a big, wide
mean streak.

On the contrary, most have dedicated their lives to helping children, and so they have convinced themselves that what they are doing has real value. Rationalization, after all, is powerful.

That is true all over the country. But what makes Nebraska different from many other states is that, while it is only the work of a minority, child welfare in Nebraska has a big, wide mean streak.

This came through loud and clear in various callous comments made by former child and family services division director Todd Landry.

After Robert Hawkins, who spent many years in DHHS custody, shot and killed eight people and then himself at an Omaha shopping mall, Landry actually said: "All appropriate services were provided when needed for as long as needed."⁷¹ Later, Landry dismissed the desperate parents who used the safe haven law as just "tired of their parenting role."⁷²

And then there was Landry's notorious comment when out-of-state parents started taking their children to Nebraska to use that law: "This is not what we intended when we said we wanted to increase Ne-

braska tourism."⁷³

Landry's successor, Todd Reckling, made clear he was cut from the same cloth when he blithely dismissed the anguish of those two Asian-American children from California, trapped in Nebraska foster care for a month.

But it's not just officials at DHHS.

- There's the police chief who referred to using the safe haven law as pressing the "easy button."⁷⁴

- There's the judge who, by his own description, has been known to take his cues for behavior on the bench from Judge Judy, who told off a parent in front of his child – either unaware, or not much caring how that is likely to affect the child.⁷⁵

- There's the judge who cut off visits between the Kelleys and their children over a matter of paperwork.

- There's judge Crnkovich, who apparently was so upset at DHHS daring to appeal one of her orders that she took it out on the children in the case. The same judge reportedly is thrilled to have Nebraska's new truancy law available as "a hammer" to use against families – even putting parents in one family in jail (see p.43).

- And consider the foster mother who had custody of May Lynn Branson's eight and nine-year-old children -- a foster mother who, apparently out of sheer meanness, systematically punished the children to get at their mother. As the *North Platte Telegraph* reports:

Branson is supposed to have nightly telephone calls to her children, but phone records indicate the calls are completed only about six times per month. Branson said she is told by the foster mother that she has cell phone issues in her area, yet a check with the phone company indicates full coverage where the foster mom lives. The cell phone company states that no such issues should exist.

When the calls do go through, the

foster mother listens on speakerphone. In one recorded conversation, Branson is heard to ask, "You have me on speakerphone again?" at which time the foster mother's voice rings out, "If you don't like, we can cut you off."

The children were taken because of one bruise on one child's leg, and apparently because Branson has a mental disability, and her home didn't pass caseworkers' white glove tests. Then the children were moved from foster home to foster home.

Tawnie Stewart, a former DHHS caseworker (see p. 7) and friend of the family, has volunteered to let the entire family move in with her and her husband. But DHHS has something else in mind:

The final case plan written by Branson's current caseworker in December states, "Fair progress is being made to alleviate the causes of out-of-home placement."

*Yet in the next paragraph, the caseworker recommends adoption.*⁷⁶

- But for sheer callousness, it would be hard to top the comments of Dave Reed who, at the time of the safe haven crisis, was working for a Boys Town shelter in Grand Island.

Virtually every expert in the Grand Island area understood that, for almost every parent using the state's "safe haven" law, that parent was acting out of desperation. But not Reed.

"I don't know if there is a gap in services. That implies, if we have more of the right kind of services, everything would be fine, I don't know if that is true," Reed told the *Grand Island Independent*.

There's one sure way to find out: Try providing more of the right kind of services.

Reed continues: "We have a lot of great services in Nebraska. You can call and get help in Nebraska. Sometimes, it just

takes a while."

And how long, exactly, is a parent supposed to wait if their child is assaulting them and siblings, and the assaults keep getting more violent? How long must they wait after the first suicide attempt – until the second one comes closer to succeeding?

Grandparents and other relatives are more likely to put up with behavior that might prompt strangers to either reach for the psychiatric medication or throw the child out.

But wait, there's more:

Reed also disagreed that socio-economic status affects the availability of treatment, as [one expert] suggested "Service is available at every socio-economic level," he said. "If people can't afford (counseling), there are interns and student counselors. Sometimes people need to get creative. If you get in a situation where you can't pay for someone to help you, it motivates you to find other ways to get help."

But why stop with mental illness, Mr. Reed? If, sometime in the next few years, you need brain surgery, you don't mind if we just let a first year med student do it, do you?

Fortunately, Reed does not appear to be typical of professionals in Grand Island. According to the *Grand Island Independent* story:

"What I've seen with the preteens and teens coming through safe haven is not

abuse and neglect on the parents' part but behavioral health issues going on," said Scott Dugan, president and chief executive officer of Mid-Plains Center for Behavioral Healthcare Services in Grand Island. Dugan said the "safe-haven problem" reflects a lack of behavioral and mental health services for children and the high costs of obtaining the services that are available.

Even if parents have insurance, many carriers don't pay for mental health care," he said.

It goes back to money," said Anne Buettner of Grand Island, a private-practice family therapist for 30 years. "Even if therapy is \$5 an hour, if you don't have money for gas, you don't go to therapy." Even in a best-case scenario, when a family can access therapy and behavioral health assistance, Allen said it's not always enough. "You look at the families that have dropped children off (under safe haven). I believe they've tried everything else," she said. "For a parent to drop a child off, things have to get so bad."⁷⁷

The vast majority of people in child welfare, in Nebraska as well as the rest of the country, are like Buettner and Dugan. So, I suspect, are the vast majority of Nebraskans. But too many people in positions of power and influence in Nebraska child welfare lack that kind of compassion. That's why in Nebraska child welfare, it's always "the mean season."

EXTENDED HOSTILITY TO EXTENDED FAMILIES

The failure to make enough use of kinship care compounds the problems inflicted on children by Nebraska's obscene rate of removal.

When children really can't remain safely in their own homes, the next best option almost always is placement with a

grandparent or another relative.

Study after study has shown the enormous benefits of what is commonly called kinship care.

Kinship care is still foster care, and even grandma is no substitute for leaving children safely in their own homes. But when that truly is not safe, then at least if a child is placed with grandma, it cushions the blow. The child is with someone he knows and loves. And odds are in some cases the placement is in his own neighborhood, so he doesn't have to change schools and lose all his friends.

Kinship care also lessens one of the most damaging problems of foster care, moving children from foster home to foster home. People who love you are far less likely to give up on you than total strangers. So grandparents and other relatives are more likely to put up with behavior that might prompt strangers to either reach for the psychiatric medication or throw the child out.⁷⁸

That helps explain why in Florida, for example, where the child welfare agency is trying to crack down on the misuse and overuse of sometimes-dangerous psychiatric medication, 26 percent of institutionalized foster children and 21 percent of foster children placed with strangers are on such medication, but only four percent of foster children are medicated when they are placed with relatives.⁷⁹

A study by the Children's Hospital of Philadelphia found that children placed in foster care with relatives had fewer behavior problems than children placed in stranger care.⁸⁰

Most important, several studies have found that kinship care is *safer* than stranger care.⁸¹

One of the most recent studies found that children in kinship care did far better than children in stranger care on multiple measures of safety, permanence and well-being. And it found no difference in these

beneficial outcomes between licensed and unlicensed kinship homes.⁸²

Because grandparents bring an extra ingredient to the mix – love – it should surprise no one that kinship care generally is safer than stranger care.

Again, because grandparents bring an extra ingredient to the mix – love – it should surprise no one that kinship care generally is safer than stranger care. But the hostility toward families that permeates the Nebraska child welfare system, and the stereotypes that poison public perceptions, both extend to extended families

It's all summed up in one pernicious little smear: "The apple doesn't fall far from the tree." If mom is abusive, it is claimed, it must be because grandma has failed in some way.

For starters, this assumes that if mom allegedly is doing a poor job raising the children, it has to be grandma's fault. In fact, there are any number of times when a grandparent may raise four children under circumstances of poverty and need that many of us can't imagine, and have three of them become happy, healthy, productive adults. The fourth is lost to the lure of the streets. When that grandmother then comes forward at a time when finally she should be able to rest, and offers to take care of that child's children, she should be treated as a hero, not a suspect.

And, as one of the nation's leading experts on kinship care has said: "a tree has more than one branch."⁸³

Nebraska places children in kinship care at a rate a little below the national aver-

age of about 23 percent. But good systems place at least one-third of their children with relatives, and some do even better.⁸⁴

Often today's "residential treatment centers" are simply yesterday's orphanages with a fancy new name.

One proposal before the legislature could make Nebraska's kinship care record even worse. Although kin normally means a relative by blood, marriage or adoption, many states extend this definition to close friends of the family or the child, such as, say, the parents of a child's longtime best friend at school, or perhaps a former teacher. They are referred to in law as "fictive kin."

But one bill before the legislature would require anyone who is not related by blood, marriage or adoption, no matter how close their ties might be to the child, to go through all the same hypertechnical licensing requirements imposed on strangers.

Many of these requirements typically have nothing to do with health and safety and everything to do with middle-class creature comforts – like minimum square footage and how many children can share a room. (It's the same mentality that prompted Judge Crnkovich to take children from their aunt because each child didn't immediately have a separate bed.) Since most children in the system are poor, it is likely that most of their close friends also are poor. It may not be possible for them to meet requirements originally designed for middle-class strangers.

There are advantages to licensing for kinship foster parents. If the family friend or relative is licensed federal law requires

Nebraska to reimburse them at the same rate strangers get; a state is free to give little or no help at all to unlicensed friends or relatives. In addition, a state can get federal aid for a kinship care placement only if the kinship foster parent is licensed. But these are reasons to encourage friends and relatives to become licensed, to help them with the process, and to streamline requirements for all foster parents. They are not reasons to make Nebraska's mediocre record on kinship care even worse.

And while this proposal isn't nearly as bad as the requirement imposed in some states that even blood relatives be licensed, it's still one more step backwards for Nebraska's vulnerable children.

INSTITUTIONALIZATION MAKES EVERYTHING WORSE

Even as Nebraska makes too little use of the least harmful form of care, it makes too much use of the worst form of care: group homes and institutions.

Imagine, for a moment, that we were building a child welfare system from scratch.

Suppose somebody said, "I've got a great idea! Let's take young people we claim have the most difficult problems and the worst behavior, at the time in their lives when they are most influenced by their peers, and throw them all together in one place!" If anyone suggested that, people might well wonder about *his* mental health.

Yet that is exactly what we do.

That helps explain why institutionalization is, by far, the worst option for children. The nation as a whole still consigns far too many children needlessly to institutional "care." And Nebraska is significantly worse than the nation as a whole.

Of course, the current system wasn't planned. It's a sad accident of history and failed assumptions.

Residential treatment: What the research tells us

The harm of residential treatment:

- A review of the scholarly literature by the office of the U.S. Surgeon General found only “weak evidence” for the success of residential treatment.⁸⁵
- A second review, by the University of North Carolina, found “when community-based services are available, they provide outcomes that are equivalent, at least [to residential treatment centers (RTCs)].”⁸⁶
- Still another study, of children institutionalized for mental health problems, found that seven years after discharge from residential treatment, 75 percent of the children were back in the only settings they could understand: institutions. They were in psychiatric centers or jails.⁸⁷

In addition to producing better results, Wraparound also saves money. It costs Wraparound Milwaukee between \$4,000 and \$4,800 to help a child. Their average cost per child for residential treatment is \$7,800.

- Even Shay Bilchik, former president of the Child Welfare League of America, a trade association for residential treatment centers and other agencies holding children in substitute care, has made a startling admission: Bilchik admitted that they lack “good research” showing residential treatment’s effectiveness and “we find it hard to demonstrate success...”⁸⁸

Better alternatives:

In Milwaukee County, Wisconsin, Wraparound Milwaukee serves the same children formerly served in residential treatment – but the children are helped in their own homes or in foster homes. The children do better, and it costs less. Here’s what the Westchester County, New York, *Journal News* found, when it looked at alternatives to residential treatment. Excerpts from the story are in italics:

[Wraparound] cut the number of Milwaukee children in RTCs by 90 percent, dramatically shortened their stays, reunited hundreds of families, reduced the incidence of crime and saved millions of dollars in treatment costs. It became a national model for treating emotionally disturbed children, offering a more effective and economical means of helping youngsters without the traditional reliance on costly and controversial institutions.

"Wraparound Milwaukee demonstrates that the seemingly impossible can be made possible: Children's care can be seamlessly integrated. The services given to children not only work, in terms of better clinical results, reduced delinquency, and fewer hospitalizations, but the services are also cost-effective," the President's New Freedom Commission on Mental Health said in October. "Imagine the nationwide impact on our juvenile justice system if this program were implemented in every community."

Institutions have long argued that their role is crucial because most of the child-

ren have no stable homes. But Wraparound advocates say institutions have been too quick to write off families; Wraparound seeks out families and finds ways to make them work.

In addition to producing better results, Wraparound also saves money. It costs Wraparound Milwaukee between \$4,000 and \$4,800 to help a child. Their average cost per child for residential treatment is \$7,800.⁸⁹

Of course, Milwaukee's institutions didn't simply accept all this. On the contrary, they fought it every step of the way:

"I remember meeting with groups of people and folks saying, 'Let's get some reports out that show they (Wraparound) are going to start hurting kids now,' " said Cathy Connolly, president of St. Charles Youth & Family Services, which operates Milwaukee's largest institution. "Well, nobody could ever bring the reports to the meetings, 'cause there were none that existed that said we were doing anything all that great. We didn't really have any solid anything that demonstrated we were able to fix kids."

Connolly and her colleagues lobbied fiercely for the status quo. She was remarkably candid about the reason:

"There were a couple big fears. The first was, 'How are we going to financially sustain ourselves?'"

Eventually, however, Connolly's agency embraced the new approach. She told *The Journal News*:

"I think, looking back on it now, what we're doing for kids today is far more helpful."⁹⁰

Crises of conscience

Occasionally, residential treatment centers study their own programs, and, when they find only failure, have a crisis of conscience and face up to the results.

"The state would ask us at the end of each year what we did with their money," says Patrick Lawler, CEO of Youth Villages in Tennessee, "and we would tell them the truth. We spent it."⁹¹

EMQ Families First in Northern California had a similar crisis of conscience.⁹² Both institutions radically reformed; rebuilding their programs to empty most of their residential beds and provide more and better help to more children in their own homes or foster homes. Said Lawler:

In the 28 years I have been entrusted with caring for other people's children, some of whom come from dire circumstances, I have learned firsthand there is no substitute for a child's birth family. I used to think we could do a better job of raising these children. We know better now. The best way to help a child is to help his or her family. Extensive research bears this out. We studied the research, redesigned our existing programs and developed new ones to ensure that the emphasis is on strengthening the child's family...There are sad circumstances when children cannot be placed with their birth parents or relatives. In these cases, foster and adoptive parents play vital roles in ensuring long-term success for these children."⁹³

But both institutions found their biggest problem wasn't finding better alternatives. Their biggest problem was fighting what EMQ calls "the group home industry" which tried to stop the state from paying for alternatives.

Often today's residential treatment centers" are simply yesterday's orphanages with a fancy new name.

Often these are venerable institutions with blue-chip boards of directors embedded in the business, political, civic and religious elites of their communities. So nobody even questions whether these institutions are needed or if they work.

"Teens [in institutions] described a powerful code of behavior dictated by an institutional peer-group subculture, encompassing drugs, sex, and intimidation."

*--North American
Council on Adoptable Children*

Those boards make for a powerful "foster care-industrial complex" that can beat back any challenge to their existence and thwart better alternatives - either directly or simply by using up all the money that might be used to fund such alternatives.

The whole enterprise is built on a set of false premises - a foundation of sand.

The first false premise is the claim that all institutionalized children need to be in substitute care at all, let alone in expensive, largely worthless institutions. But there are many more.

There probably is no group in child welfare more skilled at public relations than the foster care-industrial complex. They offer up lovely brochures, and offer tours of beautiful campuses, all the while uttering soothing platitudes about the "structure" and "stability" they supposedly provide to young people.

Oh, it's not that they're *against* families, they tell us. It's just that the children

they take supposedly are only those who are so difficult and so disturbed that they can't handle a family setting.

There are just two problems with all this: 1. The claims are not true. 2. Institutionalizing children doesn't work.

It takes five single-spaced pages (available on request from NCCPR) just to summarize some of the research about the harm of institutionalization. The North American Council on Adoptable Children (NACAC) has reviewed much of this scholarly literature.⁹⁴ 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.

- According to NACAC's analysis,

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.

Even good institutions fail to provide children with long-term, stable, affectionate relationships that are critical to later social relations.

- Though institutionalization is worst for younger children, even teenagers fare worse in institutions than in other settings. Institutionalized teens fared worse even than teens in foster homes according to one major study.⁹⁵ And a survey of teenagers with a history of long term, out-of-home placement, published in a leading scholarly journal, revealed that the teenagers found institutions to be a significantly worse option than their own families, care by relatives, adoption, or even foster care.⁹⁶

The NACAC 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 an institutional peer-group subculture, encompassing drugs, sex, and intimidation.

The younger the child, the greater the harm to that child, if she or he is institutionalized. The research on the harm of institutionalization is so overwhelming that the federal government rates state child welfare systems in part on their ability to *reduce* the number of children under age 12 in institutions.⁹⁷

In New Jersey, a consent decree bans the placement of young children in group homes or institutions – and the state has been remarkably successful. Today, of all foster children under age 10, only three percent are in group homes or institutions.⁹⁸ The same settlement bans parking any child under age 13 in a so-called “shelter” – and the state has been remarkably successful there as well. Between July 1 and December 31, 2009, one child under age 13 was placed in a shelter. Not one percent – one child.⁹⁹

Compare that to Nebraska.

As of September 30, 2010, the most recent year for which data are available, nationwide 16.2 percent of foster children were in group homes and institutions. In Nebraska, it was 21.6 percent.¹⁰⁰

Of course, few institutions call themselves orphanages anymore. Taking a cue from the advertising industry, they’ve “re-branded” themselves as residential treatment centers. But “residential treatment” doesn’t work either.

Not that they don’t have success stories – of a kind. Almost every RTC can trot out one or two young people who did well.

In fact, when institutionalized children do well it is almost always a testament to their own extraordinary resilience. Yes, once in awhile they might find a good the-

rapist or teacher at an institution. But the institution itself is not needed to give children good therapists and teachers.

The studies cited on the Boys Town website to “prove” the success of its “Family Treatment Homes” come from - The Boys Town National Research Institute.¹⁰¹

None of the standard claims of the residential treatment industry holds up to objective scientific scrutiny.

In the case of their residential treatment program, none of the studies listed in Boys Town’s research bibliography followed up on the residents beyond ten months after discharge.¹⁰²

In fact, none of the standard claims of the residential treatment industry holds up to objective scientific scrutiny. Research shows residential treatment is a failure. Leaders of some institutions have had crises of conscience and reformed their own institutions to radically curtail institutionalization, and even the former head of one of their trade associations says that, when it comes to residential treatment, “we find it hard to demonstrate success.”¹⁰³ (For full details see, *Residential Treatment: What the research really shows*, p. 28.)

Across the country, group homes and institutions have a disturbing tendency to “go bad,” becoming rife with abuse. Then the abuse is exposed, and the institution reforms - until the cycle starts again. And, of course nothing can fix the fact that institutionalizing children is inherently harmful.¹⁰⁴

But instead of facing up to all this, the group home industry cites the very severity of the children’s problems as justification for the industry’s existence. They

piously proclaim that they wish these children could be cared for by families – really they do – but, they say, it’s just not possible; the children’s problems are too severe.

But often, when a child really does have serious problems, the institutions will do everything they can to avoid taking the child in – or they’ll throw the child out.

The reasoning of the foster care-industrial complex is circular, and it is cruel: Deny families the support they need to make a placement with a family work, then justify your institution’s enormously-expensive existence on grounds that the institutionalized children couldn’t stay in families.

There’s even a term for it in the industry – “creaming,” as in skimming the cream.

In the spring of 2008, a mother from Georgia — who herself had been at Boys Town — wrote to officials at the institution, desperate to have them take in her 12-year-old son, who was disrupting classes at his school and beginning to steal. She could find no help where she lived, in suburban Atlanta.

She filled out the application form — like any institution that can pick and choose who is admitted, Boys Town has an application form — but was turned down. Later that year, after Nebraska passed the “safe haven” law, the mother got in her car and drove nonstop to Lincoln, leaving the boy at a hospital, in the hope that Nebraska officials

could get him into Boys Town. But again, it didn’t happen.

