

NEVER MIND THE DECK CHAIRS, ***SAVE THE SHIP***

KEY FINDINGS AND RECOMMENDATIONS

March, 2012

The Titanic of Nebraska child welfare hit the iceberg years ago; it's been sinking ever since. Yet it seems that all DHHS and the Legislature can think of to do is find new ways to rearrange the deck chairs. It doesn't have to be that way.

Page numbers refer to where you will find a more detailed discussion in the full report

- Nebraska doesn't just take away children at a rate above the national average, **Nebraska is an extreme outlier, tearing apart families at a rate more than triple the national average.** And Nebraska holds proportionately more children in foster care than any other state (pp. 3-6).

- Right now about 400,000 children are in foster care nationwide. But **if all of America were like Nebraska, more than a million children would be trapped in foster care** (p.5).

- **Nebraska's obscene rate of child removal makes all children less safe.** In addition to harming the children needlessly taken, all those children flooding into the system overload caseworkers, so they have less time to find children in real danger who really do need to be removed from their homes (p.9).

- The attitude of the Nebraska Department of Health and Human Services toward families was summed up by a caseworker who quit the agency in disgust. During training, she said, she was told: **"Parents don't know their rights and you should take advantage of that by walking all over them."** (p.7).

- **The obscene rate of child removal drives all of the other problems plaguing**

Nebraska child welfare. Yet the Governor and the Legislature appear obsessed with a pointless, puerile debate over privatization, (p.4).

- **Privatization is The Great Irrelevancy of American child welfare.** There is no evidence that privatized systems are better, or worse, than those where the public child welfare agency has a dominant role. (Similarly, there is no evidence that a separate children's services department works better than one that is part of a larger human services agency, p.4).

- **Nebraska makes the problem worse by underusing the least harmful form of foster care, kinship foster care with relatives, and overusing the worst form, group homes and institutions.** Study after study has found that group homes and institutions are inherently harmful – and largely unnecessary. There is nothing an institution can do that can't be done better, and at less cost, through alternatives such as Wraparound (pp. 25-36).

- Most children taken from their parents were not beaten, raped or tortured. Most cases are nothing like the stereotype that comes to mind when people hear the words "child abuse." **Far more common are cases in which family poverty is confused with "neglect."** Other cases fall between

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the extremes, the parents neither all victim nor all villain, (pp. 9-16).

- **The problem is compounded by racial bias.** Black children are trapped in Nebraska foster care at a rate 3.4 times their rate in the Nebraska child population. Native American children are trapped in foster care at a rate 6.8 times their rate in the Nebraska child population – the third worst record in the country. The adoption of an approach called Structured Decision Making is likely to worsen this bias, (pp. 16-19).

- Though agencies like DHHS claim they never take children because of poverty, point out the racial disparities and the agencies almost always blame those disparities on the fact that minority children are more likely to be poor. In fact, **racial bias and class bias both contribute to Nebraska's extreme rate of child removal** (pp. 9-10, 16-19).

- Nebraska's insane rate of removal does enormous harm to children by tearing them from everyone they know and love, often inflicting lifelong emotional damage. Foster care is so inherently traumatic that **several major studies have found that, in typical cases, children placed in foster care fare worse in later life even than comparably-maltreated children left in their own homes** (pp. 6-9).

- **The problem is worsened by the high rate of abuse in foster care itself.** Several studies have found abuse in one-quarter to one-third of foster homes, the rate of abuse in group homes and institutions is even worse (pp. 8-9).

- **All of the problems in Nebraska child welfare are worsened by the state's Foster Care Review Board,** which has brought a 19th Century mentality to 21st Century child welfare problems. The board's ap-

proach exemplifies worst practice in American child welfare. The board should be abolished (pp. 13-15).

- The problems are worsened as well by Nebraska's law that turns parents into criminals when they behave responsibly and keep sick children home from school. Hundreds of children already have suffered grave harm because of this law; ultimately, if it isn't changed, it could well harm the majority of Nebraska families. **This barbaric legislation has undermined both child welfare and education. It should be repealed** (pp. 41-43). Compromise legislation, to give more discretion to local school districts is a good step in the right direction, but does not go far enough.

- While most people in Nebraska child welfare mean well, the system has a mean streak unseen in many other states. This came through most clearly during the "safe haven" debacle (pp. 23-25).