Only after the case received extensive publicity did Boys Town take the child in.¹⁰⁵

If a child with real problems somehow gets in anyway, that doesn’t mean the institution has to keep him. If you simply decide that the children who really are difficult can’t “benefit” from what the institution has to offer and throw them out, you can make the institution look more successful — while leaving the children who need the most help to fend for themselves.

That’s also happened at Boys Town, according to the mother of one of the “safe haven” children. She said she was forced to surrender the child to the state when, after 18 months at Boys Town with no improvement, Boys Town decided he was “too much for them to deal with.”¹⁰⁶ Boys Town refused to confirm or deny that the child ever was there.

Of course, as this suggests, some children in institutions do have serious problems. But for these children as well, there are far better alternatives. Yes, sometimes such children fail in families. But that is almost always because those families, be they birth families or foster families, didn’t get the help they needed. And that’s because the money that could buy that help is being thrown away on institutionalizing children.

The reasoning of the foster care-industrial complex is circular, and it is cruel: Deny families the support they need to make a placement with a family work, then justify your institution’s enormously-expensive existence on grounds that the institutionalized children couldn’t stay in families.

Still more evidence of the extent of needless institutionalization, and needless substitute care, can be seen in what happened when Illinois changed the financial incentives.

All-purpose foster care-industrial complex excuse checklist

While we can't reproduce the unctuous tone, we can guarantee the content of the excuses that residential treatment centers and other institutions will offer to justify their existence – because we've heard them all so many times before.

So we've supplied a handy checklist of excuses you will hear from the foster care-industrial complex – and why they don't wash.

___ *Excuse #1: "We've already tried foster homes with these children. They "blow out of foster homes."*

RESPONSE: Aside from how revealing the offensive language is in terms of how the foster care-industrial complex really views children, the reason children sometimes don't stay in family homes is that the homes themselves don't get the support they need. When children are served by Wraparound and similar programs they *don't* "blow out" of foster homes, or their own homes. But Wraparound programs rarely are available because the institutions are scarfing up all the money.

___ *Excuse #2: We're not an institution. We've got house parents and cottages. We're home-like.*

RESPONSE: You know that stuff people sometimes put on bread to lose weight? Stuff called "buttery spread" or "buttery light" but it always tastes like liquid plastic? People know the difference between "buttery spread" and butter. And children know the difference between "home-like" and home.

___ *Excuse #3: Children need our institution because it provides "structure" and "stability."*

RESPONSE: Stability means that the *human beings* in a child's life remain constant. Between the shift changes and the staff turnover, a child in an institution may have to cope with ten different caregivers – none of whom loves him – in a single day.¹⁰⁷ Even in institutions using "house parents," those house parents typically quit every year or two, making an institution every bit as unstable as multiple foster home placements.¹⁰⁸

As for "structure," that's a euphemism for the almost sadistic never-ending game of "May I?" that constitutes life in a group home or institution. As one former group home resident has written: "You have to ask permission for everything: to get food from the fridge, cook, watch TV, use the phone, go in the backyard or take a shower."¹⁰⁹

Listen to a family that became mentors to a resident of a group home and invited him to spend his weekends with them:

*His first visit we're all waiting for him to come down to breakfast. I go up, he'd been in the group home so long, he was making hospital corners on his bed. He thought he couldn't eat breakfast until the bed was perfect.*¹¹⁰

Children don't need this kind of rigidity – but institutions do. They need it in order to keep large numbers of troubled children in line and prevent their institutions from descending into chaos. So they turn around and claim that, by amazing coincidence, all the things that ensure that their institutions run smoothly happen to be "therapeutic" for children.

Excuse #4: Of course we believe in prevention, and we'd much rather children stay in their own homes. (After all, says Boys Town, we provide family foster care and even in-home services.) But there always will be some children who need to be institutionalized. We just want to make sure there is a full continuum of care. The people who disagree with us believe in "one size fits all."

RESPONSE: Whatever number of foster children might need to be institutionalized, we know that the number is so tiny that the overwhelming majority of institutional beds can be closed – just the way Youth Villages, EMQ Families First and Wraparound Milwaukee did it. It is, in fact, the foster care-industrial complex that believes in one size fits all – substitute care, instead of a variety of safe, proven alternatives.

On its website, Boys Town says that much as they favor alternatives, "Child and family care is managed at the state level, and there are numerous challenges that make it difficult to fund these efforts."¹¹¹ What they don't say is that one of the biggest of those "challenges" is that the institutions are using up all the money.

Excuse #5: When the state uses alternatives to institutions it's because the state doesn't care about the kids. When they use alternatives to our institutions they're just doing it to save money.

RESPONSE: This is the most offensive claim of all. The people who say *others* care only about money stay alive by charging states and localities huge amounts on a *per diem* basis. So the longer they hold a child in their institutions the more money they make. Talk about glass houses ...

At NCCPR, we tend to be tax-and-spend liberals and proud of it. But it is obscene to criticize a program just because, in addition to helping children, it also happens to save money. In fact, when it comes to child welfare, in general, the better the option, the less it costs.

In 1997, Illinois held one of the dubious distinctions now held by Nebraska: A child was more likely to be trapped in foster care in Illinois than in any other state – there were more than 50,000 children in foster homes, group homes and institutions at any one time.¹¹²

Then the state changed the incentives for private agencies holding children in substitute care. Unlike the "lead agency" model of privatization in Nebraska, in which one agency was given what amounted to a monopoly in a part of the state, Illinois made its private agencies compete for business. Instead of rewarding the agencies for each day they kept a child in care, they started rewarding the agencies for providing safe, permanent homes for children.

Remember all those children institutionalized supposedly as an absolute last resort, because there simply were no alterna-

tives? Turns out there were alternatives. When the financial incentives changed, lo and behold: The "dysfunctional" became functional and the "intractable" became tractable. Today, fewer than 18,000 children are in Illinois substitute care on any given day, Illinois takes away children at one of the lowest rates in the nation¹¹³ - and only 10.5 percent of them are in group homes and institutions.¹¹⁴

Illinois is under a consent decree that requires the child welfare system to be watched by independent monitors. They have found that, as foster care plummeted in Illinois, child safety improved.¹¹⁵ The Illinois reforms also had another crucial benefit. When Maryville, an orphanage near Chicago cited repeatedly as a national model by proponents of institutionalizing children, turned out to be rife with abuse, Illinois was able to move hundreds of children out of the place,

virtually shutting down its main campus.¹¹⁶

**Institutions demand that
the child fit their program;
Wraparound changes its
program to fit the child.**

Illinois could do that because, by taking away far fewer children needlessly, the state had more room for children in real danger – so there were empty beds elsewhere. Child welfare no longer was a “sellers market” for places like Maryville, and the state didn’t have to turn a blind eye to the abuse.

HOW INSTITUTIONS IMEDE ADOPTION

It is no secret that NCCPR strongly supports doing far more to prevent children from ever being taken from their parents, and far more to reunify children after they are taken away. We’ve often criticized an “adoption-at-all-costs” mentality that pushes adoption at the expense of other forms of permanence, what the Family Advocacy Movement calls “the allegation to adoption pipeline.”

But we also believe that some children truly can’t return to their parents. For many of these children, adoption is, sometimes literally, a lifesaver. It is a vitally-important part of any child welfare system, and a crucial means of achieving permanence for children.

But the adoption experts will tell you: One of the biggest barriers to adoption is institutionalization.

A foster child’s best shot at adoption is by someone he or she already is living with, who knows them and loves them – in other words, a relative or a foster parent. In

Nebraska, 90.5 percent of the foster children adopted in 2010, the most recent year for which data are available, were adopted either by relatives or by foster parents.¹¹⁷

The North American Council on Adoptable Children is the nation’s leading authority on adoption of foster children; they also are experts on the harm of orphanages. According to NACAC’s executive director, Joe Kroll:

*Institutions ... deny children their best chance for a family. Nationally, most children are adopted by foster parents or relatives. ... Because they are not placed with foster parents or kin, institutionalized children lose their best hope for adoption.*¹¹⁸

SAFE HAVEN CASES

But what about parents who say the problem is the opposite?

During the safe haven debacle parents came forward to complain that they wanted their children admitted to residential treatment centers and other institutions, and either the state or the institutions actually turned them down. The family from Georgia is one example.

But look more closely: These parents did not want their children in institutions because of a fondness for institutions. Rather, these parents were at the end of their rope. Their children were seriously ill, and they were desperate to get them help. In some cases, they feared for their own safety and the safety of others, including siblings.

They sought an institution because, as in the case of that family from Georgia, no one was offering any other alternative.

During a presentation to a conference organized by the Family Advocacy Movement, Karl Dennis, who ran the nation’s first agency providing Wraparound services, described a young person like that. He was so disruptive that even the county jail couldn’t handle him.

But instead of another institution, Wraparound designed a custom-tailored plan to provide that young man and his family whatever they needed to live together safely. Where everything else had failed, Wraparound worked.¹¹⁹

“I’m tired, it was a long day taking away babies.”

--DHHS caseworker
on her Facebook page

That illustrates a crucial difference between institutions and Wraparound: Institutions demand that the child fit their program; Wraparound changes its program to fit the child.

Tell a desperate parent that they have a choice: “Ship the child to an institution where they will have to surrender all control over the child’s fate and where, odds are, the only thing the child will learn is how to be institutionalized, or let us bring right into your home whatever you and your child need,” and very few parents will opt for the institution – or any kind of substitute care.

Certainly Billy Mitchell’s parents would have preferred such a choice.

As KETV in Omaha reported, no one had accused Billy’s parents of mistreating him in any way. Rather, they made the terrible mistake of asking DHHS for help to cope with Billy’s mental health problems.

There was nothing wrong that couldn’t have been fixed by providing Wraparound services or bringing other intensive help into the family home. But DHHS didn’t offer that. Instead, they had the parents sign a “voluntary” placement agreement surrendering the child to foster care – where he died, with a belt around his neck. Foul play is not suspected, and the foster parents have not been accused of any wrongdoing.

But DHHS blew off all of the grieving parents’ concerns and questions with this boilerplate statement:

*The death of any child is extremely sad, especially for us, when a child is a state ward and placed in our care. Department staff did review this case after Billy’s death. The services that had been identified for Billy were provided. There was never a request or concern that he be monitored 24/7, and foster care was an appropriate placement.*¹²⁰

In other words: Nothing to see here, folks, move along everyone. A little boy died with a belt around his neck in one of our foster homes, but so what? Indeed, the statement bears an eerie similarity to Todd Landry’s assessment of the Robert Hawkins’ tragedy.

Just a few days later, as if to add insult to much-worse-than-injury, DHHS put out a press release filled with more boilerplate rhetoric - and no useful information whatsoever - to remind us of "Children's Mental Health Awareness Day."

THE STANDARD EXCUSES

While DHHS is not very good at protecting children, it’s great at coming up with excuses. In fact, there is a standard litany of such excuses across the country. None of them holds up to scrutiny.

Phony excuse #1: Don’t blame us; we can’t remove children, only the courts can do that.

Not true. In every state, caseworkers for agencies like DHHS either can remove a child on their own authority or call law enforcement and have them do it. In Nebraska, law enforcement takes the lead on initial child abuse investigations and any “peace officer” can take a child from her or his home whenever that officer believes the child “is seriously endangered in his or her surroundings and immediate removal ap-

pears to be necessary for the juvenile's protection."¹²¹

No peace officer is likely to turn down a request from a DHHS caseworker to remove a child.

When it comes to taking away children, DHHS workers are *not* "damned if they do and damned if they don't." They're *only* damned if they don't.

And DHHS workers will admit as much, when they think only their friends are paying attention. In 2009, WOWT-TV in Omaha reported on how one couple investigated the investigator who was investigating them. They found the DHHS caseworker's personal Facebook page and found this post: "I'm tired, it was a long day taking away babies." In a section describing her job, the same caseworker writes: "I investigate child abuse/neglect and help families so it doesn't happen again." She adds, "and yes that means I will take their kid." The posting also says "we really don't want to take kids away."¹²²

Clearly the worker understood exactly who has the power to take away children in Nebraska.

Phony excuse #2: Don't blame us; law enforcement does the initial investigation and decides whether to remove the child. This, too, has been cited by DHHS as an excuse for the high rate of removal in Nebraska. But while this arrangement is unusual, it is not unique.

Over the past decade, in several counties in Florida, responsibility for child abuse investigations was transferred from the state Department of Children and Fami-

lies to county Sheriff's departments.

The change did not result in an increase in removals of children from their homes – and the rate of removal in those counties comes nowhere near the high rate in Nebraska.

People who work in law enforcement are every bit as capable of learning how harmful it is to tear children needlessly from everyone they know and love as caseworkers. But apparently, no one ever has bothered to teach them.

Phony excuse #3: What do you expect from us? You complain if we leave a child at home and something goes wrong, and you complain when we take children away. Poor us. We're damned if we do and we're damned if we don't.

Again, it's just not true.

I have followed child welfare for 35 years, first as a reporter, now as an advocate. In all that time, I have never seen a caseworker, supervisor or other agency staffer fired, demoted, suspended, reprimanded, or even slapped on the wrist for taking away too many children. All of these things have happened to workers, supervisors, even agency chiefs, when one child was left in a home and something went wrong.

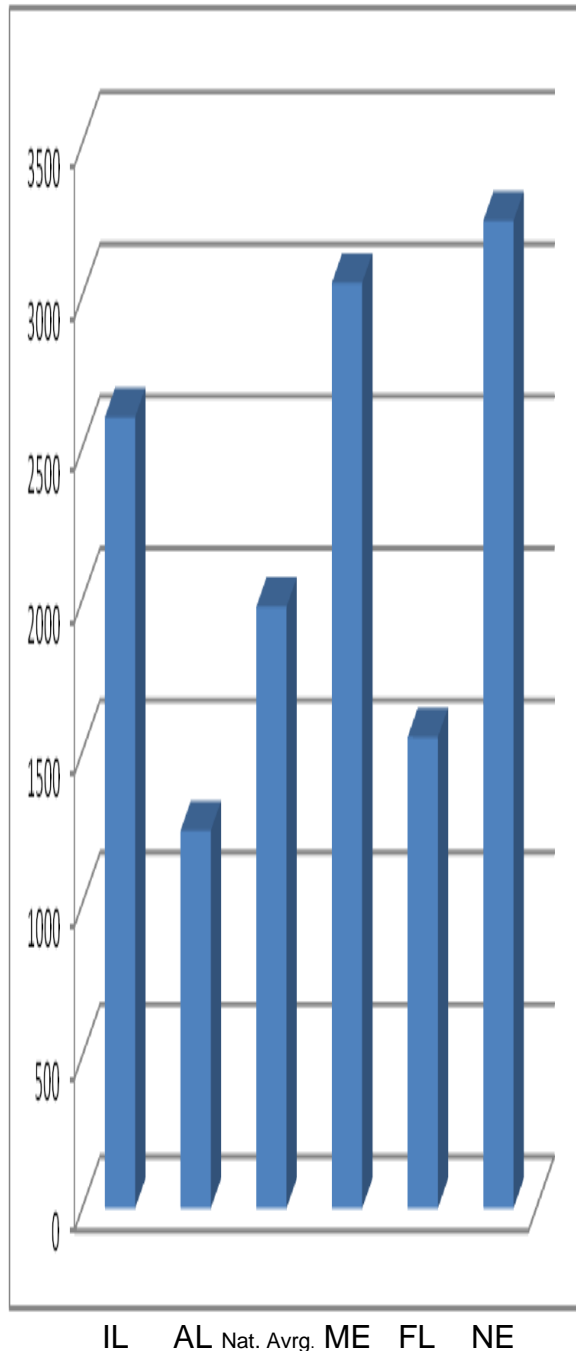
When it comes to taking away children, DHHS workers are *not* "damned if they do and damned if they don't." They're *only* damned if they don't.

MONEY IS NOT THE PROBLEM

Still another standard excuse for Nebraska's failure is the claim that the system is underfunded. While more money for child welfare certainly would be helpful, the real problem in Nebraska is not that it underfunds child welfare, but that it wastes the money on all that needless foster care and institutionalization.

The most recent authoritative study of child welfare spending uses data that are

Child welfare spending per impoverished child, 2006:*



*-Unfortunately, the most recent comparative spending study uses data only from 2006. But while many states have faced budget cuts since then, the relative position of the states probably is similar. If anything, the gap may have grown, since Nebraska increased spending to cover unanticipated costs of privatization.

Sources: See Appendix B

now six years old, but if you take those totals and divide by the number of impoverished children in each state, you find that Nebraska spent on child welfare at the 13th highest rate in the nation – a rate more than 60 percent *above* the national average. (For full details and sources see NCCPR's index of child welfare spending, included with this report as Appendix B).

The great paradox of child welfare is that the worse the option is for children, the more it costs. Safe, proven alternatives to foster homes cost less than foster homes which cost less than group homes which cost less than institutions.

Why does Nebraska spend so much while children get so little?

Because Nebraska tears apart families and holds children in foster care at one of the highest rates in the nation – and uses group homes and institutions at a rate well above average. So of course the state is spending a fortune on child welfare and harming children in the process.

Yes, part of this is the federal government's fault (and that's why, it's so important that Nebraska seek a waiver from federal funding rules; see p. 39) but state after state is providing better outcomes for children while actually spending proportionately less than Nebraska.

Spending more would be nice. Spending smarter is vital.

PART TWO:

An evaluation of current proposed legislation

Bill numbers are for the bills as they were originally introduced.

There is no shortage of ideas for fixing Nebraska child welfare floating around in the form of legislation. Unfortunately, most of those ideas involve new ways to rearrange the deck chairs. Only three proposals offered this session actually would help vulnerable children.

Here is our take on some of the proposed legislation:

Useful legislation

Bill: LB820. Purpose: *Requires Nebraska to apply for a waiver from federal funding rules that limit a large portion of federal child welfare aid to funding foster care and only foster care.*

Analysis: As noted above, Nebraska actually spends proportionately more on child welfare than the national average and more than many states that do a far better job protecting children. There are many reasons for this, but one of those reasons is that most federal aid for child welfare is restricted to funding foster care.

While Nebraska gets about \$1.3 million in federal child welfare aid for prevention and family preservation, it receives nearly \$19 million for foster care.¹²³

The foster care funding also is an open-ended entitlement. At the end of 2011 for every eligible child, Nebraska received 58.44 cents back for every dollar it spent on foster care. Nationwide, nearly half of all foster care cases are eligible. The percentage is lower in Nebraska, but that's not necessarily because there are fewer eligible children; more likely it's because Nebraska does a poorer job of documenting eligibility.

So while safe, proven alternatives to foster care cost less in total dollars, there are

circumstances under which foster care actually might cost less in state funds.

Under a waiver, states give up the open-ended entitlement and receive their foster care funds as a flat grant, indexed to inflation, for up to five years.

While safe, proven alternatives to foster care cost less in total dollars, there are circumstances under which foster care actually might cost less in state funds.

The money still can be used for foster care, but it also can be used for better alternatives. And any money the state saves by reducing foster care it can keep, as long as it plows the savings back into child welfare.

Furthermore, if something goes wrong and foster care increases, the state can opt out and return to the old system.

Precisely because Nebraska takes away so many children needlessly and places so many needlessly in the worst and most expensive forms of care, group homes and institutions, Nebraska has enormous potential to reduce foster care and generate significant savings that can be plowed into further bolstering better practices and better outcomes in child welfare.

The last time these waivers were available, in 2006, only one state, Florida, took advantage of them statewide. That waiver, combined with strong child welfare

agency leadership, led to improvements so dramatic they were featured in *The New York Times*.¹²⁴ It was the waiver and the leadership, not privatization, that turned around child welfare in Florida.

Nebraska officials should be beating down the doors at the federal DHHS trying to get one of these waivers.

Entries into foster care (which were, of course, lower than the rate in Nebraska to begin with) were cut by 35 percent. Independent evaluations, required as a condition of receiving the waiver, have found that child safety has improved).¹²⁵

One Nebraska legislator reportedly dismissed Florida's success because of a highly-publicized case in which a child known-to-the-system died. Actually, since Florida is a huge state, there are, sadly, several such cases every year. There are such cases in *every* state. Between 2006 and 2010 there were *at least* 16 of them in Nebraska.¹²⁶ But the Florida Child Abuse Death Review Team found that during 2009 and 2010 the number of such deaths fell by nearly 50 percent. Those also were the two years in which Florida took away the fewest children since 1998.¹²⁷

It is a disservice not only to Florida's children, but even more to Nebraska's children to ignore Florida's dramatic improvement because, in a state that is home to more than four million children, there still are tragedies.

Indeed, the difference between Nebraska and Florida is that Nebraska also has the tragedies – but without the improvement.

Full details on how waivers work are available at NCCPR's interactive database:

www.childwelfarewaivers.blogspot.com.

The federal Department of Health and Human Services is authorized to issue only ten waivers per year for the next three years. It is shameful that a bill like this even is necessary.

Nebraska officials should be beating down the doors at the federal DHHS trying to get one of these waivers.

Instead, the bill has been amended to give DHHS until September 2013 to even apply for a waiver. That means, at best, the funds won't be available for two more years. And of course, since the number of waivers is limited, the longer Nebraska waits, the less likely Nebraska is to receive a waiver.

The bill also has been combined with other bad bills, including the "teddy bear subsidy bill" (see p. 20).

Bill: LB1165. Purpose: *Restores the distinction between truancy and excused absences; reduces the number of unexcused absences before a school district is required to intervene but eliminates the requirement to refer cases to a county attorney.*¹²⁸

Analysis: This bill, in its original form effectively repeals Nebraska's disastrous experiment in criminalizing letting a sick child stay home from school. The reasons this repeal is essential are outlined starting on page 41.

Bill: LB998 (original version). Purpose: *Eliminates the Foster Care Review Board, replacing it with a foster care review office, reporting to the legislature.*

Analysis: For reasons discussed on page 20 (which probably are not the reasons the bill was put forward by its sponsor) this was, in its original form, a very important bill that would have gone a long way toward curbing the take-the-child-and-run mentality in Nebraska child welfare.

It would have been helpful if the bill had gone further and abolished the local boards as well, since by their nature, for reasons discussed on p. 22 volunteer boards are likely to suffer from the same unintentional

When keeping a sick child home from school is a crime

AUTHORITIES SAY THEY NEED A “HAMMER” TO DEAL WITH “EXCESSIVE” ABSENCES.
BUT A SICK CHILD IS NOT A NAIL.

In August of 2011, more than 20 families were forced to gather at the Douglas County Courthouse for an exercise in mass humiliation that sounds like something out of the 17th Century.

One-by-one the families, parents and children, were called to the front of the room to be publicly cross-examined by a deputy county attorney.

Their crime – and, in Nebraska, it’s literally a crime: During the previous school year, the children had been home sick from school for more than 20 days. One family was struggling with cancer, two had children with mono. Another was trying to cope with the deaths of his mother, sister and uncle.

The *Omaha World-Herald* described the process:

One-by-one over the course of two hours, the families were called to the front of the room. [Mary] Reynolds-East and her husband [whose son had suffered from mono and strep throat] were next to last.

Deputy Douglas County Attorney Jordan Boler told them they were called in because their son had missed more than 20 days for two years in a row. "That's a lot," she said.

Boler asked whether the couple had done something to prevent their son from getting sick again this year — a question that frustrated Reynolds-East. "There's not much we can do," she said later. "Give him vitamin C?"¹²⁹

If the family can’t somehow come up with a cure for strep throat and other diseases this year, they could face a lot worse than humiliation.

In a bizarre move, apparently unheard-of in any other state and diametrically opposed to what national experts consider best practice, Nebraska has erased the distinction between an excused and unexcused absence from school. The very term “truancy” has been replaced by the term “excessive absences.”

Any student absent for more than 20 days, for any reason, automatically is referred to the county attorney, who then is required to investigate the family. The county attorney has the option to prosecute the child as a status offender, and/or charge the parents with “educational neglect” and take the child from them.

The percentage of Nebraska families likely to be affected ultimately will be significant. In just one year, Nebraska schools referred 9,178 students to county attorneys as a result of the new 20-day law.¹³⁰ That’s about three percent of Nebraska’s students.¹³¹ Over the course of the 12 years that a child typically is in school, with an average of about two children per family, consider how many families will experience at least one year where some combination of illness and family emergency pushes a child over the 20-day limit.

Authorities keep saying they won’t really take away children or do anything similarly drastic in cases where all or most of the absences are “excused.”

But the *Omaha World-Herald* reports that KVC, the former “lead agency” serving south-east and eastern Nebraska (in effect, the equivalent of DHHS in that part of the state) said the number of families under their supervision because of school issues quadrupled since the new law took effect. The story doesn’t say how many, if any, are in foster care. But it does note that KVC itself wasn’t expecting this:

Sandra Gasca-Gonzalez, president of KVC's Nebraska operations, said she was surprised at the numbers. In other states where she has worked, truancy is an issue handled by schools, not the juvenile court system, she said.¹³²

In some parts of the state, it doesn’t take 20 absences to bring DHHS into a family’s life. In 11 school districts in Douglas and Sarpy counties, as few as six absences leads to a referral to an intervention “team” that includes DHHS.

Even the threat is doing enormous harm to families. An investigation of alleged child abuse or neglect – and when DHHS is involved, that’s what it is – is not a benign act. Taking a

child aside and asking questions about the most intimate aspects of her or his life, even in private, let alone as part of a public shaming, can do serious emotional damage. And once DHHS is involved for one reason, it can go on the ultimate fishing expedition looking for other signs of alleged “abuse” or “neglect.”

During the mass humiliation session last August “one elementary-age girl clung to her mother, who explained the girl was terrified about what might happen to her. Illnesses had put the child over the 20 day mark.”¹³³

Twelve-year-old Kylie Jackson also is under surveillance by a county attorney. A combination of illnesses, once-in-a-lifetime experiences out of Nebraska, and being a victim of bullying that school officials did not address pushed her one day over the legal limit for absences. The fact that she still gets As and Bs and consistently is on the Honor Roll doesn’t matter. “They put me under the impression I did something terribly wrong,” Jackson told a legislative hearing.¹³⁴

All that stress is bound to affect schoolwork. Beth Meyer of Lincoln, whose daughter missed 22 days of school because of meningitis, told the hearing “You’re taking my child, who is legitimately sick, through the court system and taking her from an A and B student to an F student.”¹³⁵

During the mass humiliation session last August “one elementary-age girl clung to her mother, who explained the girl was terrified about what might happen to her. Illnesses had put the child over the 20 day mark.”

Older students have another option. A 16-year-old who had endured years of stress in her life managed to reduce her absences from 40 in one semester to only three the next. But instead of praise, she was blasted in open court by a county attorney, because she didn’t get her absences down to zero. He recommended juvenile detention – jail. Fortunately, the judge did not agree.

But rather than face any more torment from the system, the 16-year-old did the one thing still within her power: With only two math classes left before graduation, she dropped out.¹³⁶

Proponents of the law argue that it’s working – attendance is up. But the fact that more students are in school does not mean that more students are getting an education.

One parent sent her child to school with a fever of over 100 degrees – because she was terrified of exceeding the limit on absences.¹³⁷ That’s not unusual, according to Dr. Lisa Whitcomb, a pediatrician at Methodist Physicians Clinic in Omaha:

*I see parents sending their children to school ill because they’re afraid they have missed too many days of school. This is concerning both for the child and their classmates that might be getting exposed to infectious diseases. ... I have seen good parents taken to court over what seem to be legitimate absences. I have one patient in particular who has been taken to court twice. Mom also has been threatened with CPS for the absences of her child, who has recurrent illnesses and does well in school despite her absences.*¹³⁸

All of this is contrary to best practice in child welfare and juvenile justice. In 2009, one of the nation’s leading child welfare and juvenile justice think tanks, the Vera Institute of Justice, found that roughly half the states don’t even have “educational neglect” statutes. They leave it to the schools.

The study was commissioned by the New York State agency that oversees county child protective services agencies (CPS is a county function in New York). In it, the Institute recommended that if agencies like DHHS are not going to get out of educational neglect cases entirely, at least for older children, they should restrict the cases with which they get involved and reduce their role to offering genuinely voluntary help through a process called “differential response.” The study also cited a series of better options for dealing with actual truancy.¹³⁹

But in Nebraska, Judge Elizabeth Crnkovich reportedly said the law is needed as a “ham-

mer” to get families to cooperate with the “help” she and others want to offer. If she said that, it reveals the same appalling lack of knowledge of child development she displayed when she tore seven children in a “safe haven” family from the loving aunt who took them in, simply because the aunt had not yet had time to buy each a separate bed and, yes, had not yet had time to enroll them in school (see p. 12).

She certainly “hammered” the parents in one case – throwing them in jail for contempt for at least five hours, apparently for doing no more than trying to tell their side of the story during a hearing. Their 17-year-old son also was taken from them. Days later, another judge returned their son and vacated the contempt finding.¹⁴⁰

A higher court judge has a far better understanding of the right role for courts in truancy cases. According to the *World-Herald*:

*Nebraska Chief Justice Michael Heavican [warns] that courts are the “most expensive and least flexible” way to deal with truancy. He said courts should be reserved for the most difficult and unresponsive truants, while others should be handled through school interventions and court diversion.*¹⁴¹

But even a diversion program causes tremendous needless stress when there is nothing to “divert.”

A “hammer” is not necessary to deal with a sick child, because a sick child is not a nail. Neither is a child whose only crime is to have been a victim of bullies.

That’s what happened to Victoria Herrera’s daughter. Two years of torment for one of the very few Latino students in the Millard Public Schools¹⁴² culminated toward the end of her third grade year, when several classmates beat her with sticks on her way home from school.

When the school refused to protect her child (not our problem, said the school district, it happened on the way home) Ms. Herrera withdrew her child for the last 24 days with the intention of home schooling her.

With a new principal at the school the next fall, Ms. Herrera decided to try the school again. But her daughter was placed in the same class as one of the worst of the bullies – and Ms. Herrera was told she and her daughter were being referred to the county attorney for “truancy.”

On the day of the first court hearing, her daughter was assaulted again, by another student, this time in the school. But again, the school did nothing. Well, not quite nothing: The principal kept the fourth grader – the victim – in the office for three hours until she “admitted” the assault was an “accident.”

DHHS was called in to investigate – no, not the people who bullied Herrera, but rather Herrera’s mother. To her face, they told Ms. Herrera that clearly this was not a case of neglect on her part. Between that and her own lawyer saying she should just plead guilty, she agreed to jump through all their hoops. Then the DHHS workers said exactly the opposite to the court – which promptly gave DHHS legal custody of the girl. Though she was allowed to remain in her own home, she remained under the constant surveillance of DHHS.

The ordeal ended only when the “guardian *ad litem*” named to represent the child’s best interests actually did just that. She recommended that the case be dismissed. The now is home-schooled.¹⁴³

State Sen. Tony Fulton proposed a simple, sensible solution for all this: His legislation, LB1165, actually would reduce the number of *unexcused* absences allowed before school districts are required to intervene – but he would restore the distinction between an excused and an unexcused absence, and leave it to the discretion of the local school districts – in partnership with parents – whether to refer too many unexcused absences to the county attorney.¹⁴⁴

But instead, it appears that a compromise, giving more discretion to local school districts, is likely to pass. This is a step in the right direction, but it does not go far enough. Even Sen. Fulton’s bill should have been stronger. Nebraska should join the states that do not consider so-called “educational neglect” to be any of child protective services’ business. School districts should be prohibited from involving DHHS in cases of either “excessive absences” or truancy.

And finally, one last item about that public humiliation session at the Douglas County courthouse last August: In order to attend the session, some of the children had to miss school.

class and racial bias that afflicts the current statewide board. Though federal law requires some sort of case review every six months, it does not require that this be done by a citizen review board.¹⁴⁵

Instead, however, the bill has been weakened. The new version replaced the old board with a new board dominated by members of the local boards.

Other legislation

Bill: LB961. Purpose: *Return case management to the state.*

Analysis: This is the quintessential “deck chair” bill. Having concluded that a privatized system doesn’t work, this bill proposes returning case management to DHHS. The problem, of course, is that the former public system didn’t work either. Our suggestion: Freeze the current dual structure for at least five years.

Right now, the last remaining private “lead agency” handles case management in Douglas and Sarpy counties, while it has been returned to DHHS in the rest. Since neither has proven to be better, the legislature should stop wasting time, effort and money trying to make further structural changes.

Instead, this creates an opportunity to compare the two approaches head-to-head. Each region should be evaluated based, at a minimum, on the following fundamental measures:

- The rate at which children determined to have been abused or neglected are abused or neglected again after they have become “known to the system.”
- The rate of foster care recidivism – that is, the percentage of children sent home from foster care who must be placed again.
- Entries into care: The number of children taken from their homes over the course of a year.
- Placement type: When children

must be placed, what proportion is placed with relatives and what proportion is forced into group homes and institutions.

These basic measures should be supplemented by detailed, in-depth case readings at least once every two years and ideally annually, in which a random sample of cases is analyzed in depth. The sample size must be large enough to be statistically valid. That means it would have to be substantially larger than the samples used by the federal government’s Child and Family Services Review process. The small samples are among many reasons why the findings of CFRs are worthless.¹⁴⁶

As this report went to press, it appeared the legislature was moving in this general direction, in the form of a compromise bill that would leave the one remaining “lead agency” in charge of case management in Omaha.

Bill: LB821. Purpose: *Create a separate Department of Children’s Services and create a Nebraska Children’s Commission. (The original bill has been amended. Now, if it becomes law, the Commission will study creating a separate department.)*

Analysis: In its original form, this really was two bills in one. The part about putting children’s services in a separate agency puts us, once again, in “deck-chair” mode.

There is no evidence that states with separate children’s services agencies do any better, or any worse, than states in which these agencies are a part of larger human services departments. The few relatively good systems include both models; and, of course, all the really bad ones include both models.

Creating a separate agency therefore is inherently harmful only because it wastes time and effort. (If Nebraska already had a separate agency, we would say the same about a proposal to go the other way and make it part of a larger agency.)

The particular way some responsibilities would be divided here, though, raises additional concerns. It appears that services would become more fragmented, not less. For example, it appears that a family coping with Medicaid would have to deal with two agencies, one for the adults in the household and another for the children.

Concerning the children's commission:

Again, it's neither good nor bad *per se*. The key is who winds up on it, if it passes. Right now, the bill says the commission "may include" a birth parent involved with the system. That should be changed to "must include," and there should be at least two of them. In addition, there should be a requirement that a family defense attorney serve on the commission. The bill already wisely allows for current or former foster youth to be on the commission; that, too, should be made mandatory.

Bill: LB957. Purpose: *Create an inspector general for Nebraska child welfare.*

Analysis: The purpose of the bill presumably is to add accountability to the system. But there is an alarming lack of accountability for the inspector general himself.

It appears that only the office's annual summary of reports and recommendations would be seen by the legislature or the public. The individual reports would be seen only by the subjects of those reports — who couldn't share them except with the inspector general's permission. The reports are specifically exempted from the Nebraska open records law.

How, then, do we know if the findings in the summary report are valid? How do we know the inspector general isn't imposing her or his own biases on the system? How do we know s/he isn't using the office to retaliate against an individual or group s/he doesn't like? We don't know, because

while conclusions may be public, the supporting evidence is not.

So under this bill, a system with enormous power and no real accountability would be overseen by someone with enormous power and no real accountability.

Under [the inspector general bill] a system with enormous power and no real accountability would be overseen by someone with enormous power and no real accountability.

The bill should be amended to create a rebuttable presumption that, at a minimum, all reports on individual complaints *are* open records, with attorneys having the right to go to court to request that a record be closed, if disclosure would do serious harm to a child. If those attorneys could show clear and convincing evidence that such harm would occur and outweigh any benefit in disclosing that record, the judge would have the right to close the record in question.

In fact, as is discussed in the section on our own recommendations, this presumption should apply to almost all child welfare records in every case, not just those that involve a complaint to an inspector general.

The other problem with this bill concerns the inspector general's jurisdiction: He can investigate only deaths, serious injury and *illegal* acts. But many times wrongful removal is morally reprehensible and destroys a child's life — yet it's perfectly legal. Such cases are entirely off-limits. They should be included in the bill.

Without inclusion of such cases, this bill risks creating "disclosure" that actually

leaves a misimpression of how and why the system fails. It risks replacing the current iron curtain of secrecy with a funhouse mirror.

Although there is a high rate of abuse in foster care, even in a state like Nebraska, the overwhelming majority of children are not actually in foster care. Therefore, though the rate of abuse in foster care is higher than in the general population, in raw numbers, cases involving death or serious injury are more likely to involve the general population.

**If new DHHS
caseworkers are to be hired,
this should be done only as
part of a comprehensive
reform plan emphasizing
alternatives to foster care.**

As a result, the inspector general's work will be skewed toward investigating cases of abuse in a child's own home. That is likely to leave the false impression that the only error DHHS makes is leaving children in dangerous homes. In fact, child welfare systems are arbitrary, capricious and cruel – they err in all directions. And in Nebraska, errors involving wrongful removal are rampant.

Bill: LB1149 Purpose: *Limit caseloads for DHHS and private lead agency caseworkers.*¹⁴⁷

Analysis: This bill is not a problem *per se*. It certainly makes sense to keep caseloads low. The problem is the assumption that the way to accomplish this is by hiring more caseworkers. The Legislative Fiscal Analyst comes up with its estimate of the cost of the bill that way.¹⁴⁸ The analyst assumes that everything else at DHHS will be

business as usual.

In fact, if DHHS continues business as usual, hiring more caseworkers won't lower caseloads. In states like Texas and Indiana, and in the city-run system in New York City, caseworker hiring binges only further widened the net of needless coercive intervention into families. All the new caseworkers chased all the new cases, and these places wound up with nothing but the same lousy systems — only bigger.

At a minimum, if new DHHS caseworkers are to be hired, this should be done only as part of a comprehensive reform plan emphasizing alternatives to foster care. That was the approach taken by New Jersey, and it was successful.

But the best way to lower caseloads is to put the millions of dollars it would cost to hire more caseworkers into services for families instead. That way these families either will not reach the point where anyone accuses them of maltreatment; or, if they are accused, they can be diverted from the foster care system.

Of course services are delivered by people. Such an approach does not mean there would be no hiring, rather it means those hired would be family preservation workers and Wraparound specialists, not investigators and case managers.

A better bill would be one that specified that caseloads are to be lowered through this method, not simply by more indiscriminate hiring.

Bill: LB926. Purpose: *Raise foster parent pay and equalize pay for relative and non-relative foster parents.*

Analysis: This bill, as originally written, should be split in two. The part about equalizing pay for relatives and non-relatives should be retained. As noted earlier, kinship care almost always is more stable, better for children's well-being and, most important, safer than stranger care.

But unless kinship foster care parents

are licensed, in which case equal pay is required by federal law, they don't get the same pay as strangers, even though kinship foster parents are likely to need the money more. (Since most children taken from their parents are poor, odds are their extended families also are poor.) Most foster care licensing requirements are related more to middle-class creature comforts than to actual health and safety. They may involve things like minimum square footage and number of children who can share a room. Often poor families can't meet these needs. So Nebraska is wise not to require that kinship foster parents be licensed.

But the giant pay raise for all foster parents is a huge mistake, for reasons discussed in *Beware of the teddy bear subsidy bill*, on p. 20.

Unfortunately, the Legislature

appears to be headed toward doing roughly the opposite. An amended bill eliminates the requirement for equal pay for unlicensed relatives, while giving foster parents (including relatives) an immediate \$1,100 raise. The bill no longer requires the giant pay raise described above, but strongly encourages such raises by setting up a stacked-deck committee to recommend them. This bill also includes bad legislation narrowing the definition of a relative for purposes of kinship care (see p. 27).

All of this has been tacked on to the bill requiring Nebraska to apply for a waiver. All of these provisions should be dropped, and the provision equalizing pay for kin and stranger-care parents should be restored.

Separately, the legislature should pass a "clean" waiver bill.

PART THREE:

Beyond the bills: real solutions

RECOMMENDATION: If privatization continues, the system should be changed either to give the remaining private agency control over the “front door” or to compensate it for unexpected increases in entries truly beyond its control.

Nebraska’s privatization effort rightly does not pay privatized “lead agencies” for every day they hold children in care. That creates a huge incentive to prolong foster care. Instead, the agencies are given a flat amount. But those agencies had no control over the front door. So an agency could, in theory, do a good job of providing services to families and quickly reunifying them and still lose money because of the sheer number of children being taken away.