- **Money is not the problem.** Nebraska actually spends on child welfare at a rate above the national average and above the rate in many states with far better systems. But the money is wasted on needless foster care and institutions, which not only are worse for children than family-based services, but also cost more. Ideally, Nebraska should spend more. But more important, Nebraska must spend smarter (pp. 37-38).

- **It would be shameful to waste even more money.** Few things could be more wasteful or more counterproductive than lavishing a pay raise on foster parents that is so huge it would reimburse them for the cost of buying a teddy bear to comfort a foster child. Yet a bill to encourage just that is before the Nebraska Legislature. **Would you want a child of yours placed with someone who demanded such reimbursement?** (PP. 20-23).

Legislation: What Works and What Does Not

All bill numbers are for the bills as originally introduced

Useful Legislation (pp. 39, 40):

- **LB820.** *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.*

The waiver would allow Nebraska to take \$19 million in federal aid now reserved for foster care and use it for better alternatives as well. It is the single most important piece of child welfare legislation this session.

- **LB998 (original version).** **Purpose:** *Eliminates the Foster Care Review Board, replacing it with a foster care review office, reporting to the legislature.* Unfortunately this bill, originally excellent, has been watered down to the point of meaninglessness. The original language should be restored, and local review boards should be abolished as well.

- **LB1165.** *Restores the distinction between truancy and excused absences.* This bill would end the criminalization of families for their children's illnesses. It would end the suffering that has been spread across the state as a result of the Nebraska law that lumps together excused and unexcused absences from school. That suffering has included a bizarre exercise in public shaming like something out of the 17th Century.

Other legislation (pp. 44-46):

- **LB961.** **Purpose:** *Return case management to the state.* **The classic deck chair bill. Instead, the current dual system should be frozen in place with steps taken to evaluate each approach.**

- **LB821.** **Purpose:** *Create a Nebraska Children's Commission. Its work would include studying whether Nebraska should have a separate Department of Children's Services.* There is no evidence separate

agencies help children. The bill should require that membership on any commission include present or former foster children, parents who lost children to the system, and parental defense attorneys.

- **LB957.** *Create an inspector general for Nebraska child welfare.* The bill will do more harm than good unless it's revised to create a rebuttable presumption that full reports from the inspector general and supporting documentation are public. The office's mandate must be expanded to include complaints alleging wrongful removal of children.

- **LB1149.** *Limit caseloads for DHHS and private lead agency caseworkers.* This bill should be amended to specify that new hiring to lower caseloads should be in the form of hiring prevention and family preservation workers, not more investigators and foster care workers.

- **LB 874.** *Requires that even close family friends, people who may be family in all but name, meet all hypertechnical requirements imposed on strangers before they can become foster parents.* This actually would worsen Nebraska's already mediocre record when it comes to kinship care, the least harmful form of foster care.

- **LB926.** *Would have provided a huge pay raise for foster parents and equalized pay for relative and non-relative foster parents.* This bill should be split in two. The part about equalizing pay for relatives and non-relatives should be retained. But for reasons noted above, the pay raise is outrageous and should be defeated. Unfortunately, in its latest form, the bill encourages doing the opposite. The provision equalizing pay rates is eliminated, and the giant pay raise is encouraged.

Beyond the Bills: Real Solutions

(Discussed in detail in the full report on pages. 47-52)

- If privatization continues, the system must be changed *either* to give “lead agencies” control over the “front door” or to compensate them for unexpected increases in entries genuinely beyond their control. This compensation must be provided in a way that still provides an incentive to reduce length of stay and encourage reunification.

- Law enforcement personnel must be trained rigorously 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.

- State law should be changed to order DHHS to audit law enforcement agency performance, including 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.

- 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. Here is a summary of some of

them:

- 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.

- Bar DHHS from obtaining gag orders to prevent families from telling their stories - something the agency actually has done in at least one case.

- 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.

- 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

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really is being abused or neglected.

- **A rational method must be established for screening hotline calls.**

- **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 anonymous 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.”**

- **When a report is “unfounded” all records should be expunged within 30 days,** unless the accused wants them retained.

- **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, should be required to arrange 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.

- **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.

- **The standard of proof in all court proceedings should be raised from the cur-**

rent “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 whose children have been taken, parents who typically are poor to begin with, to pay all sorts of expenses related to foster care. This is astoundingly stupid. Not only does it do enormous harm to children by prolonging foster care, that additional foster care will cost more than the state ever can hope to recover from an impoverished parent. **There is a word for taking someone’s child and making him pay money to get that child back.**

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:*

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

- **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.