Either the one remaining lead agency should be involved in the actual process of initial investigation and deciding whether or not to remove children, *or* its contracts should be based on the number of children they are expected to serve, with a formula increasing payments if the number of entries exceeds projections. KVC reportedly was seeking this kind of change, but could not reach agreement with DHHS, and so pulled out of case management.¹⁴⁹

There should be no increase, however, if *length of stay* exceeds projections, since that is largely within lead agency control, and paying more for longer stays eliminates the incentive to quickly move children to permanent homes. This recommendation, in contrast, would create an incentive for DHHS to control entries.

If, however, private agencies get a say concerning whether or not to take away a child, they should not also be paid for every child taken – for obvious reasons.

As this report went to press, it appeared the Legislature was moving in this general direction.

RECOMMENDATION: Law enforcement personnel must be rigorously trained in child welfare, in particular the enormous harm of needlessly removing children from their homes.

In Nebraska, the initial decision to remove a child is likely to be made by a law enforcement officer. Anyone who wields the enormous power to tear apart a family and set in motion a process that could destroy it must be fully aware of the consequences.

RECOMMENDATION: State law should be changed to order DHHS to audit law enforcement agency performance. This should include examining random samples of cases to determine whether removals were necessary. If a particular police and sheriff’s department continues to take away too many children needlessly, the law should require DHHS to take over investigations from that agency with law enforcement serving as consultants as needed. Of course there is nothing to indicate that DHHS actually has less of a hair-trigger than law enforcement, though some DHHS officials have been known to claim as much. But putting this recommendation into effect would at least prevent DHHS from passing the buck for the state’s absurdly-high rate of removal.

On the other hand, some in law enforcement have complained that DHHS pushes them to take away children when they don’t think it’s necessary. That’s why we also recommend a series of changes to bolster due process protections for families.

RECOMMENDATION: Because of disturbing evidence that it reinforces racial bias, DHHS should not use Structured Decision Making questionnaires when evaluating families. DHHS should conduct a nationwide search for a better model.

ADDITIONAL RECOMMENDATIONS: DUE PROCESS

NCCPR has a series of additional recommendations outlined in detail in NCCPR's *Due Process Agenda*, included as Appendix C.

To the credit of Nebraskans and their lawmakers, one of those recommendations, opening court hearings to the press and the public, occurs in Nebraska. The others, however, do not. Here is a summary – details are in the *Due Process Agenda*:

- **Create a strong rebuttable presumption that almost all records in all child welfare cases are open.** Lawyers for parents and children could go to court and ask that certain records be closed, with judges making the final decisions.

- **Allow DHHS and private lead agencies to comment on specific cases whenever such cases already have been made public by some other source.** Several states already have such a provision in their state laws.

Here again, a problem that exists in most places is worse in Nebraska. In much of the country, child welfare agencies hide behind confidentiality laws to avoid accountability for their actions.

But we know of no other state, where a child welfare agency was so desperate to cover up its failings that it went to court and obtained a gag order to bar parents from telling their story. (It was also pretty stupid, since DHHS got the order after the family told their story to *The Wall Street Journal*.)

But the family remained silenced, unable to talk to other media, until a higher court overturned the order.¹⁵⁰

So not only should the Nebraska Legislature give DHHS the right to speak, it also should bar DHHS from trying to shut anyone else up.

- **High-quality legal representation must be available to all parents who must face CPS.** This is not a matter of “getting bad parents off” it’s a matter of leveling the playing field so they can protect their children from the trauma of needless foster care. Evaluations in New York City and Washington State have found that this kind of representation significantly reduces foster care without compromising safety. It also saves money. (See *Leveling the playing field in two states*, p.50).

- **Law guardians should act as lawyers.** Guardians *ad litem* typically are charged with advocating for what they think is best for a child. Instead they should be required to advocate for what the child wants, whenever a child is old enough to make a rational decision. That’s not because the child is always right, but because only if all sides can make their strongest possible case can a judge determine what really is best for a child.

- **Before a call is accepted by a child abuse “hotline” and referred for investigation, the caller must be able to demonstrate that s/he does, indeed, have “reasonable cause to suspect” maltreatment.**

The caller must be able to offer something more than a guess that a child really is being abused or neglected. To help hotline operators accomplish this goal:

- **A rational method must be established for screening hotline calls.** Child abuse hotlines vary in their power to screen in or screen out calls. In Nebraska, as in most states, all that is required to “substantiate” a case is for a DHHS worker to check a box on a form if she thinks it’s slightly more likely than not that a child was abused or neglected. Nevertheless, in Nebraska, fewer than 23 percent of investigations lead to “substantiated” findings – about the national average. That indicates that in Nebraska, as in much of the nation, far too ma-

Leveling the playing field in two states

In Pierce County, Washington, the judge in charge of the county's juvenile courts was dismayed at the escalating rate of terminations of parental rights – knowing that he was dooming some of the children to a miserable existence in foster care.

So he persuaded the legislature to provide enough money for defense attorneys to have resources equal to those of the Attorney General's office, which represents the state child welfare agency in juvenile court. The result: successful reunification of families increased by more than 50 percent.

And that's not because lawyers "got their clients off."

Where the parents are innocent, lawyers have time to prove it. Where there is a problem in the home that must be corrected, the lawyers have time to sit down with the parents, explain early on what they are up against and guide them through the process of making whatever changes are needed. They also can advocate for more and better services geared to what families really need, instead of the cookie-cutter "service plans" often offered by child welfare agencies.

Between 2000 and 2003, of 144 cases in the program in which families were reunified, not one was brought back to court.

"These children aren't coming back," says Washington State Supreme Court Justice Bobbie Bridge, a supporter of the program, "and we do get them back when we make bad reunification decisions."

The National Council of Juvenile and Family Court Judges is publicizing the results, and even the State Attorney General at the time, who had to face the better-prepared lawyers, supported the project and wanted it expanded.¹⁵¹ (We don't know if she still holds that view in her current job – governor.) Further information about the program is available here:

<http://www.opd.wa.gov/Reports/DT-Reports.htm>

New York City has let contracts to provide similar representation for half of all indigent parents in four of the city's five boroughs. The city is doing this with the support of its child welfare agency, the Administration for Children's Services. This is because ACS recognizes that it is not infallible, and recognizes the role lawyers for parents can play in fighting for help for families.

It's also probably because, while at the Annie E. Casey Foundation, before becoming ACS Commissioner (a job he left in September, 2011) John Mattingly co-authored a scathing report on how the city's Family Courts ran roughshod over families. The report quoted judges admitting they routinely rubber-stamped removals even when they thought ACS failed to make its case, because they were afraid of winding up on the front page if they sent a child home and something went wrong.¹⁵²

The Center for Family Representation holds the contract for Manhattan and, starting in 2011, for Queens.¹⁵³

Since 2004, CFR has pioneered a model of team representation.

The family is represented by an attorney, a social worker and a parent advocate, described by CFR as "a parent who has directly experienced the child protective and foster care systems and has successfully reunified with his/her child."

CFR reports that the children represented this way

*spend, on average, 73 percent less time in foster care than children in the city and state and in 50 percent of our cases, children never enter care at all, but instead stay at home with the services needed to help them stay safe and thrive.*¹⁵⁴

CFR reports that the results are even better when their teams can reach a family during an investigation but before the family is charged. In those cases, placement was avoided 95 percent of the time.

It's also cost-effective. In New York it costs an average of \$49,188 to keep one child in foster care for a year. The costs range from an average of \$25,000 per year per child in a family foster home to \$92,000 per year per child for a group home or institution. In contrast, the City estimates the average cost of a year of preventive services, for an entire family, at \$10,000.¹⁵⁵ And CFR can represent an entire family for \$4,000 to \$6,000.¹⁵⁶

ny calls are being accepted for investigation in the first place.

This only further overwhelms workers, making it less likely that they will be able to investigate any case carefully – and less likely that they will find children in real danger.

Every hotline needs to have an effective protocol of questions to be asked of callers to determine if the case rises to a level requiring an investigation.

• **Once such a protocol is in place, hotline operators will need intensive instruction in how to follow it.**

Over the past three decades, legislative auditors in three states have run the same test – giving child abuse hotline operators hypothetical cases and asking if those operators would accept them and send them on for investigation. The most recent report was released just last month.

In all three cases, there was enormous variation among operators – meaning that whether a false report is screened in or a valid report is screened out depends largely on who happens to pick up the phone.¹⁵⁷

The problem may be worse in Nebraska, since, during the past decade, there have been repeated calls to broaden the kinds of cases accepted for investigation.

• **Anonymous calls should not be accepted.** People reporting child abuse still should be allowed to keep their identities secret from the accused in most cases. But they should be required to leave their names and verifiable contact information with the hotline. The argument for accepting these calls is that if they are screened out, real cases might be missed. But anonymous reports are, by far, the least reliable. Workers miss *more* children in real danger by accepting anonymous calls, because these calls waste so much time.

• **No one should be listed in a central register of alleged child abusers, and**

no allegation should be substantiated, until, at a minimum, the family has had an administrative hearing conducted by a hearing officer outside of the child welfare agency. The standard of proof should be “clear and convincing.”

In still another indication of Nebraska’s guilty-until-proven-innocent mentality, between 2004 and 2007 between 55 and 68 percent of those who appealed caseworker decisions to “substantiate” an allegation of child abuse won their appeals.¹⁵⁸ But one can only appeal after the fact. Wrongful substantiation doesn’t just hurt parents; the harm to the family is felt by the children. It’s also been used to deny placement of children in the homes of relatives. Fundamental justice for children requires that the hearing come *before* the decision.

• **When a report is “unfounded” all records automatically should be automatically expunged within 30 days, unless the accused requests their retention.**¹⁵⁹

• **From the moment a child is removed until the first hearing at which all sides are represented, the agency initiating the removal, whether it is law enforcement or DHHS, shall be responsible for arranging daily visits. This would apply unless the law enforcement agency or DHHS can show, by clear and convincing evidence, that this would endanger or cause genuine emotional harm to the child.**

In addition to reducing the trauma of removal, knowing that they will have to arrange daily visits will encourage law enforcement and DHHS to be more careful not to remove a child unless it’s truly necessary to keep that child safe.

• **All interviews conducted by CPS personnel in the course of child maltreatment investigations – not just interviews with children – should be, at a minimum, audiotaped. For interviews con-**

ducted at DHHS offices, police stations or similar settings, videotape is preferable. Information from any interview that is not taped should be inadmissible in all official records and court proceedings.

- The standard of proof in all court proceedings should be raised from the current “preponderance of the evidence,” (the same standard used to determine which insurance company pays for a fender-bender) to “clear and convincing.” The standard also should apply when a worker decides to “substantiate” alleged maltreatment.

- Abolish legal “ransom.” Nebraska sometimes requires parents who lose children, parents who typically are poor to begin with, to pay all sorts of expenses related to foster care. They may be required to help pay for the foster care itself, or they may have to pay for someone to supervise visits or, as in the case of Anthony Kelley, they may have to pay for drug treatment (whether they need it or not).

This is astoundingly stupid. Not only does it do enormous harm to children by prolonging foster care, that additional time in foster care will cost more than the state ever can hope to recover from an impoverished parent.

In addition, if a parent falls behind in helping pay for the child’s out-of-home “care,” that parent may lose her or his driver’s license. That then makes it even harder for the parent to make it to visits or hold onto a job – which, in turn, increases the likelihood that the child will lose that parent forever.

ADDITIONAL RECOMMENDATIONS: SERVICES

NCCPR has a series of recommendations concerning services for families, and examples of systems that are, relatively speaking, models. They are summarized in our brief

publication *Doing Child Welfare Right*, included as Appendix D.

But we add two additional “service” recommendation based on the special needs of Nebraska:

DHHS probably will respond to NCCPR’s recommendations concerning services by saying “we have that.” Odds are, they don’t.

- Wraparound, and other alternatives to institutionalization must become the rule, not the exception, when dealing with children with serious behavioral health problems.

- After a child has been removed from her or his home, and a decision is being made concerning where to place that child, all contracts with service providers should have a “no reject, no eject” clause. In other words, private agencies, whether they are running group homes and institutions or providing in-home services, should not be allowed to turn a child down or kick a child out in order to make their “success” numbers look good – or for any other reason.

This would not apply to individual foster parents.

Interestingly, one of Nebraska’s former lead agencies, KVC, claims to have such a policy for its facilities in Kansas.¹⁶⁰

As noted earlier, if the last remaining lead agency were to be given the power to take part in initial removal decisions, then, of course, it should have the power to leave a child in her or his own home.

DHHS probably will respond to

NCCPR's recommendations concerning services by saying "we have that." Odds are, they don't.

One can slap the label "family preservation" onto anything, for example, but that doesn't mean it's a true Intensive Family Preservation Services program that follows the model of the first such program, Homebuilders, in Washington State. The same is true of Wraparound and various other innovations. Any claim by DHHS that they have a particular program should be checked against national standards for best practices in that program.

FINAL RECOMMENDATION

• **In all places where it appears, the phrase "best interests of the child" should be replaced with the phrase "least detrimental alternative."**

Currently, almost all state laws involving custody of children are liberally sprinkled with the phrase "best interests of the child."

But that is a phrase filled with hubris. It says we are wise enough always to know what is best and capable always of

acting on what we know. In fact, those are dangerous assumptions that can lead us to try to fix what isn't broken or make worse what is.

More than thirty years ago, three scholars, Albert Solnit, Joseph Goldstein, and Anna Freud, proposed an alternative phrase. They said "best interests of the child" should be replaced with "least detrimental alternative."¹⁶¹

"Least detrimental alternative" is a humble phrase. It recognizes that whenever we intervene in family life, we do harm. Sometimes we must intervene anyway, because intervening is *less* harmful than not intervening. But whenever we step in, harm is done.

The phrase "least detrimental alternative" is a constant reminder that we must always balance the harm that we may think a family is doing against the harm of intervening. It is exactly the shot of humility that every child welfare system needs.

*See following pages for endnotes
and appendices.*

NOTES:

¹ Mark Young, "Former HHS Worker: 'This has to stop'" *North Platte Telegraph*, Feb. 13, 2011.

² Martha Stoddard, "Both sides of child welfare debate," *Omaha World-Herald*, Jan. 27, 2012. <http://omaha.com/article/20120126/NEWS01/701279889>

³ In 2008, the Nebraska "safe haven" law briefly allowed desperate parents to surrender custody of children up to age 18 without being prosecuted. Some parents came from other states to leave their children in Nebraska.

⁴ For full details and sources, see Appendix A, the *NCCPR Rate of Removal Index*.

⁵ *Ibid.*

⁶ NCCPR estimates rates of removal and placement by dividing the number of children removed from their homes in every state and the number of children in foster care in every state by the number of impoverished children in that state. Nebraska takes away 56.5 children for every thousand children living in poverty compared to the national average of 18.3. Nebraska holds 89.8 children in foster care for every thousand living in poverty compared to a national average of 29.1.

If the national average were as high as the Nebraska rates, the numbers would be those noted in the text. When this calculation is run using total child population (which is not as fair a way to do it) the figures are lower but still appalling. If the entire nation took away children and held them in foster care at the Nebraska rates using this measure, more than half a million would be taken and more than 880,000 would be trapped in foster care on any given day.

⁷ Performance Audit Committee, Nebraska Legislature, *Committee Report, Vol. 17, No. 1, DHHS Privatization of Child Welfare, and Juvenile Services*, Nov. 2011. <http://nebraska.watchdog.org/files/2011/11/privatization2011.pdf>

⁸ NCCPR calculates rates of placement by dividing the number of children in foster care by either the total child population or the impoverished child population in each state. Reduce the figure for Nebraska by 22 percent and divide the new total by these figures and Nebraska drops from worst to third worst or fifth worst.

⁹ For full details for every state, see NCCPR's interactive database *Where are America's Foster Children?* at www.nccprgraphics.blogspot.com

¹⁰ Young, note 1, *supra*.

¹¹ Peter Pecora, et al., *Improving Family Foster Care: Findings from the Northwest Foster Care Alumni Study* (Seattle: Casey Family Programs, 2005) available at <http://www.casey.org/Resources/Publications/ImprovingFamilyFosterCare.htm> See also NCCPR's full analysis of the study: <http://www.nccpr.org/reports/cfpanalysis.pdf>

¹² Nebraska Foster Care Review Board, *Additional Statistics and Analysis from The Nebraska Foster Care Review Board's 2010 Annual Report*, December, 2011: <http://bit.ly/w2fONL>

¹³ Joseph J. Doyle, Jr., "Child Protection and Child Outcomes: Measuring the Effects of Foster Care," *American Economic Review*, 97(5), December 2007: 1583-1610; Joseph J. Doyle, Jr., "Child Protection And Adult Crime: Using Investigator Assignment To Estimate Causal Effects Of Foster Care," *Journal of Political Economy* 116(4), August 2008: 746-770. Links to the full studies are included in NCCPR's analysis of these studies: <http://www.nccpr.org/reports/evidence.pdf>

¹⁴ Editorial, "Sobering truth: MIT study shows many abused children fare better at home," *Omaha World-Herald*, July 23, 2007.

¹⁵ Nebraska Foster Care Review Board, note 12, *supra*. In cases involving 30 percent of Nebraska foster children, drug abuse was alleged. Alcohol abuse, listed as a separate category, was alleged in cases involving 12 percent. It is not known how many cases involve allegations of both.

¹⁶ Kathleen Wobie, Marylou Behnke et. al., *To Have and To Hold: A Descriptive Study of Custody Status Following Prenatal Exposure to Cocaine*, paper presented at joint annual meeting of the American Pediatric Society and the Society for Pediatric Research, May 3, 1998.

¹⁷ For full citations for studies and other details, see NCCPR's publication *Epidemic of Hype*, <http://www.nccpr.org/reports/epidemicofhype.pdf>

¹⁸ U.S. Department of Health and Human Services, *Child Maltreatment 2010*, Table 3-20, <http://www.acf.hhs.gov/programs/cb/pubs/cm10/cm10.pdf#page=31>

¹⁹ Comment of former foster child Rose Garland on PBS *Frontline/Fred Friendly Seminar, Failure to Protect: A National Dialogue*, February 6, 2003.

²⁰ Pecora, note 11, *supra*.

²¹ For full details and citations see *NCCPR Issue Paper #1: Foster Care vs. Family Preservation: The Track Record on Safety and Well-being*, <http://bit.ly/ckLU92>

²² Ben Penn, "Boys Town Accused of Using Improper Restraints," *Youth Today*, Sept, 23, 2010: http://www.youthtoday.org/view_article.cfm?article_id=4317

²³ Nebraska Foster Care Review Board, note 12, *supra*. These percentages cannot simply be added together, since there may be more than one allegation in a given case.

²⁴ Voices for Children in Nebraska, *Kids Count in Nebraska, 2011 Report*, p.72. <http://voicesforchildren.com/kids-count/>

²⁵ Deborah S. Harburger with Ruth Anne White, "Reunifying Families, Cutting Costs: Housing – Child Welfare Partnerships for Permanent Supportive Housing," *Child Welfare*, Vol. LXXXIII, #5 Sept./Oct. 2004, p.501.

²⁶ Ruth Anne White and Debra Rog, "Introduction," *Child Welfare*, note 25, *supra*, p. 393.

²⁷ Nebraska Foster Care Review Board, note 12, *supra*.

²⁸ Mary Ann Jones, *Parental Lack of Supervision: Nature and Consequences of a Major Child Neglect Problem* (Washington: Child Welfare League of America, 1987), p.2.

²⁹ National Commission on Children, *Beyond Rhetoric: A New American Agenda for Children and Families*, (Washington, DC: May, 1991), p. 290.

³⁰ Shana Gruskin, "DCF administrator confident of transition" *South Florida Sun-Sentinel*, March 25, 2000, p. 8B.

³¹ Troy Anderson, "Ways to care for an ailing foster care system," *Los Angeles Daily News*, December 8, 2003.

³² Martha Stoddard, "Divided family takes on system," *Omaha World-Herald*, February 8, 2010.

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- ³⁵ Pinewoods Press, 2003.
- ³⁶ Mary Callahan, *A Foster Parent Speaks Out*, Aug. 7, 2003, <http://www.nccpr.org/reports/fosterparent.pdf>
- ³⁷ <http://www.fcrb.state.ne.us/pdf/publications/annualreport/2008/2008%20Annual%20Report%20-%20main%20body.pdf>
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APPENDIX A: THE 2010 NCCPR RATE-OF-REMOVAL INDEX

(With child population supplement and Rate-of-Placement Appendix, Released August 8, 2011, updated November 7, 2011)

The *NCCPR Rate-of-Removal Index* compares the propensity of states to adopt a “take-the-child-and-run” approach to child welfare. The index compares the number of children in each state taken from their families by child welfare agencies during federal fiscal year 2010, the most recent year for which data are available, to a Census Bureau estimate of the number of children living in poverty in that state. The result is the number of removals of children from their homes for every 1,000 impoverished children in that state.

THIS IS NOT THE “SNAPSHOT NUMBER”

The measure of a state’s foster care population usually seen in news accounts is the so-called “snapshot number” indicating the number of children in foster care in a state on one particular day – usually September 30 of each year. That is a very important number, but it is a less accurate measure of a state’s propensity to remove children.

A state may have a high snapshot number even if it takes away very few children, if it hangs on to those it takes for a very long time. (That is, in itself, a serious problem, but not a measure of the state’s propensity to take away children in the first place.) Conversely, a state can have a low snapshot number and still take away many children, but take them for only a very short period of time. Thus, a state which takes away many children in January, but returns most of them by August will have a low number when the “snapshot” is taken in September. Also, a state which took away a great many children a decade or more ago and let them languish in foster care may have a low snapshot number now simply because those children are “aging out” of the system at 18 – hardly a testament to a system’s success. *(Nevertheless, we have also included an index measuring the snapshot number. The NCCPR Rate-of-Placement Index is included as an appendix. This Index uses the same sources and the same methodology as the Rate of Removal Index.)*

RATHER, THE MAIN INDEX USES REMOVALS OVER THE COURSE OF A YEAR

So instead of measuring the foster care population on any given day, the *NCCPR Rate-of-Removal Index* relies on federal data listing the number of children removed at some point over the course of a given year.

HOW THE INDEX IS COMPILED

The source for data on removals is the Department of Health and Human Services Adoption and Foster Care Analysis and Reporting System (AFCARS). We are pleased to report that this year, HHS posted its 2010 data at the end of July, so for the second year in a row, we did not need to file a federal Freedom of Information Act request to obtain them. Data from 2002 through 2010 are available at: http://www.acf.hhs.gov/programs/cb/stats_research/afcars/statistics/entryexit2010.pdf Data for 1999 through 2001 are available online at http://www.acf.hhs.gov/programs/cb/stats_research/afcars/statistics/entryexit2002.htm.

The data in these charts are what HHS posted as of August 8, 2011. But there may be small changes over the next several months as states revise their data submissions.

COMPARISON DATA

We could have simply compared the number of children removed to a state’s total child population. But then all the states with high rates of removal and high child poverty rates would complain that this was unfair because we didn’t consider the single largest risk factor for actual abuse, (not to mention the factor most often confused with “neglect”) – poverty. In addition, **since child protective services agencies almost never take children from affluent families, using the total child population would allow affluent states that still take large numbers of children from impoverished neighborhoods to camouflage this**

NCCPR RATE-OF-REMOVAL INDEX/2

fact. So, in order to factor that out, and come closer to an apples-to-apples comparison, we used the Census Bureau's Current Population Survey, Annual Demographic Survey to determine the number of people under age 18 living in poverty in each state.

This is a statistical sample, as opposed to the head count used every ten years in the census. This has led to wide fluctuations from year to year, which probably are a result of sampling problems. To minimize these errors, we've adopted a method used by one of the nation's most authoritative sources of information about impoverished children, the National Center for Children in Poverty at Columbia University. They use the *average* from the last three Annual Demographic Surveys to estimate the number of impoverished children in each state.

However, the 2010 census data are not yet available from the Census Bureau. The estimates in these tables therefore are a three year average for 2007, 2008 and 2009.

We then compare the number of children removed from their parents in each state to this three-year average estimate of the number of people under age 18 in that state who are living in poverty. *However, for those who prefer making the comparison to the total child population, we have included charts computing the index that way as well.* For this comparison we use 2009 census bureau data.

MOST STATES *DO* INCLUDE JUVENILE JUSTICE PLACEMENTS

States with high rates of removal commonly claim that this is because they include children taken from their homes by juvenile justice agencies, and they claim this is unusual. In fact, 31 states include juvenile justice placements in the figures they send to the federal government, and their proportion of total placements generally is quite small. So this excuse does not hold up to scrutiny.

KANSAS DATA ON REMOVALS ARE UNRELIABLE AND SHOULD BE IGNORED

One state – Kansas – is, at best, exploiting a technicality in regulations to allow it to hide the true extent to which it takes away children. Regrettably, the federal government's Administration for Children and Families is letting Kansas get away with it. We believe that the true number of Kansas children torn from their families is at least double the figure reported by the state to the federal government, and that Kansas may well take away children at the highest rate in the nation. Details on how Kansas gets away with this shameful practice are in NCCPR's report on Kansas child welfare, available here: <http://www.nccpr.org/reports/kansas.pdf> *This problem does not affect Kansas' "snapshot number" – the rate-of-placement data for Kansas should be as valid as the data for any other state.*

OTHER CAUTIONS AND CAVEATS

- As a group that believes strongly in family preservation, we feel that a high rate-of-removal almost always is a sign of a bad system. But a low rate-of-removal is not necessarily a sign of a good system. A low rate-of-removal can be accomplished either by embracing safe, proven programs to keep families together, or by ignoring children in real danger. We are confident that the low rates of removal in Alabama and Illinois indicate relatively good systems, because those states also reduced the rate of reabuse of children left in their own homes, and independent court-appointed monitors say reforms in these states have improved child safety. We have no such assurances for Mississippi. That doesn't mean Mississippi necessarily needs to take away more children. But it may need to take away *different* children.

- The data don't reveal trends over time. A state that still has a relatively high number of removals but has been steadily and safely reducing them may be a better "role model" than a state which removed relatively few children in 2010, but now is in the midst of a foster-care panic. Trend data are available at the URLs noted above.

- Although placing a child with a relative is less traumatic than placing a child with a stranger, when such a “kinship care” placement is done by order of a court or a child welfare agency, *it is still foster care*. Any child welfare agency official who says “we are keeping children out of foster care by placing them with relatives” is being, at best, disingenuous.” However, there is a gray area between a purely voluntary arrangement among relatives and a placement demanded by a child welfare agency. As a result, some states may be making their entry-into-care figures and their snapshot number look lower than they should be by failing to report all such placements.

- In 13 states, individual counties run their child protection systems. Statewide data may obscure success stories or extreme failures in individual counties. In addition, in some systems that are nominally state run, there are, nevertheless, wide variations among counties or regions. NCCPR has county-by-county rate-of-removal indexes available for California, Ohio, New York State and Georgia and a region-by-region index for Florida, though these indexes are not updated annually.

- One cannot say, based on these data, that state X “took Y percent of its poor children from their parents in 2009.” That would be inaccurate because, while the overwhelming majority of children taken from their parents are poor, not all of them are. Thus, we are comparing a pool of children – those removed from their parents – which is mostly poor, to a general population that is entirely poor. One can say only that, for example, according to this index, in 2010 (for the seventh year in a row), authorities in Nebraska appeared more prone to resort to foster care than their counterparts in almost any other state, since this index shows that Nebraska has the second highest removal rate.

- Some states may claim they don’t really take away as many children as the federal data show. In fact, they’re probably wrong and the feds probably are right. The federal government doesn’t make these numbers up, and it doesn’t do the counting itself. It relies for its data on state human services agencies – the same agencies which, in some states, offer up lower numbers for public consumption.

The difference probably has to do with definitions. The federal government uses a standard definition: If a child has been taken away for more than 24 hours it “counts” as an entry into foster care. And that makes sense – you can be sure it “counts” for a child who endures it. So the numbers states give the federal government are supposed to include all such children.

But when states give figures to newspapers or post them on their websites, or even when they give them to a different federal database, they can use any definition they want. Some states may count a child as “removed” only if s/he is still in foster care at the time of the first court hearing, which can be anywhere from 24 hours to two weeks after removal. All the children agencies take, then change their minds about and return before that hearing -- much the worse for the experience -- are not counted under this definition. (Indeed, Kansas used a similar evasion to avoid even reporting these removals to the federal government, in violation of the spirit, if not the letter, of the federal definition).

(Tables begin on the following page)

SOURCES FOR DATA ON THE FOLLOWING PAGES:

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National Rankings were compiled by NCCPR.

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State	Average number of children living in poverty, 2007-2009	Children removed from their homes, 2010	Rate-of-Removal per thousand impoverished children	Rank
.Alabama	246,333	3,063	12.4	45
.Alaska	21,667	904	41.7	5
.Arizona	400,333	7,891	19.7	33
.Arkansas	166,667	3,990	23.9	22
.California	1,794,000	33,199	18.5	35
.Colorado	179,667	5,753	32.0	12
.Connecticut	92,333	2,483	26.9	17
.Delaware	30,667	411	13.4	43
.D.C.	34,667	745	21.5	28
.Florida	719,333	14,356	20.0	30
.Georgia	539,000	5,469	10.1	49
.Hawaii	40,000	1,029	25.7	18
.Idaho	62,667	1,386	22.1	27
.Illinois	516,000	5,303	10.3	48
.Indiana	317,000	9,170	28.9	15
.Iowa	100,000	4,725	47.3	4
.Kansas*	129,000	3,567	27.7	16
.Kentucky	225,667	5,500	24.4	20
.Louisiana	241,667	3,344	13.8	42
.Maine	41,000	760	18.5	35
.Maryland	158,667	2,793	17.6	39
.Massachusetts	228,333	5,515	24.2	21
.Michigan	445,000	8,203	18.4	37
.Minnesota	175,000	5,643	32.2	11
.Mississippi	241,000	2,577	10.7	47
.Missouri	301,333	5,952	19.8	32
.Montana	38,667	958	24.8	19
.Nebraska	59,667	3,373	56.5	2
.Nevada	97,667	2,884	29.5	14
.New Hampshire	22,000	522	23.7	23
.New Jersey	248,000	4,646	18.7	34
.New Mexico	119,333	1,766	14.8	41
.New York	955,333	12,605	13.2	44
.North Carolina	495,667	4,769	9.6	51
.North Dakota	20,667	819	39.6	7
.Ohio	516,333	9,184	17.8	38
.Oklahoma	183,333	4,345	23.7	24
.Oregon	143,333	4,826	33.7	10
.Pennsylvania	428,333	9,986	23.3	25
.Rhode Island	41,333	1,465	35.4	7
.South Carolina	194,000	3,390	17.5	40
.South Dakota	30,667	1,459	47.6	3
.Tennessee	314,333	6,278	20.0	30
.Texas	1,625,000	16,106	9.9	50
.Utah	108,667	2,226	20.5	29
.Vermont	13,667	555	40.6	6
.Virginia	255,000	2,840	11.1	46
.Washington	205,667	6,249	30.4	13
.West Virginia	86,667	2,938	33.9	9
.Wisconsin	203,333	4,525	22.3	26
.Wyoming	15,667	990	63.2	1
TOTAL	13,869,333	253,435	18.3	

*-Kansas data are unreliable and should be ignored. Official data from Kansas exclude large numbers of placements

NCCPR RATE-OF-REMOVAL INDEX, BY RANK, 2010

State	Average number of children living in poverty, 2007-2009	Children removed from their homes, 2010	Rete-of-Removal per thousand impoverished children	Rank
.Wyoming	15,667	990	63.2	1
.Nebraska	59,667	3,373	56.5	2
.South Dakota	30,667	1,459	47.6	3
.Iowa	100,000	4,725	47.3	4
.Alaska	21,667	904	41.7	5
.Vermont	13,667	555	40.6	6
.North Dakota	20,667	819	39.6	7
.Rhode Island	41,333	1,465	35.4	8
.West Virginia	86,667	2,938	33.9	9
.Oregon	143,333	4,826	33.7	10
.Minnesota	175,000	5,643	32.2	11
.Colorado	179,667	5,753	32.0	12
.Washington	205,667	6,249	30.4	13
.Nevada	97,667	2,884	29.5	14
.Indiana	317,000	9,170	28.9	15
.Kansas*	129,000	3,567	27.7	16
.Connecticut	92,333	2,483	26.9	17
.Hawaii	40,000	1,029	25.7	18
.Montana	38,667	958	24.8	19
.Kentucky	225,667	5,500	24.4	20
.Massachusetts	228,333	5,515	24.2	21
.Arkansas	166,667	3,990	23.9	22
.New Hampshire	22,000	522	23.7	23
.Oklahoma	183,333	4,345	23.7	24
.Pennsylvania	428,333	9,986	23.3	25
.Wisconsin	203,333	4,525	22.3	26
.Idaho	62,667	1,386	22.1	27
.D.C.	34,667	745	21.5	28
.Utah	108,667	2,226	20.5	29
.Florida	719,333	14,356	20.0	30
.Tennessee	314,333	6,278	20.0	30
.Missouri	301,333	5,952	19.8	32
.Arizona	400,333	7,891	19.7	33
.New Jersey	248,000	4,646	18.7	34
.California	1,794,000	33,199	18.5	35
.Maine	41,000	760	18.5	35
.Michigan	445,000	8,203	18.4	37
.Ohio	516,333	9,184	17.8	38
.Maryland	158,667	2,793	17.6	39
.South Carolina	194,000	3,390	17.5	40
.New Mexico	119,333	1,766	14.8	41
.Louisiana	241,667	3,344	13.8	42
.Delaware	30,667	411	13.4	43
.New York	955,333	12,605	13.2	44
.Alabama	246,333	3,063	12.4	45
.Virginia	255,000	2,840	11.1	46
.Mississippi	241,000	2,577	10.7	47
.Illinois	516,000	5,303	10.3	48
.Georgia	539,000	5,469	10.1	49
.Texas	1,625,000	16,106	9.9	50
.North Carolina	495,667	4,769	9.6	51
National Total/Average	13,869,333	253,435	18.3	

*- Kansas data are unreliable and should be ignored. Official data from Kansas exclude large numbers of placements

NCCPR RATE-OF-REMOVAL INDEX, TOTAL CHILD POPULATION, 2010

State	Child population, 2009	Children removed from their homes, 2010	Rate-of-removal per thousand children	Rank
.Alabama	1,118,000	3,063	2.7	41
.Alaska	180,000	904	5.0	14
.Arizona	1,732,000	7,891	4.6	17
.Arkansas	706,000	3,990	5.7	9
.California	9,407,000	33,199	3.5	29
.Colorado	1,208,000	5,753	4.8	15
.Connecticut	818,000	2,483	3.0	37
.Delaware	208,000	411	2.0	48
.D.C.	109,000	745	6.8	5
.Florida	4,020,000	14,356	3.6	26
.Georgia	2,527,000	5,469	2.2	45
.Hawaii	286,000	1,029	3.6	26
.Idaho	416,000	1,386	3.3	33
.Illinois	3,180,000	5,303	1.7	33
.Indiana	1,587,000	9,170	5.8	8
.Iowa	711,000	4,725	6.6	6
.Kansas*	699,000	3,567	5.1	13
.Kentucky	1,010,000	5,500	5.4	12
.Louisiana	1,118,000	3,344	3.0	37
.Maine	272,000	760	2.8	40
.Maryland	1,333,000	2,793	2.1	46
.Massachusetts	1,454,000	5,515	3.8	25
.Michigan	2,371,000	8,203	3.5	29
.Minnesota	1,231,000	5,643	4.6	17
.Mississippi	779,000	2,577	3.3	47
.Missouri	1,403,000	5,952	4.2	23
.Montana	216,000	958	4.4	19
.Nebraska	452,000	3,373	7.5	2
.Nevada	671,000	2,884	4.3	21
.New Hampshire	296,000	522	1.8	49
.New Jersey	2,035,000	4,646	2.3	44
.New Mexico	507,000	1,766	3.5	29
.New York	4,345,000	12,605	2.9	39
.North Carolina	2,299,000	4,769	2.1	46
.North Dakota	144,000	819	5.7	9
.Ohio	2,742,000	9,184	3.3	35
.Oklahoma	899,000	4,345	4.8	15
.Oregon	870,000	4,826	5.5	11
.Pennsylvania	2,758,000	9,986	3.6	23
.Rhode Island	234,000	1,465	6.3	7
.South Carolina	1,064,000	3,390	3.2	36
.South Dakota	196,000	1,459	7.4	4
.Tennessee	1,453,000	6,278	4.3	21
.Texas	6,763,000	16,106	2.4	43
.Utah	862,000	2,226	2.6	42
.Vermont	127,000	555	4.4	19
.Virginia	1,862,000	2,840	1.5	51
.Washington	1,547,000	6,249	4.0	24
.West Virginia	384,000	2,938	7.7	1
.Wisconsin	1,325,000	4,525	3.4	32
.Wyoming	132,000	990	7.5	2
TOTAL	74,066,000	253,435	3.4	

*- Kansas data are unreliable and should be ignored. Official data from Kansas exclude large numbers of placements

NCCPR RATE-OF-REMOVAL INDEX, TOTAL CHILD POPULATION, BY RANK, 2010

State	Child population, 2009	Children removed from their homes, 2010	Rate-of-Removal per thousand children	Rank
.West Virginia	384,000	2,938	7.7	1
.Nebraska	452,000	3,373	7.5	2
.Wyoming	132,000	990	7.5	2
.South Dakota	196,000	1,459	7.4	4
.D.C.	109,000	745	6.8	5
.Iowa	711,000	4,725	6.6	6
.Rhode Island	234,000	1,465	6.3	7
.Indiana	1,587,000	9,170	5.8	8
.Arkansas	706,000	3,990	5.7	9
.North Dakota	144,000	819	5.7	9
.Oregon	870,000	4,826	5.5	11
.Kentucky	1,010,000	5,500	5.4	12
.Kansas*	699,000	3,567	5.1	13
.Alaska	180,000	904	5.0	14
.Colorado	1,208,000	5,753	4.8	15
.Oklahoma	899,000	4,345	4.8	15
.Arizona	1,732,000	7,891	4.6	17
.Minnesota	1,231,000	5,643	4.6	17
.Montana	216,000	958	4.4	19
.Vermont	127,000	555	4.4	19
.Nevada	671,000	2,884	4.3	21
.Tennessee	1,453,000	6,278	4.3	21
.Missouri	1,403,000	5,952	4.2	23
.Washington	1,547,000	6,249	4.0	24
.Massachusetts	1,454,000	5,515	3.8	25
.Florida	4,020,000	14,356	3.6	26
.Hawaii	286,000	1,029	3.6	26
.Pennsylvania	2,758,000	9,986	3.6	26
.Michigan	2,371,000	8,203	3.5	29
.New Mexico	507,000	1,766	3.5	29
.California	9,407,000	33,199	3.5	29
.Wisconsin	1,325,000	4,525	3.4	32
.Idaho	416,000	1,386	3.3	33
.Mississippi	779,000	2,577	3.3	33
.Ohio	2,742,000	9,184	3.3	35
.South Carolina	1,064,000	3,390	3.2	36
.Connecticut	818,000	2,483	3.0	37
.Louisiana	1,118,000	3,344	3.0	37
.New York	4,345,000	12,605	2.9	39
.Maine	272,000	760	2.8	40
.Alabama	1,118,000	3,063	2.7	41
.Utah	862,000	2,226	2.6	42
.Texas	6,763,000	16,106	2.4	43
.New Jersey	2,035,000	4,646	2.3	44
.Georgia	2,527,000	5,469	2.2	45
.Maryland	1,333,000	2,793	2.1	46
.North Carolina	2,299,000	4,769	2.1	46
.Delaware	208,000	411	2.0	48
.New Hampshire	296,000	522	1.8	49
.Illinois	3,180,000	5,303	1.7	50
.Virginia	1,862,000	2,840	1.5	51
National Total / Average	74,066,000	253,435	3.4	

*-Kansas data are unreliable and should be ignored. Official data from Kansas exclude large numbers of placements

Appendix: NCCPR RATE-OF-PLACEMENT INDEX, 2010

State	Average number of children living in poverty, 2007-2009	Children in foster care, Sept. 30, 2010	Rate-of-placement per thousand impoverished children	Rank
.Alabama	246,333	5,350	21.7	43
.Alaska	21,667	1,801	83.1	2
.Arizona	400,333	9,930	24.8	37
.Arkansas	166,667	3,770	22.6	42
.California	1,794,000	57,708	32.2	29
.Colorado	179,667	6,980	38.8	19
.Connecticut	92,333	4,462	48.3	13
.Delaware	30,667	739	24.1	38
.D.C.	34,667	2,066	59.6	7
.Florida	719,333	18,753	26.1	36
.Georgia	539,000	6,895	12.8	51
.Hawaii	40,000	1,215	30.4	31
.Idaho	62,667	1,462	23.3	39
.Illinois	516,000	17,730	34.4	26
.Indiana	317,000	12,276	38.7	20
.Iowa	100,000	6,533	65.3	4
.Kansas	129,000	5,979	46.3	15
.Kentucky	225,667	6,983	30.9	30
.Louisiana	241,667	4,453	18.4	46
.Maine	41,000	1,546	37.7	23
.Maryland	158,667	6,098	38.4	21
.Massachusetts	228,333	8,958	39.2	18
.Michigan	445,000	16,412	36.9	24
.Minnesota	175,000	5,050	28.9	32
.Mississippi	241,000	3,582	14.9	50
.Missouri	301,333	9,880	32.8	27
.Montana	38,667	1,723	44.6	16
.Nebraska	59,667	5,358	89.8	1
.Nevada	97,667	4,806	49.2	11
.New Hampshire	22,000	839	38.1	22
.New Jersey	248,000	7,172	28.9	32
.New Mexico	119,333	1,869	15.7	49
.New York	955,333	26,783	28.0	34
.North Carolina	495,667	8,828	17.8	47
.North Dakota	20,667	1,077	52.1	8
.Ohio	516,333	11,949	23.1	40
.Oklahoma	183,333	7,857	42.9	17
.Oregon	143,333	9,001	62.8	5
.Pennsylvania	428,333	15,346	35.8	25
.Rhode Island	41,333	2,086	50.5	9
.South Carolina	194,000	4,485	23.1	40
.South Dakota	30,667	1,485	48.4	12
.Tennessee	314,333	6,786	21.6	44
.Texas	1,625,000	28,954	17.8	47
.Utah	108,667	2,886	26.6	35
.Vermont	13,667	933	68.3	3
.Virginia	255,000	5,326	20.9	45
.Washington	205,667	10,136	49.3	10
.West Virginia	86,667	4,097	47.3	14
.Wisconsin	203,333	6,575	32.3	28
.Wyoming	15,667	981	62.6	6
TOTAL	13,869,333	403,949	29.1	

NCCPR RATE-OF-PLACEMENT INDEX, BY RANK, 2010

State	Average number of children living in poverty, 2007-2009	Children in foster care, Sept. 30, 2010	Rate-of-placment per thousand impoverished children	Rank
.Nebraska	59,667	5,358	89.8	1
.Alaska	21,667	1,801	83.1	2
.Vermont	13,667	933	68.3	3
.Iowa	100,000	6,533	65.3	4
.Oregon	143,333	9,001	62.8	5
.Wyoming	15,667	981	62.6	6
.D.C.	34,667	2,066	59.6	7
.North Dakota	20,667	1,077	52.1	8
.Rhode Island	41,333	2,086	50.5	9
.Washington	205,667	10,136	49.3	10
.Nevada	97,667	4,806	49.2	11
.South Dakota	30,667	1,485	48.4	12
.Connecticut	92,333	4,462	48.3	13
.West Virginia	86,667	4,097	47.3	14
.Kansas	129,000	5,979	46.3	15
.Montana	38,667	1,723	44.6	16
.Oklahoma	183,333	7,857	42.9	17
.Massachusetts	228,333	8,958	39.2	18
.Colorado	179,667	6,980	38.8	19
.Indiana	317,000	12,276	38.7	20
.Maryland	158,667	6,098	38.4	21
.New Hampshire	22,000	839	38.1	22
.Maine	41,000	1,546	37.7	23
.Michigan	445,000	16,412	36.9	24
.Pennsylvania	428,333	15,346	35.8	25
.Illinois	516,000	17,730	34.4	26
.Missouri	301,333	9,880	32.8	27
.Wisconsin	203,333	6,575	32.3	28
.California	1,794,000	57,708	32.2	29
.Kentucky	225,667	6,983	30.9	30
.Hawaii	40,000	1,215	30.4	31
.Minnesota	175,000	5,050	28.9	32
.New Jersey	248,000	7,172	28.9	32
.New York	955,333	26,783	28.0	34
.Utah	108,667	2,886	26.6	35
.Florida	719,333	18,753	26.1	36
.Arizona	400,333	9,930	24.8	37
.Delaware	30,667	739	24.1	38
.Idaho	62,667	1,462	23.3	39
.Ohio	516,333	11,949	23.1	40
.South Carolina	194,000	4,485	23.1	40
.Arkansas	166,667	3,770	22.6	42
.Alabama	246,333	5,350	21.7	43
.Tennessee	314,333	6,786	21.6	44
.Virginia	255,000	5,326	20.9	45
.Louisiana	241,667	4,453	18.4	46
.North Carolina	495,667	8,828	17.8	47
.Texas	1,625,000	28,954	17.8	47
.New Mexico	119,333	1,869	15.7	49
.Mississippi	241,000	3,582	14.9	50
.Georgia	539,000	6,895	12.8	51
Total/Nat. Average	13,869,333	403,949	29.1	

NCCPR RATE-OF-PLACEMENT INDEX,TOTAL CHILD POPULATION, 2010

State	Child population, 2009	Children in foster care, Sept. 30, 2010	Rate-of- placement per thousand children	Rank
.Alabama	1,118,000	5,350	4.8	32
.Alaska	180,000	1,801	10.0	5
.Arizona	1,732,000	9,930	5.7	25
.Arkansas	706,000	3,770	5.3	31
.California	9,407,000	57,708	6.1	33
.Colorado	1,208,000	6,980	5.8	24
.Connecticut	818,000	4,462	5.5	29
.Delaware	208,000	739	3.6	45
.D.C.	109,000	2,066	19.0	1
.Florida	4,020,000	18,753	4.7	33
.Georgia	2,527,000	6,895	2.7	51
.Hawaii	286,000	1,215	4.2	39
.Idaho	416,000	1,462	3.5	46
.Illinois	3,180,000	17,730	5.6	27
.Indiana	1,587,000	12,276	7.7	11
.Iowa	711,000	6,533	9.2	6
.Kansas	699,000	5,979	8.6	9
.Kentucky	1,010,000	6,983	6.9	18
.Louisiana	1,118,000	4,453	4.0	42
.Maine	272,000	1,546	5.7	25
.Maryland	1,333,000	6,098	4.6	35
.Massachusetts	1,454,000	8,958	6.2	21
.Michigan	2,371,000	16,412	6.9	18
.Minnesota	1,231,000	5,050	4.1	41
.Mississippi	779,000	3,582	4.6	35
.Missouri	1,403,000	9,880	7.0	17
.Montana	216,000	1,723	8.0	10
.Nebraska	452,000	5,358	11.9	2
.Nevada	671,000	4,806	7.2	16
.New Hampshire	296,000	839	2.8	50
.New Jersey	2,035,000	7,172	3.5	46
.New Mexico	507,000	1,869	3.7	34
.New York	4,345,000	26,783	6.2	21
.North Carolina	2,299,000	8,828	3.8	43
.North Dakota	144,000	1,077	7.5	13
.Ohio	2,742,000	11,949	4.4	37
.Oklahoma	899,000	7,857	8.7	8
.Oregon	870,000	9,001	10.3	4
.Pennsylvania	2,758,000	15,346	5.6	27
.Rhode Island	234,000	2,086	8.9	7
.South Carolina	1,064,000	4,485	4.2	39
.South Dakota	196,000	1,485	7.6	12
.Tennessee	1,453,000	6,786	4.7	33
.Texas	6,763,000	28,954	4.3	38
.Utah	862,000	2,886	3.3	48
.Vermont	127,000	933	7.3	15
.Virginia	1,862,000	5,326	2.9	49
.Washington	1,547,000	10,136	6.6	20
.West Virginia	384,000	4,097	10.7	3
.Wisconsin	1,325,000	6,575	5.0	31
.Wyoming	132,000	981	7.4	14
TOTAL	74,066,000	403,949	5.5	

NCCPR RATE-OF-PLACEMENT INDEX, TOTAL CHILD POPULATION, BY RANK, 2010

State	Child population, 2009	Children in foster care, Sept. 30, 2010	Rate-of- placement per thousand children	Rank
.D.C.	109,000	2,066	19.0	1
.Nebraska	452,000	5,358	11.9	2
.West Virginia	384,000	4,097	10.7	3
.Oregon	870,000	9,001	10.3	4
.Alaska	180,000	1,801	10.0	5
.Iowa	711,000	6,533	9.2	6
.Rhode Island	234,000	2,086	8.9	7
.Oklahoma	899,000	7,857	8.7	8
.Kansas	699,000	5,979	8.6	9
.Montana	216,000	1,723	8.0	10
.Indiana	1,587,000	12,276	7.7	11
.South Dakota	196,000	1,485	7.6	12
.North Dakota	144,000	1,077	7.5	13
.Wyoming	132,000	981	7.4	14
.Vermont	127,000	933	7.3	15
.Nevada	671,000	4,806	7.2	16
.Missouri	1,403,000	9,880	7.0	17
.Kentucky	1,010,000	6,983	6.9	18
.Michigan	2,371,000	16,412	6.9	18
.Washington	1,547,000	10,136	6.6	20
.New York	4,345,000	26,783	6.2	21
.Massachusetts	1,454,000	8,958	6.2	21
.California	9,407,000	57,708	6.1	23
.Colorado	1,208,000	6,980	5.8	24
.Arizona	1,732,000	9,930	5.7	25
.Maine	272,000	1,546	5.7	25
.Illinois	3,180,000	17,730	5.6	27
.Pennsylvania	2,758,000	15,346	5.6	27
.Connecticut	818,000	4,462	5.5	29
.Arkansas	706,000	3,770	5.3	30
.Wisconsin	1,325,000	6,575	5.0	31
.Alabama	1,118,000	5,350	4.8	32
.Florida	4,020,000	18,753	4.7	33
.Tennessee	1,453,000	6,786	4.7	33
.Maryland	1,333,000	6,098	4.6	35
.Mississippi	779,000	3,582	4.6	35
.Ohio	2,742,000	11,949	4.4	37
.Texas	6,763,000	28,954	4.3	38
.Hawaii	286,000	1,215	4.2	39
.South Carolina	1,064,000	4,485	4.2	39
.Minnesota	1,231,000	5,050	4.1	41
.Louisiana	1,118,000	4,453	4.0	42
.North Carolina	2,299,000	8,828	3.8	43
.New Mexico	507,000	1,869	3.7	44
.Delaware	208,000	739	3.6	45
.Idaho	416,000	1,462	3.5	46
.New Jersey	2,035,000	7,172	3.5	46
.Utah	862,000	2,886	3.3	48
.Virginia	1,862,000	5,326	2.9	49
.New Hampshire	296,000	839	2.8	50
.Georgia	2,527,000	6,895	2.7	51
National Total / Average	74,066,000	403,949	5.6	

APPENDIX B: A ROUGH GUIDE TO COMPARATIVE CHILD WELFARE SPENDING

February 20, 2009

The charts on the following pages compare child welfare spending among the states. The charts divide total spending by the total number of *impoverished* children in each state because child maltreatment overwhelmingly is linked to – and, often, confused with, poverty. Factoring in poverty, therefore, is essential to any attempt to offer a fair comparison among states.

There are some important caveats about this comparison:

- The spending data are the most recent available, but they still are relatively old – from each state’s 2006 Fiscal Year.
- It is very difficult to figure out exactly how much a state spends on child welfare, because there are so many different pots of money to choose from – at least 30 federal “funding streams” plus state and, in some states, local dollars. Indeed, that’s why Child Trends, which compiled the data, did not try to make state-by-state comparisons itself. Child Trends did, however, go to great lengths to try to ensure an apples-to-apples comparison, regardless of the structure of child welfare service delivery in any given state.
- The data are incomplete. Several states were unable to provide data in one or two categories: local government spending or child welfare expenditures covered by Medicaid. New York State could provide neither, and New York is a state where individual counties, and New York City, are responsible for their own child welfare systems. So the figure in the tables below for New York almost certainly is a significant underestimate. The lack of local spending data also may have a significant effect on the total for Wisconsin.

Using the Child Trends definition for Medicaid spending, where states use Medicaid dollars at all, they typically account for under 10 percent of child welfare spending, though there are a few notable exceptions. Readers who may seek to get this information from their state child welfare agency are advised to read the Child Trends report first. Child Trends uses a strict definition of Medicaid child welfare spending which excludes what is likely to be the largest category: routine health care for foster children. So any request for this information should specify that the figure use the Child Trends definition.

- Data on child poverty come from the Census Bureau’s Current Population Survey, Annual Demographic Survey. This is a statistical sample, as opposed to the head count used every ten years in the census. This has led to wide fluctuations from year to year, which probably are a result of sampling problems. To minimize these errors, we’ve adopted a method used by one of the nation’s most authoritative sources of information about impoverished children, the National Center for Children in Poverty at Columbia University. They use the *average* from the three most recent Annual Demographic Surveys to estimate the number of impoverished children in each state.

Despite these limitations, we believe that the comparison is useful for determining “outliers” – that is, states which spend far more, or far less, than average. And we believe it is useful for noting significant differences among states.

Sources:

Impoverished child population: U.S. Census Bureau.

Spending: Kerry DeVooght et. al, *Federal, State and Local Spending to Address Child Abuse and Neglect in SFY 2006*.

Washington, D.C.: Child Trends, December, 2008). Available online at http://www.ChildTrends.org/Files/Child_Trends-2009_02_17_FR_CWFinancePaper.pdf Per impoverished child figures and national rankings compiled by NCCPR.

L – Local spending, M-Medicaid Spending,

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CHILD WELFARE SPENDING PER CHILD LIVING IN POVERTY, SFY 2006
ALPHABETICALLY, BY STATE:

State	Child welfare spending	Impoverished children	Spending per impoverished child	Rank	Missing data
Alabama	\$299,254,165	241,000	\$1,242	41	
Alaska	107,202,991	19,667	5,451	4	
Arizona	455,807,056	338,000	1,349	40	M
Arkansas	102,311,219	148,333	690	48	
California	4,399,479,000	1,727,333	2,547	21	
Colorado	453,473,443	161,667	2,805	17	
Connecticut	685,981,827	99,667	6,883	3	
Delaware	53,238,947	26,667	1,996	28	
DC	267,136,644	37,333	7,155	2	
Florida	1,003,537,213	648,000	1,549	36	
Georgia	819,687,496	504,000	1,626	35	
Hawaii	113,837,471	31,333	3,633	8	
Idaho	53,290,500	51,333	1,038	45	
Illinois	1,241,370,233	477,333	2,601	19	
Indiana	649,066,626	274,333	2,366	22	
Iowa	347,702,560	98,000	3,548	10	L
Kansas	288,966,692	127,667	2,263	23	
Kentucky	413,813,486	220,333	1,878	30	
Louisiana	222,485,703	253,667	877	47	M
Maine	121,736,511	40,000	3,043	14	
Maryland	498,274,967	164,667	3,026	15	
Massachusetts	719,765,059	205,667	3,500	11	
Michigan	829,794,181	422,000	1,966	29	
Minnesota	531,983,539	143,667	3,703	7	
Mississippi	83,832,451	234,000	358	51	M
Missouri	411,368,975	269,000	1,529	37	L
Montana	61,681,929	37,333	1,652	33	
Nebraska	184,015,695	56,667	3,247	13	
Nevada	101,552,926	87,000	1,167	42	
New Hampshire	81,554,399	17,333	4,705	6	
New Jersey	725,732,715	223,333	3,250	12	
New Mexico	73,041,132	110,333	662	50	
New York*	1,932,987,349	892,667	2,165	25	M, L
North Carolina	421,092,078	439,333	958	46	
North Dakota	53,820,087	20,000	2,691	18	
Ohio	1,106,670,844	505,000	2,191	24	
Oklahoma	248,445,899	179,667	1,383	39	L
Oregon	408,066,923	143,000	2,854	16	
Pennsylvania	1,624,380,399	449,000	3,618	9	
Rhode Island	207,764,196	39,667	5,238	5	
South Carolina	211,286,443	193,667	1,091	44	
South Dakota	56,619,931	28,333	1,998	27	
Tennessee	522,904,871	291,000	1,797	31	
Texas	1,015,726,824	1,506,667	674	49	
Utah	138,068,848	98,333	1,404	38	
Vermont	86,882,407	12,000	7,240	1	
Virginia	273,774,844	236,333	1,158	43	M
Washington	481,137,381	188,667	2,550	20	
West Virginia	185,461,810	86,333	2,148	26	M
Wisconsin	330,634,124	196,000	1,687	32	L
Wyoming	26,989,857	16,333	1,652	33	
U.S. Total/Average	25,734,692,866	13,018,667	1,977		

*-The figure for New York is likely to be a significant underestimate due to missing data.

For data in rank order, see following page

**CHILD WELFARE SPENDING PER CHILD LIVING IN POVERTY, SFY 2006
BY RANK:**

State	Child welfare spending	Impoverished children	Spending per impoverished child	Rank	Missing data
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Mississippi	83,832,451	234,000	358	51	M
U.S. Total/Average	25,734,692,866	13,018,667	1,977		

*-The figure for New York is likely to be a significant underestimate due to missing data.

APPENDIX C:

CIVIL LIBERTIES WITHOUT EXCEPTION: NCCPR's Due Process Agenda for Children and Families

By Richard Wexler, NCCPR Executive Director

August, 2008, Updated February, 2012

INTRODUCTION

Suppose, when he was attorney general, John Ashcroft had proposed anti-terrorism legislation with the following provisions:

Special anti-terrorism police could search any home without a warrant – and stripsearch any occupant -- based solely on an anonymous telephone tip. Any occupant of the home could be detained for 24 hours to two weeks without so much as a hearing – and they'll probably be detained far longer because, in the special anti-terrorism court set up by this legislation, all the judges are afraid to look soft on "terrorists."

At that first hearing the detainees may – or may not – get a lawyer just before the hearing begins, and they almost never get effective counsel.

At almost every stage, the standard of proof is not "beyond a reasonable doubt" or even "clear and convincing" but merely "preponderance of the evidence," the lowest standard in American jurisprudence, the same one used to determine which insurance company pays for a fender-bender.

And in most states, all the hearings and all the records are secret.

Had Ashcroft proposed such legislation, civil libertarians would have been in an uproar. Yet this is, in fact, the law governing child welfare. And sadly, many who in other circumstances are quick to defend civil liberties either stand silent or support it.

The National Coalition for Child Protection Reform believes the only way truly to protect children is to demand civil liberties without exception. There can be no true child protection when a government agency is given virtually unchecked power, almost no accountability, and operates in secret.

That is why enacting meaningful due process protections for families is at least as important as improving the "services" they receive from child welfare agencies.

Since 2000, NCCPR has issued reports on 13 state or local child welfare systems. Below are some of the due process recommendations from these various reports.

RECOMMENDATION 1: TRANSPARENCY

All court hearings in child maltreatment cases and almost all documents should be subject to a "rebuttable presumption" of openness.

Hearings and records would be closed only if the lawyer for the parents or the guardian *ad litem* for the child could persuade the judge, by clear and convincing evidence, that opening a given

record or portion of a hearing would cause severe emotional damage to a child.

The judge then would keep closed only the minimum amount of material needed to avoid the damage.

The people who work for child protective services agencies are not evil. But even the best of us would have trouble coping with nearly unlimited power and no accountability. One caseworker allegedly told some parents: "I have the power of God." It's alarming if he said it. But what's

even more alarming is: It's true. Caseworkers for CPS agencies *do* have the power of God.

"[Opening family courts] has been 100 percent positive with no negatives ... Our worst critics will say it was the best thing we ever did. Their fears were unfounded ... I wish other states would do it."

**--Jonathan Lippman,
Chief Administrative Judge,
State of New York**

To give a young, inexperienced worker the power of God, send her out on what she is convinced is a Godly mission to rescue innocent children from the scum of the earth -- knowing that there will be no penalty for removal and hell to pay if she leaves the child home and something goes wrong -- and then expect her to exercise *self-restraint* is more than can be expected of most human beings. Rarely is the power of God accompanied by the wisdom of Solomon.

The power must be checked by accountability. Accountability is not possible in secret. Nor is accountability possible simply by hiring people with more expertise and assuming they will do the right thing.

It's not supposed to work that way in a democracy. That is why it is so urgent that all court hearings and almost all records in child welfare cases be presumed open.

An exception would be made to the presumption of openness for portions of documents that name people who reported child abuse in confidence. Even then, however, if a parent claims to be a victim of

harassment, that parent should be allowed to ask a judge to review the record and, if the judge agrees there has been harassment, open this record as well, and give the accused the right to sue. (See Recommendation 9).

Only the lawyer for a parent and the guardian *ad litem* for a child should be allowed to request secrecy. CPS should not even be allowed to ask for it. CPS has no interest in secrecy other than as a way to cover up its failings. If secrecy truly is needed to protect a child, that's what the guardian *ad litem* is there to ask for.

The argument against opening hearings and records is that it would embarrass children.

That argument fails on several counts:

- The alleged potential for trauma does not explain why information is kept secret even after a child has died.

- In the overwhelming majority of cases there are no graphic details to report. Most cases involve "neglect." A child will not be testifying about being beaten or raped because that's not the accusation.

- The most traumatic cases are likely to involve not only child protection proceedings but criminal cases as well. These hearings already are public. Yet we have never seen nor heard a single account of a child saying that she or he was traumatized by the fact that such a trial was public. Nor do we know of any adult coming forward years after the fact to complain of such trauma.

- At least 14 states have opened child protection proceedings to the press and the public. Two more let in reporters only. In every one of these states, the same fears were expressed. But a comprehensive nationwide examination by the *Pittsburgh Post-Gazette* found that none of the problems materialized. Indeed, over and over, one-time critics became converts.¹

"Everyone complains about everything in New York," says Judith Kaye, chief judge of that state's highest court, the Court of Appeals. But, she says, in the years since she ordered all of the state's family courts opened, "we've had no complaints about this."

Her deputy, Chief Administrative Judge Jonathan Lippman says "It has been 100 percent positive with no negatives ... Our worst critics will say it was the best thing we ever did. Their fears were unfounded ... I wish other states would do it."

One of those who initially opposed the change was Michael Gage, former administrative judge of the New York City family court. But now, Gage says, "I think it worked. From my view, it worked remarkably well."

Another opponent was Jane Spinak, then head of the Juvenile Rights Division of the Legal Aid Society in New York City. But, Spinak says, "the consensus now is that [the court] is better open than when it was closed."

Once the courts were opened, reporters saw the shabby conditions families had to endure. That led to funding for repairs. It's also helped raise fees paid to the lawyers who defend impoverished parents – from \$40 an hour in court and \$25 an hour out of court, to \$75 an hour in all cases – still not nearly enough, but an improvement.

Opening New York's family courts probably also helped build support for New York City's new initiative to create an adequately-funded provider of counsel for birth parents in many cases. (See Recommendation 4).

The head of New York City's child welfare agency when the courts were opened, Nicholas Scoppetta, said opening up the process helped him improve his agency. "We have not experienced a downside," he said.²

New York is not alone. In Illinois, the press has been allowed into juvenile court for more than a century. The former head of the state's child welfare agency, Jess McDonald, says the public should be allowed in, too. "We will only make mistakes if we are hidden in the back room," McDonald says.

The reform-minded head of Allegheny County, Pennsylvania's child welfare system, Marc Cherna, also supports opening hearings. And he supported the county's judges when they agreed to give regular access to a reporter from the *Post-Gazette*.

In Oregon, hearings in abuse and neglect cases have been open for more than 25 years. "The appearance of being treated fairly is compromised when things are done in secret," says Oregon Circuit Judge Daniel Murphy. "People are suspicious of anything done secretly."

But perhaps most revealing is this: Of all the states to open proceedings, not one has closed them again. For example, after three years of experimenting in 12 counties, the Minnesota Supreme Court opened courts in child maltreatment cases statewide.³ Surely if the experiment had been traumatizing children, it never would have been expanded.

And that shouldn't come as a surprise. Cases covered by the media are likely to fall into these categories:

- Cases where the child has been killed.
- Cases where the alleged abuse is so brutal that the details already are public knowledge because of police reports. These cases also are likely to be the subject of public, criminal proceedings.
- Overview stories about court systems, in which case examples can be used without revealing names.

No state court judge in America has a better reputation for concern about the welfare of children than Judge Kaye in

New York. She stands by what she said when the courts first were opened:

“Sunshine is good for children.”

RECOMMENDATION 2: OPEN RECORDS. Reverse the current presumption that most child welfare records are closed, and allow child welfare agencies to comment freely on any case made public by any other source.

As noted above, roughly 14 states allow the press and public into court hearings in child abuse cases.

This provides more accountability than exists in states where the entire process is secret. But it is not enough.

The amount that can be learned from what is often a cursory hearing lasting only a few minutes is limited. Therefore it also is urgent to reverse the current presumption that case records are closed.

This, of course, goes much farther than most state laws. But it also is more than most news organizations have sought when it comes to case records. News organizations generally seek transparency only in cases of child abuse fatalities.

While that is better than nothing, it has an unintended consequence: This limited degree of openness reinforces the misperception that the system errs only in one direction, leaving children in dangerous homes.⁴

The thousands of families who say their children were wrongfully removed still have no way to prove it; they remain thwarted by a “veto of silence.”

They can tell their stories to reporters, but even if they have some limited documentation, the reporters may decline to write about the case, rather than risk the possibility that people at CPS are telling the truth when they heave meaningful sighs and say, as they so often do, “Oh, there’s really so much more to it, and we *wish* we could tell you, but our hands are tied: Confidentiality, you know.” Or reporters themselves

may use this as an excuse to avoid doing stories that challenge their own preconceived notions.

“Sunshine is good for Children.”

--Judith Kaye, Chief Judge,
New York State Court of Appeals.

If almost all CPS records were available to the public, reporters would have a much better look at all sides of the story. (Records are not always accurate, however, and claims in them should not be accepted at face value).

Therefore, there should be a “rebuttable presumption” that almost all case records are open. As noted above, the names of people reporting alleged maltreatment almost always would remain confidential. Most other records would be opened unless the lawyer for the parents or the law guardian for the child could persuade the judge, by clear and convincing evidence, that opening a given record would cause severe emotional damage to a child.

The judge then would keep closed only the minimum amount of material needed to avoid the damage.

RECOMMENDATION 3: Child welfare agencies should be free to comment on any case that has been made public by any other source. For example, if a birth parent goes to a reporter and says “my child was wrongfully taken,” CPS should be free to tell its side of the story, as well as to release records under the conditions noted above.

At least four states have such laws, with varying degrees of limitations. The broadest we know of is in Arizona, where the child welfare agency is free to “confirm, clarify or correct” any material about a case

made public by anyone else. (Unfortunately, that has not stopped CPS in that state from hiding behind dubious claims of confidentiality).

“Dependency court remains a secretive, insular place where the rights of indigent parents to effective representation are sacrificed in favor of judicial expediency and entrenched insider groups.”

-- Michael Kresser, Executive Director, Sixth District Appellate Program, California.

Such a law serves two valuable purposes. First, it will encourage reporters to override the veto of silence. No longer could CPS say it wished it could talk but it could not. Now reporters would know the agency was stonewalling. Conversely, when CPS is right, it's important that the public know it. The agency should have the right to vindicate itself.

RECOMMENDATION 4: Quality legal representation must be available to all parents who must face CPS.

It is ludicrous to claim that children are protected from needless removal when their impoverished parents often are, literally, defense-less.

In some states, indigent parents have no right to counsel until the very end of the process, the termination of parental rights stage. In most states, they don't get a lawyer until moments before – or right after – the first court hearing, which often is, in fact, the most important, since that's where judges routinely ratify removals that case-

workers have made on their own authority.

Even when parents get a lawyer, it is likely to be a grossly overworked, underpaid attorney who has time to do nothing more than tell parents to give in to whatever CPS wants if they ever want to see their children again.

A recent assessment from the director of a program co-coordinating appeals for indigent parents in California could apply to almost any state or county in America.

Said Michael Kresser, executive director of California's Sixth District Appellate Program: “Dependency court remains a secretive, insular place where the rights of indigent parents to effective representation are sacrificed in favor of judicial expediency and entrenched insider groups.”⁵

This system needs to be replaced with one which guarantees indigent parents a lawyer from the moment the child is removed – or the moment an agency decides to go to court to place a family under its supervision, even while leaving the children at home. Every county, or the State, should be required to establish an institutional provider of defense counsel with resources at least equal to those available to the lawyers who represent the child welfare agency.

Providing “law guardians” for children is not enough to protect them from wrongful removal, for two reasons.

First, law guardians tend to rubber-stamp child welfare agencies, fighting them, if at all, only when they want to return children home. They are often too overwhelmed to do an independent investigation and, even when they can, they tend to buy into the same take-the-child-and-run mentality that dominates child welfare agencies. (Anyone who doubts this should put a simple two-question test to law guardians: How many times, when CPS wants to return a child home, do you disagree? How many times, when CPS wants to hold a child in foster care, do you disagree?) The second problem

Leveling the playing field in two states

In Pierce County, Washington, the judge in charge of the county's juvenile courts was dismayed at the escalating rate of terminations of parental rights – knowing that he was dooming some of the children to a miserable existence in foster care.

So he persuaded the legislature to provide enough money for defense attorneys to have resources equal to those of the Attorney General's office, which represents the state child welfare agency in juvenile court. The result: successful reunification of families increased by more than 50 percent.

And that's not because lawyers "got their clients off."

Where the parents are innocent, lawyers have time to prove it. Where there is a problem in the home that must be corrected, the lawyers have time to sit down with the parents, explain early on what they are up against and guide them through the process of making whatever changes are needed. They also can advocate for more and better services geared to what families really need, instead of the cookie-cutter "service plans" often offered by child welfare agencies.

Between 2000 and 2003, of 144 cases in the program in which families were reunified, not one was brought back to court.

"These children aren't coming back," says Washington State Supreme Court Justice Bobbie Bridge, a supporter of the program, "and we do get them back when we make bad reunification decisions."

The National Council of Juvenile and Family Court Judges is publicizing the results, and even the State Attorney General at the time, who had to face the better-prepared lawyers, supported the project and wanted it expanded.⁶ (We don't know if she still holds that view in her current job – governor.) Further information about the program is available here: <http://www.opd.wa.gov/Reports/DT-Reports.htm>

New York City has let contracts to provide similar representation for half of all indigent parents in four of the city's five boroughs. The city is doing this with the support of its child welfare agency, the Administration for Children's Services. This is because ACS recognizes that it is not infallible, and recognizes the role lawyers for parents can play in fighting for help for families.

It's also probably because, while at the Annie E. Casey Foundation, before becoming ACS Commissioner (a job he left in September, 2011) John Mattingly co-authored a scathing report on how the city's Family Courts ran roughshod over families. The report quoted judges admitting they routinely rubber-stamped removals even when they thought ACS failed to make its case, because they were afraid of winding up on the front page if they sent a child home and something went wrong.⁷

The Center for Family Representation holds the contract for Manhattan and, starting in 2011, for Queens.⁸

Since 2004, CFR has pioneered a model of team representation.

The family is represented by an attorney, a social worker and a parent advocate, described by CFR as "a parent who has directly experienced the child protective and foster care systems and has successfully reunified with his/her child."

CFR reports that the children represented this way *"spend, on average, 73 percent less time in foster care than children in the city and state and in 50 percent of our cases, children never enter care at all, but instead stay at home with the services needed to help them stay safe and thrive."*⁹

CFR reports that the results are even better when their teams can reach a family during an investigation but before the family is charged. In those cases, placement was avoided 95 percent of the time.

It's also cost-effective. In New York it costs an average of \$49,188 to keep one child in foster care for a year. The costs range from an average of \$25,000 per year per child in a family foster home to \$92,000 per year per child for a group home or institution. In contrast, the City estimates the average cost of a year of preventive services, for an entire family, at \$10,000.¹⁰ And CFR can represent an entire family for \$4,000 to \$6,000.¹¹

with relying on law guardians is discussed in Recommendation 6.

RECOMMENDATION 5: The institutional provider of counsel should have lawyers available 24-hours-a-day, seven-days-a-week, so that they can begin to work on a case from the moment a child is removed from the home, instead of only at or after the first hearing –or even later – as usually is the case now.

RECOMMENDATION 6: Law guardians should act as lawyers. Guardians *ad litem* should advocate for what the children they represent want, even if the GAL does not think it's in the child's best interests.

In New York State, Judge Kaye recently ordered GALs to take this approach. But in most states, the job of the guardian is to fight for what the *guardian* thinks is best for the child – even if the child disagrees. The guardian may make the court aware of what the child wants but, if the guardian thinks that is bad for the child, the guardian fights against the child's wishes. That can mean that the only parties without strong advocates in their corners are the parents – and the child.

Of course, the fact that a child wants a particular outcome doesn't mean he or she should get it. And some children are too young to express a rational preference, or any preference at all. But deciding what's best is what judges are for. And they can't truly do justice unless everyone has an advocate making the best possible case for his or her side.

RECOMMENDATION 7: Before a call is accepted by a child abuse "hotline" and referred for investigation, the caller must be able to demonstrate that s/he does, indeed, have "reasonable cause to suspect" maltreatment.

The caller must be able to offer something more than a guess that a child

really is being abused or neglected. To help hotline operators accomplish this goal:

RECOMMENDATION 8: A rational method must be established for screening hotline calls.

Child abuse hotlines vary in their power to screen in or screen out calls. In some states, virtually every call, no matter how absurd, must be passed on. This only further overwhelms workers making it less likely that they will be able to investigate any case carefully – and less likely that they will find children in real danger.

There always will be screening in child welfare. The choice is not between screening and no screening. The choice is between rational screening and irrational screening.

Every hotline needs to have a protocol of questions to be asked of callers to determine if the case rises to a level requiring an investigation.

RECOMMENDATION 9: Anonymous calls should not be accepted.

Of all the sources of child abuse reports, anonymous reports consistently are the least reliable. They're almost always wrong.

A study of every anonymous report received in the Bronx, New York, over a two year period found that only 12.4 percent met the incredibly low criteria for "substantiating" reports – and not one of those cases involved death or serious injury. The researchers found that "one case was indicated for 'diaper rash' one case for welfare fraud,

and two cases because the apartment was 'dirty.'”¹²

Anonymous reporting should be replaced by *confidential* reporting. If someone who may have a grudge or someone who simply may be clueless wants to claim that, say, a neighbor is abusing a child, that person should be required to give the hotline operator his or her name and phone number. That information still should be kept secret from the accused in almost all cases, but the hotline needs to know. That will immediately discourage false and trivial reports.

As noted in the recommendation on records, the law should allow the accused to go to a judge and explain why he feels he is being harassed by false reports, and by whom. The judge should check the record and, if the accused is right, and if the judge is persuaded that the reports are an act of harassment, the name should be released to the accused, who should have the right to sue for damages.

Of course, the objection to banning anonymous reports, and the objection to any kind of serious screening mechanism, is that some anonymous calls may be legitimate.

That's true.

If you ban anonymous reports, some real cases might be missed – though anyone who is sincere and has genuine reason to suspect maltreatment should be comfortable with confidential reporting.

But more real cases are missed now by overloading the system. There always will be screening in child welfare. The choice is not between screening and no screening. The choice is between rational screening and irrational screening. The more cases that cascade down upon investigators the less time they get for each one. So some get short shrift. It is far safer for children if cases are screened rationally by eliminating anonymous reports, rather than irrationally based on which file floats to the top of the pile on a caseworker's desk.

As the authors of the Bronx study put it, in recommending that anonymous reports be rejected: “The resources of child protective agencies are not limitless. The time and energy spent investigating false reports could better be given to more serious cases, and children may suffer less as a result.”¹³

RECOMMENDATION 10: No one should be listed in a central register of alleged child abusers, and no allegation should be substantiated, until, at a minimum, the family has had an administrative hearing conducted by a hearing officer outside of the child welfare agency. The standard of proof should be “clear and convincing.”

All states have massive databases listing everyone caseworkers suspect of being a child abuser. Most databases also include the names of people even when the accusation was labeled “unfounded.”

This poses enormous risks to children. Anyone can be declared a child abuser based on no more than a caseworker's guess. All she has to do is check a box on the form. Then the accused must fight her or his way out.

In some cases, there is no way to fight your way out at all. Some states allow for no appeal of this decision. In other states, the appeal process is long and cumbersome.

Yet a listing in a central register can have profound consequences. In many states it effectively bars employment in fields dealing with children.

Three states have been forced by courts to bolster protections for the accused, though the protections still don't go far enough.

In *Valmonte v. Bane*,¹⁴ the U.S. Court of Appeals for the Second Circuit ruled that even though New York State does have an appeals process, it did not provide adequate protection for the accused. Such

protection is needed, the court ruled, because listing someone who works with children in the state's central register of alleged child abusers almost always deprives the accused of employment in their chosen field.

In child welfare, where
there's smoke, there often is
only smoke – and no one can
see clearly through smoke.

The second decision, handed down by a federal district court in Illinois, is even more sweeping. In *DuPuy v. McDonald*¹⁵ that court found the central register process unconstitutional on a variety of grounds including the fact that, while it was possible to appeal, the process was incredibly cumbersome and lengthy.

One key point that was common to these cases: In both Illinois and New York, when people did manage to appeal, the original finding of abuse or neglect was overturned 75 percent of the time.

And the Missouri Supreme Court has ruled that no one can be listed in that state's Central Register without an administrative hearing first.¹⁶

As always, CPS agencies will claim that any curb on their power to effectively blacklist anyone they choose will compromise their ability to protect children. In fact, however, depriving people of employment based on rumor and innuendo is enormously harmful to children.

- Obviously, if a parent can't get work, that will affect his or her children.

- If information based on little more than a caseworker's guess is allowed to pile up in secret files, sooner or later some CPS worker is likely to claim that there is a "pat-

tern" and use that as the basis to take away the children.

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

This is particularly true when *unfounded* reports are kept. These are files on people who usually are so innocent that even the meager amount of evidence needed for one worker to substantiate the allegation couldn't be found. Keeping such reports is an incentive for people to use the system for harassment. Make enough anonymous calls, set off enough investigations, and sooner or later something is bound to stick. Therefore:

RECOMMENDATION 11: When a report is "unfounded" all records should be expunged within 30 days.¹⁷

The reason unfounded reports should be expunged is the same reason CPS agencies want to keep them. Once again, they say they are needed to detect "patterns" or, as they often like to put it "where there's smoke, there's fire." But a pattern of rumor and innuendo is so misleading that it is worse than no pattern at all. In child welfare, where there's smoke, there often is only smoke – and no one can see clearly through smoke. Furthermore:

- If you make it too easy for a worker to accuse the most convenient suspect, list them as "substantiated" child abusers and move on, there is a good chance that in situations where there really is abuse, the wrong person will be accused - and someone who really is guilty never will be caught.

- And, perhaps most important, these listings are not necessarily limited to adults. Children themselves can be listed as child abusers. In the lead case in *DuPuy* the accused was a ten-year-old girl who was accused of sexual abuse after she pulled up the pants of some much younger boys who were "playing doctor" in the day care home run by her family.

As the appeals process dragged on and on, the child became so depressed that at one point she attempted suicide.

RECOMMENDATION 12: From the moment a child is removed until the first hearing at which all sides are represented, the child welfare agency shall be responsible for arranging daily visits, unless it can show, by clear and convincing evidence, that this would cause severe emotional harm to the child.

This would help ease the emotional trauma done to the overwhelming majority of children by the act of removal itself. But it also serves another purpose.

There are very few “front door” methods to prevent wrongful removal of children. This is a way of getting at the problem through the “back door.”

This idea was first proposed as part of a very good model law written by Prof. Michael Wald of Stanford University Law School in 1976, and revised by an American Bar Association Committee in 1981.

A requirement for daily visits, unless CPS can show by clear and convincing evidence that this would cause severe and lasting emotional trauma to the child, (physical trauma can be prevented by having the visits supervised) will help ease the trauma of the removal itself.

CPS will scream about how burdensome it is. But that’s the idea. If a CPS worker knows that taking a child on his or her own authority will be followed by a requirement that he or she set up several days worth of visits, that worker might be more careful about who is taken away.

RECOMMENDATION 13: All interviews conducted by CPS personnel in the course of child maltreatment investigations – not just interviews with children – should be, at a minimum, audiotaped. For interviews conducted at CPS offices or similar settings, videotape is preferable. Information from any interview that

is not taped should be inadmissible in all court proceedings.

In an age of tiny, unobtrusive micro-cassette tape recorders, anything less than requiring that all interviews be taped is very, very dangerous to children.

The most obvious danger is reflected in the mass molestation hysteria of the 1980s, in which hundreds of children in cases like the McMartin Preschool were pressured into saying what interrogators wanted to hear. Only the existence of tape recordings prevented even worse miscarriages of justice.

But it’s just as important to tape record interviews with everyone else. Over and over again, all over the country, one hears the same refrain from victimized families: The worker was selective. The worker wrote down only what supported her position and ignored the rest. As one victim, later proven innocent, told a reporter: “They lie, they lie, they *awfully* lie.”¹⁸

And it’s not just aggrieved parents expressing these concerns. In a scathing decision, a juvenile court judge in Connecticut blasted that state’s child welfare agency for “an appalling combination of arrogance and ineptitude.” She ruled that CPS deliberately left out exculpatory information in order to obtain emergency removal of a child. The judge wrote:

There is no other purpose for this affidavit other than to mislead the court into believing that [the child] was in immediate physical danger from her surroundings and only her immediate physical removal ... would ensure her safety. The court finds that [the Connecticut child welfare agency] intended to manipulate the facts to obtain an order that it knew the facts could not justify.

The judge felt compelled to encourage Connecticut CPS to remind its workers of the punishment for perjury.¹⁹

And a former family court judge on

Staten Island, New York wrote this:

*While I found the majority of child care agencies to be caring and trustworthy, there were enough instances of deceptive agency reports that I decided to order independent investigations of every agency adoption case that came before me. It's a course of action that remains prudent today.*²⁰

If a CPS agency wants to claim that kind of thing never happens in its own state, then let the agency prove it. Tape all the interviews, and then the people will know. Indeed, CPS should welcome this requirement, since it isn't just a way to protect the innocent – it's a way to convict the guilty. A defense lawyer can't successfully claim that a child was manipulated or a parent's comments were distorted if there is a tape that proves otherwise.

Even when it is clear that workers are not lying – and in most cases, they probably do not misrepresent facts on purpose -- taping still is essential.

A basic tenet of communications theory is that people tend to hear what they want to hear or what they expect to hear. Everything we hear is filtered through our life experiences, our beliefs, and our prejudices. There is no excuse *not* to require that every interview done by a CPS worker in the field be, at a minimum, audiotaped and every interview done at a CPS office or similar facility be videotaped.

As important as requiring taping itself is a requirement that interviews that are not taped be treated, in effect, as though they don't exist.

In criminal cases, evidence obtained improperly cannot be admitted – no matter how compelling that evidence may be. The requirement is an attempt to be sure that police are scrupulous about the rights of citizens when they gather evidence.

If taping is “required,” but notes from interviews that were not taped still can be used in court, it is an invitation for tape

recorders to “jam,” workers to “forget” and batteries to “die” on a regular basis.

RECOMMENDATION 14: The standard of proof in all court proceedings should be raised from the current standard in most states, “preponderance of the evidence,” to “clear and convincing.” The standard also should apply when a worker decides to “substantiate” alleged maltreatment.

There are few punishments one can inflict on a *child* that are more severe than needlessly tearing away his family. And yet, when it's time for courts to decide to place a child in foster care, they do not apply the standard used to convict someone accused of murdering a child, “beyond a reasonable doubt,” or even the middle standard, “clear and convincing” evidence. Instead, courts in most states apply the lowest standard of proof, “preponderance of the evidence.” As we noted at the start of this report, this is the same standard used to decide which insurance company pays for a fender-bender.

Only at the very end, when the issue is termination of parental rights, does the standard rise to “clear and convincing” – and it took a U.S Supreme Court case to make that the law of the land in all 50 states.²¹

The “clear and convincing” standard should be the standard for every decision, from the moment a caseworker decides whether to “substantiate” a case, through initial removal, through continuing foster care.

Opponents say, in effect, that if caseworkers ever actually had to provide real evidence that a parent did something wrong before they took away the children, then children might be left in unsafe homes.

But if the standard is not raised, even more children will be subject to the unconscionable trauma of needless foster care – and some of them will be abused in foster

care itself. Furthermore, the system will continue to be overwhelmed and that will lead to more children in real danger being missed.

In fact, even if the standard is raised, the impact may be limited. Some states already use a clear and convincing standard – yet the rate of child removal in those states appears to be no lower than others. In other words, no matter what the law says, judges tend to apply a standard that boils down to almost no standard.

The impact of raising the standard is likely to be symbolic – if it is raised with enough media attention it might cause at least a temporary reduction in needless removals of children. In addition, it may increase the chances of bad decisions being overturned on appeal.

RECOMMENDATION 15: Abolish legal “ransom.”

That’s not what it’s called, or course. But many states require impoverished parents to dig themselves deeper into poverty in order to help reimburse the state that took away their children for the cost of “care.” And there is a word for taking away people’s children and making them pay money to get the children back.

This legal ransom punishes innocent families, it punishes the taxpayers it is intended to help, and, worst of all, it punishes children.

The overwhelming majority of parents who lose children to the system have no money to spare. Often that’s why their children are in foster care in the first place.

Because the standard of proof in child welfare proceedings is so low, this provision inevitably punishes many innocent families.

The purpose of foster care is to keep the child safe. Everyone concedes it is harmful to take a child from his or her parents and the longer the foster care the greater the harm. If you make ransom a condition

of returning the child and the birth parents manage to do everything else but still owe the ransom, the foster care is prolonged even though the home is now safe. That is punishing the *child* for the alleged financial failings of the parents.

There is a word for taking away people’s children and making them pay money to get the children back.

For the same reason, ransom actually costs taxpayers more. For every extra day a child is held in foster care because the birth parents haven’t paid their “share” of the costs, the state has to foot the entire bill. The birth parents wind up in a deeper and deeper hole and the state winds up paying more and more.

Even if the birth parents scrape together the money to get their child back, the payments only make it harder to get out of poverty. Poverty often creates stress that leads to actual child abuse, or poverty itself is confused with neglect – so the ransom increases the chances of actual child abuse and/or having the child taken away again because of poverty. Once again, you harm the child – and cost the state more money.

RECOMMENDATION 16: In all places where it appears, the phrase “best interests of the child” should be replaced with the phrase “least detrimental alternative.”

Currently, almost all state laws involving custody of children are liberally sprinkled with the phrase “best interests of the child.”

But that is a phrase filled with hubris. It says we are wise enough always to know what is best and capable always of

acting on what we know. In fact, those are dangerous assumptions that can lead us to try to fix what isn't broken or make worse what is.

More than thirty years ago, three scholars, Albert Solnit, Joseph Goldstein, and Anna Freud, proposed an alternative phrase. They said "best interests of the child" should be replaced with "least detrimental alternative."²²

"Least detrimental alternative" is a humble phrase. It recognizes that whenever

we intervene in family life we do harm. Sometimes we must intervene anyway, because intervening is *less* harmful than not intervening. But whenever we step in, harm is done.

The phrase "least detrimental alternative" is a constant reminder that we must always balance the harm that we may think a family is doing against the harm of intervening. It is exactly the shot of humility that every child welfare system needs.

NOTES:

¹ All of the quotes in this section are from the *Pittsburgh Post-Gazette* series, "Open Justice," by reporter Barbara White Stack. (Sept. 23-25 2001). The series is available at <http://www.post-gazette.com/nation/20010923opencourt0923p8.asp>

² Barbara White Stack, "Freedom to speak can lead to reform," *Pittsburgh Post-Gazette*, Sept. 24, 2001.

³ Associated Press, Minnesota wire "Court orders child protection records opened to public," Dec. 27, 2001.

⁴ Simply because more children are in their own homes than in foster care, in raw numbers, more children die in their own homes. Proportionately, however, the rate of child abuse fatalities in foster care is higher than in the general population. About 0.73 percent of American children are in foster care, but 1.22 percent of child abuse fatalities are in foster care. U.S. Dept. of Health and Human Services, Administration on Children, Youth and Families. *Child Maltreatment 2002* (Washington, DC: U.S. Government Printing Office, 2003). See chart in Chapter 4.

⁵ Karen De Sa, "Dependent on same lawyers," San Jose Mercury News, August 9, 2008.

⁶ Heath Foster, "Relying on good advice can reunite troubled families," *Seattle Post-Intelligencer*, February 12, 2003, p.B1.

⁷ Special Child Welfare Advisory Panel for New York City, *Advisory Report on Frontline Practice* (2000), p. 48.

⁸ Center for Family Representation, *Bringing Innovative Legal Services to Scale: A Brief History of CFR's Community Advocacy Teams: from Pilot to Promise* http://www.cfrny.org/new_legal.asp#cat6

⁹ Ibid.

¹⁰ Kathleen Maher, *Fiscal Brief: How Has Shift Away From Foster Care Affected Funding, Spending, Caseloads?* (New York City Independent Budget Office, October, 2011). <http://www.ibo.nyc.ny.us/iboreports/childwelfare101211.pdf>

¹¹ Center for Family Representation, note 108, supra.

¹² William Adams, Neil Barone and Patrick Tooman, "The Dilemma of Anonymous Reporting in Child Protective Services," *Child Welfare* 61, no. 1, January, 1982, p.12. Yes, it's an old study. We wish there were a newer one. But child welfare agencies almost never ask questions to which they don't really want to know the answers – and there's no reason to think anonymous reporters have gotten any more reliable in recent years.

¹³ Ibid.

¹⁴ 18 F.3d 992 (2nd Cir. 1994). A member of NCCPR's Board of Directors served as counsel for plaintiffs in this case.

¹⁵ No. 97 C 4199, slip op. at 78-79 (N.D. Ill. March 30, 2001). A former NCCPR board member served as co-counsel for plaintiffs.

¹⁶ Supreme Court of Missouri, *Johnson v. Missouri Dept. of Social Services*, case # SC87360, March 13, 2007, available online at <http://www.courts.mo.gov/Courts/PubOpinions.nsf/0f87ea4c0ad4c0186256405005d3b8e/225584f770084a2e862572ab00787aff?OpenDocument>

¹⁷ The only exception should be if the accused believes he or she is being harassed and wants time to ask a judge for permission to see the record.

¹⁸ M.P. McQueen: "Cradle to Grave: City yanks 4 children after tragedy," *New York Newsday*, March 9, 1992.

¹⁹ Colin Poitras, "Social Worker Distorted Case; Judge: Child's Removal Was Unnecessary" *Hartford Courant*, August 5, 2004.

²⁰ Daniel Leddy, "Advocates are at times overzealous, even dishonest, in their zeal" *Staten Island Advance*, December 2, 2004.

²¹ *Santosky v. Kramer*, 455 U.S. 745 (1982). The lawyer who won this case now serves as President of NCCPR.

²² Joseph Goldstein, Anna Freud, Albert J. Solnit, *Beyond the Best Interests of the Child*, (New York: The Free Press, 1973), p.53.

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APPENDIX D: DOING CHILD WELFARE RIGHT

Successful alternatives to taking children from their families

At the National Coalition for Child Protection Reform, we often are asked what can be done to prevent the trauma of foster care by safely keeping children with their own families. There are many options, ranging from specific services to entire county or state systems that can serve as models. We've listed some below. They are listed thematically; it is not a ranking. None of these alternatives will work in every case or should be tried in every case. Contrary to the way advocates of placement prevention often are stereotyped, we do not believe in "family preservation at all costs" or that "every family can be saved." But these alternatives can keep many children now needlessly taken from their parents safely in their own homes. Similarly, even communities that have turned their child welfare systems into national models still have serious problems, and often much progress still needs to be made. All of the things that go wrong in the worst child welfare systems also go wrong in the best – but they go wrong less often. Those communities also can regress. Those listed here have proven they *can* do far better than most, not that they always will.

1. Doing nothing. There are, in fact, cases in which the investigated family is entirely innocent and perfectly capable of taking good care of their children without any "help" from a child welfare agency. In such cases, the best thing the child protective services worker can do is apologize, shut the door, and go away.

2. Basic, concrete help. Sometimes it may take something as simple as a rent subsidy, or a place in a day care center (to avoid a "lack of supervision" charge) to keep a family together. Indeed, the federal Department of Housing and Urban Development has a Family Unification Program, in which Section 8 vouchers are reserved for families where housing is the issue keeping a family apart or threatening its breakup. Localities must apply for these subsidies. By doing so, they effectively acknowledge what they typically deny: that they do, in fact, tear apart families due to lack of housing. **CONTACT: Ruth White, Executive Director National Center for Housing and Child Welfare (866) 790-6766, info@nchcw.org.** Ms. White also is a member of the NCCPR Board of Directors.

3. Intensive Family Preservation Services (IFPS) programs. The first such program, Homebuilders, in Washington State, was established in the mid-1970s. The very term "family preservation" was invented specifically to apply to this type of program, which has a better track record for safety than foster care. The basics concerning how these programs work – and what must be included for a program to be a real "family preservation" program -- are in NCCPR Issue Papers 10 and 11. Issue Paper 11 lists studies proving the programs' effectiveness. **CONTACTS:** Charlotte Booth, executive director, Homebuilders (253) 874-3630, info@instituteoffamily.org, Susan Kelly, former director, Families First (Michigan's IFPS program) (734) 547-9164, skelly@casey.org

4. The Alabama "System of Care." This is one of the most successful child welfare reforms in the country, successful enough to be featured on the front page of *The New York Times*. The reforms are the result of a consent decree growing out of a lawsuit brought by the Bazelon

Center for Mental Health Law. The consent decree, now ended, required the state to rebuild its entire system from the bottom up, with an emphasis on keeping families together. The rate at which children are taken from their homes is among the lowest in the country, and re-abuse of children left in their own homes has been cut sharply. An independent monitor appointed by the court found that children are *safer* now than before the changes. **CONTACTS: Ira Burnim, Legal Director, Bazelon Center for Mental Health Law (202) 467-5730, ext. 129.** Mr. Burnim also is a member of the NCCPR Board of Directors. **Paul Vincent, Child Welfare Policy and Practice Group, Montgomery, Ala. (334) 264-8300. Paulvincent@childwelfaregroup.org** Mr. Vincent ran the child protection system in Alabama when the lawsuit was filed. He worked closely with the plaintiffs to develop and implement the reform plan. **Ivor Groves, independent, court-appointed monitor, (850) 422-8900.**

5. Family to Family. This is a multi-faceted program developed by the Annie E. Casey Foundation. One element of the program, Team Decisionmaking often is confused with the entire program, which has many more elements. The program is described at the Casey website <http://bit.ly/btOf0j> A comprehensive outside evaluation of the program, found that it led to fewer placements, shorter placements, and less bouncing of children from foster home to foster home – with no compromise of safety. **CONTACT: Gretchen Test, Annie E. Casey Foundation (410) 547-6600, gtest@aecf.org**

6. Community/Neighborhood Partnerships for Child Protection. These partnerships, overseen by the Center for the Study of Social Policy in Washington, are similar to the Family to Family projects. **CONTACTS: Marno Batterson, Center for the Study of Social Policy, (641) 792-5918, marno.batterson@cssp.org**

7. The turnaround in Pittsburgh. 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

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DOING CHILD WELFARE RIGHT

insisted every one of those placements was necessary. New leadership changed all that. Since 1997, the foster care population has been cut dramatically. When children must be placed, about half of all placements are with relatives and siblings are kept together 82 percent of the time.

They've done it by making big new investments in primary prevention and family preservation, embracing innovations like Family to Family 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 children are safer. Reabuse of children left in their own homes has declined and there has been a significant and sustained decline in child abuse fatalities.

CONTACT: Karen Blumen, Allegheny County Department of Human Services, Office of Community Relations (412) 350-5707.

8. Reform in El Paso County, Colorado. By recognizing the crucial role of poverty in child maltreatment, El Paso County reversed steady increases in its foster care population. The number of children in foster care declined significantly – and the rate of reabuse of children left in their own homes fell below the state and national averages, according to an independent evaluation by the Center for Law and Social Policy. **CONTACT: Barbara Drake, El Paso County Department of Human Services, (719) 444-5532.**

9. The Bridge Builders, Bronx, New York. Combine the giving and guidance of ten foundations with the knowledge and enthusiasm of eight community-based agencies, add extensive involvement of neighborhood residents in outreach, service delivery and governance, then partner with the child protective services agency and what do you get? A significant reduction in the number of children taken from their homes, with no compromise of safety, in a neighborhood that is among those once losing more children to foster care than any other in New York City. That's the record of the Bridge Builders Initiative in the Highbridge section of The Bronx. (NCCPR received a grant to assist the Bridge Builders with media work). **CONTACTS: Joe Jenkins, executive director, (718) 681-2222; Jenkinsj@highbridgelife.org, John Rios, Jewish Child Care Association of New York, co-chair Bridge Builders Executive Committee, riosj@jccany.org**

10. The transformation in Maine. After a little girl named Logan Marr was taken needlessly from her mother only to be killed by a foster mother who formerly worked for the child welfare agency, the people of Maine refused to settle for pat answers about background checks and licensing standards. They zeroed in on the fact that Maine had one of the highest proportions of children in the country trapped in foster care. The combination of grassroots demands for change from below and new leadership at the top led to a significant reduction in the number of children taken away over the course of a year, the proportion of children placed with relatives has soared while the proportion in the worst form of care, group homes and institutions, plummeted. It's all been done without compromising safety, earning the support of the state's independent child welfare ombudsman. **CONTACTS: Dean**

Crocker, Vice President for Programs, Maine Children's Alliance, (207) 623-1868 ext. 212, dcrocker@mekids.org; Mary Callahan, founder Maine Alliance for DHS Accountability and Reform, (207) 353-4223, maryec_98@yahoo.com

11. Changing financial incentives. This change spurs both government and private child welfare agencies to come up with all sorts of innovations.

Illinois has focused on changing incentives for private agencies. Until the late 1990s, Illinois reimbursed those agencies the way other states typically do: They were paid for each day they kept a child in foster care. Thus, agencies were rewarded for letting children languish in foster care and punished for achieving permanence. Now those incentives have been reversed, in part because of pressure from the Illinois Branch of the ACLU, which won a lawsuit against the child welfare system. Today, private agencies in Illinois are rewarded both for adoptions (which often are conversions of kinship placements to subsidized guardianships) and for returning children safely to their own homes. They are penalized for prolonged stays in foster care. The foster care population plummeted, and children are safer. Today, Illinois takes away children at one of the lowest rates in the country. Independent, court-appointed monitors have found that child safety has improved. **CONTACT: Ben Wolf, Illinois Branch, ACLU, (312) 201-9760, ext. 420, bwolf@aclu-il.org**

12. The transformation in Florida. Less than a decade ago, Florida was the national example of child welfare failure. The disappearance of a foster child for more than a year before anyone even noticed symbolized the collapse of a system built on a take-the-child-and-run mentality. Then new leadership reversed course, replacing the former bunker mentality with an emphasis on openness and replacing the take-the-child-and-run approach with an emphasis on safe approaches to keeping families together. And Florida obtained a waiver allowing it to trade in its right to an unlimited open-ended entitlement to foster care money (discussed in detail in NCCPR Issue Paper 12) for a flat grant that can be used for better alternatives as well. Entries into care are down significantly and independent evaluators say child safety improved. The reforms were highlighted by *The New York Times*. **CONTACT: ALAN ABRAMOWITZ, Former Dir., Div. of Family Safety, Florida Department of Children and Families alan_abramowitz@dcf.state.fl.us, 850-566-5670**

13. Due process of law. Even the best programs are no substitute for due process. That means court hearings in child welfare cases should be open. But that also means it's urgent for accused parents to have meaningful legal representation from well-trained attorneys with low caseloads and solid support staff. It's not a matter of getting "bad" parents off, it's a matter of challenging case records that often are rife with error, countering cookie-cutter "service plans" that provide no services and ensuring that families get the help they need. There is much more on this in NCCPR's *Due Process Agenda for Families* at www.nccpr.org Updated Feb. 18, 2011